Political Institutions in India

DPOL525

Edited by
Karan Singh
Aashish Sharma

LOVELY PROFESSIONAL UNIVERSITY

POLITICAL INSTITUTIONS IN INDIA

Edited By:
Karan Singh
Aashish Sharma

CONTENT

Unit 1:	**Making of the Indian Constitution** *Zahoor Wani, Lovely Professional University*	1
Unit 2:	**Constituent Assembly** *Zahoor Wani, Lovely Professional University*	15
Unit 3:	**Philosophy of the Constitution** *Zahoor Wani, Lovely Professional University*	28
Unit 4:	**Constitutionalism in India:** *Zahoor Wani, Lovely Professional University*	49
Unit 5:	**Union executive:** *Zahoor Wani, Lovely Professional University*	69
Unit 6:	**Union Parliament:** *Zahoor Wani, Lovely Professional University*	82
Unit 7:	**Judiciary part - I** *Zahoor Wani, Lovely Professional University*	98
Unit 8:	**Judiciary part -II** *Zahoor Wani, Lovely Professional University*	112
Unit 9:	**State executive:** *Zahoor Wani, Lovely Professional University*	124
Unit 10:	**State Legislature:** *Zahoor Wani, Lovely Professional University*	136
Unit 11:	**Federalism in India:** *Zahoor Wani, Lovely Professional University*	150
Unit 12:	**Electoral Process and Election Commission of India** *Zahoor Wani, Lovely Professional University*	164
Unit 13:	**Constitutional and Statutory Bodies Part -II** *Zahoor Wani, Lovely Professional University*	186
Unit 14:	**Constitutional and Statutory Bodies Part -II** *Zahoor Wani, Lovely Professional University*	198

DPOL525 POLITICAL INSTITUTIONS IN INDIA

Sr. No.	Content
Unit 1	**Making of the Indian Constitution:** Indian national movement to the making of the Indian constitution
Unit 2	**Constituent Assembly:** composition of constituent assembly, ideological moorings, constitutional debates
Unit 3	**Philosophy of the Constitution:** preamble, fundamental rights, directive principles of state policy
Unit 4	**Constitutionalism in India:** democracy, social change, national unity, checks and balances, basic structure debates, constitutional amendments
Unit 5	**Union executive:** president as the head of the state, prime minister and council of ministers
Unit 6	**Union Parliament:** structure of the union parliament, role and functioning, parliamentary committees
Unit 7	**Judiciary part-1:** supremeCourt, high court
Unit 8	**Judiciary part -11:** judicial review, judicial activism, judicial reform
Unit 9	**State executive:** Governor, Chief Minister and council of ministers
Unit 10	**State Legislature:** Legislative council and Legislative assembly
Unit 11	**Federalism in India:** strong centre framework, asymmetrical federal provisions and adaption, role of intergovernmental coordination mechanisms, inter-state council, emerging trends.
Unit 12	**Electoral Process and Election Commission of India:** conduct of elections, rules, electoral reforms. functioning and reforms of the local government Institutions
Unit 13	**Constitutional and Statutory Bodies Part -1:** Comptroller and Auditor General, National Commission for Scheduled Castes, National Commission for Scheduled Tribes
Unit 14	**Constitutional and Statutory Bodies Part -11:** National Commission for Human Rights, National Commission for Women, NationalCommission for Minorities

Unit 01: Indian National Movement to the Making of the Indian Constitution

CONTENTS

Objectives
Introduction
1.1 Definitions of Constitution
1.2 The Functions of a Constitution
1.3 Evolution of the Indian Constitution 1858-1935
1.4 The Company Rule (1773-1858)
1.5 The Crown Rule (1858–1947)
1.6 Summary
Keywords
Review Questions
Further Readings

Objectives

It is salient to mention that the Constitution on India is product of long drawn process and deliberations. This Unit deals with some issues relating to the making of the Indian Constitution during the colonial era. After going through this Unit, you will be able to learn about the:

1. explain the meaning and definitions of constitution.
2. analyse the functions of Constitution.
3. stages of constitution making prior to the formation of Constituent Assembly.
4. analyse some important acts passed by the British administration before the formation of Indian Constitution.
5. explain various features of the Constitution that have their roots in the British rule.
6. critically analyse Simon Commission.

Introduction

If we will see, the general idea of a constitution and of constitutionalism originated with the ancient Greeks and especially in the systematic, theoretical, normative, and descriptive writings of Aristotle. He is regarded as the father of Political Science. In his famous works like Politics, Nicomachean Ethics, Constitution of Athens, and others, Aristotle used the Greek word for constitution (*politeia*) in several different senses. The simplest and most neutral of these was 'the arrangement of the offices in a polis' (state).

The word 'Constitution' is developed from the word 'Constitute', which means 'to frame or to establish or to compose'. It has derived from a Latin word "salus populi suprema lex" meaning 'welfare of the people is the supreme law'. Therefore, Constitution is the body of doctrines and practices that form the fundamental organizing principle of a political state. It represents the legal fundamentals of a country. It outlines the rules and principles that are fundamental in the governance of the country. A constitution is a set of fundamental legal-political rules that:

1. are binding on everyone in the state, including ordinary lawmaking institutions;
2. concern the structure and operation of the institutions of government, political principles and the rights of citizens;
3. are based on widespread public legitimacy;

4. are harder to change than ordinary laws (e.g. a two-thirds majority vote or a referendum is needed);
5. as a minimum, meet the internationally recognized criteria for a democratic system in terms of representation and human rights (Bulmer, 2017).

In addition, the purpose of the Constitution is to maintain harmonious links between the individuals and the states , on the one hand, and between the different organs of the government on the other. The Constitution reflects the will and wish of the people. There are three pillars of the Constitution: Legislature, Executive and Judiciary. This is known as 'Doctrine of Separation of Power' as advocated and propagated by Lord Montesquieu. There are two types of Constitution: Rigid and Flexible Constitutions.

1.1 Definitions of Constitution

There is no consensus among the scholars, practitioner and theoreticians on an exact, precise or concise definition of a constitution. So, they have defined it in their respective frameworks. A few definitions are following:

Aristotle, ancient Greek philosopher and scientist, one of the greatest intellectual figures of Western history, defined the constitution as 'the way of life the state has chosen for itself'.

Maciver argues constitution is 'the rules which govern the State'.

Lord Byrce, who was British politician, diplomat, and historian, states that a constitution 'consists of those of its rules or laws which determine the form of the government and the respective rights and duties of the citizens towards the government'.

Gilchrist argues that 'It is that body of rules, or laws written or unwritten which determines the organization of government, the distribution of power to the various organs of the government and the general principles on which these powers are to be exercised'.

K.C. Wheare argued that the term constitution commonly has two connotations: first it describes the whole system of a government of a country; secondly it enumerates a bunch of rules that establish and regulate the government. One of the famous constitutional historians of America, C.H. McIlwain has also defined constitution in two ways: firstly, a constitution is a nation's actual institutions and their development; secondly "A constitution is a document, a code of fundamental law, struck off at a particular historic movement."

In short, a constitution is a rulebook of a nation, codifying rule of law. In the minimal sense, a constitution consists of rules or norms which enumerate the structure, powers and limitations on the governments.

1.2 The Functions of a Constitution

The very idea of the constitution entails that the government should be limited in its powers and its authority and legitimacy should depend on the observation of these limitations. There is no denying the fact, that modern states are very powerful and possess monopoly over means of force and coercion. A history of nations provides ample examples that the state can misuse its powers and can become tyrannical in exercise of its powers. A need therefore arises to put a limitation on the states' power. Constitution plays such a role.

1. Constitutions can declare and define the 'boundaries of the political community'. These boundaries can be territorial (the geographical borders of a state, as well as its claims to any other territory or extra-territorial rights) and personal (the definition of citizenship).
2. Constitutions can express the 'identity' and 'values' of a national community. Constitution defines the national flag, anthem and other symbols.
3. Constitutions are needed to control the destabilising swings generated by the popular passions. It saves the society from the ups and downs of every day politics.
4. Constitutions can declare and define the rights and duties of citizens.
5. Constitutions can divide or share power between different layers of government or sub-state communities.

6. As an instrument of social transformation, constitutions play a very important role. They provide means to change the society in a peaceful and democratic manner without resorting to violence.
7. Another important function of the constitution is that it can declare the official religious identity of the state and demarcate relationships between sacred and secular authorities (Bulmer 2017).

1.3 Evolution of the Indian Constitution 1858-1935

Like every other constitution, the Indian constitution also seeks to establish the fundamental organs of government and administration lay down their structure, composition, powers and functions. It embodies the provisions providing basic democratic rights of human beings including the persons who are not the citizens of the country. However, various constitutional features and polity have their roots in the British rule. It must be underlined that the features and values which were introduced during the colonial period were meant to serve the colonial interests in contrast the purpose of the provisions of the Constitution made by the Constituent Assembly of India. The measures by the colonial authorities to introduce the institutions of governance were indeed responses to the protests against the British. Following are the acts passed by the British government in a chronological order:

1.4 The Company Rule (1773-1858)

Regulating Act of 1773

The regulating Act of 1773 was passed by the British Parliament to control the territories of the East India Company majorly in Bengal. It was the 'first intervention by the British government in the company's territorial affairs and marked the beginning of a takeover process that was completed in 1858'.

The occasion for the Regulating Act was the company's misgovernment of its Bengal lands, brought to a crisis by the threat of bankruptcy and a demand for a government loan. Basically, the East India Company was in severe financial crisis and had asked a loan of 1 million pounds from the British government in 1772. Even allegations of corruption and nepotism were rampant against company officials. This act is of great constitutional importance as:

a) It was the first step taken by the 'British Government to control and regulate the affairs of the East India Company in India';
b) It recognised, for the first time, the 'political and administrative functions' of the Company; and
c) It laid the foundations of central administration in India.

Provisions of the Regulating Act

I. It designated the 'Governor of Bengal' as the 'Governor-General of Bengal' and created an 'Executive Council' of four members to assist him.
II. Warren Hastings was appointed as the Governor-General of the Presidency of Fort William.
III. This act permitted the company to retain its 'territorial possessions' in India but sought to regulate the activities and functioning of the company. It did not take over power completely, hence called 'regulating'.
IV. The Governors in Councils at Madras and Bombay were brought under the control of Bengal, especially in matters related to foreign policy. Now, they could not wage war against Indian states without Bengal's approval.
V. A Supreme Court of Judicature was established at Calcutta with Sir Elijah Impey as the first Chief Justice. Judges were to come from England. It had 'civil and criminal jurisdiction' over the British subjects and not Indian natives.

VI. It strengthened the control of the British Government over the Company by requiring the Court of Directors (governing body of the Company) to report on its revenue, civil, and military affairs in India.

Pitt's India Act of 1784

Pitt's India Act (1784), named for the British Prime Minister William Pitt the Younger, and established the dual system of control by the British government and the East India Company. This act continued in effect until 1858.

Features of the Act

a) This act established the British Crown's authority in the civil and military administration of its Indian territories. Commercial activities were still a monopoly of the Company.

b) It allowed the Court of Directors to manage the commercial affairs but created a new body called Board of Control to manage the political affairs. Thus, it established a system of double government.

c) It empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.

d) Hence, the act was so significant for two reasons: first, the Company's territories in India were for the first time called the 'British possessions in India'; and second, the British Government was given the supreme control over Company' s affairs and its administration in India.

e) Charter Act of 1833

f) The Charter Act of 1833 was passed in the British Parliament which renewed the East India Company's charter for another 20 years. This was also called the 'Government of India Act 1833' or the 'Saint Helena Act 1833'. This Act was the final step towards centralisation in British India.

Features:

a) The 'Governor-General of Bengal' was re-designated as the 'Governor-General of India'. This made Lord William Bentinck the first Governor-General of India.

b) It deprived the governor of Bombay and Madras of their 'legislative powers'. The Governor-General of India was given 'exclusive legislative powers' for the entire British India. The laws made under the previous acts were called as Regulations while laws made under this act were called as Acts.

c) The company's commercial activities were closed down. It was made into an administrative body for British Indian possessions.

d) The Charter Act of 1833 attempted to introduce a system of 'open competition' for selection of civil servants, and stated that the Indians should not be debarred from holding any place, office and employment under the Company. However, this provision was negated after opposition from the Court of Directors.

Charter Act of 1853

This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853. This Act was passed in the British Parliament to renew the East India Company's charter. Unlike the previous charter acts of 1793, 1813 and 1833 which renewed the charter for 20 years; this act did not mention the time period for which the company charter was being renewed. It has constitutional significance as well.

Features:

a) For the first time, the legislative and executive functions of the Governor-General's council were separated.
b) This act served as the foundation of the modern parliamentary form of government. The legislative wing of the Governor-General's Council acted as a parliament on the model of the British Parliament.
c) It extended the company's rule for an indefinite period, unlike the previous charter acts. Thus, it could be taken over by the British government at any time.
d) It introduced an open competition system of selection and recruitment of civil servants. The covenanted civil service was thus thrown open to the Indians also. Accordingly, the Macaulay Committee (the Committee on the Indian Civil Service) was appointed in 1854.
e) For the first time, local representation was introduced into the legislative council in the form of four members from the local governments of Bengal, Bombay, Madras and North Western Provinces.

1.5 The Crown Rule (1858–1947)

If the transfer of rule from the East India Company was a reaction to revolt of 1857, subsequent Acts were the British response to the national movement against them. The main purpose of doing so was to continue colonial rule and to adapt it to the changing challenges. With the transfer of power from the East India Company to the British Crown, the British Parliament got involved in managing affairs of India. For this purpose it introduced different rules which laid the foundation of our constitution or provided a background to it. During this period the British Parliament introduced Acts, Let's us a look at them in a chronological way.

Government of India Act of 1858

This significant Act was enacted in the wake of the Revolt of 1857, also known as the First War of Independence or the 'sepoy mutiny'. The Government of India Act 1858 was an Act of the British parliament that transferred the government and territories of the East India Company to the British Crown. The company's rule over British territories in India came to an end and it was passed directly to the British government.

Features of the Act

a) The Government of India Act 1858 was an Act of the British parliament that transferred the government and territories of the East India Company to the British Crown. The company's rule over British territories in India came to an end and it was passed directly to the British government.
b) It ended the system of 'double government' by abolishing the 'Board of Control and Court of Directors'.
c) It formed a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The secretary of state was a member of the British cabinet and was responsible ultimately to the British Parliament.
d) It set-up a 15-member Council of India to assist the secretary of state for India. The council was an 'advisory body'. The secretary of state was made the chairman of the council.
e) It constituted the secretary of state-in-council as a body corporate, capable of suing and being sued in India and in England.

Indian Councils Act of 1861:

After the great revolt of 1857, the British Government felt the necessity of seeking the cooperation of the Indians in the administration of their country. In pursuance of this policy of association, three acts were enacted by the British Parliament in 1861, 1892 and 1909 The Indian Councils Act 1861 was an act of the British Parliament that made significant changes in the Governor-General's Council. The Act is an important landmark in the constitutional and political history of India.

Notes

Features of the Act:

a) It made a beginning of 'representative institutions' by associating Indians with the law-making process. It thus provided that the viceroy should nominate some Indians as 'non-official members' of his expanded council. In 1862, Lord Canning, the then viceroy, nominated three Indians to his legislative council, these were, the Raja of Benaras, the Maharaja of Patiala and Sir Dinkar Rao.
b) It also provided for the establishment of new legislative councils for Bengal, North-Western Frontier Province (NWFP) and Punjab, which were established in 1862, 1866 and 1897 respectively.
c) The Act empowered the Governor-General to delegate special task to individual members of the Executive council and hence all members have their own portfolio and death with their own initiative with all but the most important matters. This was the first beginning of 'Portfolio system' in India.
d) No distinction was made between the central and provincial subject. But measures concerning public debt, finances, currency, post-office, telegraph, religion, patents and copyrights were to be ordinarily considered by the Central Government.
e) The Governor-General also had the power to promulgate ordinances without the council's concurrence during emergencies.

Indian Councils Act 1892

The Indian Councils Act 1892 was an act of the British Parliament that increased the size of the legislative councils in India. The Indian Councils Act 1892 was an act of the British Parliament that increased the size of the legislative councils in India. One of their demands was the reform of the legislative councils. They also 'wanted the principle of the election instead of nomination'.

Features of the Act

a) The act increased the number of additional or non-official members in the legislative councils as follows:

   Central Legislative Council: 10 – 16 members

   Bengal: 20 members

   Madras: 20 members

   Bombay: 8 members

   Oudh: 15 members

   North Western Province: 15

b) In 1892, out of 24 members, only 5 were Indians.
c) It increased the functions of legislative councils and gave them the power of discussing the budget and addressing questions to the executive.
d) It also provided for the nomination of some non-official members of the:
   i. Central Legislative Council by the viceroy on the recommendation of the provincial legislative councils and the Bengal Chamber of Commerce, and,
   ii. That of the Provincial legislative councils by the Governors on the recommendation of the district boards, municipalities, universities, trade associations, zamindars and chambers.
e) Governor General was empowered to fill the seat in the case of Central legislative and by the Governor in the case of provincial legislature.
f) The legislative councils were empowered to make new laws and repeal old laws with the permission of the Governor-General.

Indian Councils Act 1909 (Morley-Minto Reforms)

Constitutional changes in British India, introduced to increase Indian participation in the legislature. They were embodied in the Indian Councils Act (1909) following discussions between John Morley, Secretary of State for India (1905–14), and Lord Minto, viceroy (1905–10). That is why it is commonly known the 'Morley-Minto Reforms' after the Secretary of State for India John Morley and the Viceroy of India, the 4th Earl of Minto.

Salient Features

a) The legislative councils at the Centre and the provinces increased in size.
i. Central Legislative Council – from 16 to 60 members.
ii. Legislative Councils of Bengal, Madras, Bombay and United Provinces – 50 members each.
iii. Legislative Councils of Punjab, Burma and Assam – 30 members each.
b) The legislative councils at the Centre and the provinces were to have four categories of members as follows:
I. Ex-officio members: Governor-General and members of the executive council.
II. Nominated official members: Government officials who were nominated by the Governor-General.
III. Nominated non-official members: nominated by the Governor-General but were not government officials.
IV. Elected members: elected by different categories of Indians.
c) It introduced a system of 'communal representation' for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Hence, the Act 'legalized communalism'. Lord Minto came to be known as 'the Father of Communal Electorate'.
d) The members given right to discuss matters of the public interest however, the house was not binding on the government. Rules were also framed under the act for the discussion of matters of general public interest in the legislative councils.
e) No discussion was permitted on any subject not within legislative competence of the particular legislature any matter affecting the relations of the Government of India with a foreign power or a native state, and any matter under adjudication by a court of law.

Government of India Act 1919

The Government of India Act was passed in British Parliament, which was mainly based on the recommendations of the combined report of the Secretary of the State, Edwin Montagu and the Governor General/Viceroy of India, Lord Frederic Thesiger (commonly known as Lord of Chelmsford). Therefore, the act was based on the recommendations of a report, which was prepared by Edwin Montagu, the then Secretary of State for India, and Lord Chelmsford, India's Viceroy between 1916 and 1921. The Act came into force in 1921.

Features of the Act:

a) It relaxed the central control over the provinces by demarcating and separating the central and provincial subjects. The central and provincial legislatures were authorised to make laws on their respective list of subjects. However, the structure of government continued to be centralised and unitary.
b) It further divided the provincial subjects into two parts, i.e., transferred and reserved.
I. The transferred subjects were to be administered by the governor with the aid of ministers responsible to the legislative Council.
II. The reserved subjects, on the other hand, were to be administered by the governor and his executive council without being responsible to the legislative Council. This dual scheme of governance was known as 'dyarch' a term derived from the Greek word di-arche which means double rule. However, this experiment was largely unsuccessful.
c) A bicameral legislature was set up with two houses – Legislative Assembly (forerunner of the Lok Sabha) and the Council of State (forerunner of the Rajya Sabha).
d) This act provided for the first time, the establishment of a public service commission in India.
e) The act also provided that after 10 years, a statutory commission would be set up to study the working of the government. This resulted in the Simon Commission of 1927.
f) It also created an office of the High Commissioner for India in London.
g) It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.

Simon Commission

The then largest political party in the region Indian National Congress opposed the provisions of the Government of India Act, 1919 and launched non-cooperation movement. And, in response the British Conservative government under Stanley Baldwin appointed the Simon Commission in November 1927 to review the functioning of the Act of 1919.

The commission consisted of seven members – four from Conservative party, two from labour party, and one Liberal – under the joint chairmanship of the distinguished Liberal lawyer, Sir John

Notes

Simon on his name this commission has been titled, and Clement Attlee, the future prime minister. It met a hostile reception in India, and was boycotted there because it had no Indian members. In 1927, the Congress Party decided to boycott the Commission at Madras session. The Muslim League led by M. A. Jinnah and Justice Party in South also boycotted it.

When the Commission landed in February 1928, there were mass protests, hartals and black flag demonstrations all over the country. The police resorted to lathi charges to suppress the movement. Even senior leaders like Pandit Nehru were not spared. In Lahore, Lala Lajpat Rai, who was leading the demonstration against the Simon Commission, was brutally lathi-charged. He died later that year due to injuries sustained then.

The Simon Commission submitted its report in 1930. The British government brought up the Simon Commission Report for discussion in the Round Table Conference in London. It recommended the 'abolition of dyarchy, extension of responsible government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate' and so on.

To consider the proposals of the commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states. On the basis of these discussions, a 'White Paper on Constitutional Reforms' was prepared and submitted for the consideration of the Joint Select Committee of the British Parliament. The recommendations of this committee were incorporated (with certain changes) in the next Government of India Act of 1935. However, the British Prime Minister issued a "Communal Award" on August 4, 1932, which underlined that before discussion of the Simon Commission Report there Hindus and Muslims have to agree to some agreement for solution. It noted that the division between Hindus and Muslims had widened after the introduction of the Government of India Act, 1919. Following the discussion in the Round Table Conference, the British Government passed Government of India Act, 1935, which provided for separate representations to Muslims, Sikhs, the Europeans, Indian Christians and Anglo-Indians.

On the one side, Dalit leaders, especially Bhimrao Ramji Ambedkar, supported the proposal, believing it would allow Dalits to advance their interests. Mahatma Gandhi, on the other side, understood this move and knew that this was an attack on Indian nationalism. Therefore, Mahatma Gandhi in prison announced a fast unto death, which he began on September 18. He objected to the provision of separate electorates for the Dalits. Gandhi opposed the British since he felt that their policies would divide the Hindu society. Though Ambedkar could hold on for a few days in face of the growing public pressure to compromise with Gandhi, he was persuaded as a 'true satyagrahi' to meet Gandhi in view of the willingness of the Mahatma to offer more reserved seats to the untouchables in return of their renunciation of the separate electorate system.

Thus, consequent upon the signing of the Poona Pact, Gandhi broke his fast on 26 September 1932 with a seeming resolve for a more vigorous pursuit in the direction of the emancipation of the untouchables. A few days after the Poona Pact, Gandhi inspired his trusted disciple G.D. Birla to set up the All India Anti-Untouchability League with a massive fund to work for the eradication of untouchability. Professing that untouchability is a crime against humanity and God; Gandhi initiated a series of programmes like organising Untouchability Abolition Week and so forth.

In addition, these developments took place in the backdrop of clamoring for formation of constitution for Indians by themselves. On May 27th 1927, Motilal Nehru at the Bombay session of the Congress moved a resolution calling upon the Congress Working Committee to frame a constitution for India in consultations with the members of central and provincial legislative assemblies. In pursuance of this proposal a committee was set up under the chairmanship of Motilal Nehru, which prepared a report in 1928 known as Nehru Report. This report was the first attempt by Indians to frame a constitution for themselves in the conference of the established All India parties (except the Justice Party in Madras and Unionist Party in Punjab). The Nehru Report demanded universal suffrage for adults and responsible government both in the centre and the provinces.

Government of India Act 1935

The Government of India Act was passed by the British Parliament in August 1935. It was the longest act enacted by the British Parliament at that time as it contained 321 sections and 10 schedules. So, it was divided into two separate acts namely, the Government of India Act 1935 and the Government of Burma Act 1935. The act gave new dimensions to the affairs of the country by the development of an All India Federation, Provisional autonomy and the removal of the dyarchy. It was also the last constitution of British India, before the Indian subcontinent was divided into

two parts-India and Pakistan in August 1947. The act was implemented and formed from the sources like the Simon Commission Report, the three roundtable conferences etc. which were earlier declined by the government. The Act proposed various amendments in context to the act earlier framed in the year 1919. The Act was based on:

I. Simon Commission Report;
II. The recommendations of the Round Table Conference;
III. The White Paper published by the British government in 1933;
IV. Report of the Joint Select Committees.

Features of the Act

a) It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists:

I. Federal List (for Centre, with 59 items),
II. Provincial List (for provinces, with 54 items), and
III. The Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy. However, the federation never came into being as the princely states did not join it.

b) This Act introduced a system of 'Provincial Autonomy' into the provinces in place of the dyarchy system. This time dyarchy was not introduced at the state level it only introduced at the central level.
c) It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.
d) It further extended the 'principle of communal representation' by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).
e) A federal court was established after the recommendation of this Act. This court was introduced after two years of the passing of this Act, i.e., 1937.
f) This Act provides the recommendation for the establishment of the Reserve Bank of India to control the regulation of currencies and credits of this country.
g) This Act introduced the 'extension' of the franchise. Approximately 10% of the total population had the right to vote to appoint representatives to this legislature. The Act did not hold its hand over the communal electorates but it had extended it holds. For the first time, the direct election was introduced in India with the help of this Act.
h) It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.
i) The Indian Council that was established by the Government of India Act, 1858 was abolished by this Act and in place of that council, it proposed the appointment of Secretary of State and his team which could not be more than six members and could not comprise of members less than three. The power of Secretary of State got diminished and the Governor-General became more powerful than him after the establishment of provincial autonomy through this Act.

1.6 Summary

The making of Indian Constitution did not emerge overnight; it evolved gradually during the British rule. So, the colonial era consisted of two phases, i. e., 1973 to1958 and 1958 to1935. With the 'transfer of power' from the Company to the British Crown, the British government introduced diverse elements of polity and governance through different Acts. In the year 1909, the 'Morley-Minto Reforms' was introduced the provision of 'communal representation'. When the Communal Award was announced in 1932; it was staunchly opposed by the leaders of the Indian National Movement, particularly in case of the Depressed Classes. Gandhi's fast unto death which resulted in the 'Poona Pact'. It did abolition of the separate electorate but in giving the reservation to the depressed classes in the provincial legislature.

Consequently, the Government of India Act of 1935 came into being after several parleys between the Indian national leaders and Britain. It contemplated a federation consisting of British Indian Provinces and native states. It introduced bicameral legislatures in six Provinces. It demarcated

legislative power of the Centre and the Provinces through three lists: the Central List, the Provincial List and the Concurrent List.

Keywords

Autonomy: The condition of being autonomous; self-government or the right of self-government. A self-governing (to some certain extent) is community.

Bill: Draft law presented to the legislature for enactment

Constitution: A constitution is the fundamental law or the basic law of a country. It determines the fundamental political values and principles of the government, rules of procedure of that government, rights and obligations of the citizenry and also sets forth methods to ensure accountability of governmental branches.

Constitution-making: The whole process of making a constitution.

Deliberation: The fair consideration of all positions, guided by the values of democracy and the general welfare, rather than by populism and crude bargaining on the part of narrow interest groups.

Enact (enactment): Pass a law (including a constitution).

Ratify (ratification): To approve an act done by someone else, and thus to have some legal effect, or to bind oneself. A country for which a representative has signed a treaty will often not be bound until it is ratified by some body - perhaps the legislature. In constitution-making a referendum might be required so that the people can ratify the constitution.

Ordinances: Provisional law made by the executive under the authority of the constitution and not of another statue.

Parliament: A legislature that formulates laws adopts the budget and forms the government in a parliamentary system of governance. It also plays the role of making the executive of the government (cabinet) accountable and scrutinizes government policies and programs.

Province/Provincial: A term to disrobe a territorial constituent unit within a federation.

Revenue sharing: Arrangements for sharing revenue between orders of government, usually from the federal government to its constituent units according to an established formula or practice.

Reservation: A process of positive discrimination to ensure adequate representation of marginalized groups in legislative and executive positions.

Self-government: The ability of peoples to govern themselves according to their values, cultures and traditions. In its wider sense, this also refers to institutions of local government in a federal or unitary system.

Objective Type Questions

1. Which of the following Act of British India designated the Governor-General of Bengal?

A. Regulating Act, 1773

B. Pitt's India Act of 1784

C. Charter Act of 1793

D. Charter Act of 1813

2. Which of the following British Act gave exclusive trade privileges to the British East India Company?

A. Regulating Act, 1773

B. Pitt's India Act of 1784

C. Charter Act of 1793

D. Charter Act of 1813

3. Which of the following British Act introduces Indian Civil Service as an open competition?

A. Charter Act of 1793

B. Charter Act of 1813

C. Charter Act of 1833

D. Charter Act of 1853

4. Consider the following statement (s) is/are related to the Charter Act of 1833.

I. It allowed missionaries for spreading the Christianity in India.

II. It made British East India Company as an administrative body.

Code:

A. Only I

B. Only II

C. Both I and II

D. Neither I nor II

5. Who was the first Governor-General of Bengal?

A. Lord Warren Hastings

B. Lord William Bentinck

C. Lord Mayo

D. Robert Clive

6. Which of the following British Act brought three presidencies into a common system?

A. Government of India Act, 1858

B. Indian Council Act, 1861

C. Act of 1892

D. Indian Council Act, 1909

7. Which of the following British Act introduced provincial autonomy?

A. Government of India Act, 1858

B. Indian Council Act, 1861

C. Indian Council Act of 1892

D. Government of India Act 1935

8. Which of the following British Act established Public Service Commission?

A. Government of India Act, 1919

B. Government of India Act, 1935

C. Indian Council Act, 1909

D. Act of 1892

9. British Government appointed an Indian Statutory Commission to review the Government of India Act 1919, this commission is also known as?

A. Simon Commission

B. Hunter Commission

C. Elbert Commission

D. Cripps Mission

10. What was/were the important features of Nehru Report?

A. It contained a Bill of Rights.

B. There shall be no state religion; men and women shall have equal rights as citizens.

C. There should be federal form of government with residuary powers vested in the center.

D. All of the above

11. Simon Commission was sent to India in 1928, at that time who was the Prime Minister of Britain?

A. Stanley Baldwin

B. John Allsebrook Simon

C. Clement Richard Attlee

D. Winston Churchill

12. Which of the following was the impact of 1857 revolt?

A. Doctrine of Lapse was withdrawn

B. End of Peshwaship and the Mughal rule

C. control of Indian administration was passed on to the British Crown

D. All of the above

13. Which of the following statements is not correct about Poona Pact?
(a) Poona Pact was held on 24 September 1934.
(b) Poona Pact took place between Mahatma Gandhi and Dr. Ambedkar.
(c) In Poona Pact, right to separate electorate and two votes for Dalits was abolished.
(d) After Poona Pact, the number of seats reserved for Dalits was increased from 71 in the Provincial Legislatures to 147 and 18% of the total seats in the Central Legislature.

14. When was the White paper based on the recommendations of the Third Round Table Conference published?

a) 1919

b) 1931

c) 1933

d) 1935

15. According to the Government of India Act 1935, how many judges were appointed along with the Chief Justice?

a) 4

b) 5

c) 6

d) 7

16. Consider the following statements.
1. The Nehru Report rejected separate communal electorates.
2. The Simon commission suggested the continuation of separate communal electorates.
3. Which of the above statements are correct?

a) 1 only

b) 1&2

c) 2 only

d) None of the above

1.	A	2.	C	3.	D	4.	B	5.	A	6.	B
7.	D	8.	A	9.	A	10.	D	11.	A	12.	D
13.	A	14.	C	15.	C	16.	B				

Review Questions

1) Discuss the role of the 1909, 1919 and 1935 Acts in making of the Indian Constitution?
2) What were the recommendations of the Simon Commission? What were its shortcomings?
3) Describe the crown rule and its influence on making of the Indian constitution and polity?
4) What was Poona Pact?

Further Readings

Indian Government and politics by B. L. Fadia and Kuldeep Fadia, Sahitya Bhawan; Revised edition (1 January 2020).

Introduction to the Constitution of India by D D Basu, Lexis Nexis; Twenty-Third edition (2018).

India's Struggle for Independence: 1857-1947 by Bipan Chandra, Penguin Random House India; 1st edition (9 August 2016).

J.C. Johari, "The Constitution of India—A Politico-Legal Study", Sterling Publication Pvt. Ltd., New Delhi.

Notes

Unit 02: Constituent Assembly

CONTENTS

Objectives
Introduction
2.1 Meaning of Constituent Assembly
2.2 Evolution of the Concept of Constituent a Assembly in India
2.3 Cabinet Mission Plan and the Formation of the Constituent Assembly
2.4 Composition of the Constituent Assembly
2.5 Working of the Constituent Assembly
2.6 Objective Resolution
2.7 Gandhian Ideology
2.8 Constitution Assembly Debates
2.9 Decision Making in the Constituent Assembly
Summary
Glossary
Self Assessment
Answers for Self Assessment
Review Questions
Further Readings

Objectives

After going through this Unit, you will be able to learn about the:

1. give a brief overview of a demand for Constituent Assembly (hereafter CA).
2. Explain or describe the composition of the CA.
3. analyse what is objective resolution and its salient features.
4. understand the set of values and ideals embedded in the Constitution.
5. explain different and diverse ideologies.
6. analyse some important Constituent Assembly debates.
7. explain salient features of the working process of the Constituent Assembly.

Introduction

We should remember this that the Constitution of India was not prepared in haste but the process of the evolution of the constitution began before India became independence in 1947. The enormous task of drafting free India's Constitution was taken up by the Constituent Assembly. The Assembly brought into being by the will of the Indian people, with the help of the British, drafted a Constitution for India in the years from December 1946 to December 1949. Before we will understand the making of Constituent Assembly in India, it is important to know the meaning of the Constituent Assembly.

2.1 Meaning of Constituent Assembly

Constituent Assembly has been defined by different thinkers in their respective frameworks. Dood has defined it as 'a representative body chosen for the purpose of considering and either adopting or proposing a new constitution or changes in the existing constitution'.

Abbe Siezes has defined it is 'an assembly of extraordinary representatives to which the nation shall have entrusted the authority to make a constitution or at any point to define it content'.

A constituent assembly is a democratic device for formulating or adopting a new constitution or for bringing about some fundamental changes in an existing constitution by a free people. The concept of a constitution assembly implies the right of a people to determine their own future and decide the nature and type of polity under which they would like to live. The right of people to give to themselves a constitution of their choice through a representative constituent assembly is an essential attribute of national freedom.

Sir lvor Jennings has noted three situations in which a Constituent Assembly comes into being: When there is 'a great social revolution' or 'when a nation throws off its foreign yoke' or when 'a nation is created by the fusion of smaller political units' Whatever the circumstances Jennings points out 'the need is felt and some person is felt and some person is set to draft a constitution'. According to this perspective, the Indian Constitution falls into the secondary category.

2.2 Evolution of the Concept of Constituent a Assembly in India

The origin and growth of the idea of a constituent assembly in the sense of a representative body called specifically for the purpose of formulating the fundamental law of a country has had a venerable history in the West and has always carried about itself the aroma of its revolutionary origin.

In India, the demand for a constituent assembly was, in a sense, implied in the demand for national freedom. As early as in December 1918, the 33rd session of the Indian National Congress held at Delhi unanimously adopted a resolution demanding that 'the principles of self-determination should be applied' to India. Writing in Young India on 1st January 1922, Mahatma Gandhi said that *Swaraj* (Self-rule) of his conception would not be free gift of the British Parliament but a declaration of India's self-expression, the will of the people of India expressed 'through her freely chosen representatives'. On February 8, 1924, Motilal Nehru, the leader of the Swaraj Party in the Central Legislative Assembly introduced a resolution embodying inter alia a demand for summoning 'at an early date of a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities the scheme of a constitution for India'.

On 17 May 1927, at the Bombay Session of the Congress, Motilal Nehru had moved a resolution calling upon the Congress Working Committee to frame a constitution for India in consultation with the elected members of the Central and Provincial Legislatures and leaders of political parties. The Congress Working Committee organised an All Parties Conference at Bombay on 19 May 1928 and appointed a committee, under the Chairmanship of Motilal Nehru 'to determine the principles of the Constitution of India'. The report of the Committee (submitted on 10 August 1928) which was later to become famous as the 'Nehru Report' was the first attempt by Indians to frame a constitution of their country. The constitution embodied in the Report, was based on the principle of Dominion Status with full responsible government on the parliamentary pattern.

In March 1933, the British government put forth before Indians the White Paper which contains proposals for the constitutional reforms for India. The nationalist opinion in India found this proposal highly objectionable and therefore unacceptable. Consequently, it was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a radical humanist and a pioneer and staunch supporter of the communist movement in India.

In June 1934, the Congress adopted a resolution stated that the only satisfactory alternative to the white paper is a constitution drawn by the constituent assembly elected on the basis of adult suffrage. In 1935, the then major political party in the subcontinent, Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India.

In 1938, Jawaharlal Nehru, on behalf of the INC declared that 'the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'.

Congress kept on repeating the demand for a constituent assembly in subsequent sessions also. However, this demand was resisted by the British government until the outbreak of World War II, when external circumstances forced them to realise the urgency of solving the Indian constitutional problem. In 1940, the British government gave recognition to the principle that Indians themselves should frame the constitution for free India. In March 1942, the British government sent Sir Stanford Cripps with a draft declaration on the proposals. These proposals were to be adopted at the end of the war, provided the two major political parties Congress and Muslim League could come to an agreement to accept them. But the two parties failed to come to an agreement to accept the proposals. Thus an idea of the constitution making body failed to materialise (Basu, 2011).

In April 1942, the Cripps Mission failed and within months the mass struggle of the Indian people, 'the Quit India Movement' started. The growing popular upsurge against the British rule and the spread of discontent in the armed forces made it clear to British rulers that their days are numbered

in India. In 1946, the British Government announced its intention to end its rule in India and as such it sent a Cabinet Mission in March 1946 to hold negotiations with Indian leaders on the transfer of power. The Mission proposed the formation of an interim government and the convening of a Constituent Assembly (Basu, 2011).

2.3 Cabinet Mission Plan and the Formation of the Constituent Assembly

After, the rejection of the Cripps Proposals, various attempts to reconcile the two parties were made including the Simla Conference held at the instance of the Governor-General, Lord Wavell. These having failed, the British Cabinet sent three of its own members including Cripps himself, to make another serious attempt for the solution of Indian problem. The Cabinet Mission, which arrived in New Delhi on March 24, 1946, had prolonged negotiations with Jawahar Lal Nehru and other leaders of the Congress and of the Muslim League. The Mission emphasized that their main object was not 'to lay out the details of a constitution' for India but to set in motion machinery whereby a constitution could be 'settled by Indians for Indians' (Fadia 2020).

The Cabinet Mission, too, failed in making the two major parties (Congress and Muslim League) come to an agreement and were accordingly, obliged to put forward their own proposals, which were announced simultaneously in India and England on 16th May 1946. The proposals are known as the Cabinet Mission Plan.

The Plan, while rejecting the demand of the Ail India Muslim League for partition of the country and establishment of a fully sovereign Pakistan, envisaged a confederation consisting of three groups of autonomous states vesting the powers of three departments - Defence, External Affairs and Communications - in a Central Government and all the remaining powers with the groups themselves. Each of the groups was free to have a separate constitution of its own choice, thus giving ample scope for both the leading religious groups, Hindus and Muslims, to live united but, at the same time, to enjoy complete autonomy in areas where they were in majority. The Plan had two parts, namely, a long-term programme and a short-term one. While the former was concerned with the future political setup on a permanent basis, the latter was intended to establish an immediate Indian Interim Government (Fadia, 2020).

The Cabinet Mission Plan also laid down in some detail the procedure to be followed by the constitution-making body. It was proposed in the Plan that for this Assembly each province was to be assigned specific number of seats. This number will be proportionate to the population of the province. Seats in each province will be allotted to different communities which will again be linked with population of the community in that province.

2.4 Composition of the Constituent Assembly

In November 1946, the Constituent Assembly was constituted in under the scheme formulated by the Cabinet Mission Plan. The features of the scheme were:

1. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States.
2. Each province and princely state were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.
3. Seats allocated to each British province were to be divided among the three principal communities−Muslims, Sikhs and general.
4. The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.
5. The representatives of princely states were to be nominated by the heads of the princely states (Fadia, 2020; Basu, 2011).

It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body.

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946. The Indian National Congress won 208 seats, the Muslim League 73 seats, and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

2.5 Working of the Constituent Assembly

Austin characterised the motivation and the task of the Constituent Assembly in these evocative words: 'In the Assembly, Indians, for the first time in a century and a half, were responsible for their own governance. They were at last free to shape their own destiny and to pursue their long proclaimed aims and aspiration by creating the national institutions that would facilitate the fulfilment of these aims. The members approached this task with remarkable idealism and a strength of purpose, born out of the struggle for independence' (Austin, 1976).

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was thus attended by only 211 members. Dr Sachchidanand Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice. Later, Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. In other words, the Assembly had two Vice-Presidents.

2.6 Objective Resolution

On 13 December 1946, the fifth day of the first session, Nehru moved the historic Objectives Resolution. The Resolution said:

1. India is an independent sovereign republic and to draw up for her future governance a Constitution.
2. India shall be a union of erstwhile states, British Indian territories, Indian states and other parts outside British India and Indian states as are willing to be a part of Union.
3. Territories forming the union shall be autonomous units. These states exercise all powers and functions of the government and administration, except those are assigned or vested in the Union.
4. All powers and authority of the sovereign India and its constitution shall flow from the people.
5. All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunity; and fundamental freedoms of speech, expression, faith, worship, vocation, association and action.
6. The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards.
7. The territorial integrity of the Republic and its sovereign rights on land, air, sea shall be maintained according to justice and law of civilized nation.

The land would make full and willing contribution to the promotion of world peace and welfare to human kind.

Changes by the Independence Act

After the acceptance of the Mountbatten Plan of June 3, 1947 for a partition of the country, the representatives of most of the other princely states took their seats in the Assembly. The members of the Muslim League from the Indian Dominion also entered the Assembly.

The Indian Independence Act of 1947 made the following three changes in the position of the Assembly:

1. The Assembly was made a fully sovereign body, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
2. The Assembly also became a legislative body. In other words, two separate functions were assigned to the Assembly, that is, making of a constitution for free India and enacting of ordinary laws for the country. Thus, the Assembly became the first Parliament of free India. Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body it was chaired by G V Mavlankar. These two

functions continued till November 26, 1949, when the task of making the Constitution was over.

3. The Muslim League members (hailing from the areas included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to 70.

Other Functions Performed

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

1. It ratified the India's membership of the Commonwealth in May 1949.
2. It adopted the national flag on July 22, 1947.
3. It adopted the national anthem on January 24, 1950.
4. It adopted the national song on January 24, 1950.
5. It elected Dr Rajendra Prasad as the first President of India on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the constitutions of about 60 countries, and the Draft Constitution was considered for 114 days. The total expenditure incurred on making the Constitution amounted to ` 64 lakh.

On January 24, 1950, the Constituent Assembly held its final session. It,however, did not end, and continued as the provisional parliament of India from January 26, 1950 till the formation of new Parliament8 after the first general elections in 1951-52.

Committees of the Constituent Assembly

The Constituent Assembly had a total of more than fifteen committees. Seven of them, such as House and Staff Committee performed minor functions. The brick and the mortar of the structure was provided by the reports of the Union Power Committee, the Union Constitution Committee, the Advisory Committee on Minorities and Fundamental Rights, the Committee on Chief Commissioner Provinces, the Committee on the Financial provisions of the Union Constitution and the Advisory Committee on Tribal Areas. The Assembly appointed a Drafting Committee on 29 August 1947 to consider the Draft Constitution with Dr B.R. Ambedkar as its Chairman along with six other members.

Drafting Committee

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

1. Alladi Krishnaswamy Aiyar, an astute lawyer of liberal views from Madras who came with a Congress ticket and later made outstanding contribution to constitution-making.
2. N. Gopalaswami Ayyangar, another brilliant legal brain from Madras, with a liberal outlook, a congress ticket and a civilian background.
3. B.R. Ambedkar, the leader of the Scheduled Castes Federation, also an outstanding lawyer, who shed several ideological differences with the Congress. On the eve of independence, he joined the government as the law minister, without leaving his party.
4. K.M. Munshi, a Congress leader, occasionally working in the states' people's movement.
5. Saiyad Mohammad Saadullah, a League supporter from Assam of rather liberal outlook and a profound legalist
6. B.L. Mitter, an ex-law member of the Government of India and the Dewan of Baroda, who made remarkable contribution to the integration of the states with India.
7. D.P. Khaitan, an industrialist from West Bengal who had come with a Congress ticket (Chaube 2000).

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948.

The Drafting Committee took less than six months to prepare its draft. In all it sat only for 141 days.

Ideological Moorings

Before try to understand the ideological contestations in the CA while making the Const. of India. A few basic questions arise. These are: What is ideology? What role ideas play to shape the nature of political system/s?

Ideology is one of the most controversial concepts encountered in political analysis. The first problem confronting any discussion of the nature of ideology is the fact that there is no settled or agreed definition of the term, only a collection of rival definitions.

As David McLellan is an English scholar of Karl Marx and Marxism- put it clearly, 'Ideology is the most elusive concept in the whole of the social sciences.' Among the meanings that have been attached to ideology currently in circulation are as under:

- The process of production of meanings, signs and values in social life;
- A political belief system;
- Ideas which help to legitimate a dominant political power;
- The ideas of the ruling class;
- systematically distorted communication;
- identity thinking;
- The indispensable medium in which individuals live out their relations to a social structure;
- Ideas that propagate false consciousness amongst the exploited or oppressed.

From these above definitions it is clear that there is no consensus among the scholars, experts and practitioners, on a particular definition. Therefore, it is contested term. The origins of the term are nevertheless clear. The term 'ideology' was coined during the French Revolution in 1796 by the French philosopher de Tracy (1754–1836). He used it to refer to a new 'science of ideas' (literally, an idea-ology) that set out to uncover the origins of conscious thought and ideas. De Tracy's hope was that ideology would eventually enjoy the same status as established sciences such as zoology and biology.

From a social-scientific viewpoint, an ideology is a more or less coherent set of ideas that provides a basis for organized political action, whether this is intended to preserve, modify or overthrow the existing system of power relationships. All ideologies, therefore, outlines three tenets. They:

a. Offer an account of the existing order, usually in the form of a 'worldview';
b. Provide a model of a desired future, a vision of the Good Society; and
c. Outline how political change can and should be brought about.

Ideologies are not, however, hermetically sealed systems of thought; rather, they are fluid sets of ideas that overlap with one another at a number of points.

The membership of the Constituent Assembly was attempted to be kept diverse and represent all communities therefore there were also attempts to mould the Constitution according to their requirements.

2.7 Gandhian Ideology

Gandhian ideals played a significant part in shaping the Indian freedom struggle and it was bound to have an influence on the working of the Constituent Assembly but this has been largely believed that the Congress had ignored it and instead followed the western principles. Gandhi believed in the amalgam of reformism and revolution. To him virtues of rural simplicity and decentralization of the country's economy to the rural communities would help realise the establishment of *Swaraj*. For Gandhi, India's economic future lay in charkha (spinning wheel) and *khadi* (homespun cotton textile). He argued, 'If India's villages are to live and prosper, the charkha must become universal'.

He criticized the modern bourgeois civilization, use of modern machinery and technology and emphasized on the revival and extension of craft and cottage industry. This idea of 'reconciliation of

tradition and modernity in Gandhi was looked upon as tenuous and fragile by the socialists and communists' (Narang, 1987).

To him virtues of rural simplicity and decentralization of the country's economy to the rural communities would help realise the establishment of *Swaraj*. His *Swaraj* had economic, social, political and international connotations.

Economic Swaraj: as he says himself, 'stands for social justice, it promotes the good of all equally including the weakest, and is indispensable for decent life'.

Social Swaraj centres on 'an equalisation of status'.

Political Swaraj aims at 'enabling people to better their condition in every department of life'. In the international field, swaraj emphasised on interdependence.

However, the Gandhian ideal was totally ignored by the congress and the constitution makers had followed the western principles. Austin mentions that 'of a large number of articles published in the Indian Journal of Political Science from 1940 to 1945 concerning India's future constitution, everyone used the Euro-American constitutional tradition as its source of both principles and detailed suggestions'. However, S.K. Chaube believes that Gandhi had remained the vanguard of the Congress and though his role has paradoxically subdued in the formulation of several policies of the Congress from time to time. He finds Austin's comment that 'the Congress had never been Gandhian', superficial.

Socialism

Socialist ideology was quite dominant in the working of the Assembly and gave way to the assembly's belief in Parliamentary government. It is important to know the historical background of the word 'socialism'.

The term 'socialist' derives from the Latin sociare, meaning to combine or to share. Its earliest known usage was in 1827 in Britain, in an issue of the Co-operative Magazine. By the early 1830s the followers of Robert Owen (1771-1858) in Britain and Saint-Simon (1760–1825) in France had started to refer to their beliefs as 'socialism', and by the 1840s the term was familiar in a range of industrialized countries, notably France, Belgium and the German states. It came as a reaction against the emergence of industrial capitalism.

According to Austin, the members in the Assembly committed to socialism 'ranged from Marxists to Gandhian socialists to conservative capitalists, each with his own definition of socialism nearly everyone in the Assembly was Fabian and Laski-ite enough to believe that 'democratic constitutions' are… inseparably associated with the drive towards economic equality' (Austin 1966:41). Out of the two kinds of leftists the ones 'who wanted to change the feudal system, favoured egalitarianism to an extent opposed the idea of private property, but believed in peaceful change without undue confrontation…were more prominently present and active in the Constituent Assembly'.

The Preamble to the Constitution of India enshrined principles to lay the foundation of a socialistic pattern of society. The Directive Principles of State Policy (Part IV of the Constitution) emphasise that the goal of the Indian polity is not unbridled laissez faire but a welfare state where the state has a positive duty to ensure to its citizens social and economic justice with dignity of the individual consistent with the unity and integrity of the nation. In this model of state-directed development, the most significant instrument was the Planning Commission that came into being in January 1950, despite serious opposition of Gandhians within the Congress Working Committee (CWC).

Hence, Austin argues that the emphasis was not that 'socialism be embodied in the constitution but that a democratic constitution with a socialist bias be framed so as to allow the nation in the future to become as socialist as its citizens desired or its needs demanded' (Austin 1966: 43).

Rightist Ideology

There was the third group led by Sardar Vallabh Bhai Patel. This was a rightist group and represented the interests of the bourgeoisie and the landed class 'who were filling the nationalist movement with the content of their own class needs and aspirations, for a political system conducive to the growth and unrestricted development of private enterprise, to suppress the struggle of the working people and to look to the western countries for the guidance' (Narang 1987:59). This was the class providing financial assistance to the working of the assembly therefore their aspirations had to be kept in mind along with the welfare of the common population of the nation.

2.8 Constitution Assembly Debates

Constituent Assembly Debates (CADs) refer to the discussions and debates that the members of the CA had rigorously in the process of drafting a constitution for free India. These debates provide a good insight into the thinking behind the making of the Constitution. Following are some factual points.

- To frame the Constitution of India, the Assembly sat for about 165 days. Members had useful and productive discussions.
- Forty-six (46) days were spent on preliminary discussion in the Assembly.
- And, 101 days were spent on the clause by clause discussion of the draft Constitution.
- Approximately 36 lakh words were spoken during Assembly debates. Two-thirds of all deliberations were during the clause by clause discussion and deliberations in the second reading.
- Fundamental Rights were included in Part III of the draft Constitution. These were discussed for 16 days. That means, 14% of the total clause by clause discussion was dedicated to Fundamental Rights.
- Directive Principles of State Policy were included in Part IV were discussed six days. That means, 4% of the clause by clause discussion was dedicated to these principles.
- Provisions related to concept of Citizenship were included in Part II. It was discussed for three days. Thus, 2% of the discussion was dedicated to this part.
- In the Constituent Assembly 210 members were elected from provinces, and 64 members nominated by the princely states participated in debates.
- Members elected from provinces contributed to 85% of discussions in the Assembly, while the representatives from princely states contributed to 6% of the discussions.
- On average, each member from provinces spoke 14,817 words and a member from princely states spoke 3,367 words.

2.9 Decision Making in the Constituent Assembly

The process of decision making was democratic and pragmatic. The members were very persuasive in expressing their sometimes very divergent viewpoints. The debate comprised of many conflicting ideas such as: of what language Indians should speak; of political and economic system the nation should follow; of what moral values its citizens should uphold; how to protect the minorities etc. the members expressed many diverse viewpoints that made the sessions lively and interesting. The leadership of the Constituent Assembly followed the process of decision making by the consensus, by the policy of accommodation and by the art of selection and modification **(Austin, 1976: 4).** Shibani Kinkar Chaube pointed out that 'on fundamentals there was little concession'. G. Austin has highlighted that the leadership of the Constituent Assembly followed the process of decision making by the consensus, by the policy of accommodation and by the art of selection and modification. The framers successfully selected and modified the provisions which they had borrowed from other constitutions.

Consensus and accommodation were two principles which the Assembly applied which the Assembly applied to its task of drafting with great effectiveness. Principle of Consensus was used while arriving at decisions in the Assembly, while principle of accommodation was used while incorporating other provisions in the Constitution.

Decision Making by Consensus

Consensus simply means making decisions with near unanimity. It is a recognition of the fact that decision by majority is not the best way of deciding political conflicts. The framers of the Constitution knew fully well that constitutional provisions which would be agreed upon by consensus of the members will prove effective and long lasting. Consensus, opined Austin, thus 'had a general appeal in the Assembly as an ethical means of reaching lasting agreements and to the rank and file as an indigenous institution that suited the framing of an Indian Constitution' (Austin, 1976: 316).

The method of consensus found its way in the Assembly in a number of ways. Firstly, the Congress party used the principle in its meeting. From party leaders to non-Congressmen like Aiyar,

Ambedkar and Ayengar all were free to attend the Congress meetings. In addition to the Congress, this process of consensus was followed in the Committee system of the Assembly as well. The dialogue was carried with both the Provincial and the Union government leaders in the Assembly. Provisions regarding federal structure and the issue of language perhaps proved as the best testing ground of this principle. The issue of language strained the Assembly decision making machinery to the utmost. A generally acceptable solution to the problem of language eluded the Assembly members for three years. The Munshi-Ayengar formula was drafted almost in desperation. At the time of final debate on language, Prasad, the Chairman of the Assembly, refused to put the issue to vote. He argued, that in the absence of agreement, it would be difficult to implement it.

Policy of Accommodation

The policy of accommodation was the other salient element which was followed during the debates. According to Austin, it was India's second original contribution to the process of constitution making. In the Assembly, the members had divergent views on a number of crucial issues and there was an immediate and urgent need to reconcile the incompatible and conflicting views. A good deal of behind the scenes discussions and negotiations were required to accommodate these divergent views. The constitutional structure is a good example of the principle of accommodation on the matters of substance. The Constitution has combined federal with the unitary provisions, republican status of India with the membership of the Commonwealth and a strong Central government with decentralisation in the form of Panchayati Raj (Austin, 1976: 16).

The Art of Selection and Modification

The Constituent Assembly discovered a new principle 'the art of selection and modification'. It means, whatever has been borrowed from the other constitutions was not blindly followed. The Assembly seriously chose and modified the provisions so as to make them appropriate for Indian needs and circumstances. One such example of selection and modification is the method of Constitutional amendment. The three procedures of amendment made the Constitution flexible and also helped in protecting the rights of the states. The federal system was another proof of the system of modification.

The Assembly, unlike the American and the Canadian Assembly, adopted the policy of publicity rather than secrecy. Following the democratic methods of debates and discussion, the Assembly published its high level debates which had an educative and enabling effect on the people.

Summary

A Constituent Assembly is a body of people that frames the fundamental laws of a country. The Constitution of India was prepared by an elected body of people known as the Constituent Assembly of India. The making of India was a long process in which members of the Constituent Assembly debated as to what the Constitution was expected to include. The notion of a Constituent Assembly for India was in gestation for a long time both in the national quarters and the British ruling circles. The formation of the constituent assembly was the final culmination of aspirations of the people and the demand of the national movement that the constitution of India should be framed not by British Parliament but by the chosen representative of Indian people. Under the Cabinet Mission plan, the Constituent Assembly was to be indirectly elected by the system of proportional representation from the provincial legislature which themselves had been elected on a restricted franchise consisting of about 20 to 24 percent of the adult population. Initially, the number of members was 389. After partition, some of the members went to Pakistan and the number came down to 299. Out of this, 229 were from the British provinces and 70 were nominated from the princely states.

The work started with the presentation of the 'Objective Resolution' moved on 13th December, 1946 by Pandit Jawaharlal Nehru and was adopted on 22nd January, 1947. The Committee for scrutinizing the Draft Constitution and suggesting Amendments was formed on 29th August, 1947. The Draft was readied by February, 1948. The Constituent Assembly met thrice to read the Draft clause-by-clause in November, 1948, October, 1949 and November, 1949. After the third reading, it was signed by the President and adopted on 26th November, 1949. In fact, a Committee on Rules of Procedure was in place as early as December, 1946 under the Chairmanship of Dr. Bhimrao Ramji Ambedkar and other members.

The Drafting Committee studied the Constitutions of number of countries like France, Canada, USA, Switzerland, etc. and gathered the best features and adopted them for the realization of the aspirations of the people of India in our Constitution. The result of it was that we have one of the best Constitutions of the world today. The Indian Constitution closely follows the British Parliamentary Model but differs from it; the Constitution is Supreme, not Parliament. So the Indian Courts are vested with the authority to adjudicate on the constitutionality of any law passed by the Parliament

The framers of the constitution agreed that consensus of the members was required to make the provisions of the constitution effective and long lasting. Consensus means, to make decisions with near unanimity. The principle of consensus was followed to decide the fundamental issues such as federal structure, language etc. The policy of accommodation helped reconcile the conflicting views, behind the scene discussions and negotiations and to accommodate these divergent views. Through the principle of selection and modification the constitution makers made sure that it did not blindly followed the other constitutions but chose and modified the provisions to suit the Indian circumstances and the aspirations of the Indian people.

The Constituent Assembly discussed all concerns and issues very comprehensively before reaching decision on them. The decision and suggestions of different sub-Committees of the Constituent Assembly were finally incorporated in the Constitution of India. The Constitution of India is a document which provides a vision for social change. The Constitution is an embodiment of principles of liberal democracy and secularism, with some elements of social democracy. It ensures protection of cultural, linguistic and religious rights of individuals and communities.

Glossary

Amend (amendment): Change a law, including a constitution. How to make a change to a constitution will be laid down in the previous constitution. It is possible that "amendment" does not include replacing the entire constitution.

Constituent Assembly: A group of people elected, or chosen on the basis of some other representative principle. This group is entrusted with the task of drawing/writing a constitution.

Consensus: General agreement on an issue—but it need not mean unanimity. However, a mere 51 percent majority would not be a consensus. Though it is a phrase often used in constitution-making, it often causes difficulties. It is rather vague for legal purposes. And there is always a risk that the consensus can be that of the majority, excluding minorities.

Drafting: The expert task of putting constitutional ideas into precise legal language that those who will employ the constitution, including the courts, are able to interpret. The word is often used to refer to a logically prior phase when ideas are put into a structured document, often called the draft constitution.

Preamble (to the constitution): An introduction setting out the aims and objectives of a Constitution.

Sovereign: Supreme; who does not derive power from any one else and is herself/himself the source of power.

Swaraj: The term literally means self-rule, freedom or self-determination. Hedged in: bound

Self Assessment

1) The Constituent Assembly of India was step up under the framework of?

A. Cripps mission (1942)

B. Cabinet mission (1946)

C. Simon commission (1927)

D. None of these.

2) The Constituent Assembly of India was passed and adopted on which of the following days?

A. 24 January, 1950

B. 26 January, 1950

C. 26 November, 1949

D. 29 August, 1947

3) The Objective Resolution was unanimously adopted by the Constituent Assembly on 22nd January 1947, had the following provisions as given below:

I. Adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.

II. All power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people.

Which of the statements given above is/are correct?

A. I only

B. II only

C. Both I and II

D. Neither I nor II

4) Who was the Chairman of the Union Power Committee of Constituent Assembly of India?

A. Sardar Vallabhbhai Patel

B. Dr. B.R. Ambedkar

C. Sir Alladi Krishnaswami Ayer

D. Pt. Jawaharlal Nehru

5) What was the Basis for constituting the Constituent Assembly of India**?**

A. The resolution of Indian National Congress

B. The Cabinet Mission Plan, 1946

C. Indian Independence Act, 1947

D. State Legislature Act

6) Who presided over the first meeting of the Indian Constituent Assembly?

A. Dr. Rajendra Prasad

B. Sachchidananda Sinha

C. B.R. Ambedkar

D. H.V. Kamath

7) Which of the following place where the Constituent Assembly met for the first time on 9thDecember 1946?

A. In the library of the Council Chamber, Delhi

B. In the library of the Council Chamber, Calcutta

C. In the library of the Council Chamber, Madras

D. None of the above

8) The national Anthem was adopted by the constituent Assembly on which of the following day?

A. 24 January, 1947

B. 22 July, 1947

C. 29 August, 1947

D. 26 November, 1949

9) On which day Constituent Assembly elected Dr. Rajendra Prasad as its permanent President?

A. On 13th December, 1946

B. On 12th December, 1946

C. On 11th December, 1946

D. On 10th December, 1946

10) Who among the following was the chairman of Constituent Assembly's Advisory Committee on Fundamental Rights?

A. A. H. C Mukherji

B. J.B Kriplani

C. Sardar Patel

D. P.C Joshi

11) Who among the following was the chairman of Constituent Assembly's Minorities Sub-Committee?

A. Sardar Patel

B. P.C Joshi

C. Pattabhi Sitaramayya

D. H. C Mukherji

12) Who among the following was not a member of the Constituent Assembly?

A. Sardar Vallabhbhai Patel

B. Archarya J.B. Kripalani

C. K.M. Munshi

D. Jay Prakash Narayan

13) The Constitution of India was came into force on:

A. Jan 26, 1950

B. Feb 11, 1948

C. Nov 26, 1949

D. July 26, 1950

14) How many Sessions of the Indian Constituent Assembly were conducted for the formulation of Indian Constitution?

A. 11

B. 7

C. 12

D. 15

15) How much time the Constituent Assembly took to frame the Constitution of India?

A. 2 year and 7 months 23 days

B. 3 years 4 months 14 days

C. 3 year 11 months 5 days

D. 2 year and 11 months 18 days

16) Who proposed the Preamble before the Drafting Committee of the Constitution?

A. Jawaharlal Nehru

B. B.R. Ambedkar

C. B.N. Rau

D. Mahatma Gandhi

Answers for Self-Assessment

1.	B	2.	C	3.	C	4.	B	5.	B
6.	B	7.	A	8.	A	9.	C	10.	C
11.	D	12.	D	13.	A	14.	A	15.	D
16.	A								

Review Questions

1. What is meant by Constituent Assembly? Why do we need a Constituent Assembly?
2. How was the social diversity reflected in the composition of the Constituent Assembly?
3. How was a balance struck in the Constitution among the rights and aspirations of the various sections of the population?
4. Does the Constitution include Gandhian principles?

Further Readings

Basu, D.D. (2011). Introduction to the Constitution of India, (20thed.). New Delhi, India: Wadhwa and Company Law Publishers.

Chaube, S.K. (2009).The Making and Working of the Indian Constitution. New Delhi, India: National Book Trust.

Granville, Austin (2012).The Indian Constitution: Cornerstone of a Nation (17th ed.). New Delhi, India: Oxford University Press.

Shankar, B.L. and Rodrigues Valerian (2011).The Indian Parliament: A Democracy at Work. New Delhi, India: Oxford University Press.

Unit 03: Philosophy of the Constitution

CONTENTS

Objectives
Introduction
3.1 Key Words in the Preamble
3.2 Salient Features of the Constitution:
3.3 Fundamental Rights
3.4 Directive Principles of State Policy
3.5 Fundamental Duties
Summary
Glossary
Self Assessment
Answers for Self Assessment
Review Questions
Further Readings

Objectives

After going through this Unit, you will be able to learn about the:

- explain the preamble of the Indian Constitution.
- identify the basic principles of Preamble and their reflection in the constitutional provisions
- scrutinise the salient features of the Indian Constitution.
- explain the meaning of the fundamental rights.
- analyse different fundamental rights embedded in the Indian Constitution.
- analyze the categorization of the Directive Principles of State Policy.
- outline the list and features of Fundamental Duties.

Introduction

The preface or introduction to a Constitution is known as the Preamble. As an introduction, it is not a part of the contents but it explains the purposes and objectives with which the document has been written. A preamble is the part of the constitution that best reflects the constitutional understandings of the framers, what Carl Schmitt calls the "fundamental political decisions." A preamble is an introductory statement in a document that explains the document's philosophy and objectives. It mirrors the spirit of the constitution. Also, it serves the purpose of a window through which we peep into the intentions of the makers of the constitution. It presents the history behind the constitution's enactment, as well as the nation's core principles and values. In substantive terms, a preamble does not require a specific location in the constitution but, rather, specific content. It helps in the interpretation of the constitution. It also enables the people to assess and evaluate the performance of the government in the light of the objectives laid down into the preamble.

The Constitution of India begins with a Preamble. The Preamble contains the ideals, objectives and basic principles of the Constitution. The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947. Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous. The salient features of the Constitution have evolved directly and indirectly from these objectives which flow from the Preamble.

In brief, the Preamble explains the objectives of the Constitution in two ways: one, about the structure of the governance and the other, about the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the key of the Constitution. The objectives, which are laid down in the Preamble, are: i) Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic (Socialist, Secular added by 42nd Amendment, 1976). Provision to all the citizens of India i.e.,

a) Justice social, economic and political;
b) Liberty of thought, expression, belief, faith and worship;
c) Equality of status and opportunity;
d) Fraternity assuring dignity of the individual and unity and integrity of the nation.

Ingredients of the Preamble: The Preamble reveals four ingredients or components:

1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
2. Nature of Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949 as the date.

3.1 Key Words in the Preamble

Certain key words – Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity – are explained as follows:

Sovereignty: Sovereignty is the principle of supreme and unquestionable authority, reflected in the claim by the state to be the sole author of laws within its territory .It is one of the foremost elements of any independent State. It means absolute independence, i.e., a government which is not controlled by any other power: internal or external. A country cannot have its own constitution without being sovereign. India is a sovereign country. It is free from external control. It can frame its policies. India is free to formulate its own foreign policy.

Socialist: The word socialist was not there in the Preamble of the Constitution in its original form. In 1976, the 42ndAmendment to the Constitution incorporated 'Socialist' and 'Secular', in the Preamble. The word 'Socialism' had been used in the context of economic planning. It signifies major role in the economy. It also means commitment to attain ideals like removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work. When you read about the Directive Principles of the State Policy, you will see how these ideals have been incorporated as well as partly, implemented in the Constitution.

Secularism: In the context of secularism in India, it is said that 'India is neither religious, nor irreligious nor anti-religious.' Now what does this imply? It implies that in India there will be no 'State' religion – the 'State' will not support any particular religion out of public fund. This has two implications, a) every individual is free to believe in, and practice, any religion he/ she belongs to, and, b) State will not discriminate against any individual or group on the basis of religion.

Democratic Republic: As you have noticed while reading the Preamble to the Constitution, that the Constitution belongs to the people of India. The last line of the Preamble says '…. Hereby Adopt, Enact And Give To Ourselves This Constitution'. In fact the Democratic principles of the country flow from this memorable last line of the Preamble. Democracy is generally known as government of the people, by the people and for the people. Effectively this means that the Government is elected by the people, it is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government. These you will read in subsequent lessons.

Justice: The term 'justice' in the Preamble embraces three distinct forms–social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular

section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.

Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as 'distributive justice'.

Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

The ideal of justice–social, economic and political–has been taken from the Russian Revolution (1917).

Liberty: The term liberty means, in its broadest sense, the ability to think or act as one wishes. A distinction is nevertheless often made between 'negative' and 'positive' liberty (Berlin, 1958). Negative freedom means noninterference: the absence of external constraints on the individual. Freedom, in this sense, is a private sphere within which individuals are 'at liberty' to act as they wish. Positive freedom is linked to the achievement of some identifiable goal or benefit, usually in the sense of personal development, self-realization, or self-mastery. The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation. Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the

Preamble or fundamental rights is not absolute but qualified. The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

Equality: Equality is the principle of uniform apportionment, but does not imply sameness. The term 'equality' has differing implications, depending on what is being apportioned. Formal equality means the equal distribution of legal and political rights, and is usually based on the assumption that human beings are 'born' equal. Equality of opportunity means that everyone has the same starting-point, or equal life chances, but may justify social inequality because talent and the capacity for hard work are unequally distributed. Equality of outcome refers to an equal distribution of income, wealth and other social goods. The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality–civic, political and economic. The following provisions of the chapter on Fundamental Rights ensure civic equality:

(a) Equality before the law (Article 14).

(b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).

(c) Equality of opportunity in matters of public employment (Article 16).

(d) Abolition of untouchability (Article 17).

(e) Abolition of titles (Article 18).

Fraternity: Fraternity means a sense of brotherhood. As human beings share a common humanity, they are bound together by a sense of comradeship or fraternity (literally meaning 'brotherhood', but broadened in this context to embrace all humans). This encourages socialists to prefer cooperation to competition, and to favour collectivism over individualism. In this view, cooperation enables people to harness their collective energies and strengthens the bonds of community, while competition pits individuals against each other, breeding resentment, conflict and hostility. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities. The Preamble declares that fraternity has to assure two things–the dignity of the individual and the unity and integrity of the nation. The word 'integrity' has been added to the preamble by the 42nd Constitutional Amendment (1976).

According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the phrase 'dignity of the individual' signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred.

The phrase 'unity and integrity of the nation' embraces both the psychological and territorial dimensions of national integration. Article 1 of the Constitution describes India as a 'Union of States' to make it clear that the states have no right to secede from the Union, implying the indestructible

nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguism, secessionism and so on.

Significance of the Preamble: The Preamble embodies the basic philosophy and fundamental values– political, moral and religious–on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution. According to Sir Alladi Krishnaswami Iyer, a member of the Constituent Assembly who played a significant role in making the Constitution, 'The Preamble to our Constitution expresses what we had thought or dreamt so long'.

In the words of K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the 'horoscope of our sovereign democratic republic'. Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of the Preamble in the following words: 'The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution'. Sir Ernest Barker, a distinguished English political scientist, paid a glowing tribute to the political wisdom of the authors of the Preamble. He described the Preamble as the 'key-note' to the Constitution. He was so moved by the text of the preamble that he quoted it at the opening of his popular book, Principles of Social and Political Theory (1951).

M Hidayatullah, a former Chief Justice of India, observed, 'Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter'.

3.2 Salient Features of the Constitution:

So far we have discussed about the Preamble to the Indian Constitution. In the following sections we are going to discus about the salient features of the Indian Constitution which directly and indirectly flow from the Preamble, indicating the faith of framers in the ideals, objectives and goals as mentioned in our Constitution.

Lengthiest Written Constitution

The Indian Constitution is mainly a written constitution. It is a very comprehensive, elaborate and detailed document. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. The Indian constitution was framed over a period of 2 years, 11 months and 18 days; it was adopted on 26th November, 1949 and enforced on January 26, 1950. Certain conventions have gradually evolved over a period of time which has proved useful in the working of the constitution.

Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently (2016), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules2. The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 90 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9, 10, 11 and 12). No other Constitution in the world has so many Articles and Schedules.

Four factors have contributed to the elephantine size of our Constitution. They are:

a. Geographical factors, that is, the vastness of the country and its diversity.
b. Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
c. Single Constitution for both the Centre.
d. Dominance of legal luminaries in the Constituent Assembly.

A Combination of Rigidity and Flexibility

The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution may be called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy. The Constitutions of USA, Switzerland and Australia are considered rigid constitutions. While, the British Constitution is considered flexible because amendment procedure is easy and simple.

The Constitution of India provides for three categories of amendments. In the first category, amendment can be done by the two houses of Parliament simple majority of the members present and voting of before sending it for the President's assent. In the second category amendments require

a special majority. Such an amendment can be passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied. In the third category besides the special majority mentioned in the second category, the same has to be approved also by at least 50% of the State legislatures. Thus, you see that the Indian Constitution provides for the type of amendments ranging from simple to most difficult procedure depending on the nature of the amendment.

Drawn From Various Sources

The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935. Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the World'.

The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935. The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derives their inspiration from the American and Irish Constitutions respectively. The political part of the Constitution (the principle of Cabinet Government and the relations between the executive and the legislature) has been largely drawn from the British Constitution.

The other provisions of the Constitution have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on. The most profound influence and material source of the Constitution is the Government of India Act, 1935. The Federal Scheme, Judiciary, Governors, emergency powers, the Public Service Commissions and most of the administrative details are drawn from this Act. More than half of the provisions of Constitution are identical to or bear a close resemblance to the Act of 1935.

Federal Polity

India has adopted a federal structure. In a federation there are two distinct levels of governments. There is one government for the whole country which is called the Union or Central Government. Also there is government for each Unit/State. The United States of America is a federation whereas the United Kingdom (Britain) has a unitary form of government. In a unitary structure there is only one government for the whole country and the power is centralised. The Constitution of India does not use the term 'federal state'. Article 1 says that India is a 'Union of States'. There is a distribution of powers between the Union/Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List. These lists have been explained in Lesson 8 in detail. On the basic of this distribution, India may be called a federal system. The supremacy of the judiciary is an essential feature of a federation so that the constitution could be interpreted impartially. In India, the Supreme Court has been established to guard the constitution.

However, in case of Indian federalism, more powers have been given to the Union Government in administrative, legislative, financial and judicial matters. In fact, The Indian federal set up stands out with certain distinctive unitary features. The makers of our constitution while providing for two sets of government at the centre and in the states provided for division of powers favouring the Central Government, appointment of the Head of the State government by the Central Government, single unified judiciary, single citizenship indicate the unitary nature of our federalism. Therefore, it is said that India has a quasi-federal set up.

Independent and Impartial Judiciary

Under the democratic system, all citizens are equal before the law. There cannot be different sets of laws for the different groups of people. The judiciary is expected to provide justice to all the sections of the society. Therefore, the Judiciary is given adequate powers. The Supreme Court acts as a guardian of the Constitution in place of the Privy Council.

A Welfare State

A State which aims at providing social and economic security to all its citizens is known as a Welfare State. Social Security must be provided to the citizens so that they would live a peaceful life. They should have employment and adequate income, food, clothes, shelter and health care. The aged and

destitute must get proper protection. It protects the weaker sections from exploitation, and provides equal social, economic and political opportunities to all citizens.

Parliamentary Democracy

India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.

Universal Adult Franchise

The system of election of representatives by all the adults of a country is called as Universal Adult Franchise. In India, an adult means one who is above the age of eighteen.

Fundamental Rights and Fundamental Duties

Every human being is entitled to enjoy certain rights which ensure good living. In a democracy all citizens enjoy equal rights. The Constitution of India guarantees those rights in the form of Fundamental Rights.

Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights about which you will read in the following lesson. Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection.

Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.

Secularism

As per the principle of secularism, the government must be impartial towards all the religions followed by its citizens. There shall be no 'State Religion'. At the same time, the government guarantees freedom of faith and worship to all citizens. However, the government has the right to restrict religious freedom when it disturbs public peace, as well as law and order.

Directive Principles of State Policy

The Directive Principles of State Policy which have been adopted from the Irish Constitution, is another unique feature of the Constitution of India. The Directive Principles were included in our Constitution in order to provide social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

Single Citizenship

In a federal state usually the citizens enjoys double citizenship as is the case in the USA. In India there is only single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong to but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.

Emergency Provisions

The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution. The Constitution envisages three types of emergencies, namely:

(a) National emergency on the ground of war or external aggression or armed rebellion16 (Article 352);

(b) State emergency (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and

(c) Financial emergency on the ground of threat to the financial stability or credit of India (Article 360).

During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

3.3 Fundamental Rights

The vision of liberty, equality, justice, fraternity, peace, prosperity and so on envisaged in the speech of Jawaharlal Nehru, 'Tryst with Destiny' for independent India was given shape in the form of a Constitution. Various norms and principles were laid down in the Constitution for both the citizens and the government of India to achieve the abovementioned vision into a reality. These include limits on the powers of the government, along with space for rights and duties of individuals as well as groups/collectives.

History of Fundamental Rights

The idea that human beings have fundamental rights and that the social/political arrangements of the society must recognize the worth of every human, along with facilitating the exercise of those rights has been an accepted norm of every democratic society. The scholars of political theory have been occupied in a major way to delineate the tradition of rights. S.K.Chaube argues that the sense of rights in terms of entitlement cannot be seen in ancient political theory. In this context, rights primarily meant what was appropriate or logical.

The seeds of rights in terms of entitlement could be traced back to *Magna Carta* of thirteenth century, where King John enunciated that no person could be detained without trial. This was followed by an era of liberal political theory, with scholars like Hobbes and John Locke who came up with the concept of natural rights of life, liberty and later property. Subsequently, a petition of rights was given by the British Parliament in 1628, which paved the way for Declaration of Rights in 1689. However, it should be noted that the Constitution of England was unwritten. Incorporation of rights in a written form came up with the American Bill of Rights (enclosed in the first Ten Amendments of the Constitution of the USA) in 1791. These rights were termed as fundamental rights, as they could not be violated by the state. The US rights further progressed through amendments in 1865, 1866, 1870, 1919 and in 1962. In the present times, the ambit of protection of rights under the name of human rights has been strengthened with United Declaration of Human Rights along with other international conventions and treaties. Thus, the issue of preservation of rights has assumed a universal dimension. The fundamental rights are meant to be sheltered from the abuses of both the legislative and executive bodies of the government. In the United States, the declarations of the American Bill of Rights are absolute, to the extent that they have the concept of 'judicial supremacy' which can declare any Congressional Act as unconstitutional for breaching any provision of Bill of Rights and also it the Judiciary in the United States which can alter any fundamental right in the instance of national emergency or any kind of threat to the State.

The Indian Constitution can be seen as a balance between parliamentary sovereignty of England and judicial supremacy of the United States. Our Parliament is constrained by a written constitution, unlike England. Hence, if any provisions of the Constitution like Fundamental Rights are transgressed by any act of the Legislature or the Executive, then in that case the Supreme Court or the High Courts are competent to declare that law as void. Also it should be noted that the degree of judicial supremacy in India in declaring these laws as void are less intense as compared to the American model. We are saying this because in the United States the power of the State to impose restrictions on fundamental rights had to be evolved by the Judiciary, while in India this power has been bestowed upon the Legislatures by the Constitution itself, along with a window for judicial review, where the Judiciary can determine whether the restrictions imposed by the Legislature are reasonable enough to impose restrictions on Fundamental Rights.

Thus, The inclusion of a detailed scheme of fundamental rights in the Constitution marks the culmination of a long and sustained desire of the Indians to be bestowed with the basic liberties of free and happy life. Indeed, the formation of the Indian National Congress in 1885 was, among other things, aimed at ensuring the same rights and privileges for Indians that the British enjoyed in their

own country. But the first systematic demand for fundamental rights came in the form of the Constitution of India Bill, 1895.

Thereafter, numerous resolutions were passed and committees were appointed to put forth the perspectives of Indians on the nature and scope of the fundamental rights, aspired by the people of India. The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights, and on the tribal and excluded areas, under the chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make it Part III of the Constitution. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights). Part III of the Constitution is rightly described as the Magna Carta of India. It contains a very lengthy and comprehensive list of 'justiciable' Fundamental Rights.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation. The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing 'a government of laws and not of men'.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the allround development (material, intellectual, moral and spiritual) of the individuals.

Originally, the Constitution contained seven fundamental rights. But the right to property was repealed in 1978 by the Forty-fourth Constitutional Amendment during the rule of the Janata government, reducing these rights to six only, which are:

i. Right to Equality (Articles 14–18),
ii. Right to Freedom (Articles 19–22),
iii. Right against Exploitation (Articles 23 and 24),
iv. Right to Freedom of Religion (Articles 25–28),
v. Cultural and Educational Rights (Articles 29 and 30),
vi. Right to Constitutional Remedies (Article 32).

Definition of state

The term 'State' has been used in different provisions concerning the fundamental rights.

Hence, Article 12 has defined the term for the purposes of Part III.

Laws inconsistent with fundamental rights

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressively provides for the doctrine of judicial review. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

Right to equality: these are discussed from Article 14 to Article 18 of the Constitution.

Article 14, states that the state has to follow equality before the law along with equal protection of law within the domain of Indian territory. Equality before law implies that every person irrespective of his rank/status is equal before the law of the land, and can't claim for any kind of special status. In this way, the concept carries a negative connotation in the sense that it implies absence of any special concessions on grounds of birth, caste, creed and so on. Nevertheless, exception to this are allowed for the President or the Governor of a state where no civil or criminal proceedings are allowed when they are in office.

The concept of 'equality before law' is of British origin while the concept of 'equal protection of laws' has been taken from the American Constitution. The first concept connotes: (a) the absence of any special privileges in favour of any person, (b) the equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and (c) no person (whether rich or poor, high or low, official or non-official) is above the law.

The second concept, on the other hand, connotes: (a) the equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws, (b) the similar application of the same laws to all persons who are similarly situated, and (c) the like should be treated alike without any discrimination. Thus, the former is a negative concept while the latter is a positive concept. However, both of them aim at establishing equality of legal status, opportunity and justice.

In the words of Justice P.N. Bhagwati, Article 14 'shines like a beacon light towards the goal of classless egalitarian socio-economic order'.

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'. The word 'discrimination' means 'to make an adverse distinction with regard to' or 'to distinguish unfavourably from others'. The use of the word 'only' connotes that discrimination on other grounds is not prohibited.

The second provision of Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public. This provision prohibits discrimination both by the State and private individuals, while the former provision prohibits discrimination only by the State.

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

Further, as a state of exception, Article 16 (4) held that reservation for any post could be carried out by the state in favour of any backward class, if they are numerically or even qualitatively underrepresented in any particular service. Finally, in the last exception, Article 16 (5) declares that the offices of a particular religious or denominated institution may be reserved for members of that particular religious community.

Article 17 under Right to Freedom which formed the base for the enactment of Untochability (Offences) Act, 1955 and which was further modified in 1976 and was read as Protection of Civil Rights, 1955. Under this Article it has been declared that 'untochability' is abolished and its practice in any form like insulting a member of Scheduled Caste, preaching or justifying untochability in the name of tradition of the caste system is forbidden, as its practice is a punishable offence according to law under Article 35. Thus, no individual could be refused admission to any public institution or worshipping in any place of public worship or with regard to access to any place where public services are rendered.

This is followed by Article 18, Clause (1) which disallows the state to confer titles on individuals, therefore the abolition of titles. However military or academic distinctions may be awarded, and they may be used as titles but not as an 'appendage to one's name'. Further, Clause (2) of the Article prohibits an Indian citizen from accepting any foreign state title and also under Clause (3) any foreigner holding office of profit under the Indian State cannot accept any foreign state title without the permission of the President.

Right to Freedom: *These are discussed from Article 19 to Article 22 of the Constitution.*

Article 19 guarantees to all citizens the six rights. These are:

(i) Right to freedom of speech and expression.

(ii) Right to assemble peaceably and without arms.

(iii) Right to form associations or unions or co-operative societies.

(iv) Right to move freely throughout the territory of India.

(v) Right to reside and settle in any part of the territory of India.

(vi) Right to practice any profession or to carry on any occupation, trade or business.

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or

legal persons like companies or corporations, etc. The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

(a) ***No ex-post-facto law***: No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.

(b) ***No double jeopardy***: No person shall be prosecuted and punished for the same offence more than once.

(c) ***No self-incrimination***: No person accused of any offence shall be compelled to be a witness against himself.

Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except 'according to the procedure established by law'. The concept of 'procedure established by law' is the adoption of the English concept of personal liberty, where the legislature is supreme. This is to be differentiated from the 'due process' entailed in the American Constitution, where any law depriving a person of his liberty could be declared unconstitutional by the Court on reasonable grounds.

In Gopalan v. State of Madras, 1950 case , liberty implied only physical body of the individual, however in 1978 decision in Maneka Gandhi v. union of India case, it was upheld that right to live, is not only about physical existence, rather it also carries the connotation of right to live with human dignity. Also it should be noted that until this decision in 1978 the validity of legislative law depriving personal liberty could not be challenged in a court of law. But after this judgment it was held that the Court should attempt to expand the ambit of Fundamental Rights. Further, in 1982 Pavement Dwellers' case, right to life was made to be inclusive of right to livelihood. In 1993 the right to livelihood within the scope of Article 21 was reiterated in D.K.Yadav v. JMA Industries Ltd.

In increasing the ambit of Article 21, the Supreme Court in Mohini Jain v. State of Karnataka held that Right to Education was a fundamental right and that the state should provide opportunities for education. Right to Education Act was passed in 2009, where the state has the obligation to provide free and compulsory education to children between six to fourteen years.

Article 21 A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education. This provision was added by the 86th Constitutional Amendment Act of 2002. This amendment is a major milestone in the country's aim to achieve 'Education for All'. The government described this step as 'the dawn of the second revolution in the chapter of citizens' rights' .

Even before this amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard. This amendment changed the subject matter of Article 45 in directive principles. It now reads: 'The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years. It also added a new fundamental duty under Article 51A that reads, 'It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years'.

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court. Preventive detention, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion.

Nevertheless, Clauses 4-7 of Article 22 contain protective provisions to prevent the misuse of the power of preventive detention by the state. Thus, a person detained under preventive detention cannot remain in custody for more than three months and if the period exceeds then it has to be justified. The person detained may be informed of the grounds of his detention, if those facts do not disrupt the public interest and also the opportunity of representation against the order of detention is to be given at the earliest.

Right Against Exploitation: These are discussed from Article 23 to Article 24 of the Constitution.

Article 23 prohibits traffic in human beings, begar (forced labour) and other similar forms of forced labour. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.

The expression 'traffic in human beings' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c) devadasis; and (d) slavery. To punish these acts, the Parliament has made the Immoral Traffic (Prevention) Act13, 1956.

The term 'begar' means compulsory work without remuneration. It was a peculiar Indian system under which the local zamindars sometimes used to force their tenants to render services without any payment. In addition to begar, the Article 23 prohibits other 'similar forms of forced labour' like 'bonded labour'. The term 'forced labour' means compelling a person to work against his will. The word 'force' includes not only physical or legal force but also force arising from the compulsion of economic circumstances, that is, working for less than the minimum wage. In this regard, the Bonded Labour System (Abolition) Act, 1976; the Minimum Wages Act, 1948; the Contract Labour Act, 1970 and the Equal Remuneration Act, 1976 were made.

Article 23 also provides for an exception to this provision. It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay. However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

In the same real, we have Article 24 which contains provisions prohibiting employment of children below the age of fourteen in factories, mines or any hazardous jobs. Unlike Article 23, where the state can exercise exception for public purposes, Article 24 is absolute in its nature which implies that there is no clause under which children could be employed in hazardous jobs. Further, in M.C.Mehta v. State of Tamil Nadu, 1991, the Supreme Court directed that positive measures should be taken for the welfare of such children by meeting the terms of Child Labour (Prohibition and Protection) Act.

Right to Freedom of Religion: These are discussed from Article 25 to Article 28 of the Constitution.

Article 25 upholds that all persons (citizens and non-citizens) have the right to freedom of conscience along with free profession, practice and propagation of religion which includes both faith or belief and observance of rituals.

The freedom of religion is not only meant for individuals but also for religious groups or denominations under Article 26. They have the right to establish institutions for religious and charitable purposes; manage their own affairs in matters of religion as well as the right to own and acquire movable/ immovable property in accordance with law. However, these freedoms are not absolute in nature and are subject to interests of the public order, morality, health and for social reform measures of the state.

Article 27 working within the ambit of equal respect for all religions says that no person shall be compelled to pay any taxes for the promotion and maintenance of any particular religion.

Article 28 completely prohibits religious instructions in state-owned educational institutions. Nevertheless, in other denominational institutions or educational institutions recognized or receiving aid from the state , religious instructions could be imparted but it cannot be imposed upon people attending that institution without their consent (consent from the guardian in case of a minor).

Cultural and Educational Rights: these rights are from 29 and 30 in the Indian Constitution.

Article 29 guarantees every section of the citizens having a distinct language, script or culture to conserve the same. The state shall not inflict any culture upon the community. Article 30 holds that such communities have right to establish and administer educational institutions of its choice which also implies freedom to choose medium of instruction in such institutions (D.V.College Bhatinda v. State of Punjab, 1971) and the state shall not discriminate on the ground that the institution is maintained by a minority community while granting aid to educational institutions. 44th Amendment added Clause 1(A) to Article 30 which says full compensation to be paid if the State acquires the property of any such institution.

Right to Constitutional Remedies: Article 32 deals with it.

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. In other words, the right to get the Fundamental Rights protected is in itself a fundamental right. This makes the fundamental rights real. That is why Dr Ambedkar called Article 32 as the most important article of the Constitution - 'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it.'. The Supreme Court has ruled that Article 32 is a basic feature of the Constitution.

There are five kinds of writs which the Supreme Court or the High Courts may issue namely habeas corpus, mandamus, prohibition, certiorari and quo warranto. These writs are borrowed from English law where they are known as 'prerogative writs'. They are so called in England as they were issued in the exercise of the prerogative of the King who was, and is still, described as the 'fountain of justice'. Later, the high court started issuing these writs as extraordinary remedies to uphold the rights and liberties of the British people.

The literal meaning of the term *habeas corpus* is 'to have a body' which has a Latin origin. This writ could be issued to check the arbitrary acts not only of private individuals/officials but also against the executive. The writ attempts to secure the body of the person detained by bringing the person before the court, to know the reason of detention and to set free if there is no justification for detention. However, it cannot issued for persons charged with criminal offence.

Mandamus means command, thus the Supreme Court or the High Courts commands the officers, government and other persons who are bound to do a public duty and which have been refused to be performed by them. It could also be issued against inferior or other judicial bodies who have refused to exercise their jurisdiction. Nonetheless, it could not be issued against the President or the Governor of a state and also not against private individual or body which is not in collusion with the state.

While mandamus commands activity, we have the writ of *prohibition* where the Supreme Court or the High Courts command inactivity on the part of inferior court by usurping the latter's excessive jurisdiction i.e. which is not legally vested in them. Thus, this writ is issued before the order is made, in the sense of prohibiting judicial tribunal or inferior courts from making unconstitutional orders.

The writ of *certiorari* is issued against Courts and tribunals exercising judicial powers to quash their orders which contravene the rules of justice.

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces. The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.

The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area. The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures. This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement.

Features of Fundamental Rights

The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.

2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are rea-sonable or not is to be decided by the courts. Thus, they

strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.

3. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.

5. They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.

4. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.

5. They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution.

6. They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).

7. Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).

10. Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).

11. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.

12. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

3.4 Directive Principles of State Policy

It has been well documented that the original intention of the framers of the Indian Constitution was to create only one set of 'Fundamental Rights' in the Constitution which were to cover civil, political, social and economic rights. In the first draft of Constitution, the Part III consisted of three chapters. The first chapter dealt with certain general principles emphasizing the importance of Directive Principles, the second chapter consisted of the 'Fundamental Rights' and the third chapter comprised of the Directive Principles (Diwan, 1982).

On the other hand, the rights which were aimed at promoting social and economic progress and required action on the part of the state (in terms of legislation etc) were framed in Part IV of the Indian Constitution as goals for the Indian State and termed as the 'Directive Principles of State Policy' (Deshpande, 1982).

It was argued during the Constituent Assembly that the newly independent Indian State could only guarantee social and economic rights over a period of time. Thus, the civil and political rights were enshrined in the Indian Constitution as the 'Fundamental Rights' where as the social and economic rights were made a part of the 'Directive Principles of State Policy.

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution. Dr B R Ambedkar described these principles as 'novel features' of the Indian Constitution. The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution. Granville Austin has described the Directive Principles and the Fundamental Rights as the 'Conscience of the Constitutio'. As K.C. Markandan argues, 'Far from being a proclamation or promulgation of principles, the directive principles constitute a pledge by the framers of the Constitution to the people of India and a failure to implement them would constitute not only a breach of faith with the people but would also render a vital [feature] of the Constitution practically a dead letter'.

Significance and Utility of 'Directive Principles of State Policy'

The 'Directive Principles of State Policy' have been written in the form of instructions or recommendations to the government and government agencies to formulate policies accordingly. It has been argued that the importance of the 'Directive Principles of State Policy' has not been reduced just because they are not justiciable.

If there is a strong public opinion in favour of these Directive Principles then it would be difficult for the government to ignore them (Mohanty, 2009). People have judged subsequent governments for the manner in which they have/have not legislated on these Directive Principles. The presence of the Directive Principles has ensured that the government in India has been answerable to the citizens. Another significant aspect of the Directive Principles is that they present guidelines to the Indian State to act as a Welfare State. They aim at ensuring the realization of social justice and economic democracy. These provisions are framed in the form of positive obligations placed on the State. For instance, they direct the State government to secure adequate means of livelihood for citizens, to ensure proper standards of nutrition, ensure equal pay for equal work etc.

It can be argued that the extent to which these principles are applied whilst governing the Indian State, to the same extent social and economic justice have become relizable and vice versa. Some scholars have opined that the extent to which the government has/has not been able to realize the ideals present in the 'Directive Principles of State Policy', the 'Fundamental Rights' have become realizable (Mohanty, 2009, pg.239). Individual liberty can only be realized in the presence of social and economic freedom. However, it is also important to point out criticisms of the 'Directive Principles of State Policy'. It has been a severe limitation that these Principles have not been made legally binding on the State and government. The fact that they have not been made justiciable has restricted their implementation. Several governments have not been able to implement them.

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

Article 38: To promote the welfare of the people by securing a social order permeated by justice–social, economic and political–and to minimise inequalities in income, status, facilities and opportunities.

Article 39: To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children.

Article 39 (A): To promote equal justice and to provide free legal aid to the poor.

Article 41: To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

Article 42: To make provision for just and humane conditions of work and maternity relief.

Article 43: To secure a living wage, a decent standard of life and social and cultural opportunities for all workers.

Article 43 (A): To take steps to secure the participation of workers in the management of industries.

Article 47: To raise the level of nutrition and the standard of living of people and to improve public health.

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

Article 40: To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.

Article 43: It say 'the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage,

conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas'.

Article 43 (B): To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Article 46: It states that, 'the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation'.

Article 47: To prohibit the consumption of intoxicating drinks and drugs which are injurious to health.

Article 48: To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

Liberal–Intellectual Principles

The principles included in this category represent the ideology of liberalism.

They direct the state:

Article 44: To secure for all citizens a uniform civil code throughout the country.

Article 45: To provide early childhood care and education for all children until they complete the age of six years.

Article 48: To organise agriculture and animal husbandry on modern and scientific lines.

Article 48 (A): To protect and improve the environment and to safeguard forests and wild life.

Article 49: To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.

Article 50: To separate the judiciary from the executive in the public services of the State.

Article 51: It reads, 'the State shall endeavour to:

a) promote international peace and security;
b) maintain just and honourable relations between nations;
c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
d) encourage settlement of international disputes by arbitration.

3.5 Fundamental Duties

Impregnating the high sounding and zealously guarded domain of fundamental rights with a moderate dose of ethical citizenship responsibilities, the fundamental duties were inserted in the Constitution in 1976 through the Constitution's Forty-second Amendment. Drawn from the Constitution of former Soviet Union and placed in Part IV-A of the Constitution under Article 51-A, the set of ten fundamental duties is supposed to be only moral exhortation to the citizens of the country to inculcate a sense of patriotic and sensible citizenship, without any legal justiciability.

Though not justiciable and therefore, with little consequence in practical terms, the provision of fundamental duties was opposed by many people who also brought out several inconsistencies in these duties. For instance, one of the fundamental duties asks every citizen of the country to develop a scientific temper and spirit of enquiry. But with bulk of the people still illiterate, how is it possible to imbibe the habit of thinking with clarity and precision if they are unable to get the basic inputs of such a thinking. Nevertheless, the fundamental duties have become a part of the Constitution and despite their non-justiciability, they continue to exercise some sort of social and collective restriction on those who are fond of enjoying unfettered rights without discharging even an iota of duty to the society and the nation.

List of Fundamental Duties

According to Article 51 A, it shall be the duty of every citizen of India:

a. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

b. To cherish and follow the noble ideals that inspired the national struggle for freedom;
c. To uphold and protect the sovereignty, unity and integrity of India;
d. To defend the country and render national service when called upon to do so;
e. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
f. To value and preserve the rich heritage of the country's composite culture;
g. To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
h. To develop scientific temper, humanism and the spirit of inquiry and reform;
i. To safeguard public property and to abjure violence;
j. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
k. To provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Features of the Fundamental Duties

Following points can be noted with regard to the characteristics of the Fundamental Duties:

a) Some of them are moral duties while others are civic duties. For instance, cherishing noble ideals of freedom struggle is a moral precept and respecting the Constitution, National Flag and National Anthem is a civic duty.
b) They refer to such values which have been a part of the Indian tradition, mythology, religions and practices. In other words, they essentially contain just a codification of tasks integral to the Indian way of life.
c) Unlike some of the Fundamental Rights which extend to all persons whether citizens or foreigners1, the Fundamental Duties are confined to citizens only and do not extend to foreigners.
d) Like the Directive Principles, the fundamental duties are also nonjusticiable. The Constitution does not provide for their direct enforcement by the courts. Moreover, there is not legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

Summary

The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950. The Constitution begins with a Preamble which declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The Preamble also mentions the goals of securing justice, liberty and equality for all its citizens and promotion of national unity and integrity on the basis of fraternity among the people assuring dignity of the individual.

The Constitution has been given the adjective of 'living', which connotes that it is a document which responds to the changing circumstances. It signifies that our Constitution is dynamic in nature and not constant, this also conveys its democratic aspect. Thus, with the new challenges, ideas and practices of the contemporary times, scope has been made to amend the Constitution. The Indian Constitution provides for Fundamental Rights which are justiciable. Ten Fundamental Duties have also been added to the Constitution. The Directive Principles of State Policy give a concrete shape to the welfare concept.

It should be noted that the constitutional provisions have scope to expand its meaning in order to make the exercise of Fundamental Rights more substantial. Therefore, two processes must go simultaneously. First, the existing provisions must be implemented i.e. the gap between theory (as

given in the Constitution) and its actual practice needs to be lessened. And second, the interpretation of each constitutional provision must be widened with the changing circumstances.

The 'Directive Principles of State Policy' constitute an important part of the Indian Constitution. The implementation of the provisions of the Directive Principles has widened the scope for realization or freedom. Additionally, with these Principles it has become possible to argue with the Indian State for the realization of social and economic freedom for Indian citizens.

The provisions in the 'Fundamental Rights' and the 'Directive Principles of State Policy' need to be read together for the realization of the ideals inscribed in the Indian Constitution. The role they will continue to play in the Indian democracy will depend on the manner in which the legislature and judiciary continue to interpret and implement these directives.

Glossary

Magna Carta: It is also known as the Great Charter of the Liberties of England. This was the first document to limit the powers of the King of England in the thirteenth century.

Principles: In constitution-making, sometimes used to refer to guidance on certain things that should appear in the final constitution, or possibly on the process. These might be called constitutional or guiding or foundational principles. They may be laid down by a peace process or an interim constitution, or in other ways.

Procedure established by law: It means that a law that is duly enacted by legislature or the concerned body is valid if it has followed the correct procedure.

Ratify (ratification): To approve an act done by someone else—and thus to have some legal effect, or to bind oneself. A country for which a representative has signed a treaty will often not be bound until it is ratified by some body—perhaps the legislature. In constitution-making a referendum might be required so that the people can ratify the constitution.

Rigid constitution: A constitution that is hard to change. Also refers to one that has many detailed provisions, leaving little room for different interpretations. The opposite of a flexible constitution—though in reality all constitutions are on a continuum.

Sovereign (sovereignty): Characteristic of an independent state within the community of states, meaning that it is not subject to any other state. Having full powers. Also used in the phrase "sovereignty of the people" to indicate that the sovereignty is not that of a monarch or government.

Writ: a form of written command in the name of a court or legal authority.

Self Assessment

1) Preamble to the Constitution of India:

A. is not a part of the Constitution

B. indicates the objectives to be achieved

C. indicates the source from which the Constitution derives its authority

D. is a source of authority of the Constitution of India

2) The solemn resolution in the preamble of our constitution is made in the name of:

A. People of India

B. Constitution of India

C. Indian independence Act 1947

D. None of these

3) The basic structure of the Constitution of India is contained in

A. Article 21

B. Article 14

C. Article 32

D. Preamble

4) The lengthiest written constitution in the world is of:

A. Britain
B. France
C. India
D. USA

5) Which one of the following rights of Indian Constitution guarantees all the fundamental rights to every resident of a country?
A. Right against exploitation
B. Right to freedom
C. Right to equality
D. Right to constitutional remedies

6) Which one of the following is true with respect to the Fundamental Rights of Indian Constitution?
A. The sovereignty of the people
B. Equality of opportunity for all resident
C. Limited government
D. Democracy

7) Which of the following Article of the Indian Constitution guarantees 'Equality Before the Law and Equal Protection of Law within the Territory of India'?
A. 14
B. 17
C. 18
D. 12

8) Which Article of the Indian Constitution abolishes Untouchability**?**
A. 13
B. 14
C. 16
D. 17

9) Which of the following is correct with respect to "Right Against Exploitation"?
A. Prohibition of traffic in human beings and forced labour.
B. Freedom as to payment of taxes for the promotion of any particular religion.
C. Protection of interests of minorities.
D. Equality before the law.

10) B. R. Ambedkar termed Article 32 of the Indian Constitution as the "Heart and Soul of the Indian Constitution". Which one of the following fundamental right it contains?
A. Right to freedom
B. Right to constitutional remedies
C. Right to elementary education
D. Right to freedom of religion

11) Which of the following Articles contain the right to religious freedom?

A. 14-18

B. 32-35

C. 19-22

D. 25-28

12) Which of the following can a court issue for enforcement of Fundamental Rights?

A. Decree

B. A writ

C. An Ordinance

D. A notification

13) In which part of the Indian constitution the Directive Principle of State Policy are mentioned?

A. Part II

B. Part III

C. Part IV

D. Part I

14) Which of the following statements is not correct about Directive Principle of State Policy?

A. If a State does not apply Directive Principle of State Policy, then a case may be filed against it in court.

B. 'Gandhism' is also an element of Directive Principle of State Policy.

C. Principles have been taken from the Constitution of Ireland.

D. These principles are not binding on the state.

15) The Directive Principle have been taken from the constitution of..... ?

A. Britain

B. Canada

C. America

D. Ireland

16) The elements of the Directive Principle of State Policy are explained in the articles.....

A. 12-35

B. 36-51

C. 51 A

D. All of the Above

17) Which of the following statements is correct about the 'Directive Principles of State Policy'?

A. They are not moral and political.

B. These are automatically applied to the state.

C. They can be legally enforced by the court.

D. Their nature is socialist.

18) One of the objectives of Directive Principles of State Policy is?

A. Total prohibition.

B. Prevention of gambling and lotteries.

C. Making effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement.

D. All of the Above

19) Separation of the judiciary from the executive has been provided in one of the following parts of the Indian constitution?

A. The preamble

B. The fundamental right

C. The directive principle of state policy

D. The Seventh Schedule

20) Which of the following committee suggested incorporating Fundamental Duties in the Indian Constitution?

A. Malhotra Committee

B. Raghavan Committee

C. Swaran Singh Committee

D. Narasimhan Committee

21) The Fundamental Duties were included in the Constitution of India by which of the following Amendment Act?

A. 40th Amendment Act

B. 44th Amendment Act

C. 43rd Amendment Act

D. 42nd Amendment Act

22) The Fundamental Duties are mentioned in:

A. Part-IV A

B. Part-IV

C. Part-III

D. Part-II

23) Which of the following Article of the Indian Constitution contains Fundamental Duties?

A. 47 A

B. 51 A

C. 42

D. 39B

24) Which of the following are Fundamental Duties?

A. Safeguarding public property.

B. Protecting the sovereignty, integrity and unity of India.

C. Developing scientific temper and humanism.

D. All the above

Answers for Self Assessment

1.	C	2.	A	3.	D	4.	C	5.	D
6.	B	7.	A	8.	D	9.	A	10.	B
11.	D	12.	B	13.	C	14.	A	15.	D
16.	B	17.	D	18.	C	19.	C	20.	C
21.	D	22.	A	23.	B	24.	D		

Review Questions

1. What is the importance of the Preamble to the Constitution?
2. What is the philosophy of the Indian Constitution?
3. Discuss the scope of Fundamental Rights. Are they absolute in nature?
4. What are the writs existing under Right to Constitutional Remedies?
5. How are directive principles of state policy implemented?
6. What are the critical features of directive principles of state policy?
7. What is the significance and utility of the 'Directive Principles of State Policy'? Discuss with reference to the Constituent Assembly debates. Write a critical note on fundamental duties?
8. Why did fundamental chapter include in the Indian Constitution?
9. Write an essay on the relationship between 'Fundamental Rights' and 'Directive Principles of State Policy' in the Indian context.
10. What are the provisions within Article 19? Do you think they have been violated in the present context?

Further Readings

Austin, G, (2013) The Indian Constitution, Cornerstone of a Nation, New Delhi: Oxford University Press.

Basu, D D, (2004) *Introduction to the Constitution of India*, New Delhi: Wadhwa and Company Law Publishers.

Chaube, S C, (2010) *The Making and Working of Indian Constitution*, New Delhi: National Book Trust.

Kashyap, S, (1994) Our Constitution, *An Introduction to India's Constitution and Constitutional Law*, New Delhi: National Book Trust.

Unit 04: Constitutionalism in India

CONTENTS

Objectives:

4.1 Democracy

4.2 Main Features of the Indian Democracy

4.3 Social change

4.4 Factors of social change

4.5 National Unity

4.6 Separation of Powers

4.7 Basic Structure Doctrine

4.8 Evolution of the Basic Structure Concept

4.9 Procedure of Amendment

Summary

Glossary

Self Assessment

Answer for Self Assessment

Review Questions

Further Readings

Objectives:

After going through this Unit, you will be able to learn about the:

- explain the meaning of democracy and outline the salient features of the Indian democracy.
- define and describe the nature and features of social change.
- describe the factors of social change.
- explain the concept of unity and diversity and describe the forms and bases of diversity in India.
- explicate the meaning of the separation of powers and outline the debate in Constituent Assembly on checks and balance.
- evaluate the meaning of Basic Structure of the Indian Constitution and highlight the major elements of the Basic Structure.
- analyze the procedure of amendments and describe the types of amendments.

Introduction

The concept of constitutionalism, like almost all other social sciences concepts, has always been subject to or part of an evolutionary process. Therefore, we cannot point out any specific time or event that led to its creation or emergence, though a succession of such events may have led to shaping and acquisition of an image as an outcome of the totality of those events or processes. Generally, they are shaped in the context of paradigm shifts in social and political structures. There is no consensus among the scholars on the exact and precise definition of the term constitutionalism. A few definitions are mentioned below:

Professor McIlwain is credited with introducing the concept of constitutionalism by devoting his six lectures at Cornell University in 1938-39 exclusively to its understanding supported by its history of evolution in the West. He defined it in the following words, "[C]onstitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law" (1987: 21-22).

Carl Friedrich also defined constitutionalism on similar lines in the following words, "Constitutionalism is built on the simple proposition that the government is a set of activities organised by and operated on behalf of the people, but subject to a series of restraints which attempt to ensure that the power which is needed for such governance is not abused by those who are called upon to do the governing".

Professor Harding, a political scientist, also explains constitutionalism on the same lines, "Arguably the most important aspect of constitutionalism for modern nations, especially those that have had histories of autocracy, is in the placing of limits on the power of government. In the view of many this is the central point of constitutionalism: the limited government".

Andras Sojo, a Hungarian scholar, wrote the book titled "Limiting Government: An Introduction to Constitutionalism" initially in Hungarian in 1995 and later in English in 1999 for the guidance of the new regimes in East Europe. After noting that "Constitutionalism is the restriction of State power in the preservation of public peace", he admits that "[t]here is no satisfactory definition of constitutionalism, but one does not only feel when it has been violated, one can prove it." He further adds, "The doctrine of constitutionalism was the answer given to oppression during and after the French Revolution, and it was related to concrete forms of abuse and usurpation. Constitutional ideas and constitutionalism in all ages refer to abuses of power because they exist in collective memory."

D. D. Basu has argued that "The principle of constitutionalism requires control over the exercise of governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of separation of power; it requires a diffusion of powers, necessitating different independent centres of decision-making. … The principle of constitutionalism underpins the principle of legality which requires the courts to interpret legislation on the assumption that Parliament would not wish to legislate contrary to fundamental rights.… Constitutionalism or constitutional system of government abhors absolutism it is premised on the rule of law in which subjective satisfaction is— substituted by objectivity provided for by provisions of the Constitution itself. Constitutionalism is about limits and aspirations. The Constitution embodies aspiration to social justice, brotherhood, and human dignity. It is a text which contains fundamental principles. … The tradition of written constitutionalism makes it possible to apply concepts and doctrines not recoverable under the doctrine of unwritten living Constitution. The Constitution is a living heritage and, therefore, you cannot destroy its identity".

In the Indian context, thus, it is not that India conceived and made its constitution only after obtaining independence from the foreign rule. On the contrary, in the light of its past history and precedents in pre-British and British India, a blueprint for the future constitution of India had already been drawn. Therefore, India could conceive and frame a constitution which in spite of India's partition, diversity and immense problems of merging over five hundred Indian states into the Union of India has been working so far with some major and minor amendments. Let's now identify whether constitutionalism is present in India or not. It can be analyzed with the help of various provisions of constitution that are: democracy, social change, unity in diversity, separation of powers and so on. Let's have a discussion on them one by one.

4.1 Democracy

To take democracy seriously, we must know what we are talking about. Developing a precise definition of democracy is particularly important when trying – as we are here – to describe and explain variation and change in the extent and character of democracy. Observers of democracy and democratization generally choose, implicitly or explicitly, among four main types of definitions: constitutional, substantive, procedural, and process-oriented. The origins of the term 'democracy' can be traced back to Ancient Greece. Like other words ending in 'cracy' (for example, autocracy, aristocracy and bureaucracy), demo cracy is derived from the Greek word kratos, meaning power, or rule. Democracy, thus, means 'rule by the demos' (the demos referring to 'the people', although the Greeks originally used this to mean 'the poor' or 'the many'). However, the simple notion of 'rule by the people' does not get us very far. The problem with democracy has been its very popularity, a popularity that has threatened the term's undoing as a meaningful political concept. In being almost universally regarded as a 'good thing', democracy has come to be used as little more than a 'hurrah! word', implying approval of a particular set of ideas or system of rule. In Bernard Crick's (1993) words, 'democracy is perhaps the most promiscuous word in the world of public affairs'. A term that can mean anything to anyone is in danger of meaning nothing at all. Amongst the meanings that have been attached to the word 'democracy' are the following:

- a system of rule by the poor and disadvantaged;

- a form of government in which the people rule themselves directly and continuously, without the need for professional politicians or public officials;
- a society based on equal opportunity and individual merit, rather than hierarchy and privilege;
- a system of welfare and redistribution aimed at narrowing social inequalities;
- a system of decision-making based on the principle of majority rule;
- a system of rule that secures the rights and interests of minorities by placing checks upon the power of the majority;
- a means of filling public offices through a competitive struggle for the popular vote;
- a system of government that serves the interests of the people regardless of their participation in political life (Heywood, 2012).

One of the core features of democracy is the principle of political equality, the notion that political power should be distributed as widely and as evenly as possible. However, within what body or group should this power be distributed? In short, who constitutes 'the people'? On the face of it, the answer is simple: 'the *demos*', or 'the people', surely refers to *all* the people; that is, the entire population of the country. In practice, however, every democratic system has restricted political participation, sometimes severely.

Most conceptions of democracy are based on the principle of 'government *by* the people'. This implies that, in effect, people govern themselves – that they participate in making the crucial decisions that structure their lives and determine the fate of their society. This participation can take a number of forms, however. In the case of direct democracy, popular participation entails direct and continuous involvement in decision-making, through devices such as referendums, mass meetings, or even interactive television. The alternative and more common form of democratic participation is the act of voting, which the central feature of what is usually is called 'representative democracy'. When citizens vote, they do not so much make the decisions that structure their own lives as choose who will make those decisions on their behalf. What gives voting its democratic character, however, is that, provided that the election is competitive, it empowers the public to 'kick the rascals out', and it thus makes politicians publicly accountable. Democracy, properly understood, is the context in which citizens freely engage in the process of broad-based discourse, debate, deliberation, and enhance the critical assessment without any fear, restraint, or unease. People enjoy greater freedom and human development in well-functioning democracies than citizens of non-democracies. They also experience less deprivation, violence, suppression, dehumanization, and domination. Therefore, it is a robust and a vibrant mechanism that provides more pluralism and more tolerance (Wani, 2020).

Democracies fall into two basic categories, direct and representative. Direct democracy (sometimes 'classical', 'participatory', or 'radical' democracy) is based on the direct, unmediated and continuous participation of citizens in the tasks of government. Direct democracy thus obliterates the distinction between government and the governed, and between the state and civil society; it is a system of popular self-government. It was achieved in ancient Athens through a form of government by mass meeting; its most common modern manifestation is the use of the referendum. The merits of direct democracy include the following:

- It heightens the control that citizens can exercise over their own destinies, as it is the only pure form of democracy.
- It creates a better-informed and more politically sophisticated citizenry, and thus it has educational benefits.
- It enables the public to express their own views and interests without having to rely on self-serving politicians.
- It ensures that rule is legitimate, in the sense that people are more likely to accept decisions that they have made themselves.

Representative democracy is a limited and indirect form of democracy. It is limited in that popular participation in government is infrequent and brief, being restricted to the act of voting every few years. It is indirect in that the public do not exercise power themselves; they merely select those who will rule on their behalf. This form of rule is democratic only insofar as representation establishes a reliable and effective link between the government and the governed. This is sometimes expressed

in the notion of an electoral mandate. The strengths of representative democracy include the following:

- It offers a practicable form of democracy (direct popular participation is achievable only in small communities).
- It relieves ordinary citizens of the burden of decision-making, thus making possible a division of labour in politics.
- It allows government to be placed in the hands of those with better education, expert knowledge and greater experience.
- It maintains stability by distancing ordinary citizens from politics, thereby encouraging them to accept compromise.

India, the largest democracy in the world, has historically little back- ground of democracy. In fact, India strayed into democracy as a result of a long association with the British as a part of the British Raj. It under- went myriad adaptations. The social peculiarities of India include such factors as caste, regionalism, language differences and religious pluralism. Democracy in modern India is then of recent growth having being introduced and developed by the British government. Democracy in India owes its beginning not to the democratic sense. But for the stern necessity, for the Indian Council Act of 1861 which for the first time recognized the rights of the Indian people to representation in their legislative bodies. The Morley-Minto Reforms of 1909 increased the size of all the Legislative Councils, gave legal recognition to the elective principle provided for non-official majorities.

In 1939, Gandhiji wrote an article in the 'Harijan' called 'The Only Way' in which he said "… the Constituent Assembly alone can produce a constitution indigenous to the country and truly and fully representing the will of the people" one based on "unadulterated adult franchise for both men and women". The popular demand in 1939 for a Constituent Assembly was, after several ups and downs conceded by Imperialist Britain in 1945. In July 1946, the elections were held. In August 1946, The Indian National Congress' Expert Committee moved a resolution in the Constituent Assembly. This contained the declaration that India shall be a Republic where the declared social, economic and political justice will be guaranteed to all the people of India. India opted for the parliamentary form of government in order to make the nation-state I (modernity) based on the principles of universal adult franchise and periodic election in contrast to the village-level government in the light of Gandhian principles.

In his famous *Tryst with Destiny* speech at midnight of August 14-15, 1947, Jawaharlal Nehru, the first Prime Minister, had brilliantly posed: "What shall be our endeavor?" He elegantly answered: "To bring freedom and opportunity to the common man, to the peasants and workers of India; to fight and end poverty and ignorance and disease; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman" (Wani, 2020).

Thus, democracy came to India neither as a response to an absolutist state nor as the realisation of an individualist conception of society. It also did not follow capitalist industrialisation and development. The legislative, executive and judicial organs have been functioning properly. The Parliament and the State Legislatures control the Executives effectively through the means like question hours, etc. More importantly, some significant enactments like the Right to Information (RTI) Act 2005, Right to Education 2009 and other welfare means have empowered the people. The mass media, including print and electronic, have full autonomy and play a key role in formulating and influencing public opinion. Significant social change has taken place in almost all walks of life and the nation is moving ahead on course of socio-economic development. With the introduction of the 73rd and the 74th Constitutional Amendments, the decentralization has been democratized and the scope of democracy has expanded to include the women, OBCs and dalits at the grass root level. Prior to this the dorniilant social groups exclusively dominated the institutions of the local self-governance. This defeated the very purpose of democracy. The transfer of 29 subjects to the local bodies has added to the democratic decentralization, however, democratic decentralization gets impeded in the light of the fact that in several cases women members of the PRIs (Panchayati Raj Institutions) are proxies of the in members of their families. The increasing role of crime, money, etc., has further eroded tile creditability of local level democracy. Nevertheless, wherever the public action has coexisted with institutions of local self government, the institutions of local self government have functioned democratically.

4.2 Main Features of the Indian Democracy

Following are the main features of the Indian democracy.

- Popular Sovereignty: Democracy is based on sovereignty. People can exercise their power in democracy. They elect their representatives. The government remains responsible to the common mass for its every omission and commission.
- Political Equality: Democracy is based on political equality. It means all citizens irrespective of caste, creed, religion, race or sex are considered to be equal before law and enjoy equal political rights. Political equality gives the right to vote to every citizen.
- Sovereignty with people: In democracy, the supreme power is in the hands of people and people use their power through their representatives who are elected by them on the basis of universal adult franchise. In short, we can say the ultimate sources of state power are the people.
- Provision of fundamental rights: Fundamental rights have a special place in democracy. Fundamental rights are usually included in the constitution and efforts are made to protect these fundamental rights. The India, America and French constitution are it's example.
- Formation of Opinion: Democratic government must provide institutions through which public opinion on various matters can be formed. Legislature provides the most important platform to estimate and express the public opinion.
- Collective responsibility: In the Indian democracy, the Council of Ministers both in states and centre are collectively responsible to their respective legislatives. No minister is alone responsible for any act of the government. The entire council of ministers are responsible for all the activities.
- Federal: It is another feature of Indian democracy. The Article 1 of Indian Constitution describes India as a union of states. According to our Constitution, the states are autonomous. They have full freedom in certain matters, and in some other matters they are dependent on centre.
- Respect for Opinion of Minority: In a democratic set up majority rules but opinions of minorities are also given respect. They are encouraged to give their opinion. Democracy being a government by free discussion and criticism encourages both the positive and negative aspects of any proposal. The majority must tolerate the opinion of the minority otherwise democracy will degenerate into authoritarianism.

4.3 Social change

Change is a very broad concept. Though change is all around us, we do not refer to all of it as social change. Thus, physical growth from year to year, or change of seasons do not fall under the concept of social change. In sociology, we look at social change as alterations that occur in the social structure and social relationship. The International Encyclopaedia of the Social Science (IESS 1972) looks at change as the important alterations that occur in the social structure, or in the pattern of action and interaction in societies Alterations may occur in norms, values, cultural products and symbols in a society. Other definitions of change also point out that change implies, above all other things, alteration in the structure and function of a social system. Institutions, patterns of interaction, work, leisure activities, roles, norms and other aspects of society can be altered over time as a result of the process of social change.

The term 'social change' is used to indicate the changes that take place in human interactions and interrelations. Society is a web of relationships and social change means a change in the system of social relationships. Thus the term social change is used to desirable variations in social interaction, social processes and social organization. A society generally has two distinct tendencies. They are-conservative and progressive. People in society have their tendency to conserve or preserve the social heritage of the past. Every society is proud of its own cultural history of the past. This is what may be describing as the conservative tendency of the society. But at the same time it has the tendency to change, modify and improve the existing social heritage. Man is never satisfied with his present situation or existing condition. He wants to make changes and improvement of the existing state of affairs. This change is the law of nature and it is inevitable in the life of an individual as well as of society. So social change and development are inevitable in human society. It is also an instinctive tendency in man to have the curiosity for new knowledge and new experiences. It leads to dissatisfaction with the existing situations that result in the changes. So, social situation undergoes changes with the changes of time that result in social progress.

According to Kingsley Davis- "By social change is meant only such alterations as occur in social organization, that is, structure and functions of society."

According to Maclver ad Page, "Social change refers to "a process" responsive to many types of changes; to change in the manmade condition of life; to changes in the attitudes and beliefs of men, and to the changes that go beyond the human control to the biological and the physical nature of things".

August Comte has argued "Societies progress through a series of predictable stages based on the development of human knowledge".

Anderson and Parker state "social Change involves alterations in the structure or functioning of social forms or processes themselves".

Morris Ginsberg, "By social change I understand a change in social structure, i.e. the size of a society, the composition or balance of its parts or the type of its organisation."

Gillin and Gillin, "Social changes are variations from the accepted modes of life; whether due to alternation in geographical conditions, in cultural equipments, composition of the population or ideologies whether brought about by diffusion or inventions within the group.

Alvin Toffler, "Change is the process through which future invades our life."

M.E. Jones, "Social change is a term used to describe variations in, or modifications of, any aspect of social process, social patterns, social interaction or social organisations."

Merrill and Eldredge state "Social change means that a large number of persons are engaging in activities that differ from those which they or their immediate forefathers engaged in sometime before".

Smelser, Neil J. argued that "Social change is the alterations of the way societies are organized".

The important features that emerge from the definitions of social change are:

a) Social change is the effect of certain causes.
b) Social change modifies social structure, social organization and social functioning.
c) It modifies the life-pattern of people.
d) Technological and cultural changes are different from social change.
e) Social change is reflected through social attitudes, social values and ways of living.

Nature and characteristics of social change:

1) Social change is continuous: Society is always undergoing endless changes. Society cannot be preserved in a museum to save it from the ravages of time. From the dawn of history society has been in continuous flux.
2) Social change is temporal: Social change is temporal in the sense it denotes the time sequence. In fact, society exists only as a time-sequence. Innovation of new things, modification and renovation of the existing behavior and the discarding of the old behavior patterns take time.
3) Social change is environmental: It must take place within a geographic or physical and cultural context. Both these contexts have impact on human behavior and in turn man changes them. A social change never takes place in vacuum.
4) Social change is human change: The sociological significance of the change consists in the fact that it involves the human aspect. The composition of society is not constant, but changing.
5) Social change may be planned or unplanned: The direction and tempo of social change are often conditioned by human plans and programmes of man in order to determine and control the rate and direction of social change. Unplanned change refers to change resulting from natural calamities such as- famines, floods, earthquakes etc.
6) Short versus long-run changes: Some social changes may bring about immediate results while some others may take years and decades to produce results. This distinction is significant, because a change which appears to be very vital today may be nothing more

than a temporary oscillation having nothing to do with the essential trends of life, some years later.

7) Social change is an objective term: The term social change describes one of the categorical processes. It has no value-judgments attached to it. To the sociologist social change as a phenomenon is neither moral nor immoral, it is amoral. It means the study of social change involves no value judgment. One can study change even within the value system without being for against the change.
8) Social change may create chain reaction: Change in one aspect of life may lead to a series of changes in its other aspects. For example- change in rights, privileges and status of women has resulted in a series of changes in home, family relationships and structure, the economic and to some extent political pattern of both rural and urban society.

4.4 Factors of social change

Physical Environment and Social Change

Physical environment is the most important phenomenon which influences social life. There are slow as well as fast changes in physical environment. Disasters in the form of storms, floods, earthquakes, volcanic eruptions, fire, seasonal variations etc. determine the form of social life. The prevalence of flora and fauna creates a social order based on it. Physical environment promotes and limits the growth of civilization. At poles and deserts, there will be a limited social life due to hostile climatic conditions for human living. The forces generated by the physical environment determine the form, growth and change in human society.

In present day India, intensive agriculture operations resulted in green revolution and sufficiency in food production but at the cost of erosion in soil fertility and depletion of water table. Economic and technological developments led to ecological imbalance and damage to it. Physical environmental compulsions such as famines, droughts, floods, earthquakes led to human migration to distant places with a consequence of disruption to settled human life. Physical environmental compulsions effect social life by producing new ways of living and set of social relationships. It is now evident that physical environmental factors induce social change.

Demographic Factors of Social Change

Demography is the study of human population. 'Demos' is a Greek word which means people. Demographic factors that induce social change are fertility, mortality, migration, changing age structure, sex ratio, age at marriage, patterns of marriage, child bearing age, life expectancy, use of contraceptives, levels and types of morbidity. These factors have a far reaching effect on society with the pressure to produce changes in social and political institutions. In the developed countries of the world, the population growth is negative or stable but in developing countries such as India it is alarmingly high. Both the trends cause social transformation. Another demographic factor of social change especially with reference to Indian society is the declining sex ratio.

It is an established fact that social and economic life of human beings is integral part of each other. Economic aspect of social life is a primary feature of society. Engels rightly said that "the ultimate causes of all social changes and political revolutions are to be sought not in the minds of men, in their increasing insight into the external truth and justice, but in changes in the mode of production and exchange." Elaborating the idea further Marx said, "The sum total of these relations of production constitutes the economic structure of society - the real foundation, on which rise legal and political super structures and to which correspond definite form of social consciousness. It indicates that economic influences are powerful and penetrating on social life."

Technological Factors

Technology is recognised as one of the most crucial factors in social change. You may read Ogburn's concept of 'culture lag' in detail, to understand how technology has been an important factor in social change. The modern factory, means of transportation, medicine, surgery, mass media of communications, space and computers technology etc. have affected the attitudes, values and behaviour of people across societies. To take a simple example, automobiles and other means of modern transportation have spread culture, by increasing interaction among people who live far away from each other. The technological feats in the area of transport and communication have altered leisure activities, helped in maintaining social networks, and stimulated the formation of new social relationships. Thus, Technological changes have converted the world into a global village and produced profound social changes. Industry, agriculture, transportation, communication, sources of energy, food processing, housing, and physical environment is influenced by technological changes. Almost all the technological developments brought about changes in social living, interaction patterns and social life.

Cultural Factors:

In sociology the word 'Culture' denotes acquired behavior which are shared by and transmitted among the members of the society. Man learns his behavior and behavior which is learnt is called culture. Singing, dancing, eating, playing belong to the category of culture. No culture even remains constant. It is symbolic and dynamic and a progressive process. Culture plays a very significant role in social change. No culture even remains constant. It always keeps on changing. f his individual and social life. Change in culture takes place by three important factors. They are discovery, invention and diffusion.

a) Discovery: A shared human perception of an aspect of reality which already exists e.g. discovery of blood circulation in biology. It is an addition to the world's store of verified knowledge. However, it becomes a factor in social change only when it is put to use, not when it is merely known.

b) Inventions: A new combination or a new use of existing knowledge e.g. the assembling of the automobile from an already existing idea. The idea of combining them was new. Inventions can be material (technology) and social (alphabet, trade union). Each invention may be new in form (i.e. in shape or action) in function (what it does) or in meaning (its long range consequences) or in principle (the theory or law on which it is based).

c) Diffusion: Diffusion refers to the spread of cultural traits from one group to another. It operates both within and between societies. It takes place whenever societies come into contact with each other. Diffusion is a two way process. Diffusion is also a selective process. Majority of the Indians may adopt the English language, but not their beef-eating habits. Diffusion generally involves some modification of the borrowed elements of culture either in form, function or meaning.

Biological Factors:

Social change is a complex process. It is caused by multiple factors. All factors of social change are closely related to each other. But at the same time each individual factor brings change in society in its own way. Accordingly biological factor plays an important role in the causation of social change. An ordinarily biological factor refers to those which are concerned with the genetic constitution of the human beings. Different biological process like human procreation, fertility and mortality also influence the rate of change in a society. A. Pareto opines that the biological evolution of mankind brings social changes. Elites in a society are determined by inherited biological instincts. Besides, composition of population also influences social change. Both age composition and sex composition are very closely related to social change. Number of population in the productive age group deeply influences the rate and speed of social change.

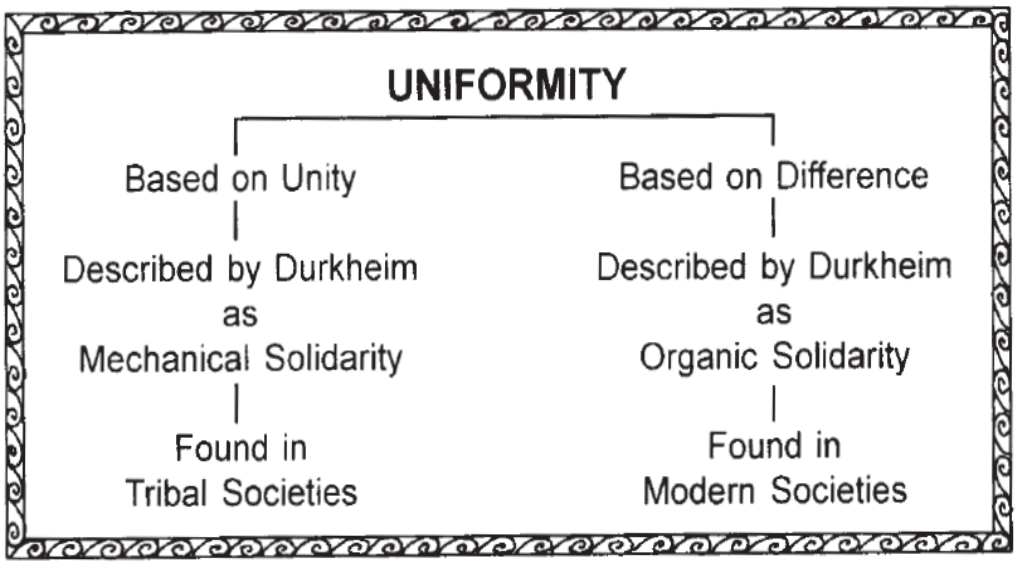
For the last three hundred years or so social change has been a concern of prime importance for social scientists, especially for sociologists from the middle of nineteenth century onwards. No sociological analysis is complete without reference to social change. It is a change in the institutional and normative structure of society. Social evolution, social progress, social development, changes in physical environment, technological developments, innovations, changes in econonlic and political

institutions are all having bearing on social change. Social change is inherent in all the physical and social environmental changes. To sum up social change, MacIver and Page has said rightly that social structure cannot be placed in a museum to save it from the ravages of time.

4.5 National Unity

Unity means integration. It is a social psychological condition. It connotes a sense of oneness, a sense of weness. It stands for the bonds, which hold the members of a society together. There is a difference between unity and uniformity. Uniformity presupposes similarity, unity does not. Thus, unity may or may not be based on uniformity. Unity may be born out of uniformity. Durkheim calls this type of unity a mechanical solidarity. We find this type of unity in tribal societies and in

traditional societies. However, unity may as well be based on differences. It is such unity, which is described by Durkheim as organic solidarity. This type of unity characterizes modern societies. Let us see it in a diagram.



Forms of Diversity

Some of its important forms are the following

1) Racial Diversity: Along with the physical variety the most remarkable feature of India is the presence of the variety of human beings which she presents through her teeming millions. The people of India can be divided into four major groups on ethnic and linguistic grounds. The first group include the Neolithic and Paleolithic men who inhabited in this country since the remote past. The second group of people belong to the Mongoloid type and they are found in Bhutan, Sikkim and Nepal. The third group is identified as Dravidians living in the Southern part of the country. The fourth group include the tall and fair complexioned Indo-Aryans living in the North-Western part of India. Gradually they brought the whole Gangetic Valley under their settlement. With the passage of time the Dravidians and the Aryans came closer to each other. Other races like Persians, Greeks, Kushanas and Huns came to India at different periods and permanently settled in the country. From the Seventh century onwards Muslim invaders made India their hunting ground. The Arabs, Turks and the Mughals came to India and settled here. Thus the racial diversities play a vital role in Indian society and culture.
2) Linguistic diversity: The people of India speak different languages. There are in India separate group of people with their own language. Each of these people's has its own literature. More than 200 different dialects and languages are used in this vast sub-continent. The principal languages of India are Sanskrit, Hindi, Bengali, Oriya, Assamese, Gujarati, Marathi, Sindhi, Urdu, Punjabi, Tamil, Telgu, Malayalam, Kashmiri and Kannada. The hill tribes of Central India speak Austric type of languages. The people of the South who belong to the Dravidian group speak Telgu, Tamil, Malayalam and Kannada. On the other hand the languages like Hindi, Bengali, Oriya, Marathi, Gujarati and Punjabi are used by the Indo-Aryans.
3) Religious diversity: There is also to be found an equal variety of religions. All the world religions are found here — Hinduism, Buddhism, Jainism, Sikhism, Islam and Christianity.

All have their sects and sub-divisions. The Hindu religion itself is split up in countless creeds, the Vedic religion, the Puranic Hinduism, the Sanatan Dharma, the Brahmo Samaj, the Arya Samaj. Originally Brahmanical Hinduism was the religion of the people. But the sixth century gave birth two new religions namely Buddhism and Jainism. During the medieval period Sikhism emerged as a new religion. Gradually, Persian, Zoroastrianism, Islam and Christianity also spread in India. Thus India is a land of many religions. The people therefore differ considerably in the social habits and cultural differences vary from State to State which has become the fabric of Indian culture composite in nature. While Hindus and Muslims are found in almost all parts of India, the remaining minority religions have their pockets of concentration. Christians have their strongholds in the three Southern States of Kerala, Tamil Nadu and Meghalaya. Sikhs are concentrated largely in Punjab, Buddhist in Maharashtra and Jains are mainly spread over Maharashtra, Rajasthan and Gujarat, but also found in most urban centres throughout the country.

4) Caste Diversity: India is a country of castes. Caste or Jati refers to a hereditary, endogamous status group practicing a specific traditional occupation. It is surprising to know that there are more than 3,000 Jatis in India. These are hierarchically graded in different ways in different regions. The practice of caste system is not confined to Hindus alone. One can find castes among the Muslims, Christians, Sikhs as well as other communities. There is the hierarchy of Shaik, Saiyed, Mughal and Pathan among the Muslims. Furthermore, there are castes like teli (oil presser), dhobi (washerman), etc among the Muslims. Similarly, caste consciousness among the Christians in India is not unknown. Since a vast majority of Christians in India 6 were converted from Hindu fold, the converts carried the caste system into Christianity. In this view, one can imagine the extent of caste diversity in India.

Bonds of Unity in India

In the preceding section we have illustrated the diversity of India. There are bonds of unity underlying all this diversity. These bonds of unity may be located in a certain underlying uniformity of life as well as in certain mechanisms of integration. Census Commissioner in 1911, Herbert Risley (1969), was right when he observed: "Beneath the manifold diversity of physical and social type, language, custom and religion which strikes the observer in India there can still be discerned ….. a certain underlying uniformity of life from the Himalayas to Cape Comorin".

1) Geo-political Unity: The first bond of unity of India is found in its geo-political integration. India is known for its geographical unity marked by the Himalayas in the north end and the oceans on the other sides. Politically India is now a sovereign state. The same constitution and same parliament govern every part of it. We share the same political culture marked by the norms of democracy, secularism and socialism.
2) The Institution of Pilgrimage: Another source of unity of India lies in what is known as temple culture, which is reflected in the network of shrines and sacred places. From Badrinath and Kedarnath in the north to Rameshwaram in the south, Jagannath Puri in the east to Dwaraka in the west the religious shrines and holy rivers are spread throughout the length and breadth of the country. Closely related to them is the age-old culture of pilgrimage, which has always moved people to various parts of the country and fostered in them a sense of geo-cultural unity. Pilgrimage can, therefore, rightly be viewed as a mechanism of geo-cultural unity.
3) Tradition of Accommodation: The first evidence of it lies in the elastic character of Hinduism, the majority religion of India. Sociologists have distinguished two broad forms of Hinduism: sanskritic and popular. Sanskritic is that which is found in the texts (religious books like Vedas, etc.) and popular is that which is found in the actual life situation of the vast masses. Robert Redfield has called these two forms as great tradition of *Ramayana and Mahabharata and the little tradition* of worship of the village deity. And everything passes for Hinduism. Thus, both Hindus and Muslims have shown reverence to the saints and Pirs of each other. And this holds as well for the coexistence of other religious groups like Sikh, Jain, Christian and so on.
4) Tradition of Interdependence: We have had a remarkable tradition of interdependence, which has held us together throughout centuries. One manifestation of it is found in the form of *Jajmani* system, i.e., a system of functional interdependence of castes. The term "*jajman*" refers generally to the patron or recipient of specialised services. Thus a Hindu may be dependent for the washing of his clothes on a Muslim washerman. Similarly, a Muslim may be dependent for the stitching of his clothes on a Hindu tailor, and vice-versa.*d regulated* this functional interdependence. The contributions made by Kabir, Eknath, Guru Nanak, and more recently Mahatma Gandhi, are well known to bring communities closer to each other. Also, in the field of art and architecture we find such a happy blending of

Hindu and Muslim styles. The composite culture model provides for the preservation and growth of plurality of cultures within the framework of an integrated nation. Hence the significance of our choice of the norm of secularism, implying equal regard for all religions, as our policy of national integration.

4.6 Separation of Powers

In the panoply of principles regulating constitutional government, the separation of powers occupies a position of deep ambivalence. On the one hand, all constitutional democracies rest on some form of division between three distinct branches of government—the legislature, executive, and judiciary. Moreover, within these countries, the separation of powers is invoked as an ideal, that is as a standard (or, perhaps, set of standards) to which the legal and constitutional arrangements of a modern state ought to conform. The assumption is that the separation of powers is an ideal worth having and that we gain something valuable by conforming to it. Indeed, this assumption has had a long pedigree in the canonical literature on constitutional theory. In the eighteenth century, the separation of powers was hailed as a bulwark against the abuse of state power and the threat of tyranny. Montesquieu wrote that without a separation of powers, there would be `no liberty'. The French Declaration of the Rights of Man in 1789 went so far as to suggest that Any society in which the safeguarding of rights is not assured, and the separation of powers is not established, has no constitution: Right up to the present day, theorists argue that the separation of powers is the very 'essence of constitutionalism* and 'a universal criterion of constitutional government (Kavanagh).

There is no exact definition of this doctrine because everybody is interpreting it according to his own views and it is also not possible to find the exact origin but we can see for the first time Aristotle was saying about the doctrine of separation of powers in his book *Politics* as follows: "There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; if these are well arranged, and the differences in constitutions are bound to correspond to the differences between each of these three elements. The three are, first the deliberative, which discuss everything of common importance; second the officials…and third the judicial element."

In 1689 the English political theorist John Locke also envisaged a three fold classification of powers in the book The Second Treatise of Government as: "May be too great a temptation to human frailty…for the same person to have the power of making laws, to have also in there hands the power to execute them, where by they may exempt themselves from obedience to laws they make, and suit the law both in its making and execution, to make their own private advantage."

Another one who said about this doctrine is Montesquieu who described separation of powers in his book *The Spirit of Laws* in 1748 as: "When legislative power is united with executive power in a single person or in a single body of magistracy, there is no liberty, because one can fear that the same monarch or senate that makes tyrannically laws will execute them tyrannically. Nor there is liberty if the power of judging is not separate from legislative power. If it were joined to legislative power, the power over the life and liberty of citizen would be arbitrary, for the judge would be the legislator. If it were joined to the executive power, the judge could have the force of an oppressor. All would be lost if the same man or same body of principal men, either of nobles, or of the people, exercised these three powers: that the making of laws, that of executing public resolutions, and of judging the crimes or disputes of individuals."

Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. Cooley argues "This arrangement gives each department a certain independence, which operates as a restraint upon such action of others as might encroach on the rights and liberties of the people, and makes it possible to establish and enforce guarantees against attempts at tyranny".

Separation of powers means distribution of powers for specified functions of the government. All the powers of the government have been conceived as falling within one or another of three great classes, as:

a) The enactment of making laws;
b) The interpretation of that laws; and,
c) Their enforcement; namely- legislative, judicial and executive. Government has been deemed to be made up of three branches having for their functions and such classification is recognized as classical division.

The doctrine of separation of powers has no place in strict sense in Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the function of another. In Constituent Assembly Debates Prof. K.T. Shah a member of Constituent Assembly laid emphasis to insert by amendment a new Article 40-A concerned with doctrine of separation of powers. This Article reads: "There shall be complete separation of powers as between the principal organs of the State, viz; the legislative, the executive, and the judicial." Kazi Syed Karimuddin (a member of Constituent Assembly) was entirely in agreement with the amendment of Prof. K.T. Shah. Shri K. Hanumanthiya, a member of Constituent Assembly dissented with the proposal of Prof. K.T. Shah. He stated that Drafting Committee has given approval to Parliamentary system of Government suitable to this country and Prof. Shah sponsors in his amendment the Presidential Executive. He further commented: "Instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we completely separate the executive, judiciary and the legislature conflicts are bound to arise between these three departments of Government. In any country or in any government, conflicts are suicidal to the peace and progress of the country..... Therefore in a governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict." Prof. Shibban Lal Saksena also agreed with the view of Shri K. Hanumanthaiya. With the aforesaid observations the motion to insert a new Article 40-dealing with the separation of powers was negatived i.e. turned down. In Indian Constitution there is express provision that "Executive power of the Union shall be vested in the President, and the executive power of the State shall be vested in Governor.." (Article 154(1) of Indian Constitution). But there is no express provision that legislative and judicial powers shall be vested in any person or organ.

Position In India: Constitutional Provisions: There are no separate provisions regarding the Doctrine of Separation of Powers has been given in our Constitution. But there are some directive principles are given in the constitution as in Part-IV and Part-V and Articale-50 of our constitution is separating the judiciary from executive as, "the state shall take steps to separate judiciary from the executive in the public services of the state," and except this there is no formal and dogmatic division of powers. In India, not only functional overlapping is there but also the personal overlapping is prevailing.

1) Judiciary: Under Article-142 and Article-145 of our constitution, the SC has the power to declare void the laws passed by legislature and actions taken by the executive if they violate any provision of the constitution or the law passed by the legislature in case of executive actions. Even the power to amend the constitution by Parliament is subject to the scrutiny of the Court. The Court can declare any amendment void if it changes the basic structure of the constitution. In many cases courts have issued directions for the Parliament to make policies.
2) Executive: The President of India who is the supreme executive authority in India exercise law making power in the form of ordinance making power under Article-123, also the Judicial powers under Article-103(1) and Article-217(3), he has the consulting power to the SC of India under Article-143 and also the pardoning power in Article-72 of the Constitution. The executive also affecting functioning of the judiciary by making appointments to the office of Chief Justice of India and other judges.
3) Legislature: The Council of Minister is selected from the legislature and this Council is responsible for the legislature. The legislature exercising judicial powers in cases of breach of its privileges, impeachment of the President under Article-61 and removal of judges. The legislative body has the punitive powers under Article-105(3). In words of Gledhill, "constitution of India has not ceremoniously wedded with Doctrine of Separation of Powers, however, it is whenever possible followed the doctrine of separation of powers."

The strict separation of powers that was envisaged in the classical sense is not practicable anymore, but the logic behind this doctrine is still valid. The logic behind this doctrine is of polarity rather than strict classification meaning thereby that the centre of authority must be dispersed to avoid absolutism. Hence, the doctrine can be better appreciated as a doctrine of checks and balances.

In Indira Nehru Gandhi's case, Chandrachud J. observed – "No Constitution can survive without a conscious adherence to its fine checks and balances. Just as courts ought not to enter into problems intertwined in the political thicket, Parliament must also respect the preserve of the courts. The principle of separation of powers is a principle of restraint which "has in it the precept, inmate in the prudence of self-preservation; that discretion is the better part of valour".

The doctrine of separation of powers in today's context of liberalization, privatization and globalization cannot be interpreted to mean either "separation of powers" or "checks and balance"

or "principles of restraint", but "community of powers" exercised in the spirit of cooperation by various organs of the state in the best interest of the people.

4.7 Basic Structure Doctrine

There is no mention of the term "Basic Structure" anywhere in the Indian Constitution. The idea that the Parliament cannot introduce laws that would amend the basic structure of the constitution evolved gradually over time and many cases. The idea is to preserve the nature of Indian democracy and protect the rights and liberties of people. This doctrine helps to protect and preserve the spirit of the constitution document. According to the Indian Constitution, the Parliament and the State Legislatures can make laws within their jurisdictions. The power to amend the Constitution is only with the Parliament and not the state legislative assemblies. However, this power of the Parliament is not absolute. The Supreme Court has the power to declare any law that it finds unconstitutional void. As per the Basic Structure Doctrine, any amendment that tries to change the basic structure of the constitution is invalid.

This doctrine was evolved in the famous case of *Kashvananda Bharti vs. State of Kerala* A.I.R 1973 SC popularly known as the Fundamental Rights case in which the court observed that article 368 of the Indian constitution did not enable parliament to alter the 'Basic Structure or Framework' The basic structure doctrine is a judicial creation whereby certain features of the constitution of India are beyond the limits of amending powers of parliament of the constitution. From then till very recently, this doctrine continues to be the limitation upon the parliament's power to amend the constitution, in spite of the fact that Article 368 is really silent as to the width of amending power. There has been a long journey almost two decades in carving an implied limitation in the form of doctrine of basic structure on the on amendment powers of the parliament under article 368.

Elements of Basic Structure

1) Supremacy of the Constitution: Constitution is the supreme law of the land. It is undisputed and cannot be challenged in a court of law. It is also a system of fundamental law for the government of a nation. It is the most important document having a special legal sanctity which sets out the frame-work and the principal functions of the government of a State. A Constitution is a set of laws and rules setting up the machinery of the government of a State.
2) Sovereign, democratic and republican: The Preamble to the Constitution declares India to be a sovereign democratic republic. 'Sovereignty' of India is reflected from the fact that India is not subject to external control in its domestic or foreign policy. The 'Republican' form of the Indian constitution implies that no monarch can be its head. Its head is an elected President. The word 'Democratic' implies that the Governmental authority is derived from the people, is exercised by a Government constituted on the basis of universal adult franchise.
3) Secular character: India gives special status to no religion. There is no such thing as a state religion of India. This makes it different from theocratic states like the Islamic Republic of Pakistan or other Islamic countries. Further, Indian secularism guarantees equal freedom to all religions. The Constitution grants the Right to Religious Freedom to all the citizens.
4) Unity and integrity: The framers of the Indian constitution were aware of the policy of divide and rule of the Britishers. So they laid great stress for the need of ensuring the unity and integrity of the nation. To achieve this goal, India has been declared a secular state and principle of single citizenship has been adopted. There is one constitution for the whole country and 22 languages have been given recognition by the constitution. Along with unity of the nation the word integrity has been added by the 42nd Amendment 1976 of the Constitution.
5) Parliamentary system: The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. The President of India is the constitutional head of state with nominal powers. The Union Council of Ministers headed by the Prime Minister is the real executive. Ministers are essentially the members of the Union Parliament. For all its policies and decisions the Council of Ministers is collectively responsible before the Lok Sabha. The Lok Sabha can remove the Ministry by passing a vote of no-confidence. The Cabinet, in fact the Prime Minister has the power to get the Lok Sabha dissolved by the President. On similar lines a parliamentary government is also at work in each state.
6) Principle of equality: The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination. The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and

economic. The following provisions of the chapter on Fundamental Rights ensure civic equality:

a) Equality before the law (Article 14).
b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
c) Equality of opportunity in matters of public employment (Article 16).
d) Abolition of untouchability (Article 17).
e) Abolition of titles (Article 18).

7) **Independent Judiciary**: The Indian Constitution establishes a judicial system that is integrated as well as independent. The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. Hence, the Constitution has made various provisions to ensure its independence—security of tenure of the judges, fixed service conditions for the judges, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement and so on.
8) Federal system with a unitary bias: The Indian constitution described India as a 'Union of States' (Article 1), which implies that Indian federation is not the result of any agreement among the units and the units cannot secede from it.

4.8 Evolution of the Basic Structure Concept

The concept of the basic structure of the constitution evolved over time. In this section, we shall discuss this evolution with the help of some landmark judgement related to this doctrine.

Shankari Prasad Case (1951)

In this case, the SC contended that the Parliament's power of amending the Constitution under Article 368 included the power to amend the Fundamental Rights guaranteed in Part III as well.

Sajjan Singh case (1965)

In this case also, the SC held that the Parliament can amend any part of the Constitution including the Fundamental Rights. It is noteworthy to point out that two dissenting judges, in this case, remarked whether the fundamental rights of citizens could become a plaything of the majority party in Parliament.

Golaknath case (1967)

In this case, the court reversed its earlier stance that the Fundamental Rights can be amended. It said that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required. Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution. This case conferred upon Fundamental Rights a 'transcendental position'.

The majority judgement called upon the concept of implied limitations on the power of the Parliament to amend the Constitution. As per this view, the Constitution gives a place of permanence to the fundamental freedoms of the citizens. In giving to themselves the Constitution, the people had reserved these rights for themselves.

Kesavananda Bharati case (1973)

This was a landmark case in defining the concept of the basic structure doctrine. The SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment." The judgement implied that the parliament can only amend the constitution and not rewrite it. The power to amend is not a power to destroy. This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.

Indira Nehru Gandhi v. Raj Narain case (1975)

Here, the SC applied the theory of basic structure and struck down Clause(4) of Article 329-A, which was inserted by the 39th Amendment in 1975 on the grounds that it was beyond the Parliament's amending power as it destroyed the Constitution's basic features. The 39th Amendment Act was passed by the Parliament during the Emergency Period. This Act placed the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the

judiciary. This was done by the government in order to suppress Indira Gandhi's prosecution by the Allahabad High Court for corrupt electoral practices.

Minerva Mills case (1980)

This case again strengthens the Basic Structure doctrine. The judgement struck down 2 changes made to the Constitution by the 42nd Amendment Act 1976, declaring them to be violative of the basic structure. The judgement makes it clear that the Constitution, and not the Parliament is supreme. In this case, the Court added two features to the list of basic structure features. They were: judicial review and balance between Fundamental Rights and DPSP. The judges ruled that a **limited amending power** itself is a basic feature of the Constitution.

Waman Rao Case (1981)

The SC again reiterated the Basic Structure doctrine. It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Kesavananda Bharati judgement, and held that it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to that date. In the Kesavananda Bharati case, the petitioner had challenged the Constitution (29th Amendment) Act, 1972, which placed the Kerala Land Reforms Act, 1963 and its amending Act into the 9th Schedule of the Constitution. The 9th Schedule was added to the Constitution by the First Amendment in 1951 along with Article 31-B to provide a "protective umbrella" to land reforms laws. This was done in order to prevent them from being challenged in court. Article 13(2) says that the state shall not make any law inconsistent with fundamental rights and any law made in contravention of fundamental rights shall be void. Now, Article 31-B protects laws from the above scrutiny. Laws enacted under it and placed in the 9th Schedule are immune to challenge in a court, even if they go against fundamental rights. The Waman Rao case held that amendments made to the 9th Schedule until the Kesavananda judgement are valid, and those passed after that date can be subject to scrutiny.

Indra Sawhney and Union of India (1992)

SC examined the scope and extent of Article 16(4), which provides for the reservation of jobs in favour of backward classes. It upheld the constitutional validity of 27% reservation for the OBCs with certain conditions (like creamy layer exclusion, no reservation in promotion, total reserved quota should not exceed 50%, etc.)

Here, 'Rule of Law' was added to the list of basic features of the constitution.

S.R. Bommai case (1994)

In this judgement, the SC tried to curb the blatant misuse of Article 356 (regarding the imposition of President's Rule on states).

In this case, there was no question of constitutional amendment but even so, the concept of basic doctrine was applied.

The Supreme Court held that policies of a state government directed against an element of the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

4.9 Procedure of Amendment

The Indian Constitution is neither flexible nor rigid but a synthesis of both. Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down for the purpose. However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution. This was ruled by the Supreme Court in *the Kesavananda Bharati case (1973)*. The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.

2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.

3. The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.

4. Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.

5. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.

6. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.

7. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.

8. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

Types of Amendments

Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority. But, some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process). Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Therefore, the Constitution can be amended in three ways:

(a) Amendment by simple majority of the Parliament,

(b) Amendment by special majority of the Parliament, and

(c) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of Article 368. These provisions include:

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. Second Schedule–emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. Use of English language in Parliament and so on.

By Special Majority of Parliament

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 per cent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees.

Strictly speaking, the special majority is required only for voting at the third reading stage of the bill but by way of abundant caution the requirement for special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill'. The provisions which can be amended by this way include:

(i) Fundamental Rights;

(ii) (ii) Directive Principles of State Policy; and,

(iii) All other provisions which are not covered by the first and third categories.

By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

1. Election of the President and its manner.
2. Extent of the executive power of the Union and the states.
3. Supreme Court and high courts.
4. Distribution of legislative powers between the Union and the states.
5. Any of the lists in the Seventh Schedule.
6. Representation of states in Parliament.
7. Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Summary

The concept of constitutionalism is a mechanism that provides legitimacy to a democratic government. It cannot and should not be confused with the legality of the acts of the officials in a government setup. Constitutionalism is far more important than having a written Constitution. The guiding values of the Indian Constitution may be summarized as comprising equality, freedom, secularism, socialism and internationalism. These values have laid down the parameters within which the Indian constitution has to function. Some of the basic principles developed over time that embody the concept of constitutionalism are separation of powers, judicial control and accountable government. In India, constitutionalism is considered to be a natural corollary to the fundamental governance of the country. The Constitution of India with the aid of various legislations has developed a detailed and robust mechanism to put into place administrative mechanisms for the smooth functioning of the machinery of governance. However, due to a variety of factors, the distance between the government and the governed has been growing with every passing year. The rich are getting richer and the poor have resigned to their fates, areas which were backward sixty years ago remain as such.

Glossary

Culture lag: The time gap that occurs when changes in material culture come more rapidly than changes in the non-material culture.

Diffusion: The process by which cultural traits spread from one culture to another.

Evolution: A particular process of change, (intrinsic in nature) which expresses continuity and direction of change, involving alterations in size and structure of a system.

Innovation: Discovery and inventions are together considered as innovation.

Fertility: A number of children a woman bears during her life time.

Human Society: A geographic unit bound together by a legal system and having certain national identity.

Mechanical Solidarity The condition of unity or of one-ness in a society may be based on the elements of uniformity or similarities. Such condition is described by Durkheim as mechanical solidarity.

Mediterranean Relating to a physical type of the Caucasian race characterised by medium or short stature, slender build, long head with cephalic index of less than 75 and dark complexion.

Migration: Movement of persons or groups across symbolic or political boundaries into new residential areas, communities or societies.

Organic Solidarity The condition of unity or one-ness in a society may arise out of differences of socio-cultural characteristics. Such unity as described by Durkheim as organic solidarity.

Social Change: Alterations that occur in the social structure and function of a social system.

Secularism: Secularism as a means of liberation from prejudices and communal frenzies has inherent competence to enhance the worth of human rights and welfare.

Self Assessment

1. ……..is a form of government in which the rulers are elected by the people?
   A. Dictatorship
   B. Non Democratic Government
   C. Monarchy
   D. Democracy
2. How does the definition of democracy help us?
   A. To separate democracy from forms of government that are clearly not democratic
   B. So that we can get voting rights
   C. To figure out what lies in a democracy
   D. None
3. Which of these is a defining characteristic of democracy?
   A. Those rulers govern in the interests of the ruled.
   B. Those rulers come from a wide range of social backgrounds.
   C. Those rulers are directly accountable to the ruled on a regular basis.
   D. That the proceedings of the legislative body are televised.
4. Democracy originated....
   A. in ancient Greece.
   B. in the US after freeing itself from British tyranny.
   C. in France after the Revolution.
   D. in the UK, after the signing of Magna Carta.
5. Who propounded Conflict Theory of Social Change?
   A. T. Parsons
   B. P.V. Sorokin
   C. K. Marx
   D. Durkheim
6. Who introduced the concept of social change?
   A. August Comte
   B. Karl Marx
   C. T. Hobbes
   D. J.L. Nehru
7. Who among the following argues 'Social change involves alterations in the structure or functioning of social forms or processes themselves.'
   A. August Comte
   B. Anderson and Parker
   C. T. Hobbes
   D. J. Locke
8. What does unity mean?
   A. Integration
   B. Dis-integration
   C. Stratification
   D. Reification
9. Who among the following advocated 'mechanical and organic solidarity'?
   A. Karl Marx
   B. A Gramsci

C. Emile Durkheim
D. Max Weber

10. Identify the Form/s of Diversity in India?
A. Linguistic diversity
B. Religious diversity
C. Caste diversity
D. All of the Above

11. Who propounded separations of powers?
A. Montesquieu
B. Karl Marx
C. Thomas Hobbes
D. Hegel

12. "This arrangement gives each department a certain independence, which operates as a restraint upon such action of others as might encroach on the rights and liberties of the people, and makes it possible to establish and enforce guarantees against attempts at tyranny". Who made the statement?
A. Montesquieu
B. M. Weber
C. Hegel
D. Cooley

13. Who among the following has raised an amendment in the Constituent Assembly that complete separation of power should be inserted in the constitution of India as Article 40-A?
A. Shri K. Hanumanthaiya
B. K. T. Shah
C. Kazi Syed Karimuddin
D. J. L. Nehru

14. Which article of the Indian Constitution deals with the abolition of untouchability?
A. Article 21
B. Article 20
C. Article 17
D. Article 14

15. Which article of the Indian Constitution deals with the 'union of states'?
A. Article 7
B. Article 1
C. Article 12
D. Article 22

16. When did Shankari Prasad case crop up?
A. 1949
B. 1956
C. 1947
D. 1951

17. Which article deals with the powers of Parliament to amend the Constitution and its procedure?
A. Article 322
B. Article 32
C. Article 368
D. Article 1

18. Identify the type/s of the amendment in the Indian Constitution?

A. By simple majority of the Parliament
B. By Special Majority of Parliament
C. By Special Majority of Parliament and Consent of States
D. All of the Above

19. Who among the following argues that 'this variety in the amending process is wise but rarely found'?
A. K C Wheare
B. K. T. Shah
C. M. Gandhi
D. J. L. Nehru

Answer for Self Assessment

1.	D	2.	A	3.	C	4.	A	5.	C
6.	A	7.	B	8.	A	9.	C	10.	D
11.	A	12.	D	13.	B	14.	C	15.	B
16.	D	17.	C	18.	D	19.	A		

Review Questions

1. Explain the evolution and growth of democracy in India.
2. Discuss various conceptions of democracy?
3. Do you think the term 'unity in diversity' is an appropriate term to describe India?
4. What is the separation of powers in Indian Constitution? Why is it necessary?
5. Critically evaluate the checks and balances in the Indian Constitution?
6. Write briefly about the amendment procedure of the Constitution of India?
7. Discuss the factors have stood in the way of effective functioning of parliamentary system in India?
8. Explain the philosophy of democracy of the Indian Constitution?
9. Explain the factors that have contributed towards the success of Parliamentary Democracy in India?
10. What are the provisions included in the Indian Constitution to ensure equality among its citizens?
11. How does the Constitution of India try to ensure political democracy in India?

Further Readings

Bakhi, P. M. (2013). The Constitution of India. New Delhi: Universal Law Publishing Co. 3).

Basu, Durga Das. (2015). An Introduction to the Constitution of India. 2) Basu, Durga Das. And

Bottomore, T., 1987. Sociology. A guide to Problems and Literature, Allen and Unwin: London.

Ghai, K.K. (2008). Indian Government and Politics. New Delhi: Kalyani Publishers.

Singh, M.P. and Saxena, Rekha (2008): Indian Politics: Contemporary Issues and Concerns', (New Delhi: Prentice Hall of India Pvt. Ltd.).

Unit 05: Union Executive

CONTENTS

Objectives

Introduction

5.1 President

5.2 Powers and Functions of the President

5.3 Prime Minister

5.4 Council of Ministers

Summary

Keywords/Glossary

Self Assessment

Answer for Self Assessment

Review Questions

Further Readings

Objectives

Articles 52 to 78 in Part V of the Indian Constitution deal with the Union executive. The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India. After going through this Unit, you will be able to learn about the:

- Explain the procedure for the election of the President of India.
- Describe the powers of the President of India.
- Describe the nature of Prime Minister in India.
- Identify the sources of power and influence of the Prime Minister.
- Describe the composition and functions of the Council of Ministers.
- Illustrate the responsibility of the council of ministers.

Introduction

The organ of a government that primarily looks after the function of implementation and administration is known the Executive. The Executive is the branch of Government accountable for the implementation of laws and policies legislated by the legislature. In the Parliamentary form of executive, the Prime Minister is the head of the government and the head of the State may be Monarch (Constitutional Monarchy, e.g. UK) or President (Parliamentary Republic, e.g. India). In a Semi-Presidential System, the President is the head of the State and the Prime Minister is the head of the government, e.g. France. In a Presidential System, the President is the head of the State as well as the head of government, e.g. the US.

India is a democratic republic with a parliamentary form of government. The government at the Central level is called 'Union Government' and at the State level it is known as 'State Government'. The Union Government has three organs – the Executive, the Legislature and the Judiciary. The President, the Prime Minister and his Council of Ministers collectively constitute the Union Executive. The Constitution of India, however, bestows authority and dignity on the office of the President without providing adequate powers to rule. The President performs essentially a ceremonial role. The Prime Minister exercises real executive power. While the President is the head of the state, the Prime Minister is the head of the government. The President carries out the actual functions of the government only with the aid and advice of the Prime Minister. Let's have a discussion on President, Prime Minister and Council of Ministers one by one.

5.1 President

The constitution has made detailed provisions to see that the President, the head of the state, is a ceremonial head and that he does not arrogate to himself any real power. Article 52 reads that there shall be a President of India. The Constitution vests executive powers of the Union in the hands of the President. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation. Article 53 reads that he is also the supreme commander of the armed forces. He alone has the powers to declare war and peace. He always comes first on the table of precedence. Therefore, he is the highest constitutional dignitaries in the country.

Election of the President

Article 54 of the Constitution reads that the President is elected not directly by the people but by members of Electoral College consisting of:

1. the elected members of both the Houses of Parliament;

2. the elected members of the legislative assemblies of the states; and

3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes.

The framers of the Constitution were keen to obtain parity between the votes of the elected members of Parliament on one side and elected members of Legislative Assemblies of all the States on the other. They devised a system to determine the value of vote of each member of Parliament and Legislative Assembly, so as to ensure equality. The value of vote of each member of Legislative Assembly of a state is determined by the formula as given below:-

$$\frac{\text{Total population of the State}}{1000}$$

= Number of elected members of State Legislative Assembly

In simple words the total population of the State is divided by the number of elected members of the State Legislative Assembly, and the quotient is divided by 1000.

The value of each vote of a Member of Parliament is determined by adding all the votes of members of the State Legislative Assemblies including the Legislative Assemblies of Union Territory of Delhi and Pondicherry divided by total member of elected members of Lok Sabha and Rajya Sabha.

$$= \frac{\text{Total number of votes of Member of all the State Legislative Assemblies}}{\text{Total number of elected Members of both Houses of Parliament}}$$

Single Transferable Vote System: The election of the President is held through single transferable vote system of proportional representation. Under this system, names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his/her preference. Every voter may mark on the ballot paper as many preferences as there are candidates. Thus the elector shall place the figure 1 opposite the name of the candidate whom he/she chooses for first preference and may mark as many preferences as he/she wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all.

Counting of Votes and Declaration of Result: Members of State Legislative Assemblies cast their votes in States Capitals, while Members of Parliament cast their votes in Delhi in the States Capitals. Counting of votes is done at New Delhi. First preference votes of all the candidates are sorted out and counted. To be declared elected a candidate must get more than 50% of the total valid votes polled. This is known as Quota. The Quota is determined by totaling the total number of votes polled divided by the number of candidates to be elected plus one. In this case, since only the President is to be elected, so division is done by 1+1. One (01) is added to the quotient to make it more than 50%.

This method of election was intended to make the Presidential election broad based to achieve political balance between the Centre and the states. Consequently, the President represents not only the Union but also the States. This is in keeping with the federal character of the Indian polity.

Qualifications for Election as President

Articles 58 and 59 of the Constitution of India lay down the qualifications for the office of the President of India. Article 58 reads that a person to be eligible for election as President should fulfil the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Lok Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Oath or Affirmation by the President

Article 60 deals with the oath or affirmation of the President. Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears:

1. to faithfully execute the office;
2. to preserve, protect and defend the Constitution and the law; and
3. to devote himself to the service and well-being of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior most judge of the Supreme Court available.

Term of Office and Removal of the President

The tenure of the office of the President of India is five years. His/her term commences from the date on which he/she assumes office after taking an oath administered by the Chief Justice of India. However, the President can seek a second term. For instance, Rajendra Prasad was elected as the President twice despite not being favoured by the then Prime Minister Jawaharlal Nehru but strongly supported by a large number of Congress leaders. The President remains in office until his/her successor enters the office. However, if the President wishes to resign, he can send his resignation letter to the Vice-President. If the post of the President falls vacant, the Vice-President takes over the charge. But the election for the post of President must be conducted within six months from the date of occurrence of the vacancy.

Articles 56 and 61 deal with the procedure for impeaching the President of India. In this regard, the constitution lays down 'violation of the Constitution' as the ground for removal. The process of impeachment can be initiated in either house of parliament and must be passed by not less than two-thirds of the total membership of the House in which it has been moved. If the other House investigates the charge and two-thirds majority of that house find him guilty, the President stands impeached from the office from the date of passing of the resolution. Thus, the procedure of removal of the President is difficult and has been made so to prevent misuse of this power by the Parliament. Till date, no President of India has been impeached.

Vacancy in the Office of the President

Whenever the office of the President falls vacant either due to death or resignation or impeachment, the Vice-President officiates for a period not more than six months. The Constitution has made it obligatory that in such cases (of vacancy in the office of President) election for a new President must be held within six months. The newly elected President then holds office for his full term of five years. Thus, when President Fakhruddin Ali Ahmad died in 1977, Vice-President B. D. Jatti officiated and the new President (Sanjeeva Reddy) was elected within six months. In case the President's office falls vacant and the Vice-President is not available (or VicePresident acting as President dies or resigns in less than six months), the Chief Justice of India is required to officiate till the new President is elected. This provision was made in 1969 by the Parliament to enable Chief Justice Hidayatullah to officiate when President Zakir Hussain had died, and Vice-President V. V. Giri resigned. If a President is temporarily unable to discharge his duties, due to illness or otherwise, the Vice-President may discharge the functions of the President without officiating as the President

5.2 Powers and Functions of the President

The Constitution has vested the President with vast powers. The powers enjoyed and the functions performed by the President can be studied under the following heads.

1. Executive powers
2. Legislative powers

3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

Executive Powers

The President is head of State and executive powers of the Union have been vested in him. The President is empowered to exercise these powers either directly or through officers subordinate to him which means through the Prime Minister and Council of Ministers also. His executive powers are given below:

The executive powers and functions of the President are:

All executive actions of the Government of India are formally taken in his name.

i. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
ii. He appoints the prime minister and the other ministers. They hold office during his pleasure.
iii. He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
iv. He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
v. He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.

All laws enacted by the Union Parliament are enforced by him/her. All officials appointed by him/her (such as Governors and Ambassadors) may be removed or recalled by him/ her, on the advice of the Union Council of Ministers. All the functions are performed by the President on the advice of the Prime Minister. All decisions of the Union Government are communicated to him/her by the Prime Minister. The President can ask the Prime Minister only once to have a recommendation of the executive reconsidered by the Cabinet. The President can also refer a minister's decision to the Cabinet for its consideration. The President cannot seek a second reconsideration

Legislative Powers

The President being an integral part of Parliament enjoys many legislative powers. These powers are given below:

I. He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
II. He can address the Parliament at the commencement of the first session after each general election and the first session of each year.
III. He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.
IV. He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.
V. He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

VI. He can nominate two members to the Lok Sabha from the Anglo-Indian Community.

VII. He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.

VIII. When a bill is sent to the President after it has been passed by the Parliament, he can:

(i) give his assent to the bill, or

(ii) withhold his assent to the bill, or

(iii) return the bill (if it is not a money bill) for reconsideration of the Parliament.

IX. However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

Financial Powers

All money bills are introduced in the Lok Sabha only with the prior approval of the President. The President has the control over Contingency Fund of India. It enables her to advance money for the purpose of meeting unforeseen expenses. Annual budget and railway budget are introduced in the Lok Sabha on the recommendation of the President. If the Government in the middle of the financial year feels that more money is required than estimated in the annual budget, it can present supplementary demands. Money bills are never returned for reconsiderations. The President appoints the Finance Commission after every five years. It makes recommendations to the President on some specific financial matters, especially the distribution of Central taxes between the Union and the States. The President also receives the reports of the Comptroller and Auditor-General of India, and has it laid in the Parliament.

Judicial Powers

The judicial powers and functions of the President are:

I. You have seen the above that the President appoints the Chief Justice and the judges of Supreme Court and high courts. The President also appoints Chief Justices and other judges of the High Courts.

II. (b) He can seek advice from the Supreme Court on any question of law or fact. However, the advice tender by the Supreme Court is not binding on the President.

III. (c) He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:

a) In all cases where the punishment or sentence is by a court martial;

b) In all cases where the punishment or sentence is for an offence against a Union law; and

c) In all cases where the sentence is a sentence of death.

Diplomatic Powers

The international treaty and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Military Powers

He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Power

With the intention of safeguarding the sovereignty, independence and integrity of Union of India, the constitution bestows emergency powers on the President of India. The President is empowered to declare three types of emergencies, namely, national emergency (Article 352) arising out of the war, external aggression or armed rebellion, b) emergency arising (Article 356 and 3665) due to the breakdown of the constitutional machinery in the States, and c) financial emergency (Article 360).

The President can make a proclamation of national emergency at any time if he is satisfied that the security of Indian any part of the country is threatened by war, external aggression or armed rebellion. This proclamation must be submitted to the Parliament for its consideration and approval. It must be accepted within one month by both the houses of Parliament by two-third of the members present and voting. If the Parliament fails to approve the proclamation bill, it ceases to operate. If approved, it can continue for a period of six months. However, it can continue for any length of time if the President approves the proclamation for every six months. The Parliament however, has the power to revoke the emergency at any time by a resolution proposed by at least one tenth of the total members of the Lok Sabha and accepted by a simple majority of the members present and voting.

National emergency under Article 352 was proclaimed for the first time in 1962 when the Chinese aggression took place. The second proclamation was made in 1971 during the Bangladesh war. On 26th June 1975, for the first time, the President proclaimed, on the advice of the Prime Minister, emergency in the name of grave danger to internal security.

When there is a breakdown of the constitutional machinery in the state, the President can impose emergency in that state. Article356 provides that if the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the constitutional provisions, he may proclaim constitutional emergency in the state. He can also declare state emergency if the state government refuses or fails to carry out certain directives given by the central government. The proclamation of this type of emergency, popularly called as President Rule, can remain in force for a period of six months. By the 44th Amendment, the Parliament can extend the duration of the state emergency for a period of six months at one instance. Ordinarily, the total period of such emergency cannot exceed one year unless there is a national emergency in force. However, the total period of state emergency cannot go beyond three years.

The President can impose financial emergency. Article 360 states that if the President is satisfied that a situation has arisen where the financial stability or credit of India or any part of the country is threatened, he may declare financial emergency. Like the National emergency, such a proclamation has to be laid before the Parliament for its approval. On its face value one can say that the President enjoys formidable powers. In reality however, he can exercise his powers only on the aid and advice of the Council of Ministers, headed by the Prime Minister. In this respect, the Presidents position is more like that of the British Monarch rather than that of the President of the United States of America. While the President of India may be the head of the state, the head of the government is the Prime Minister.

Veto Power of the President

President has the power to withhold his assent to a bill passed by the Parliament. This is also known as Veto Power of the President. India President has three types of Veto Power.

Absolute Veto: When President declares that he withholds his assent to a bill then it is called as Absolute veto. However, he can reject any bill only the recommendation of the council of ministers.

Suspensive Veto: When President returns a bill (except money and constitutional amendment bills) for the reconsideration of the Parliament. Then it is called suspensive veto. However, if Parliament passes the bill for the second time president is bound to give assent to bill.

Pocket Veto: Constitution doesn't provide any time limit, within which president is to declare his assent or refusal, or to return the bill. Thus, after a bill is presented to the President, he can keep the bill on his table for an indefinite time. This is known as pocket veto.

Constitutional Position

The Constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the prime minister. In other words, the President has to exercise his powers and functions with the aid and advise of the council of ministers headed by the prime minister. B. R. Ambedkar succinctly pointed in the Constitution Assembly: "President occupies the same position as the king under the English constitution. He is the head of the state but not of the executive. He represents the nation but doesn't rule the nation. He is the symbol of the nation". But in reality the President of India is not a mere rubber stamp. The Constitution lays down that the President has to preserve, protect and defend the Constitution. The President can ask a newly appointed Prime Minister to seek a vote of confidence in the Lok Sabha within a stipulated period of time. All the administration of the country is carried on in her name. The President can ask for any information

from any minister. All the decisions of the Cabinet are communicated to the President. The President is furnished with all the information relating to administration. It is in this context that the utility of the office of the President comes to be fully realised when the President gives suggestions, encourages and even warns the government. It is in this context, the President emerges as an advisor, a friend and even a critic.

The 42nd Constitutional Amendment Act of 1976 (enacted by the Indira Gandhi Government) made the President bound by the advice of the council of ministers headed by the prime minister. The 44th Constitutional

Amendment Act of 1978 (enacted by the Janata Party Government headed by Morarji Desai) authorised the President to require the council of ministers to reconsider such advice either generally or otherwise. However, he 'shall' act in accordance with the advice tender after such reconsideration. In other words, the President may return a matter once for reconsideration of his ministers, but the reconsidered advice shall be binding.

In October 1997, the cabinet recommended President K R Narayanan to impose President's Rule (under Article 356) in Uttar Pradesh. The President returned the matter for the reconsideration of the cabinet, which then decided not to move ahead in the matter. Hence, the BJP-led government under Kalyan Singh was saved. Again in September 1998, the President KR Narayanan returned a recommendation of the cabinet that sought the imposition of the President's Rule in Bihar. After a couple of months, the cabinet re-advised the same. It was only then that the President's Rule was imposed in Bihar, in February 1999.

Though the President has no constitutional discretion (the freedom or power to decide what should be done in a particular situation), he has some situational discretion. In other words, the President can act on his discretion (that is, without the advice of the ministers) under the following situations:

a) Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.
b) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.
c) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

By way of conclusion, we may describe the position of the President in the words of Dr. B.R. Ambedkar. According to him/her, the President is the Head of State but not the executive. The President represents the nation but does not rule over the nation. The President is the symbol of nation. His/her place in the administration is that of a ceremonial head.

5.3 Prime Minister

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (de jure executive) and Prime Minister is the real executive authority (de facto executive). In other words, president is the head of the State while Prime Minister is the head of the government.

Appointment of the Prime Minister

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. However, this does not imply that the president is free to appoint any one as the Prime Minister. In accordance with the conventions of the parliamentary system of government the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month. This discretion was exercised by the President, for the first time in 1979, when Neelam Sanjiva Reddy (the then President) appointed Charan Singh (the coalition leader) as the Prime Minister after the fall of the Janata Party government headed by Morarji Desai.

Oath, Term and Salary

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy.2 In his oath of office, the Prime Minister swears:

i. to bear true faith and allegiance to the Constitution of India,

ii. to uphold the sovereignty and integrity of India,

iii. to faithfully and conscientiously discharge the duties of his office, and

iv. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

Powers and Functions of the Prime Minister

The Prime Minister is the most important and powerful functionary of the Union Government. The President is head of the government and leader of Lok Sabha. The powers and functions of Prime Minister can be studied under the following heads:

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.

2. He allocates and reshuffles various portfolios among the ministers.

3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

4. He presides over the meeting of council of ministers and influences its decisions.

5. He guides, directs, controls, and coordinates the activities of all the ministers.

6. He can bring about the collapse of the co-uncil of ministers by resigning from office.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the council of ministers.4 It is the duty of the prime minister :

(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

2. He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.

2. He can recommend dissolution of the Lok Sabha to President at any time.

3. He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

1. He is the chairman of the Planning Commission (now NITI Aayog), National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.

2. He plays a significant role in shaping the foreign policy of the country.

3. He is the chief spokesman of the Union government.

4. He is the crisis manager-in-chief at the political level during emergencies.

5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.

6. He is leader of the party in power.

7. He is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr B R Ambedkar stated, 'If any functionary under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union'.

5.4 Council of Ministers

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

Appointment of Council of Ministers

Members of the Council of Ministers are appointed by the President on the advice of the Prime Minister. While selecting the ministers, the Prime Minister the PM keeps in mind that due representation to different regions of the country, to various religious and caste groups. In a coalition government, the members of coalition parties have to be given due representation in the Council of Ministers. The Prime Minister decides portfolios of the Ministers, and can alter these at his will. In order to be a Minister, a person has to be a member of either of the two Houses of Parliament. Even a person who is not a member of any of the two Houses can become a Minister for a period of six months. Within six months the Minister has to get himself/ herself elected to either House of Parliament, failing which he/she ceases to be a Minister. All the Ministers are collectively as well as individually responsible to the Lok Sabha.

The Council of Ministers consists of two category of ministers. These are: Cabinet Ministers and Ministers of State. The Cabinet Ministers are usually senior members of the party/ coalition of parties. The Ministers of State come next to Cabinet Ministers. Some of the Ministers of State have independent charge of a department while other Ministers of State only assist the Cabinet Ministers. Sometimes even deputy ministers are also appointed to assist the ministers. Ministers other than Cabinet Ministers normally do not attend the meetings of the Cabinet. The Prime Minister presides over the meetings of the Cabinet. All policy matters are decided by the Cabinet. The Prime Minister has the authority to reshuffle the portfolios of the Ministers or even ask for their resignation. In case of resignation or death of the Prime Minister the entire Council of Ministers also goes out of office. This is because the Council of Ministers is created by the Prime Minister, who also heads it. The entire Council of Ministers is responsibility to the Lok Sabha.

Responsibility of the Ministers

We have already read that there is a Council of Ministers, with the Prime Minister as its head to aid and advise the President. Constitutionally the Ministers hold office during the pleasure of the President. But, in fact, they are responsible to, and removable by the Lok Sabha. Actually the Constitution has itself declared that the Council of Ministers shall be responsible to the Lok Sabha (not to both the Houses). Ministerial responsibility is the essential feature of parliamentary form of government. The principle of ministerial responsibility has two dimensions: collective responsibility and individual responsibility.

Collective Responsibility

Our Constitution clearly says that "The Council of Ministers shall be collectively responsible to 'House of the People'." It actually means that the Ministers are responsible to the Lok Sabha not as individuals alone, but collectively also. Collective responsibility has two implications. Firstly, it

means that every member of the Council of ministers accepts responsibility for each and every decision of the Cabinet. Members of the Council of Ministers swim and sink together. When a decision has been taken by the Cabinet, every Minister has to stand by it without any hesitation. If a Minister does not agree with the Cabinet decision, the only alternative left to him/her is to resign from the Council of Ministers. The essence of collective responsibility means that, 'the Minister must vote with the government, speak in defence of it if the Prime Minister insists, and he/she cannot afterwards reject criticism of his act, either in Parliament or in the constituencies, on the ground that he/she did not agree with the decision.' Secondly, vote of no-confidence against the Prime Minister is a vote against the whole Council of Ministers. Similarly, adverse vote in the Lok Sabha on any government bill or budget implies lack of confidence in the entire Council of Ministers, not only the mover of the bill.

Individual Responsibility

Though the Ministers are collectively responsible to the Lok Sabha, they are also individually responsible to the Lok Sabha. Individual responsibility is enforced when an action taken by a Minister without the concurrence of the Cabinet, or the Prime Minister, is criticised and not approved by the Parliament. Similarly if personal conduct of a Minister is questionable and unbecoming he may have to resign without affecting the fate of the Government. If a Minister becomes a liability or embarrassment to the Prime Minister, he may be asked to quit.

Summary

Following the pattern of British Westminster model, India evolved its system of the parliamentary form of government in which the executive is responsible to the legislature. The executive power of the government of India is vested in the President of India, who is both the formal head of the state and the symbol of the nation. The President is endowed with authority and dignity without adequate powers. The President is elected for a term of five years. The President is eligible for reelection. The President may resign before the expiry of his/her term or can be removed from office by impeachment. The President can exercise his/her authority only with the aid and advice of the Council of Ministers headed by the Prime Minster. It is the Prime Minister who exercises real executive power in the Indian political system. As the head of the Council of Ministers, the leader of the majority party in the Lok Sabha and often the leader of the Parliament, the Prime Minister enjoys considerable power and authority. Though the Prime Minister is appointed by the President and holds office during the pleasure of the President, the Prime Minister is in reality responsible to the Parliament. The Council of Ministers and the informal cabinet headed by the Prime Minister work on the principle of collective responsibility. Sometimes here have been differences between the President and the Prime Minister. But these did not assume serious proportions culminating in any constitutional crisis.

The Council of Ministers consists of all category of Ministers, while the Cabinet is a smaller group consisting of senior Ministers. The Council of Ministers as a whole rarely meets. It is the Cabinet which determines the policies and programmes of the Government. All the Ministers are collectively as well as individually responsible to the Lok Sabha. The Council of Ministers can be removed from office by Lok Sabha if a vote of no-confidence is adopted by it. The Cabinet formulates the external and internal policies of the government. It coordinates the working of various departments. It has full control over the national finance. A money bill can only be introduced in the Lok Sabha by a Minister.

Keywords/Glossary

Ballot: The method of secret voting by means of printed or written ballots or by means of voting machines.

Bill: Draft law presented to the legislature for enactment.

Cabinet: usually a synonym for "Council of Ministers".

Election: The process of selecting a person of choice through voting.

Executive/Executive Power: Having power to put decisions, laws, etc. into effect (power conferred on the executive). In some federations, the federal executive has extensive independent authority to make laws by decree or in circumstances of a national emergency.

Impeachment: Process under which charges are brought in Parliament against a high constitutional authority, public official or judge.

Secret ballot: A system of voting in which one's choice of candidate is kept secret.

Veto: Valid power that one can exercise to block a decision (e.g. the power that a head of state has to reject a bill passed by the legislature).

Self Assessment

1. Which Article of the Indian Constitution says that there shall be a President of India?

A. Article 61
B. Article 60
C. Article 51
D. Article 52

2. Who participates in the Presidential election?
A. Elected members of both Houses of Parliament
B. Elected and nominated members of the State Legislative Assembly
C. Members of all Union Territories
D. All of the above

3. Which of the following is not matched?
A. Article 54: Presidential election
B. Article 55: manner of presidential election
C. Article 60: Procedure for impeachment of the President
D. Article 123: Power of the President to promulgate ordinance

4. What is the minimum age for a candidate to be elected as President of India?
A. 20 Years
B. 35 Years
C. 32 Years
D. 25 Years

5. A bill cannot become an act of parliament, unless and until_____?
A. It is passed by Lok Sabha
B. It is passed by Rajya Sabha
C. It gets assent from President
D. It is passed by both Lok Sabha and Rajya Sabha

6. Which of the following statements is wrong?
A. Elected and nominated members of the State Legislative Assembly participate in the presidential election.
B. The Union Executive includes the President, Vice President, Prime Minister, Attorney General of India
C. Impeachment may be initiated against the President for 'breach of constitution'
D. Article 56 envisages the tenure of the President

7. Which one of the following article deals with the appointment of the Prime Minister and other ministers?
A. Article 76
B. Article 74

C. Article 75
D. Article 72

8. According to Article 74 of the Constitution, which of the following statements relating to the advice tendered by Ministers to the President would be correct?
A. It shall not be inquired into in any court.
B. It can be inquired into in the Supreme Court. It cannot be inquired into in the High Courts.
C. It can be inquired into in all the courts.

9. Who among the following shall communicate to the president all the decisions of the council of ministers under article 78?
A. Home Minister
B. Prime Minister
C. Attorney General
D. Finance Minister

10. The Prime Minister is appointed by which one of the following?
A. Attorney General of India
B. President
C. Vice-President
D. Chief Justice of India

11. The accountability or responsibility of the Prime Minister and Cabinet to the Lok Sabha is:
A. Intermittent
B. Indirect
C. At the time of elections
D. Direct, continuous and collective

12. Which of the following statements is not correct?
A. Article 74 deals with the Council of Ministers
B. The Prime Minister is the head of the Council of Ministers
C. The Central Council of Ministers is the head of India's political and administrative system.
D. Article 75 is related only to the appointment of ministers.

13. The salary and allowances of the Ministers of the Government of India are determined by whom?
A. Parliament
B. Prime Minister
C. President
D. Council of Ministers

14. What is not the correct statement?
A. If a minister is not the member of any house at the time of becoming a minister, then he will have to get a membership of Lok Sabha within 6 months.
B. A minister who is a member of lower House can participate in the proceedings of the upper house.

C. A minister can vote only in that house whose membership he holds.

D. The President appoints the Prime Minister.

15. Whose interests are represented in the Council of Ministers?

A. The heads of government of member states

B. Member state governments

C. Member state parliaments

D. Members of the European Parliament

16. Who said that "The cabinet is the pivot around which the whole political machinery revolves"?

A. Sir John Marriott

B. Dr. Ambedkar

C. W. Churchill

D. Jawaharlal Nehru

Answer for Self Assessment

1.	D	2.	A	3.	C	4.	B	5.	C
6.	A	7.	C	8.	A	9.	B	10.	B
11.	D	12.	D	13.	A	14.	A	15.	B
16.	A								

Review Questions

1. What is meant by parliamentary form of government?
2. Explain the union executive?
3. Explain the method of election of the President?
4. Write down a critical note on judicial power of the President?
5. What is the procedure of removal of the President known as?
6. Evaluate the role of the President in the Indian Constitution?
7. How is the Prime Minister of India appointed? Explain.
8. Explain the powers, functions and role of the Prime Minister of India?
9. Critically examine the collective and individual responsibility of the Ministers?
10. Describe the relationship between the President and Prime Minister?

Further Readings

Das, BC, 1977, The President of India, RR Printers, New Delhi.

Jennings, Sir, Ivor, 1969, Cabinet Government, Cambridge University Press, Cambridge.

Patnaik, Raghunath, 1996, Powers of the President and Governors of India, Deep and Deep, New Delhi.

Kashyap, Subhas, 1995, History of the Parliament of India, Vol. 2, Shipra Publications, New Delhi.

Unit 06: Union Parliament

CONTENTS

Objectives

Introduction

6.1 Composition of the Parliament

6.2 Officials of Rajya Sabha

6.3 Sessions of Parliament

6.4 Functions of Parliament

6.5 Parliamentary Committees

Summary

Keywords/Glossary

Self Assessment

Self Assessment

Review Question

Further Readings

Objectives

After going through this unit, you will be able to learn about the:

- describe the organisation of parliament.
- analyse the composition and functions of the two Houses of the Parliament, namely, Lok Sabha and Rajya Sabha.
- describe the role and functions of the Parliament.
- analyse the position of Rajya Sabha.
- explain the history and meaning the Parliamentary Committees.
- describe the classification of the Parliamentary Committees.
- analyse the three financial committees.

Introduction

You have read in the preceding lesson that India has a parliamentary form of government in which the Prime Minister and his Council of Ministers are collectively responsible to the lower House of the Parliament i.e. Lok Sabha. In a parliamentary form of government the Parliament is the most important organ. It is the people who elect their representatives to be members of the Parliament and these representatives legislate and control the executive on behalf of the people. The Prime Minister and his Council of Ministers remain at the helm of affairs so long as they enjoy the confidence of Lok Sabha. The Parliament (Lok Sabha) may dislodge them from power by expressing a no confidence against the Prime Minister and his Council of Ministers. Thus the Parliament occupies a central position in our parliamentary system.

Legislature is not merely a law making body. Lawmaking is but one of the functions of the legislature. It is the centre of all democratic political process. It is packed with action; walkouts, protests, demonstration, unanimity, concern and co-operation. All these serve very vital purposes. Indeed, a genuine democracy is inconceivable without a representative, efficient and effective legislature. The legislature also helps people in holding the representatives accountable. This is indeed, the very basis of representative democracy. Yet, in most democracies, legislatures are losing central place to the executive. In India too, the Cabinet initiates policies, sets the agenda for governance and carries them through. This has led some critics to remark that the Parliament has declined. But even very strong cabinets must retain majority in the legislature. A strong leader has to face the Parliament and answer to the satisfaction of the Parliament. Herein lies the democratic potential of the Parliament. It is recognised as one of the most democratic and open forum of debate.

6.1 Composition of the Parliament

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament. Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent. The parliamentary form of government emphasize on the interdependence between the legislative and executive organs.

Composition of Rajya Sabha

Each of the two Houses of the Parliament has different bases of representation. Rajya Sabha or the Upper House of the Parliament is a permanent body as it cannot be dissolved. The membership of the Rajya Sabha cannot exceed 250. Out of these, the President nominates 12 members on the basis of their excellence in literature, science, art and social service and the rest are elected. At present its total membership is 245. Rajya Sabha is the body representing States in Indian Union. The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

Representation of States

The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only.

Representation of Union Territories

The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electroral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven union territories, only two (Delhi and Puducherry) have representation in Rajya Sabha. The populations of other five union territories are too small to have any representative in the Rajya Sabha.

Nominated Members

The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election.

Qualifications

The qualifications for becoming a Rajya Sabha member are as follows:

1. He/she should be a citizen of India and at least 30 years of age.
2. He/she should make an oath or affirmation stating that he will bear true faith and allegiance to the Constitution of India.
3. Thus according to the Representation of People Act 1951, he/she should be registered as a voter in the State from which he is seeking election to the Rajya Sabha. But in 2003, two provisions have been made regarding the elections to Rajya Sabha:
    a) Any Indian citizen can contest the Rajya Sabha elections irrespective of the State in which he resides;
    b) Elections are to be conducted through open voting system.

Oath or Affirmation

Every member of either House of Parliament, before taking his seat in the House, has to make and subscribe to an oath or affirmation before the President or some person appointed by him for this purpose. In his oath or affirmation, a member of Parliament swears:

a. to bear true faith and allegiance to the Constitution of India;
b. to uphold the sovereignty and integrity of India; and
c. to faithfully discharge the duty upon which he is about to enter.

Tenure

Every member of Rajya Sabha enjoys a safe tenure of six years. One-third of its members retire after every two years. They are entitled to contest again for the membership. But a member elected against a mid-term vacancy serves the remaining period only. This system of election ensures continuity in the working of Rajya Sabha.

6.2 Officials of Rajya Sabha

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He/she presides over the meetings of Rajya Sabha. In his absence the Deputy Chairman, who is elected by its members from amongst themselves, presides over the meeting of the House. The Deputy Chairman can be removed by a majority of all the then members of Rajya Sabha. But the Chairman (Vice-President) can only be removed from his office by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha. As the Vice-President is an ex-officio Chairman and not a member of Rajya Sabha, he/ she is normally not entitled to vote. He/she can vote only in case of a tie.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community. At present, the Lok Sabha has 545 members. Of these, 530 members represent the states, 13 members represent the union territories and 2 Anglo-Indian members are nominated by the President.

Representation of States

The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

Representation of Union Territories

The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.

Nominated Members

The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha. Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

Qualifications

All the citizens of 18 years of age and above are entitled to vote in the elections to Lok Sabha subject to the laws made by the Parliament. Any Indian citizen can become a member of Lok Sabha provided he/she fulfils the following qualifications:

1. He/she should be not less than 25 years of age.
2. He/she should declare through an oath or affirmation that he has true faith and allegiance in the Constitution and that he will uphold the sovereignty and integrity of India.

3. He/she must possess such other qualifications as may be laid down by the Parliament by law. He must be registered as a voter in any constituency in India.
4. Person contesting from the reserved seat should belong to the Scheduled Caste or Scheduled Tribe as the case may be.

Oath or Affirmation

Every member of either House of Parliament, before taking his seat in the House, has to make and subscribe to an oath or affirmation before the President or some person appointed by him for this purpose. In his oath or affirmation, a member of Parliament swears:

a) to bear true faith and allegiance to the Constitution of India;
b) to uphold the sovereignty and integrity of India; and
c) to faithfully discharge the duty upon which he is about to enter.

Tenure

The normal term of Lok Sabha is five years. But the President, on the advice of Council of Ministers, may dissolve it before the expiry of five years. In the case of national emergency, its term can be extended for one year at a time. But it will not exceed six months after the emergency is over. On several occasions Lok Sabha was dissolved prior to the end of its term. For example the 12th Lok Sabha elected in 1998 was dissolved in 1999.

Officials of the Lok Sabha

The Speaker and the Deputy Speaker: The presiding officer of Lok Sabha is known as Speaker. The members of the House elect him. He/she remains the Speaker even after Lok Sabha is dissolved till the next House elects a new Speaker in his place. In she absence, a Deputy Speaker who is also elected by the House presides over the meetings. Both the Speaker as well as the Deputy Speaker can be removed from office by a resolution of Lok Sabha passed by a majority of all the then members of the House.

6.3 Sessions of Parliament

Summoning

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year, viz,

a) the Budget Session (February to May);
b) the Monsoon Session (July to September); and
c) the Winter Session (November to December).

A 'session' of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha). During a session, the House meets every day to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is called 'recess'.

Adjournment

A session of Parliament consists of many meetings. Each meeting of a day consists of two sittings, that is, a morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm. A sitting of Parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution (in the case of the Lok Sabha). An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment Sine Die

Adjournment sine die means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die. The power of adjournment as well as adjournment sine die lies with the presiding officer of the House. He can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session. However, the President can also prorogue the House while in session.

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. The dissolution of the Lok Sabha may take place in either of two ways:

1. Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or
2. Whenever the President decides to dissolve the House, which he is authorised to do. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

Quorum: Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Lame-duck Session: It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

6.4 Functions of Parliament

The functions and powers of the Indian Parliament can be divided into legislative, executive, financial and other categories.

Legislative Functions

Basically the Parliament is a law-making body. In an earlier lesson you have seen that there is a division of power between the Centre (Union) and the States. There are three lists – Union List, State List and the Concurrent List. Only Parliament can make laws on the subjects mentioned in the Union List. You know that the Union List has 97 subjects. Along with the State Legislatures, the Parliament is empowered to make laws on the Concurrent List. In case, both the Centre as well as the States make a law on the subject mentioned in the Concurrent List then the central law prevails upon the state law if there is a clash between the two. Any subject not mentioned in any list i.e. residuary powers are vested with the Parliament. Thus the law making power of the Parliament is very wide. It covers the Union List and Concurrent List and in certain circumstances even the State List also.

The Executive Functions

In a parliamentary system of government there is a close relationship between the legislature and the executive. And the executive is responsible to the legislature for all its acts. The Prime Minister and his Council of Ministers are responsible to the Parliament individually as well as collectively. Hence, the Parliament exercises control over the Executive through question hour, zero hour, half-an-hour discussion, short duration discussion, calling attention motion, adjournment motion, no-confidence motion, censure motion and other discussions. It also supervises the activities of the Executive with the help of its committees like committee on government assurance, committee on subordinate legislation, committee on petitions, etc.

In other words, the council of ministers can be removed from office by the Lok Sabha by passing a no-confidence motion. The Lok Sabha can also express lack of confidence in the government in the following ways:

i. By not passing a motion of thanks on the President's inaugural address.
ii. By rejecting a money bill.

iii. By passing a censure motion or an adjournment motion.

iv. By defeating the government on a vital issue.

v. By passing a cut motion.

Therefore, "the first function of Parliament can be said to be to select the group which is to form the government, support and sustain it in power so long as it enjoys its confidence, and to expel it when it ceases to do so, and leave it to the people to decide at the next general election."

Financial Powers and Functions

No tax can be levied or collected and no expenditure can be incurred by the Executive except under the authority and with the approval of Parliament. Hence, the budget is placed before the Parliament for its approval. The enactment of the budget by the Parliament legalises the receipts and expenditure of the government for the ensuing financial year. The Parliament also scrutinises government spending and financial performance with the help of its financial committees. These include public accounts committee, estimates committee and committee on public undertakings. They bring out the cases of illegal, irregular, unauthorised, improper usage and wastage and extravagance in public expenditure. Therefore, the parliamentary control over the Executive in financial matters operates in two stages:

(a) budgetary control, that is, control before the appropriation of grants through the enactment of the budget; and

(b) post-budgetary control, that is, control after the appropriation of grants through the three financial committees.

The budget is based on the principle of annuality, that is, the Parliament grants money to the government for one financial year. If the granted money is not spent by the end of the financial year, then the balance expires and returns to the Consolidated Fund of India. This practice is known as the 'rule of lapse'. It facilitates effective financial control by the Parliament as no reserve funds can be built without its authorization. However, the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'March Rush'.

Judicial Powers and Functions

The judicial powers and functions of the Parliament include the following:

i. It can impeach the President for the violation of the Constitution.

ii. It can remove the Vice-President from his office.

iii. It can recommend the removal of judges (including chief justice) of the Supreme Court and the high courts, chief election commissioner, comptroller and auditor general to the president.

iv. It can punish its members or outsiders for the breach of its privileges or its contempt.

The Electoral Functions

The elected member of Parliament one members of the Electoral College for Presidential election. As such, they participate in the election of the President of India. They elect the Vice-President. The Lok Sabha elects its Speaker and Deputy Speaker and the Rajya Sabha elects its Deputy Chairman.

Power of Removal

Certain high functionaries may be removed from office on the initiative of the Parliament. The President of India may be removed through the process of impeachment (you have read about it in Lesson No. 10). The judges of Supreme Court and of High Courts can be removed by an order of the President, which may be issued only if a resolution of their removal is passed by both Houses of Parliament by special majority.

Other Powers and Functions

The various other powers and functions of the Parliament include:

a. It serves as the highest deliberative body in the country. It discusses various issues of national and international significance.

b. It approves all the three types of emergencies (national, state and financial) proclaimed by the President.

c. It can create or abolish the state legislative councils on the recommendation of the concerned state legislative assemblies.
d. It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union.
e. It can regulate the organisation and jurisdiction of the Supreme Court and high courts and can establish a common high court for two or more states.

Special Powers of Rajya Sabha

You have seen earlier that the two Houses of Parliament differ in their composition. From the federal point of view the Rajya Sabha represents the States in the Indian Union while the Lok Sabha is the representative of the Indian people. This is also the reason why the method of election differs. The members of Legislative Assemblies of the States elect the members of Rajya Sabha while the people directly participate in the elections to the Lok Sabha. Rajya Sabha is a permanent House while the Lok Sabha is constituted for a specified term of five years.

The Rajya Sabha has hardly any control over the ministers who are individually and jointly responsible to the Lok Sabha. Though it has every right to seek information on all matters which are exclusively in the domain of Lok Sabha, it has no power to pass a vote of no-confidence in the Council of Ministers. Moreover, the Rajya Sabha has not much say in matters of money bills. Nevertheless, the Constitution grants certain special powers to the Rajya Sabha. As the sole representative of the States, the Rajya Sabha enjoys two exclusive powers which are of considerable importance. First, under Article 249, the Rajya Sabha has the power to declare that, in the national interest, the Parliament should make laws with respect to a matter enumerated in the State List. If by a two-thirds majority, Rajya Sabha passes a resolution to this effect, the Union Parliament can make laws for the whole or any part of India for a period of one year. The second exclusive power of the Rajya Sabha is with regard to the setting up of All-India Services. If the Rajya Sabha passes a resolution by not less than two-thirds of the members present and voting, the parliament is empowered to make laws providing for creation of one or more All-India Services common to the Union and the Sates.

Thus, these special provisions make the Rajya Sabha an important component of Indian Legislature rather than just being an ornamental second chamber like the House of Lords of England. The constitution makers have designed it not just to check any hasty legislation, but also to play the role of an important influential advisor. Its compact composition and permanent character provides it continuity and stability. As many of its members are "elder statesmen" the Rajya Sabha commands respectability.

Law-making Procedure in the Parliament

As mentioned earlier basically the Parliament is a law making body. Any proposed law is introduced in the Parliament as a bill. After being passed by the Parliament and getting the President's assent it becomes a law. Now you will study how the law is made by the Parliament. There are two kinds of bills, which come up before the Parliament:(i) ordinary bill and (ii) money bill. Here we shall discuss the legislative procedure in each of these kinds of bills.

Ordinary Bills

Every member of the Parliament has a right to introduce an ordinary bill and from this point of view, we have two types of bills – government bills and private member's bills. A Minister moves a government bill and any bill not moved by a Minister is a Private Member's Bill, which means that the bill has been moved by a member of parliament but not a minister in the Government. The Government bills consume most of the time of the Parliament. The Bills pass through several stages.

(A) With the introduction of the bill, the First Reading of the bill starts. This stage is simple. The Minister wanting to introduce a bill, informs the presiding officer. He/she puts the question of introduction to the House. When approved, normally by voicevote, the Minister is called upon to introduce the bill.
(B) Second Reading: -This stage is the most vital stage. After general discussion the House has four options:
    i. it may straightaway take the bill into detailed (clauseby-clause) consideration or
    ii. refer it to a select committee of the House or,
    iii. refers it to the Joint Committee of both the Houses or

iv. circulate it among the people to elicit public opinion. If the bill is referred to a select committee of the House or the joint select committee of both the Houses, the concerned committee examines the bill very minutely. Each and every clause is examined. The committee may also take the opinion of professionals and legal experts. After due deliberations, the committee submits its report to the House.

(C)Third Reading: After the completion of the second reading, the Minister may move that the bill be passed. At this stage normally no discussion takes place. The members may oppose or support the adoption of the bill, by a simple majority of members present and voting.

Bill in the other House

After the bill has been passed by one House, it goes to the other House. Here also the same procedure of three readings is followed. The following consequences may follow: -

a) It may pass it; then the bill is sent to the President for his assent.
b) It may pass the bill with amendments. The bill will be sent back to the first House. In such a case, the first House will consider the amendments and if it accepts the amendments then the bill will be sent to President for his assent. In case the first House refuses to accept the amendments, then it means there is a deadlock.
c) It may reject it. It means there is a deadlock. In order to remove the deadlock between the two Houses, the President may call for a joint sitting of the two Houses. Such joint sittings are very rare in India and till now only three times such meetings have taken place. They were convened on the occasion of passage of Dowry Prohibition Bill 1959, Banking Service Commission (Repeal) Bill, 1978, and Prevention of Terrorism Bill, 2002.
d) President's assent to the Bill:- After being passed by both the Houses or the Joint Sitting of both Houses, the bill is referred to the President for his assent. The President also has some options in this regard:
    i. He may give his assent and with his assent, the bill becomes a law.
    ii. He may withhold his assent, but may suggest some changes. In such a case the bill is sent back to the House from where it had originated. But if both the Houses pass the bill again with or without accepting the recommendations Structure of Government of the President, the President has no option but to give his assent.
    iii. In 1986, the President Giani Zail Singh invented a new option. He neither gave his assent nor he returned it to the Parliament for reconsideration of the Postal Bill. He sought some clarifications, which were never provided. The bill thus, lapsed.

Money Bills

The money bills are such bills which deal with money matters like imposition of taxes, governmental expenditure and borrowings etc. In case there is a dispute as to weather a bill is a money bill or not, the Speaker's decision is final. The money bill has to undergo three readings like an ordinary bill but few considerations are also added here. They are:

a) Money bill can be introduced only in Lok Sabha and not in Rajya Sabha and that too with the prior approval of and on behalf of the President.
b) After being passed by the Lok Sabha, the bill goes to the Rajya Sabha. Rajya Sabha has 14 days at its disposal for consideration and report.
c) The Rajya Sabha cannot reject the money bill. It may either accept it or make recommendations.

d) In case Rajya Sabha chooses to make recommendations, the bill will return to Lok Sabha. The Lok Sabha may accept these recommendations or reject them. In any case the bill will not go back to Rajya Sabha. Instead it will be sent directly to the President for his assent.

e) If the Rajya Sabha does not return the bill within 14 days, it will be deemed to have been passed by both the Houses of the Parliament and sent to the President for his assent.

6.5 Parliamentary Committees

As one of the most crucial innovations to streamline the working of the Parliament in an increasingly complex politico-administrative and almost unmanageably expanding public expenditure system, the parliamentary committees have become the alter-ego of the Parliament in the specified areas of their functioning. Born in the British parliamentary traditions in quite early years of the formation of the British Parliament, these committees were expected to infuse the virtues of efficiency, effectiveness, expeditiousness, and expertise in the performance of the functions by the Parliament (Chakrabarty and Pandey 2008).

In India, the history of the committee system may be traced back to 1854 when the first legislature was established in the form of the Legislative Council which, in turn, appointed its own committee to consider what should be its standing orders. In post-Independence period, primarily, Âthe review of administrative action and the examination of numerous and complicated legislative proposals and subordinate legislation require an expertise and close scrutiny that are not possible in Lok Sabha consisting as it does of 545 members, necessitating the creation of the parliamentary committees (Chakrabarty and Pandey 2008).

The Constitution of India makes a mention of these committees at different places, but without making any specific provisions regarding their composition, tenure, functions, etc. All these matters are dealt by the rules of two Houses. Accordingly, a parliamentary committee means a committee that:

a) Is appointed or elected by the House or nominated by the Speaker / Chairman;
b) Works under the direction of the Speaker / Chairman;
c) Presents its report to the House or to the Speaker / Chairman;
d) Has a secretariat provided by the Lok Sabha / Rajya Sabha;

The consultative committees, which also consist of members of Parliament, are not parliamentary committees as they do not fulfill above four conditions. Accordingly, the Parliament has created numerous ad hoc and standing committees, the prominent of the former type includes the select committees and joint committees. Of the standing committees, More gives a five-fold categorization:

a) committees to inquire like the Committee on Petitions and the Committee on Privileges,
b) committees to scrutinize like the Committee on Government Assurances and the Committee on Subordinate Legislation,
c) committee of an administrative character relating to the business of the House like the Committee on the Absence of Members,
d) committees dealing with the provisions of facilities to members like the General Purpose Committee and the House Committee, and
e) the financial committees, such as, the Estimates Committee, the Public Accounts Committee, and the Committee on Public Undertakings. Of all the parliamentary committees, the ones meriting detailed exposition include the three financial committees.

Estimates Committee

The origin of this committee can be traced to the standing financial committee set up in 1921. The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this committee. These members are elected by the Lok Sabha every year from amongst its own members, according to the principles of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office is one

year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members and he is invariably from the ruling party.

The function of the committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure. Hence, it has been described as a 'continuous economy committee'. In more detail, the functions of the committee are:

i. To report what economies, improvements in organisation, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected;
ii. To suggest alternative policies in order to bring about efficiency and economy in administration;
iii. To examine whether the money is well laid out within the limits of the policy implied in the estimates;
iv. To suggest the forth in which the estimates are to be presented to Parliament

The Committee shall not exercise its functions in relation to such public undertakings as are allotted to the Committee on Public Undertakings. The Committee may continue the examination of the estimates from time to time, throughout the financial year and report to the House as its examination proceeds. It shall not be incumbent on the Committee to examine the entire estimates of any one year. The demands for grants may be finally voted despite the fact that the Committee has made no report.

Public Accounts Committee

Described as the 'twin sisters' of the Estimates Committee, the Public Accounts Committee acts in tandem with the former in the following sense: "While the Estimates Committee deals with the estimates of public, the Public Accounts Committee examines mainly the accounts showing the appropriation of sums granted by the House for the expenditure of the Government of India in order to ascertain whether the money has been spent as authorized by Parliament and for the purpose for which it was granted".

This committee was set up first in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence. At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed from amongst its members by the Speaker. Until 1966-67, the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the Opposition.

The function of the committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the President. The CAG submits three audit reports to the President, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings. The committee examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses. In more detail, the functions of the committee are:

i. To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts shows the annual receipts and disbursements of the Union Government.
ii. In scrutinizing the appropriation accounts and the audit report of CAG on it, the committee has to satisfy itself that:
    a) The money that has been disbursed was legally available for the applied service or purpose;
    b) The expenditure conforms to the authority that governs it;
    c) Every re-appropriation has been made in accordance with the related rules

iii. To examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them (except those public undertakings which are allotted to the Committee on Public Undertakings);

iv. To examine the accounts of autonomous and semi-autonomous bodies, the audit of which is conducted by the CAG;

v. To consider the report of the CAG relating to the audit of any receipt or to examine the accounts of stores and stocks;

vi. To examine the money spent on any service during a financial year in excess of the amount granted by the Lok Sabha for that purpose

In the fulfillment of the above functions, the committee is assisted by the CAG. In fact, the CAG acts as a guide, friend and philosopher of the committee. On the role played by the committee, Ashok Chanda (who himself has been a CAG of India) observed: "Over a period of years, the committee has entirely fulfilled the expectation that it should develop into a powerful force in the control of public expenditure. It may be claimed that the traditions established and conventions developed by the Public Accounts Committee conform to the highest traditions of a parliamentary democracy".

Committee on Public Undertakings

This committee was created in 1964 on the recommendation of the Krishna Menon Committee. Originally, it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha). However, in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). The members of this committee are elected by the Parliament every year from amongst its own members according to the principle of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only. Thus, the members of the committee who are from the Rajya Sabha cannot be appointed as the chairman. The functions of the committee are:

i. To examine the reports and accounts of public undertakings;

ii. To examine the reports of the Comptroller and Auditor General on public undertakings;

iii. To examine (in the context of autonomy and efficiency of public undertakings) whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices;

iv. To exercise such other functions vested in the public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the Speaker from time to time.

Summary

You have learnt in this lesson that the Parliament is country's central legislative body. It has two Houses-Rajya Sabha and Lok Sabha and the President is an integral part of the Parliament. Rajya Sabha is a permanent body, which can never be dissolved. Each member of Rajya Sabha enjoys a term of six years and one-third of its member retires after every two years. The Rajya Sabha represents the States in Indian Union. In contrast, the Lok Sabha or the lower House has a fixed term of five years and the President before the expiry of stipulated five years can also dissolve it. Members of the Lok Sabha are directly elected by people on the basis of universal adult franchise. While the Vice-President chairs the meetings of Rajya Sabha, the Lok Sabha is presided over by the Speaker. You have read about the powers of the Speaker. You have read that the quorum of both the Houses is one-tenth of the total membership. Without the quorum, no meeting of the House/Houses can take place. You have also read in details about the various legislative, executive, financial, electoral, judicial and miscellaneous functions of the Parliament, and its law making procedure. Finally, you have been able to compare the two Houses and find that Lok Sabha is more powerful than Rajya Sabha.

The primary function of the Parliament is to enact laws. In addition, it holds the Council of Ministers responsible for its policies and criticizes the policies wherever necessary. It also has the powers to amend the constitution and to impeach the President. There are several Committees appointed from among its members for effective functioning. Devices like the question hour, adjournment motion,

calling attention motion, etc. are available for Parliament to check the government. Passing of the budget, an important function of the Parliament, provides it with an opportunity to scrutinise the activities of the government. There is a declining trend in the position of the legislature all over the world. Delegated legislation, ascendancy of the executive over the other organs of the government, emergence of strong party system, etc. are some of the reasons for such a trend. Despite these trends, the Parliament still commands respect and is able to maintain its position vis a vis the other organs of the government.

However, over the years, the functioning of the Parliament has left much to be desired. Instead of acting as the agency to keep the executive branch of the government on its toes through its inquisitive questioning of the policies and programmes of the government from time to time, and provide some sort of encouragement to the government by extending desired approval to the proper policies, the Parliament appeared to have allowed itself to be carried away by the executive. In such a scenario, while the situation did not take an ugly turn in view of the presence of persons of democratic vision and restrained functioning in the seat of power like Jawaharlal Nehru despite commanding a huge majority in the Lok Sabha, the state of things definitely took a perverse turnin times of the prime ministers like Indira Gandhi when she decided to keep aside the democratic institutions of governance and took upon herself to rule the country with the help of a caucus, without any accountability to either Parliament or any other organ of the government. In such circumstances, the role of scrutinizing the executive decisions and checking it from usurping the powers of other organs of government came down to the Supreme Court and the high courts, putting the judiciary on a collision course with the executive from time to time, though situations never seemed to go out of control. Among other things, the increasing politicking in Parliament led to the conversion of the august body into a ring for the politicians to fight with each other not only with words but sometimes with blows also. Consequently, the basic purpose of the existence of Parliament as the examiner of the executive policy formulations and budgetary allocations started suffering. Hence, to tide over the situation, the committee system was introduced in Parliament so that certain specific committees are able to scrutinize the executive proposals and keep tab on the functioning of the government. The establishment of the standing subject committees has been taken as a sort of innovation in the parliamentary system of the country as a result of which a greater degree of transparency and accountability have been ensured in the functioning of the executive agencies.

Keywords/Glossary

Committee: A body of persons appointed or elected for performing specified tasks; may be small group within a larger body.

Constitutional: Power or action in compliance with the provision of the constitution; related to the constitution.

Legislation: The process of making enacted law; the body of enacted laws (note: an individual law is not a 'legislation' but a 'piece of legislation' or 'a statue').

Legislature*:* A body of people with the power to make and change laws.

Majority: Either 'more than half' or 'the largest number'; the number by which votes for one are more than those for another; 'a majority of 3'.

National Assembly: It is either a legislature, or the lower house of bicameral legislature in some countries. In federations it usually refers to a legislative house of the federal government, but sometimes the title is used for a provincial legislature such as that of Canada's province of Quebec.

Parliament: A legislature that formulates laws, adopts the budget and forms the government in a parliamentary system of governance. It also plays the role of making the executive of the government (cabinet) accountable and scrutinizes government policies and programs.

Parliamentary system: A system of government in which the executive is composed of a select group of members of Parliament, called the cabinet, which is accountable to Parliament. The executive is dependent on direct or indirect support of the legislative (often termed the parliament), frequently expressed through a vote of confidence. Also known as parliamentarism; examples include the United Kingdom and India.

Promulgate: Put a law into effect by a formal proclamation.

Quorum: The minimum number of members of an organization (e.g. Parliament) needed to conduct business.

Tie: It means a situation in which there are equal vote cast in favour and against a bill or resolution. In such a situation the presiding officer may exercise a casting vote in favour/against to break the tie.

Unconstitutional: Contrary to the provisions of the constitution.

Unicameral: Legislature composed of one chamber

Self Assessment

1. Which of the following article of the Indian Constitution deals with the constitution of the Parliament of India?

A. Article 73
B. Article 78
C. Article 79
D. Article 82

2. What is the minimum age for holding office in the Lok Sabha?

A. 18 Years
B. 25 years
C. 21 Years
D. 30 Years

3. How many sessions of the Lok Sabha take place in a year?

A. 3 Sessions
B. 2 Sessions
C. 4 Sessions
D. 1 Sessions

4. Which of the following article deals with the composition of council of states (Rajya Sabha) and the manner of election of its members?

A. Article 82
B. Article 81
C. Article 90
D. Article 80

5. The Parliament of India consists of the following:

A. President
B. Lok Sabha & Rajya Sabha
C. Both A and B
D. None of the above

6. The representatives of the state in the Rajya Sabha are elected by which one of the following?

A. Chief Minister of the state
B. Governor
C. President
D. Elected members of the state legislative assembly

7. Indian Parliament is:

A. Unicameral

B. Bicameral
C. Tricameral
D. None of the Above

8. Originally, the number of subjects in union list:
A. 47
B. 53
C. 97
D. 108

9. Under article 169, the parliament can:
A. Entirely change the composition of state
B. Appoint state assembly
C. Dissolve the state assembly
D. None of the Above

10. Constitutionally, who has the power to make a law on the subject mentionable in the Union List?
A. Lok Sabha
B. Rajya Sabha
C. Legislative Council
D. Parliament

11. Who decides whether a bill is a Money Bill or not?
A. President
B. Prime Minister
C. Speaker of the Lok Sabha
D. Finance Minister

12. Which of the following statement is wrong with regard to Parliamentary Committee?
A. Parliamentary Committee is appointed/elected by the speaker/chairman
B. Works under the guidance of speaker/chairman
C. Has a secretariat provided by the president of India
D. Submits its reports to house or speaker/chairman

13. Which of the following statement is not correct?
A. Mainly Parliamentary Committees are of two types
B. Ad hoc committees are of permanent nature
C. Parliamentary Committees are mentioned in the Indian constitution
D. Indian Constitution does not mentioned any time period for the Parliamentary Committees

14. Which of the following is not a Parliamentary Committee?
A. Committee on Public Accounts
B. Demands for Grants Committee
C. Committee on Public Undertakings
D. Committee on Estimates

15. Which of the following committee is NOT made for day to day business of the house?

A. Business Advisory Committee

B. Committee of private members bill

C. Rules committee

D. Ad hoc committee

16. How many members are in Public Account Committee?

A. 22

B. 15

C. 07

D. 10

17. Which of the following committee regulates the programme and time table of the house of Parliament?

A. Committee on public understanding

B. Public Account Committee

C. Estimates Committee

D. Business advisory committee

18. The function of the …….committee is to examine the estimates included in the budget and suggests economies in public expenditure.

A. Public Accounts Committee

B. Rules Committee

C. Estimate Committee

D. Ethics Committee

Self-Assessment

1.	C	2.	B	3.	A	4.	D	5.	B
6.	D	7.	B	8.	C	9.	A	10.	D
11.	C	12.	C	13.	B	14.	B	15.	D
16.	A	17.	D	18.	C				

Review Question

1. Write a detailed note on the Union Parliament?
2. Explain the various functions of Parliament?
3. Evaluate the powers and functions of the Lok Sabha?
4. Describe the composition and powers of the Rajya Sabha?
5. Analyse the relationship between the two Houses of the Parliament?
6. Write short notes on the following:
    a) Ordinary bill
    b) Money bill.

7. How has the system of parliamentary committee affected the overseeing and appraisal of legislation by the Parliament?
8. Discuss in detail the Public Accounts Committee and Estimate Committee?
9. Critically dissect the Committee on Public Undertakings and its role?

Further Readings

1. Arora, Ramesh K. and Rajni Goyal. 1996. *Indian Public Administration*. New Delhi: Wishwa Prakashan.
2. Austin, Granville. 1966. *The Indian Constitution: Cornerstone of a Nation*. Delhi: Oxford University Press.
3. Basu, D.D. 1998. *An Introduction to the Constitution of India*. New Delhi: Prentice Hall of India.
4. Mukherjee, Hiren. 1978. Portrait of Parliament: Reflections and Recollections, Vikas, New Delhi.
5. Constituent Assembly. 1947. *Constituent Assembly Debates, Volume IV*. New Delhi: Government of India

Unit 07: Judiciary-I

CONTENTS

Objectives

Introduction

7.1 Supreme Court

7.2 Jurisdiction and Powers of Supreme Court

7.3 High Court

7.4 Jurisdiction and Powers of High Court

Summary

Keywords/Glossary

Self Assessment

Answers for Self Assessment

Review Questions

Further Readings

Objectives

Many times, courts are seen only as arbitrators in disputes between individuals or private parties. But judiciary performs some political functions also. Judiciary is an important organ of the government. The Supreme Court of India is in fact, one of the very powerful courts in the world. Right from 1950 the judiciary has played an important role in interpreting and in protecting the Constitution. After studying this chapter, you would be able to:

- know the structure of Judiciary in India.
- explain the composition and functioning of the Supreme Court.
- analyse the powers and jurisdiction of the Supreme Court.
- understand the role of the Judiciary in interpreting the Constitution
- explain organisation and composition of high courts.
- analyse powers and jurisdiction of high courts.

Introduction

When you read the Constitution of India, you will come to know 'that it is characterised as a federal Constitution. By federal Constitution we mean a written Constitution which provides the division of powers between Central and the State Governments'. It is the supreme law of the land. But the language of the Constitution is very complex as its meaning is likely to be interpreted by different authorities at different times in different manners. Like several other institutions under the Constitution, 'the judicial system of independent India appears to be a compromise between the two distinct perspectives of judiciary under the parliamentary and federal systems of government. under the classical notion of the federal systems like America, the Supreme Court should have been accorded some sort of supremacy amongst the three organs of the government owing to its position as the protector of the Constitution and the people's rights'. On the other hand, the imperatives of the parliamentary system as in Britain require the highest court to be in a subservient position to the Parliament since the latter is construed to be the sovereign authority in the political system of the country. Now, since the Indian political system was designed to be a halfway mark of both the

federal as well as the parliamentary systems, the judicial system of India was bound to be an amalgam of certain features prevalent in both the countries.

Hence, it is natural that dispute might arise between the Centre and its constituent units (primarily the States) regarding their respective powers. 'All such disputes must be settled by an independent body in accordance with the principle of rule of law. This idea of rule of law implies that all individuals — rich and poor, men or women, forward or backward castes — are subjected to the same law'. The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures. Simply stated independence of judiciary means that

- The other organs of the government like the executive and legislature must not restrain the functioning of the judiciary in such a way that it is unable to do justice.
- The other organs of the government should not interfere with the decision of the judiciary.
- Judges must be able to perform their functions without fear or favour. Independence of the judiciary does not imply arbitrariness or absence of accountability.

The Constitution of India has provided a 'single integrated and unified judicial system for the whole country'. It means that for the entire country, there is one unified judicial system, one hierarchy of courts with the Supreme Court as the highest or the apex court. It is also the highest and the final interpreter of the Constitution and the general law of the land. The Unitary Judicial System "seems to have been accepted with the least questioning". The Supreme Court was to have a special, countrywide responsibility for the protection of individual rights. Dr B. R. Ambedkar was perhaps the greatest apostle in the Assembly of what he described as 'one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional law, the Civil, or the Criminal law, essential to maintain the unity of the country'. With the Indian independence in 1947, the judicial system had to be modified to suit the changed conditions. The jurisdiction of the Privy Council over the Indian appeals came to an end with the establishment of the Supreme Court of India on January 26, 1950. Presently, 'India has a fairly advanced judicial system having a well defined hierarchy of Courts with the Supreme Court at the apex and a number of subordinate Courts below it'. The laws are mostly codified having a uniform application throughout the country. Below the Supreme Court are the High Courts of different States and under each High Court there are 'subordinate courts', i.e., courts subordinate to and under the control of the High Courts.

7.1 Supreme Court

Within the framework of a unified integrated judicial system, the Constitution provides for the establishment of the courts at the Central, states, and the district levels, with the Supreme Court standing at the head of the system. A successor of the Federal Court of the pre-Independence times, the Supreme Court was inaugurated in 1950 with Chief Justice H.J. Kania and seven other judges. The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its prodecessor. This is because, the Supreme Court has replaced the British Privy Council as the highest court of appeal. Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.

Organisation of Supreme Court

The Supreme Court is the apex Court at national level which was established on 28th January 1950, under Article 124(1) of the Constitution of India. In this context, Article 124 (1) reads as "there shall be a Supreme Court of India consisting of the Chief Justice of India and until Parliament, by law, prescribe a large number of not more than 7 judges". Though by 2009 Amendment, the number of judges in Supreme Court was raised to 31 including the Chief Justice. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2008. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977 and to twenty-five in 1986.

All proceedings in the Supreme Court are conducted in English. The seat of Supreme Court is in Delhi and the proceedings are open to the public.

Appointment of Judges

Under article 124(2), Supreme Court judges are to be appointed by the President "after consultation with such judges of the Supreme Court and of the High Courts as the President may deem necessary". The provision in the Article says that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. It is obligatory for the Government in which it has to consult the Chief Justice and other judges. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice. Significantly, the appointment is not required to be made in consultation but only 'after consultation', and the opinion should be in written. In actual practice, after receiving the opinion of the Chief Justice, the Cabinet deliberates on the matter and advises the President in regard to the persons to be appointed. The President acts on the advice. The Chief Justice has to consult four senior most Judges of the Supreme Court and if two of the four disagree on some name, it can not be recommended. In fact, decisions are to be taken by consensus where the Chief Justice and at least three of the four Judges agree.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case (2015). The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Appointment of Chief Justice

From 1950 to 1973, the practice has been to appoint the seniormost judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A N Ray was appointed as the Chief Justice of India by superseding three senior judges. Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge. This discretion of the government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the seniormost judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or

   (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or

   (c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court. Interestingly, a non-practising or an academic lawyer may also be appointed as Judge of the Supreme Court, if he/she is, in the opinion of the President, a distinguished Jurist. But in India so far, no non practising lawyer has been appointed as a Judge of the Supreme Court. Every person appointed as a judge of the Supreme Court, before he/she enters upon his office, takes an oath before the President or some other person appointed by him in the form prescribed in III Scheduled of the Constitution.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and

4. to uphold the Constitution and the laws.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

A judge may be removed from his/her office only by an order of the President passed after an address by each House of Parliament for his removal on the ground of 'proved misbehavior or incapacity', supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting in the same session. The procedure of the presentation of an address for investigation and proof of misbehavior or incapacity of a Judge will be determined by Parliament (Article 124 (5)).The Supreme Court has held that a Judge of the Supreme Court or High Court can be prosecuted and convicted for criminal misconduct. The expression 'misbehavior' in article 124 (5) includes criminal misconduct as defined in the Prevention of Corruption Act.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The first and the only case of impeachment is that of Justice V Ramaswami of the Supreme Court (1991-1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

Salaries and Allowances

Judges of the Supreme Court are to be paid such salaries as may be determined by Parliament by law and until so determined salaries are laid down in the Second Schedule (Article 125). In addition to this, they are also allowed sumptuary allowances, rent free furnished residences, telephone, water, electricity, medical and many other facilities.

Seat of the Supreme Court

The Constitution provides that Supreme Court shall sit in Delhi. However, the Chief Justice of India may with the previous approval of President be able to sit in such other place or places as he/she may decide (Article 130). At present, the Supreme Court is functioning from Delhi.

7.2 Jurisdiction and Powers of Supreme Court

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament). It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers. Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: "The Supreme Court of India has more powers than any other Supreme Court in any part of the world". Article 129 provides that the Supreme Court shall be a Court of record and shall have all powers of such a Court. Being the highest court of the land, its proceedings, acts and decisions are kept on record for perpetual memory and for presentation as evidence, in support of the law. Being a Court of record it implies that its records can be used as evidence and cannot be questioned for their authenticity in any court. Court of record also means that it can punish for its own contempt. But this is a summary power, used rarely and under pressing circumstances. It does not restrict genuine and well intentioned criticism of Court and its functioning. Fair and reasonable criticism of judicial acts in the interest of public good does not constitute the contempt. The jurisdiction and powers of the Supreme Court can be classified into the following:

1. Original Jurisdiction.

2. Writ Jurisdiction.

3. Appellate Jurisdiction.

4. Advisory Jurisdiction.

5. A Court of Record.

6. Power of Judicial Review.

7. Other Powers.

Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between:

(a) the Centre and one or more states; or

(b) the Centre and any state or states on one side and one or more states on the other; or

(c) between two or more states.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal. With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted. One, the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends. Thus, the questions of political nature are excluded from it. Two, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained under this.

The Supreme Court in its original jurisdiction cannot entertain any suits brought by individuals against the Government of India. The dispute relating to the original jurisdiction of the Court must involve a question of law or fact on which the existence of legal right depends. This means that the Court has no jurisdiction in matters of political nature. However, this jurisdiction shall not extend to a dispute arising out of a treaty, agreement etc. which is in operation and excludes such jurisdiction (Article 131).

The jurisdiction of Supreme Court also excludes in inter-State water disputes India-II (Article 262), matters referred to the Finance Commission (Article 280) and adjustment of certain expenses and pensions between the Union and States (Article 290). If any dispute is to be brought before the Supreme Court, it must involve a question of law on which the legal right depends. Under Article 139A, the Supreme Court may transfer to itself cases from one or more High Courts if these involve questions of law or of great importance. The Supreme Court may transfer cases from one High Court to another in the interest of justice. The Original Jurisdiction of the Supreme Court also extends to cases of violation of the Fundamental Rights of individuals and the Court can issue several Writs for the enforcement of these rights (Article 32). It is a unique feature of our Constitution that in principle, any individual can straightway approach the highest Court in case of violation of his/her Fundamental Rights.

Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo-warrento and certiorari for the enforcement of the fundamental rights of an aggrieved citizen. In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights. In the first case, it is exclusive and in the second case, it is concurrent with high courts jurisdiction.

Appellate Jurisdiction

The Appellate Jurisdiction of the Supreme Court extends to civil, criminal and constitutional matters. In a civil matter, an appeal lies to the Supreme Court from any judgment, decree or final

order of a High Court if the High Court certifies under Article 134A that a 'substantial question of law' of general importance is involved and the matter needs to be decided by the Supreme Court. The High Court grants certificate only where there have been exceptional circumstances where substantial and grave injustice has been done. Thus, a certificate cannot be granted by the High Court on mere question of fact, where no substantial question of law is involved. In criminal cases, an appeal to the Supreme Court shall if the High Court:

- has reversed an order of acquittal of an accused person and sentenced him to death.
- has withdrawn for trial before itself any case from any subordinate court to its authority and has in such trial convicted the accused person and sentenced him to death (Article 134).

It is to be noted that before the commencement of the Constitution, there was a Federal Court in India. It was created by the Government of India Act 1935 and has been abolished by the Constitution of independent India. Article 135 was included in the Constitution to enable the Supreme Court to exercise jurisdiction in respect of matters where the Federal Court had the jurisdiction. Under Article 136 the Supreme Court, by its own, may grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. These powers of the Supreme Court to grant 'special leave to appeal' are far wider than the High Court.

Article 137 provides for the Supreme Court having the power to review its own judgments and orders. The Supreme Court has held that a judgement of the apex Court of the land is final. A review of such a judgement is an exceptional phenomenon, permitted only where a grave error is made out.

Advisory Jurisdiction

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

a) On any question of law or fact of public importance which has arisen or which is likely to arise.

b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanador other similar instruments.

Article-139 lays down that Parliament may confer on the Supreme Court power to issue directions, orders or writs in matters not already covered under Article 32. Under Article-140, Parliament may supplement the powers of the Supreme Court to enable it to perform effectively the functions placed upon it under the Constitution. Law declared by the Supreme Court is binding on all courts in India under Article-141. Article-142 provides that the Supreme Court in exercise of its jurisdiction may pass such decrees or orders as necessary for doing complete justice. The decree or order made by the Court shall be enforceable throughout the territory of India in such a manner as prescribed by the Parliament. Until provision is made by the Parliament, the orders of the Court will be enforced in the manner prescribed by the President.

A Court of Record

As a Court of Record, the Supreme Court has two powers:

a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.

b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if

they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

Other Powers

Besides the above, the Supreme Court has numerous other powers:

a) It decides the disputes regarding the election of the president and the vice-president. In this regard, it has the original, exclusive and final authority.

b) It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.

c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self-correcting agency. For example, in the Kesavananda Bharati case (1973), the Supreme Court departed from its previous judgement in the Golak Nath case (1967).

d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.

e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.

f) It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution.

g) It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

7.3 High Court

The Constitution of India provides a High Court for each State. Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts The Parliament may, however, establish a common High Court for two or more States and a Union Territory (Article 214 & 231). Similar to the Supreme Court, 'every High Court is also a Court of record and has the entire original and appellate jurisdiction together with the power to punish for contempt' (Article 215). The institution of high court originated in India in 1862 'when the high courts were set up at Calcutta, Bombay and Madras. In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state'. The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The 'territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory'.

The Chief Justice of a High Court is appointed by the President after consulting the Chief Justice of India and Governor of the State and in case of appointment of Judges, other than the Chief Justice, the Chief Justice of the concerned High Court is also consulted.

For a person to be appointed as a Judge of the High Court he/she must:

- be a citizen of India,
- have ten years of service in Judicial Office, or

- have ten years of experience as a High Court Advocate.

Oath or Affirmation

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears:

a) to bear true faith and allegiance to the Constitution of India;
b) to uphold the sovereignty and integrity of India;
c) to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and
d) to uphold the Constitution and the laws.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

a) He holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
b) He can resign his office by writing to the president.
c) He can be removed from his office by the President on the recommendation of the Parliament.
d) He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

7.4 Jurisdiction and Powers of High Court

Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the Constitution. At present, a high court enjoys the following jurisdiction and powers:

1. Original jurisdiction.

2. Writ jurisdiction.

3. Appellate jurisdiction.

4. Supervisory jurisdiction.

5. Control over subordinate courts.

6. A court of record.

7. Power of judicial review.

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions, (b) the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Cirminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908.

1*. Original Jurisdiction*

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:

(a) Matters of admirality, will, marriage, divorce, company laws and contempt of court.

(b) Disputes relating to the election of members of Parliament and state legislatures.

(c) Regarding revenue matter or an act ordered or done in revenue collection.

(d) Enforcement of fundamental rights of citizens.

(e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

2. *Writ Jurisdiction*

Article 226 provides that every High Court under its jurisdiction has power to issue writs including habeas corpus, mandamus, certiorari, prohibition and quowarren for enforcement of the Fundamental Rights or for any other purpose. By inserting the word 'any other purpose' the High Court has been given much wider power than the Supreme Court. It can issue writs in all the cases of breach of any right while Supreme Court can issue only in the breach of Fundamental Rights. The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32).

3. *Appellate Jurisdiction*

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction. Its appellate jurisdiction extends to both civil and criminal matters. On the civil side, an appeal to the High Court is either a first appeal or second appeal. The criminal appellate jurisdiction consists of appeals from the decisions of:
(a) A Session Judge, or an additional Session Judge where the sentence is of imprisonment exceeding 7 years
(b) An Assistant session judge, Metropolitan Magistrate of other Judicial Magistrate in certain certified cases other than 'petty' cases.

4. *Supervisory Jurisdiction*

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may:

(a) call for returns from them;

(b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;

(c) prescribe forms in which books, entries and accounts are to be kept by them; and

(d) settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power of superintendence of a high court is very broad because:

a) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not;
b) it covers not only administrative superintendence but also judicial superintendence;
c) it is a revisional jurisdiction; and,
d) it can be suo-motu (on its own) and not necessarily on the application of a party.

5. *Control over Subordinate Courts*

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:

(a) It is 'consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state' (other than district judges).

(b) It deals with 'the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state' (other than district judges).

(c) It can withdraw a case 'pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution'.

(d) Its law is 'binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India'.

6. *A Court of Record*

As a court of record, a high court has two powers:

(a) The judgments, proceedings and acts of the high courts are 'recorded for perpetual memory and testimony'. These records are admitted to be of 'evidentiary value and cannot be questioned when produced before any subordinate court'. They are recognised as legal precedents and legal references.

(b) It has power to 'punish for contempt of court', either with simple imprisonment or with fine or with both.

As a court of record, a high court also has the power to review and correct its own judgement or order or decision, even though no specific power of review is conferred on it by the Constitution. The Supreme Court, on the other hand, has been specifically conferred with the power of review by the constitution.

7. ***Power of Judicial Review***

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the high court. Consequently, they cannot be enforced by the government.

Summary

The legal and Judicial history of India is as old as 5000 years from now. From the point of view of chronology, the beginning of Indian Judicial System can be traced back to Anglo-India era when the Judicial System was at its primitive stage. The Regulating Act of 1773 enacted by the British Parliament is considered to be a landmark in the development of Indian Judicial System in India.

The Jurisdiction of Privy Council over the Indian appeals came to an end with the establishment of Supreme Court on January 26, 1950. The crucial feature of Indian Judiciary is that 'it has a single integrated and unified Judicial System'.

The structure of courts in India is like a pyramid. The Supreme Court is the Apex Court in India. The Highest Court in the State is High Court. Then there are Subordinate Courts at District, Sub-Division and Tehsil level. The growth, evolution and development of modern Indian Judicial System is not the creation of one man or of one day. It is rather an outcome of the concerted efforts and experience of a number of able administrators who laboured patiently for generations.

Keywords/Glossary

Bodies: Legal or constitutional entities created for a special purpose.

Boundaries: Boundary, border, frontier share the sense of that which divides one entity or political unit from another. Boundary, in reference to a country, city, state, territory, or the like, most often designates a line on a map.

Constitutional Court: A constitutional court is one that has the final say in interpreting the constitution and also in deciding whether or not other national laws are in harmony with the constitution or are unconstitutional.

High Court: It is generally the court of appeal. In India it is the highest court at the level of a constituent state. The high court may also be endowed with extraordinary jurisdiction to enforce fundamental rights and judicial review.

Judicial interpretation: The method by which courts establish the meaning of constitutional provisions or legislative acts.

Judiciary: The branch of government that is endowed with the authority to interpret the law, adjudicates legal disputes, and otherwise administers justice. "Judiciary" is also used to refer to judges of a court considered as a group.

Jurisdiction: The territorial or legislative fields over which an order of government, including the judiciary, has the authority to make laws.

Supreme Court: In most cases, the highest court within the legal system. It is the highest appellate court for all other courts in the state.

Self Assessment

1. From which source India got the concept of Single order of court?

A. Government of India Act, 1935

B. Government of India Act, 1919

C. Pitts India Act, 1773

D. None of the following

2. Which of the following statement is not true about India's Supreme Court?

A. Article 124 to 147 and Part V of the Indian Constitution informs about the composition and powers of the Supreme Court?

B. The Supreme Court was inaugurated on January 28, 1950

C. At present, there are 39 judges in the Supreme Court

D. Judges of Supreme Court are appointed by the President of India

3. Which among the following is the final authority to interpret the Constitution of India?

A. President

B. Prime Minister

C. Council of Ministers

D. Supreme Court

4. Till now how many judges of Supreme Court of India have been removed from Office through impeachment?

A. 0

B. 1

C. 2

D. 3

5. Which qualification is wrong for being a judge in the Supreme Court?

(A) It is compulsory to be a citizen of India.

(B) He should be a respected jurist in the eyes of Parliament

(C) Must be a judge in the High Court for at least 5 years

(D) He should be a lawyer in the High Court for at least 10 years

6. Who can remove the Judge of the Supreme Court?

A. Chief Justice of the Supreme Court

B. Only President

C. Only Parliament

D. Both Parliament and President

7. At Present, how many judges in the Supreme Court?

A. 34
B. 40
C. 25
D. 27

8. The President can declare a judge an executive chief justice of the Supreme Court of India when ...

A. The post of Chief Justice is vacant
B. Chief Justice is temporarily absent
C. Chief Justice is unable to discharge his obligations
D. All of the above

9. The transfer of Judges from one High Court to another High Court may be made by the:

A. President of India in consultation with the Chief Justice of that High Court.
B. Chief Justice of the concerned High Court
C. Governor of the concerned State in consultation with the Chief Justice of India.
D. President of India after consultation with the Chief Justice of India.

10. Who among the following extends the jurisdiction of a High Court to, or excludes from, any Union territory?

A. Parliament by law
B. The President of India
C. The Chief Justice of India
D. Legislature of the State in which the High Court is situated

11. The nature of 'consultation' with the Chief Justice of India in matters of appointment of a judge to a High Court is correctly described as:

A. Inspection of the file by the Chief Justice
B. Concurrence of the Chief Justice
C. Conformity with the opinion of the Chief Justice
D. Formal reference to the Chief Justice without any obligation to carry out his wishes.

12. Which one of the following statements is not correct?

A. The Supreme Court can over-rule itself.
B. A High Court can over-rule itself.
C. Judgements of the Supreme Court bind the lower courts.
D. Judgements of a High Court do not bind the lower courts of the State.

13. A Judge of a High Court can be removed from office during his tenure by:

A. The Governor, if the State Legislature passes a resolution to this effect by two-thirds majority.

B. The President, on the basis of a resolution passed by the Parliament by two-thirds majority.

C. The Chief Justice of the Supreme Court, on the recommendation of the Parliament.

D. The Chief Justice of the High Court, on the recommendation of the State Legislature.

14. Which of the following statements is not true?

A. The institution of High Court in India was first formed in 1862.

B. Article 214 to 231 of the Indian constitution envisages about the powers of the High Court.

C. Only Delhi is a Union territory which has its own High Court.

D. Only Parliament determines the number of judges in the High Court.

15. How many High Courts are in the India currently?

A. 24

B. 31

C. 27

D. 38

16. Who does not participate in the appointment of the High Court Judge?

A. Governor of the State

B. Chief Minister of the state

C. Chief Justice of the High Court of the respective state

D. President of India

Answers for Self Assessment

1.	A	2.	C	3.	D	4.	A	5.	B
6.	D	7.	A	8.	D	9.	D	10.	A
11.	C	12.	D	13.	B	14.	D	15.	A
16.	B								

Review Questions

1. What is the Role of the Judiciary?
2. What is an Independent Judiciary?
3. What is the Structure of Courts in India?
4. How is the judicial system of India based on the hierarchy of courts?
5. Do you think that executive should have the power to appoint judges?
6. How does the President of India appoint the Judges of the Supreme Court, other than the Chief Justice?

7. What are the grounds on which the Judge of Supreme Court can be removed?
8. Which Court has the wider powers to issue 'Writs' in the context of Fundamental Rights?
9. How does the President of India appoint the Judges of the High Courts?
10. Mention any two functions of the High Court.
11. Why judiciary is called the pillar of democracy?

Further Readings

Austin, Granville. 1966. *The Indian Constitution: Cornerstone of a Nation*. Delhi: Oxford University Press.

----------. 2003. *Working a Democratic Constitution: A History of the Indian Experience.* New Delhi: Oxford University Press.

Basu, D.D. 1998. *An Introduction to the Constitution of India*. New Delhi: Prentice Hall of India.

Thakur, Ramesh. 1995. *The Government and Politics of India*. London: Macmillan.

Unit 08: Judiciary Part -11

CONTENTS

Objectives
Introduction
8.1 Judicial Review
8.2 Judicial Activism
8.3 Judicial Restraint
8.4 Judicial Reform
Summary
Keywords/Glossary
Review Questions
Self Assessment
Answer for Self Assessment
Further Readings

Objectives

After studying this chapter, you would be able to:

- explain the concept of judicial review.
- analyse the importance of judicial review in safeguarding fundamental rights.
- explain the meaning and importance of judicial activism.
- analyse the activators and apprehensions of judicial activism.
- explain the meaning and reasons of judicial restraint.
- analyse the need of judicial reforms.
- describe the importance of judicial reforms.

Introduction

The doctrine of 'Separation of Powers' which is a dominant features of the USA Constitution, had helped the Supreme Court a great deal in this connection. In Canada, Australia and India the existence of a parliamentary government, which ensures the responsibility of the executive to the legislature, minimizes the possibilities of conflict between the various agencies of the government. However, the position of the federal judiciary in these countries is more or less the same and is similar, to a great extent, to that in the United States regarding constitutional interpretation. Thus it is obvious that in most federations the judiciary becomes the 'pivot on which the constitutional arrangements of the country turns'. Its proper appreciation of this pre-eminent position that Dicey has argued that "federalism means legalism – the predominance of the judiciary in the Constitution, the prevalence of a spirit of legality among the people". The judiciary stands on a level with the executive and the legislature therefore, the courts can and must determine the limits of authorities, both of the executive and of the legislatures. Dicey said that the judges are not only guardians of the Constitution but also the master of the Constitution.

8.1 Judicial Review

Judicial review is the power of the judiciary to examine the constitutionality of legislative enactments and executive orders of both the Central and State governments. On examination, if they are found to be violative of the Constitution (ultra vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the judiciary. Consequently, they cannot be enforced by the Government. It has been defined by many thinkers. Some of the definitions are mentioned below:

It has been defined by Smith & Zurcher, "The examination or review by the Courts, in cases actually before them, of legislative statutes and executive or administrative acts to determine whether or not they are prohibited by a written Constitution or are in excess of powers granted by it, and if so, to declare them void and of no effect".

Edward S. Corwin also says that Judicial Review is "the power and duty of the courts to disallow all legislative or executive acts of either the central or the State governments, which in the Court's opinion transgresses the Constitution".

Timothy Walker argues "one court easily conceive of a more sublime exercise of powers, than that by which few men, through the mere force of reason, without soldiers, and without timult, pomp, or parade, but calmly, noiselessly and fearlessly proceeded to get aside the acts of either government, because repugnant to the constitution".

Justice Goldberg also remarks "Judicial Review is not a usurped power but a part of the grand design to ensure the supremacy of the Constitution".

As Jhon P. Roche says, "the principle of equilibrium required that judges be more than puppets of a legislature in the constitutional scheme of things, it was imperative that some institution exist to protect the fabric of the constitution. To ensure that a legislature and an executive would not connive together, to break the equilibrium of forces".

The doctrine of judicial review originated and developed in the USA. It was propounded for the first time in the famous case of Marbury V Madison (1803) by John Marshall, the then chief justice of the American Supreme Court. Madison explained, "A Constitution can be preserved in practice in no other way than through the medium of the courts of justice". Whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all reservations of particular freedoms or liberties or privilege amount to nothing.

In India, on the other hand, the Constitution itself confers the power of judicial review on the judiciary (both the Supreme Court as well as High Courts). Further, the Supreme Court has declared the power of judicial review as a basic feature of the Constitution or an element of the basic structure of the Constitution. Hence, the power of judicial review cannot be curtailed or excluded even by a constitutional amendment. Judicial Review is not an expression exclusively used in constitutional law. Literally, it means the revision of the decree or sentence of an inferior court by a superior court, it works through the remedies of appeal, revision and the like, as prescribed by the procedural laws of the land, irrespective of political system which prevail.

The courts perform the 'role of expounding the provisions of the Constitution and exercise power of declaring any law or administrative action which may be inconsistent with the Constitution as unconstitutional and hence void'. This judicial functions stems from a feeling that a system based on a written Constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of constitutional issues and also that it is necessary to restrain governmental organs from exercising powers which may not be sanctioned by the Constitution. Justice Syed Shah Mohamed Quadri has classified the judicial review into the following three categories:

1. Judicial review of constitutional amendments.
2. Judicial review of legislation of the Parliament and State Legislatures and subordinate legislations.
3. Judicial review of administrative action of the Union and State and authorities under the state.

The power of judiciary is not limited to enquiring about whether the power belongs to the particular legislature under the question it extends also as to whether the laws are made in conformity with and not in violation of other provisions of the Constitution. Judicial Review is a great weapon through which arbitrary, unjust harassing and unconstitutional laws are checked. Judicial Review is the cornerstone of constitutionalism which implies limited Government. In this connection Prof. K.V. Rao remarks – "In a democracy public opinion is passive, and in India it is still worse, and that is all the reason why it is imperative that judiciary should come to our rescue. Otherwise …. The Constitution becomes ill-balanced, and leaves heavily on executive supremacy, and tyranny of the majority; and that was not intention of the makers".

The concept of Judicial Review has it foundation on the following constitutional principles:

a) The Government that cannot satisfy the 'governed', the legitimacy of its action cannot be expected to be considered legitimate and democratic and such government also cannot expect to receive the confidence and satisfaction of the governed.

b) Where the constitution guarantees the fundamental rights, legislative violation of the rights can be scrutinized by the court alone.

c) The legislature being the delegate and agent of the sovereign people has no jurisdiction and legal authority to delegate essential legislative function to any other body.

d) To maintain federal equilibrium (balance between the Centre and the states).

e) To protect the Fundamental Rights of the citizens.

In a number of cases, the Supreme Court has pointed out the significance of the power of judicial review in our country. Some of the observations made by it, in this regard, are given below:

"In India it is the Constitution that is supreme and that a statute law to be valid, must be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not".

"Our constitution contains express provisions for judicial review of legislation as to its conformity with the constitution. This is especially true as regards the Fundamental Rights, to which the court has been assigned the role of sentinel on the qui vive".

"As long as some Fundamental Rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by these Rights are not contravened".

Constitutional Provisional for Judicial Review in India

Provision for amendment of the Constitution is made with a view to overcome the difficulties which may encounter in future the working of the Constitution.

The Constitution of India explicitly establishes the doctrine of Judicial Review in several Articles, such as 13, 32, 131, 136, 143, 226 and 246.

Art. 13(2) says that "the State shall not make any law which takes away or abridges the right conferred by this part and any law made in contraventions of this clause shall, to the extent of the contravention, be void". Thus, the basic idea of Judicial Review is that law should be the generator of peace, happiness and harmony; the ruler has no legal authority to inflict pain, torture and tyranny on the ruled and to usurp the basic rights of freedom and liberty of people which are rooted in the ancient Indian civilization and culture. Under the impact of ancient Indian heritage the Constitution of India of 1950 evolved a unique system of Judicial Review. The fundamental subject of Judicial Review in the present constitution of India relates to :

a) Enactment of legislative Act in violation of the constitutional mandates regarding distribution of powers.

b) Delegation of essential legislative power by the legislature to the executive or any other body.

c) Violation of fundamental rights.

d) Violation of various other constitutional restrictions embodied in the constitution.

e) Violation of implied limitations and restrictions.

Ninth Schedule

In the constitution founded on popular sovereignty the power of Judicial Review is inherent and natural. A right which is natural and inherent cannot be destroyed by the Constitutional Amendments. There are implied limitations on such amending power in India. Exercise of such wide amending power destroys the natural rights of the citizens. By incorporating various legislative statutes in Schedule Nine of the Constitution as introduced by Art. 31B, an attempt has been made to completely destroy the power of Judicial Review in regard to these statutes, but it must be realized that these amendments themselves have to be tested on the touchstone of reasonableness, the will of the sovereign people, intention of the constitution makers and the spirit of the constitution. It appears apparently clear that power to annihilate the right of Judicial Review is beyond the jurisdiction of the Indian Parliament.

Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present (in 2016) their number is 282. Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters.

Article 31-B is a 'mechanical Article which provides that any legislative Act or its provision, which is added in Schedule Nine, is immune from Judicial Review'. This Article is 'very drastic and is a political device to fetter the hands of the court in determining legislative lapses'. The rulers made under such statutes and Regulations are immune from judicial scrutiny.

8.2 Judicial Activism

Judicial activism denotes the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. In other words, it implies the assertive role played by the judiciary to force the other two organs of the government (legislature and executive) to discharge their constitutional duties. In this process, the judicial creativity or craftsmanship is utilized to fill in the gaps between the law as it is and the law as it ought to be built in this process is the proper perception and commitment to proper social values. This judicial creativity is called 'judicial activism'. In other words it means "an active interpretation of existing legislation by a judge made with a view to enhance the utility of legislation for social betterment".

The concept of judicial activism originated and developed in the USA. This term was first coined in 1947 by Arthur Schlesinger Jr., an American historian and educator. In India, the doctrine of judicial activism was introduced in mid-1970s. Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai laid the foundations of judicial activism in the country.

Judicial Activism is a powerful weapon which the judges have to wield to subserve the ends of justice by making the law responsive to the felt necessities of the changing times. The scope of judicial activism varies with the courts power of Judicial Review. Recognizing this justice Bhagwati observed: "Judicial activism is now a central feature of every political system that vests adjudicatory power in a free and independent judiciary".

Justice J.S. Verma has been more emphatic in laying down the exact norms of sufficient activist criterion. The learned judge has remarked: "Judicial Activism is required only when there is inertia in others. Proper judicial activism is that which brings about results with the least judicial intervention. If everyone else is working we do not have to step in". Justice Cardoze said, "The law has its epochs of ebb and flow, the flood tides are on us. The old order may change yielding place to new; but the transition is never an easy process."

Justification of Judicial Activism

According to Dr. B.L. Wadehra, the reasons for judicial activism are as follows:

a) There is near collapse of the responsible government, when the Legislature and Executive fail to discharge their respective functions. This results in erosion of the confidence in the Constitution and democracy amongst the citizens.

b) The citizens of the country look up to the judiciary for the protection of their rights and freedoms. This leads to tremendous pressure on judiciary to step in aid for the suffering masses.

c) Judicial Enthusiasm, that is, the judges like to participate in the social reforms that take place in the changing times. It encourages the Public Interest Litigation and liberalises the principle of 'Locus Standi'.

d) Legislative Vacuum, that is, there may be certain areas, which have not been legislated upon. It is therefore, upon court to indulge in judicial legislation and to meet the changing social needs.

e) The Constitution of India has itself adopted certain provisions, which gives judiciary enough scope to legislate or to play an active role.

Similarly, Subhash Kashyap observes that certain eventualities may be conceived when the judiciary may have to overstep its normal jurisdiction and intervene in areas otherwise falling within the domain of the legislature and the executive:

i. When the legislature fails to discharge its responsibilities.

ii. In case of a 'hung' legislature when the government it provides is weak, insecure and busy only in the struggle for survival and, therefore, unable to take any decision which displeases any caste, community, or other group.

iii. Where the legislature and the executive fail to protect the basic rights of citizens, like the right to live a decent life, healthy surroundings, or to provide honest, efficient and just system of laws and administration.

iv. Where the court of law is misused by a strong authoritarian parliamentary party government for ulterior motives, as was sought to be done during the emergency aberration.

According to Dr. Vandana, the concept of judicial activism can be seen to be reflecting from the following trends, namely:

i. Expansion of rights of hearing in the administrative process.
ii. Excessive delegation without limitation.
iii. Expansion of judicial control over discretionary powers.
iv. Expansion of judicial review over the administration.
v. Promotion of open government.
vi. Indiscriminate exercise of contempt power.
vii. Exercise of jurisdiction when non-exist.
viii. Over extending the standard rules of interpretation in its search to achieve economic, social and educational objectives.
ix. Passing of orders which are per se unworkable.

Apprehensions of Judicial Activism

The same jurist Upendra Baxi also presented a typology of fears which are generated by judicial activism. He observes: "The facts entail invocation of a wide range of fears. The invocation is designed to bring into a nervous rationality among India's most conscientious justices".. He described the following types of fears:

a) ***Ideological fears***: (Are they usurping powers of the legislature, the executive or of other autonomous institutions in a civil society?)
b) ***Epistemic fears***: (Do they have enough knowledge in economic matters of a Manmohan Singh, in scientific matters of the Czars of the atomic energy establishment, the captains of the Council of Scientific and Industrial Research , and so on?).
c) ***Management fears***: (Are they doing justice by adding this kind of litigation work load to a situation of staggering growth of arrears?).
d) ***Legitimation fears***: (Are not they causing depletion of their symbolic and instrumental authority by passing orders in public interest litigation which the executive may bypass or ignore? Would not the people' s faith in judiciary, a democratic recourse, be thus eroded?).
e) ***Democratic fears***: (Is a profusion of public interest litigation nurturing democracy or depleting its potential for the future?).
f) ***Biographic fears***: (What would be my place in national affairs after superannuation if I overdo this kind of litigation?).

8.3 Judicial Restraint

The judiciary has been assigned active role under the constitution. Judicial activism and judicial restraint are facets of that uncourageous creativity and pragmatic wisdom. The concept of judicial activism is thus the polar opposite of judicial restraint. Judicial activism and judicial restraint are the two terms used to describe the philosophy and motivation behind some judicial decision. At most level, judicial activism refers to a theory of judgment that takes into account the spirit of the law and the changing times, while judicial restraint relies on a strict interpretation of the law and the importance of legal precedent. Judicial restraint is a theory of judicial interpretation that encourages judges to limit the exercise of their own power. It asserts that judges should hesitate to strike down laws unless they are obviously unconstitutional. Judicially-restrained judges respect stare-decisis, the principle of upholding established precedent handed down by past judges.

Judicial restraint, a procedural or substantive approach to the exercise of judicial review. As a procedural doctrine, the principle of restraint urges judges to refrain from deciding legal issues, and especially constitutional ones, unless the decision is necessary to the resolution of a concrete dispute between adverse parties. As a substantive one, it urges judges considering constitutional questions to grant substantial deference to the views of the elected branches and invalidate their actions only when constitutional limits have clearly been violated. Compare judicial activism. The courts should hesitate to use judicial review to promote new ideas or policy preferences. In short, the courts should interpret the law and not intervene in policy-making. Judges should always try to decide cases on the basis of:

i. The original intent of those who wrote the constitution.

ii. Precedent – past decisions in earlier cases.

iii. The court should leave policy making to others.

They "restrain" themselves from setting new policies with their decisions. They make decisions strictly based on what the Constitution says. One can identify at least four institutional reasons for judicial restraint. These are concerns about 1) judicial expertise, 2) the incrementalist nature of judicial law- making, 3) institutional legitimacy and 4) the reputation of the courts.

Supreme Court Observations

While delivering a judgement in December 2007, the Supreme Court of India called for judicial restraint and asked courts not to take over the functions of the legislature or the executive, saying there is a broad separation of powers under the Constitution and each organ of the state must have respect for others and should not encroach on others' domain. In this context, the concerned Bench of the court made the following observations:

1. The Bench said, "We are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. This is clearly unconstitutional. In the name of judicial activism, judges cannot cross their limits and try to take over functions which belong to another organ of the state".
2. The Bench said, "Judges must know their limits and must not try to run the government. They must have modesty and humility, and not behave like emperors".
3. Quoting from the book 'The Spirit of Laws' by Montesquieu on the consequences of not maintaining separation of powers among the three organs, the Bench said the French political philosopher's "warning is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for 'overreach' and encroachment on the domain of the other two organs."
4. "The courts must not embarrass administrative authorities and must realise that administrative authorities have expertise in the field of administration while the court does not."
5. The Bench said, "The justification often given for judicial encroachment on the domain of the executive or the legislature is that the other two organs are not doing their jobs properly. Even assuming this is so, the same allegations can be made against the judiciary too because there are cases pending in courts for half-a-century".
6. If the legislature or the executive was not functioning properly, it was for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who would fulfil their expectations or by other lawful methods, e.g., peaceful demonstrations.
7. "The remedy is not in the judiciary taking over the legislative or the executive functions, because that will not only violate the delicate balance of power enshrined in the Constitution but also (because) the judiciary has neither the expertise nor the resources to perform these functions."
8. The Bench said: "Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the state. It accomplishes this in two ways: first, judicial restraint not only recognises the equality of the other two branches with the judiciary, it also fosters that equality by minimising inter-branch interference by the judiciary. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach on the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored".

8.4 Judicial Reform

An independent and impartial judiciary, and a speedy and efficient system are the very essence of civilization. According to Parkinson law, Judicial Reform is a complex subject.A good judicial system produces many 'economic, political, and social benefits'. An effective judicial system is necessary to check abuses of government power, enforce property rights, and enable exchanges between private parties. A fair, efficient, affordable, and accessible justice delivery system aids in market development; supports investment, including foreign direct investment; and stimulates economic growth. Of the three branches of government, the judiciary is "in a unique position to support sustainable development by holding the other two branches accountable for their decisions and underpinning the credibility of the overall business and political environment."

Judicial reforms are aimed, in part, at lowering the transaction costs of litigation. In civil cases, parties go to court in order to resolve a dispute, which they have not been able to resolve privately. In other words, the cost of settling the dispute privately between the parties is very high. The Courts in India are functioning according to the procedure laid down in the Criminal Procedure Code, Civil Procedure Code, Indian Evidence Act etc. The Judicial Reform has become a great challenge to the polity because there is undue delay of disposal of cases in India. Judiciary is over-burdened and rendered ineffective with unnecessary litigation, delayed procedures, obsessive concern with the livelihood of advocates at the cost of justice to litigant public and indiscriminate application of writ jurisdiction. The age-old village institutions for justice were allowed to wither away completely.

The purpose of Judicial Reforms is to build a credible justice system that will provide agency/channel for citizens to secure their rights through legitimate process. The government is accountable to them. The citizens should enable to resolve their mutual disputes in a free, fair and speedy manner including disputes against the mighty government. The failure of the justice system has several disastrous implications in society. As Gladstone observed, the proper function of a government is to make it easy for the people to do good and difficult for them to do evil. The only sanction to ensure good conduct and to prevent bad behavior in society is swift punishment. In the absence of the state's capacity to enforce law and to mete out justice, rule of law has all but collapsed. According to Daniel Webster, the outstanding American Lawyer, 'Justice is the greatest end of man. Justice is the end while law is a means'. The purpose of Judicial Reform is as follows:

a) Improving the independence, integrity and professionalism of the judiciary by developing and maintaining a professional cadre of judges and legal professionals, through a combination of appropriate training, incentive systems and improvement in working conditions.
b) Increasing the efficiency of the judiciary through improved resource allocation and management as well as case management and capacity building.
c) Ensuring the transparency and accountability of the judiciary through the establishment of an effective control and supervision system, the gathering and dissemination of legal information.
d) Ensuring access by the poor to judicial services and the delivery of quality judicial services.

Major Reforms Needed

The following are some of the major reforms that need to be implemented without further delay.

1. Rural Courts for Speedy Justice.
2. Indian Judicial Service.
3. Judicial procedures.
4. Higher Courts.
5. Judicial Commission.
6. Crime Investigation.

1. Rural Courts for Speedy Justice

Perhaps the most important practical reform would be constitution of rural courts for speedy justice. As already stated, the number of judges in our society is slightly over 10 per million population. This density is roughly ten percent of the density of judges (per unit population) in more advanced and law-abiding societies. Even this low number is highly skewed with pitiful shortages in subordinate judiciary and ridiculously large numbers in higher courts. The Supreme

Court, which was originally designed to consist of a chief justice and not more than 7 other judges has now been expanded to a total strength of 26.

2. Indian Judicial Service

In the subordinate courts there have been 'inordinate delays and varying levels of efficiency'. It is high time that the 'Indian Judicial Service' (IJS) is created as an All India Service under article 312 of the constitution. All the offices of the District and Sessions Judges should be held by persons 'recruited to such a service after adequate training and exposure'. Only such a meritocratic service with a competitive recruitment, high quality uniform training and assured standards of probity and efficiency would be able to ensure speedy and impartial justice. A fair proportion of the High Court Judges could be drawn from the Indian Judicial Service.

3. Judicial procedures

The civil and criminal procedure codes and the laws of evidence have to be substantially revised to meet the requirements of modern judicial administration. While the principles underlying the procedural law are valid even to day, in actual practice several procedures have become cumbersome, dilatory, and often counter-productive.

4. Higher Courts

The number of judges in the higher courts should be substantially reduced and their appellate jurisdiction should be severely restricted. The Supreme Court jurisdiction should be limited only to matters involving interpretation of the Constitution or disputes between two States or Union and States. In effect, the Supreme Court should function only as a Constitutional Court and a Federal Court. The high courts should not have the power to interpret the Constitution except in matters involving the State legislation. The appellate powers of high courts should be severely restricted in order to reduce the case load and ensure the sanctity and authority of the high courts.

5. Judicial Commission

The present mechanism for appointment of judges of higher courts has become very dilatory and ineffective. The Supreme Court's judgement arrogating to itself the complete power of appointment of judges has made the remedy worse than the disease. It is absurd to assume that in a democratic society any organ of state should perpetuate itself without any degree of accountability to the people as the ultimate sovereigns. Nowhere in the democratic world have the executive and legislature been made so utterly impotent in matters relating to judicial appointments as in India. Therefore the Judicial Commission should be empowered to try an errant judge and upon the recommendations of the Judicial Commission the President should be empowered to remove the judge held guilty of high crimes and misdemeanors.

6. Crime Investigation

The combination of several functions including crime investigation, riot control, intelligence gathering, security of state properties and protection of important citizens – all in a single police force has had a devastating effect on criminal justice system. The police forces have become inefficient and increasingly partisan. As the government of the day has complete powers over the crime investigation machinery as well as the legal authority to drop criminal charges against the accused, crime investigation has become a play thing of partisan politics. Equally important, only when crime investigation machinery is accountable to judiciary can the obnoxious and inhuman practice of torture, third degree and extra judicial executions in fake encounters be stopped.

Summary

In a way, for the transitional societies like India which had embarked on an ambitious path of practising the democratic system of governance even in the face of a number of hindrances emanating from the socio-economic and politico-cultural milieu of the country. The credit must be given to the wisdom and the farsightedness of the fathers of the Constitution in this regard, for despite adopting the parliamentary system of governance of the British mould in its letter and spirit, to the maximum extent possible, they remained alive to the peculiarities of the Indian political system. During the early years of the functioning of the judicial system, the judicial process, attuned to the principles of natural justice, adopted the well-established adversarial system of adjudication. The pattern of the court, in its ascending order, followed the hierarchical structure and was accessible, under the Constitution, to every citizen of the country. The courts on rare occasions defaulted, delayed, and deviated from the desirable path. But such instances have been rectifi ed later by the larger benches or criticized by jurists or set right by means of the constitutional amendments. Thus, despite all odds, the Indian judicial system stayed put, by and

large, within the broad jurisdictional domains set out by the Constitution. Justice should be free from any favour or influences. So, judiciary has been kept independent of legislative and executive interference. Judiciary has been provided with the Writ jurisdiction for protection of Fundamental Right of the people. Judiciary is provided with various powers which helps it to constitute as the guardian of the Constitution. Judicial review is 'the power exerted by the courts of a country to examine the actions of the legislatures, executive and administrative arms of government and to ensure that such actions conform to the provisions of the nation's Constitution'. It has two important functions, like, of legitimizing government action and the protection of constitution against any undue encroachment by the government. Judicial review is a technique by which the courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the constitution. The foundation of judicial review is (a) that the constitution is a legal instrument, and (b) that this law is superior in status to the laws made by the legislature that is itself set up by the constitution. It is now well established in India that judicial review constitutes the basic structure or feature of the Constitution of India. In constitutional review, judicial restraint governs the extent to which, or the intensity with which, the courts are willing to scrutinise a legislative decision and the justification advanced in support of that decision. Being restrained indicates a less intense or probing level of the judicial scrutiny of legislation.

Keywords/Glossary

Governance: The act of governing; exercising power.
Judicial interpretation: The method by which courts establish the meaning of constitutional provisions or legislative acts.
Judicial review: Powers of the courts to decide upon the constitutionality of a legislative or an executive act and invalidate that act if it is determined to be contrary to constitutional provisions or principles.
Judiciary: The branch of government that is endowed with the authority to interpret the law, adjudicates legal disputes, and otherwise administers justice. "Judiciary" is also used to refer to judges of a court considered as a group.
Ratification: Making something valid by formally approving or confirming it: 'a referendum may ratify a constitution'; 'Parliament may ratify a treaty'.

Self Assessment

1. The power of judicial review means:

A. The power of the courts to define and interpret constitution.
B. The power of the courts to declare null and void any legislative or executive act, which is against the provisions of the Constitution.
C. The power of the judiciary to define and interpret laws.
D. The power of the courts to legislate when there is no statutory provision.

2. Which one of the following statements is false?

A. Judicial review allows a High Court Judge to examine the lawfulness of the decisions made by public bodies carrying out their public functions.
B. Judicial review is not available where there is a right of appeal against the decision of a public body.
C. Public' means that the body making the decision is governmental and the decisions it makes concern the rights of citizens generally rather than purely private rights.
D. Judicial review allows the High Court to review enactments.

3. Which one of the following is the constitutional basis of judicial review?

A. Common Law
B. Statute
C. The rule of Law and the separation of powers.
D. Equity

4. Judicial Review in the Indian Constitution is based on which of the following?
A. Due process of Law
B. Conventions
C. Procedure established by law
D. Rule of law

5. Who restored the Judicial Review power of Judiciary under Indian Constitution?
A. Supreme Court of India
B. High Court
C. Chief Metropolitan Magistrate
D. District Court

6. Where did the concept of judicial activism originate?
A. India
B. USA
C. Germany
D. Japan

7. Who amongst the following is associated with judicial activism in India?
A. Justice P.N. Bhagwati
B. Justice O. Chinnappa Reddy
C. Justice D.A. Desai
D. All of the above

8. Public Interest Litigation in India is to be linked with ----------
A. Judicial Review
B. Judicial Activism
C. Judicial Intervention
D. Judicial Sanctity

9. Which of the following statements are correct about judicial activism?
A. It is the process of lawmaking by judges.
B. It is the practice in the judiciary of protecting individual rights.
C. Judges depart from strict adherence to judicial precedents.
D. All of the above

10. Who coined the term judicial activism?
A. Montesquieu
B. Justice V.R. Krishna Iyer
C. Arthur Schlesinger Jr.
D. None of the above

11. ……. is a theory of judicial interpretation that encourages judges to limit the exercise of their own power.
A. Judicial restraint
B. Judicial Power
C. Precedent

D. None of the Above

12. Judicial restraint, a procedural or substantive approach to the exercise of …..
A. Judicial Activism
B. Judicial Power
C. Judicial Review
D. Parliament

13. In one form or another, judges face a choice between innovation and ……
A. Precedent
B. Judicial Review
C. Judicial Power
D. Restraint

14. Who among the following made English language as official language for Supreme Court proceeding?
A. Lord Dalhousie
B. Warren Hastings
C. Lord William Bentinck
D. Lord Cornwallis

15. ……..can include judicial administration, compensation, judicial independence versus accountability, performance evaluation, and judicial selection and retention.
A. Judicial Reform
B. Judicial Activism
C. Judicial Review
D. None of the Above

16. Which one of the following statements is false?
A. The judiciary maintains order and manages public services.
B. The organ of government which carries out the legislative function is called the Legislature.
C. The organs of government carrying out the executive function are collectively referred to as the executive.
D. The judicial organ of government is the judiciary.

Answer for Self Assessment

1.	B	2.	B	3.	C	4.	C	5.	A
6.	B	7.	D	8.	B	9.	D	10.	C
11.	A	12.	C	13.	D	14.	C	15.	A
16.	A								

Review Questions

1. Explicate the notion of judicial review?
2. How and why judicial review is necessary?
3. What is the difference between 'procedure established law and 'due process of law'?
4. What is meant by 'Judicial Activism' and how does it help in the redressed of injustice?
5. How are judges to exercise a constitutionally appropriate degree of restraint, without ceding questions about the legality of decisions under scrutiny to the elected branches?
6. How can judges uphold human rights, without straying beyond the limits of their constitutional role?
7. "Supreme Court is the guardian of Indian Constitution and a protector of Fundamental Rights" Explain.
8. Critically explicate important judicial reforms in India?
9. Why does judicial reforms need of the hour?

Further Readings

Sathe, S.P. 2001. *Judicial Activism in India*. New Delhi: Oxford University Press.

Thakur, Ramesh. 1995. *The Government and Politics of India*. London: Macmillan.

Daley.J. 2000. 'Defining Judicial Restraint', in Tom Campbell & Jeffrey Goldsworthy (eds.) Judicial Power, Democracy and Legal Positivism, Aldershot: Ashgate

Unit 09: State Executive

CONTENTS

Objectives
Introduction
9.1 Governor
9.2 Powers and Functions of Governor
9.3 Position and Role of the Governor
9.4 Chief Minister
9.5 Powers and functions of Chief Minister
9.6 Council of Ministers
Summary
Keywords/Glossary
Self Assessment
Answers for Self Assessment
Review Questions
Further Readings

Objectives

After studying this chapter, you would be able to:

- explain the appointment of a governor.
- examine the powers and functions of a governor.
- explain the appointment of Chief Minister.
- analyse powers and functions of Chief Minister.
- explain the constitutional provisions of Council of Ministers.
- analyse the responsibility of ministers.

Introduction

Articles 153 to 167 in Part VI of the Constitution deal with the state executive.The creation of a whole set of institutions and processes of governance at the level of states fulfils an important prerequisite for India to become a federation, at least theoretically. The most distinct feature of the state-level governance in India may arguably be a relatively subservient position vis-à-vis the Centre in both constitutional arrangement and practical functioning of the executive. At the State level, generally following the central pattern, the Governor, like the President, acts as a nominal head and the real powers are exercised by the Council of Ministers headed by the Chief Minister. The members of the Council of Ministers at the State level are also collectively and individually responsible to the lower House of the State Legislature for their acts of omission as well as commission. Hence, the major segment which accounts for much of what is called as the state government is the executive branch of the government, though the Legislative Assembly also occupies a place of prestige and reckoning in the governmental system of the state. Above all, even the executive system of the state revolves around the key constitutional functionaries like the Governor and the Chief Minister, with the Council of Ministers and the bureaucracy playing a second fiddle to them. The broad theme of the chapter, therefore, concentrates on the office of the Governor and the Chief Minister, with special reference to both the constitutional provisions as well as the political trends in position and functioning of the two authorities.

9.1 Governor

According to the Constitution of India, there has to be a Governor for each State. If need be, one person may be appointed Governor for even two or more States. The executive authority of every State is vested in the Governor of the state. He/She may exercise the same, directly or through the officers subordinate to him.

Appointment of the Governor

The 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. In a way, he is a nominee of the Central government. But, as held by the Suprem Court in 1979 the office of governor of a state is not an employment under the Central government. It is an independent constitutional office and is not under the control of or subordinate to the Central government. In order to become a Governor a person must have following qualifications:

a. He/she must be a citizen of India;

b. He/she should be at least 35 years; and

c. He/she cannot hold any office of profit during his tenure.

Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so that the smooth functioning of the constitutional machinery in the state is ensured. However, both the conventions have been violated in some of the cases.

Conditions of Governor's Office

The Constitution lays down the following conditions for the governor's office:

I. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.

II. He should not hold any other office of profit.

III. He is entitled without payment of rent to the use of his official residence (the Raj Bhavan).

IV. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

V. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.

VI. His emoluments and allowances cannot be diminished during his term of office.

Oath or Affirmation

Before entering upon his office, the governor has to make and subscribe to an oath or affirmation. In his oath, the governor swears:

a) to faithfully execute the office;

b) to preserve, protect and defend the Constitution and the law; and

c) to devote himself to the service and well-being of the people of the state.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the senior-most judge of that court available. Every person discharging the functions of the governor also undertakes the similar oath or affirmation.

Term of the Office

The Governor is appointed for a term of five years but normally holds office during the pleasure of the President. He/she may resign before the expiry of the term or may be removed by the President earlier. As a matter of fact while appointing or removing the Governor the President goes by the advise of the Prime Minister. He/she is entitled to a rent-free residence which is called Raj Bhawan. His/her emoluments, allowances and privileges are specified by the law. However, the emoluments and allowances of the Governor cannot be reduced during his tenure.

9.2 Powers and Functions of Governor

The powers and functions of the Governor can broadly be categorised under two heads namely (a) as the head of the State, and (b) as the representative of the Union Government. Under the head of the State you will study his/her executive, legislative, financial as well as the power to grant pardon.

Executive Powers

All the executive functions in the State are carried on in the name of the Governor. He/she not only appoints the Chief Minister but on his/her advice appoints the members of the Council of Ministers. According to a well established convention he/she calls the leader of the majority party or an alliance of parties (if no single party in the Legislative Assembly gets majority) to form the Government. On the advice of the Chief Minister he/she allocates portfolios among the ministers.
He/she appoints the Advocate- General and Chairman and members of the State Public Service Commission.
He/she has the power to appoint judges of the courts, other than the High Court. He/she, however, is consulted when the judges of the State High Court are appointed by the President of India.
While discharging all his/her functions as Head of the Executive in the State, the Governors like the President, is aided and advised by the Council of Ministers headed by the Chief Minister.

Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:
1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.
5. He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
6. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
7. He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
8. When a bill is sent to the governor after it is passed by state legislature, he can:
(a) He/she may give assent to the bill; in that case the bill becomes a law;
(b) He/she may withhold the assent; in which case the bill fails to become a law;
(c) He/she may return the bill with his message. If the State Legislature passes the bill in its original shape or in a modified form, the Governor has to give the assent to the bill;
(d) He/she may reserve the bill for the consideration of the President.
9. He can promulgate ordinances when the state legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly. He can also withdraw an ordinance anytime. This is the most important legislative power of the governor.
10. He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

I. No money bill can be introduced in the State Legislative Assembly without the prior permission of the Governor.
II. The annual and supplementary budgets are introduced in the Assembly in the name of the Governor.
III. The Governor has the control over the State Contingency Fund.

Judicial Powers

The judicial powers and functions of the governor are:

I. He can grant pardons, reprives, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

II. He is consulted by the president while appointing the judges of the concerned state high court.

III. He makes appointments, postings and promotions of the district judges in consultation with the state high court.

IV. He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

9.3 Position and Role of the Governor

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:

a. The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).

b. There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).

c. The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.

From the above, it is clear that constitutional position of the governor differs from that of the president in the following two respects:

1. While the Constitution envisages the possibility of the governor acting at times in his discretion, no such possibility has been envisaged for the President.

2. After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.

According to the constitutional experts, the Governor's role in three respects i.e. recommending to the President for the proclamation of emergency; appointing a Chief Minister in case no party gets a clear majority and deciding the fate of the Chief Minister in case of intra-party defections, has become very controversial. The deterioration in the political standards and practices that has come about in the wake of multi-party ministries in many of the States, party rivalries, political defections and fragmentation of the political parties has been at the root of these controversies. Suggestions and recommendations of the Administrative Reforms Commission as well as of Sarkaria Commission have remained only on paper, in spite of the fact that these recommendations would help in minimising partiality on the part of the functioning of the Governors.

9.4 Chief Minister

Taking the analogy of the parliamentary system of governance at the state level, the Constitution provides for the office of the Chief Minister to be the real executive of the state. As the head of the Council of Ministers of the state, the Chief Minister happens to be the chief advisor to the Governor in the discharge of his functions as head of the state. In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (de jure

executive) and the Chief Minister is the real executive authority (de facto executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

Appointment of Chief Minister

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

Oath, Term and Salary

Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the Chief Minister swears:
1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.6 But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

9.5 Powers and functions of Chief Minister

Chief Minister is the head of the Council of Ministers of his State. The constitutional position of the Chief Minister is more or less similar to that of the Prime Minister. The Chief Minister plays an important role in the administration of the State. The powers and functions of the Chief Minister can be studied under the following heads:

In Relation to Council of Ministers

The Chief Minister enjoys the following powers as head of the state council of ministers:
(a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
(b) He allocates and reshuffles the portfolios among ministers.
(c) He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
(d) He presides over the meetings of the council of ministers and influences its decisions.
(e) He guides, directs, controls and coordinates the activities of all the ministers.
(f) He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the governor:
(a) He is the principal channel of communication between the governor and the council of ministers.7 It is the duty of the Chief Minister:
(i) to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
(ii) to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and

(iii) if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
(b) He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:
(a) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
(b) He can recommend the dissolution of the legislative assembly to the governor at any time.
(c) He announces the government policies on the floor of the house.

Other Powers and Functions

In addition, the Chief Minister also performs the following functions:
(a) He is the chairman of the State Planning Board.
(b) He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.8
(c) He is a member of the Inter-State Council and the National Development Council, both headed by the prime minister.
(d) He is the chief spokesman of the state government.
(e) He is the crisis manager-in-chief at the political level during emergencies.
(f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
(g) He is the political head of the services.
Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduce to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

9.6 Council of Ministers

Following the model of the parliamentary government, the real government of the state consists of the Council of Ministers headed by the Chief Minister. Significantly, over the years, in most of the parliamentary systems of governance, the place of pride ordained for the collective executive in the form of the Council of Ministers, has been usurped by the individual personality of the Prime Minister or the Chief Minister, as the case may be. Not remaining immune to this worldwide phenomenon, the Council of Ministers in the states have also lost much of their sheen, if not vitality, in face of the growing personality-based clout of the Chief Minister.
The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

Constitutional Provisions

Article 163—Council of Ministers to aid and advise Governor

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
3. The advice tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164—Other Provisions as to Ministers

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.
3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
4. The ministers shall hold office during the pleasure of the Governor.
5. The council of ministers shall be collectively responsible to the state Legislative Assembly.
6. The Governor shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the state legislature.

Article 166—Conduct of Business of the Government of a State

1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
3. The Governor shall make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act in his discretion.

Article 167—Duties of Chief Minister

It shall be the duty of the Chief Minister of each state
1. To communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation
2. To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for
3. If the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council

Article 177—Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he may be named a member. But he shall not be entitled to vote.

Appointment of Ministers

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

Oath and Salary of Ministers

Before a minister enters upon his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the minister swears:
1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

Responsibility of Ministers

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council. Alternatively, the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also mean that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advice the governor to dismiss him. By exercising this power, the chief minister can ensure the realisation of the rule of collective responsibility.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

Composition of the Council of Ministers

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation. Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister−supreme governing authority in the state. The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government. The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings. At times, the council of ministers may also include a deputy chief minister. The deputy chief ministers are appointed mostly for local political reasons.

Summary

In the discussions on the Indian political system, the subject of the state-level system of governance is ordinarily taken to be a topic of insignificance and, therefore, left out in the cold without any elaborate discussion. Though the basic structural postulates of the state executive are patterned on the system prevailing at the Union level, there appear to be marked distinctions at least in the powers and functions of the head of the state executive, that is, the Governor of the state. In fact, the office of the Governor has been one of the most hotly debated subjects in the discourses on the

Indian politics as its implications are not only grave for the proper functioning of the state executive but they also throw a spanner in the works of Centre-state relations in the country.

The Head of the State is Governor who is approved and appointed by the President on the recommendation of the Union Cabinet. His/her tenure is of five years but can be removed from his office even prior to the expiry of the term. He/She also exercises legislative, financial, judicial and discretionary powers. He/She performs his/her functions as the executive head but is guided and advised by the Council of Minister's headed by the Chief Minister.

The discretionary powers which he/she exercises have made him/her a controversial person. Efforts have been made by Administrative Reforms Commission and Sarkaria Commission to make him/her impartial but nothing concrete has come out. The Chief Minister is the real head of the Government at the State level. The Governor appoints the Chief Minister. The person who commands the support of majority in the State Legislative Assembly is appointed as the Chief Minister by the Governor. Other Ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister presides over the Cabinet meetings. He/she lays down the policies of the State Government. He/she is the sole link between his ministers and the Governor. He/she Coordinates the functioning of different ministries. During normal times, the Governor exercises his/her powers on the advice of the Chief Minister but when there is a breakdown of constitutional machinery in the State, the Governor advises the President to proclaim constitutional emergency in his discretion. He/she administers the State, during constitutional emergency, on behalf of the President.

Keywords/Glossary

Decentralization: A process of governance where constituent units exercise administrative, legislative and/or fiscal authority. The process is also defined in the transfer of authority from central government to lower levels of government in political, administrative and territorial hierarchy.

Election: The process of selecting a person of choice through voting.

Executive/Executive Power: Having power to put decisions, laws, etc. into effect (power conferred on the executive).

Parliamentary system: A system of government in which the executive is composed of a select group of members of Parliament, called the cabinet, which is accountable to Parliament. The executive is dependent on direct or indirect support of the legislative (often termed the parliament), frequently expressed through a vote of confidence. Also known as parliamentarism; examples include the United Kingdom and India

Party: A political organization whose members have the same aim and belief; side in an argument or court case.

Self Assessment

1. Which of the following statement is/are not true about the status of Governor of a state in India?

A. Appointment of the same person as a governor for two or more states is possible.

B. A Governor acts as an agent of the central government.

C. A Governor is a nominal executive head (titular or constitutional head) of the state.

D. The office of governor of a state is an employment under the Central government.

2. In a case, if the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him will bear by:

A. One of the two states decided by the President.

B. The first state in which he was appointed.

C. Both the states shared by in such proportion as determined by the President of India.

D. The second state in which he has been appointed.

3. The oath of office to the governor is administered by:

A. The President of India.

B. The Chief Justice of the concerned state high court.

C. The Chief Justice of the Supreme Court.
D. None of the above

4. Which of the following powers does not possessed by a Governor?
A. Diplomatic Powers
B. Executive powers
C. Judicial powers
D. Legislative powers

5. Which article of the Indian Constitution provides for a Governor?
A. 151
B. 160
C. 171
D. 153

6. Who administers oath of office and secrecy to the Chief Minister?
A. President
B. Governor
C. Chief Justice of India
D. Chief Justice of a concerned High Court

7. What is the term of Chief Minister of a state?
A. 7
B. 8
C. 2
D. None of the Above

8. What is the minimum age to be appointed as the Chief Minister of a state?
A. 25 years
B. 30 years
C. 35 years
D. 18 years

9. Which of the following is not matched correctly?
A. Article 167: Duties of the Chief Minister
B. Article 163: Sworn in of the Chief Minister
C. Article 164: Provisions related to State Ministers
D. Article 166: Operations by the State Government

10. Which of the following power is not enjoyed by the Chief Minister?
A. The Governor appoints ministers only to those people who are recommended by the Chief Minister.
B. Chief Minister shifts all the ministers' departments.
C. Chief Minister can ask the governor to disassociate the Legislative assembly.
D. Chief Minister appoints judges of the state's high court.

11. The State Council is responsible to whom?

A. To the Governor
B. To the Legislative Assembly
C. To the Legislative Council
D. To the State Legislature

12. Which of the following Constitutional Amendment Acts has / have made the decisions of the Council of Ministers binding on the President of India?
A. 42nd and 44th Amendment Acts
B. 40th Amendment Act
C. 43rd Amendment Act
D. 40th and 41st Amendment Acts

13. Which one of the following is not correct in relation to the Council of Ministers?
A. The number of its members is not specified in the Constitution.
B. Its working is as per the provisions in the Constitution.
C. Its members and their ranks are decided by the Prime Minister.
D. It is recognized by the Constitution

14. What is the maximum allowed size of the Council of Ministers?
A. Maximum 48
B. No such upper limit
C. Cannot exceed 15% of the total members of Lok Sabha.
D. Cannot exceed 10% of the total members of Lok Sabha.

15. Which among the following is NOT a category of the Council of Ministers?
A. Cabinet Ministers
B. Ministers of State
C. Minister of the Crown
D. Deputy Ministers

Answers for Self Assessment

1.	D	2.	C	3.	B	4.	A	5.	D
6.	B	7.	D	8.	A	9.	B	10.	D
11.	B	12.	A	13.	B	14.	C	15.	C

Review Questions

1. How is Governor appointed?
2. What powers and functions are exercised by the Governor?
3. Explain the role and position of Governor?
4. Write a detailed note on the appointment of Chief Minister?
5. Critically examine the powers and functions of Chief Minister?
6. What is the position and role of Chief Minister?
7. How is the Council of Ministers formed in a State?

8. Evaluate the relationship between Governor and Chief Minister of a state?
9. Describe the relationship between Chief Minister and Council of Ministers?
10. Discuss in detail the composition of the Council of Ministers?

Further Readings

Arora, Ramesh K. and Rajni Goyal. 1995. Indian Public Administration. New Delhi: Vishwa Prakashan.
Austin, Granville. 2003. Working of a Democratic Constitution: A History of the Indian Experience. New Delhi: Oxford University Press.
Constituent Assembly. 1948. Draft Constitution of India. New Delhi: Government of India.
———. 1949. Constituent Assembly Debates, Volume VIII. New Delhi: Government of India.
Pylee, M.V. 1968. Constitutional Government in India. Bombay: Asia Publishing House.
Seervai, H.M. 1984. Constitutional Law of India, Volume II, 3rd Edition. Bombay: N.M. Tripathi Pvt. Ltd.

Unit 10: State Legislature

CONTENTS

Objectives

Introduction

10.1 Composition of Two Houses

10.2 Duration of Two Houses

10.3 Membership of State Legislature

10.4 Presiding Officer

10.5 Sessions of State Legislature

10.6 Powers and Functions of the State Legislature

10.7 Position of legislative council

10.8 Privileges of State Legislature

Summary

Keywords/Glossary

Review Questions

Self Assessment

Answer for Self Assessment

Further Readings

Objectives

- explain the composition of state legislature.
- analyse the position of legislative council.
- describe the special privileges of state legislature.
- examine relationship between both the Houses; and
- highlight that Vidhan Sabha is more powerful than Vidhan Parishad.

Introduction

The state legislature occupies a pre-eminent and central position in the political system of a state. Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature. Though these are similar to that of Parliament, there are some differences as well. There is no uniformity in the organisation of state legislatures. Most of the states have an unicameral system, while others have a bicameral system.

In most of the States, the Legislature consists of the Governor and the Legislative Assembly (Vidhan Sabha). This means that these State have unicameral Legislature. In a few States, there are two Houses of the Legislature namely, Legislative Assembly (Vidhan Sabha) and Legislative council (Vidhan Parishad) besides the Governor.Where there are two Houses, the Legislature, is known as bicameral. Five States have the bicameral, legislature. The Lagislative Assembly is known as lower House or popular House. The Legislative Council is known as upper House. Just as Lok Sabha has been made powerful at the Union level, the Legislative Assembly has been made a powerful body in the States. The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect. Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting. This Act of Parliament is

not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (i.e., by simple majority). "The idea of having a second chamber in the states was criticised in the Constituent Assembly on the ground that it was not representative of the people, that it delayed legislative process and that it was an expensive institution".

10.1 Composition of Two Houses

Legislative Assembly (Vidhan Sabha)

There is a Legislative Assembly (Vidhan Sabha) in every State. It represents the people of State. The members of Vidhan Sabha are directly elected by people on the basis of universal adult franchise. They are directly elected by all adult citizens registered as voters in the State. All men and women who are 18 years of age and above are eligible to be included in the voters' List. They vote to elect members of State Assembly. Members are elected from territorial constituencies. Every State is divided into as many (single member) constituencies as the number of members to be elected. As in case of Lok Sabha, certain number of seats are reserved for Scheduled Castes, and in some States for Scheduled Tribes also. This depends on population of these weaker sections in the State. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state. However, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.

The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly. Originally, this provision was to operate for ten years (ie, upto 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this is to last until 2020.

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state. In other words, the Constitution ensures that there is uniformity of representation between different constituencies in the state. The expression 'population' means, the population as ascertained at the last preceding census of which the relevant figures have been published.

Composition of Council

Vidhan Parishad is the upper House of the State Legislature. It is not in existence in very State. Very few States have bicameral Legislature that means having two Houses. Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 406. It means that the size of the council depends on the size of the assembly of the concerned state. This is done to ensure the predominance of the directly elected House (assembly) in the legislative affairs of the state. Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament. The Vidhan Parishad is partly elected and partly nominated. Most of the members are indirectly elected in accordance with the principle of proportional representation by means of single transferable vote system. Different categories of members represent different interests. The composition of the Legislative Council is as follows:

a) 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
b) 1/12 are elected by graduates of three years standing and residing within the state,
c) 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
d) 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
e) the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, 5/6 of the total number of members of a legislative council is indirectly elected and 1/6 are nominated by the governor. The members are elected in accordance with the system of proportional representation by means of a single transferable vote. The bonafides or propriety of

the governor's nomination in any case cannot be challenged in the courts. This scheme of composition of a legislative council as laid down in the Constitution is tentative and not final. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

10.2 Duration of Two Houses

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections. The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

Further, the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. This means that the assembly should be re-elected within six months after the revocation of emergency.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year. The retiring members are also eligible for re-election and re-nomination any number of times.

10.3 Membership of State Legislature

1. ***Qualifications***

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

a) He must be a citizen of India.

b) He must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose. In his oath or affirmation, he swears

i. To bear true faith and allegiance to the Constitution of India,

ii. To uphold the sovereignty and integrity of India,

c) He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.

d) He must posses other qualifications prescribed by Parliament.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

a. A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.

b. A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.

c. He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

a) if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature),

b) if he is of unsound mind and stands so declared by a court,

c) if he is an undischarged insolvent,

d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and

e) if he is so disqualified under any law made by Parliament.

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. These are mentioned here:

a) He must not have been found guilty of certain election offences or corrupt practices in the elections.

b) He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.

c) He must not have failed to lodge an account of his election expenses within the time.

d) He must not have any interest in government contracts, works or services.

e) He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.

f) He must not have been dismissed from government service for corruption or disloyalty to the state.

g) He must not have been convicted for promoting enmity between different groups or for the offence of bribery.

h) He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.

On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he should obtain the opinion of the Election Commission and act accordingly.

Oath or Affirmation

Every member of either House of state legislature, before taking his seat in the House, has to make and subscribe an oath or affirmation before the governor or some person appointed by him for this purpose. In this oath, a member of the state legislature swears:

a. to bear true faith and allegiance to the Constitution of India;

b. to uphold the sovereignty and integrity of India; and

c. to faithfully discharge the duty of his office.

Unless a member takes the oath, he cannot vote and participate in the proceedings of the House and does not become eligible to the privileges and immunities of the state legislature. A person is liable to a penalty of 500 for each day he sits or votes as a member in a House:

a) before taking and subscribing the prescribed oath or affirmation; or

b) when he knows that he is not qualified or that he is disqualified for its membership; or

c) when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by Parliament or the state legislature.

Members of a state legislature are entitled to receive such salaries and allowances as may from time to time be determined by the state legislature.

Vacation of Seats

In the following cases, a member of the state legislature vacates his seat:

Double Membership: A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.

Disqualification: If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.

Resignation: A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.

Absence: A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.

Other Cases: A member has to vacate his seat in the either House of state legislature,

i. if his election is declared void by the court,
ii. if he is expelled by the House,
iii. if he is elected to the office of president or office of vice-president, and
iv. if he is appointed to the office of governor of a state.

10.4 Presiding Officer

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council. A panel of chairmen for the assembly and a panel of vice-chairmen for the council is also appointed.

The Speaker

The members of Vidhan Sabha elect their presiding officer. The Presiding officer is known as the Speaker. The Speaker presides over the meatings of the House and conducts its proceedings. He maintains order in the House, allows the members to ask questions and speak. He puts bills and other measures to vote and announces the result of voting. The Speaker does not ordinarily vote at the time of voting. However, he may exercise casting vote in case of a tie. The Deputy Speaker presides over the meeting during the absence of the Speaker. He is also elected by the Assembly from amongst its members.

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place. Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

1. if he ceases to be a member of the assembly;
2. if he resigns by writing to the speaker; and
3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker. The Speaker nominates from amongst the members a panel of chairmen. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairmen is nominated.

Chairman of the Legislative Council

The Chairman is elected by the council itself from amongst its members. The Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;
2. if he resigns by writing to the deputy chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by the Chairman. The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final. As in the case of the Speaker, the salaries and allowances of the Chairman are also fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members. The deputy chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;

2. if he resigns by writing to the Chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the Chairman. The Chairman nominates from amongst the members a panel of vice chairmen. Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He has the same powers as the chairman when so presiding. He holds office until a new panel of vice-chairmen is nominated.

10.5 Sessions of State Legislature

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, ie, the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks. Adjournment sine die means terminating a sitting of the state legislature for an indefinte period. The power of the adjournment as well as adjournment sine die lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session. However, the governor can also prorogue the House which is in session. Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held. The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).
2. A Bill passed by the assembly but pending in the council lapses.
3. A Bill pending in the council but not passed by the assembly does not lapse.
4. A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
5. A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the council and so on require special majority, not ordinary majority. The presiding officer (i.e., Speaker

in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

10.6 Powers and Functions of the State Legislature

Law Making Function

The primary function of the State Legislature, like the Union Parliament, is law-making. The State Legislature is empowered to make laws on State List and Concurrent List. The Parliament and the Legislative Assemblies have the right to make the laws on the subjects mentioned in the Concurrent List. But in case of contradiction between the Union and State law on the subject the law made by the Parliament shall prevail.

Ordinary Bills

Bill in the Originating House An ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by any other member. The bill passes through three stages in the originating House, viz,

1. First reading,
2. Second reading, and
3. Third reading.

After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

Bill in the Second House In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

1. it may pass the bill as sent by the assembly (i.e., without amendments);
2. it may pass the bill with amendments and return it to the assembly for reconsideration;
3. it may reject the bill altogether; and
4. it may not take any action and thus keep the bill pending.

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the Houses and the same is sent to the the governor for his assent. On the other hand, if the assembly rejects the amendments suggested by the council or the council rejects the bill altogether or the council does not take any action for three months, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the assembly for the second time.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months–three months in the first instance and one month in the second instance. The Constitution does not provide for the mechanism of joint sitting of both the Houses to resolve the disagreement between the two Houses over a bill. On the other hand, there is a provision for joint sitting of the Lok Sabha and the Rajya Sabha to resolve a disagreement between the two over an ordinary bill. Moreover, when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead. Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre

Assent of the Governor Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

1. he may give his assent to the bill;
2. he may withhold his assent to the bill;
3. he may return the bill for reconsideration of the House or Houses; and
4. he may reserve the bill for the consideration of the President.

If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the

governor must give his assent to the bill. Thus, the governor enjoys only a suspensive veto. The position is same at the Central level also.

Assent of the President When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented gain to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows: A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be government bill and can be introduced only by a minister.

After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council. If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change. If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.

Finally, when a Money Bill is presented to the governor, he may give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission. When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

Financial Powers

The State Legislature keeps control over the finances of the State. A money bill is introduced first only in the Vidhan Sabha. The money bill includes authorisation of the expenditure to be incurred by the government, imposition or abolition of taxes, borrowing, etc. The bill is introduced by a Minister on the recommendations of the Governor. The money bill cannot be introduced by a private member. The Speaker of the Vidhan Sabha certifies that a particular bill is a money bill. After a money bill is passed by the Vidhan Sabha, it is sent to the Vidhan Parishad. It has to return this bill within 14 days with, or without, its recommendations. The Vidhan Sabha may either accept or reject its recommendations. The bill is deemed to have been passé by both Houses. After this stage, the bill is sent to the Governor for his assent. The Governor cannot withhold his assent, as money bills are introduced with his prior approval.

Control over the Executive

Like the Union Legislature, the State Legislature keeps control over the executive. The Council of Ministers is responsible to Vidhan Sabha collectively and remains in the office so long as it enjoys the confidence of the Vidhan Sabha. The Council is removed if the Vidhan Sabha adopts a vote of no-confidence, or when it rejects a government bill. In addition to the no-confidence motion, the Legislature keeps checks on the government by asking questions and supplementary questions, moving adjournment motions and calling attention notices.

Electoral Functions

The elected members of the Vidhan Sabha are members of the Electoral College for the election of the President of India. Thus they have say in the election of the President of the Republic. The members of the Vidhan Sabha also elect members of the Rajya Sabha from their respective States. One-third members of the Vidhan Parishad (if it is in existence in the State) are also elected by the members of the Vidhan Sabha. In all these elections, members of the Vidhan Sabha (Assembly) cost their votes in accordance with single transferable vote system.

Constitutional Functions

You have learnt about the procedure of amendment of the Constitution. An Amendment requires special majority of each House of the Parliament and ratification by not less than half of the States relating to Federal subjects. The resolution for the ratification is passed by State Legislatures with simple majority. However, a constitutional amendment cannot be initiated in the State Legislature.

10.7 Position of legislative council

The constitutional position of the council (as compared with the assembly) can be studied from two angles:
A. Spheres where council is equal to assembly.
B. Spheres where council is unequal to assembly.

Equal with Assembly

In the following matters, the powers and status of the council are broadly equal to that of the assembly:

1. Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the council.
2. Approval of ordinances issued by the governor.
3. Selection of ministers including the chief minister. Under the Constitution the, ministers including the chief minister can be members of either House of the state legislature. However, irrespective of their membership, they are responsible only to the assembly.
4. Consideration of the reports of the constitutional bodies like State Finance Commission, state public service commission and Comptroller and Auditor General of India.
5. Enlargement of the jurisdiction of the state public service commission.

Unequal with Assembly

In the following matters, the powers and status of the council are unequal to that of the assembly:

1. A Money Bill can be introduced only in the assembly and not in the council.
2. The council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
3. The assembly can either accept or reject all or any of the recommendation of the council. In both the cases, the money bill is deemed to have been passed by the two Houses.
4. The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.
5. The final power of passing an ordinary bill also lies with the assembly. At the most, the council can detain or delay the bill for the period of four months−three months in the first instance and one month in the second instance. In other words, the council is not even a revising body like the Rajya Sabha; it is only a dilatory chamber or an advisory body.
6. The council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
7. The council cannot remove the council of ministers by passing a noconfidence motion. This is because, the council of ministers is collectively responsible only to the assembly. But, the council can discus and criticise the policies and activities of the Government.
8. When an ordinary bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.
9. The council does not participate in the election of the president of India and representatives of the state in the Rajya Sabha.
10. The council has no effective say in the ratification of a constitutional amendment bill. In this respect also, the will of the assembly prevails over that of the council.

11. Finally, the very existence of the council depends on the will of the assembly. The council can be abolished by the Parliament on the recommendation of the assembly.

From the above, it is clear that the position of the czouncil vis-a-vis the assembly is much weaker than the position of the Rajya Sabha vis-a-vis the Lok Sabha. The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regard to the control over the Government. On the other hand, the council is subordinate to the assembly in all respects. Thus, the predominance of the assembly over the council is fully established.

Even though both the council and the Rajya Sabha are second chambers, the Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons:

1. The Rajya Sabha consists of the representatives of the states and thus reflect the federal element of the polity. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre. Therefore, it has to be an effective revising body and not just an advisory body or dilatory body like that of the council. On the other hand, the issue of federal significance does not arise in the case of a council.
2. The council is heterogeneously constituted. It represents different interests and consists of differently elected members and also include some nominated members. Its very composition makes its position weak and reduces its utility as an effective revising body. On the other hand, the Rajya Sabha is homogeneously constituted. It represents only the states and consists of mainly elected members (only 12 out of 250 are nominated).
3. The position accorded to the council is in accordance with the principles of democracy. The council should yield to the assembly, which is a popular house. This pattern of relationship between the two Houses of the state legislature is adopted from the British model. In Britain, the House of Lords (Upper House) cannot oppose and obstruct the House of Commons (Lower House). The House of Lords is only a dilatory chamber −it can delay an ordinary bill for a maximum period of one year and a money bill for one month.16

Keeping in view its weak, powerless and insignificant position and role, the critics have described the council as a 'secondary chamber', 'costly ornamental luxury', 'white elephant', etc. The critics have opined that the council has served as a refuge for those who are defeated in the assembly elections. It enabled the unpopular, rejected and ambitious politicians to occupy the post of a chief minister or a minister or a member of the state legislature. Even though the council has been given less powers as compared with the assembly, its utility is supported on the following grounds:

1. It checks the hasty, defective, careless and ill-considered legislation made by the assembly by making provision for revision and thought.
2. It facilitates representation of eminent professionals and experts who cannot face direct elections. The governor nominates one-sixth members of the council to provide representation to such people.

10.8 Privileges of State Legislature

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities. The Constitution has also extended the privileges of the state legislature to those persons who are entitled to speak and take part in the proceedings of a House of the state legislature or any of its committees. These include advocate-general of the state and state ministers. It must be clarified here that the privileges of the state legislature do not extend to the governor who is also an integral part of the state legislature. The privileges of a state legislature can be classified into two broad categories−those that are enjoyed by each House of the state legislature collectively, and those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.

4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendence of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its Committes.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:
1. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

Summary

The State Legislature consists of the Governor, the Legislative Council (Vidhan Parishad) and the Legislative Assembly (Vidhan Sabha). In most of the States there are unicameral Legislatures. These State Legislatures consist of the Governor and the Legislative Assembly. The Parliament is empowered to set up or abolish the Vidhan Parishad in a State. The Vidhan Parishad is partly indirectly elected and partly nominated. It is permanent House like the Rajya Sabha. It is never dissolved. The tenure of its members is six year. One third members retire after every two years. The minimum age for the membership of the Vidhan Parishad is 30 years; it is 25 years for Vidhan Sabha. Member of the Vidhan Sabha are directly elected by the people of the State on the basis of universal adult franchise. Its tenure is five years, but the Governor can dissolve it earlier on the advice of the Chief Minister. In case of constitutional breakdown it may be dissolved by the President. The powers of the State Legislature are law-making, control over the finances, and the executive, electoral functions and constitutional functions. The Vidhan Sabha occupies a dominant position. The Vidhan Parishad enjoys less powers as compared to the Vidhan Sabha in relation to ordinary bills, money bills, control over the executive and powers in regard to the election of the President, etc.

Keywords/Glossary

Amendment: Change or addition to a document or legal provisions: 'constitutional amendment'.
Appropriation: The act of allocating public money to a purpose.
Bicameral: Having two branches, chambers, or houses, as a legislative body.
Bill: Draft law presented to the legislature for enactment.
Legislature: A body of people with the power to make and change laws.
Legitimacy: The state of quality of being accepted as legitimate, lawful or right. It can refer to a system being accepted as legitimate by the population, or have a narrow meaning of legal legitimacy as recognized by the courts.
Liability: Legal responsibility.
Ordinances: Provisional law made by the executive under the authority of the constitution and not of another statue.
Quorum: The minimum number of members of an organization (e.g. Parliament) needed to conduct business.
Veto: Valid power that one can exercise to block a decision (e.g. the power that a head of state has to reject a bill passed by the legislature).

Review Questions

1. Describe the composition of Vidhan Sabha (Legislative Assembly)?
2. Describe the powers and functions of the Legislative Assembly?

3. Explain the composition of Vidhan Parishad (Legislative Council)?
4. Evaluate the powers and functions of Legislative Council?
5. Critically examine the relationship between Legislative Assembly and Legislative Council?
6. Write a detailed note on Ordinary bills?
7. How Money bill is different from ordinary bills? Discuss?
8. Explain the limitations of the State Legislature?
9. Describe the role of the Speaker of the State Assembly?
10. Highlight the importance of the Chairman of the Legislative Council?

Self Assessment

1. Which of the following statements is not correct about the State Legislature?

A. The constitution of the State Legislature has been stated in the 6th part of the Constitution

B. Article 168 to 212 has been constituted for the tenure & constitution of the State Legislature.

C. Currently only 7 states have Legislative Council

D. Members of Legislative Council are indirectly elected

2. What is the minimum age for becoming a member of the State Legislative Council?

A. 18 years

B. 21 years

C. 25 years

D. 30 years

3. Which among the following state does not have a bicameral legislature?

A. Maharashtra

B. West Bengal

C. Bihar

D. Andhra Pradesh

4. Which of the following statements is not correct?

A. The person becoming the member of the Legislative Assembly should also be a voter in the constituency of the respective state.

B. It is not necessary that a person who is elected to the Legislative Council should also be eligible to be choosen for the Legislative Assembly.

C. Should not hold office of profit.

D. Keeps all the qualifications as per the People's Representation Act, 1951.

5. What is the minimum number of members in the State Legislative Council?

A. 40

B. 50

C. 60

D. 30

6. What can be the minimum strength of members in the State Legislature?

A. 40

B. 50

C. 60

D. 30

7. The term of the State Legislative Assembly can be increased by Parliament during the National Emergency upto…..

A. 3 Months
B. 6 Months
C. 9 Months
D. 12 Months

8. How many members are elected indirectly in State Legislative Councils?

A. 1 \ 6
B. 3 \ 4
C. 5 \ 6
D. 1 \ 3

9. Who can take the decision to cancel the Assembly membership of any person under the 10th schedule?

A. Governor
B. Chief Minister
C. Assembly Speaker
D. Chief Justice of the High Court

10. Member of the Legislative Council submits his resignation to .....

A. Chairman
B. President
C. Chief Minister
D. Governor

11. The power to create of abolish legislative council in states is vested with which among the following?

A. Council of State Ministers
B. Governor of the State
C. Legislative Assembly of the state
D. President of India

12. Who does not participate in the election of the Legislative Council?

A. Graduates
B. Members of the municipality
C. Teachers of secondary schools
D. District Panchayat members

13. Speaker of Legislative Assembly surrenders his resignation to.....?

A. Chief Minister
B. Governor
C. Chief Justice of the High Court
D. Deputy Speaker

14. Which of the following statements is not correct?

A. A minister can also participate in the proceedings of the House, he is not a member of that house.

B. The Advocate General can vote in the House.

C. A minister, who is not a member of the House, can participate in the proceedings of both houses.

D. The quorum is the 10th share of the total members in a single house.

15. Who decides the salary and allowance of the speaker of the Legislative Assembly?

A. Legislature

B. Governor

C. Chief Minister

D. None of the following

16. What is the maximum permissible strength of the Legislative Assembly (Vidhan Sabha) of any State?

A. 400 Members

B. 520 Members

C. 500 Members

D. 600 Members

Answer for Self Assessment

1.	C	2.	D	3.	B	4.	B	5.	A
6.	C	7.	B	8.	C	9.	C	10.	A
11.	C	12.	D	13.	D	14.	B	15.	A
16.	C								

Further Readings

Indian Government and politics by B. L. Fadia and Kuldeep Fadia, Sahitya Bhawan; Revised edition (1 January 2020).

Introduction to the Constitution of India by D D Basu, Lexis Nexis; Twenty-Third edition (2018).

India's Struggle for Independence: 1857-1947 by Bipan Chandra, Penguin Random House India; 1st edition (9 August 2016).

J.C. Johari, "The Constitution of India—A Politico-Legal Study", Sterling Publication Pvt. Ltd., New Delhi.

Unit 11: Federalism in India

CONTENTS

Objectives

Introduction

11.1 Federalism in India: Nature and Scope

11.2 Centre-State Relations

11.3 Federalism with a Strong Central Government

11.4 Role of Intergovernmental Coordination Mechanisms in Indian federalism

Summary

Keywords/Glossary

Self Assessment

Answers for Self Assessment

Review Question

Further Readings

Objectives

After studying this chapter, you would be able to:

- explain the federalism in India.
- distinguish between unitary and federal features of Indian Constitution.
- analyse the asymmetrical federal provisions in the Indian constitution.
- explain the meaning of Intergovernmental Coordination Mechanisms.
- analyse the role of Intergovernmental Coordination Mechanisms in Indian federalism.
- explain how a shift took place from Centralized to Competitive Federalism.
- analyse the recent trends and issues in Indian federalism.

Introduction

Federalism does not consist of a set of fixed principles, which are applied, to different historical situations. Rather, federalism as a principle of government has evolved differently in different situations. In a federal set up there is a two tier of Government with well assigned powers and functions. In this system the central government and the governments of the units act within a well defined sphere, co-ordinate and at the same time act independently. The federal polity, in other words, provides a constitutional device for bringing unity in diversity and for the achievement of common national goals. While the parliamentary system is conceptually unitary, federalism is just otherwise. This is a puzzle that needs to be understood in a specific historical context. Even before Independence, most leaders of our national movement were aware that to govern a large country like ours, it would be necessary to divide the powers between provinces and the central government. There was also awareness that Indian society had regional diversity and linguistic diversity. This diversity needed recognition. People of different regions and languages had to share power and in each region, people of that region should govern themselves. This was only logical if we wanted a democratic government. The British parliamentary model remained a major reference point for the Indian Constitution-makers. Federalism seemed to have provided an institutional arrangement to accommodate India's pluralist socio-political character. Despite being conceptually incompatible, the founding fathers were favourably inclined towards parliamentary-federalism as perhaps the most appropriate institutional set-up for governance in India. Parliamentary federalism is thus a creative institutional response to democratic governance suitable for India's peculiar socio-political milieu (Chakrabarty and Pandey, 2012).

11.1 Federalism in India: Nature and Scope

The term 'federation' is derived from a Latin word 'foedus' which means 'treaty' or 'agreement'. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units. The units of a federation are known by various names like states (as in US) or cantons (as in Switzerland) or provinces (as in Canada) or republics (as in Russia). The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons −the large size of the country and its socio-cultural diversity. They realised that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy. However, the term 'federation' has no where been used in the Constitution. Instead, Article 1 of the Constitution describes India as a 'Union of States'. According to Dr B R Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' to indicate two things: (i) the Indian federation is not the result of an agreement among the states like the American federation; and (ii) the states have no right to secede from the federation. The federation is union because it is indestructible. The Indian federal system is based on the 'Canadian model' and not on the 'American model'. The 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre. The Indian federation resembles the Canadian federation (i) in its formation (i.e., by way of disintegration); (ii) in its preference to the term 'Union' (the Canadian federation is also called a 'Union'); and (iii) in its centralizing tendency (i.e., vesting more powers in the centre vis-a-vis the states).

India has a hybrid system of government. The hybrid system combines two classical models: the British traditions, drawn upon parliamentary sovereignty and conventions, and American principles upholding the supremacy of a written constitution, the separation of powers and judicial review. The two models are contradictory since parliamentary sovereignty and constitutional supremacy are incompatible. India has distinct imprints in her Constitution of both the British and the American principles. In other words, following the adoption of the 1950 Constitution, India has evolved a completely different politico-constitutional arrangement with characteristics from both the British and the American constitutional practices. The peculiarity lies in the fact that despite being parliamentary, Indian political arrangement does not wholly correspond with the British system simply because it has adopted the federal principles as well; it can never be completely American since Parliament in India continues to remain sovereign. As a hybrid political system, India has contributed to a completely different politico-constitutional arrangement, described as parliamentary-federalism, with no parallel in the history of the growth of constitutions. Based on both parliamentary practices and federal principles, political system in India is therefore a conceptual riddle underlining the hitherto unexplored dimensions of socio-political history of nation-states imbibing the British traditions and American principles. At the time of the framing of the Constitution, political institutions were chosen with utmost care. There are two sets of government created by the Indian Constitution: one for the entire nation called the union government (central government) and one for each unit or State called the State government. Both of these have a constitutional status and clearly identified area of activity. If there is any dispute about which powers come under the control of the union and which under the States, this can be resolved by the Judiciary on the basis of the constitutional provisions. The Constitution clearly demarcates subjects, which are under the exclusive domain of the Union and those under the States. (Study the chart given on the next page carefully. It shows how powers are distributed between the centre and the States.) One of the important aspects of this division of powers is that economic and financial powers are centralised in the hands of the central government by the Constitution. The States have immense responsibilities but very meager revenue sources.

Federal Features of the Indian Constitution

The Constitution of India has adopted federal features; though it does not, in fact, claim that it establishes a federation. The question whether the Indian Constitution could be called a federal constitution troubled the minds of the members of the Constituent Assembly. This question cannot be answered without going into the meaning of federalism and the essential features that are evident in federal state. Let us examine them and try to find out whether India is a federation or not.

1. ***Dual Polity***

The Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with the matters of national

importance like defence, foreign affairs, currency, communication and so on. The state governments, on the other hand, look after the matters of regional and local importance like public order, agriculture, health, local government and so on.

2. ***Written Constitution***

The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.2 At present (2016), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules. It specifies the structure, organisation, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

3. ***Division of Powers***

The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 100 subjects (originally 97), the State List 61 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (i.e., which are not mentioned in any of the three lists) are given to the Centre.

4***. Supremacy of the Constitution***

The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must confirm to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

5. ***Rigid Constitution***

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre–state relations and judicial organisation) can be amended only by the joint action of the Central and state governments. Such provisions require for their amendment a special majority4 of the Parliament and also an approval of half of the state legislatures.

6. ***Independent Judiciary***

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.

7. ***Bicameralism***

The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

In the light of the above criteria, there was no doubt that the founding fathers preferred federalism in its true spirit and yet what emerged after the deliberations in the Constituent Assembly was a unique form, adapted to the Indian context. As Ambedkar argued, the draft constitution contained provisions that provide for both federal and unitary forms of government. In normal times, it is framed to work as a federal system stated Ambedkar. But in times of war: "it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorized to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary state".

11.2 Centre-State Relations

We have seen that the Constitution of India provides for a federal system. Both the Union and the State are created by the Constitution and derive their respective authority from it. To understand this, it is desirable to study the relationship between the Union and the States. The relations between the Centre and the states which constitute the core of federalism have been enumerated in Parts XI and XII of the Constitution under the heads, legislative, administrative and financial relations. Let us examine them one by one.

Legislative Relations

Regarding legislative relations, there is a threefold division of powers in the Constitution. We have followed a system in which there are two lists of legislative powers, one for the Centre and the other for the State, known as the Union List and the State List, respectively. An additional list called the Concurrent List has also been added. The Union List which consists of 97 subjects of national interest is the largest of the three lists. Some of the important subjects included in this list are: Defence, Railways, Post and Telegraph, Income Tax, Custom Duties, etc. The Parliament has the exclusive power to enact laws on the subjects included in the Union List for the entire country. The State List consists of 66 subjects of local interest. Some of the important subjects included in this List are Trade and Commerce within the State, Police, Fisheries, Forests, Industries, etc. The State Legislatures have been empowered to make laws on the subjects included in the State List.

The Concurrent List consists of 47 subjects of common interest to both the Union and the States. Some of the subjects included in this list are: Stamp Duties, Drugs and Poison, Electricity, Newspapers etc. Both the Parliament and the State Legislatures can make laws on the subjects included in this list. But in case of a conflict between the Union and the State law relating to the same subject, the Union law prevails over the State law. Power to legislate on all subjects not included in any of the three lists vests with the Parliament. Under certain circumstances, the Parliament can legislate on the subjects mentioned in the State List.

Administrative Relations

The framers of the Indian Constitution never intended to create administrative co-operation and co-ordination between the centre and states. The executive power of the State is to be exercised in such a way as to ensure compliance with the laws made by the Parliament. Further, the Union Executive is empowered to give directions to a State, if necessary, for the requisite purpose. The Union Government can issue directions to the States to ensure compliance with the laws of the Parliament for construction and maintenance of means of communications, declared to be of national and military importance, and also on the measures for the protection of Railways. In addition to all this, the Parliament can alone adjudicate on inter-state river disputes. Also, a provision has been made for constituting an Inter- State Council to advise the president on inter-state disputes. Even the State governments may delegate some of its administrative functions relating to the State subjects, to Union Government for a specified period. The Constitution of India has certain special provisions to ensure uniformity of the administrative system. These include the creation of All India Services such as IAS and IPS and placing members of these services in key administrative positions in the states. The presence of All India Service Officers further paves way for the Central Government to exercise its authority and control over the states. The members of these services are recruited by the Centre but are appointed in the States. No disciplinary action can be taken against them by the State Governments without the permission of the Centre. The Constitution also makes provision for the creation of new All India Service by the Parliament on the recommendation of the Rajya Sabha. The President also puts the entire control of the state administrative machinery under the control of the Union which you will study in details while going through the lesson on emergency provisions. You would also recall that the Union executive is empowered to give such directions to a state as it may appear necessary for the purpose to the Union Government. The Union Government has wide powers to issue directions based on the subjective view of the Union and may, therefore, interfere with the state autonomy in the field of administration. Ordinarily, the central police force and Army are posted to the states at the request of the State Government. However, there have been occasions when the CRPF of BSF have been deployed in states much against the state wishes of the State Government. Thus, the center plays a very important role in the administrative sphere of activity concerning the States.

Financial Relations

The distribution of financial resources is especially critical in determining the nature of the State's relationship with the Centre. Both the Union and the State have been provided with independent sources of revenue by the Constitution. The Parliament can levy taxes on the subjects included in the Union List. The States can levy taxes on the subjects in the State List. By and large taxes that have an inter-state base are levied by the Centre and those with a local base by the State. The Union List consists of items of taxation which fall under the following categories:

i. Taxes levied by the Union but collected and appropriated by the State such as stamp duties and duties of excise on medicinal and toilet preparations etc.

ii. Taxes levied and collected by the Union but assigned to the States viz. railways, sea or air etc.

iii. Taxes levied and collected by the Central and may be distributed between the Central and the states if the Parliament by law so provides, such as union excise duties, excise on toilet preparations etc.

iv. Taxes levied and collected and retained by the Centre such as customs, surcharge on income tax etc.

v. Taxes levied and collected by the Centre and distributed between the union and the states such as taxes other than agriculture etc. It is clear that in the financial sphere too the Centre is better equipped.

The Centre can exercise control over the state finances and grants-in-aid both general and special to meet the expenditure on developmental schemes. During financial emergency, the President has the power to suspend the provisions regarding division of taxes between the Centre and the State. He can also impose other restrictions on the expenses of the State. State plans are framed within the priorities of the central plan and they are executed with the approval of the Planning Commission. Further, the States have to carry out the centre-sponsored schemes for which the Centre gives grants and the conditions under which these are to be made. The Planning Commission has created an over-centralized planning system. No initiative is left to the states and the centrally formulated schemes have been inappropriately and unimaginatively imposed upon them.

11.3 Federalism with a Strong Central Government

The British colonial rule introduced federalism in phases, partly in response to the nationalist demand for decentralization of power and partly to implement the liberal principle of self-rule in colonies. Despite its organic roots in colonialism, federalism was also an outcome of the growing democratization in India, which the Gandhi-led nationalist movement facilitated. In short, the legacy of colonialism, partition, and the vision of nation building all contrived to create a centralized federation that hardly corresponds with its classical form. Two major constitutional inputs from the colonial past seem to be critical in the evolution of federalism in India. First, the 1918 Montague-Chelmsford Report on constitutional reforms and later the 1929 Simon Commission Report strongly argued for decentralization of authorities among the constituent provinces as perhaps the best administrative device in politically-fragmented and strife-ridden India. For B.R. Ambedkar, the choice was categorical since: "the draft constitution is a Federal Constitution in as much as it establishes / Dual Polity [with] the Union at the centre and the States at the periphery, each being assigned with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The States in our Constitution are in no way dependent upon the Centre for their legislative and executive authority. [T]he Centre and the States are co-equal in this matter. [I]t is therefore wrong to say that the States have been placed under the Centre".

It is generally accepted that the Indian Constitution has created a strong central government. India is a country of continental dimensions with immense diversities and social problems. The framers of the Constitution believed that we required a federal constitution that would accommodate diversities. But they also wanted to create a strong centre to stem disintegration and bring about social and political change. It was necessary for the centre to have such powers because India at the time of independence was not only divided into provinces created by the British; but there were more than 500 princely states which had to be integrated into existing States or new States had to be created. Moreover, the decision of the Muslim majority provinces of British India to constitute themselves into Pakistan aroused the apprehension in the minds of the nationalist leadership in India that they might have to face further attempts at secession from a future Indian union. However, the very apprehensions that produced a desire for stronger central authority also led to a counter-tendency in the form of demands from several states for greater autonomy. Thus, the Union of India in 1947 began with a major asymmetry between British India and the princely states and even among the latter, the terms of accession differed depending on the bargaining strength. In almost all cases, the princely states surrendered whatever notional sovereignty they had to the new country of India, in exchange for a guaranteed revenue stream: their "privy purses". The nature of this bargain was clear - security and money in exchange for giving up authority or residual control rights.

Article 3 of the Constitution vests the Parliament with powers to constitute new states by separating territories from the existing ones, alter their boundaries, and change their names. The only requirement for this is that the Bill for the purpose will have to be placed in the Parliament on the recommendation of the President and after it has been referred to the relevant State legislature for ascertaining their views (their approval is not necessary).

Besides the concern for unity, the makers of the Constitution also believed that the socio-economic problems of the country needed to be handled by a strong central government in cooperation with the States. Poverty, illiteracy and inequalities of wealth were some of the problems that required planning and coordination. Thus, the concerns for unity and development prompted the makers of the Constitution to create a strong central government. Let us look at the important provisions that create a strong central government: "The very existence of a State including its territorial integrity is in the hands of Parliament. The Parliament is empowered to 'form a new State by separation of territory from any State or by uniting two or more States…'. It can also alter the boundary of any State or even its name. The Constitution provides for some safeguards by way of securing the view of the concerned State legislature". The Constitution has certain very powerful emergency provisions, which can turn our federal polity into a highly centralised system once emergency is declared. During an emergency, power becomes lawfully centralised. Parliament also assumes the power to make laws on subjects within the jurisdiction of the States. Even during normal circumstances, the central government has very effective financial powers and responsibilities. In the first place, items generating revenue are under the control of the central government. Thus, the central government has many revenue sources and the States are mostly dependent on the grants and financial assistance from the centre. Secondly, India adopted planning as the instrument of rapid economic progress and development after independence. Planning led to considerable centralisation of economic decision making. Planning commission appointed by the union government is the coordinating machinery that controls and supervises the resources management of the States. Besides, the Union government uses its discretion to give grants and loans to States. This distribution of economic resources is considered lopsided and has led to charges of discrimination against States ruled by an opposition party.

There may be occasions when the situation may demand that the central government needs to legislate on matters from the State list. This is possible if the move is ratified by the Rajya Sabha. The Constitution clearly states that executive powers of the centre are superior to the executive powers of the States. Furthermore, the central government may choose to give instructions to the State government. The following extract from an article of the Constitution makes this clear. Article 257 (1): "The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

The adoption of market economy heralded a new era in which states came to occupy a strategic position in India's market-led economy. The Centre has even gone to the extent of encouraging the states to negotiate loans/foreign direct investments (FDIs) with overseas banks/institutions directly since the 1990s. The introduction of New Economic Policy (NEP) in 1991 has, indeed, led to a paradigm shift in Centre–state relations. The dominance of the Centre in economic policy decision-making witnessed significant decline. Economic liberalisation dismantled the role of the central government as the gatekeeper of the license-permit raj. After liberalisation in 1991, states stepped into the breach, taking on a more central role in economic regulation and in competing with each other in the liberalised economy. Planning Commission, given its role as a centralising force and not considered as useful for the market economy, has been replaced by a new institution called National Institute of Transforming India (NITI) Aayog, with a reduced regular role in economic decisions of the governments.

With the states' engagement in Para-diplomacy, foreign economic policy no longer remained a central preserve. Economic globalisation and regionalization have made it possible for states of India to interact with their respective investors in foreign countries in a de facto sense if not in a de jure sense. Regionalization of political parties and coalition rule at the Centre do not adequately explain sub-national Para-diplomacy. Earlier in the pre-liberalisation period there existed two routes, that is, the partisan route and bureaucratic route to engage in paradiplomatic activities. States so far have adopted a host of instruments which fall under Para-diplomacy. Public relations exercises have become an important driving force for attracting foreign FDIs. Media has become an important tool to showcase the achievements of states. Chief Ministers use media to advertise their industrial policies and achievements and also compare themselves with their competitor states. Increasingly, there is a realisation among foreign investors that the states in India have come to occupy an independent role in the making of foreign economic policies suited to their own needs and that the old method of approaching the central government to pursue trade relations at the state level cannot be useful. Nevertheless, paradiplomacy presents challenges too. It is often argued that states lack the skills to exercise responsible foreign policy, especially in the political sphere, given the fact that states do not have trained diplomats.

One of the major advantages of federalism is that 'it offers to the constituents to operate in a large market'. The economic benefits from competition and a free flow of goods and factors of

production over a large area are so enticing that many countries, in spite of their reluctance to surrender their sovereignty, have come. The Punchhi Commission on Centre–states relations recommended the creation of a common market. Our founding fathers of the constitution have recognised the great potential of a large common market and hence devoted one full part of the constitution (Part XIII). to trade and commerce within the country with a clear mandate in its opening article (Article 301): '....trade, commerce and intercourse throughout the territory of India shall be free'. The introduction of the GST in 2017 took India another step closer to a model of internal competition within a common market by dismantling inter-state taxes on goods and services. The GST introduced standard rates of tax on goods and services (within six bands) across India. The Centre has been successful in introduction of proposed Goods and Services Tax (GST) aimed at removing restrictions on trade and commerce across India. Kapur (2014) has stated that 'impact of GST can be social and political also'. He argues: Importantly over the long time its most beneficial impact will be to leverage the large common market that is India. GST that finally came into effect in the states in 2017 can be considered as a major milestone in Centre–state relations and a step towards a gradual move to forge a common market.

Kelkar (2010) has discussed a host of new emerging issues and challenges in the realm of fiscal federalism. Given the spurt in discovery of offshore reserves of hydrocarbons and given the huge rents from such vast resources, which so far have remained under the preserve of the Centre, they now need to be shared. Apart from resource federalism, green federalism is another big challenge for our fiscal federalism. Our existing intergovernmental transfer system does not adequately recognise environmental externalities. For example, states with large forests are seeking compensation for the environmental services they provide to the entire federation.

11.4 Role of Intergovernmental Coordination Mechanisms in Indian federalism

As the political and economic system of a nation changes over time, so do intergovernmental relations [IGR]. While the emphasis in the concept of federalism is on national-state relationships with occasional attention to interstate relations, IGR include not only national-state and interstate relations, but also national-local, state-local, national-state-local, and inter-local relations. Anderson defines that "interactions occurring between governmental units of all types and levels". Certain institutional mechanisms are required to facilitate interactions among political incumbents. The aim of these mechanisms is to achieve 'policy coordination' by facilitating interactions among the executives of the two orders of government. The successful functioning of the Indian federal system depends not only on the harmonious relations and close cooperation between the Centre and the states but also between the states *inter se. Hence, the Constitution makes the following provisions with regard to inter-state comity:*

I. National Development Council.

II. Inter-State Councils.

III. Inter-State Water Tribunals.

IV. Mutual recognition of public acts, records and judicial proceedings.

V. Freedom of inter-state trade, commerce and intercourse.

National Development Council

The idea of a coordinating mechanism of an advisory nature was first mooted by the Planning Advisory Board set up in October 1946 under the chairmanship of K. C. Neogi. The Planning Commission, established by a cabinet resolution of 15 March 1950, also stressed the need for a coordinating body for periodical evaluation of planning. Accordingly, Nehru set up the NDC as an extra-constitutional and non-statutory body by a cabinet resolution of 6 August 1952. It has been listed as an advisory body whose recommendations are not binding. In the first meeting of the National Development Council held in Nov. 1952, the Prime Minister Nehru observed that the NDC was essentially a forum for intimate cooperation between the State Governments and the Central Government for all the tasks of national development. The objectives of the NDC, as stated by Nehru himself, are as follows:

a) To secure cooperation of states in the execution of the Plan;

b) To promote common economic policies in all vital spheres;

c) To ensure the balanced and rapid development.

The Administrative Reforms Commission constituted by the Government of India on January 5, 1966, made a number of recommendations regarding organization and functions of the NDC, which were accepted by the Government of India on October 7, 1967 with some modifications. The NDC, as reconstituted in 1967, is composed of the Prime Minister [as Chairman], all Union Cabinet Ministers, Chief Ministers of all States, Chief Ministers/administrators of all Union Territories and the Members of the Planning Commission. Secretary of the Planning Commission acts as Secretary to the N.D.C. On the basis of the recommendations of the ARC the functions of the NDC were redefined to include a few more functions. These were:

1) To prescribe guidelines for the formulation of the national plan;
2) To consider the national plans as formulated by the Planning Commission;
3) To assess resources required for implementing the plan and to suggest ways and means for raising them.

Inter-state Councils

Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states. Thus, the President can establish such a council if at any time it appears to him that the public interest would be served by its establishment. He can define the nature of duties to be performed by such a council and its organisation and procedure. Even though the president is empowered to define the duties of an interstate council, Article 263 specifies the duties that can be assigned to it in the following manner:

(a) enquiring into and advising upon disputes which may arise between states;
(b) investigating and discussing subjects in which the states or the Centre and the states have a common interest; and
(c) making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.

"The council's function to enquire and advice upon inter-state disputes is complementary to the Supreme Court's jurisdiction under Article 131 to decide a legal controversy between the governments. The Council can deal with any controversy whether legal or non-legal, but its function is advisory unlike that of the court which gives a binding decision. Under the above provisions of Article 263, the president has established the following councils to make recommendations for the better coordination of policy and action in the related subjects:

a) Central Council of Health.
b) Central Council of Local Government and Urban Development.
c) Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.
d) The Central Council of Indian Medicine and the Central Council of
4) Homoeopathy were set up under the Acts of Parliament.

Establishment of Inter-State Council

The Sarkaria Commission on Centre-State Relations (1983-87) made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution. It recommended that in order to differentiate the Inter-State Council from other bodies established under the same Article 263, it must be called as the Inter-Governmental Council. The Commission recommended that the Council should be charged with the duties laid down in clauses (b) and (c) of Article 263. In pursuance of the above recommendations of the Sarkaria Commission, the Janata Dal Government headed by V. P. Singh established the Inter- State Council in 1990. It consists of the following members:

(i) Prime minister as the Chairman;
(ii) Chief ministers of all the states;
(iii) Chief ministers of union territories having legislative assemblies
(iv) Administrators of union territories not having legislative assemblies;
(v) Governors of States under President's rule;

(vi) Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.

(vii) Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council.

The council is a recommendatory body on issues relating to inter-state, Centre-state and Centre-union territories relations. It aims at promoting coordination between them by examining, discussing and deliberating o such issues. Its duties, in detail, are as follows:

I. investigating and discussing such subjects in which the states or the centre have a common interest;

II. making recommendations upon any such subject for the better coordination of policy and action on it; and

III. deliberating upon such other matters of general interest to the states as may be referred to it by the chairman.

The Council may meet at least thrice in a year. Its meetings are held in camera and all questions are decided by consensus. There is also a Standing Committee of the Council. It was set up in 1996 for continuous consultation and processing of matters for the consideration of the Council. It consists of the following members:

(i) Union Home Minister as the Chairman

(ii) Five Union Cabinet Ministers

(iii) Nine Chief Ministers

The Council is assisted by a secretariat called the Inter-State Council Secretariat. This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.

Inter-state water disputes

Article 262 of the Constitution provides for the adjudication of inter-state water disputes. It makes two provisions:

I. Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.

II. Parliament may also provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.

Under this provision, the Parliament has enacted two laws [the River Boards Act (1956) and the Inter-State Water Disputes Act (1956)]. The River Boards Act provides for the establishment of river boards for the regulation and development of inter-state river and river valleys. A river board is established by the Central government on the request of the state governments concerned to advise them. The Inter-State Water Disputes Act empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley. The decision of the tribunal would be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act. The need for an extra judicial machinery to settle inter-state water disputes is as follows: "The Supreme Court would indeed have jurisdiction to decide any dispute between states in connection with water supplies, if legal rights or interests are concerned; but the experience of most countries has shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between the states where the interests of the public at large in the proper use of water supplies are involved."

Public Acts, Records and Judicial Proceedings

Under the Constitution, the jurisdiction of each state is confined to its own territory. Hence, it is possible that the acts and records of one state may not be recognised in another state. To remove

any such difficulty, the Constitution contains the "Full Faith and Credit" clause which lays down the following:

I. Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state. The expression 'public acts' includes both legislative and executive acts of the government. The expression 'public record' includes any official book, register or record made by a public servant in the discharge of his official duties.

II. The manner in which and the conditions under which such acts, records and proceedings are to be proved and their effect determined would be as provided by the laws of Parliament. This means that the general rule mentioned above is subject to the power of Parliament to lay down the mode of proof as well as the effect of such acts, records and proceedings of one state in another state.

III. Final judgements and orders of civil courts in any part of India are capable of execution anywhere within India (without the necessity of a fresh suit upon the judgement). The rule applies only to civil judgements and not to criminal judgements. In other words, it does not require the courts of a state to enforce the penal laws of another state.

Inter-State Trade and Commerce

Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India. Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free. The object of this provision is to break down the border barriers between the states and to create one unit with a view to encourage the free flow of trade, commerce and intercourse in the country. The freedom under this provision is not confined to inter-state trade, commerce and intercourse but also extends to intra-state trade, commerce and intercourse. Thus, Article 301 will be violated whether restrictions are imposed at the frontier of any state or at any prior or subsequent stage. The freedom guaranteed by Article 301 is a freedom from all restrictions, except those which are provided for in the other provisions (Articles 302 to 305) of Part XIII of the Constitution itself. These are explained below:

i. Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest.6 But, the Parliament cannot give preference to one state over another or discriminate between the states except in the case of scarcity of goods in any part of India.

ii. The legislature of a state can impose reasonable restrictions on the freedom of trade, commerce and intercourse with that state or within that state in public interest. But, a bill for this purpose can be introduced in the legislature only with the previous sanction of the president. Further, the state legislature cannot give preference to one state over another or discriminate between the states.

iii. The legislature of a state can impose on goods imported from other states or the union territories any tax to which similar goods manufactured in that state are subject. This provision prohibits the imposition of discriminatory taxes by the state.

iv. The freedom (under Article 301) is subject to the nationalisation laws (i.e., laws providing for monopolies in favour of the Centre or the states).

Thus, the Parliament or the state legislature can make laws for the carrying on by the respective government of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Summary

Federalism is like a rainbow, where each colour is separate, yet together they make a harmonious pattern. Federalism has to continuously maintain a difficult balance between the centre and the States. No legal or institutional formula can guarantee the smooth functioning of a federal polity. In

a federal system of government there is a need for clear cut division of power between the Union and States. This also requires a written and rigid constitution and an independent judiciary to decide disputes between the Union and the States. Though the Indian Constitution has all such features of a federal state, it is indeed difficult to put the Indian Constitution in the category of true federations.

The framers of the Constitution have incorporated certain non federal features in it such as single citizenship, single judiciary, a strong centre, appointment of the Governor by the President, unequal of representation in the Rajya Sabha and so on. All these indicate a tilt towards strong centre. The states have to work in close co-operation with the centre. The constitution is federal in form but unitary in spirit. The study of Center-State relationship in legislative, administrative and financial spheres also clearly shows that the Centre is stronger as compared to the states. The Centre has been assigned a dominant role which became necessary keeping in view the dangers to the unity and integrity of the nation. Therefore, there are provisions for a co- operative federalism. The working of the Indian Constitution over the year indicates that relations between the center and the States have not remained very co-ordinal. The states have started demanding more autonomy. Various commissions have been appointed by the Government of India to review the centre- state relations. The Sarkaria Commission examined the problem and recommended changes in the area of federal, legislative, administrative and financial relations.

Keywords/Glossary

Assimilation: The process by which minority groups adopt characteristics of larger groups, including language, religion, beliefs and identity. It can be either voluntary or coerced.
Autonomous region: A region having certain independent governing powers.
Autonomy: The condition of being autonomous; self-government or the right of self-government. A self-governing (to a certain extent) community.
Bicameral: Having two branches, chambers, or houses, as a legislative body.
Confederation: A group of nations or states, or a government encompassing several states or political divisions, in which the component states retain considerable independence. The members of a confederation often delegate only a few powers to the central authority.
Devolution: A process by which administrative, executive, legislative and fiscal powers are given to constituent units. Devolution differs from federalism in that the devolved powers may be repealed, that is taken back to the centre by the central government by ordinary legislation.
Federal Government: The central government of a federal state. A federal government may be named in different ways such as national government in South Africa, Commonwealth government in Australia, Union government in India, and federal government in the United States of America.
Federalism: Federalism refers to a broad category of political systems in which, by contract with the single central source of political and legal authority in unitary systems, there are two or more constitutionally established orders of government, each directly elected, and each order having some autonomy from the other in terms of the powers assigned to it. The system combines elements of shared rule (collaborative partnership) through a common government and regional self-rule (constituent unit autonomy) for the governments of the constituent units.
Power-sharing: This term is used to describe a system of governance in which all or some groups of society, usually defined along territorial, ethnic, racial, linguistic or religious lines, are guaranteed a permanent share of power. Power-sharing arrangements include guaranteed political representation in public institutions, protection of minority rights or group rights, federalism or consociationalism. It also implies sharing of power by various political parties in a parliamentary system.
Union: The term is used to describe the association of nation states such as the European Union; it also refers to unitary governments, such as the United Kingdom, and to federations, such as the Union of India. Thus, the term can refer to a federation as a whole, or to the national order of governance; in the case of India, Union is the official term for the federation and its central government.

Self Assessment

1. The Union List includes subjects such as:

A. Education, forests, trade unions, marriages, adoption and succession.

B. Police, trade, commerce, agriculture and irrigation.

C. Residuary subjects like computer software.

D. Defence, foreign affairs, banking, currency, communications.

2. ……. is a system of government in which the power is divided between a central authority and various constituent units of the country?

A. Dictatorship
B. Federalism
C. Unitary system
D. Monarchy

3. How many levels of government does a federation usually have?

A. 2
B. 3
C. 4
D. 1

4. Different tiers of government govern the same citizens, but each tier has its own …….. in specific matters.

A. Administration
B. Jurisdiction
C. Execution
D. Policies

5. What is meant by residuary subjects?

A. Subjects under union list
B. Subjects under state list
C. Subject under both state and union list
D. Subjects which are not under any list

6. Federal power sharing in India needs another tier of government below that of the State governments, it is called……..

A. State offices
B. District government
C. Local government
D. Tehsils

7. If there is a clash between the laws made by the state and centre on a subject in the concurrent list:

A. The central law prevails
B. The state law prevails
C. The Supreme Court has to intervene to decide
D. Both the laws prevail in their respective jurisdiction

8. The Constitution of India has:

A. Divides power between centre and state into two lists
B. Divides power between centre and state into three lists
C. Listed the powers of the state and left the undefined powers to the state
D. Specified the powers of the state and left the residuary powers with the state

9. Who is the chairman of Inter-State Council?
A. President
B. Prime Minister
C. Cabinet Secretary
D. Chief ministers elected by members of council

10. In which year, the Government of India had set up the Sarkaria Commission on Centre-State relations?
A. 1980
B. 1993
C. 1989
D. 1983

11. Which article deals with the establishment of an Inter-State Council?
A. Article 263
B. Article 218
C. Article 220
D. Article 278

12. In which Part of the Indian constitution, Central-State relations are mentioned?
A. Part XI
B. Part X
C. Part IV
D. Part XII

13. Which of the following is not related to the Administrative Reform Commission?
A. Rajmannar Committee
B. Sarkaria Commission
C. West Bengal Remembrance Letter
D. Hanumantaiya Commission

14. Which of the following is not matched correctly?
A. Rajmannar Committee: 1969
B. Sarkaria Commission: 1983
C. Anand Pur Sahib Proposal: 1973
D. Punchhi Commission: 2001

15. When did the Liberalisation, Privatisation and Globalisation (LPG) model introduced in India?
A. 2001
B. 2003
C. 1991
D. 1995

16. Which of the following taxes is/are levied, collected and keep by the State Government?
A. Land Taxes

B. Octroi tax
C. Agricultural income tax
D. All of the Above

Answers for Self Assessment

1.	D	2.	B	3.	A	4.	B	5.	D
6.	C	7.	A	8.	B	9.	B	10.	D
11.	A	12.	A	13.	B	14.	D	15.	C
16.	D								

Review Question

1) List some features of the Indian Constitution that give greater power to the central government than the State government.
2) What is Federalism?
3) Explain the federal features of the Indian Constitution?
4) Describe the unitary features of the Constitution of India?
5) Write a detailed note on the legislative relations between the center and the states?
6) Describe the financial relations between the center and states?
7) Explain that the Indian Constitution is federal in form but unitary in spirit?
8) What are the demands raised by States in their quest for greater autonomy?
9) Should some States be governed by special provisions?
10) Does this create resentment among other States? Does this help in forging greater unity among the regions of the country?
11) What is the difference between autonomy and secession?
12) Do you think that there is a need for mentioning residuary powers separately? Why?

Further Readings

Austin, Granville. 1999. *The Indian Constitution: Cornerstone of a Nation.* New Delhi: Oxford University Press.

Austin, Granville. 2002. The Expected and the Unintended in Working a Democratic Constitution, in Zoya Hasan, E. Sridharan and R. Sudarshan (eds), India's Living Constitution: Ideas, Practices, Controversies. New Delhi: Permanent Black.

Centre-State Relations Enquiry Committee. 1971. Report of the Centre-State Relations Enquiry Committee. Report submitted to Government of Tamil Nadu, Madras.

Corbridge, Stuart and John Harriss. 2005. *Reinventing India: Liberalization, Hindu Nationalism and Popular Democracy*. New Delhi: Oxford University Press.

Rao, M. Govinda and Nirvikar Singh. 2005. Political *Economy of Federalism in India*. New Delhi: Oxford University Press.

Saez, Lawrence. 2002. Federalism Without a Centre: The Impact of Political and Economic Reform in IndiaÊs Federal System. New Delhi: Sage Publications

Zahoor Wani, Lovely Professional University

Unit 12: Electoral Process and Election Commission of India

CONTENTS

Objectives
Introduction
12.1 Election Commission
12.2 Electoral Reforms
12.3 Issues in Electoral Politics in India
12.4 Electoral Reforms Undertaken
12.5 Functioning and Reforms of the Local Government Institutions
Summary
Keywords/Glossary
Self Assessment
Answer for Self Assessment
Review Questions
Further Readings

Objectives

After studying this chapter, you would be able to:

- explain the composition of the Election Commission.
- analyse the powers and functions of the Election Commission.
- describe the Conduct of Elections (Amendment) Rules, 2019.
- describe the major committees of electoral reforms.
- analyse the major issues in electoral politics in India.
- examine electoral reforms undertaken by different regimes.
- explain the importance of local government bodies.
- examine the evolution of the Panchayati Raj in India.
- analyse the functions and responsibilities of the Panchayati Raj.
-

Introduction

India has the distinction of being the largest democracy of the world. Elections are the most important and integral part of politics in a democratic system of governance. While politics is the art and practice of dealing with political power, election is a process of legitimization of such power. Democracy can indeed function only upon this faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and in form and are not mere rituals calculated to generate illusion of difference to mass opinion, it cannot survive without free and fair elections. Also, India is constitutionally a socialist, secular and democratic Republic and the success of democracy depends upon free and fair elections. In continuance of the British legacy, India has opted for Parliamentary Democracy. Since 1952, the country has witnessed elections to the legislative bodies at the national as well as state levels. The electoral system of India is marked by many problems that have encouraged anti-social elements to jump into the elections. The Election Commission has frequently expressed its concern and anxiety for removing obstacles in the way of free and fair polls. It has made a number of recommendations and repeatedly reminded the government the necessity so change existing laws checks the electoral malpractices.

12.1 Election Commission

The existence of a competent machinery to conduct free and fair elections happens to be the *sine qua non* of the democratic polity in India. The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. Accordingly, the fathers of the Constitution made it a point to provide for foolproof machinery for conducting free and fair elections in the form of Election Commission of India under the provisions of Article 324 of the Constitution. Proviso 2 of Article 324 provides: "The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President".

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years. Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court. In case of difference of opinion amongst the Chief election commissioner and/or two other election commissioners, the matter is decided by the Commission by majority. They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

Independence

In order to fortify the independent status and autonomous functioning of the Election Commission, the Constitution, as in the case of various other constitutional authorities, has laid down under Article 324(5) that the CEC shall not be removed from his offi ce except in like manner and on the like grounds as a judge of the Supreme Court, and the conditions of service to the CEC shall not be varied to his disadvantage during his tenure. As regards the removal from offi ce of other ECs, though the constitutional provisions provide for their removal on the recommendations of the CEC, there still exists certain degree of uncertainty over the procedure of such removal as the niceties of the issue are being argued in the Supreme Court in the case of the Election Commissioner Navin Chawla. Further, the independence of the Election Commission is also made immune from the vagaries of the laws enacted either by the Parliament or the state legislatures as the enactment of such laws are made subject to the provisions contained in Article 324, as emphasized by the Supreme Court in the case of *Sadiq Ali vs Election Commission.*

Powers and Functions

The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and Vice-President can be classified into three categories, viz,

1. Administrative

2. Advisory

3. Quasi-Judicial

The functions of the Election Commission have been provided for under Article 324(1) which includes "the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every state and of elections to the offices of President and Vice-President." Such indicative functions of the Election Commission boil down to include whole gamut of the electoral process including: "Preparation, maintenance and revision of electoral rolls, the notifications, scrutiny, withdrawals and polling, registration of and recognition to political parties, allotment of election symbols, the appointment of a Chief Electoral Officer (a State government official) for each state, and Electoral Registration Officers and Returning Officers and Assistant Officers for each Assembly and parliamentary constituency, and the receiving of election petitions and the appointment of Election Tribunals to

consider such petitions" (cited in Charkrabarty and Pandey, 2012). To ensure the smooth discharge of functions by the Election Commission, it has been authorized to exercise a number of powers with regard to the preparation for and conduct of elections, of which two stand out clearly (ibid).

i. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
ii. To prepare and periodically revise electoral rolls and to register all eligible voters.
iii. To notify the dates and schedules of elections and to scrutinise nomination papers.
iv. To grant recognition to political parties and allot election symbols to them.
v. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
vi. To appoint officers for inquiring into disputes relating to electoral arrangements.
vii. To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
viii. To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
ix. To advise the president on matters relating to the disqualifications of the members of Parliament.
x. To advise the governor on matters relating to the disqualifications of the members of state legislature.
xi. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
xii. To request the president or the governor for requisitioning the staff necessary for conducting elections.
xiii. To supervise the machinery of elections throughout the country to ensure free and fair elections.
xiv. To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
xv. To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.

The Election Commission is assisted by deputy election commissioners. They are drawn from the civil service and appointed by the commission with tenure system. They are assisted, in turn, by the secretaries, joint secretaries, deputy secretaries and under secretaries posted in the secretariat of the commission. At the state level, the Election Commission is assisted by the chief electoral officer who is appointed by the chief election commissioner in consultation with the state government. Below this, at the district level, the collector acts as the district returning officer. He appoints a returning officer for every constituency in the district and presiding officer for every polling booth in the constituency.

Model Code of Conduct

General:

No party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic. Criticism of other political parties , when made, shall be confined to their policies and programme, past record and work. Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided. There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda. All parties and candidates shall avoid scrupulously all activities which are "corrupt practices" and offences under the election law, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station. The right of every individual for peaceful and undisturbed home-life shall be respected, however much the political parties or candidates may resent his political opinions or activities. Organising demonstrations or picketing before the houses of

individuals by way of protesting against their opinions or activities shall not be resorted to under any circumstances.

Meetings:

The Party or candidate shall inform the local police authorities of the venue and time any proposed meeting well in time so as to enable the police to make necessary arrangements for controlling traffic and maintaining peace and order. A Party or candidate shall ascertain in advance if there are any restrictive or prohibitory orders in force in the place proposed for the meeting. If such orders exist, they shall be followed strictly. If any exemption is required from such orders, it shall be applied for and obtained well in time. Organizers of a meeting shall invariably seek the assistance of the police on duty for dealing with persons disturbing a meeting or otherwise attempting to create disorder. Organizers themselves shall not take action against such persons.

Polling Day:

All political parties and candidates shall: (i) co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction. Supply to their authorised workers suitable badges or identity cards; refrain from serving or distributing liquor on polling day and during the twenty-four hours preceding it; co-operate with the authorities in complying with the restrictions to be imposed on the plying of vehicles on the polling day and obtain permits for them which should be displayed prominently on those vehicles.

Polling Booth:

Excepting the voters , no one without a valid pass from the Election Commission shall enter the polling booths.

Observers:

The Election Commission is appointing Observers. If the candidates or their agents have any specific complaint or problem regarding the conduct of elections they may bring the same to the notice of the Observer.

Party in power:

The Party in power whether at the Centre or in the State or States concerned , shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign.

Process of Election

1. ***Submission of Nominations:*** President in case of Lok Sabha and the Governor in the case of Legislatures, issue the Notification of election. The contesting candidates are expected to submit their nominations before the Returning Officer, before the prescribed date. Every nomination should be accompanied by a deposit as prescribed. Deposit money is forfeited in case the candidate does not get the minimum number of votes prescribed.
2. ***Scrutiny of Nominations:*** The contesting candidates should properly fill up the Nomination Forms and satisfy the various conditions prescribed by the Election Commission. During the process of scrutiny, all such issues are examined. After such scrutiny alone, the names of the eligible candidates to the election are announced.
3. ***Withdrawal of Nomination:*** The contesting candidates are given a chance to withdraw their nominations. A date is fixed for this purpose.
4. ***Election Propaganda***: After the declaration of the names of the contesting candidates, propaganda / canvass work starts to woo the electorate. The independent candidates belonging no political parties are also contest in elections. Meetings, rallies, processions, pamphlets and other means of communication used for the purpose of wooing the voters.
5. **Election Day**: For the sake of the voters, the Election Commission has created a number of election booths. On the day of election, the voters can go to their nearest prescribed booth and exercise their vote. To carry out the election work, a number of Officers are

appointed. Security arrangements are also made. A voters' list is prepared. With the help of the list, Officers are able to identify the voters. The list contains the name, sex, age and address of the voters. Recently, the Election Commission has insisted on providing Identification Cards to the voters.

6. **Counting of Votes**: A number of counting centers are created and in the presence of the candidates or their agents, the sealed boxes / machines are opened for counting. One who gets the majority is declared as Winner. There is scope for recounting under special circumstances. The election disputes can be settled through courts.

Conduct of Elections (Amendment) Rules, 2019

The Central Government, after consulting the Election Commission, hereby makes the following rules further to amend the Conduct of Election Rules, 1961, namely:

i. These rules may be called the Conduct of Elections (Amendment) Rules, 2019. After clause (a), the following clauses shall be inserted, namely:
   - 'Absentee voter' means a person belonging to such class of persons as may be notified, under clause (c) of Section 60 of the Act, and who is employed in essential services as mentioned in the said notification, and includes an elector belonging to the class of senior citizen or persons with disability;
   - 'Nodal officer' means an officer authorised to verify the claim of an absentee voter not being an elector belonging to the class of senior citizen or persons with disability;
   - 'Person with disability' means a person flagged as person with disability in the database for the electoral roll;
   - 'Poll officer' means the officer deputed to issue postal ballot to elector belonging to the class of senior citizen or persons with disability;
   - 'Senior citizen' for the purpose of this Part means an elector belonging to the class of absentee voters and is above 80 years of age.

12.2 Electoral Reforms

Electoral reforms refer to the initiatives undertaken with an objective to strengthen the electoral processes. They are necessary due to the dynamism displayed in the politics of India. Bringing about reforms from time to time is necessary in order to establish India as a democratic republic as outlined in the preamble and other constitutional principles. Electoral reforms seem to have come to occupy a prominent position in the national discourse in recent times. The electoral system was largely free from any major flaw till the fourth general election (1967). The distortions in its working appeared, for the first time, in the fifth general election (1971) and these got multiplied in the successive elections, especially those held in the eighties and thereafter. The Election Commission has frequently expressed its concern and anxiety for removing obstacles in the way of free and fair polls. It has made a number of recommendations and repeatedly reminded the government the necessity so change existing laws checks the electoral malpractices. The Government of India made several Committees regarding electoral reforms. Number of new initiatives has been taken by the Election Commission to cleanse the electoral process. The important among these are discussed below:

Tarkunde Committee

The Tarkunde Committee (1974) On behalf of the Citizens for Democracy (CFD), Jayaprakash Narayan (JP) appointed a Committee in 1974 under the chairmanship of Justice V.M. Tarkunde to consider electoral reforms. It submitted the report in 1975. It recommended that the election commission should be a three member body. Tarkunde Committee's Report (1975) noted: "As in the case of Judiciary, the Election Commission must not only be independent in theory but also manifestly appear to be so in the exercise of its powers of organising and conducting elections. In the recent years, an impression is gaining ground that the Election Commission is becoming less and less independent of the Executive than in the earlier years of Independence, because the choice of the Chief Election Commissioner has not always been based on criteria, which would command the confidence of all sections of public opinion. The practice of making it a berth for retiring Government officials has, perhaps, been responsible for the feeling that the incumbent so benefited

will be beholden to the Government for his office". Besides other recommendations, the Committee recommended that the minimum age of voting should be 18 years. Consequently, it was enacted by the 61st Amendment Act of 1988. Also, The Committee recommended that "the members of the Election Commission should be appointed by the President on the advice of a Committee, consisting of the Prime Minister, the Leader of the Opposition (or a Member of Parliament selected by the Opposition) in the Lok Sabha, and the Chief Justice of India".

Dinesh Goswami Committee (1990)

On January 9, 1990, Prime Minister Mr. V.P. Singh appointed the Committee on Electoral Reforms under the chairmanship of the Law Minister, Mr. Dinesh Goswam Goswami. Regarding the appointment of the Commission, the Committee made the following recommendations:

a. The appointment of the CEC should be made by the President in consultation with the Chief Justice of India and the Leader of the Opposition;
b. the consultation process should have a statutory backing;
c. the appointment of the other Election Commissioners should be made by the committee in consultation with the Chief Election Commissioner;
d. on expiry of the term of Office, the Chief Election Commissioner and the Election Commissioners should be ineligible for any appointment under the Government, including the post of Governor.

The Committee's recommendations led to the enactment of the Chief. Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 and the Representation of the People (Amendment) Act, 1996. The Representation of the People Amendment Act, 1998 was passed to amplify section 159 of the Representation of the People Act, 1951. This enabled the Election Commission of India to deploy employees of public sector undertakings and autonomous bodies wholly or partially funded by the Government, for election duties. The United Front Government had identified a set of 24 proposals on electoral reforms. These proposals mainly consisted of unimplemented recommendations of the Dinesh Goswami Committee. The Government had also discussed those proposals with political parties in four meetings held between August 1996 and July 1997. The United Front Government was also separately considering certain proposals for strengthening section 8 of the Representation of the People Act, 1951 that were aimed at barring criminals from contesting elections. No final decision, however, could be taken by that Government in respect of any of those proposals.

The Vohra Committee (1993)

In 1993, the Vohra Committee appointed by the Government of India10 had stated in the strong tefms that the nexus between crime syndicates and political personalities was strong. The entry of criminals in politics is a matter of great concern. According to the Central Bureau of Investigation (CBI) report to the Vohra Committee all over India, crime syndicates have become a law unto themselves. Even in the smaller urban and rural areas criminals have come to prevail. Hiring assassins have become a part of the activities of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The Committee quoted other agencies to state that the Mafia network is virtually running a parallel government, pushing the State apparatus into irrelevance. The report also says in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of the local politicians cutting across party lines. Some political leaders become the hands of these gangs/ armed senas and over the years have got themselves elected to local bodies, state assemblies and the national parliament. The Committee recommended protecting politics from these criminal.

Indrajit Gupta Committee on State Funding of Elections (1998)

The National Agenda for Government of the Union Government mandated the introduction of necessary electoral reforms on the basis of the recommendations of Dinesh Goswami Committee. Accordingly, the Union Government took up on priority basis the unimplemented recommendations of the Dinesh Goswami Committee. As the set of 24 proposals comprising unimplemented recommendations of Dinesh Goswami Committee had been discussed by the previous government, the present government, at the initiative of its Home Minister, called a meeting of leaders of various political parties on 22nd May, 1998 to discuss afresh those proposals. As a follow up to a decision taken at the meeting, a High Powered Committee under the Chairmanship of Shri Indrajit Gupta, Member of Parliament, was constituted to suggest concrete measures for providing State funding to recognised political parties. The Committee also considered the related proposals of maintenance of accounts by political parties and their audit, ban on donations by companies to political parties, prohibiting inclusion of expenses of political parties in the election expenses of candidates and empowering of Election Commission of India to fix ceiling on election expenses before every General Election.

12.3 Issues in Electoral Politics in India

The election at present are not being hold in ideal conditions because of the enormous amount of money required to be spent and large muscle power needed for winning the elections. The major defects which come in the path of electoral system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, castism, non-serious and independent candidates etc.

Criminalization of Politics and Politicization of Criminals: Apart from the dark shadow of terrorism, prevailing social inequalities, communal tensions, severe economic disparities and demon of poverty the most serious problem being faced by the Indian democracy is criminalization of politics. At times, the concern has been expressed from time to time against this obnoxious cancerous growth proving fatal to electoral politics in India. The reason of the criminals behind entrance to politics is to gain influence and ensure that cases against them are dropped or not proceeded with. They are able to make it big in the political arena because of their financial clout. Political parties tap criminals for fund and in return provide them with political patronage and protection. Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes often at gun point. Voters in many parts in the country are forced to vote for the local strongman. Tickets were given to the candidates with criminal records even by National Party. The politics have been corrupted because the corrupt and criminals have to entered it, Criminalization of politics has become an all-pervasive phenomenon. At one time politicians hired criminals to help them win elections by booth capturing. Today, those same criminals have begun entering parliament and the state legislature. The entry of criminals in election politics must be stopped at any cost. If it is not checked it, will destroy the system totally.

Money power: Electioneering is an expensive affair in every democratic polity which plays a more vital role in India. Money power plays in our electoral system destructive role affecting seriously the working of periodic election. A prospective candidate in each constituency has to spend millions of money towards transport, publicity and other essential items of election campaign . In recent years the election expenses have increased beyond any limits due to the desire on the part of every political party to spend more than their rivals in the fray. The elections in Indian polity are becoming increasingly expensive and the gap between the expenses incurred and legally permitted is increasing over the years. The adoption of planning and of mixed economy with a large amount of control, regulation, licenses, permits and quotas in free India provided enormous opportunities for political corruption and resulted in an unethical nexus between the electoral politics and the business sector of the country. This seems to be continued even today with more disastrous consequences of an overflow of black money into the corridors of political parties despite the liberalized economy induced to the political system of country. Elections in India so far from a common man, only those people can participate in elections as a candidate who has a lot of money, because today vote is not a mean of public opinion. It is being purchased.

Muscle Power: Violence, pre-election intimidation, post election, victimisation, most of the riggings of any type, booth capturing both silent and violent are mainly the products of muscle power. These are prevalent in many parts of the country like Bihar, Western Uttar Pradesh, Maharashtra etc. and this cancerous disease is slowly spreading to south like in Andhra Pradesh, Criminalization of politics and politicalisation of criminals, freely indulged in now, are like two sides of the same coin and are mainly responsible for the manifestation of muscle power at elections. By using of violence, the criminals are able to achieve success at elections for their benefactors.

Misuse of Government Machinery: It is generally complained that the government in power at the time of election misuse official machinery to further the election prospects of its party candidates. The misuse of official machinery takes different forms, such as issue of advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing etc. The misuse of official machinery in the ways mentioned above gives an unfair advantage to the ruling party at the time of elections. This leads to misuse of public funds for furthering the prospects of candidates of a particular party.

Castism: The caste system is a predominant aspect of the social and political structure in India. Caste is a notable foundation of social stratification in India. Indian politics is caste-ridden politics. Thus while political parties struggle among themselves, to win different caste groups in their favour by making offers to them, caste groups too try to pressurize parties to choose its members for candidature in elections, If the caste group is dominant and the political party ,is an important

one, this interaction is all the more prominent. In many political parties, in place of ideological polarization there occurs the determination of policies and programmes as well as the nomination of electoral candidates and the extension of support to them on caste consideration. Caste based politics and castism are eroding the unity principle in the name of regional autonomy.

Communalism: The emergence of India as a "secular state", the politics of communalism and religious fundamentalism in the post independence period has led to a number of separate movements in various states and regions of the country. Communal polarization, rather multi-polarization, has posed a threat to the Indian "political ethos of pluralism, parliamentarianism and federalism". Despite the adoption of the "principle of Secularism" as a constitutional creed, which ironically allows communal parties to compete, the trend towards communalism and fundamentalism in Indian politics have been growing day by day. The spirit of tolerance that is essential for a „secular" society seems to have completely vanished from the body politics of India. Caste and religion have in recent years emerged "as rallying points to gain electoral" support. Unfortunately there is a tendency to play upon caste and religious sentiments and field candidates in elections with an eagle eye on the caste equations and communal configurations.

Lack of Moral Values in Politics: There has been very sharp erosion in the ideological orientation of political parties. Party dynamics in India has led to the emergence of valueless politics much against the ideals of the father of the nation, Mahatma Gandhi, who suggested that the Congress party should be disbanded after the achievement of Independence and its members should engage themselves in the service of the people. While Gandhi taught us tremendous selflessness, self sacrifice and service, to the people, such inspirational values, the democratic norms and institutions have been destroyed systematically over the last years of the working of the Constitution. In the process, both the politicians and political parties have lost their credibility, the ultimate value that should bind them with the masses. There seems to be a crisis of character amongst the politicians, as the system does not encourage the honest leader. Because of the falling moral standards both in the public and among the leaders, criminalisation of politics and politicization of criminals has become the norm. Due to degeneration of leadership, parties have been entangled in power struggle for the sake of personal ends. In a moral pursuit of power politics, every major player seems to be playing a no holds barred game. The Gandhian value of the spirit of service to the nation has become completely extinct from the present day politics. The money and muscle powers are the basic evils that pollute and defile the process and motivate participants to resort to mal practices in elections. This leads to the decline of moral values in the arena of electoral politics. Radical measures- legislative administrative and reformatory are needed to stem the root that is eating vitiate of the democratic process. A game can be fair only if the players are honest and true to its spirit.

Non-Serious Candidates in Political Parties: In recent years there has been a steady increase in the number of candidates in elections. The number of candidates has swelled due to the participation of Independents. They contest elections light heartedly and lose their deposits. Non-serious candidates are largely floated by serious candidates either to cut sizeable portion of votes of rival candidates or to split the votes on caste lines or to have additional physical force at polling station and counting centers. The multiplicity of candidates causes inconvenience to election authorities in the management of elections. The voters are also handicapped in identifying the candidates of their own choice. This affects the sanctity of elections. This onslaught of non-seriousness has to be halted.

12.4 Electoral Reforms Undertaken

Electoral Reforms Before 1996

Lowering of Voting Age: The 61st Constitutional Amendment Act of 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the assembly elections. This was done in order to provide to the unrepresented youth of the country an opportunity to express their feelings and help them become a part of political process. Deputation to Election Commission In 1988, a provision was made that the officers and the staff engaged in preparation, revision and correction of electoral rolls for elections are deemed to be on deputation to the Election Commission for the period of such employment. These personnel, during that period, would be under the control, superintendence and discipline of the Election Commission.

Increase in Number of Proposers: In 1988, the number of electors who are required to sign as proposers in nomination papers for elections to the Rajya Sabha and state legislative council has been increased to 10 per cent of the electors of the constituency or ten such electors, whichever is less. This was done in order to prevent non-serious candidates from contesting frivolously.

Electronic Voting Machines: In 1989, a provision was made to facilitate the use of Electronic Voting Machines (EVMs) in elections. The EVMs were used for the first time in 1998 on experimental basis in selected constituencies in the elections to the Assemblies of Rajasthan, Madhya Pradesh and Delhi. The EVMs were used for the first time in the general elections (entire state) to the Assembly of Goa in 1999.

Booth Capturing In 1989, a provision was made for adjournment of poll or countermanding of elections in case of booth capturing. Booth capturing includes: (i) seizure of a polling station and making polling authorities surrender ballot papers or voting machines (ii) taking possession of polling station and allowing only one's own supporters to exercise their franchise (iii) threatening and preventing any elector from going to polling station and (iv) seizure of the place being used for counting of votes. Elector's Photo Identity Card (EPIC) The use of electors' photo identity cards by the Election Commission is surely making the electoral process simple, smoother and quicker. A decision was taken by the Election Commission in 1993 to issue photo identity cards to electors throughout the country to check bogus voting and impersonation of electors at elections. The electoral roll is the basis for issue of EPICs to the registered electors. The electoral rolls are normally revised every year with 1st January of the year as the qualifying date. Every Indian citizen who attain the age of 18 years or above as on that date is eligible for inclusion in the electoral roll and can apply for the same. Once he is registered in the roll, he would be eligible for getting an EPIC. The scheme of issuing the EPICs is, therefore, a continuous and ongoing process for the completion of which no time limit can be fixed as the registration of electors is a continuous and ongoing process (excepting for a brief period between the last date for filing nomination and completion of electoral process) on account of more number of persons becoming eligible for the right of franchise on attaining the age of 18. It is the continuous effort of the Election Commission to provide the EPICs to the electors who have been left out in the previous campaigns as well as the new electors.

Electoral Reforms of 1996

In 1990, the National Front Government headed by V P Singh appointed a committee on electoral reforms under the chairmanship of Dinesh Goswami, the then Law Minister. The Committee was asked to study the electoral system in detail and suggest measures for remedying the drawbacks within it. The Committee, in its report submitted in 1990 itself, made a number of proposals on electoral reforms. Some of these recommendations were implemented in 19969. These are explained here.

Listing of Names of Candidates The candidates contesting elections are to be classified into three categories for the purpose of listing of their names. They are

(i) Candidates of recognised political parties

(ii) Candidates of registered-unrecognized political parties

(iii) Other (independent) candidates

Their names in the list of contesting candidates and in the ballot papers has to appear separately in the above order and in each category these have to be arranged in the alphabetical order.

Disqualification for Insulting the National Honour Act A person who is convicted for the following offences under the Prevention of Insults to National Honour Act of 1971 is disqualified to contest in the elections to the Parliament and state legislature for 6 years.

(i) Offence of insulting the National Flag

(ii) Offence of insulting the Constitution of India

(iii) Offence of preventing the singing of National Anthem

Prohibition on the Sale of Liquor No liquor or other intoxicants are to be sold or given or distributed at any shop, eating place, hotel or any other place whether public or private within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll. Any person who violates this rule is to be punished with imprisonment up to 6 months or with fine up to 2,000 or with both.

Number of Proposers The nomination of a candidate in a Parliamentary or assembly constituency should be subscribed by 10 registered electors of the constituency as proposers, if the candidate is not sponsored by a recognised political party. In the case of a candidate sponsored by a recognised political party, only one proposer is required. This was done in order to discourage non-serious people from contesting the elections.

Death of a Candidate Earlier, in case of death of a contesting candidate before the actual polling, the election used to be countermanded. Consequently, the election process had to start all over again in the concerned constituency. But now, the election would not be countermanded on the death of a contesting candidate before the actual polling. However, if the deceased candidate belonged to a recognised political party, the party concerned would be given an option to propose another candidate within seven days.

Time Limit for By-Elections Now, by-elections are to be held within six months of occurrence of the vacancy in any House of Parliament or a state legislature. But, this condition is not applicable in two cases:

(i) Where the remainder of the term of the member whose vacancy is to be filled is less than one year; or

(ii) When the Election Commission in consultation with the Central Government, certifies that it is difficult to hold the by-elections within the said period.

Contestants Restricted to Two Constituencies A candidate would not be eligible to contest from more than two Parliamentary or assembly constituencies at a general election or at the by-elections which are held simultaneously.

Effective Campaigning Period Reduced The minimum gap between the last date for withdrawal of candidature and the polling date has been reduced from 20 to 14 days.

Electoral Reforms After 1996

Presidential and Vice Presidential Elections In 1997, the number of electors as proposers and seconders for contesting election to the office of the President was increased from 10 to 50 and to the office of the Vice President from 5 to 20. Further, the amount of security deposit was increased from 2,500 to 15,000 for contesting election to both the offices of President and Vice-President to discourage frivolous candidates.

Requisitioning of Staff for Election Duty In 1998, a provision was made whereby the employees of local authorities, nationalized banks, universities, LIC, government undertakings and other government-aided institutions can be requisitioned for deployment on election duty.

Voting through Postal Ballot In 1999, a provision was made for voting by certain classes of persons through postal ballot. Thus, any class of persons can be notified by the Election Commission, in consultation with the government, and the persons belonging to such notified class can give their votes by postal ballot, and not in any other manner, at elections in their constituency or constituencies.

Facility to Opt to Vote Through Proxy In 2003, the facility to opt to vote through proxy was provided to the service voters belonging to the Armed Forces and members belonging to a Force to which provisions of the Army Act apply. Such service voters who opt to vote through proxy have to appoint a proxy in a prescribed format and intimate the Returning Officer of the constituency.

Exemption of Travelling Expenditure As per a provision of 2003, the traveling expenditure incurred by the campaigning leaders of a political party shall be exempted from being included in the election expenses of the candidate.

Free Supply of Electoral Rolls, etc. According to a 2003 provision, the Government should supply, free of cost, the copies of the electoral rolls and other prescribed material to the candidates of recognised political parties for the Lok Sabha and Assembly elections. Further, the Election Commission should supply specified items to the voters in the constituencies concerned or to the candidates set up by the recognised political parties.

Allocation of Time on Electronic Media Under a 2003 provision, the Election Commission should allocate equitable sharing of time on the cable television network and other electronic media during elections to display or propagate any matter or to address public. This allocation would be decided on the basis of the past performance of a recognised political party.

Introduction of Braille Signage Features in EVMs The Commission received representations from the various associations of visually impaired persons for introduction of Braille signage features in the EVMs to facilitate the visually impaired voters to cast their votes without the help of attendant. The Commission considered the proposal in detail and tried the Braille signage feature in the EVMs during the bye-election to the Asifnagar Assembly Constituency of Andhra Pradesh held in 2004. In 2005, it was tried in one of the constituency during the Assembly elections of Bihar, Jharkhand and Haryana. In 2006, it was tried in one of the constituency of the States of Assam, West

Bengal, Tamil Nadu, Puducherry and Kerala during Assembly elections. In 2008, it was tried in all the assembly constituencies of NCT of Delhi during Assembly elections.

Electoral Reforms since 2010

Restrictions Imposed on Exit Polls According to a 2009 provision, conducting exit polls and publishing results of exist polls would be prohibited during the election to Lok Sabha and State Legislative Assemblies. Thus, no person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, the result of any exit poll during the period notified by the Election Commission in this regard. Further, any person who contravenes this provision shall be punishable with imprisonment of upto two years or with fine or with both. "Exit-poll" is an opinion survey regarding how electors have voted at an election or how all the electors have performed with regard to the identification of a political party or candidate in an election.

Time-Limit for Submitting a Case for Disqualification In 2009, a provision was made for the simplification of the procedure for disqualification of a person found guilty of corrupt practices. It provided for a three-month time-limit within which the specified authority will have to submit the case of a person found guilty of corrupt practice to the President for determination of the question of disqualification.

Online Enrolment in the Electoral Roll In 2013, a provision was made for online filing of applications for enrolment in the electoral roll. For this purpose, the General Government, after consulting the Election Commission, made the rules known as the Registration of the Electors (Amendment) Rules, 2013. These rules made certain amendments in the Registration of Electors Rules, 1960.

Introduction of NOTA Option According to the directions of Supreme Court, the Election Commission made provision in the ballot papers / EVMs for None of the Above (NOTA) option so that the voters who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote for such candidates while maintaining the secrecy of their ballot.

Introduction of VVPAT The Voter Verifiable Paper Audit Trail is an independent system attached with the EVMs that allows the voters to verify that their votes are cast as intended. When a vote is cast, a slip is printed and remains exposed through a transparent window for seven seconds, showing the serial number, name and symbol of the candidate. Thereafter, the receipt automatically gets cut and falls into the sealed drop box of the VVPAT. The system allows a voter to challenge his/her vote on the basis of the paper receipt. As per rules, the Presiding Officer of the polling booth will have to record the dissent of the voter, which would have to be taken into account at the time of counting, if the challenge is found to be false.

Immediate Disqualification of Convicted MPs and MLAs In 2013, the Supreme Court held that charge sheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before. The concerned Bench of the Court struck down as unconstitutional Section 8 (4) of the Representation of the People Act (1951) that allows convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay of the conviction and sentence. The Bench, however, made it clear that the ruling will be prospective and those who had already filed appeals in various High Courts or the Supreme Court against their convictions would be exempt from it. The Bench said: "A reading of the two provisions in Articles 102 and 191 of the Constitution would make it abundantly clear that Parliament is to make one law for a person to be disqualified for being chosen as, and for being, a Member of either House of Parliament or Legislative Assembly or Legislative Council of the State. Parliament thus does not have the power under Articles 102 and 191 of the Constitution to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a Member of Parliament or the State Legislature." The Bench said: "Section 8 (4) of the Act which carves out a saving in the case of sitting members of Parliament or State Legislature from the disqualifications under the Act or which defers the date on which the disqualification will take effect in the case of a sitting member of Parliament or a State Legislature is beyond the powers conferred on Parliament by the Constitution."

Ceiling on Election Expenditure Increased In 2014, the Central Government raised the maximum ceiling on election expenditure by candidates for a Lok Sabha seat in bigger states to 70 lakhs (from earlier 40 lakhs). In other states and union territories, it is 54 lakhs (from earlier 16-40 lakhs). Similarly, the limit for an Assembly seat in the bigger states was increased to 28 lakhs (from

earlier 16 lakhs). In other states and union territories, it is 20 lakhs (from earlier 8-16 lakhs). The State-wise limits are mentioned in Table 71.1 at the end of this chapter. Photos of Candidates on EVMs and Ballot Papers According to an Election Commission order, in any election being held after May 1, 2015, the ballot papers and EVMs will carry the picture of the candidate with his or her name and party symbol to avoid confusion among the electorates in constituencies where namesakes are contesting.

12.5 Functioning and Reforms of the Local Government Institutions

India, primarily, is a land of villages and around 72% of the total population of India resides in the rural areas. The rural areas thus forms the roots for the governance in India and the democracy should start thereon. Mahatma Gandhi also said that the main element for the development and for the governance should not be the big cities rather the village because it is where India resides. Local government is about government that involves the day-to-day life and problems of ordinary citizens. Local government believes that local knowledge and local interest are essential ingredients for democratic decision making. They are also necessary for efficient and people-friendly administration. The advantage of local government is that it is so near the people. It is convenient for the people to approach the local government for solving their problems both quickly and with minimum cost. Democracy is about meaningful participation. It is also about accountability. Strong and vibrant local governments ensure both active participation and purposeful accountability. It is necessary that in a democracy, tasks, which can be performed locally, should be left in the hands of the local people and their representatives. Common people are more familiar with their local government than with the government at the State or national level. They are also more concerned with what local government does or has failed to do as it has a direct bearing and impact on their day-to-day life. Thus, strengthening local government is like strengthening democratic processes. After the independence and under the impact of the Gandhian ideology of rural development, there has been a gradual development of institution, supposed to embody the principals of democratic decentralization. The objectives of these grass root level institutions are:

- To facilitate rapid rural development in all fields.
- To involve the people in the process of development.
- To ensure social justice; empowerment of SC, ST, Women and backward Class people.

Importance

The term *Panchayati Raj* in India signifies the system of rural local self-government. It has been established in all the states of India by the Acts of the state legislatures to build democracy at the grass root level. It means decentralisation of power and authority to the lowest limb of the governmental structure, thereby enabling the residents of the farthest hamlet of the country to share the responsibility of running its affairs. Today, the Panchayat Raj Institutions (PRIs) have varieties of functions related to day-to-day life of the rural people without which the rural life cannot be imagined. It has the responsibility to provide civic amenities, housing, sites, loans protection of environment, ensuring harmony in the society etc. Hence we can call PRI as an institution of a service body where the popular initiative and involvement of the local people is compulsory in all its process. By popular involvement of the local people, it avoids the conflicts; there will be less intervention of bureaucrats; transparency will also be ensured apart from fixing the responsibilities on the local people themselves. The phrase 'democratic decentralisation', used by the Balwantray Mehta Team to designate the system, conveys, perhaps, the fullest connotation of this indigenous term, Panchayati Raj. It is working not only for the betterment of the economic conditions of the society but, also to pursue a good and dignified life. Panchayats therefore were looked upon as instruments of decentralisation and participatory democracy. The Indian national movement was concerned about the enormous concentration of powers in the hands of the Governor General sitting at Delhi. Therefore, for our leaders, independence meant an assurance that there will be decentralisation of decision making, executive and administrative powers. The main responsibility of the Panchayati Raj Institutions is to accelerate the pace of development and involve all people in this process so that the felt needs of the people and their development aspirations are fulfilled. The decentralized planning is a multi-level planning process. It will have to start from lower level intermediate level and higher level. PRIs are expected to play an important role in planning and implementing various developmental programmes.

Local Governments in Independent India

The term 'panchayati' literally means a Council of Five. The principle of 'panchayati' is Panch Parmeshwar, which means God speaking through the Five. It seems the panchayat was invented with a spiritual tone to take up politico-developmental programmes for the Indian villages.

However, the term 'Panchayati Raj' came into style in the late 1950's. It referred to a process of governance, which links the people from village to state. Article 40 in Part IV of the Indian Constitution Directive Principles of State Policy which says that, "the state should take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government." One may recall that after independence, India has continuously implemented development programmes with the objective of improving the social and economic conditions of the people. One of the major development attempts was the Community Development Programme (CDP) introduced in 1952. The Programme was not a success because of the lack of people's participation in it. It was followed by a series of development interventions, but people's participation continued to be a problem. The CDP was soon strengthened by a National Extension Service to tackle the problems of growth and development at different local and functional levels. Even this could invoke only token public participation. It is, however, true that CDP was the first comprehensive programme for socio-economic transformation of rural areas. It is also a fact that it succeeded in establishing, for the first time, an organized administrative set-up at the national, state, district and block levels for the implementation of development programmes.

Balwant Rai Mehta Committee

In January 1957, the Government of India appointed a committee to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The chairman of this committee was Balwant Rai G Mehta. The committee submitted its report in November 1957 and recommended the establishment of the scheme of 'democratic decentralisation', which ultimately came to be known as Panchayati Raj. The specific recommendations made by it are:

I. Establishment of a three-tier panchayati raj system−gram panchayat at the village level, panchayat samiti at the block level and zila parishad at the district level. These tiers should be organically linked through a device of indirect elections.
II. The village panchayat should be constituted with directly elected representatives, whereas the panchayat samiti and zila parishad should be constituted with indirectly elected members.
III. All planning and development activities should be entrusted to these bodies.
IV. The panchayat samiti should be the executive body while the zila parishad should be the advisory, coordinating and supervisory body.
V. The district collector should be the chairman of the zila parishad.
VI. There should be a genuine transfer of power and responsibility to these democratice bodies.

These recommendations of the committee were accepted by the National Development Council in January 1958. The council did not insist on a single rigid pattern and left it to the states to evolve their own patterns suitable to local conditions. But the basic principles and broad fundamentals should be identical throughout the country. Rajasthan was the first state to establish Panchayati Raj. The scheme was inaugurated by the prime minister on October 2, 1959, in Nagaur district. Rajasthan was followed by Andhra Pradesh, which also adopted the system in 1959. Thereafter, most of the states adopted the system.

Ashok Mehta Committee

In December 1977, the Janata Government appointed a committee on panchayati raj institutions under the chairmanship of Ashok Mehta. It submitted its report in August 1978 and made 132 recommendations to revive and strengthen the declining panchayati raj system in the country. Its main recommendations were:

1. The three-tier system of panchayati raj should be replaced by the two-tier system, that is, zila parishad at the district level, and below it, the mandal panchayat consisting of a group of villages with a total population of 15,000 to 20,000.

2. A district should be the first point for decentralisation under popular supervision below the state level.

3. Zila parishad should be the executive body and made responsible for planning at the district level.

4. There should be an official participation of political parties at all levels of panchayat elections.

5. The panchayati raj institutions should have compulsory powers of taxation to mobilise their own financial resourses.

6. There should be a regular social audit by a district level agency and by a committee of legislators to check whether the funds allotted for the vulnerable social and economic groups are actually spent on them.

7. The state government should not supersede the panchayati raj institutions. In case of an imperative supersession, elections should be held within six months from the date of supersession.

8. The nyaya panchayats should be kept as separate bodies from that of development panchayats. They should be presided over by a qualified judge.

9. Seats for SCs and STs should be reserved on the basis of their population.

Due to the collapse of the Janata Government before the completion of its term, no action could be taken on the recommendations of the Ashok Mehta Committee at the central level. However, the three states of Karnataka, West Bengal and Andhra Pradesh took steps to revitalise the panchayati raj, keeping in view some of the recommendations of the Ashok Mehta Committee.

G V K Rao Committee

The Committee to review the existing Administrative Arrangements for Rural Development and Poverty Alleviation Programmes under the chairmanship of G.V.K. Rao was appointed by the Planning Commission in 1985. The Committee came to conclusion that the developmental process was gradually bureaucratised and divorced from the Panchayati Raj. This phenomena of bureaucratisation of development administration as against the democratisation weakened the Panchayati Raj institutions resulting in what is aptly called as 'grass without roots'. Hence, the Committee made the following recommendations to strengthen and revitalise the Panchayati Raj system:

(i) The district level body, that is, the Zila Parishad should be of pivotal importance in the scheme of democratic decentralisation. It stated that "the district is the proper unit for planning and development and the Zila Parishad should become the principal body for management of all development programmes which can be handled at that level."

(ii) The Panchayati Raj institutions at the district and lower levels should be assigned an important role with respect to planning, implementation and monitoring of rural development programmes.

(iii) Some of the planning functions at the state level should be transferred to the district level planning units for effective decentralized district planning.

(iv) A post of District Development Commissioner should be created. He should act as the chief executive officer of the Zila Parishad and should be in charge of all the development departments at the district level.

Thus the committee, in its scheme of decentralised system of field administration, assigned a leading role to the Panchayati Raj in local planning and development. It is in this respect that the recommendation of the G.V.K. Rao Committee Report (1986) differed from those of the Dantwala Committee Report on Block-Level Planning (1978) and the Hanumantha Rao Committee Report on District Planning (1984). Both the committees have suggested that the basic decentralised planning function should be done at the district level. The Hanumantha Rao Committee advocated separate district planning bodies under either the District Collector or a minister. In both the models, the Collector should play a significant role in the decentralized planning though the Committee stated that Panchayati Raj institutions would also be associated with this process (of decentralised planning). The committee recommended that the Collector should be the coordinator, at the district level, of all developmental and planning activities. Thus the, Hanumantha Rao Committee differed in this respect from those of Balwantray Mehta Committee, the Administrative Reforms Commission of India, the Ashok Mehta Committee and finally the G.V.K. Rao Committee which recommended reduction in the developmental role of the District Collector and which assigned a major role to the Panchayati Raj in development administration.

L M Singhvi Committee

In 1986, Rajiv Gandhi government appointed a committee to prepare a concept paper on 'Revitalisation of Panchayati Raj Institutions for Democracy and Development' under the chairmanship of L M Singhvi. It made the following recommendations.

(i) The Panchayati Raj institutions should be constitutionally recognised, protected and preserved. For this purpose, a new chapter should be added in the Constitution of India. This will make their identity and integrity reasonably and substantially inviolate. It also suggested constitutional provisions to ensure regular, free and fair elections to the Panchayati Raj bodies.

(ii) Nyaya Panchayats should be established for a cluster of villages.

(iii) The villages should be reorganised to make Gram Panchayats more viable. It also emphasised the importance of the Gram Sabha and called it as the embodiment of direct democracy.

(iv) The Village Panchayats should have more financial resources.

(v) The judicial tribunals should be established in each state to adjudicate controversies about election to the Panchayati Raj institutions, their dissolution and other matters related to their functioning.

Thungon Committee

In 1988, a sub-committee of the Consultative Committee of Parliament was constituted under the chairmanship of P.K. Thungon to examine the political and administrative structure in the district for the purpose of district planning. This committee suggested for the strengthening of the Panchayati Raj system. It made the following recommendations:

1. The Panchayati Raj bodies should be constitutionally recognized.

2. A three-tier system of Panchayati Raj with panchayats at the village, block and district levels.

3. Zilla Parishad should be the pivot of the Panchayati Raj system. It should act as the planning and development agency in the district.

4. The Panchayati Raj bodies should have a fixed tenure of five years.

5. The maximum period of super session of a body should be six months.

6. A planning and co-ordination committee should be set-up at the state level under the chairmanship of the minister for planning. The presidents of Zilla Parishads should be its members.

7. Reservation of seats in all the three-tiers should be on the basis of population. There should also be reservation for women.

8. A state finance commission should be set-up in each state. It would lay down the criteria and guidelines for the devolution of finances to the Panchayati Raj institutions.

10. The district collector should be the chief executive officer of the Zilla Parishad.

Gadgil Committee

The Committee on Policy and Programmes was constituted in 1988 by the Congress party under the chairmanship of V.N. Gadgil. This committee was asked to consider the question of "how best Panchayati Raj institutions could be made effective". In this context, the committee made the following recommendations:

1. A constitutional status should be bestowed on the Panchayati Raj institutions.

2. A three-tier system of Panchayati Raj with panchayats at the village, block and district levels.

3. The term of Panchayati Raj institutions should be fixed at five years.

4. The members of the Panchayats at all the three levels should be directly elected.

5. Reservation for SCs, STs and women.

6. Establishment of a State Finance Commission for the allocation of finances to the Panchayats.

9. Establishment of a State Election Commission for the conduction of elections to the panchayats.

The above recommendations of the Gadgil Committee became the basis for drafting an amendment bill aimed at conferring the constitutional status and protection to the Panchayati Raj institutions.

Constitutionalisation

Rajiv Gandhi Government The Rajiv Gandhi Government introduced the 64th Constitutional Amendment Bill in the Lok Sabha in July 1989 to constitutionalise panchayati raj institutions and make them more powerful and broad based. Although, the Lok Sabha passed the bill in August 1989, it was not approved by the Rajya Sabha. The bill was vehemently opposed by the Opposition

on the ground that it sought to strengthen centralisation in the federal system. V P Singh Government The National Front Government, soon after assuming office in November 1989 under the Prime Ministership of V P Singh, announced that it would take steps to strengthen the panchayati raj institutions. In June 1990, a two-day conference of the state chief ministers under the chairmanship of V P Singh was held to discuss the issues relating to the strengthening of the panchayati raj bodies. The conference approved the proposals for the introduction of a fresh constitutional amendment bill. Consequently, a constitutional amendment bill was introduced in the Lok Sabha in September 1990. However, the fall of the government resulted in the lapse of the bill. Narasimha Rao Government The Congress Government under the prime ministership of P V Narasimha Rao once again considered the matter of the constitutionalisation of panchayati raj bodies. It drastically modified the proposals in this regard to delete the controversial aspects and introduced a constitutional amendment bill in the Lok Sabha in September, 1991. This bill finally emerged as the 73rd Constitutional Amendment Act, 1992 and came into force on 24 April, 19932.

73rd Amendment act of 1992

Significance of the Act

This act has added a new Part-IX to the Constitution of India. This part is entitled as 'The Panchayats' and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new Eleventh Schedule to the Constitution. This schedule contains 29 functional items of the panchayats. It deals with Article 243-G. The act has given a practical shape to Article 40 of the Constitution which says that, "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." This article forms a part of the Directive Principles of State Policy. The act gives a constitutional status to the panchayati raj institutions. It has brought them under the purview of the justiciable part of the Constitution. In other words, the state governments are under constitutional obligation to adopt the new panchayati raj system in accordance with the provisions of the act. Consequently, neither the formation of panchayats nor the holding of elections at regular intervals depends on the will of the state government any more. The provisions of the act can be grouped into two categories–compulsory and voluntary. The compulsory (mandatory or obligatory) provisions of the act have to be included in the state laws creating the new panchayati raj system. The voluntary provisions, on the other hand, may be included at the discretion of the states. Thus the voluntary provisions of the act ensure the right of the states to take local factors like geographical, politico-administrative and others, into consideration while adopting the new panchayati raj system.

The act is a significant landmark in the evolution of grassroot democratic institutions in the country. It transfers the representative democracy into participatory democracy. It is a revolutionary concept to build democracy at the grassroot level in the country.

Salient Features

The salient features of the act are:

Gram Sabha The act provides for a Gram Sabha as the foundation of the panchayati raj system. It is a body consisting of persons registered in the electoral rolls of a village comprised within the area of Panchayat at the village level. Thus, it is a village assembly consisting of all the registered voters in the area of a panchayat. It may exercise such powers and perform such functions at the village level as the legislature of a state determines.

Three-Tier System The act provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels3. Thus, the act brings about uniformity in the structure of panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

Election of Members and Chairpersons All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

Reservation of Seats The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat (i.e., at all the three levels) in proportion of their population to the total population in the panchayat area. Further, the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs. The act provides for the reservation of not less than one-third of the total number of seats

for women (including the number of seats reserved for women belonging the SCs and STs). Further, not less than one-third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

Duration of Panchayats The act provides for a five-year term of office to the panchayat at every level. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution. But, where the remainder of the period (for which the dissolved panchayat would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new panchayat for such period.

Disqualifications A person shall be disqualified for being chosen as or for being a member of panchayat if he is so disqualified, (a) under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.

State Election Commission The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commission. It consists of a state election commissioner to be appointed by the governor. His conditions of service and tenure of office shall also be determined by the governor. He shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court. His conditions of service shall not be varied to his disadvantage after his appointment. The state legislature may make provision with respect to all matters relating to elections to the panchayats.

Powers and Functions The state legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to:

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the Eleventh Schedule.

Finances The state legislature may:

(a) authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees;

(b) assign to a panchayat taxes, duties, tolls and fees levied and collected by the state government;
(c) provide for making grants-in-aid to the panchayats from the consolidated fund of the state; and
(d) provide for constitution of funds for crediting all moneys of the panchayats.

Finance Commission The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panachayats. It shall make the following recommendations to the Governor.

1. The principles that should govern:

(a) The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state.

(b) The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.

(c) The grants-in-aid to the panchayats from the consolidated fund of the state.

2. The measures needed to improve the financial position of the panchayats.

3. Any other matter referred to it by the governor in the interests of sound finance of the panchayats.

Audit of Accounts The state legislature may make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

Application to Union Territories The president of India may direct that the provisions of this act shall apply to any union territory subject to such exceptions and modifications as he may specify.

Summary

The successful functioning of the Election Commission since its inception with the inauguration of the Constitution of India in 1950 has been one of the marvelous treats of the democratic system of governance in India. If the conduct of free and fair elections at periodic intervals is assumed to be the essence of the vibrancy of a successful democracy, the successful functioning of the electoral machinery must be construed to lie at the heart of the system. On such counts, the Election Commission of India has come out with flying colours. The significance of the free and fair elections to be conducted by an independent authority can be gauged from the experiences of those totalitarian or authoritarian countries which also claim to hold periodic elections to their legislative and executive bodies; but the farcical nature of such elections are for everybody to see in the world. Thus, the difference between a true democracy and a farcical democracy lies in the sanctity of free and fair elections in the system, and in this regard, the credit needs to be given to the Election Commission of India for ensuring that the country remains the leading light amongst the prime and successful democratic systems in the world. Political corruption should be stopped by providing funds to genuine candidates through political parties whose account should be auditable. Candidate involving in corruption should be disqualified. In democracy the public is most powerful entity. If the public do not vote in favour of criminals, dishonest and corrupt politicians who wish to purchase their votes by money or muscle powers, everything shall function nicely and the democracy will shine in the dark spectrum of hitherto corrupt and criminalised political system. So, though the EC is working hard in this direction, but it cannot succeed unless all political parties and voters realize their responsibility. Finally there should proper mechanism, fully functional and fully equipped to fight with any triviality.

The plight of the Panchayati Raj institutions in India is reflective of the tendency on part of the political leaders in power, right from the days of the national movement till date, to disallow any experiment in betterment in the conditions of the people if it has a propensity to undermining the vested interests of the leaders. As the Panchayati Raj happens to be one of the most effective instruments of ensuring the involvement of common people in the processes of governance by guaranteeing them a role in the formulation and execution of policies and programmes of rural development, it has never been a favourite idea of the leaders for fear of losing their grip over the socio-economic and political aspects of rural life having a bearing on their electoral fortunes. Hence, despite being a novel idea of democratic decentralization with potential of deepening the ethos of democracy and spirit of participatory governance, the operationalization of Panchayati Raj appears more to be a formalistic ritual rather than a true experience in rural self-governance. After the passage of the 73rd Constitutional Amendment Act, though the structural shortcomings of the Panchayati Raj institutions have seemingly been removed to a great extent, the real challenge in the successful functioning of these bodies lie in changing the outlook of the power brokers in government towards these institutions.

Keywords/Glossary

Bodies: Legal or constitutional entities created for a special purpose.
By-law: Rule made by a local body or council under authority of a statue.
Commission: Authority to perform an act or exercise power: 'a military commission' means conferring the rank of an officer; a body of persons charged with some specific functions. For example a constitutional commission.
Committee: A body of persons appointed or elected for performing specified tasks; may be small group within a larger body.
Conditional grants: Funds transferred by the federal government to constituent units for specific purposes and with limits on its spending that are monitored by the grantor.
Election Commission: A constitutional body with responsibility for conducting elections.
Electoral system: The method of converting votes into seats in an elected body.
Government, local: A system of government administered by locally elected bodies; government at the local level; not used of government at level of units in a federation.
Municipality: A local government often centered in a town or a city.
Province/Provincial: A term to disrobe a territorial constituent unit within a federation.
Reservation: A process of positive discrimination to ensure adequate representation of marginalized groups in legislative and executive positions.

Self Assessment

1. Which of the following is not a feature of Election system in India?

A. Universal Adult Franchise

B. Secret Voting

C. Reservation of seats in the legislature for the members of Scheduled Castes and Scheduled Tribes.

D. Communal Electorate

2. Members of Election Commission are appointed by.....

A. President of India

B. Prime Minister of India

C. Elected by the people

D. Chief Justice of India

3. Which article of the Indian constitution says that will be an election commission in India?

A. Article 124

B. Article 342

C. Article 324

D. Article 115

4. Which Articles in the Constitution give provisions for the electoral system in our country?

A. Articles 124-128

B. Articles 324-329

C. Articles 256-259

D. Articles 274-279

5. Elections in India for Parliament and State Legislatures are conducted by.....

A. President

B. State Election Commission

C. Governor

D. Election Commission of India

6. By which Constitutional amendment was the voting age brought down from 21 to 18?

A. 37st Constitutional Amendment of 1985

B. 61st Constitutional Amendment of 1988

C. 56st Constitutional Amendment of 1993

D. 46st Constitutional Amendment of 1985

7. The Representation of the People (Amendment) Act, 2003, passed by the Parliament of India sought to:

A. Provide the facility to opt to vote through proxy to the service voters belonging to armed forces.

B. Introduce open ballot system for elections to the Council of States.

C. Insert provision regarding supply of copies of electoral rolls to candidates of recognized political parties.

D. Make it mandatory for political parties to report all cases of contributions received above Rs.20, 000 to Election Commission.

8. Indrajit Gupta Committee is related to:
A. Registration of political parties.
B. Criminalisation of politics
C. State funding of elections
D. Anti-defection law

9. The Electronic Voting Machines (EVMs) were used for the rst time in 1999 in the general elections (entire state) to the Legislative Assembly of:
A. Goa
B. Rajasthan
C. Madhya Pradesh
D. Kerala

10. Dinesh Goswami Committee on electoral reforms was appointed by the:
A. United Front Government
B. BJP-led coalition Government
C. United Progressive Alliance Government
D. National Front Government

11. As per the Constitution (74th Amendment) Act, Legislatures of States have not been conferred the power to empower municipalities with the responsibility of:
A. Preparation of plans for economic development and social justice
B. Management of law and order
C. Implementation of schemes as may be entrusted to them
D. Levy, collection and appropriation of taxes, duties, tolls, etc.

12. Which one of the following functions is not the concern of the Local Government in India?
A. Public health
B. Sanitation
C. Public utility services
D. Maintenance of public order

13. Which one of the following Constitution (Amendment) Acts provided for the formation of the Metropolitan Planning Committee?
A. 74th Constitution (Amendment) Act
B. 42nd Constitution (Amendment) Act
C. 44th Constitution (Amendment) Act
D. 73rd Constitution (Amendment) Act

14. In 1989, the 64th and 65th Amendment Bills were not passed and the Amendment Acts could not come in force at that time because:
A. Lok Sabha was dissolved in November, 1989.
B. Lok Sabha could not pass the Bills for lack of required majority.
C. Rajya Sabha could not pass the Bills due to lack of required majority.
D. The President sent the bills for reconsideration.

15. Who among the following is hailed as the father of local self-government in India?
A. Lord Mayo
B. Lord Ripon
C. Jawaharlal Nehru
D. Mahatma Gandhi

16. Nagar Palika bill was first introduced in Parliament during the prime ministership of:
A. Narasimha Rao
B. V.P. Singh
C. Chandrasekhar
D. Rajiv Gandhi

17. Ashok Mehta Committee in 1977 recommended for the establishment of:
A. Nagar Panchayat
B. Panchayat Samiti
C. Maha Panchayat
D. Mandal Panchayat

18. Which one of the following was the first committee to demand constitutional recognition for Panchayats?
A. Balwantrai Mehta Committee
B. Ashok Mehta Committee
C. Santhanam Committee
D. G.V.K.Rao Committee

Answer for Self Assessment

1.	D	2.	A	3.	C	4.	B	5.	D
6.	B	7.	B	8.	C	9.	A	10.	D
11.	B	12.	D	13.	A	14.	C	15.	B
16.	D	17.	D	18	A				

Review Questions

1. Write a critical note on the election commission?
2. Describe the powers and functions of the election commission?
3. Write a detailed note on the Conduct of Elections (Amendment) Rules, 2019?
4. What is meant by the electoral reforms?
5. Highlight the historical perspectives of the electoral reforms in India?
6. Write down critical issues in electoral politics of India?
7. Critically analyze the structure and functions of the panchayats?
8. Explain the role of women and other marginalized sections of the society in the panchayats?
9. Critically evaluate the role of panchayats and the bureaucracy as the agents of rural development?

10. Discuss the issues affecting the working of the panchayats in the country?

Further Readings

Kumar, Sanjay. 2002. 'Reforming Indian Electoral Process', Economic and Political Weekly, 24 August 2002.

Mishra, S.N. 1993. Panchayati Raj Institutions: 73rd Amendment and After Employment News, New Delhi, 14-20 August.

Mukharji, Nirmal. 1991. *The Panchayats*. Delhi: Institute of Social Sciences.

Palmer, Norman D. 1978. *The Indian Political System*. Boston: Houghton Mifflin.

Shukia, Subhash. 2008. *Issues in Indian Politics,* New Delhi: Anamika Publishers.

Zahoor Wani, Lovely Professional University

Unit 13: Constitutional and Statutory Bodies Part -1

CONTENTS

Objectives
Introduction
13.1 Comptroller and Auditor General (CAG)
13.2 Duties and Powers
13.3 National Commission for Schedule Castes
13.4 Evolution of the Commission
13.5 Functions of the Commission
13.6 National Commission for Schedule Tribes
13.7 Separate Commission for Schedule Tribes
13.8 Functions of the Commission
13.9 Other Functions of the Commission
13.10 Report of the Commission
Summary
Keywords/Glossary
Review Question
Self Assessment
Answer for Self Assessment
Further Readings

Objectives

After studying this chapter you will be able to understand the following:

- explain the Comptroller and Auditor-General of India.
- analyse the duties and powers of the Comptroller and Auditor-General of India.
- describe the Paul Appleby's criticism to the Comptroller and Auditor-General.
- explain the evolution of the National Commission for SCs.
- analyse the powers and functions of National Commission for SCs.
- examine the evolution of the National Commission for STs.
- evaluate the powers and functions of the National Commission for STs.

Introduction

Over the years, the functioning of the constitutional democracy in India has produced numerous paradoxical propositions, one of which is exemplified by the creation of various statutory institutions and commissions in the country. With the deepening of the democratic ethos and development of a conciliatory and participatory culture in India, the vast social cleavages prevalent for centuries in the Indian society would have been assumed to have disappeared, paving way for evolution of an all-inclusive and respectful social structure and processes. Instead of demanding a separate mechanism for the protection and promotion of their rights and privileges, the various sections of society needed to have come out against the tendency on the part of the government to play the game of populist politics and succumb to the pressure of the unscrupulous elements demanding certain special benefits for them (Chakrabarty and Pandey, 2012). The creation of an ever increasing number of statutory institutions and commissions raises the eyebrows of the concerned citizens of the country also because of the perspective of Indian Constitution on the

issue. At the time of framing of the Constitution, all sorts of opinions were expressed in the Constituent Assembly regarding the creation of special and exclusive mechanisms for the protection and promotion of the interests of particular sections of the society. But the vision of the fathers of the Constitution appeared to be very clear on the issue as they arguably took the position that the creation of such parochial commissions would do more harm than benefit to the social fabric of India, and hence they desisted from creating sectarian bodies in the Constitution (ibid). Thus, this chapter besides dwelling on the structures and functions of a few illustrative statutory institutions and commissions tries to assess their effectiveness in meeting out challenges posed to the concerned people.

13.1 Comptroller and Auditor General (CAG)

The institution of the Comptroller and Auditor General (CAG) constitutes 'one of the pillars upon which the proper and efficient functioning of the government machinery depends in India'. CAG is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission. Drawn from the system of financial accountability prevalent during British times, the office of CAG is meant to introduce the 'rigour and uniformity of government accounts' on the one hand and 'to carry out the responsibility of conducting independent audit' on the other. Owing its lineage to the Indian Audit and Accounts Department, created for the first time as early as 1753, the institution of CAG was accorded a place of prominence in the Constitution of independent India due to its criticality in ensuring the sanctity, efficiency, and effectiveness of the government accounts in the country (Chakrabarty and Pandey, 2012). He is the head of the Indian Audit and Accounts Department. He is the guardian of the public purse and controls the entire financial system of the country at both the levels−the Centre and the state. His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. This is the reason why Dr B R Ambedkar said that the 'CAG shall be the most important Officer under the Constitution of India'.

Appointment

The CAG is appointed by the president of India by a warrant under his hand and seal. The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation:

1. To bear true faith and allegiance to the Constitution of India;
2. To uphold the sovereignty and integrity of India;
3. To duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will; and
4. To uphold the Constitution and the laws.

Term of Office

CAG holds office for a period of six years or up to the age of 65 years, whichever is earlier. He can resign any time from his office by addressing the resignation letter to the president. He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or incapacity.

His removal from office is envisaged in like manner and on like grounds as in the case of a judge of the Supreme Court. Moreover, the appointee to the post of CAG is duty-bound to take an oath before the President or any other person appointed by him, according to the form set out for this purpose in the Third Schedule of the Constitution before assuming the duties of his office. Though put on the same footing as the judge of the Supreme Court in terms of his appointment, oath, removal, and so on, his service conditions remain equivalent to that of a secretary to the Government of India in other matters. However, his conditions of service cannot be varied to his disadvantage during the term of his service, and he would not be eligible for further appointment to any office under the Government of India or under the government of any state after his superannuation from the office of the CAG.

Independence

Owing to the nature and significance of the functions of the institution of CAG, the independence and functional autonomy of the office become the 'conditions precedent'. Hence, elaborate provisions have been made in the Constitution to ensure the independence of the CAG. The first and foremost provision in this regard pertains to the fixture of his tenure and cumbersome procedure of his removal from office. Thus, the CAG, on being appointed to the office, 'remains in the service for a term of six years from the date he assumes his office or until attaining the age of

sixty-five years', whichever is earlier. His removal from office is possible only by an order of the President passed in the aftermath of an address by each House of Parliament supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting on the ground of proved misbehavior or incapacity. Further, the conditions of his service as well his salary and other pensionary benefits cannot be varied to his disadvantage after his appointment to the office. Moreover, to save him from any allurement or enticement from the executive which may induce him to compromise with the performance of his duties, he is debarred from holding any office under the Government of India or any state government after his retirement. It is some sort of reassurance of the growing maturity of the Indian democratic system of governance that so far no overt or covert attempt has been made by the government to either question or fetter the independence and functional autonomy of the office, even at such times when the report of the CAG on the Bofors issue was proving fatal for the government of the day, which was in command of overwhelming majority in both the Houses of the Parliament and could have successfully gone for initiating the process of removing the CAG from the office.

The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament. Further, no minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

13.2 Duties and Powers

The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the states and of any other authority or body. Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) act, 1971. This Act was amended in 1976 to separate accounts from audit in the Central government. The duties and functions of the CAG as laid down by the Parliament and the Constitution are:

1. CAG audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
2. GAG audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. CAG audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.
4. CAG audits the receipts and expenditure of the Centre and each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
5. CAG audits the receipts and expenditure of the following: a) All bodies and authorities
   (a)substantially financed from the Central or state revenues;
   (b) Government companies; and
   (c) Other corporations and bodies, when so required by related laws.
6. GAG audits all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.
7. GAG audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
8. Article 150 states that GAG advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept.
9. Article 151 states that GAG submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament.
10. CAG submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).

11. Article 279 deals that CAG ascertains and certifies the net proceeds of any tax or duty. His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
12. CAG acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

The CAG submits three audit reports to the President−audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings. The President lays these reports before both the Houses of Parliament. After this, the Public Accounts Committee examines them and reports its findings to the Parliament. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

Role

The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of 'financial administration'. The accountability of the executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG. The CAG is an 'agent of the Parliament and conducts audit of expenditure on behalf of the Parliament'. Therefore, he is responsible only to the Parliament. The CAG has more freedom with regard to audit of expenditure than with regard to audit of receipts, stores and stock. "Whereas in relation to expenditure he decides the scope of audit and frames his own audit codes and manuals, he has to proceed with the approval of the executive government in relation to rules for the conduct of the other audits."

The CAG has 'to ascertain whether money shown in the accounts as having been disbursed was legally available for and applicable to the service or the purpose to which they have been applied or charged and whether the expenditure conforms to the authority that governs it. In addition to this legal and regulatory audit, the CAG can also conduct the propriety audit, that is, he can look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the wastefulness and extravagance of such expenditure. However, unlike the legal and regulatory audit, which is obligatory on the part of the CAG, the propriety audit is discretionary. The secret service expenditure is a limitation on the auditing role of the CAG. In this regard, the CAG cannot call for particulars of expenditure incurred by the executive agencies, but has to accept a certificate from the competent administrative authority that the expenditure has been so incurred under his authority. The Constitution of India visualises the CAG to be Comptroller as well as Auditor General. However, in practice, the CAG is fulfilling the role of an Auditor-General only and not that of a Comptroller. In other words, 'the CAG has no control over the issue of money from the consolidated fund and many departments are authorised to draw money by issuing cheques without specific authority from the CAG, who is concerned only at the audit stage when the expenditure has already taken place'. In this respect, the CAG of India differs totally from the CAG of Britain who has powers of both Comptroller as well as Auditor General. In other words, in Britain, the executive can draw money from the public exchequer only with the approval of the CAG.

It is important to note, by way of evaluating the role of CAG in the Indian political system, the objections raised by noted American scholar Paul Appleby. Branding Indian audit as a highly pedestrian function with a narrow perspective and very limited utility, he held the CAG accountable for a much prevalent and crippling reluctance on the part of the government officials to take decisions and act decisively. However, the scathing criticism of Appleby, with regard to the whole notion of audit in India and the office of CAG, was not accepted by the Indian scholars who steadfastly held the view that: "In all recognized democracies, audit is not just tolerated as a necessary evil but is also looked upon as a valued ally which brings to notice procedural and technical irregularities and lapses on the part of individuals, whether they be errors of judgment, negligence or acts and intents of dishonesty. The complementary roles of audit and administration are accepted as axiomatic being essential for toning up the machinery of government". Hence, the function of keeping a tab on the objectives and methods of utilization of the public exchequer has been bestowed upon the CAG whose duty is still valued to be of critical significance for the proper fixation of accountability of the government officials.

13.3 National Commission for Schedule Castes

At times, we are confused and use different terminology to refer to Scheduled Castes. Dalits, 'Harijan', disadvantaged, socially disadvantaged, untouchables (forbidden connotation) are commonly used to refer to Scheduled Castes. Therefore, it is necessary for us to understand what are Scheduled Castes? The term which "Scheduled Castes" designates an official rather than a

sociological category, has its history in the caste system of the country. The term signifies certain constitutional and legal status conferred upon a number of castes or communities united by their position as untouchables in the hierarchical caste structure of traditional Hindu society. The caste system is the backbone of traditional Indian social structure. Most castes originated as occupational groupings in the past. The inequality of opportunities institutionalised by the caste system in the past, persisted for ages and consequently the scheduled castes continued to be disadvantaged as far as education was concerned. They have been victim of alienation, poverty, illiteracy, disease and all sorts of exploitations and superstitions. Although, since independence a lot of effort has been made by central and state governments their, social, economic and educational condition is still alarming. Now-a-days a particular term, dalit is loosely used to mean as Scheduled Castes of India. The term "Scheduled Castes" is defined in Article 366 (24) of the Constitution of India, as under: "Scheduled Castes means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution". The need for providing adequate safeguards for the Scheduled Castes and Scheduled Tribes was recognized by the framers of the Indian Constitution. For this purpose, special provisions were made in the Constitution of India to promote social, educational, economic, and service interests of these two weaker sections of the society.

13.4 Evolution of the Commission

Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working. He was designated as the Commissioner for SCs and STs and assigned the said duty. In 1978, the Government (through a Resolution) set up a non-statutory multi-member Commission for SCs and STs; the Office of Commissioner for SCs and STs also continued to exist. In 1987, the Government (through another Resolution) modified the functions of the Commission and renamed it as the National Commission for SCs and STs. Later, the 65th Constitutional Amendment Act of 19905 provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs. This constitutional body replaced the Commissioner for SCs and STs as well as the Commission set up under the Resolution of 1987. Again, the 89th Constitutional Amendment Act of 2003 bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).

The separate National Commission for SCs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

13.5 Functions of the Commission

The functions of the Commission are:

1. To 'investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working';
2. To 'inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs';
3. To 'participate and advise on the planning process of socio-economic development of the SCs' and 'to evaluate the progress of their development under the Union or a state';
4. To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
5. To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs; and
6. To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify.

Report of the Commission

The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary. The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations. The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission

The Commission is vested with the power to regulate its own procedure. The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

a. 'summoning and enforcing the attendance of any person from any part of India and examining him on oath';
b. 'requiring the discovery and production of any document';
c. 'receiving evidence on affidavits';
d. 'requisitioning any public record from any court or office';
e. issuing summons for the examination of witnesses and documents; and
f. any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs. The Commission is also required to discharge similar functions with regard to the other backward classes (OBCs) and the Anglo-Indian Community as it does with respect to the SCs. In other words, the Commission has to investigate all matters relating to the constitutional and other legal safeguards for the OBCs and the Anglo-Indian Community and report to the President upon their working

13.6 National Commission for Schedule Tribes

Like the National Commission for Schedules Castes (SCs), the National Commission for Scheduled Tribes (STs) is also a constitutional body in the sense that it is directly established by Article 338-A of the Constitution.

13.7 Separate Commission for Schedule Tribes

The National Commission for SCs and STs did come into existence consequent upon passing of the 65th Constitutional Amendment Act of 19902. The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws. Geographically and culturally, the STs are different from the SCs and their problems are also different from those of SCs. In 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs. It was felt necessary that the Ministry of Tribal Affairs should co-ordinate all activities relating to the STs as it would not be administratively feasible for the Ministry of Social Justice and Empowerment to perform this role. Hence, in order to safeguard the interests of the STs more effectively, it was proposed to set up a separate National Commission for STs by bifurcating the existing combined National Commission for SCs and STs.

This was done by passing the 89th Constitutional Amendment Act of 2003. This Act further amended Article 338 and inserted a new Article 338-A in the Constitution. The separate National Commission for STs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

13.8 Functions of the Commission

The functions of the Commission are:

a. To 'investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working';
b. To 'inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs';
c. To 'participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state';
d. To 'present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards';
e. To make 'recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs'; and
f. To 'discharge such other functions in relation to the protection, welfare and development' and advancement of the STs as the President may specify.

13.9 Other Functions of the Commission

In 2005, the President specified the following other functions of the Commission in relation to the protection, welfare and development and advancement of the STs:

i. Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas;
ii. Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law;
iii. Measures to be taken for the development of tribals and to work for more viable livelihood strategies;
iv. Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects;
v. Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place;
vi. Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation;
vii. Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996;
viii. Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment.
ix.

13.10 Report of the Commission

The Commission presents an annual report to the President. It can also 'submit a report' as and when it thinks necessary. The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations. The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission

The Commission is vested with the power to regulate its own procedure. The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

a. 'summoning and enforcing the attendance of any person from any part of India and examining him on oath';
b. 'requiring the discovery and production of any document';
c. 'receiving evidence on affidavits';
d. 'requisitioning any public record from any court or office';
e. 'issuing summons for the examination of witnesses and documents'; and
f. any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs.

Summary

In a way, for the transitional societies like India which had embarked on an ambitious path of practising the democratic system of governance even in the face of a number of hindrances emanating from the socio-economic and politico-cultural milieu of the country, the existence of the seemingly independent institutions like the judiciary and other constitutional commissions have truly proved to be the blessings in disguise as they not only kept the sanctity of the system but also brought it back on the track whenever it appeared to be drifting towards the undesirable path. The credit must be given to the wisdom and the farsightedness of the fathers of the Constitution in this regard, for despite adopting the parliamentary system of governance of the British mould in its letter and spirit, to the maximum extent possible, they remained alive to the peculiarities of the Indian political system. The Indian Constitution provides for an independent office of the CAG. The main functions of the CAG, over the years, mainly relate to the procedure and form of keeping of accounts and auditing of such accounts. Hence, the CAG has to prescribe, with the approval of the President, the form in which the accounts of the Union and of the states are to be kept, in addition to performing such other duties and exercising such powers in relation to the accounts of the Union and the states, and of any other bodies or authority, as may be prescribed by the law passed by the Parliament, and report to the President or to the governors of the states on the accounts of the Union and the states, respectively. The Commissioner for Scheduled Castes and Scheduled Tribes was appointed under Article 338 of the Constitution to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and report to the President upon the working of these safeguards. In regard to the safeguards relating to the appointment of Scheduled Castes and Scheduled Tribes to services and posts, the Commissioner had raised the following two questions: "(i) Whether he can call for the original records and nIes in specific cases where complaints have been made to him so that he can satisfy himself that the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution have not been violated; and (ii) Whether Scheduled Caste and Scheduled Tribe Government servants can write to him direct bringing their grievances to his notice".

Keywords/Glossary

Appropriation: The act of allocating public money to a purpose.

Authorities: Officials or bodies with official powers. A person or body of persons in whom authority is vested, for example a governmental agency.

Caste: A *caste* is a social group that includes people of the same economic status, occupation or rank.

Commission: Authority to perform an act or exercise power: 'a military commission' means conferring the rank of an officer; a body of persons charged with some specific functions. For example a constitutional commission.

Constitutional bodies: Entities created by the constitution for specified tasks.

Justice: A public official authorized to decide questions brought before a court of justice; the quality of being just or fair; what courts, etc. dispense: 'the administration of justice'.

Non-discrimination: Treating persons equally without taking account of irrelevant differences.

Principles: Guiding rules or a system of moral behaviour.

Procedure: The rules and methods of a legal process or those of parliament or other body.

Proceedings: On-going activity of a body such as a court, legislature or conference.

Reservation: A process of positive discrimination to ensure adequate representation of marginalized groups in legislative and executive positions.

Review Question

1. Write a detailed note on the institution of the Comptroller and Auditor General?
2. Describe the main powers and functions of the CAG?
3. What role CAG plays in the Indian political System? Discuss?
4. What is meant by Schedule Caste?
5. Who are Schedule Castes and Schedule Tribes according to the Constitution of India?
6. What are the Constitutional Provisions for educational empowerments of the Scheduled Castes?
7. What are the States legal safeguards to protect SCs from discrimination?
8. Explain the concept of non-discrimination?
9. Critically examine the notion of equity?
10. Discuss the constitutional provisions for development of Schedule Tribes?
11. What is the fundamental difference between Schedule Castes and Schedule Tribes?

Self Assessment

1. Which Article in the Constitution on India provides for the post of Comptroller and Auditor General of India (CAG)?

A. Article148
B. Article 343
C. Article 266
D. Article 248

2. Who among the following appoints the Comptroller and Auditor General of India (CAG)?

A. Prime Minister
B. Chief justice of India
C. President
D. Vice-president

3. What is the tenure of the office of Comptroller and Auditor General of India (CAG)?

A. 5 years or age of 60, whichever is lower
B. 6 years or age of 65, whichever is lower
C. 4 years or age of 65, whichever is lower
D. Age of 60

4. Consider the following duties, roles and functions. Which of them is/are NOT belong to Comptroller and Auditor General of India (CAG)?

A. Upholding the Constitution of India and laws of Parliament in terms of financial administration
B. Auditing accounts related to Consolidated Fund of India

C. Audits transactions of the Center and state governments related to debts
D. Conduct audit of secret service expenditure

5. When was the Indian Audit and Accounts Department created?
A. 1850
B. 1948
C. 1950
D. 1753

6. To whom the Comptroller and Auditor General of India submits his resignation letter?
A. Finance Minister
B. Lok Sabha Speaker
C. President of India
D. Prime Minister

7. The National Commission for Schedule Caste was established under.....of Indian Constitution**.**
A. Article 338
B. Article 250
C. Article 180
D. Article 142

8. Which of the following is the constitutional body?
A. National Child Rights Protection Commission
B. National Backward Classes Commission
C. National Minorities Commission
D. National Commission for Scheduled Castes

9. Who appoints the Chairman of the National Commission for Scheduled Castes?
A. President
B. Prime Minister
C. Lok Sabha Speaker
D. None of the Above

10. Which of the following is not the function of the National Commission for Scheduled Castes?
A. Providing Constitutional protection to Scheduled Castes
B. To investigate any case that violates the interests of Scheduled Castes
C. To submit the report to the Prime Minister related to the protection of Scheduled Castes
D. None of the above

11. Which constitution amendment has recommended the establishment of a commission for Scheduled Castes and Scheduled Tribes?
A. 41st Constitutional Amendment
B. 65th Constitutional Amendment
C. 82nd Constitutional Amendment
D. 76th Constitutional Amendment

12. How long is the tenure of Chairman of the National Scheduled Tribes Commission?

A. 5 years

B. 6 years

C. 4 years

D. Not fixed, he remains at the post till the pleasure of the President of India

13. When was National Scheduled Tribes Commission set up?

A. 1990

B. 1993

C. 1995

D. 2004

14. Article 330 to 342 of Indian Constitution belong to.....

A. All India Services

B. Election Commission

C. Village Panchayats

D. Reservation and Representation of Scheduled Castes, Scheduled Tribes in Lok Sabha

15. Which constitutional amendment has the provision of reservation of seats for SCs/STs in public service and legislatures until 2020?

A. 96th Amendment

B. 95th Amendment

C. 89th Amendment

D. 102nd Amendment

16. National Commission for SC/ST was constituted on the basis of:

A. 1989 Act

B. 1995 Act

C. 1992 Act

D. 1956 Act

Answer for Self Assessment

1.	A	2.	C	3.	B	4.	D	5.	D
6.	C	7.	A	8.	D	9.	A	10.	C
11.	B	12.	D	13.	D	14.	D	15.	B
16.	A								

Further Readings

Basu, D. D. 2018. Introduction to the Constitution of India, Lexis Nexis.

Fadia, B. L. and Fadia, K. 2020. Indian Government and politics, Sahitya Bhawan.

Arora, Ramesh K. and Rajni Goyal. 1995. *Indian Public Administration: Institutions and Issues*. New Delhi: Wishwa Prakashan.

Austin, Granville. 1966. *The Indian Constitution: Cornerstone of a Nation*. Delhi: Oxford University Press

Zahoor Wani, Lovely Professional University

Unit 14: Constitutional and Statutory Bodies Part -11

Objectives:
Introduction
14.1 National Commission for Human Rights
14.2 National Commission for Women
14.3 National Commission for Minorities
Summary
Keywords /Glossary
Self Assessment
Answers for Self Assessment
Review Questions
Further Readings

Objectives:

After studying this chapter you will be able to understand the following:

- explain the genesis of National Human Rights Commission.
- evaluate the composition of the National Human Rights Commission.
- analyse the functions of the National Human Rights Commission.
- explain the constitution of National Commission for Women.
- analyze the functions and powers of the National Commission for Women.
- explain the constitution of National Commission for Minorities.
- analyze the functions and powers of the National Commission for Minorities.

Introduction

Over the years, the functioning of the constitutional democracy in India has produced numerous paradoxical propositions, one of which is exemplified by the creation of various statutory institutions and commissions in the country. With the passage of time, the country has seen the creation of innumerable statutory institutions and commissions ostensibly for the purpose of protection and promotion of certain sections of society whose interests were not found to be adequately safeguarded within the framework of available machinery and laws in the country. The reason for the acceptance of such demands would probably lay in the changing norms of social behaviour in which certain sections of society became more vulnerable than others to the forces of oppression and victimization, and hence the protection and promotion of their interest necessitated the creation of certain special purpose bodies with statutory powers and functions in order to effectively discharge their responsibilities. How far these bodies have been able to protect and promote the interests of the people who are at the receiving end of the oppressive socio-economic and political order is a matter for serious investigation.

14.1 National Commission for Human Rights

The concern for the protection and promotion of the human rights in India is a relatively new phenomenon, though India has been one of the early signatories to the Universal Declaration of Human Rights (UDHR) and the Constitution of India containing one of the finest provisions guaranteeing the people a wide range of fundamental rights. Ironically, the genesis of the idea of having some sort of institutional mechanism for the protection and promotion of human rights in India is attributed to the policy of the Western countries, notably the United States, to link the

economic and financial assistance to the developing nations with the condition of human rights protection in these countries. Though India opposed such move on the part of the donor countries, the compulsions of availing the grants and concessional loans from the developed countries left no way out for the country than to provide for an institutional arrangement to safeguard the human rights of the people (Chakrabarty and Pandey, 2012). Owing to the lack of self-visualization on the issue of human rights commission amongst the government circles, the first effort in the direction of providing for such a commission met with discomfiture as the Human Rights Commission Bill introduced in Parliament in May 1993 was withdrawn in view of scathing criticisms it received from all quarters and persons involved in the propagation and promotion of human rights in the country. Subsequently, pouring its mind into the objections raised on the Human Rights Commission Bill for three months, the government came out with a Presidential ordinance in the name of Protection of Human Rights, providing for the constitution of a Human Rights Commission. Ultimately, the Protection of Human Rights Act, 1993 was enacted by the Parliament under the provisions of which the National Human Rights Commission (NHRC) was constituted (ibid).

Composition of the Commission

The State Human Rights Commission is a multi-member body consisting of a chairperson and two members. The chairperson should be a retired Chief Justice of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District Judge and a person having knowledge or practical experience with respect to human rights.

The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the chief minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee. Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state. Apart from the membership of the Commission, the Act also made provisions for two statutory administrative offices in the Commission, namely, the secretary general and the director general (investigations) to afford an adequate administrative support, so that the functions of the Commission are carried out in an impartial and efficient manner.

The chairperson and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier. After their tenure, the chairperson and members are not eligible for further employment under a state government or the Central government. Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he can remove the chairperson or a member of the National Human Rights Commission. Thus, he can remove the chairperson or a member under the following circumstances:

a) If he is adjudged an insolvent; or
b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
c) If he is unfit to continue in office by reason of infirmity of mind or body; or
d) If he is of unsound mind and stands so declared by a competent court; or
e) If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

The salaries, allowances and other conditions of service of the chairman or a member are determined by the state government. But, they cannot be varied to his disadvantage after his appointment.

Functions of the Commission

The idea of the creation of NHRC has enjoined upon the government to dovetail all the functions pertaining to the protection and promotion of the human rights upon the Commission, which has found its reflection in the Protection of the Human Rights Act, 1993. As per Section 12 of the Act, the main functions of the Commission include the following:

1. To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either suo motu or on a petition presented to it or on an order of a court.
2. Having an interjection in a Court of law, with the approval of the Court, where any issue of human rights violations are involved in the proceedings of a pending case.
3. Conducting inspections to study the conditions of life of the inmates, and presenting its recommendations thereof, confined in any jail or any other institution meant for cure, reforms or protection of such people under the control of a state government with the prior information to the concerned state government.
4. Reviewing the provisions in the Indian Constitution or any other law or provisions under such law regarding the protection of human rights and making recommendations for effective implementation of such laws and provisions of the Constitution.
5. Examining the factors that curtail or circumscribe the enjoyment of human rights, including the acts such as terrorism and suggesting suitable remedial measures for them.
6. Studying international treaties and other related covenants or documents pertaining to human rights and making suggestions for their effective implementation.
7. Undertaking research in the field of human rights in order to promote human rights in India.
8. Promoting awareness regarding the human rights in different sections of the society and disseminating awakening on the measures for the protection and promotion of human rights through the methods of publications, media, seminars, and other available mediums.
9. Encouraging the endeavours of the non-governmental organizations and other such organizations which are involved in the field of human rights protection and promotion.
10. Performing such other functions as are deemed necessary for the promotion of the human rights.

Working of the Commission

The Commission is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the state government or any other authority subordinate thereto. The Commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence. The Commission may take any of the following steps during or upon the completion of an inquiry:

(a) it may recommend to the state government or authority to make payment of compensation or damages to the victim;

(b) it may recommend to the state government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;

(c) it may recommend to the state government or authority for the grant of immediate interim relief to the victim;

(d) it may approach the Supreme Court or the state high court for the necessary directions, orders or writs.

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the state government or authority. But, it should be informed about the action taken on its recommendations within one month. The Commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations.

Role of the Commission

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the concerned government or authority. But, it should be informed about the action taken on its recommendations within one month. In this context, a former member of the Commission observed: "The government cannot wash away the recommendations made by the Commission. The commission's role may be recommendatory, advisory, yet the Government considers the cases forwarded by it. It is, therefore, improper to say that the commission is powerless. It enjoys great material authority and no government can ignore its recommendation"

Moreover, the commission has limited role, powers and jurisdiction with respect to the violation of human rights by the members of the armed forces. In this sphere, the commission may seek a report from the Central government and make its recommendations. The Central government should inform the Commission of the action taken on the recommendations within three months.

The commission submits its annual or special reports to the Central government and to the state government concerned. These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the commission and the reasons for non-acceptance of any of such recommendations.

14.2 National Commission for Women

The creation of the National Commission for Women (NCW) in 1992 marked a landmark in the movement towards securing a more just and equitable existence and status for women in society by putting in place certain institutional mechanisms to protect and promote the exclusive rights of women on continuing basis. Starting even in the pre-Independence days, the women movement in its early days concentrated on unfettering the women from the numerous fetters imposed on them, by virtue of confining their existence within the four walls of the household, primarily by the method of imparting education to them However, the real breakthrough came in the post-Independence period with the Constitution of India making significant provisions for the improvement in the lot of women in order not only to ensure a respectable place for them in the Indian society but also to make them an equal partner in the socio-economic and political developments in the country. While the general perspective on securing an equal and just status for women is provided for in the provision like the Preamble and the Fundamental Rights, the specific provisions have been made in the Directive Principles of State Policy to provide for the betterment in the conditions of women. Hence, securing equality between men and women in terms of adequate means of livelihood [Article 39(a)] and equal pay for equal work for both men and women [Article 39(d)], specific provision has been made to guarantee just and humane conditions of work and maternity relief (Article 42), so that the women are not left to suffer from miseries in times of their pregnancy. Moreover, a constitutional duty has also been imposed on the citizens by Article 51(a) to renounce practices derogatory to the dignity of women which appears to have a revolutionary outlook keeping in mind the prevalence of numerous inhuman and cruel practices in the Indian society impacting on the health and social status of women. The Commission is entrusted with: "[A] wide mandate over issues affecting women development. It seeks to improve women socio-economic state by addressing issues like female foeticide/infanticide, women trafficking; plight of women from marginalized sections, widows and victims of domestic violence; economic empowerment by vocational training, wage equality, and transfer of technology; political empowerment by seat reservation from grassroots to national legislature level; repeal of anachronistic anti-women laws, sensitization of police and judiciary on the special treatment women need, and enactment of progressive laws for women development".

Composition of the Commission

Established under the National Commission for Women Act, 1990 which was enacted under the persuasions of the covenants and protocols of the United Nations dealing with the elimination of all forms of discrimination against women, the NCW consists of a chairperson and five other members nominated by the Central Government, in addition to a member secretary. The functions of the Commission mainly fall into four categories.

First, the NCW has primarily been established as the watchdog body to keep an eye on the functioning of the numerous provisions made in the Constitution and other laws enacted by the Parliament regarding safety and security of the women on the one hand and protection and promotion of their rights, on the other. Thus the monitoring of functional dynamics of the measures

initiated for the protection and promotion of the welfare of women rests with the NCW whereas the normal governmental affairs pertaining to the issues of women are dealt with by the ministry. Acting as the supervisory body on the proper functioning of the safeguards provided for women under the Constitution and other enactments of the Parliament, the NCW, at the outset, busies itself with an analysis of the factors and issues which go to make or mar the effective functioning of the safeguards enshrined in various legal documents of the country. After being fully aware of the functional dynamics of the safeguards, including the efficacy and effectiveness of such safeguards, the Commission presents a report to the Central government, making out a case for its findings on the working of these safeguards for the protection and promotion of the interest of the women.

Second, in its capacity as the monitoring body to look into the issues of effective implementation of the safeguards provided for women, the NCW not only keeps an eye on the violations of such safeguards but also effectively takes corrective measures to undo the wrongs done to the women. Two broad strategies are ordinarily followed by the NCW while embarking on the mission to get any wrongs done to the women undone: raising the issue of such wrongs or violations of the safeguards for women in front of the appropriate authorities with a request to take suitable remedial measures so that the wrong is made right as soon as possible; and in case of the failure of the authorities petitioned to right the wrong to do the needful, the Commission retains the right to move the Court seeking a direction to the concerned authorities to perform their duties so that the constitutional safeguards are put into practice and the women are saved from undue disadvantages.

Third, the NCW is also empowered to look for prospective measures to protect and promote the welfare of women which may arise from the research and investigation studies conducted by the Commission. In other words, while monitoring the implementation of existing provisions to protect and promote the interest of the women, the NCW may also commission studies and research to find out the state of affairs prevailing in the country regarding the various indicators of women development on the one hand, and functional dynamics of the existing provisions on the other, so that suitable modifications may be suggested in order to make them more effective. The performance of this function by the Commission brings it closer to the functional domain of the Ministry of Women and Child Welfare, as it also becomes the harbinger of innovations and new initiatives in the field of women development in the country.

Last, the NCW acts as the repository as well as the nodal agency to deal with all the issues concerning not only the effective implementation of the safeguards provided in the Constitution, and other legal enactments for the safety and security of women but also the issues relating to welfare of even individual women. Hence, as an expert in the field points out, the functions of the Commission include: "Looking into complaints relating to the deprivation of women rights; non-implementation of laws enacted to provide protection to women and also to achieve the objectives of equality and development; and non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring the welfare of and providing relief to women".

In addition to providing assistance to the needy and distressed women even by taking a *suo moto* notice of their problems, the NCW has also made a number of efforts to alleviate the miserable conditions of those women who are found to be working in certain disadvantaged and vulnerable spheres of life. For instance, the NCW is reported to be in the process of finalizing a set of recommendations pertaining to the working conditions of the domestic women workers. Stipulated to afford an honourable and healthy work environment to these domestic helps, the recommendations of the NCW range from limiting the working hours of such helps to eight hours to guaranteeing at least one weekly off to them. Thus, the NCW appears to have transcended its conventional domain of acting as the monitoring body to ensure that the safeguards enshrined in the Constitution and other legal instruments of the country for the protection and promotion of the interests of the women are implemented, and has started functioning as the precursor and initiator of numerous sets of reforms in those areas involving women which either still remain outside the purview of laws and regulations stipulated by the government, or the effective implementation of rules and regulations in these areas seems to be improbable owing to the lack of definite and well-equipped machinery for the purpose.

14.3 National Commission for Minorities

The idea of a statutory commission to look into the affairs of the minorities, interestingly, germinated in the state of Uttar Pradesh when a one-man "Minorities Commission" was established at Lucknow in 1960. The Central Government, for almost three decades of Independence, remained reluctant to the idea of creating a Minorities Commission at the national

level in order to provide for a mechanism to protect and promote the interests of the minorities both religious and linguistic. However, with the change of guard at the Central level in 1977 and the inauguration of the Janata Government headed by Morarji Desai, the moves were afoot to put into place a body with the exclusive jurisdiction of looking after the affairs of the minorities. Accordingly, the Ministry of Home Affairs under Choudhary Charan Singh notified the government resolution providing the rationale for setting up of the Minorities Commission. The resolution said: "Despite safeguards provided in the Constitution and the laws in force, there persists among the minorities a feeling of inequality and discrimination. In order to preserve the secular traditions and to promote national integration, the government attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in the central and the state laws and in government policies and administrative schemes enunciated from time to time. The government of India has, therefore, resolved to set up a Minorities Commission to safeguard the interests of the minorities whether based on religion or language".

Initially, the Commission consisted of a chairperson and two members to be appointed from amongst the minorities' communities. After remaining in existence for fourteen years as a non-statutory body, the Minorities Commission was accorded the statutory status with the enactment of the National Commission for Minorities Act, 1992. The present structure, powers, functions, and position of the Commission are defined by the Act of 1992 as amended in 1995 by the National Commission for Minorities (Amendment) Act.

Structure and Functions of the Commission

The National Commission for Minorities (NCM) consists of a chairperson, a vice-chairperson, and five other members who should have been persons of eminence, ability, and integrity and are to be drawn from the minority communities and would hold office for a term of three years. The chairperson of the Commission is also made the ex-officio member of the NHRC for the purposes of performance of majority of the functions of NHRC.

The NCM is entrusted with a variety of functions in the field of promoting and protecting the interests of the minority communities in all parts of the country. The important functions of the Commission include:

1. Evaluating the progress of the development of minorities at the levels of the Centre and the states.
2. Examining the working of the various safeguards provided in the Constitution for the protection of minorities, and in the laws passed by the Union and the state governments.
3. Recommending effective implementation of the safeguards for the protection of the interest of the minorities by the Central Government or the state government.
4. Undertaking a review of the implementation of the policies pursued by the Union and the state governments with respect to the minorities.
5. Looking into the specific complaints regarding the deprivation of rights and safeguards for the minorities.
6. Conducting studies, researches, and analyses on the question of avoidance of discrimination against minorities.
7. Suggesting appropriate legal and welfare measures in the respect of any minority.
8. Presenting periodic reports to the Central Government on the difficulties faced by the minorities.

In order to enable the Commission to carry out its functions and responsibilities effectively, a number of powers have also been conferred upon the Commission. Moulded in the form of powers of the civil court of law, the Commission is empowered to issue summons to any person in India to secure his presence before the Commission and examine him under oath. The Commission may also require the presentation of any record or document if it finds that relevant for the performance of its duties.

Summary

The whole idea of the 'creation of numerous statutory commissions and institutions over the years in India seems to suffer from perennial dilemma of the political leaders in the context of the

populist politics they are into and the reluctance on their part to part away with some degree of power and authority over which they are elected to lord over'. However, the real trick appears when it comes to accord the real structural soundness and functional vibrancy to these commissions that the true colours of the politicians are out in black and white. They not only retain the exclusive power in their hands on the matters of the constitution of the commissions but also are unwilling to share any of the executive powers with the commissions. As a result, most of the statutory commissions and institutions remain on the mercy of the government for getting some sort of respectability by way of getting their recommendations implemented by the government. In case the government wills to cut any statutory institution to size, it retains a number of instrumentalities to reduce the existence of the particular institution to a naught very much within the framework of the law providing for such an institution. No doubt, thus, 'most of the statutory commissions have been able to function only with a limited effectiveness and that too only to the extent allowed by the government'. The only consolation for such institutions is that something is better than nothing since their existence provide a platform for the people of the particular category to go to these commissions with their grievances in the hope that the commission would come out with some feasible solution to their problems. Though in certain cases the statutory commissions go too far in their search for guaranteeing heaven to their clients, in normal times, their endeavours remain confined to recommending to the government viable solutions to the problems plaguing the people of the particular community.

Keywords/Glossary

Administration: The function of a political state in exercising its governmental duties.
Authorities: Officials or bodies with official powers. A person or body of persons in whom authority is vested, for example a governmental agency.
Cairo Declaration on Human Rights: The Cairo Declaration of Human Rights (CDHRI) was adopted on August 5th 1990 by the member states of The Organization of the Islamic Conference. The declaration provides an overview of the Islamic perspective on human rights. The purpose of the declaration is to serve as a general guidance for member states of the Organization of the Islamic Conference in the field of human rights.
Commission: Authority to perform an act or exercise power: 'a military commission' means conferring the rank of an officer; a body of persons charged with some specific functions. For example a constitutional commission.
Human rights: "All human beings are born free and equal in dignity and peace" are the opening words of the United Nations Universal Declaration of Human Rights. Formally adopted by the United Nations on December 10, 1948, it is the most universal human rights document in existence, delineating the 30 fundamental rights that form the basis for a democratic society. The Declaration is a living document that has now been accepted as a contract between a government and its people throughout the world.
Reservation: A process of positive discrimination to ensure adequate representation of marginalized groups in legislative and executive positions.
Universal declaration of human rights: In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights as a bulwark against oppression and discrimination. In the wake of a devastating world war, which had witnessed some of the most barbarous crimes in human history, the Universal Declaration marked the first time that the rights and freedoms of individuals were set forth in such detail. It also represented the first international recognition that human rights and fundamental freedoms are applicable to every person, everywhere.

Self Assessment

1. The protection of Human Rights Act in India was enacted in the year:

A. 1993
B. 1994
C. 1995
D. 1996

2. National Human Rights Commission is a .....

A. Statutory body
B. Constitutional body

C. Multilateral institution

D. Both constitutional body and multilateral institution

3. Who can be appointed as the chairman of the National Human Rights Commission?

A. Any sitting judge of the Supreme Court

B. Any retired Chief Justice of the Supreme Court

C. Any person appointed by the President

D. Retired Chief Justice of any High Court

4. Which of the following statements is NOT correct about the National Human Rights Commission?

A. It was established in 1993.

B. In the cases of human rights violation, the Commission has no right to punish the culprit

C. The Chairman and members of this Commission are appointed by the Supreme Court of India

D. The Commission sends its annual report to the Central Government and State Governments.

5. What is the tenure of the chairman of the National Human Rights Commission?

A. 5 years or upto 62 years of age

B. 5 years or upto 65 years of age

C. 6 years or upto 65 years of age

D. 5 years or upto 70 years of age

6. Where is the headquarter of the National Human Rights Commission located?

A. Delhi

B. Mumbai

C. Ahmadabad

D. Kolkata

7. The National Commission for Women was created by:

A. an amendment in the Constitution of India.

B. an Act passed by the Parliament.

C. an order of the President of India.

D. a decision of the Union Cabinet.

8. Where is the national commission set up?

A. New Delhi

B. Bangalore

C. Chennai

D. Ahmadabad

9. The Chairperson and every Member shall hold office for such period, not exceeding …… years.

A. Four

B. Five

C. Six

D. Three

10. NCW stands for:
A. National Council for Women
B. National Committee for Women
C. National Commission for Women
D. National Congress for Women

11. Who can be a Chairperson of NCW?
A. A person nominated by the Parliament
B. A person nominated by the President of India
C. A person nominated by the Ministry of Defence
D. A person nominated by Central Government

12. The National commission on minorities was enacted in the year:
A. 1990
B. 1989
C. 1992
D. 1980

13. Government of India constituted a minority commission with a:
A. Chairman and three members
B. Chairman and 4 members
C. Chairman and 5 members
D. Chairman and 7 members

14. Which of the following are correct about National commission for Minorities?
A. Evaluate the progress of the development of minorities under the union and states.
B. Monitor the working of safeguards provided in the constitution.
C. Conduct studies research and analysis and the issues relating to socio economical and educational development to all minorities.
D. All of the above

15. Which of the following committees / commissions recommended the establishment of the office of the Special Officer for Linguistic Minorities?
A. Administrative Reforms Commission
B. Swaran Singh Committee
C. States Reorganisation Commission
D. Rajmannar Committee

16. Who / which of the following appoints the Special Officer for Linguistic Minorities?
A. Cabinet Committee on Appointments
B. President of India
C. Speaker of the Lok Sabha
D. Chairman of the National Minorities Commission

Answers for Self Assessment

1.	A	2.	D	3.	B	4.	C	5.	D
6.	A	7.	B	8.	A	9.	D	10.	C
11.	D	12.	C	13.	A	14.	D	15.	C
16.	B								

Review Questions

1. Write a detailed note on the National Human Rights Commission?
2. Critically examine the powers and functions of the National Human Rights Commission?
3. Describe the role of the National Human Rights Commission?
4. Write some important points of the working National Human Rights Commission?
5. Discuss the composition of the National Commission for Women?
6. Describe the powers of the National Commission for Women?
7. Critically examine the role of the National Commission for Women?
8. Discuss the origin of the National Commission for Minorities?
9. Explain the powers and functions of the National Commission for Minorities?
10. Describe the role of the National Commission for Minorities?
11. Write a note on the structure of the National Commission for Minorities?

Further Readings

Bhargava, G.S. 1999. National Human Rights Commission: An Assessment of its Functioning, in K.P. Saxena (ed.), Human Rights: Fifty Years of India Independence. New Delhi: Gyan Publishing House.

Kaarthikeyan, D.R. 2005. Human Rights: Problems and Solutions. New Delhi: Gyan Publishing House.

Mahmood, Tahir. 2001. Minorities Commission: Minor Role in Major Affairs. New Delhi: Pharos.

Kaarthikeyan, D.R. 2005. Human Rights: Problems and Solutions. New Delhi: Gyan Publishing House.

Mahmood, Tahir. 2001. Minorities Commission: Minor Role in Major Affairs. New Delhi: Pharos.

LOVELY PROFESSIONAL UNIVERSITY
Jalandhar-Delhi G.T. Road (NH-1)
Phagwara, Punjab (India)-144411
For Enquiry: +91-1824-521360
Fax.: +91-1824-506111
Email: odl@lpu.co.in