PREFACE

With its grounding in the "guiding pillars of Access, Equity, Equality, Affordability and Accountability," the New Education Policy (NEP 2020) envisions flexible curricular structures and creative combinations for studies across disciplines. Accordingly, the UGC has revised the CBCS with a new Curriculum and Credit Framework for Undergraduate Programmes (CCFUP) to further empower the flexible choice based credit system with a multidisciplinary approach and multiple/ lateral entry-exit options. It is held that this entire exercise shall leverage the potential of higher education in three-fold ways – learner's personal enlightenment; her/his constructive public engagement; productive social contribution. Cumulatively therefore, all academic endeavours taken up under the NEP 2020 framework are aimed at synergising individual attainments towards the enhancement of our national goals.

In this epochal moment of a paradigmatic transformation in the higher education scenario, the role of an Open University is crucial, not just in terms of improving the Gross Enrolment Ratio (GER) but also in upholding the qualitative parameters. It is time to acknowledge that the implementation of the National Higher Education Qualifications Framework (NHEQF), National Credit Framework (NCrF) and its syncing with the National Skills Qualification Framework (NSQF) are best optimised in the arena of Open and Distance Learning that is truly seamless in its horizons. As one of the largest Open Universities in Eastern India that has been accredited with 'A' grade by NAAC in 2021, has ranked second among Open Universities in the NIRF in 2024, and attained the much required UGC 12B status, Netaji Subhas Open University is committed to both quantity and quality in its mission to spread higher education. It was therefore imperative upon us to embrace NEP 2020, bring in dynamic revisions to our Undergraduate syllabi, and formulate these Self Learning Materials anew. Our new offering is synchronised with the CCFUP in integrating domain specific knowledge with multidisciplinary fields, honing of skills that are relevant to each domain, enhancement of abilities, and of course deep-diving into Indian Knowledge Systems.

Self Learning Materials (SLM's) are the mainstay of Student Support Services (SSS) of an Open University. It is with a futuristic thought that we now offer our learners the choice of print or e-slm's. From our mandate of offering quality higher education in the mother tongue, and from the logistic viewpoint of balancing scholastic needs, we strive to bring out learning materials in Bengali and English. All our faculty members are constantly engaged in this academic exercise that combines subject specific academic research with educational pedagogy.We are privileged in that the expertise of academics across institutions on a national level also comes together to augment our own faculty strength in developing these learning materials. We look forward to proactive feedback from all stakeholders whose participatory zeal in the teaching-learning process based on these study materials will enable us to only get better. On the whole it has been a very challenging task, and I congratulate everyone in the preparation of these SLM's.

I wish the venture all success.

Professor Indrajit Lahiri
Vice-Chancellor

Netaji Subhas Open University

Four Year Undergraduate Degree Programme
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Subject : Honours in Political Science (HPS)
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Module I

Module II

Module III

Module - 1

Unit 1 ❑ The Constituent Assembly

Structure

1.1 Objective

After studying this unit, the learner will be able to:

- Understand the process of formation of the Constituent Assembly.
- Examine how the Constituent Assembly enacted the Indian Constitution and identify the chief architect behind its creation.
- Analyze the type of constitution that was enacted and assess the criticisms directed at the Constituent Assembly.
- Develop insights into the methods and frameworks for evaluating the Constitution of India.

1.2 Introduction

Constitution is considered to be the supreme law of the land. Although the people of the

country are said to be the makers of the constitution, in reality, the constitution of a country is prepaned by an organisation consisted of the elected representatives of the people. In India also the constitution was enacted by an agency called Constituent Assembly made of both the elected and nominated members from various Provinces and the Princely States. According to many, Constitution Assembly is not just a mechanism for writing the constitution, it has also a radical significance in the sense that through it the thought and consciousness of the people in the freedom struggle and their aspirations are manifested.

1.3 Demand for the Setting Up of the Constituent Assembly

The establishment of the Constituent Assembly can be considered to be the most important event in the history of the constitutional development of India. Since the time when demand for self- rule was raised, the demand for a Constituent Assembly was raised directly or indirectly. It was in 1922 that Gandhiji raised this demand. When in 1933 the British Government declared the introduction of dyarchy and responsible government in Provinces, the Congress Working Committee rejected it and demanded that a Constituent Assembly elected on the basis of universal adult franchise was the need of the hour. In the year 1936, the Congress party in its manifesto very clearly demanded the Constituent Assembly. They even went to the extent of abolishing the 1935 Government of India Act so that the Indians could enact their own constitution. In 1939, Gandhiji in his Harizan patrika clearly expressed his views on the need to establish a Constituent Assembly for the making of a constitution for the Indians.

Thus, when the demand for a Constituent Assembly got louder the then Viceroy was convinced about the making of a constitution for the Indians. Subsequently, to find a solution to this problem, the British Government sent Stafford Cripps to India. Cripps came out with some proposals towards establishing a Constituent Assembly for making a constitution for the Indians. But both the Congress and the Muslim League rejected the proposals. As a result of the failure of the Cripps mission, it was declared by the then Viceroy, Lord Wavell announced that after the election of the provincial legislatures, measures would be adopted to form a Constituent Assembly and proper steps would be taken to hand over power to the Indians. He put special emphasis on the need for unity among the Indians in this respect.

Towards this end of establishing a Constituent Assembly for India, the British

Government sent Cabinet Mission to India in March, 1946. This Mission put forward some important proposals regarding the constitution making and the constitution of a Constituent Assembly for India. The recommendations were a) A Constituent Assembly would be established for making a constitution for India and out of 395 members, 292 members would come from the Provinces and 93 members would come from the Princely States b) the provinces would be divided into Hindu majority and Muslim majority provinces. 187 including 20 muslim members members would come from Hindu majority provinces and Muslim majority provinces would send 35 members including 22 muslims, 4 Sikhs and the rest would be from other communities. In addition, 70 representatives would come from Bengal and Assam among which 36 would be muslims and 34 would be from other communities.c) After the constitution of the Constituent Assembly, Chairman and other functionaries would be elected.d) An Advisory Council would be constituted for underdeveloped regions and backward communities. e) Provincial representatives would enact their own constitution by being divided into aforementioned three groups.

1.4 Composition of the Constituent Assembly

Elections to the provincial legislatures took place towards the end of 1945 which was not held on the basis of the universal adult franchise. Only 28.5 percent people took part. The Congress party and the Muslim League garnered all seats. Congress bagged 926 seats out of 1585 seats (58%) and the Muslim League garnered 425 seats out of 432 reserved seats. Subsequently, in the month of July and August of 1946, election of the representatives of the Constituent Assembly was held. The total number of members of the Constituent Assembly was 389 out of which 296 were elected from various political parties and 93 nominated members from the Princely States. On the other hand, the Muslim League won 73 seats out of 80 reserved seats. Mentioned may be made here that after partition, the Muslim League members resigned from the Constituent Assembly as a result of which the percentage of members of the Congress party got increased to 82 percent. All prominent leaders of the Congress party were elected to the Constituent Assembly including Nehru, Patel, Azad, Radhakrishnan, Allahdi K. Ayer, H C.Mukherjee, N.Gopalaswami Ayengar, K M Munsi, T.T.Krishnamachari etc.

1.5 Objectives of the Constituent Assembly

According to Granville Austin, the main function of the Constituent Assembly was to prepare a draft constitution which would fulfill the ultimate objective of social revolution. In fact, only the achievement of independence cannot be the sole objective of any nation. The main objective of a nation should be establishment of democracy in socio economic sphere. By participating in the debates of the Constituent Assembly, Nehru said that the main objective of the Constituent Assembly should be to enact a new constitution, to feed the poor people and to ensure all round development of the personalities of each Indian based on their individual capacities. Dr Rajendra Prasad and Dr Radhakrishnan also put emphasis on the socio economic emancipation of the Indian people. The constitution which was enacted by the Constituent Assembly had five fundamental features like, a) democratic socialism b) parliamentary form of Government c) Secularism d) Federalism and e) Judicial Review. Critics have argued that despite these features, Indian constitution cannot be called an instrument of social revolution as the right to private property was kept in the constitution as a fundamental right. Although this right has been abolished by the 44th constitution amendment act, 1978 and it has been made only a legal right. The same criticism applies to judicial review and the true character of parliamentary democracy. Austin tried to give an answer to these anomalies by saying that these happened because of result of the combination between Nehru's fabian socialism and Patel's liberalism.

1.6 Working Procedure of the Constituent Assembly

The Constituent Assembly adopted the committee system for its functioning like a legislature. As such, the matters to be discussed were divided into two groups - 1. Procedural Affairs and 2. Substantive Affairs. The Constituent Assembly formed 10 committees for the first mentioned issues for discussion and making recommendations.

The Committees were:

1. Rules of Procedure Committee
2. Finance and Staff Committee

3. Credentials Committee
4. House Committee
5. Press Gallery Committee
6. Steering Committee
7. Business Committee
8. Hindi Translation Committee
9. Urdu Translation Committee
10. Committee on Indian Independence Act.

The Committees which were formed to deal with the Substantive Affairs are:

1. Committee for Negotiating with States
2. Advisory Committee
3. Union Powers Committee
4. Union Constitution Committee
5. Provincial Constitution Committee
6. Drafting Committee
7. Expert Committee on Financial Provisions
8. Committee on Chief Commissioners Provinces
9. Committee to Study and Examine the Draft Constitution
10. Ad Hoc Committee on National Flag
11. Ad Hoc Committee on the Supreme Court
12. Linguistic Provinces Committee

The Constituent Assembly also constituted the following Sub- Committees

1. Sub-Committee on Fundamental Rights
2. Sub-Committee on Minorities
3. Sub-Committee on NEFA
4. Sub-Committee on Excluded and Partially Excluded Areas(Outside Assam)

1.7 Drafting Committee

Among the Committees of the Constituent Assembly, the Drafting Committee deserves

special mention being the most important committee. This committee was set up on the basis of the recommendations of various committees on 29 th August, 1947. Dr B.R. Ambedkar was made the chairman of this committee. Other members were N.Gopalaswamy Ayengar, Alladi Krishna Swami Ayer, K.M.Munsi, Sayed Shahedullah, B.L.Moitra and D.P.Khaitan. The functions of this committee were made specific. The main task of the Constituent Assembly was to study and analyse the draft constitution made by B N.Rao, the constitutional advisor. After due consideration, the committee was ordained to submit the draft constitution to the Constituent Assembly for discussion. The process of drafting the constitution started in August, 1947 and it was completed in the mid October. Then the draft committee started to analyse each and every article of the constitution. The committee acted so fast that it was able to submit the draft constitution to the Constituent Assembly on 21st February, 1948. After a thorough study and discussion, the draft constitution was adopted by the constituent assembly and it was signed by the President of the Constituent Assembly, Dr Rajendra Prasad. Thus, the constitution which was adopted by the constituent assembly of India within a period of only less than three years was a result of a lot of unrepated and hearty efforts of the members of the Drafting Committee.

1.8 Role of the Constituent Assembly in Enacting the Constitution

The first session of the Constituent Assembly was held on 9th December, 1946. The Muslim League members didn't join this session. The first session of the Constituent Assembly continued from 9th December to 23rd December. In this session Nehru placed his "objectives resolutions" in which India was declared to be a "sovereign, democratic republic". Dr Rajendra Prasad was elected as the permanent Chairman of the Constituent Assembly. On 12 December, the Committee on Rules of Procedure was elected.

The second session sat on 21st January, 1947 and it continued up to 26th January. In this session, Nehru's "objectives resolutions" were approved and some important committees like Steering committee, Advisory committee on Minorities, Union Powers Committee, Committee on Tribal Areas, Advisory committee on Fundamental Rights were formed. Harendra Kumar Mukhopadhyay was elected as the Vice President of the Constituent Assembly. It is to be mentioned that members of the Muslim League were absent in the two sessions. For this reason, the Congress party members requested the

Governor General to suspend the Muslim League members from the Constituent Assembly. Ultimately, when Lord Mountbatten decided to divide the country, the Congress party obtained supreme authority over the Constituent Assembly.

The third session of the Constituent Assembly began on 28th April and ended on 2nd May. In this session, members discussed the reports of the Union Powers Committee and Advisory committee on Fundamental Rights. The first committee recommended that the central government be given foreign relations, communication and economic powers. The second committee recommended that fundamental rights be divided into two categories - justiciable and non- justiciable and further recommended that all citizens, irrespective of caste, class, religion and gender, would enjoy these rights equally. In addition, a recommendation regarding untouchability was adopted and it was declared that any discriminatory behaviour towards the SCs and STs would be regarded as offence. Some more committees were formed in this session like Union Constitution Committee, Provincial Constitution Committee. In this session, Dr Rajendra Prasad suggested that Indian Constitution would be enacted in both Hindustani and English language and thereafter the session was adjourned sine die.

The fourth session of the Constituent Assembly started on 14th July and went on till 31st July. This session dwelt on the reports of the Union Powers Committee and Provincial Constitution Committee. Moreover, this session appointed an ad- hoc committee on National Flag of India.

A special session was held on at the midnight of 14 th August,1947 on the occassion of the transfer of power and opening of Dominion India. Then the fifth session of the Constituent Assembly commenced from 20th August only to end on 29th August, 1947. From this session, the Constituent Assembly was declared to be an agency with sovereign authority. This session discussed the reports of the Union Powers Committee, Advisory committee on Minorities etc in detail. It was decided in this session that the Constituent Assembly would have powers to enact the constitution and make laws. But it was decided that when the Constituent Assembly would legislate, there would be a Speaker to conduct the legislative business. The ministers who were not members of the Constituent Assembly would have no voting rights but they would be able to participate in the deliberations of the Constituent Assembly. The Princely States would be able to participate in law- making as before. It should be mentioned here that the Constituent Assembly first acted as the

Dominion Parliament on 17th November, 1947. G.V.Mavalankar was elected as the first Speaker for conduct of Central Legislative business.

The Drafting Committee which was formed on 29th August, 1947 elected Dr B.R.Ambedkar as the Chairman of the Drafting Committee. There were other members who helped Dr Ambedkar in preparing a draft constitution for India. A draft constitution was ready by February, 1948 and it was sent to all members of the Constituent Assembly, to the ministers, to the Federal Court and Judges of the High Courts. Then on 21st February the draft constitution was presented to the Constituent Assembly and it contained 315 Articles and 13 Schedules. The members of the Constituent Assembly started to deliberate on the Articles from 15th November, 1948 and ended on 17th October, 1949. This was the first reading of the constitution where 7365 amendments were received but in the end, discussion took place on 2473 amendments. After a long period of intense debate and discussion, the final draft of the constitution contained 395 Articles and 8 Schedules. Second reading of the constitution was completed by 16th November, 1949 and the third reading of the constitution began on the very next day, that is, on 17th November,1949. Lastly, the Preamble was added to the constitution. Thus, the constitution, which was adopted by the constituent assembly on 26th November, 1949, contained a Preamble, 395 Articles and 8 Schedules and it was signed by Dr Rajendra Prasad, the President of the Constituent Assembly. The last session of the Constituent Assembly sat on 24th January, 1950 which elected Dr Rajendra Prasad as the first President of India and the constitution came into effect from 26th January, 1950 which came to be known as the Republic Day.

1.9 Evaluation of the Constituent Assembly

Lack of Popular Character :

Although Congress party was committed to a constitution based on popular support, the Constituent Assembly as based on Cabinet Mission recommendations, had no relation with the Congress party's pre- declared wishes. The members of the Constituent Assembly were elected by those who were elected as legislators of the Provincial Legislatures election of which was held in 1945 on the basis of qualifications such as property, education, income etc as determined by the Government of India Act, 1935.

Undemocratic Nature:

The Princely States had 93 representatives in the Constituent Assembly. They were committed to status quo and represented feudal interests. Thus, feudal interests were fused with democratic values resulting in protecting the interests of the Princely States.

Supremacy of the Lawyers:

Those who played the most important role in enacting the Constitution were mostly lawyers. Ivory G. Jennings described the Constituent Assembly as the "lawyers paradise". Most of the members of the constitution drafting committee were lawyers including the Chairman, Dr. B.R.Ambedkar. As a result, they put more emphasis on the nitty gritty of law than on the need for socio-economic changes. K T.Shah commented that the objectives of the constitution enacted by the constituent assembly were political, not social or economic.

No Referendum:

The constitution makers did not feel any need for the constitution to be placed before the people for their approval. Granville Austin opined that the leaders of the Congress party felt that the constitution of the Constituent Assembly on the basis of universal adult franchise was both complex and time- consuming. That's why they didn't favour universal adult franchise.

Procedural Issues:

Critics argue that the constitution drafting committee would love to think them to be the select committee and expert committee. As a result, in spite of the members having the right to discuss things but the ultimate decision would be taken by the drafting committee.

Frequent Changes of Opinion:

Frequent Changes of opinion on various issues on the part of the members of the Constituent Assembly would force the constitution drafting committee to take the members to task. Naziruddin Ahmed commented sarcastically that the constitution drafting committee was really a "drifting committee".

Bossist Attitude of Dr Ambedkar:

Many a time, Dr. Ambedkar didn't give due importance to the opinions expressed by

ordinary members of the Constituent Assembly. This bossist attitude of the Chairman of the Constitution Drafting Committee annoyed them.

Lack of Universal Character:

The Constituent Assembly had majority members of the Congress party but due to partition, the Communists had no representative in the constitution assembly which barred them to put forward their opinion or alternative programme before the Constituent Assembly. Considering this, Granville Austin went to the extent of calling the Constituent Assembly as a one- party affair. The Congress party was the Constituent Assembly and the Constituent Assembly was the Congress party - so opined Austin.

The Behind the Scenes role of the Congress Working Committee:

On a theoretical plane, the Constituent Assembly was all-powerful by in reality, it was the Congress Working Committee which dictated the Constitution Drafting Committee. Mahabir Tyagi drew attention to all these things and Dr. Ambedkar also couldn't hide his displeasure for undue interference by the Congress Working Committee in the affairs of the Drafting Committee.

Congress Oligarchy:

The leading lights of the Congress party like Nehru, Patel, Azad, Rajendra Prasad had their unrestricted say on the composition of the Constituent Assembly and constitution making. Austin described this dominance of these leaders as "Congress Oligarchy". As a result, the views of Nehru and Patel prevailed over the ideas of Gandhiji. Not only this, the progressive ideas of Gandhiji like Panchayat, Cottage Industry and Cow Protection, found their place in the Directive Principles of State Policy which are not justiciable.

Intellectual Autocracy:

In the Constituent Assembly, the views expressed by the western educated members had an overwhelming edge over the ordinary members of the Constituent Assembly. As a result, a gap developed between the views of the so-called intellectuals and the ordinary members of the Constituent Assembly.

Dominance of the Right Wing leaders:

Leaders like Patel had rightist inclinations and he had greatly influenced the constitution

making. C.Deshmukh and T.T.Krishnamachari were considered to have close relationship with Indian capitalists. As such, the interests of the capitalist class were given priority over the interests of the ordinary people of the country.

Protection of the Special Interests of Certain Groups:

Professor Dhirendranath Sen in his book, ''From Raj to Swaraj'' said that the Indian constitution served the interests of three groups a) the Princely States b) High-ranking British Officials and c) British Businessmen and Industrialists.

Inconsistencies and incongruities:

Many constitutional experts opined that Indian Constitution is full of inconsistencies and incongruities. There were many lawyers but there were no political scientists or experts in constitutional laws in the Constituent Assembly. As a result, the Indian constitution failed to address the socio-economic problems faced by the Indian people.

1.10 Conclusion

Indian constitution is the largest written constitution in the world and it has a Preamble which was profusely praised by Arnest Barkar in one of his celebrated book ''Principles of Social and Political Theory''. Constitution makers took only about three years to enact this constitution the credit for which must go to the Chairman of the constitution drafting committee, Dr. B.R.Ambedkar, Nehru, Patel, Azad and Rajendra Prasad. But it cannot be denied that due to the absence of any representative of the Communist party in the Constituent Assembly, the interests of the working class in India couldn't be served. Liberal thinkers have described the Indian constitution as " revolution by consent". But the Marxist writers and thinkers like A.R.Desai, D.N.Sen called the Indian constitution to be a constitution serving the interests of the Indian bourgeoisie. They opined that Indian constitution is not "a product of political revolution". Still, it could not be denied that the rulers in India could establish a welfare state by utilising the Indian constitution. Fundamental rights have been given to the Indian citizens and they can enjoy them on an equal basis irrespective of caste, class, religion and gender etc. Democracy has also been functioning smoothly except for certain aberrations on the part of the rulers. Directive Principles of State Policy in the constitution are aimed at ensuring socio-economic changes

of the people although it is on the whims of the rulers that Directive Principles of State Policy can be implemented as they have been made non-justiciable. There are no dearth of progressive principles contained in the Preamble. Recently, there was a legal move on the part of certain political leaders to do away with the term "secular and socialism" from the Preamble but the supreme court has clearly stated that these terms are essential for India as a developing country and quashed the appeal. Lastly, in the age of globalisation, liberalisation and privatisation, the values and principles contained in many parts of the constitution aimed at welfare state have lost their relevance much.

1.11 Summing Up

- In the introduction part, the meaning of the constitution has been explained which is nothing but the meeting of aspirations of the Indian people who not only supported the Indian freedom movement from heart but also actively participated in the movement.
- Demands were made by various quarters for an indigenous constitution to be made by the representatives of the Indian people.
- A Constituent Assembly was formed on the recommendations of the Cabinet Mission.
- It started to work in December, 1946. For enacting the Constitution, it formed a Constitution Drafting Committee headed by Dr. B.R.Ambedkar.
- Various committees were formed for the purpose of making the constitution.
- The Constituent Assembly went through many sessions for giving the members of the Constituent Assembly opportunity to discuss things in detail.
- It took about three years to enact the Indian constitution which originally contained 395 Articles and 8 Schedules.
- Nehru, Patel, Azad, Rajendra Prasad played the most important role in the Constituent Assembly.
- Various criticisms have been levelled against the Constituent Assembly on various grounds.
- Many described the constitution as serving the interests of the capitalist class of India.
- There was no representative of the Communist party of India in the Constituent Assembly as a result of which the interests of the working class couldn't be served by the constitution.

- Despite all shortcomings, the Indian constitution was able to make India a welfare state in the initial years of the constitution.
- The Preamble of the Indian constitution works as a guide for the governments and to work for the common people of India.
- Due to the adoption of globalisation, liberalisation and privatisation by the Government in the 90s of the twentieth century, the values and principles contained in the constitution of India have been given a go-by by subsequent governments.
- Still, there is a ray of hope in the ruling given by the Supreme Court of India in the sense that the judges are not in favour of doing away with the terms " secularism and socialism", inserted in the constitution by constitution amendment, as according to them, these ideals are very relevant for India as a developing nation committed to the welfare of the people of India and ensuring brotherhood among the various communities of the country.

1.12 Probable Questions

Essay type Questions

1. Write a note on the Constituent Assembly of India.
2. Discuss the criticisms against the Constituent Assembly.

Short Questions

1. Discuss the role of the Constitution Drafting Committee in making the Indian constitution.
2. Discuss briefly the stages of constitution making of India.

Objective Questions

1. On the recommendations of which commission was the Constituent Assembly of India established?
2. In which year and on which date was the first session of the Constituent Assembly held?
3. Who was the Chairman of the Constitution Drafting Committee?
4. In which year and on which date was the constitution adopted by the Constituent Assembly of India?

5. Who was the first elected President of the Constituent Assembly of India?
6. Who wrote the book, " From Raj to Swaraj"?
7. Who coined the term " Congress Oligarchy"?
8. In which year and on which date did the Indian constitution come into effect?

1.13 Further Reading

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Unit 2 ❑ The Preamble

Structure

2.1 Objective

After studying this Unit, the learner will be able

- To discuss the Preamble proper and the ideals contained in the Preamble as the philosophy of the constitution.
- To analyse the nature and significance of the Preamble.
- To deal with the question of amendability of the Preamble.

2.2 Introduction

The Constitution of every country has a philosophy. This philosophy includes those ideals or policies on which is based the Constitution. Jawaharlal Nehru's 'Objectives Resolution' helps us understand the philosophy of the Indian Constitution. Nehru placed these resolutions before the Constituent Assembly on 23rd December, 1946 and they were adopted in an amended form on 22nd January, 1947. These

resolutions declared India as an "Independent Sovereign Republic". Indian people were described as the source of all power and authority. In addition, social, economic and political justice, equal status and opportunities, equality before law, freedom of expression, faith, and religion and adequate provisions for the preservation of the interests of the SCs and STs were included in the resolutions. Nehru's 'Objectives Resolution'also incorporated ideals like the integrity of the territory of the Republic, promotion of world peace and the welfare of mankind. The preamble of the Indian constitution has given an important place to the 'Objectives Resolution' of Nehru.

2.3 The Preamble

"We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens :

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give to Ourselves this Constitution."

2.4 Key Concepts of the Preamble and Their Elucidation

1. Sovereign
2. Socialist
3. Secular
4. Democratic
5. Republic
6. Justice
7. Liberty

8. Equality
9. Fraternity

1. Sovereign

This word implies that India is neither a dependence nor a dominion of any other nation but an independent state. There is no authority above it, and it is free to conduct its own affairs (both internal and external). Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

2. Socialist

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy.

Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalization of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side'. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism'.

3. Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although words 'secular state' is not mentioned in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental rights to freedom of religion) have been included in the constitution.

The Indian Constitution embodies the positive concept of secularism i.e., all religions in our country (irrespective of their strength) have the same status and support from the state.

4. Democratic

A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.

The Indian Constitution provides for the representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.

The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

5. Republic

A democratic polity can be classified into two categories—monarchy and republic. In a monarchy, the head of the state (usually King or Queen) enjoys a hereditary position, that is, he/ she comes into office through succession as in Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period as in the USA.

Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the President. He is elected indirectly for a fixed period of five years.

6. 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 the absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward sections of society like the SCs, the STs, the OBCs and the Women.

7. Liberty

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

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.

8. 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.

9. Fraternity

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Articles 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.

2.5 Nature of the Preamble

It should be noted that the first Constitution to have a preamble was that of the United States of America in the year 1787. The other countries having a preamble to their Constitutions include Japan, Ireland, Myanmar, India etc.

In India, there is much debate about whether the preamble is the part of the constitution. In Berubari case, the Supreme Court refused to recognize the preamble as part of the Constitution. But in Keshavananda Bharati case, the majority of Judges of the Supreme Court of India, mentioning the debates in the Constituent Assembly, opined that the preamble is very much a part of the Constitution.

In fact, in spite of the preamble being an inviolable part of the Constitution, it

cannot be considered to be the source of power as well as it cannot impose restrictions on power. In Berubari case in 1960 and in Indira Gandhi vs. Rajnarayan judgement in 1975, the Supreme Court Judges opined that the preamble is a part of the constitution but it is not a part of the effective part of the constitution. Renowned constitution expert, Dr. Durgadas Basu also agreed with this opinion.

Despite being not an effective part of the constitution, it cannot be denied that the preamble helps us get a clear idea about the objectives of the framers of the constitution. Taking part in a debate of the Constituent Assembly, Alladi Krishnaswamy Iyer commented that the preamble is' a sort of introduction to the Statute'. In Golaknath case in 1967 and in Keshavananda Bharati case, the Supreme Court expressed the similar view.

From the above, it can be said that the preamble to the Indian constitution has very little legal importance. Firstly, it is not associated with the effective part of the constitution and secondly, it cannot give legal explanation of the effective part of the constitution. All the functions of the Indian state are conducted and controlled as per the basic part of the constitution. Moreover, if any citizen ignores the ideals and principles of the preamble, the Court has no power to force him or her to follow these ideals and principles.

2.6 Significance of the Preamble

Although the Preamble is not a part of the basic constitution, its importance and significance cannot be denied.

1. The Preamble helps in the clarification of any ambiguities relating to any word or sentence of the effective part of the constitution. The Preamble plays a very important role in removing the ambiguities of the constitution.
2. The Preamble acts as a key to opening the mindset of the constitution-makers. In other words, the Preamble helps us understand the objectives and concerns of the makers of the constitution. In Berubari and Golaknath case, the point, that through the Preamble, the aspirations of the constitution-makers have found expression, has been made very clear. While delivering the judgement, the then

Chief Justice of Supreme Court commented that the Preamble was, in short, an expression of the "ideas and aspirations" of the constitution.

3. The Preamble is the philosophical foundation of the constitution. The social, economic and political ideals of the makers of the constitution have got reflected through the Preamble.The Preamble has not only reflected the ideals of popular sovereignty, state sovereignty, democracy, socialism, secularism and republicanism, determination to establish economic and political justice, freedom of expression, faith and belief, equality, fraternalism has also found an important place in the Preamble. Moreover, the Preamble has gone to the extent of declaring establishing a welfare state coupled with democratic socialism in the country. Unity and integrity of the country have also been emphasized on by the Preamble. In this way, the Preamble has, in a nutshell, described the aims and objectives and principles of our constitution. Even, we can know the date of adoption of the constitution and the date from which it came into effect. Subba Rao commented that the ideals and principles, on which our constitution is based, have been given a place of pride in the Preamble.
4. The Preamble is very important not only nationally but also internationally. The majority ruling in the Golaknath case categorically stated that the Parliament has no power to amend the fundamental features enshrined in the Preamble as the edifice of Indian constitution rests on these features. If any one of these features is weakened, the entire structure of the constitution will break down. Internationally, the Preamble plays a very important role as the principle 'Fraternity' acts as the basis of our national and international affairs. Our foreign policy is bound to fail unless bound by fraternity. Article 51 of our constitution has clearly stated the ideals of our foreign policy and for these policies to be realized, we must adopt the ancient Indian principle of "*Basudhaiva Kutumbakam*". The 'Fraternity' principle must not be confined within the four walls of our national boundary, it must also be extended to the international sphere.
5. The Preamble has immense moral significance. No government can ignore the principles and ideals embedded in the Preambleas that will spell political doom

for the party in power. Hence, it is considered to be a moral duty of any government to implement these ideals and principles contained in the Preamble.

Considering the importance of the Preamble, Thakurdas Bhargav said that the Preamble is "the most precious part of the constitution". It is the 'soul' of the constitution, a key to understand the essence of the constitution. Bhargav considered the Preamble as "a jewel set in the constitution" and "superb prose-poem". Dr. Dhirendranath Sen went to the extent of calling the Preamble as a "solemn resolve". He criticized the Preamble as nothing more than a law serving the interests of the capitalist class. So, it must be kept in mind that what is important is not the ideals and principles enshrined in the Preamble, but its class-character. Any Preamble should be analysed in terms of the criterion of political power of the class concerned.

2.7 Can the Preamble Be Amended?

There is much disagreement as regards whether the Preamble can be amended under Article 368 of the constitution. Even the Supreme Court judgements in various cases at different times are not similar. The reason for this may be due to the fact that the Preamble is not related to the effective part of the constitution and thus, it has no legal value.

Whether the Preamble is amendable under Article 368 came to be discussed by the Supreme Court first in the Keshavananda Bharati vs the State of Kerala case in 1973.The petitioners claimed that the power to amend the constitution under Article 368 was not unlimited and an implied limitation has been imposed by the Preamble on this power of the Parliament as the basic elements or the fundamental features of the constitution have been codified in the Preamble. These features cannot be changed by amendment of the constitution. In addition, as the Preamble is not a part of the constitution, it cannot be amended with the help of Article 368 as this Article can be used only to amend the constitution. The Supreme Court gave this ruling in Berubari case in 1960. But in KeshavanandaBharati case in 1973, the Supreme Court was of the view that as the Preamble is very much a part of the constitution, it can be amended by Article 368.

But it should be kept in mind that the majority of the judges in this case opined that certain conditions must be followed while amending the Preamble. They said that the Preamble could be amended by applying Article 368 but the basic features contained in the Preamble could not be amended under any circumstances as our constitutional edifice was grounded on these basic features. So the judgement of the Keashavananda Bharati case made it clear that although the Preamble is amendable, the basic structures of the constitution are not.

It may be in order to mention that in 1976, constitution was amended and like other parts of the constitution, Preamble was also amended and three words were inserted into the Preamble, namely, 'socialist, 'secularism' and 'integrity'. Nobody objected to these amendments as these were important principles like already-existing ones like 'sovereignty', 'democratic', 'republic', 'social-economic and political justice', 'freedom of expression', 'faith and belief' etc. There was no novelty in inserting these three principles as there were provisions already existing in the constitution relating to these principles as enshrined in the Directive Principles of State Policy and Fundamental rights. They were just explicitly given place in the Preamble.

2.8 Conclusion

The Preamble is the cornerstone of the Indian constitution. Although it is not binding on the Government of the day to always act in accordance with the Preamble, it is at its own political risks that the Government can disregard or ignore the principles and ideals enshrined in the Preamble. The Preamble represents the spirit of the Indian political system as a democratic, sovereign, socialist, secular republic. The Preamble has lost much of its sheen due to the policy of liberalization, privatization and globalization initiated since 1991 by the then Congress led Government at the Centre. The ideals enshrined in the Preamble are at odds with the market-oriented principles of governance being resorted to by the rulers of our country.

2.9 Summing Up

- Indian Constitution has a highly admired Preamble.
- Preamble of the Indian Constitution has immense political and moral significance.
- Preamble of the Indian Constitution can be amended keeping the basic features of the constitution in mind.
- Preamble of the Indian Constitution acts as a guide for the rulers of the day.
- Ideals enshrined in the preamble have lost much of their sheen due to market oriented policies followed by the Governments at the national level since the 1990s of the last century.

2.10 Probable Questions

Essay Type Questions :

1. Write a brief note on the Preamble of the Indian Constitution.
2. Analyse the nature and significance of the Preamble.
3. Why is the Preamble considered as the philosophical basis of the Indian constitution?
4. "India is a sovereign, socialist, secular, democratic republic" – Explain.
5. What is the significance of the Preamble of the Indian constitution?
6. Do you think that the Preamble is a part of the constitution? Give reasons for your answer.

Short Questions :

1. Why is India called a Republic?
2. Can India be called a Socialist State?
3. Do you think that India is a secular country?
4. What is the importance of the Preamble?
5. What is the Preamble of the Indian Constitution?

Objective Questions :

1. By which amendment of the constitution was the term 'socialist' added to the preamble?
2. In which year was the Indian Constitution adopted by the Constituent Assembly?
3. Under which Article of the Constitution can the Preamble be amended?
4. Mention one ideal of the Preamble.
5. Which country influenced our constitation makers to write a Preamble for the Indian Constitution?

2.11 Further Reading

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Unit 3 ❑ Fundamental Rights

Structure

3.1 Objective

This unit will help the learner to understand

- The important features and amendability of the Fundamental Rights.
- The Fundamental Rights as enshrined in various Articles of the Constitution.
- The Writs issued by the Courts (Supreme Court and High Courts) to protect the Fundamental Rights of the citizens.
- The circumstances under which Fundamental Rights can be suspended.

3.2 Introduction

In any democratic set-up, fundamental rights are a must for the citizens. It is due to the fundamental rights that the individuals are able to develop their personalities to the full. Like many constitutions of other countries of the world, Indian constitution has provided the Indian citizens with some fundamental rights. The Constituent Assembly set up many committees for constitution making and one committee headed by Sardar Patel was entrusted with the stupendous task of dealing with the fundamental rights of the citizens. After much discussions and deliberations, the committee came to identify the essential rights for the citizens of India making them enforceable in courts. Fundamental rights have been highly praised and their importance highlighted. They have been called, "conscience of the constitution" and the very "soul of the constitution".

3.3 Important Features of the Fundamental Rights

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- All the fundamental rights are available to the citizens, while persons other than citizens residing in India are entitled to enjoy some fundamental rights.
- Fundamental rights are not absolute rights. They have reasonable restrictions which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts under Articles 32 and 226. People can approach the Supreme Court directly in case of violation of fundamental rights. High courts can also be approached through Article 226.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.

- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule.
- Fundamental rights can be classified into two types-Positive and Negative. Some fundamental rights like Article 14, 15(1), 16(2), 18(1), 20, 21, 22(1), and 28(1) impose restrictions on the state from doing something. On the other hand, Articles 19(1), 25, 29(1), and 30 (1) are positive fundamental rights in the sense that they direct the state to perform certain functions. Former Chief Justice of India, Justice P.B.Gajendragadkar went to the extent of saying that, "a legally enforceable right governing the relations between the state and citizens has both a negative and positive aspect. It must, as the words indicate, be fundamental. It does not mean a right of liberty permissible under law: it also means a Right to Liberty in a positive sense which enables an individual to develop his personality and his faculties and to live his life in his own interest and in the interests of the community as a whole."
- Fundamental rights are not only binding on the state and its agencies but also on the individuals and organizations. If untouchability or any other discrimination is practiced by any person then he or she is subjected to punishment under the law
- Certain fundamental rights are there which are available against private individuals like Article 15 (2), Article 17, Article 18 (3)-(4), Article 23 and Article 24.
- Another important feature of the fundamental rights is that the Right to Property, which was a fundamental right, has been taken away from the chapter of the fundamental rights by the 44th constitution amendment act, 1978 and it has been made a legal right under Article 300A which says, "No person shall be deprived of his property save by authority of law."

3.4 Amendability of the Fundamental Rights

The fundamental Rights are a bulwork against the State interference as well as individual infringement of fundamental rights. Still, the question of amenability of the fundamental rights takes us to the point whether the fundamental rights can be amended

under Article 368. Till the time Golaknath case was not there, it was the general view that no part of the constitution is immune from amendment and the Parliament can amend any part of the constitution taking advantage of Article 368. But in Golaknath case of 1967 it was upheld by the Supreme Court that fundamental rights as enshrined in Part-III of the constitution cannot be amended by any authority as the fundamental rights have been given a transcendental position by the constitution. To override this judgement, Parliament passed the 24th Amendment Act in 1971 and made the fundamental rights amendable in accordance with the procedure of Article 368. In the case of Keshavananda Bharati v. State of Kerala, the opinion of the Supreme Court may be expressed in a nutshell: 1) Golak Nath's case is overruled; 2) Article 368 does not enable Parliament to alter the basic structure of the Constitution; 3) The 24th Constitution Amendment Act, 1971 is valid.

3.5 Fundamental Rights

Right to Equality (Articles 14 to 18)

Article 14 states, "The state shall not deny any person equality before law or equal protection of the laws within the territory of India." This is both a negative and positive fundamental right. The positive side relates to the equal protection of all persons under equal circumstances and the negative side relates to the expression equality before law which implies the absence of privilege or favour towards any individual irrespective of his status or rank. Equality before law means that among equals, the law should be equal and the like should be treated alike.

The Supreme Court of India, while interpreting the ambit of Article 14, upheld that

a. Equal protection means equal protection under equal conditions
b. The state can make reasonable classification for purposes of making laws
c. Presumption of reasonableness is for legislation
d. The burden of proof is on those who will prefer to challenge the laws

However, there are some exceptions in Article 14 which are as follows :

i. The President or the Governor of a state shall be exempted from being

answerable to any court for the exercise and performance of the powers and functions of their office or any act done or to be done in the exercise of their powers and functions

ii. No criminal proceedings can be initiated against the President or the Governor of a state in any court during his/her term of office.

iii. No civil proceedings can be initiated against the President or a Governor of a state when he or she is in office relating to any act done or to be done in exercise of his or her powers and functions.

Article 15 :

Article 15 states that 1. the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth, or any of them and 2. Any citizen would not be subject to any disability, liability, restriction, or condition with regard to

a. Access to shops, public restaurants, hotels, places of public entertainment

or

the use of Wells, Tanks, Bathing Ghats, Roads and Places of public Resorts maintained wholly or partially by the state fund or dedicated to the use by the people.

However, there are four exceptions. These are—

1. Nothing in this Article shall prevent the state from making any special provisions for the women and the children.

2. Nothing in this Article shall prevent the State from making any special provision for the advancement of the socially and educationally backward classes of people or for the people belonging to Scheduled Castes or Scheduled Tribes.

3. This clause was added by 93rd Amendment Act, 2005. It empowers the State to make special provisions for the above mentioned classes regarding their admission to private educational institutions.

4. This clause was added by 103rd Amendment Act, 2019. It states that nothing in Art. 15 shall prevent the State from making any special provision

for the advancement of any economically weaker sections of citizens, other than the classes mentioned in clauses (4) and (5).

Article 16 :

Article 16 stipulates that,

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
2. No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

   There are certain exceptions in Article 16 regarding public employment :

   a. Parliament may lay down the condition of residence within the State for employment [(Article 16 (3)]
   b. The State may reserve any post or appointment in favour of any backward classes of citizens who, in the view of the State, are not adequately represented in the services under the State (Article 16 (4)
   c. Offices related to a religious or denominated institution may be reserved for members professing the particular denomination to which the institution relates [(Article 16 (5)]
   d. The claims of the people belonging to Scheduled Castes or Tribes shall be taken into consideration in matters of appointment to services and posts under the Union and the States in keeping with the maintenance of efficiency in the administration (Article 335)

      Art 16(6) was added by 103rd Amendment Act, 2019. It states, "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other then the classes mentioned in clause (4)."

Article 17 :

Article 17 states that, "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law."

This particular Article has to be read along with Article 35 which confers on the Parliament the power to make laws for prescribing punishments for offences as mentioned in Part-III of the constitution. Acting on this provision, the Parliament passed the Untouchability (Offences) Act 1955 which was later amended in 1977 and renamed as the Protection of Civil Rights Act, 1955.

The Act recommended certain acts of untouchability as offences :

1. Refusing admission any person to public institutions, such as Hospitals, Dispensary, Educational Institutions;
2. Preventing any person to from worshipping or offering prayers in any place or public worship;
3. Subjecting any person to any disability with regard to access to any shop, public restaurant, hotel, or public entertainment or with regard to the use of any reservoir, tap or other sources of water, road, cremation ground or any other place where services are rendered to the public.

   The scope of the Act was further widened in 1976 following an amendment. The various aspects of the amendment are :

   1. Insulting anybody belonging to Scheduled Caste or Scheduled Tribe community on the ground of untouchability
   2. Preaching untouchability, directly or indirectly
   3. Justifying untouchability on historical, philosophical or religious grounds or on grounds of religious tradition.

Article 18 :

Article 18 of the Indian constitution abolishes the use any sort of titles which were conferred by the British rulers when India was under their subjugation. The Article enshrines :

1. No title, not being a military or academic distinction, shall be conferred by the State
2. No citizen of India shall accept any title from any foreign State
3. No person who is not a citizen of India shall accept without the consent of the President any title from any foreign State

4. No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

The constitution of India seeks to prevent such abuse of titles by prohibiting the State from conferring any title at all as such abuse creates artificial distinctions in society.

The State is allowed to confer military or academic distinctions and it can also confer awards or distinctions for excellence in social, cultural, public service or extra-ordinary services leading to achievement in art, literature and science, like Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri, which cannot be used as titles.

3.6 Right to Freedom (Articles 19-22)

Right to Freedom in the Indian constitution consists of four Articles, Article 19, 20, 21 and 22. Article 19 has given us several rights. They are :

a. Right to freedom of speech and expression
b. Right to assemble peacefully and without arms
c. Right to form associations or unions
d. Right to move freely throughout the territory of India
e. Right to reside and settle in any part of the territory of India
f. Right to practice any profession, or to carry on any occupation, trade or business

3.7 Restrictions on the Right to Freedom

No freedom can be unrestricted. Therefore, to strike a balance between individual freedom and public order, reasonable restrictions have been imposed under Article 19 in the sub-clauses (2) to (6). The grounds of restrictions can be Public Order or Morality, Sovereignty and Integrity of India, the Security of the State, and Friendly relations with foreign Nations etc. For example, the rights of a non- ST citizen can be restricted in an area exclusively inhabited by the Scheduled Tribes.

The freedoms guaranteed by Article 19 are sought to be protected further by Articles 20, 21 and 22.

Protection in respect of conviction of offences.

Article 20 protects us from conviction in respect of certain offences. The Article states :

1. No person shall be convicted of any offence except for violation of existing laws.
2. No person shall be prosecuted and punished for the same offence more than once.
3. No person accused of any offence shall be compelled to be a witness against himself.

Protection of Life and Personal Liberty.

Article 21 provides for protection and personal liberty. It says, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Subsequent judicial pronouncements and interpretations have broadened the scope of Article 21 to include within it a number of rights like livelihood, clean environment, good health, speedy trial and humanitarian treatment for those who are behind the bar.

Right to Education.

The right to education at the elementary level has been made one of the fundamental rights under Article 21 A by the 86th Constitution Amendment Act, 2002.The newly added Article 21 reads thus, "The State shall provide free and compulsory education of children of the age of six to fourteen years in such manner as the State may, by law, determine."

Protection against Arbitrary Arrest and Detention.

Article 22 provides specific rights to arrested and detained persons:

1. The arrested person must be informed about the ground of arrest.
2. The arrested person must be allowed to consult a lawyer of his or her own choice.

3. The arrested person must be produced before nearest Magistrate within 24 hours of arrest and the freedom not to be detained beyond that period without an order of the Magistrate.

   The above safeguards are not allowed to be enjoyed by 1. an enemy alien 2. A person arrested or detained under a law permitting preventive detention.

   Article 22 provides for what the State can do in case a person is detained under laws relating to preventive detention:

1. The State can detain such person without trial for only three months and
2. Any detention for a longer period must be authenticated by the Advisory Board.
3. The person who has been detained will have the right to be informed about the grounds of detention and be allowed to make a representation against detention at the earliest opportunity.

   Preventive Detention Act was first enacted by the Indian Parliament in the year 1950. Subsequently, this was replaced by Acts like MISA in 1971, COFEPOSA in 1974, NSA in 1980, and ESMA in 1980 and the latest being UAPA. All these laws empower the State to put people under detention.

   The Preventive Detention Act was challenged in the Gopalan v the State of Madras case, 1950 when the Court went to the extent of observing that Preventive Detention could not be challenged on the pretext of violation of fundamental rights as guaranteed under Article 19. This ruling was overturned in the subsequent Maneka Gandhi's case in 1978.

3.8 Right Against Exploitation (Articles 23 and 24)

Articles 23 and Article 24 of the constitution ensure the right of the citizens, particularly of the weaker sections of society, against exploitation by stating that

1. Traffic in human beings and *begar* and similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
2. Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class of any of them.

These provisions bear similarity with the 13th Amendment of the American constitution through which slavery or involuntary servitude was done away with.Indian constitution, in order to make the purview of Article 23 wider, has inserted the term 'traffic in human beings' instead of slavery so that it not only prohibits slavery, but also any kind of traffic in women or children or the crippled for immoral or other purposes.

Article 24 states that, "No child below the age of fourteen years, shall be employed to work in any factory or mine or engaged in any other hazardous employment." This Article can be said to be related to the Directive Principles of State Policy which imposes the duty on the State to ensure universal compulsory and free primary education for children of the age upto 14.

3.9 Right to Freedom of Religion (Articles 25-28)

The Preamble of the constitution of India has ideals of secularism inscribed in it. It has described India as a secular State. India has no 'State Religion. 'Articles 25-28 ensures the religious neutrality and impartiality of the Indian State and also guarantees the minority rights.

Article 25 contains the freedom of conscience and free profession, practice and propagation of religion. It states that:

1. "Subject to Public order, Morality, Health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
2. Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law—
   a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
   b) providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

However, it must be kept in mind that although this Article has given the right to propagate and spread the tenets of one's religion, it has prohibited forceful conversion of people belonging to one religion to another religion. The wearing and carrying of kripans by the Sikhs are to be thought of as a part of the profession of the Sikh religion and the sub-clause (b) of (2) refers to Hindus which must include a reference to persons professing religions like Sikhism, Jainism or Budhism and the Hindu religious institutions must be construed as such.

Article 26 bestows upon the various religious denominations the right to manage their own religious affairs. As per this Article, religious communities shall have the right, subject to public order, morality and health, 1. to establish and maintain institutions for religious and charitable purposes; 2. to manage its own affairs in matters of religion; 3. to own and acquire movable and immovable property; and 4. to administer such property in accordance with law.

Article 27 is related to the right with regard to payment of taxes for promotion of any particular religion. According to this article, "No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denominations."

Article 28 is with reference to the freedom as to attendance at religious worship in certain educational institutions. It enshrines;

(1) No religious instructions shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in Clause (I) shall apply to educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such situations.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any

religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or if such person is a minor, his guardian has given his consent thereto.

3.10 Cultural and Educational Rights (Articles 29-30)

Indian constitution guarantees cultural and educational rights to the citizens which are very crucial for the preservation of one's language, script or culture. Article 29 aims at protecting the interests of the minorities. It goes thus;

(1) Any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of any religion, race, caste, language or any one of them."

Article 30 empowers the minorities to establish and administer their own educational institutions and says;

(1) "All minorities whether based on religion, language shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is managed by a minority, whether based on religion or language.

3.11 Right to Constitutional Remedies (Article 32)

A declaration of fundamental rights is of no meaning unless there is an effective machinery for implementation of the rights. For this reason, the framers of our constitution argued for special provisions guaranteeing the right to constitution remedies. Article 32 provides for such right.

Article 32 has four sections. The first section is general and says that "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

The second section deals, in more specific terms, with the power of the Supreme Court to issue writs including writs in the nature of *habeas corpus*, *mandamas*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of any rights. The third section empowers Parliament to confer the power of issuing writs or orders on any other courts without prejudice to the power of issuing writs on any courts. The last section deals with the conditions under which this right can be suspended.

Therefore, the Supreme Court has been given the authority to play the role as the guarantor and protector of the fundamental rights. The power to issue writs for the enforcement of the fundamental rights has been conferred on the Supreme Court (Article 32) and High Courts (Article 226). Supreme Court can issue writs under Article 32 only for enforcement of fundamental rights whereas the High Courts, acting under Article 226, can issue writs for enforcing fundamental rights as well as for redress of any injury or illegality arising out of violation of ordinary legal rights. It should be noted that the right guaranteed under Article 32 cannot be suspended except during Proclamation of Emergency in the manner laid down by the Constitution (Article 359).

3.12 Writs

Habeas Corpus

It is a Latin term meaning "to have the body". In India, the court secures the body of a person detained or imprisoned to be brought before it and secure the release of the person from confinement if it is found that there is no ground of detention and hence unlawful. This writ can be issued both by the Supreme Court or High Courts. By issuing this writ, the Court directs the person who has kept another person in detention, to bring the body of the detained person before the court.

Mandamas

Mandamas means, "We order". It is an order issued by the Supreme Court and High Courts directing a person to perform some public or quasi-public duty which he or she has refused to do and there is no legal remedy left for its enforcement. The High Court may refuse to issue Mandamas if there is alternative remedy available for redress of injury. A writ of Mandamas can be issued not only against officers or persons engaged in public duty, but also the government itself.

Apart from protecting fundamental rights, the High Courts can issue a writ of Mandamas for purposes of enforcement of the performance of a statutory duty of a public officer conferred upon him by a statute or the constitution itself, to compel a Court or Judicial Tribunal to exercise its jurisdiction which it has failed to do and to direct a public official or the Government not to enforce any law which may be unconstitutional.

Prohibition

It is a writ issued by the Supreme Court to refrain the lower courts from usurping jurisdiction or overstepping their jurisdiction in any proceedings before it. Prohibition is a writ which warrants inaction when Mandamas wants public officials to act. It is applicable only against a body empowered to exercise public functions of a judicial or quasi-judicial character.

Certiorari

It is a prerogative writ by which order can be issued for removal of a suit from an inferior court to higher court. By a writ of certiorari, a decision of a lower court or tribunal can be quashed when there is an error of law or the subject is beyond the jurisdiction of the body or it assumes jurisdiction on the basis of a wrong decision or the inferior court or tribunal has violated the principle of natural justice.High Courts can issue this writ and quash the decision of a lower/inferior court while the Supreme Court can issue this writ if some fundamental rights have been infringed upon in such cases.

Quo Warranto

By issuing this writ, the Supreme Court or the High Courts may prevent a person from occupying a public office which he or she is not entitled to hold and may remove the person from enjoying the office and declare the office to be vacant. But a writ of Quo Warranto can only be issued when there is a usurpation of an office of public nature and an office which is substantive in nature, and there has been a breach of constitutional norms or a statute or statutory instrument in appointing that person to that particular office. This writ is a discriminatory remedy and may be refused by the Court on the basis of factual and legal evidences.

3.13 Suspension of Fundamental Rights

Despite being the 'conscience of the constitution', fundamental rights are not unrestricted and one can enjoy these rights subject to restrictions like, the Sovereignty and Integrity of the country, the Security of the State, Public order, Decency or Morality. The fundamental rights remain suspended during National Emergency proclaimed by the President of India (Article 352). Even in normal times, these fundamental rights can be restricted when someone has been booked under Preventive Detention Act like MISA, NSA, ESMA, COFEPOSA, POTA, TADA, UAPA etc. The misuse of these restrictions by authorities can make the enjoyment of fundamental rights by the citizens a complete mockery.

3.14 Fundamental Duties

The Fundamental Duties of Indian citizens are enshrined in Part IV-A of the Constitution of India, under Article 5 IA. These duties outline the ethical and civic responsibilities of individuals toward the nation. Unlike Fundamental Rights, which primarily focus on the entitlements of citizens, Fundamental Duties emphasize their obligations in maintaining national integrity, social harmony, and environmental consciousness.

The concept of Fundamental Duties was introduced through the 42nd Constitutional Amendment Act of 1976, based on the recommendations of the Swaran Singh Committee. This committee, appointed by the government, reviewed the constitutional framework and suggested the inclusion of citizens' duties to complement their rights. Inspired by the constitutions of socialist countries like the former Soviet Union, these duties were incorporated to instil a sense of responsibility and national commitment among citizens.

Initially, 10 Fundamental Duties were included in the Constitution, reflecting the core values of patriotism, respect for national symbols, protection of the environment, and upholding the ideals of the freedom struggle. Later, through the 86th Constitutional Amendment Act of 2002, an llth duty was added, making it the responsibility of parents or guardians to provide opportunities for education to their children between the ages of 6 to 14 years.

Although not legally enforceable, these duties serve as moral guidelines and play a crucial role in fostering civic consciousness and responsible behaviour among citizens. Courts have often referenced Fundamental Duties while interpreting constitutional provisions, and certain laws indirectly enforce them, such as those related to national honour and environmental protection. Thus, while they may not be justiciable, Fundamental Duties hold significant importance in shaping a disciplined and conscientious society.

Fundamental Duties (Article 51 A)

According to Article 51 A, every Indian citizen has the duty to:

i) Abide by the Constitution and respect its ideals, institutions, the National Flag, and the National Anthem.

ii) Cherish and follow the noble ideals that inspired India's freedom struggle.

iii) Uphold and protect the sovereignty, unity, and integritY of India.

iv) Defend the country and render national service when called upon.

v) Promote harmony and spirit of common brotherhood among all people of India) transcending religious, linguistic, and regional or sectional diversities; renounce practices derogatory to the dignity of women.

vi) Value and preserve the rich heritage of India's composite culture.

vii) Protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and have compassion for living creatures.

viii) Develop scientific temper, humanism, and the spirit of inquiry and reform.

ix) Safeguard public property and abjure violence.

x) Strive for excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement .

xi) Provide opportunities for education to children between the ages of 6 and 14 years (added by the 86th Amendment Act, 2002).

The Fundamental Duties serve as moral obligations for Indian citizens, encouraging responsible citizenship and fostering national unity. TheY complement the Fundamental Rights by ensuring a balance between rights and duties, reinforcing the idea that citizens should actively contribute to the nation's progress. Additionally, these duties play a crucial role in promoting social harmony and environmental consciousness, emphasizing the importance of collective responsibility in maintaining cultural and ecological well-being.

3.15 Conclusion

Fundamental rights are essential for the development of individual personality. These rights are expected to create a congenial atmosphere so that individuals would be able to develop their personalities to the fullest extent.Indian constitution has given six fundamental rights to the citizens of India. It was not an easy task for the Constituent Assembly to draw up a list of fundamental rights. It had to make difficult compromises in order to arrive at a consensus on fundamental rights. In independent India, fundamental rights have come

to face many hurdles created both by the Legislature and the Executive. Critics argue that fundamental rights are not fundamental rights in reality, but they are just an apology for them. More important rights like the right to work, education have been left out. Many are of the opinion that draconial laws like preventive detention have taken much of the spirit and substance of the 3rd chapter of the constitution. Another category of people argue that the fundamental rights have been hedged in with so many exceptions, explanations and qualifications that it becomes very difficult for ordinary citizens to understand what exactly is available to them in the form of fundamental rights. The only consolation has been the role played by the Supreme Court and the High Courts. Whenever fundamental rights of the citizens have been infringed, the Courts have come forward to protect these rights. Overall, the chapter of fundamental rights has worked as a bulwark of individual liberty, a code of public conduct and a strong and sustaining basis of Indian democracy.

3.16 Summing Up

- Fundamental Rights are those rights which help individuals to be at their best selves, that is, with the help of these rights, the individuals can develop their personalities to the fullest extent.
- Fundamental Rights are not absolute. Reasonable restrictions can be imposed on them and they can be suspended during national emergency and even in normal times when someone is booked under the Preventive Detention Act.
- Fundamental Rights are amendable as has been proved by the fact that by the 44th Constitution Amendment Act, 1978, the Fundamental Right to property has been abolished and it has been made a legal right under Article 300(A) of the Indian Constitution.
- The Supreme Court and the High Courts have been given the power to protect these fundamental rights in case of violation and they have the power to issue various writs like Habeas Corpus, Mandamas etc. for the purpose of protecting the fundamental rights of the Indian Citizens.

3.17 Probable Questions

Essay Type Questions :

1. Discuss the Right to Equality.
2. Write a note on the Right to Freedom.
3. Analyse the Right to Freedom of Religion.
4. Discuss some important features of the Fundamental Rights.
5. Write a note on the amendability of the Fundamental Rights.

Short Questions :

1. Discuss the Right against Exploitation.
2. What is the Right to Education and Culture?
3. What is the Right to Constitutional Remedies?
4. What is Habeas Corpus?
5. What is Mandamas?
6. What is Certiorari?
7. What is Prohibition?
8. What is Quo Warranto?

Objective Questions :

1. How many fundamental right are there in the Indian Constitution?
2. How many writs are there in the Indian Constitution?
3. Which articles deal with the right to religion?
4. Is right to property a fundamental right?
5. Who can issne writs?

3.18 Further Reading

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Unit 4 ❑ Directive Principles of State Policy

Structure

4.1 Objective

This unit will help the learner to know

- The distinctions between the Directive Principles and the Fundamental Rights.
- The important features of the Directive Principles.
- The Directive Principles of State Policy as enshrined under Articles 35 to 51.
- The significance of the Directive Principles**.**

4.2 Introduction

Directive Principles of state policy exist in the Part-IV of the Indian constitution. Ivor Jennings opined that the constitution-makers were influenced by the principles of Fabian socialism in incorporating these principles in the constitution. According to Durgadas Basu, the constitution of Ireland has its imprint on the directive principles of state policy as enshrined in the Indian constitution. In order for

democracy to be successful, civil and political rights are not enough, economic and social rights are also necessary. Economic and social rights have found their place in the form of Directive Principles of State Policy in the constitution. The framers of the constitution, through these principles, wanted to make India a welfare state. Many are of the opinion that the directive principles of state policy are major steps forward towards realizing Nehru's "socialistic pattern of society." Unlike the fundamental rights, directive principles are not justiciable, that is, they cannot be enforced by the courts. The importance of these principles lie in their being the guiding principles of governance.

4.3 Distinctions Between the Directive Principles and the Fundamental Rights

There are some differences between the Directive Principles and Fundamental rights which are as follows :

a) Directive principles are positive in the sense that they direct the state what it should do while the fundamental rights are negative as they impose limitations on the state as regards what it cannot do.

b) Directive principles cannot be operational without laws, but fundamental rights can come into force without laws.

c) Directive principles are not justiciable, that is, no citizen can go to the courts for enforcement of the Directive Principles but fundamental rights are enforceable by the courts. If one's fundamental rights are violated then one can seek redressal in the court.

d) Government cannot enact any law on the basis of Directive Principles, but the government can enact laws on the basis of fundamental rights. For example, Parliament has enacted some laws on untouchability basing on Article 17 which has prohibited behaviour and campaigning relating to untouchability.

e) Article 13 of the constitution has stipulated that any law enacted by parliament or any executive order which is against fundamental rights will be declared null and void by the court. In 1950, the Supreme Court nullified

a part of the preventive detention act passed by the parliament in 1950. But the courts cannot declare any law null and void if it is against any directive principle.

f) If any conflict arises between a fundamental right and a directive principle, the fundamental right will prevail. At present, directive principles under Articles 39 (B and C) will prevail over Article 14 and Article 19 which deal with the right to equality and right to freedom.

g) According to many, the objective of the fundamental rights is to build up a democratic society but the objective of the directive principles is to create a welfare state. In other words, fundamental rights are political in nature but the directive principles are social and economic in nature.

h) Fundamental rights are not unlimited. The state can impose limitations on them in public interests. So a kind of balance between individual interests and collective interests has been forged through the fundamental rights. But no limitation can be imposed on the directive principles.

i) Fundamental rights have limited the powers of the state. On the other hand, directive principles have expanded the state's power both nationally and internationally.

j) According to some, fundamental rights are not as dynamic as the Directive Principles of State Policy.

k) The importance of the directive principles lies in the fact that they are expected to play an important role in socio-economic revolution. On the other hand, fundamental rights are more geared to ensure political equality.

4.4 Features of the Directive Principles of State Policy

- Directive Principles of State Policies are not enforceable in a court of law.
- They were made non-justifiable considering that the State may not have enough resources to implement all of them or it may even come up with some better and progressive laws.
- It consists of all the ideals which the State should follow and keep in mind while formulating policies and enacting laws for the country.

- The Directive Principles of State Policies are like a collection of instructions and directions, which were issued under the Government of India Act, 1935, to the Governors of the colonies of India.
- It constitutes a very comprehensive economic, social and political guidelines or principles and tips for a modern democratic State that aimed towards inculcating the ideals of justice, liberty, equality and fraternity as given in the Preamble. The Preamble consists of all the objectives that needs to be achieved through the Constitution.
- Adding Directive Principles of State Policies was all about creating a "welfare state" which works for the individuals of the country which was absent during the colonial era.

4.5 Art 36-51

Article 36. Definition.—In this Part, unless the context otherwise requires, "the State" has the same meaningas in Part III.

Article 37. Application of the principles contained in this Part.—The provisions contained in this Part shallnot be enforceable by any court, but the principles therein laid down are nevertheless fundamental in thegovernance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 38. State to secure a social order for the promotion of welfare of the people :

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

Article 39. Equal justice and free legal aid.—The State shall secure that the operation of the legal systempromotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitablelegislation or schemes or in any other way, to ensure that opportunities for securing justice are not deniedto any citizen by reason of economic or other disabilities.

Article 40. Organization of village panchayats.—The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Article 41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved wants.

Article 42 : Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43. Living wage, etc., for workers.—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, aliving wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and socialand cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A. Participation of workers in management of industries.—The State shall take steps, bysuitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

Article 43B. Promotion of co-operative societies.—The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Article 44. Uniform Civil Code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Article 45. Provision for early childhood care and education to children below the age of six years.—

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—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. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48. Organization of agriculture and animal husbandry.—The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Article 48A. Protection and improvement of environment and safeguarding of forests and wild life in the country-

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement,destruction, removal, disposal or export, as the case may be.

Article 50. Separation of Judiciary from Executive.

The State shall take steps to separate the judiciary from the executive in the public services of the State.

Article 51. Promotion of international peace and security.—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.

4.6 Significance of the Directive Principles of State Policy

In the Indian constitution, the Directive Principles of State Policy have been given a lot of importance so far as socio-economic implications are concerned. But compared to fundamental rights, the Principles enjoy secondary position in legal terms. In spite of legal inferiority, the principles have political and moral significance. If any government fails to implement these principles then the government may have to face an unsatisfied electorate at the time of election.The principles have also constitutional significance as Article 37 stipulates that it is the duty of the state to keep these principles in mind at the time of enacting laws. The central government can issue directives to the states to implement 1) Article 39(d) relating to equal pay for equal work irrespective of gender 2) Article 40 regarding introduction of the Panchayat system and 3) Article 47 prohibiting intoxicating drinks and drugs. The Directive principles are considered to be complimentary to social revolution through constitutional means as they have not only socialist principles in them, they have also helped us to find ways of implementing these principles. G.Austine described these

principles as “clearer statement of the social revolution”. Moral importance of these principles cannot also be denied as they act as a reminder to the government as regards its economic, social and international duties. The Directive Principles are said to have no legal importance. But this is not wholly true because the Supreme Court, many a time, has considered the validity of laws on the basis of these principles. Prof. K.C.Wheare has pointed out the educative value of these principles. These principles make the people aware of their rights and duties. In fine, it can be said that these principles have given birth to new wants and aspirations among the people. Prof. Pylee has described these principles as symbol of minimum hopes and aspirations of the Indian people. Directive Principles can make India a welfare state, if implemented seriously.

It should be kept in mind that both the Fundamental rights and the Directive Principles are complementary to each other. What is necessary is that both the two should be made to balance each other. As Austin says, “By establishing these positive obligations of the State, the members of the Constituent Assembly made it the responsibility of future Indian governments to find a middle way between individual liberty and the public good, between preserving the property and privilege of the few and bestowing benefits on many in order to liberate the powers of all men equally for contributions to the common good.”Hence, it can be said that the Directive Principles are no less important than the Fundamental Rights in making India a truly democratic country.

4.7 Conclusion

Despite high ideals being expressed through the Directive Principles of State Policy, exploitation of the people, particularly the poor, discrimination based on caste, gender are very much in existence in India. Ignorance, caused by illiteracy on the part of a large section of people in society,has led to their religious enchainment and superstitious behavior. Liberalization, privatization and globalization policies followed by Governments since the 90s of the last century have weakened the objective of making India a ‘socialistic pattern of society’ as dreamt of by Nehru

through the implementation of these Directive Principles of State Policies. What needs to be noted in particular is the non-enforceability of these principles where more important socio-economic rights of the people reside. The unwillingness to implement the important Directive Principles by Governments coming to power at various times for political reasons has also been a bane for establishing a society based on equality.

4.8 Summing Up

- Economic and social rights have found their place in the form of Directive Principles of State Policy.
- Directive Principles are different from the Fundamental Rights in many respects.
- While the objective of the Fundamental Rights is to build a democratic society, the objective of the Directive Principles of State Policy is to create a welfare state.
- Directive principles of state policy are not justiciable, that is, the courts can do nothing in case any principle is not implemented by the Government.
- Directive principles of state policy consist of principles—which can be categorised as social, economic and international. Maintenance of international peace and security has been given an important place in the Directive Principles.

4.9 Probable Questions

Essay Type Questions :

1. Discuss the distinctions between the Directive Principles and the Fundamental Rights.
2. Write a note on the Directive Principles of State Policy.
3. What are the important features of the Directive Principles of State Policy?
4. Discuss the significance of the Directive Principles of State Policy.

Short Questions :

1. Discuss whether a Government is bound to implement the Directive Principles.
2. What are the Directive Principles linked to International Relations?
3. Mention four Directive Principles.
4. Why are the Directive Principles significant?
5. Mention two Directive Principles having social significance.

Objective Questions :

1. Which chapter of the Indian Contitution deals with the Directive Principles of state policy?
2. Name one Directive Principle.
3. Is it true to say that Directive Principles are justiciable?
4. Which constitution influened the constitution makers to accomodate the Directive Principles in the Indian Constitution?
5. Which article deals with the right to work?

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Unit 5 ❑ Federalism : Centre–State Relations

Structure

5.1 Objective

After studying this unit, the learner will be able to

- Explain the meaning of the concept of Federalism.
- Explain the features of Indian Federalism.
- Understand the nature of Indian Federalism.
- Identify the powers and responsibilities of the union and state government.

5.2 Introduction

The inheritance of the Indian government and administration was influenced by the different foreign rulers like French, Portuguese, Dutch, Shaka, Hunas, Kushanas, Mughals, and Britishers. After Independence, the Indian Parliamentary Democracy was established by the constituent assembly (1946-1950). This assembly was influenced by the various Acts of British Government ever passed to rule India from the Regulating Act 1773 to the Government of India Act. 1935. The act of 1935 became

the most influencing act for the constituent assembly as well as the Constitution of India; this was quoted by W.H. Morris Jones in his various research findings. The constitution of free India comes into effect on January 26, 1950. One of the most important features of the Indian Constitution included the distribution of powers between the union and different state governments. It was considered prudent not to introduce the Unitary Government but only the Federal Government which was widely welcomed by all shades of opinion. The elements of the federation are present in the Indian Constitution, although the word 'federation 'does not find a place in the whole text of the Indian Constitution. Articles 1 of the Indian Constitution describes India as a Union of States instead of a federation, though in India Federal form of Government has been adopted. The federal features which influenced the founding fathers of the Indian Constitution were mainly from American, Canadian, and Australian Federations. The framers of the Constitution were influenced by the federal principles, with exceptions and modifications of the US and Canadian constitutions. On the other hand, Indian Leaders like Jawaharlal Nehru who was a staunch supporter of liberal democracy was committed to democratic socialism and agrarian redistribution. For their policies to be successful, they believed that there should be a centralised direction for the establishment of a federal system in India. Dr. B.R. Ambedkar wrote "It will be noticed that the committee has used the term Union instead of Federation. Nothing much turns on the name, but the committee has preferred to follow the language of the Preamble to the British North America Act. 1867, and considered that there are advantages in describing India as a Union although its Constitution may be Federal in Character."

5.3 Federalism : Meaning

The term federation is derived from the Latin word "Foedus" meaning 'Treaty or Agreement'. Hence, it is the result of an agreement between two sets of governments, which is the Central or Federal government and State government. Historically, a federation means a union of some states brought about through the instrumentality of a treaty. Federation has come to mean a union of two or more states. In such a union there is a central government and there are state governments. Thus, there is a state

authority, and the powers of the state are divided between the central and regional governments.

The term 'federalism' has been used in a variety of contexts. Indeed, the extent of terminological and conceptual abuse has obscured its meaning. Like the word 'democracy, federalism stands to mean different things to different people. In principle, by federal concept is meant the idea of organization of state whereby a compromise is achieved between concurrent demands for union and territorial diversity within a society, by the establishment of a single political system, within which, general (Central) and regional (State) governments are assigned coordinate authority so that neither level of government is legally or politically subordinate to the others.

5.3.1 Definition :

KC. Wheare, an authority on federalism says that "Federation is a system which consists of two sets of governments that are independent, co-ordinate, and distinct.

Prof. A.V. Dicey, says : "Federation is a political contrivance intended to reconcile national unity with the maintenance of State Rights."

Dr. B.R. Ambedkar, "The partition of legislative and executive power of the centre and units is the main criteria of the federation."

In 1961, M.J.C. Vile, attempted to substitute the idea of interdependence in the place of independence, and according to him, "Federalism is a system of government in which neither level of a government is wholly dependent on the other not wholly independent of the other."

In 1964, W.H. Riker, pointed out that, "A constitution is federal if (i) two levels of government rule the same land and people and (ii) each level has at least one area of action in which it is autonomous, and (iii) there is some guarantee of the autonomy of each government in its own sphere."

According to A.H. Birch, "A federal system of government is one in which there is a division of powers between one general and several regional authorities, each of

which, in its sphere, is coordinate with the other, and each of which acts directly on the people through its administrative agencies."

However, by 'federation', we mean, in short, a type of polity operating a constitution that works on two levels of government as a nation and as a collection of related, but self-standing units. And the main objective of a federation is to form a government for the people and by the people.

5.4 Features of Indian Federalism

The Constitution of India is unique concerning its extreme detail and substance. It is the longest constitution in existence in the world totaling three hundred ninety-five articles and eight supporting schedules embraced in two hundred and seventy-two pages. Its uniqueness is attested to by its emphasis on constitutional detail, covering legislative procedure, administrative relationships between the Centre and the component states, and the inclusion of a constitution for the states with equal detail as that for the national political organism. The essential reason for this phenomenon is the basic distrust of the members of the Constituent Assembly of human beings, the communal ill-will prevailing between Muslims and Hindus, the fear of provincialism in the nation, and the need to empower the national government with sufficient strength to develop a national, industrialized economy from a backward state.

The character of the Indian Constitution is in a federal form. Federalism involves the distribution of sovereignty between the national government and the constituent member states. Within each sphere, each government is supreme. The Indian Constitution itself does not characterise the form of government as federal, but rather, describes India (Bharat), as a Union of States (Article-1). However, the Drafting Committee of the Constituent Assembly referred to this when it reported the draft constitution to the Constituent Assembly stating that the committee preferred to follow the language found in the preamble of the British North America Act, 1867.

The main features of the Indian Federal system are as follows :

i) **Division of Powers** : One of the most important features in any federal system is the division of powers between two levels of government is an essential feature of federalism. Federalism means the distribution of powers of the state between the central and the state governments. The basis of such distribution of power is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the centre and matters of local concern remain with the states. In a Federation, there should be a clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activities and none violates its limits and tries to encroach upon the functions of others. The Seventh schedule contains three legislative lists which enumerate subjects of administration and legislation viz., Union, State, and Concurrent lists.The union list consists of 100 subjects, the more important of which are defines, railway, posts and telegraph, currency, etc. The state list consists of 61 subjects, including public order, police, administration of justice, public health, education, agriculture, etc. The concurrent list embraced 52 subjects including criminal law, marriage, divorce, trade unions, electricity, etc. The residuary powers have been vested in the central government.

ii) **Supremacy of the Constitution :** A federal-state derives its existence from the constitution. The constitution in a federal state constitutes the supreme law of the land. As Prof. K. C. Wheare rightly says, “these two institutions the supremacy of the constitution and the written constitution are, then essential institutions to a federal government. The Supremacy of the Constitution is essential if the government is to be federal; the written constitution is essential if the federal government is to work well.” In a federation, the constitution should be the supreme source of strength, both for the centre as well as the federating units. Accordingly, the Indian constitution is also supreme and not the handmaid of either the centre or of the states. If for any reason, any organ of the state dares to violate any provision of the constitution, the court of law is there to ensure the dignity of the constitution, which is upheld at all cost.

iii) **A Written Constitution :** A Federal constitution must almost be a written constitution. It will be practically impossible to maintain the supremacy of the constitution and division of powers between the centre and the states unless the terms of the constitution have been reduced into writing. Accordingly, the Indian constitution is a written document containing 395 Articles and 12 Schedules and therefore fulfills this basic requirement of a federal government. The Indian constitution is the most elaborate in the world. All the modem federations like the U.S.A., Australia, Switzerland, and Canada have hammered their constitutions, and they are 'written' in nature. However, it should be noted that in the U.S.A., in addition to the federal constitution, each state has its constitution. The Indian constitution demarcates the powers between the centre and the state. Dual polity and a clear written constitution are essential for the functioning of federalism. In a written constitution the central government will not encroach upon the state powers, and both have to work within their jurisdiction. The United States of America, Australia, Switzerland, Canada, and India are examples of a federal constitution.

iv) **Rigid Constitution :** A natural corollary of a written constitution is its rigidity. In a rigid constitution, the procedure of amendment is complicated and difficult. But this does not mean that the constitution should be legally unalterable. A rigid constitution, as we know, cannot be changed easily. The Indian constitution is partly rigid. All the provisions of the constitution concerning federal-state relations can be amended only by the joint actions of the state legislatures and the union parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and by voting in the parliament, and is ratified by at least one-half of the states. However, in India, the constitution prescribes three different methods for amending the different provisions of the constitution. In the first category, it can be amended by a majority of the total membership in each house, and by a majority of not less than two-thirds of the members present, and voting in each house of parliament. In the second category, it requires a majority of the total membership in each house,

and a majority not less than two-thirds of the members present, and voting in each house of parliament, and ratification by at least one-half the state legislatures. The third category requires a simple majority in each house of the parliament.

v) **Independent Judiciary :** Impartial and independent judiciary is essential for a federation. A Federal court is indispensable to a federation. It acts as the guardian of the constitution. Especially, this principle has been playing an important an key role in the working of the federal government. The judiciary has occupied a very important status in federal countries like the United States, Switzerland, Australia, Canada, and India. The constitution has provided for a Supreme Court, and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law unconstitutional if it contravenes any provisions of the constitution. To ensure the impartiality of the judiciary, our judges are not removable by the executive and their salaries cannot be curtailed by the Parliament.

vi) **Bicameral Legislature :** A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral legislature at the Centre consisting of the Lok Sabha and the Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by State Legislative Assemblies.

5.5 Nature of Indian Federal System

The Indian constitution adopts the strict application of the federal principles, as a result, some of the political events would reveal that the states are not the agents or instrumentalities of the center. Despite, the strong central tendency the states have been able to assert their rights. There have been territorial disputes between Karnataka and Maharashtra; and Punjab and Haryana. Disputes, over sharing of water, took place between Karnataka and Tamil Nadu. Nagaland, Tripura, and

Manipur have laid claims to each other's territory. A more stark fact supporting the existence of federalism is the spectacle of different parties in power in different states. In West Bengal and Kerala, the left front has formed the government several times. In Madhya Pradesh, Maharashtra, Uttar Pradesh, Himachal Pradesh, and Rajasthan the Bhartiya Janta Party-led governments enjoyed power. In Tamil Nadu and Andhra Pradesh, the local parties have been in the seat of government for a long time. And all this when a different party or coalition was ruling at the center. It is the success of federalism in giving effect to the aspiration of the people that there is a never-ending demand for the creation of new states. In the constitution of 1950, there were 9 Part A and 5 Part B states. As of today (after the abolition of Part B states), the total number of states is 28. Another piece of evidence is the loud clamor for obtaining more grants from the center and assertion of autonomy in matters about law and order (especially in West Bengal and Bihar). The central government has been paying more to the State governments than recommended by the Finance Commissions appointed under Article 280.

But at the same time, some principles of Indian federalism may be characterised as a prefectural federal system. some important constitutional provisions substantiate this idea.

Under the Indian federal system, the Union is indestructible and the states are destructible. In other words, a "state's" identity can be altered or even obliterated, and 20 acts have been passed by Parliament under Articles 3 and 4 of the Constitution to bring about changes in the areas, boundaries, and names of states. Ascertaining the views of the concerned states by the President is not mandatory because he is competent to fix a time limit within which states must express their opinion. Moreover, Parliament is not bound to accept or act upon the views of the state legislature even if those views are received in time.

According to Article 200 of the Constitution, certain bills passed by state legislatures may be reserved by the governors for the consideration of the President of India. A governor's action in this regard has been held to be non-justiciable. Under

Article 201, the President may give his assent to such state bills at any time, without time limit, or exercise his veto power over them. Ambedkar's argument that "the States under our Constitution are in no way dependent upon the centre for their legislative or executive authority" is only a federal myth. Granville Austin has rightly pointed out that "in theory Articles 200 and 201 invalidate the division of powers for there is no means of overriding a President's veto in the case of State legislation." This un- federal provision has been used extensively by the Union government and thereby has undermined the legislative autonomy of the states.

Through the office of the state governor, the central government can control and command the state governments. As nominees of the center, the governors act as their agents to send periodic reports to the President, dismiss unwanted state governments, and reserve state bills for the consideration of the President.

Article 254(1) empowers the Union Parliament to exercise its "pre-emptive power" overstate legislation if any provision of a law made by the legislature of a state is repugnant to any provision of a law made by Parliament or to any provision of existing law concerning mattersenumerated in the Concurrent List. In such cases, the parliamentary law shall prevail, whether passed before or after the law enacted by the state legislature, and the state law shall, to the extent of the repugnancy, be void. Although Clause (2) of this article grants the states permission to legislate under the Concurrent List even if some provisions of the law are repugnant to the Union law, the state is subject to two conditions : first, that the state legislature should have received presidential assent, and second, that nothing in this clause shall prevent Parliament from enacting a law concerning the same matter, including a law adding to, amending, varying, or repealing the state law.

Articles 248 and 249 give further scope to the Union Parliament to establish its legislative supremacy. Under Article 248, Parliament has residual powers of legislation, and under Article 249 there is a possibility of its "big intrusion" into state legislative jurisdiction in the name of national interest based on a resolution passed by the upper chamber (Council of States). The arguments advanced by some state governments for

the abrogation of Article 249 are worthy of consideration. The article short-circuits the amending process prescribed in Article 368 and enables one house to transfer unilaterally any subject from the State List to the Concurrent List. Also, the two-thirds majority in the Council of States may not necessarily reflect the consent of the majority of states through their representatives. Finally, the initial life of the law, though limited to one year, maybe extended indefinitely through successive resolutions of the upper house.

Articles 256 and 257 place a mandatory duty on the states regarding the exercise of their executive power. Article 256 states that the executive power of every state shall be exercised in such a manner as to ensure compliance with the laws made by Parliament, and if necessary, the central government can give directions to a state fo this purpose.

Article 355 empowers the central government to intervene in the affairs of states under three circumstances : external aggression, internal disturbance, and when a state government cannot be carried on by the provisions of the Constitution.

The state emergency power or President's Rule provision of Article 356 empowers the Union government to use it as a bludgeon to threaten or supersede unwanted state governments. Instead of keeping it as a last resort, as visualised by the constitution-makers, to be used as a salvage operation in an ailing state, the Article has been wantonly and brazenly employed for partisan purposes on most occasions. The word "otherwise" in Article 356 gives wide scope to the center to dismiss any state government even without the governor's report.

Emergency powers of the President contemplated under Articles 352, 356, and 360 can transform the federal system into a unitary system. While a proclamation of national emergency under Article 352 is in operation, the Union Parliament has the power to make laws for the whole or any part of the territory of India concerning any of the matters enumerated in the State List, under the terms of Clause (1) of Article 250.

The provision for All-India Services under Article 312 is another federal aberration. Based on the recommendation of the Council of States, the Parliament may by law create All-India Services. At present three such services are working.

Inequality of representation in Rajya Sabha-the US Senate accords equal representation to all the states irrespective of their size, the Indian constitution accords representation to various states in the Rajya Sabha based on their population. Emergency Provisions-under emergency, the normal distribution of powers between the Center and states undergo a vital change, and the center becomes all-powerful. In the opinion of Prof. Wheare, the Indian constitution is almost "quasi-federal" a unitary state with subsidiary federal features, rather than a federal state with subsidiary unitary features. Jennings has characterised it as "a federation with a strong centralizing tendency." Austin and A.H. Birch used the term "Cooperative Federalism" for the Indian system, i.e., it is neither purely federal nor purely unitary, but a combination of both. Dicey holds that the extent of federalism in India is largely watered down by the needs or progress and development of a country that has to be nationally integrated, politically, and economically coordinated and socially, intellectually, and spiritually uplifted.

Although Dr. Ambedkar thought that our constitution is federal "in as much as it establishes a dual polity," he also said in the constituent assembly, that our Constitution makers had avoided the "tight mold of federalism" in which the American constitution was forged. Dr. Ambedkar, one of the principal architects of our constitution considered our constitution to be "both unitary as well as federal according to the requirements of time and circumstances." He said that rigidity and legalism were the two serious weaknesses of federalism. India adopted a federal structure as the different parts of the country were at different stages of development, and it would have been different to control from one center and to ensure minorities their due place.

However, Indian federalism is unique because of its mode of formation, i.e., from union to states (creation of autonomous units and then combining them into a federation), and not vice versa. It is to be noted that the term "Union of States" and not "federation of states" is used in the constitution (the term "federal" or "federation" is not used anywhere in the constitution). In addition, the units have no right to

secede (as in a confederation). In a classic federation, the federal government enjoys only those powers that are by an agreement surrendered to it by the units. Neither the parliament nor the state legislation is "sovereign" because each being limited by the constitutional provisions affecting the distribution of powers. The constitution enshrines the principle that despite federalism, the national interest ought to be paramount. Thus, the Indian constitution is mainly federal with unique safeguards for enforcing national unity and growth.

5.6 Conclusion

The theory and practice of Indian federalism substantiate that the Union government functions under prefectural federalism that gives it a commanding position and overriding powers. The existence of states and the very survival of their elected governments is dependent upon the will of the Union government. The single Constitution for the whole country (except Jammu and Kashmir), the unilateral power of Parliament to amend it, the provision for supersession of state governments and centrally appointed state governors, the discretionary powers of governors to reserve state bills for the consideration of the President and his veto power over such bills, the prosperity of the Union government, the vertical planning system, and the centralised party system have been mainly responsible for the aberration, distortion, and perversion of Indian federalism. During the period of one-party rule (Congress dominance) from 1951 to 1967, center-state differences, if any, were resolved within the party. Jayaprakash Narayan observed :

> "Center-State relations were mainly a reflection of relations between the State branches of the Congress party and Central leadership. The federal structure never had a chance to operate.... If a particular state succeeded in enlarging its autonomy, it was because the local Congress leadership was in a position to browbeat the High Command…"

The breakdown of Congress dominance in 1967 led to the emergence of strong regional parties and the formation of non-Congress governments in some states.

Since 1967, center-state relations and state autonomy have become the cardinal issues of Indian federalism. An overcentralized federal system is incapable of dealing effectively with socio-economic challenges and strengthening national unity. Hence, it is appropriate to restructure Indian federalism to make it more effective and promote center-state partnership.

5.7 Summing Up

- One of the most important features of the Indian Constitution included the distribution of powers between the union and different state governments.
- The elements of the federation are present in the Indian Constitution, although the word 'federation 'does not find a place in the whole text of the Indian Constitution.
- The framers of the Constitution were influenced by the federal principles of the US and Canadian Constitutions.
- Indian federalism is quasi federal in nature and that is why it is often regarded as unique.

5.8 Probable Questions

Essay Type Questions :

1. Define federalism. Discuss the nature of Indian Federalism.
2. Discuss the main features of Indian federalism.
3. Do you think that Indian Federalism is a prefectorial federal system? Give reasons for your answer.

Short Questions :

1. Mention four reasons for calling India a federal state.
2. Mention any five features of Federalism.

3. What is the Supremacy of the Constitution?
4. Write a short note on Article 356.
5. Write a short note on Independent Judiciary in India.

Objective Questions :

1. From which latin word the term 'Federation' emerged?
2. What Article I of the Indian Constitution says?
3. Name one theoritician of federalism.
4. Who described Indian federalism as quasi-federal?
5. Name one constitution which influened the constitution makers to make Indian Constitution a federal one?

5.9 Further Reading

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Module - 2

Unit 6 ❑ Union Legislature

Structure

6.1 Objective

The present unit will help the learner to

- Understand the nature of the lower house of the Union Legislature

- Explain the method of election through which the members of the lower house get elected
- Know the essential qualifications to become a member of the house
- Get acquainted with the criterion through which membership can be called off
- Analyse the powers and functions of the Lok Sabha
- Understand the nature, composition and tenure of the Rajya Sabha
- Get acquainted with the debate related to a bicameral legislature in India
- Examine the powers and functions of the upper chamber of the Parliament
- Analyse the relation between the two houses of the Indian Parliament
- Make a critical assessment of the functioning of the Rajya Sabha

6.2 Introduction

India has adopted a parliamentary system of government. Like in England, its union legislature is called a 'Sansad' which means a Parliament. The Parliament of India is composed of two houses namely the upper house or the Council of States and the lower house or the House of the People. The House of the People is commonly known as the Lok Sabha. It is the lower or the popular chamber of the Indian Parliament. The members of the Lok Sabha are elected directly by the people. Unlike many other constitutions, the maximum numbers of member to be elected to the Lok Sabha is fixed by the Constitution. Originally, this number was fixed at 500. But the Seventh Amendment of the Constitution following the reorganization of the states in 1956 raised it to 520. The Forty Second Amendment of the Constitution further raised it to 545(Art 81). However at present it consists of 550 elected members. Of these a maximum of 20 seats are reserved for members from the Union Territories. The remaining 530 members are to be chosen by direct election from territorial constituencies in the States. For this purpose, each State is allotted a certain number of seats on the basis of its population in proportion to the total population of all the States.

6.3 Electoral Method

For the purpose of election, each State is divided into territorial constituencies which are more or less of the same size in regard to population. Though the Constitution has abolished the system of Communal electorates, it provides for the reservation of seats for the scheduled castes and scheduled tribes. For the purpose of election from the territorial constituencies, a number of seats are allotted to each State and Union Territory in such a manner that the ratio between the number of the representatives and the size of population is as far as practicable, the same for all the units of the Indian Union. Each state is therefore, divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it, is as far as practicable and is the same throughout the State. Under the Delimitation Commission Act of 1962, the Election Commission is authorized to determine forthwith the number of seats in the Lok Sabha on the basis of the latest census figures with due regard to the constitutional provisions on the subject. Accordingly, on the basis of the 1951 Census, India had a population of 360 million. But in 1981, it was about 700 million and by 1991 it has gone over 840 million. By the year 2001, the population of India has exceeded 1000 million. Yet, there has been no change in the total number of elected members to the Lok Sabha. Infact, by an amendment of the Constitution in 2001, the present strength of the Lok Sabha will remain the same until the year 2026.

Here, it may be pointed out that the election of the House of the People being direct requires that the territory of India should be divided into suitable territorial constituencies, for the purpose of holding such elections. Article 81 has provided for uniformity of representation in two respects – (a) as between the different States and (b) as between the different constituencies in the same State. Thus, there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency

and the number of seats allotted to it is, so far as practicable, the same throughout the State.

As regards the House of the People and the Legislative Assembly of the State the system of proportional representation has been abandoned and instead, the Constitution has adopted the single member constituency with reservation of seats for some backward communities namely scheduled castes and tribes. The reasons held by the Constituent Assembly for not adopting proportional representation were the following :

i) Proportional Representation presupposes literacy on a large scale. It presupposes that every voter should be a literate, at least to the extent of being in a position to know the numerals and mark them on the ballot paper.

ii) Proportional representation is ill suited to the Parliamentary system of government laid down by the Constitution. One of the disadvantages of the system of proportional representation is the fragmentation of the Legislature into a number of small groups. This means that every time anything happened which displeased certain groups in Parliament, would on those occasions withdraw support to the government with the result that the Government, losing the support of certain groups, would fall to pieces.

6.4 Essential Qualifications for Members

To be qualified for election to the Lok Sabha, the following conditions are required to be fulfilled :-

1. Must be a citizen of India.
2. He must be above 25 years of age.
3. Must possess all other qualifications that are prescribed by law of the Parliament.
4. No person can be a member of both the houses of the Parliament, or of a house of the Parliament and of some State Legislature at the same time.

5. Must not hold any office of profit under the Government of India or of some State except that of a Minister or any other exempted by a law of the Parliament.

6. Must not be a man of unsound mind or a bankrupt declared by the court.

In case there is any complaint about the disqualifications of a member of the Parliament, it must be addressed to the President who will take suitable action after having the report of the Election Commission.

Criterion for disqualification

The Constitution has laid down certain disqualifications for membership. These are the following :-

1. No person can be a member of both the houses of Parliament or a member both of Parliament and of a State Legislature.

2. A person will be disqualified, if he/she absents himself/herself for a period of sixty days from the meetings of the house without the permission of the house.

3. If he/she holds an office of profit under any Government in India.

4. If he/she voluntarily acquires the citizenship of another country or is under any acknowledgement of allegiance to a foreign State.

In pursuance of the powers granted under Article 372 to regulate matters of election, the Representation of the People's Act of 1951 also lays down certain conditions for disqualifications which are also applicable to the members of a State Legislature. These are :-

1. A member must not have been found guilty by a Court or an election Tribunal of certain election offences or corrupt practices in the elections.

2. He must not have been convicted by a Court of any offence and sentenced to imprisonment for a period of more than two years.

3. He must not have failed to lodge an account of his/her election expenses within the time and in the manner prescribed by law.

4. He must not have been dismissed for corruption or disloyalty from Government services.
5. He must not be a director or a managing agent nor hold an office of profit under any corporation in which the Government has any financial interest.
6. He must not have any interests in Government contracts, execution of governmental work or service.

It is required that the candidate seeking election to the Lok Sabha must not incur any of these disqualifications at time of filing his/her nomination papers.

6.5 Term of the Lok Sabha

The normal term of the Lok Sabha is five years. It begins from the date of its first meeting. The President is empowered to dissolve Lok Sabha at any time and this matter cannot be challenged in a court of law. When the second Lok Sabha was dissolved by the President on 11th March 1962, a few days earlier than the full term of five years, a writ petition was filed by Dr. N.C.Samantsinha in the circuit bench of the Punjab High Court in New Delhi under Article 226 praying that a rule nisi be issued declaring the premature dissolution void and ineffective. It was dismissed by the court on April 4 1962. Further, the President is also empowered to extend the life of the house for one year at a time during a National Emergency. But in any case, the life of the house cannot be extended beyond six months after the emergency has ceased to operate. Infact it is necessary that elections must take place at the most within a period of six months after the revocation of emergency.

6.6 Sessions of Lok Sabha

The house shall meet atleast twice a year and the interval between two consecutive sessions shall be less than six months. The time and the place of meeting will be decided by the President who will summon the house to meet. He/she has also the power to prorogue the house. For a session to be legally valid it is essential for the Lok Sabha to assure the presence of minimum number of members which is known as the quorum. Without a quorum, Lok Sabha cannot legally decide over a

matter nor can it comply any of its essential functions. The quorum of Lok Sabha is $1/10^{th}$ of the total strength of the house. Its presiding officer is the Speaker who is assisted by the Deputy Speaker during the period of his/her absence. The debates and discussions within a Lok Sabha is usually done either in English or in Hindi but in case a member is not comfortable in either of the two languages then the member may do so in his/her mother tongue.

6.7 Powers and Functions

India has adopted the model of a parliamentary democracy. In such a system usually the authority of the lower house is established. This is so, since, the House is composed of members who are directly elected by the people. In India too, the importance of Lok Sabha is established in carrying out the administration of the country. The powers and functions of the Lok Sabha are wide and varied. For our convenience, they can be discussed in the following manner :

1. **Legislative :** The principal business of the Lok Sabha is to deal with the matters relating to legislation. A non-money bill can originate in either house of the Parliament and it cannot be taken as passed by the Parliament unless it is so agreed to by both the houses of the Parliament. In the event of a difference of opinion between the two houses, the President is required to call a Joint Session for resolving the deadlock. The Lok Sabha can make a law relating to subjects included in the Union List and the Concurrent List but in case of subjects under State list, certain conditions on part of the Lok Sabha is required to be fulfilled. They are :
   i. To make a law under State list it is required for the Rajya Sabha to pass a special resolution.
   ii. The Lok Sabha can do so, if, National Emergency under Article 352 is declared for the entire country
   iii. If there is a request by two or more states
   iv. If there is the implementation of some international treaty or convention.

However, it may also be noted that the Lok Sabha has exclusive control over the residuary subjects.

2. **Executive :** The Lok Sabha exercises control over the Executive. According to the Indian Constitution the Union Council of Ministers headed by the Prime Minister shall be collectively responsible to the Lok Sabha. The Council of Ministers will have to resign, if, a vote of no confidence is passed in the Parliament. In case the Lok Sabha rejects a Government bill or a budget, or disapproves official policy, or shows its lack of confidence in the Government by making alterations in the policies and programmes of the Government against its wishes, it shall amount to the expression of a vote of no confidence. Infact the executive power of the Lok Sabha extends to the control of the executive through various devices like calling attention motion, questions and supplementary questions, tabling motions on matters of urgent public importance for discussion, half an hour discussion, No Confidence Motion and other means.
3. **Financial :** As far as the financial power of the Lok Sabha is concerned a Money bill can originate only in the Lok Sabha. It is sent to the Rajya Sabha where it is required to pass within a period of 14 days. In case the Rajya Sabha returns the money bill with some recommendations of its own, it shall depend upon the will of the Lok Sabha to accept them or not. However, a money bill can in no case be referred back to the Rajya Sabha for a second time. Moreover, it is one of the powers of the Speaker to decide whether a bill is a money bill or not. It is therefore, clear that the Lok Sabha alone is powerful in the sphere of financial legislation. Again, the annual budget is placed before both the houses but it is adopted by the Lok Sabha alone. Again, Rajya Sabha has no power to vote on the demand for grants of the Ministries / Departments, as this is the exclusive domain of the Lok Sabha. The Lok Sabha has further control over the Contingency Fund of India. It bears the sole responsibility to study the reports of the Estimate Committee and Public Accounts Committee.
4. **Judicial :** The Lok Sabha shares equal powers with that of the Rajya Sabha

in taking punitive action against the outsider as well as its own members who commit a breach of its privileges. Lok Sabha jointly with Rajya Sabha can establish a High Court in the Union Territories and can even enhanced its power in such areas. Lok Sabha shares equal powers relating to the removal of the Chief Justice and the Judges of the Supreme and High Court.

5. **Powers related to Amendment :** Lok Sabha plays a crucial role with regard to the amendment of the bills. It shares equal authority with that of the Rajya Sabha in this respect. If a constitutional amendment bill is passed in the Lok Sabha but is rejected in the Rajya Sabha then the bill becomes non functional. Not only that, on issues related to Supreme Court High Court, distribution of powers between Union and the States, Constitutional Amendment, election of the President requires the ratification of half of the states as well. However, on all other issues Parliament can alone amend the Constitution of India.

6. **Miscellaneous Powers :** Lok Sabha performs a number of miscellaneous functions. It shares with the Rajya Sabha equal authority in matters relating to the election and removal of the President. It elects its Speaker and Deputy Speaker. It shares with the Rajya Sabha authority in matters relating to the approval of the Emergency declared by the President. Both the houses of the Parliament can act in emergency times for setting up Martial Law Courts for dealing with the offences committed by the civilians. Besides, the Lok Sabha shares with the Rajya Sabha, the powers of discussing reports submitted by autonomous officials, agencies like the Union Public Service Commission, Comptroller and Auditor General of India, Finance Commission, Language Commission, Minorities Commission, Scheduled Castes and Scheduled Tribes Commission and the like. Lok Sabha also plays a severe role in providing important information related to the administration. The members query about governmental policies and activities on which the ministers concern had to reply. The answers of the ministers are expected to be based on informations collected from the official sources. These information helped the people to have an idea of the governmental activities. Lok Sabha

also criticizes the governmental policies, if, it goes against the interest of the public. So, in this sense it tries to aware the people and alerts them on governmental activities. It in a way, helps to form the public opinion and it is public opinion which helps the democracy to flourish even further.

7. Other Powers :

i. According to Article 2 of the Indian Constitution, Parliament by its discretion can create a new state or can include any part within the territory of India. According to Article 3 Parliament can enact a law relating to reorganizations of the states and of creating a new state. Parliament can expand the territory of a particular state or can even limit its territorial boundary and can even change the name of the state.

ii. Parliament by virtue of Article 16 can determine additional residential qualification regarding jobs under state governments or that of the Union Territories.

iii. Parliament can make final decision regarding creation or elimination of the upper chambers of the state legislatures. If the majority members present and the 2/3rd members of State Legislature agreed to pass a bill then, the Parliament based on such decision can take a decision in its favour. Here, it must also be noted that the Lok Sabha shares equal authority with that of the Raya Sabha in this respect.

6.8 Speaker of the Lok Sabha

Each house of Parliament has its own presiding officer and secretarial staff. There shall be Speaker to preside over the House of the People. The office of the Speaker is of great honour, dignity and authority. In the Order of Precedence, he/she is ranked seventh and is bracketed with the Chief Justice of India. The Speaker represents the house and because the house represents the Nation, in a particular way, the Speaker becomes the symbol of the Nations liberty and freedom.

The Speaker is chosen by house from amongst its members. He/she holds his/her office until he/she ceases to be a member or resigns from his/her office or he/she is

removed from the office by a resolution of the house passed by a majority of all the then members of the house. Infact, under Article 93 of our Constitution, both the Speaker and Deputy Speakers are elected. Usually a member belonging to the ruling party is elected as a Speaker. However, in most cases the ruling party generally nominates its candidate after informal consultations with the leaders of other parties in the house. There are also instances when members not belonging to a ruling party or coalition were elected to the office of the Speaker. Somnath Chatterjee has been associated with the Communist Party of India (Marxist) for most of his/her life but he/she was the Speaker of the Lok Sabha from 2004 to 2009 when UPA I was in power and the Left Parties had extended support from outside. The first meeting after election in which Speaker is elected by the members of Lok Sabha, is held under the senior most member of Parliament who is commonly known as the Proterm Speaker. The Proterm Speaker presides over the sitting in which the Speaker is elected, if it is a newly constituted house.

Tenure

The normal term of a Speaker is that of five years. There is however, no restriction on his/her seeking another term or terms. He/she continues in office notwithstanding the fact, that the house has been dissolved, and he/she vacates it immediately before the first meeting of the new house after General Election. The Speaker or a Deputy Speaker will normally hold office during the life of the house, but his/her office may terminate earlier in any of the following ways :

i) By his/her ceasing to be a member of the house

ii) By resignation in writing, addressed to the Deputy Speaker and vice versa.

iii) By removal from office by a resolution, passed by a majority of all the then members of the house (Art 94).

Here it must also be noted, that at least 14 days notice should be given to the Speaker in case a motion of no confidence is brought to remove him/her from office. It is also provided that the Speaker shall not preside over the house in case such a motion is under consideration. But in such a case, he/she will have every right to

present himself/herself in the house for speaking anything in his/her defence. He/she may also entitle to take part in the proceedings of, the house, and shall have a right of vote except in the case of equality of votes (Art 96).

6.9 Powers and Functions of the Speaker

The Speaker occupies an office that carries both great dignity and high authority. The functions and powers of the Indian Speaker emanate both from the provisions of the Constitution and the Rules of Procedure made in pursuance of them for conducting the business of the Parliament. Two things deserve special mention at this stage. First, the Speaker possesses some unwritten or unspecified powers to supplement his/her other powers. The reason for this should be discovered in the important position that the speaker holds. Second, though the office of the presiding officer of our popular chamber is largely modelled on that of the English Speaker, the Indian Speaker has wide powers than his/her counterpart in the United Kingdom.

The powers of the Speaker may be roughly classified into four parts like regulatory, supervisory and censuring administrative and special or miscellaneous.

1. **Regulatory :** In the first place, the regulatory powers of the Speaker include his/her entire authority and responsibility for conducting the business of the house in an orderly manner. Thus, he/she maintains order and decorum in the house. He/she allots time for the debates and discussion and allows the members to express their views within the time determined by him/her. The Speaker interprets the rules of the Constitution and of the Procedure for the guidance of the members. He/she puts matters for division and announces the result. In the event of a tie he/she exercises his/her casting vote. It is within his/her powers to admit motions, resolutions and points of order and then make arrangements for discussion on them.

   The Speaker may adjourn the house in the event of the absence of quorum or grave disorder. He/she may make his/her address on an important matter under consideration for the enlightenment of the members. The business of the house is conducted in English and Hindi languages, but he/she may allow a member to speak in some other language that happens to be his/her mother

tongue and then make arrangements for authentic translation of the statements of the member into Hindi and English languages. No representation can be moved by members of the house without his/her consent. A secret meeting of the house can take place at the request of the leader of the house after its approval by the Speaker. Finally, the Speaker gives his/her ruling to settle a matter of dispute and his/her version is final. It can be challenged only when a substantive motion is brought by the members of the house.

2. **Supervisory :** Allied with the regulatory powers of the Speaker are also his/her supervisory or censuring powers. The Speaker is the head of the Parliamentary Committees. Some important committees like Rules Committee and Business Advisory Committee work under his/her chairmanship. He/she appoints the Chairman of the various committees of the house and may issue instructions and directions for their guidance. He/she may ask the Government to supply such information to the house or to its committees that is so essential in the public interest.

   The Speaker sees to it that no member speaks unparliamentary language or becomes unnecessarily argumentative or verbose in his/her expression. He/she may force a member to withdraw his/her indecent expression or make amends. He/she may warn the member in the event of his/her disorderly behaviour or he/she may also ask him/her to withdraw from the house. He/she may also make use of his/her Marshal for getting a member out of the house in the event of his/her highly disorderly behaviour. He/she may even adjourn the house in the event of grave disorder or some serious situation. No member can be arrested, nor can any legal proceedings be served on him/her without the permission of the Speaker. The Speaker may even issue warrants of arrest for bringing an alleged offender of the privileges of the house and it is his/her function to implement the decision of the house with regard to the punishment given to a person for the breach of privileges or contempt of the house.

3. **Administrative :** The Lok Sabha Secretariat functions under the control and direction of the Speaker. The Speaker's authority over the Secretariat staff of the house, its precincts and its security arrangements is supreme. All strangers, visitors and press correspondent are subject to his/her discipline

and orders. No alternation and addition can be made in the Parliament house, and no new structure can be erected in the Parliament Estate without the Speaker's permission. He/she makes provisions for the accommodation and other amenities of life granted to the members of the house. He/she regulates the lobbies and galleries meant for the press and the public. It is his/her concern to make arrangements for the sittings of the house and its Committees. He/she is the custodian of the honour of the house. It is his/her concern to see that the life and persons of members are secure and that the staff and property of the house are immuned from any danger.

Besides, by virtue of 33rd Constitution Amendments Act of 1974, he/she has been empowered not to accept the resignation of a member of the house in case he/she finds it submitted under duress. He/she may disqualify a member from the membership of the house and then declare his/her seat vacant on the ground of being a defector. On 11 January 1991s the Speaker gave a historic ruling whereby he/she disqualified eight members of the ruling Janata Dal including five ministers, on the ground that they were defectors under Schedule X of the Constitution and as such their seats were declared vacant. He/she ruled that a split in the ranks of the Janata Dal had taken place on 5th November and the event of persons leaving the original party on that date could be taken as a split. Moreover, they could be given a benefit of doubt in view of the highly uncertain conditions of the time. But the defection of eight other members after a few days could not be regarded as a split, because their number could not be equal to the 1/3rd strength of the residual strength of the Janata Dal. The important point of his/her ruling to be noted here, is that the spilt could be one time affair and could not be an ongoing or continuous process or phenomenon.

4. **Miscellaneous :** Finally we come to the miscellaneous or special powers of the Speaker. He/she gives his/her certificate to a Bill that is passed by the house. He/she alone can decide whether a bill is a money bill or not. He/she presides over the Joint Session of the Parliament. He/she acts as a sole channel of communication between the President and the house. He/she

makes obituary reference in the house and delivers a valedictory address on the expiry of the term of the house. He/she makes formal reference on some occasions to important national and international events. He/she can correct patent errors in a bill after it has been passed in the house. He/she may even make changes in the bill consequential on the amendments accepted by the house. He/she acts as a ex officio chairman of the conferences of the presiding officers in the country. He/she can make nominations for the Parliamentary delegations visiting various parts of the country or abroad.

6.10 Position of the Speaker

A study of the powers of the Speaker in practice, however, shows that he/she has not been able to gain that high level of dignity which is enjoyed by his/her English counterpart for the obvious reason that India is yet develop a sound tradition of our Speakers being a non - partyman. That is why, there have been occasions when a move for removing the Speaker from office was made or that some angry members went to the length of undermining the high office of the Speaker until they were forcibly pushed out of the house by the Watch and Ward Staff headed by the Marshal. G.V. Mavalankar dismissed the proposal of Speaker's being a distinctly non political man on the ground that he/she could establish another tradition of remaining above politics inside the house while living like a man of politics out of it. It was certainly the biggest day in the history of the Speakership in India when N.Sanjiva Reddy after being elected to this great office on 17 March 1967. He/she observes that his/her office requires him/her to be impartial and judicious in the conduct of his/her work. Unfortunately, this high tradition failed to prevail when Sanjiva Reddy relinquished his/her office to jump into the fray of the politics of the Presidential election in 1969. As such the tradition had a serious setback.

No less unfortunate has been the tradition of conferring gubernatorial assignments on the persons after their retirement from the great office of the Speaker. In this way, instead of setting up of a healthy tradition like that of conferring the distinguished membership of the Upper Chamber of our Parliament by means of Presidential

nominations upon one after his/her retirement from the office of the Speaker, new rooms for lucrative temptations have been opened whereby the occupant of this great office might fall prey to the charm of executive patronage. Sometimes the bias of the Speaker becomes well discernible in his/her attitude towards the Party in power as a result of which vocal members of Opposition lose their temper and demonstrate their resentment by means of shouts and walkouts. The Speaker often do so on the request of the ruling party and sought to justify his/her unjustifiable action in the name of 'extra-ordinary circumstances'.

The office of the Speaker has a dignity of its own. As such it is a matter of regret that his/her authority is undermined on several occasions. There are several important reasons behind it of which some has been enumerated by J.C. Johari in the following manner :

1. The holders of this office seldom resign their political affiliations and remain active politicians.
2. They generally pronounce rulings and decisions, admit or reject motions, appoint members to various committees and treat members on partisan lines.
3. They remain ambitious to become Ministers, Governors or Chief Ministers, try to form factions and win favour from their groups.
4. They tend to please the powers and favour them out and out.
5. The leaders of the Opposition may resort to unparliamentary methods to fight the ruling party in the house. When checked by the Speaker, they defy and blame him/her.
6. The Opposition leaders are seldom consulted at the time of the election of the Speaker and for this reason, they look upon him/her as the nominee of the ruling party.

Thus, the above mentioned circumstances suggests that the Speaker is sometimes compelled to adopt a partisan line and favour the ruling party either because he/she gets political favour and patronage which is required by him/her to remain in office or he/she needed the support of the majority in the house for conduction of the house properly.

6.11 Composition of Council of States

The maximum membership of the Council of States is limited to 250, just about half of the maximum membership originally fixed for the House of the People. Its composition has unique features. Out of 250 members, there shall be 12 members nominated by the President and the remaining members i.e. 238 shall be representatives of the States and the Union Territories elected by the method of indirect election. This is in accordance with Article 80 of our Constitution. For convenience let us examine the members of the Council of States in the following manner :

1. Nomination : The 12 nominated members shall be chosen by the President from amongst persons having special knowledge or practical experience in literature, science, art and social service. The Constitution thus, adopts the principle of nomination for giving distinguished persons a place in the upper chamber.
2. Representation of States : The representatives of each state shall be elected by the elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of the single transferable vote.
3. Representation of Union Territories : The representatives of union territories shall be chosen in such manner as Parliament may prescribe [Art 80(5)]. Under this power, Parliament has prescribed that the representatives of union territories to the Council of States shall be indirectly elected by members of an electoral college for that territory, in accordance with the system of proportional representation by means of the single transferable vote.

Here, is an attempt to combine different principles of representation in the composition of the same legislative body. The American principle of equality of states in representation which has been followed by several federal constitutions and was rejected as undemocratic. At the same time, the election of the majority of its members by the state assemblies is intended to give recognition to the federal principle. Another principle that is given recognition in the composition of the Council of States is representation of talent, experience and service. The number of

nominated members is constitutionally limited to 12. Such members would be persons having special knowledge or practical experience in respect of matters like literature, science, art or social service.

The Council of States is a permanent body like the American Senate. This means it is a continuing chamber and not subject to dissolution like that of the Lok Sabha. Like the American Senators the members of the Rajya Sabha are elected for six years. At the end of every second year, one-third of the members are re-elected. This provision enables the council to retain its political complexion in a more stable manner than the House of the People which after every election is a completely new house. It follows, that there will be an election of 1/3 of the membership of the Council of States at the beginning of every third year [Art 83(1)].The order of retirement of the members is governed by the Council of States Order, 1952, made by the President in exercise of powers conferred upon him/her by the Representation of the People Act, 1951. The representation of the People Act 1951 provided that in order to be elected as a member of Rajya Sabha from a state the candidate must be an ordinary resident of that state. This qualification was deleted in 2003. The election to Rajya Sabha was done by secret ballot. By the same amendment Act in 2003 it was made an open ballot.

However, regarding composition of Rajya Sabha several criticisms had been advanced by scholars which for our convenience can be discussed in the following manner :-

1. It is argued that enough justice is not done in keeping parity with the name i.e. Council of States and the nature of the house. It was assumed that the upper chamber of the Parliament is likely to be composed of representatives of different states but 12 members were nominated by the President. It is quite possible that the nominated members represent the centre and not the states and may tilt the balance in crucial moments of division. So, Rajya Sabha in real terms may not be regarded as the Council of States.
2. The composition of the Rajya Sabha is often viewed as against the conventions and structures of a federation. The composition is not done on the basis of population or area of a state. Many are of the opinion that such composition

is unjust in the sense that it places bigger states of the Indian Union in a position of greater advantage.

3. M.P.Sharma interestingly opined that Rajya Sabha represents neither the people, nor the Government nor the State Legislature. It may so happen that after the second annual election of the Rajya Sabha, General Assembly election is held in a state and there may occur drastic change in electoral seats in such an assembly election. Under such circumstances, the newly elected government in the state may not be able to control the members of the Rajya Sabha.

6.12 Debate Related to Bicameralism in India

Now why India has adopted a system of bicameralism, its advantages along with its negative aspects are some of the essential questions which are needed to be answered at the very beginning of our discussion. On the basis of Indian Administration Act of 1919 bicameralism was first introduced in India. Later the Indian Administrative Act of 1935 has also retained this system. After achieving independence Indian Parliament too followed the legacy of the British era and established a bicameral legislature. Infact, during the days of the framing of the Constitution the problems related to bicameralism has not been discussed in detail. The scholars too seem to have divergent opinions with regard to the advantages of the bicameral system. There were many who were against it. This is perhaps one of the reasons, why many were reluctant to have a second chamber called Rajya Sabha along with the Lok Sabha in India. Many were even critical of the significance or the advantages in the very existence of the second chamber in India.

However, in citing the significance of the second chamber in India several arguments were forwarded by one of the members of the Drafting Committee namely Gopalaswami Ayyenger. Citing him/her the following arguments can be advanced :

1. There is a fear that in case of a single chamber legislature a law passed may be a product of a temporary emotions and excitement. But if there are two chambers in a Parliament then a bill is likely to be passed with sufficient consideration and carefulness. A bill passed in a house is placed in before the

second house in which it is thoughtfully re-evaluated. This might results in evolving a more accurate and error free law. So in a way, it helps to secure the national interest of the country. Again, the existence of the Rajya Sabha as an upper chamber plays the role of regulating and to some extent controlling the popular chamber of the Parliament. In doing so, it assumes a significant position in the liberal democratic country like that of India. It is through constructive debates, contradictions discussions and evaluation of both the houses that a law is evolved in our country. Consequently, it provides a greater assurance for an evolution of welfare and well thought law of our country.

2. The second chamber is composed of indirectly elected members along with a few nominated one. So several personalities who are well experts and experienced in respective field are usually the members of the upper house. They hardly want to get involved in the electoral process and contest election. So, it is expected to have the presence of these unassociated personalities as members of the house. In doing so, their skill and expertise knowledge may be found useful in the formulation of laws. In Lok Sabha only 12 members are nominated but in Rajya Sabha the composition of the house being different gives an opportunity to reasonable people who might be willing to participate in the debate with an amount of learning and importance not really associated with the House of the People.
3. The existence of a second chamber is regarded as inevitable, if one adopts a federal system of administration. The second house is also composed of the members of the federating units. This helps to reserve the interest of the states. Infact, there is a need to retain a balance between the interest of a nation and the regional interest within a federal system of government. The national interest is well represented by the popular or the Lok Sabha of the country while the member of the Rajya Sabha represents the interest of the states. So without Rajya Sabha the regional interest would not have been represented in the Parliament.
4. If there is a Unicameral Legislature then there is a possibility of the house to turn into a dictator. But, if Parliament is composed of two houses then the

possibility of turning into a dictator is probably bleak. So the existence of two houses counter check each other. This enhances the liberty of an individual. According to Lord Acton the second chamber of the Parliament provides an inevitable security to individual liberty. So, Rajya Sabha can prevent Lok Sabha from turning into a dictator and it can also ensure the liberty of the individual. If the Lok Sabha takes an initiative to pass a bill which opposes individual liberty then the Rajya Sabha may take positive initiative in preventing it.

5. The responsibilities of the state have increased to a great extent in the recent years since it has declared itself as a welfare state. As a result, the workload of the Parliament has also expanded. A bicameral legislature to a certain extent may distribute the workload into two houses. So the pressure of the lower house is also shared to a certain extent by the upper house as well. The formulations of laws on comparatively less significant issues can be vested to the Rajya Sabha by the Lok Sabha.
6. One of the limitations of a liberal democratic system is that it tends to safeguard the interests of the majority. Keeping this in mind, it may be noted that the members of the Rajya Sabha are elected by means of proportional representation. As a result the minority communities in India also get an opportunity to send their representatives in Rajya Sabha. So the interests of the minorities are not only represented but also well preserved in the Parliament.
7. The debates and discussions that are likely to take place in the Rajya Sabha are expected to be rich in content since the members are renowned in their own distinctive fields and their expertise knowledge has a great educational value and therefore, its significance cannot be denied. Infact it was argued that the second chamber was expected to hold dignified debates on important issues and to delay legislation which might be the outcome of passions of the moment until passions have subsided and calm consideration could be bestowed before the Legislature.

Now, if there are arguments showing the significance of the principles of bicameralism then there are also counterarguments as well to show the limitations of the system. Let us examine them in the following manner :-

1. As rightly being pointed out by Harold Laski, that legislation is not made out of clean sky, finds it a way to the statute book. The drafts of each bill are prepared by lawyers. After a thorough and careful evaluation and discussion the bill is passed in the popular chamber. A bill in order to become an Act has to pass through several stages. At every stage debates, discussions and exchange of opinion takes place between the Government bench and the members of opposition. The crux matter of the bill is also communicated to the masses through print and electronic media. This helps in formulating a public opinion regarding the bill. The reaction of the people and an analysis of the nature of public opinion help in taking final decision regarding the bill. That is why, it is argued by many that a fear relating law to be enacted out of sporadic emotions is baseless. Infact for a well thought formulation of law the role played by Lok Sabha is sufficient and there is hardly any need of the second chamber.
2. Many critics argue that the composition of Rajya Sabha is undemocratic. This is so since the members of the Rajya Sabha are either indirectly elected through proportional representation or they are nominated by the President of India. At the other side, the members of the Lok Sabha are elected directly by the people. So it is a democratic body in the truest sense of the term. In such a situation the interference of the Rajya Sabha over the decisions of the Lok Sabha implies opposing the democratic conventions. A question has been raised whether it is at all desirable by an undemocratic body like that of Rajya Sabha to do so for a highly democratic institution like Lok Sabha. This is perhaps one of the major reasons that in practice Rajya Sabha hardly succeed in obstructing a decision of the Lok Sabha against its will. So viewed from this perspective its existence becomes less meaningful.
3. One of the logical argument behind the existence of the Rajya Sabha lies in the fact, that it is composed of distinguished personalities from various fields whose expertise knowledge are applied in framing up of the laws. This argument too, has been discarded by many. They argued, even if the members of the Rajya Sabha are elected by proportional representation they

are in reality being done on the basis of their party affiliation. Consequently, the possibility of electing an unassociated, impartial and experienced expert is nothing but a myth. Again, the members who are nominated by the President are actually being done on the basis of advice given by the Prime Minister to the President. This again implies that an expert is a one who is in reality nominated by the Union Government or specifically the political party in power at the Union. As such K.C.Wheare remarked that, if second chambers are to be anything more than debating societies or discussion circles, party is bound to come in. Practically, the Rajya Sabha preserves the interest of a particular class.

4. The argument that Rajya Sabha preserves the right of the state has also been challenged. The Indian Constitution is a written one and is partially flexible. The distinction of powers between the centre and the states has been explicitly stated in the Constitution. Apart from that, the rights of the states from the clutches of the Union have also been protected in the Constitution. Further, the country also has a federal court known as the Supreme Court of India who along with other functions is also entrusted with the protection of the interests of the federating units.
5. Further, the members of the Rajya Sabha are elected indirectly by proportional representation on the basis of population of the state. This has resulted into a division among states on the basis of population. Densely populated states have a greater say as they are represented in more numbers in Rajya Sabha compared to the lowly populated states. This had adversely affected the federal structure of the country. So it is argued that the protection of interests of the smaller states is almost at a stake as even ignoring their interest and desires the bigger states can change the federal system of the country.
6. Rajya Sabha is expected to retain the interests of the minority communities. But this is also not acceptable entirely by many since minority based political parties do not always sent their representatives to the Rajya Sabha in adequate numbers.

7. Again, it is argued that the existence of Rajya Sabha does not enable the Lok Sabha to take quick decisions over an issue. Sometimes it becomes an absolute necessity on part of the Government to take swift decision which is not possible due to the mere existence of the Rajya Sabha.
8. Moreover, the expenditure incurred for maintaining the system of bicameralism is a huge one. As such expenses for the Rajya Sabha seems to be unjustified for many as they feel there is hardly any relevance of its existence.

6.13 Eligibility and Disqualifications for Membership

A candidate for the Rajya Sabha's election must possess the following qualifications :-

1. He must be a citizen of India.
2. He must be above 30 years of age.
3. He must possess all other qualifications as laid down by an Act of the Parliament. The Representation of the People Act of 1951 says that a person to be chosen as a member of this house from any state excluding Jammu and Kashmir must be an elector for a parliamentary constituency in that state.

Disqualifications

The disqualifications for the membership of the house are the following :-

1. Holding any office of profit under the Government of India or of the states except that of a minister or any other exempted by a law of Parliament.
2. Being of unsound mind as declared by the competent court.
3. Being an undischarged bankrupt.
4. Being an alien or non citizen.
5. A member may be disqualified, if he/she remains absent from all meetings and sessions of the house for a period of 60 days without the permission of the house or if he/she is expelled from the house.
6. Being disqualified under any law of Parliament.

6.14 Session

The Rajya Sabha holds its session under the chairmanship of the Vice – President who is its ex-officio presiding officer. It elects its own Vice Chairman who functions during the absence of the Chairman. Its quorum is 1/10 of the total number of the members. The presiding officers of the Council of States are called the Chairman and the Deputy Chairman. The Vice President of India is the ex officio Chairman of the Council of States. As the presiding officer of the Rajya Sabha, his/her functions and powers are the same as those of the Speaker of the Lok Sabha. He/she is, however, not a member of the house. The Vice President will act for the President under certain contingencies. During such period he/she will not perform the duties of the office of the Chairman of the Council nor will he/she draw the salary or allowances payable to the Chairman.

In the absence of the Chairman, the Council is presided over by the Deputy Chairman. He/she is a member of the house and is elected by the members of the house. When he/she ceases to be a member of the council he/she automatically vacates the office of the Deputy Chairman. The Deputy Chairman is empowered to discharge all the functions and to perform all duties of the office of the Chairman, whenever Chairman's office is vacant or when the Vice President is acting for the President. The Council of States also has a panel of members called "Vice Chairmen" nominated by the Chairman for the purpose of presiding over the house in the absence of both the Chairman and the Deputy Chairman. The Secretariat of the Rajya Sabha is headed by a Secretary General who discharges the same functions as his/her counterpart in the Lok Sabha.

6.15 Powers and Functions

For our convenience the powers and functions of the Rajya Sabha can be discussed under the following heads :-

Firstly, the Rajya Sabha has almost equal powers as compared to the powers of the Lok Sabha in non-money matters. It is provided that a non money bill may originate in either house of Parliament and that no bill can be taken as passed by the Parliament unless agreed to by both the houses. In the event of disagreement between

the two houses, the President is empowered to call a joint session of the two houses in order to dissolve the deadlock. In this way, the position of the Rajya Sabha is not weak like that of the English House of Lords that may do nothing else than to obstruct the will of the House of Commons by causing a delay of one year. However, it may be pointed out that the position of the Rajya Sabha, in this direction is not as strong as that of the American Senate. In the United States, it is provided that in the event of a conflict between the two houses of the Congress, the matter shall be resolved by the role of the conciliation committee having equaled number of representatives taken from both the houses and the decision of the committee shall be final.

Different from this, in our country, the position of the Rajya Sabha is comparatively weak due to three reasons. First, the Joint Session is to be presided over by the Speaker of the Lok Sabha. Second, the factor of numerical strength is likely to go in favour of the Lok Sabha, unless there is a very sharp cross division among the members of the popular chamber. Third, the initiative of calling a joint session or dropping the piece of controversial legislation depends upon the decision of the Council of Ministerss that is collectively responsible to the Lok Sabha.

Secondly, the Rajya Sabha has some executive powers. It is true to say that the Council of Ministerss is collectively responsible to the Lok Sabha; it does not mean that the Rajya Sabha has no control over the Government. In fact the Rajya Sabha may exercise its control over the government by means of asking questions, tabling important motions, introducing resolutions and call attention motions and demanding half an hour discussions. Thus, it has ample opportunities to criticize the policies and activities of the government.

Thirdly, the Rajya Sabha is powerless in money matters. A money bill can originate in the Lok Sabha alone and the Rajya Sabha has to adopt it within a period of 14 days. In case it returns a money bill with some recommendations to the Lok Sabha, it depends upon the will of the lower house to accept them or not.

Fourthly, the Rajya Sabha has some other powers where it has equal authority with the Lok Sabha. They are :

1. It has equal powers in matters of constitutional amendment where it is required that a bill must be passed by both the houses by special majority. Such a bill may originate in either house of the Parliament and it is not provided that in the event of disagreement between the two houses, the President shall call a joint session to resolve the deadlock.
2. The Rajya Sabha enjoys equal authority with the Lok Sabha in the election and removal of the President. It also applies to the passing of a special address to remove the Chief Justice and a Judge of a Supreme Court or High Courts or some High Officers like Comptroller and Auditor General of India.
3. A proclamation of emergency made by the President must be approved by both the houses of the Parliament.
4. Annual reports of various autonomous agencies like the UPSC, Comptroller and Auditor General of India, Minorities Commission etc. are considered by both the Rajya Sabha and the Lok Sabha.
5. In cases the government makes a proposal to take away an appointment from the purview of the UPSC both the Rajya Sabha and Lok Sabha must agree to it.
6. Every order issued by the President suspending the enforcement of Fundamental Rights or laying down the canons of financial propriety is to be laid before each house of the Parliament.
7. Rajya Sabha shares equal powers with Lok Sabha in matters like setting up Martial Law Courts during National Emergency for dealing with offences committed by the civilians and indemnifying officers for their acts done in good faith
8. Lastly, the delegated legislation and the rules framed by various departments must be approved by both the houses.

Finally, there are certain special powers which the Rajya Sabha exclusively enjoy and are not at all shared by the Lok Sabha. These are :

1. The Rajya Sabha vide Article 249 may pass a resolution by its 2/3rd

majority to shift an item of the State List to the Concurrent List or to th Union List on the plea that it is expedient in the national interest.

2. The Rajya Sabha vide Art 312, is empowered to create an All India Service if it adopts a resolution by its 2/3 majority saying that it is necessary or expedient in the national interest.
3. It is the Rajya Sabha alone that can apply a democratic check on the exercise of the emergency powers of the President in case the Lok Sabha stands dissolved.
4. Finally, the Rajya Sabha alone can initiate proposals for removing the Vice President of India.

6.16 Relation between Lok Sabha and Rajya Sabha

Discussion on the pros and cons of a bicameral system would make it much easier for us to analyse the relation between the House of the People and the Council of States. The relation between the two houses can be done from three perspectives in terms of exercising their powers in different areas. Broadly, there are three main ways through which the relation of both the houses is to be discussed. They are :-

1. Lok Sabha sharing equal powers with that of the Rajya Sabha.
2. Lok Sabha enjoying greater powers as compared to Rajya Sabha and
3. Rajya Sabha having certain special powers which Lok Sabha does not seems to enjoy.

For our convenience let us discuss them in the following manner :-

Lok Sabha and Rajya Sabha sharing equal powers

Lok Sabha and Rajya Sabha shares equal powers with each other on the following :-

a) On matters related to election of the President and Vice President

b) Removal of the Judges of the Supreme Court and High Court,

c) Removal of the Chairman and the other members of UPSC,

d) Removal of Chief Election Commissioner, Comptroller and Auditor General and so on.

e) In all other matters of legislation, including constitutional amendments, the extent of the council's power is the same as that of the house. A bill can be initiated either in the house or in the council. The council may amend or reject a bill that is passed by the house. If the house does not agree with the action of the council, the contested measure is placed before a Joint sitting of both the houses and passed by a simple majority.

f) Annual reports of various autonomous agencies like the UPSC, Comptroller and Auditor General of India, Minorities Commission etc. are considered by both the Rajya Sabha and the Lok Sabha.

g) Rajya Sabha shares equal powers with Lok Sabha in matters like setting up Martial Law Courts during National Emergency for dealing with offences committed by the civilians and indemnifying officers for their acts done in good faith.

Lok Sabha having more powers than Rajya Sabha

a) Dominant position in the Executive : The Lok Sabha exercises control over the Executive. According to the Indian Constitution the Union Council of Ministers headed by the Prime Minister shall be collectively responsible to the Lok Sabha. Infact Lok Sabha exercises exclusive power with relation to the formation of Council of Ministers, its existence and even demanding for its resignation before its normal tenure of five years. The Council of Ministers will have to resign if a vote of no confidence is passed in the Parliament. In case the Lok Sabha rejects a Government bill or a budget, or disapproves official policy, or shows its lack of confidence in the Government by making alterations in the policies and programmes of the Government against its wishes, it shall amount to the expression of a vote of no confidence. If a no confidence motion is passed in the Rajya Sabha, it will not have any impact upon the party forming the government and in power at the centre. Infact the Council of Ministers has every right to be fully

informed of all matters connected with the government's activities which are raised on its floor. But it has no right to pass a censure motion against the Government of the day. The confidence of the Parliament means the confidence of the House of the People and the responsibility of the Executive means the responsibility to the House of the People. This principle can be justified only on the basis of the popular character of the house. How vulnerable is the position of the Rajya Sabha can be cited through an instance. In 1978, Rajya Sabha passed a proposal for forming an investigation committee against Kantibhai Desai, the son of then Prime Minister Mr. Morarji Desai. The Morarji Government ignored and rejected the proposal. So, it shows that the Rajya Sabha has the power to discuss and debate over matters of important issues but it can no way pass a vote of no confidence against it. So, the Rajya Sabha has hardly any power to control the executive of the country. Lok Sabha happens to be supreme in this domain.

b) **Money Bill :** Rajya Sabha has no power related to money bill. As far as the financial power of the Lok Sabha is concerned a money bill can originate only in the Lok Sabha. It is sent to the Rajya Sabha which it must pass within a period of 14 days. In case the Rajya Sabha returns the money bill with some recommendations of its own, it shall depend upon the will of the Lok Sabha to accept them or not. However, a money bill can in no case be referred back to the Rajya Sabha for a second time. Moreover, it is one of the powers of the Speaker to decide whether a bill is a money bill or not. It is therefore, clear that the Lok Sabha alone is powerful in the sphere of financial legislation.

c) **Ordinary Bill :** In case of ordinary bill apparently, it seems that Rajya Sabha and Lok Sabha shares equal powers but in reality it is not so. An ordinary bill requires the approval of both the houses. It cannot be taken as passed by the Parliament unless it is so agreed to by both the houses of the Parliament. In the event of a difference of opinion between the two houses, the President is required to call a Joint Session for resolving the deadlock. A joint sitting is presided by the Speaker of the Lok Sabha. Again, the numbers of members are more in Lok Sabha than in Rajya Sabha. So naturally, even in a joint

sitting the probability of retaining the decision of the Lok Sabha is therefore, much higher. However, there are certain instances of exception as well. In 1961, in a joint sitting of both the houses, one of the proposal of Rajya Sabha was included in the Dowry Prohibition Bill. But at the same time it must be noted that they are exceptions and rarely happens.

d) Emergency : Lok Sabha shares with the Rajya Sabha authority in matters relating to the approval of the emergency declared by the President. But according to 44th Constitutional Amendment Act of 1978, if, the Lok Sabha accepts the proposal relating to the dissolution of the emergency then the President is bound to abide by its decision and declared it as off. Again if 1/10th members of Lok Sabha request to discuss on matters of emergency then the President is bound to summon a session and the Speaker is also bound to create an opportunity for its discussion. Here it must be noted, that Rajya Sabha has no powers relating to it.

Rajya Sabha enjoying more powers than Lok Sabha

There are certain provisions in the Constitution which confer upon the council as the sole representative of the states, powers in its own right and to the exclusion of the house. These are of considerable importance from a constitutional point of view. They are the following :-

a) Under Article 249, the Council with the support of two-third of its members sitting and voting is empowered to declare that, in the national interests, Parliament should make laws with respect to a matter that is included in the State Legislature list. On the passing of such a resolution, it becomes lawful for Parliament to make laws with respect to a matter that is included in the State Legislature List. On the passing of such a resolution, it becomes lawful for Parliament to make laws with respect to that matter for the whole or any part of India for a period of one year.

b) The second exclusive power of the Council is connected with the setting up of All India Services. The special characteristic of an All India Service is that it is common to the Union and the States. As such, the setting up of such a service affects the powers of the States. Therefore, here again, the Council

is given the power to decide by a resolution supported by a two-thirds majority the question of setting up of an All India Service. Hence, any laws connected with such a service can be initiated only if, the Council passes such a Resolution.

c) The Vice President by virtue of its position is the Chairman of the Rajya Sabha. He/She presides the meetings of the Rajya Sabha. The proposal relating to the removal of the Vice President can be initiated only in the Rajya Sabha and not in Lok Sabha. For this reason, Rajya Sabha has special powers and dignity within the political system of the country.

d) Along with the above mentioned constitutional provisions there is also an operational advantage of the Rajya Sabha which at critical juncture might enhance its power. The Council of States is a permanent body like the American Senate. This means it is a continuing chamber and not subject to dissolution like that of the Lok Sabha. Like the American Senators the members of the Rajya Sabha are elected for six years. At the end of every second year, one-third of the members are re elected. This provision enables the Council to retain its political complexion in a more stable manner than the House of the People which after every election is a completely new house. What is worth mentioning, is that, an unprecedented change takes place in the functioning of the Upper Chamber when a party has a comfortable majority in Rajya Sabha while it formed the Opposition in the Lok Sabha. Such an incident occurred in the year 1977, when the Congress had a majority in the Rajya Sabha while occupied the opposition bench in the Lok Sabha. It placed the then Janata Government in a very difficult position. The Non Congress government had the taste of its strong position when the Congress members stalled two official bills on April 11, 1977. Almost a similar situation can be traced in the recent years when the Modi Government despite its majority in the Lok Sabha finds it difficult to pass a bill in the Rajya Sabha. This creates a compelling ground on part of the Union Government to win over and maintain a fruitful relation with some of the State Government, so that, it could ensure their support in the Rajya Sabha.

These provisions make the Council an important part of the Governmental machinery and not an ornamental superstructure or an inessential adjunct. It was not designated to play the humble role of an unimportant advisor, nor of an occasional check on hasty legislation. Its comparatively small and therefore, compact size, its permanent character which ensures a certain degree of stability and continuity in thought and action, and its having a large number of "elder statesmen" among its members, and its broad based representative character, all these, in course of time, should help to establish it not only as a respectable but also beneficial and influential body though not equal in power in all respects with the House of the People.

In India, the Council of States in relation to the House of the People is nowhere near as powerful as the American Senate, nor is it at par with its Australian counterpart; but it is much more powerful than the Canadian Senate. It is true that the Constitution clearly recognizes the supremacy of the House of the People over the Council in certain matters but not in all. The co equal power of the Council on constitutional amendment is of great significance. It means that the Constitution cannot be amended unless the Council of States as the representatives of the States also agrees to such change. This provision alone will show the significantly important role the framers of the Constitution have assigned to the Council. Infact, what is perhaps required is the participation and collaboration of both the houses for all legislative activities. Without such collaboration practically nothing can be done in the legislative field. Infact a bicameral legislature was probably the only operational guarantee which the framers could think of, to ensure the harmonious coexistence of the centre as well as the states under the overall rubric of the Union of India.

6.17 Evaluation of Rajya Sabha

A critical study of the composition and working of the Rajya Sabha shows that it has neither proved itself like a mere ornamental chamber as is found in the British House of Lords nor has it been able to assert itself like a powerful upper chamber having a formidable replica in the American Senate. In fact what is interesting to learn, that it has never intended to be a pale shadow of the lower chamber. It has indeed provided occasional checks on the activities of the popular chamber of the Parliament but in doing so hardly created a deadlock situation thereby, obstructing the functioning of the government. It therefore, in a sense, has evolved itself into a

house of action when situation so demands thereby, giving a unique Indian version of the institution. Let us enumerate certain points for a critical study of the Rajya Sabha in the following manner :-

First, the mode of composition of this house is defective. As the name Council f States suggests it ought to have representatives from the states but it is surprising to see that it has members nominated by the President. So it is quite possible that the nominated members represent the centre and not the states and may tilt the balance in crucial moments of division.

Second, the principle of distribution of seats according to the factor of population is unjust in a sense that it places bigger states of the Indian Union in a position of greater advantage. It therefore, violates the principle of uniformity that desires equal representation of the federal units irrespective of their geographical size or their demographic composition.

Third, the method of indirect election by means of proportional representation with single transferable vote system makes it highly convenient for a very affluent person to purchase votes in the election and thereby, have the privilege of being a member of the Indian Parliament.

Fourth, the indirect election enables even the minor parties to grab some seats in proportion to their strength in the State Legislative Assemblies. The Rajya Sabha thus, has the representatives indirectly elected by the State Vidhan Sabha's who are supposed to fight for the cause of their parties than that of the States as a whole.

Fifth, it is also possible that after the state general election the assembly may have a different party wise composition that might entail their loss of control over the representatives chosen by the previous house for a term of six years. The result is that the members of this house are the representatives of neither the state governments nor of the state legislature.

Sixth, the actual working of the Rajya Sabha has failed to realize the expectations of the founding fathers who desire to give an opportunity to seasoned people more interested in participating in debates. Though we cannot deny the fact, that this house has seen several seasoned people but a matter of pity is that party politics has done a lot of damage to the high standards of this chamber. On several occasions, persons rejected in general polls but having very strong position in the party hierarchy or are close associates of the party chief has been inducted into the house without judging their abilities and efficiency so required in this regard.

Finally, what is worth mentioning is that an unprecedented change takes place in the functioning of the Upper Chamber when a party has a comfortable majority in Rajya Sabha while it formed the Opposition in the Lok Sabha. Such an incident occurred in the year 1977, when the Congress had a majority in the Rajya Sabha while occupied the Opposition bench in the Lok Sabha. It placed the then Janata Government in a very difficult position.

6.18 Conclusion

A comparative study of the functions and powers of the two houses of our Parliament may leads to an impression that the Lok Sabha is more powerful than the Rajya Sabha. There is no doubt that the Indian Parliament is constituted on the basis of the principle of bicameralism, that is, legislature having two houses or chambers. The lower house or the House of the People being composed of directly elected members has an edge over the upper chamber. But here, it must be noted that the Constitution has also established a federal system of government. Even there was unanimity among the framers for achieving a balance between the direct representation of the people and the representation of the units. Keeping in mind the aspirations of our forefathers, the two houses should not be designated as such to exalt one and denigrate the other. Infact, what should prevail is the convention of harmony and cooperation between the two.

6.19 Summing Up

- The House of the People is commonly known as the Lok Sabha. It is the lower or the popular chamber of the Indian Parliament.
- The members of the Lok Sabha are elected directly by the people.
- At present it consists of 550 elected members. Of these a maximum of 20 seats are reserved for members from the Union Territories.
- Members of the Lok Sabha are elected from each state which is divided into territorial constituencies that are more or less of the same size with regard to population.

- Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it, is and as far as practicable, same throughout the state.
- The normal term of the Lok Sabha is five years which begins from the date of its first meeting.
- The house shall meet atleast twice a year and the interval between two consecutive sessions shall be less than six months.
- The powers and functions of the Lok Sabha are wide and varied which includes legislative, executive, judicial along with other essential powers.
- The lower house or the House of the People being composed of directly elected members has an edge over the upper chamber or the Rajya Sabha.
- Each house of Parliament has its own presiding officer called the Speaker who presides over the House of the People.
- The Speaker occupies an office that carries both great dignity and high authority. The functions and powers of the Indian Speaker emanate both from the provisions of the Constitution and the Rules of Procedure made in pursuance of them for conducting the business of the Parliament.
- However, a study of the powers of the Speaker in practice, shows that he/she has not been able to gain that high level of dignity in India which is enjoyed by his/her English counterpart since India is yet to develop a sound tradition of Speakers being a non - party man.

6.20 Probable Questions

Essay Type Questions :

1. Discuss the composition of the Indian Parliament with special reference to the electoral methods, term and session of the lower house.
2. Analyse the powers and functions of the Lok Sabha.
3. Examine the powers and functions of the Speaker.

Short Questions :

1. Why the lower house of the Indian Parliament has an edge over its upper chamber?
2. How the members of the Lok Sabha are elected? Explain the essential qualifications and disqualifications of the members of the lower house.
3. How is the speaker of Lok Sabha elected?
4. What are the legislature powers of Lok Sabha?

Objective Questions :

1. What is the term of the Council of States?
2. Who presides over the joint session of the two houses of Parliament?
3. How many elected members are there in Lok Sabha?
4. Which House of Parleament has the power to introduce the financial bill?

6.21 Further Reading

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Unit 7 ❑ Union Executive : President, Prime Minister of India

Structure

7.1 Objective

By studying this unit, the learner will be able to

- Understand the aim of the framers of the Constitution to have a Constitutional Head in the country

- Know the essential qualifications required to become the President
- Get acquainted with the actual term of office of the President and the causes for his/her removal
- Examine the powers and functions of the Indian President including the emergency powers
- Assess the powers as given by the Constitution and the real experience in Indian politics
- Analyse the constitutional position of the President of India
- Know the selection process, appointment and term of office of the Prime Minister
- Understand the powers and functions of the Indian Prime Minister
- Know the constitutional and real position of the Prime Minister
- Grasp the composition and classification of the Union Council of Ministers
- Know the powers and functions of the Union Council of Ministers

7.2 Introduction

India has adopted a federal system of government. At the head of the Union executive, stands the President of India. The Constitution of India provides for a President of India and the executive power of the Union Government including the supreme command of the defence forces, is vested on him/her. Infact, Article 52 states that there shall be a President of India. Article 53 declares that the executive power of the Union shall be vested in the President. However, it must be noted that India has adopted for a Parliamentary form of government in which the President happens to be the constitutional head and the real executive powers vested in the Council of Ministers. The Prime Minister being head of the Council of Ministers is the real head of the executive. Article 74 mandates that there shall be a Council of Ministers to aid and advice the President in the exercise of his/her functions. It is further prescribed that the President shall act in accordance with such advice. The Constitution has no article stating that the President is answerable or responsible the Lok Sabha. Thus, the President being the titular or formal head, exercises all powers and functions conferred on him/her on the aid and advice of the Council of Ministers.

Inspired by the British parliamentary model, India has constituted its administrative system. The framers of our Constitution intended that though formally all executive powers were vested in the President, he/she should act as the constitutional head of the Executive like the English Crown, acting on the advice of Ministers responsible to the popular house of the legislature. In England, the Prime Minister is the keystone of Cabinet arch. Infact the position of the Prime Minister has been described by Lord Morley as primus inter pares i.e., 'first among equals'. In theory, all Ministers or members of the Cabinet have an equal position, all being advisors of the Crown, and all being responsible to Parliament in the same manner. However, just like in England, in India too, the Prime Minister has a pre eminence, by convention and usage. Art 74(1) of the Constitution expressly states that the Prime Minister shall be at the head of the Council of Ministers. Almost all the powers enjoyed by the British Prime Minister through the conventions are in as much in general applicable to the Indian Prime Minister as well. The power of advising the President as regards the appointment of the other Ministers is, thus, embodied in Article 75(1).

As to the function of acting as the channel of communication between the President and the Council of Ministers, Art.78 provides—it shall be the duty of the Prime Minister to communicate to the President all decisions of the affairs of the Union and proposals for legislation. The written provisions of our Constitution in this regard are extremely sketchy. They do not cover the area of entire authority that the Prime Minister has to exercise. Moreover, like in England, the Indian Prime Minister is expected to play the role of the efficient executive in view of the paramount fact that the President constitutes the dignified part of the Union Executive. It should also be borne in mind that there are four important factors that either circumscribe the authority of the Prime Minister or force him/her to push back the barriers in order to play the role of a great national leader. These are written constitution, federal system, judicial review and multi-party system. The functions of the Prime Minister, thus, should be examined in the light of several limitations hedged around his/her office and the ability and the courage with which he/she discharges them for the ultimate good of the people without violating the provisions of the Constitution. Even then, over the years, the way the Prime Ministers have acted have surely

pointed to the direction that the Office of the Prime Minister is significant as well as commands great respect and authority in relation to his/her Cabinet, Council of Ministers, Parliament as well as the President of India.

7.3 Essential Qualifications

Article 58 of the Constitution requires that a candidate for the office of the President should possess the following qualifications :

1. She/he must be a citizen of India.
2. She/he must have completed 35 years of age.
3. She/he must possess all qualifications prescribed for election as a member of the Lok Sabha.
4. Besides she/he must hold any office of profit under the government of India or any State Government or any local authority subject to the control of central or State Government.
5. Article 59 says that she/he must not be a member of either house of Parliament or of any State Legislature. It means that in case the member of the Union or the State Legislature is elected for this office, his/her seat in the Legislature shall be deemed to have been vacated from the date on which he/she assumes his/her office as the President of India.

7.4 Election of the President

The procedure of Presidential election is contained in Article 54 and 55 of our Constitution. The President of India is elected by indirect election, that is, by an electoral college, in accordance with the system of proportional representation by means of a single transferable vote. According to Article 54 the Electoral College shall consist of –

(a) The elected members of both houses of Parliament and

(b) The elected members of the Legislative Assemblies of the States.

Article 55 provides for the formula of uniformity in the scale of representation

of different states, as far as practicable, by incorporating the method of proportional representation with single transferable vote system. This condition seeks to ensure that the votes of the states, in the aggregate, in the Electoral College for the election of the President, shall be equal to that of the people of the country as a whole. In this way the President shall be a representative of the nation as well as a representative of the people in the different States. It also gives recognition to the status of the States in the federal system.

The whole procedure of Presidential election has been discussed by J.C. Johari with the help of the following steps :

1. Each elected member of a State Legislative Assembly shall have as many votes as there are the multiples of one thousand in the quotient by dividing the population of the State as given in the last census report by the total number of the elected members of the Assembly. Moreover, if after taking the said multiples of one thousand, the remainder is more than 500 then the votes of each member shall be further increased by one. Its formula may be put as under :

$$\text{Total number of votes of an elected M.L.A.} = \frac{\text{Population of the State}}{\text{Total no. of elected M.L.A.'s}} \div 1{,}000$$

To take a hypothetical example, we may say, that if there is a population of 5,000,000 in a State and there are 50 elected M.L.A.s, then the value of the votes of each of them will be: 5,000,000/ 50= 100,000/ 1000 = 100.

2. Each elected member of the Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to all the elected M.L.A.'s of the country by the total strength of the elected M.P.'s is to be counted as one vote more, otherwise it shall be discarded. Its formula may be put as under :

$$\text{Total number of votes} = \frac{\text{Total number of votes assigned to all elected M.L.A.'s of an elected M.P.}}{\text{Total number of the elected members of Parliaments}}$$

To take a hypothetical example again, we may say that in case the total value of

votes of all the elected M.L.A.'s of the country is 2,00,000 and the total strength of the elected M.P.'S is 500, then the value of the votes of each elected M.P. will be 400.

3. Finally, it is provided that the election of the President shall be by secret ballot and in accordance with the system of proportional representation with single transferable vote. It means that the voter shall be given a ballot paper having the names and party symbols of the candidates on the left side with blank columns on the right that he/she has to fill up by showing his/her preferences. The voter shall place the figures of 1,2,3 and so on in the blank columns to show his/her order of preferences after the polling is over, counting shall take place. First of all, invalid paper shall be rejected and electoral quota shall be taken out by means of this formula :

$$\text{Electoral Quota} = \frac{\text{Total number of valid votes polled}}{1 + 1 = 2} + 1$$

Then counting will begin. In case a candidate secures vote's upto the figure of electoral quota in the first round, he/she shall be declared elected. Otherwise, subsequent rounds shall be made to declare the results. A candidate having least number of votes shall be eliminated and his/her votes shall be transferred to other candidates according to second preferences. Thus, the votes of other candidates will be enhanced. The process will continue until the result is available.

A historical study of the Presidential polls tells us that not first, second and third, but the fourth and fifth elections assumed unprecedented significance. The fourth election of 1967 and, shortly after that, the fifth one of 1969 made a history of their own in view of the dwindling position of the Congress Party heading towards an inevitable split. The fourth Presidential election witnessed a meaningful political contest between a united Congress and a more or less united Opposition. It looked like a straight fight between Dr. Zakir Hussain as the nominee of the Congress party and K. Subba Rao as a chosen leader of the opposition parties, excluding the leftist element. But a more significant episode took place in the fifth Presidential poll of

1969. It marked an unprecedented contest between a divided Congress and a disunited opposition each thriving on the bickering of the other. The result was that no candidate could win in the first round and the victory of the unofficial Congress nominee (Mr.V.V.Giri) at the expense of the official candidate (Mr.N.Sanjiva Reddy) occurred owing to the process of elimination.

7.5 Evaluation of the Method of Election of the President

A critical examination of the system of the Presidential election in India shows that there are certain serious loopholes in it though some of them have been removed in course of time :

1. The expression of Article 55(3) providing for proportional representation system is incorrect in the sense that there can be no proportion unless there are at least two seats. That is, the system of proportional representation cannot apply to a single member constituency. Prof. M.P.Sharma was the first critic to point out in 1950 that the nomenclature of proportional representation is incorrect. According to him, the question of proportion can arise only when there are at least two things to compare. Infact in his book entitled *The Government of the Indian Republic*, he argued in favour of preferential or alternative vote system.
2. The Constitution is not clear as to what shall happen if the Electoral College is in a lame-duck situation. The XI Constitution Amendment Act was rushed through in 1961 to provide that the election of the President shall not be invalid if there were some vacancies in the Electoral College. However, it does not lay down whether the election will take place if any state is under President's rule. It must also be noted that a new device of half state emergency was invented in 1966 to keep the Legislative Assembly of Punjab under suspended animation. The question arises as to what shall happen if there is no Legislative Assembly in a state. This controversy arose in 1974 owing to President's rule in Gujrat. The matter was referred by the President to the Supreme Court for its advisory opinion. The Court advised in favour of the Government desiring election without a State Assembly.

3. The present system of Presidential election hardly provides any chance for the election of a non political personality. The prospects of victory are there for one supported by the party having its overwhelming majority in the Electoral College, or for one backed by a combination of parties, big and small, that somehow manage to come together for the purposes of having a friend of their own in the Rastrapati Bhawan.
4. The procedure of Presidential election is highly complex and is beyond the understanding of the ordinary citizens. If a political party ceases to have unanimous and absolute majority in both the houses of the Parliament and if, in such a situation many candidates of different political parties express their desires to contest for Presidential election then, there is no doubt that such a procedure of Presidential election is bound to be even more complicated.
5. Dr. K.V.Rao in his book entitled *Parliamentary Democracy of India* has mentioned the voting system of the President as highly unscientific. According to him, this system of election is more or less like a knock out tournament since in the method of proportional representation the first preference is given a greater value compared to the second one.

On the question of Presidential election opinion in the Constituent Assembly was at first divided. There were those who advocated the adoption of the Presidential system of government prevalent in the United States of America and advocated in favour of the direct election. But they formed only a small minority and the overwhelming majority was decisively in favour of an indirect election. Several reasons were cited in this regard by the members. They are :

1. India has adopted a parliamentary system of government. The President is a mere titular head in such a system. If the President is directly elected then there might arise a possibility of conflict between the President and the Prime Minister. It is not desirable for the President to get involved into a conflict with the Prime Minister and Council of Ministerss.
2. The role of the President in India is mere constitutional. It was also desired by some other members that, as the manner of direct election would amount

to a colossal waste of time, energy and money and also would lead to immense political difficulties, the President should be elected by the member of the Parliament.

3. Incase of direct election of the President for two or more candidates there is a possibility of electing the one who has the support of the majority.

As such what was finally accepted was the Nehru –Ambedkar formula of indirect election of the President by an enlarged electoral college consisting of the elected members of the Union and the State legislatures in accordance with the principle of proportional representation with single transferable vote system. This formula, as stressed by Nehru and Ambedkar, had the support of three essential reasons- vast size of our electorate, strain on the administrative machinery and nominal position of the head of the State in our parliamentary form of the government. In this way, the principle of the indirect election of the President had its happy coincidence with the framework of our federal system implying division of powers between the Centre and the States with the President being a chosen nominee of both. Thus, it has been remarked that the method adopted for the election of our President "is an original contribution to constitutional practice."

7.6 Tenure and Removal From Office

The President holds his/her office for a period of five years from the date he/she takes the oath in the presence of the Chief Justice of India. As the Constitution says nothing regarding the number of terms that a person may avail of, it is clear that the President is eligible for any number of elections. The President may also resign before the expiration of his/her term of office for any reason. It is provided that his/her resignation should be addressed to the Vice-President who is required to communicate it to the Speaker of the Lok Sabha. A voluntary resignation of the President may presumably be in any of the following four cases :

1. He/she may resign due to the reason of continued ill-health.
2. There may be a voluntary abdication in a case where the President may not

be in harmony with the Council of Ministers and would prefer to quit rather than create a constitutional crisis. The resignation in such a situation may also be due to a directive from the high command of the party in order to avoid the likely conflict.

3. The resignation of the President may also be to avoid removal by impeachment when such proceedings seem to be in progress.

The resignation of the President may also be a threat against the ministry or the majority party on some vital issue which might reveal something damaging to the ministers who can thus, be coerced to reconsider their stand, reconsider their differences, if possible, or offer themselves to resign.

Infact a vacancy of the office of the President may be caused in any of the following ways-

(i) On the expiry of his/her term of five years.

(ii) By his/her death.

(iii) By his/her resignation.

(iv) On his/her removal by impeachment.

(v) Otherwise.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be completed before the expiration of the term [Article 62(1)] but it is at the same time provided that the outgoing President must continue to hold office, until his/her successor enters upon his/her office [Art 56(1)].

In case of a vacancy arising due to reason of any cause other than the expiry of the term of the incumbent in office, an election to fill the vacancy must be held as soon as possible after, and in no case later than, six months from the date of occurrence of the vacancy.

Apart from the permanent vacancy, the President may be temporarily unable to discharge his/her functions, owing to his/her absence from India, illness or any other cause, in which case the Vice President shall discharge his/her functions until the date on which the President resumes his/her duties. [Art 65 (2)].

Article 56(1) provides that the President of India may be removed by the process of impeachment for the 'violation of the Constitution.' An impeachment is a quasi-judicial procedure in Parliament. Either house may prefer the charge of violation of the Constitution before the other house which shall then either investigate the charge itself, or cause the charge to be investigated. But the charge cannot be preferred by a house unless—

(a) A resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than ¼ of the total number of members of that house and

(b) The resolution is then passed by a majority of not less than 2/3 of the total membership of the house.

The President shall have a right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by not less than 2/3 of the total membership of the house before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his/her office with effect from the date on which such resolution is passed [Art 61]. Since the Constitution provides the mode and ground for removing the President, he/she cannot be removed otherwise than by impeachment, in accordance with the terms of Arts. 56 and 61.

A critical examination of the procedure for the impeachment of the President shows that it is full of loopholes and inconsistencies which may be enumerated as under :

1. The phrase 'violation of the Constitution is delightfully vague. It is not clear as to what it includes and what it excludes. One may, and one may not agree with the view of Dr. Ambedkar that President's refusal to summon the Parliament, for example, on the advice of the Prime Minister constitutes a violation of the Constitution. Prof. B.M.Sharma feels, that any act of the President without or against the wishes of the Council of Ministers would amount to a violation of the Constitution.
2. The members of the state legislatures have been deprived of any part in this process in spite of the fact that they have their full part in the election of the President. There ought to have been some provision for the ratificatory role of the state legislative assemblies.

3. The provision of at least ¼ members at the time of the initiation of the move in either house of the Parliament and of 2/3 majority of the whole house at the time of the adoption of the resolution include all the members of the house whether elected or nominated. One may ask, as to why the nominated members of the house have been given the right to take part in th impeachment proceedings when they have no such rights in matters of Presidential election.
4. The provision that the other house of the Parliament shall investigate the charge is understandable but it is not clear whether the house will do the tedious job itself or appoint some judicial commission for the said purpose.
5. It is not clear, as to what time the investigating house will give to the President for making his/her defence, since the term 'short notice' does not give any idea of specific time period and personal equation with the President and are more likely to influence the outcome.
6. As the President has the power to summon and prorogue the Parliament and dissolve the Lok Sabha, he/she might use these powers thereby delaying the process of impeachment.
7. The Constitution makes no mention of the disqualifications that a person shall incur after his/her removal from the office of the President.
8. Above all, the requirement of the 2/3 majority of the house makes the whole affair highly tedious that goes to the benefit of the President.

7.7 Powers and Functions

India is a democratic republic. As such, it has a democratically elected Government. That is why, the head of the State is neither a nominated representative, nor a hereditary monarch, but an elected representative of the people even though the election may be indirect. The President of India is the head of the State and occupies the highest office in India. Under Article 53 of the Constitution, the executive power of the Union vested in the President who is empowered to exercise it either directly or through officers subordinate to him/her. Owing to the manifold expansion of the

functions of the State, all residuary functions have practically passed into the heads of the executive. Viewed in this perspective, it appears that the President is the highest authority of the land in matters of executive as well as legislative powers. For the sake of convenience, the normal powers and functions of the President can be classified into five categories namely- Executive, Legislative, Financial, Judicial and others. Let us discuss them in the following manner :-

Executive Powers :

The President is the chief executive of the Indian administration. The supreme executive authority of the Union is vested in him/her that he/she can exercise it either directly or through officers subordinate to him/her. The executive power may be enumerated in the following manner :-

1. The entire administration of the Union Government is conducted in the name of the President and all important decisions of the Government of India are formally taken by him/her. He/she makes rules of business whereby the work of the Government is conducted. He/she also allocates works among the Ministers.
2. The President must be kept informed by the Prime Minister of all decisions of the cabinet. He/she can ask the Prime minister to submit a decision of any Minister for the consideration of the Council of Ministerss in order to have the decision of the cabinet as a whole on that important subject.
3. Important appointments are made by the President and they include the Prime Minister and all Union Ministers and Deputy Ministers, Attorney General of India, Comptroller and Auditor General of India and so on. Besides he/she has the power to appoint the Chairman and members of several commissions and statutory bodies like the Election Commission, Finance Commission, Official Language Commission and so on. As he/she is the appointing authority, he/she can also remove the officers appointed by him/her in certain situations. For instance, he/she can dismiss the Judge of the Supreme Court or of a High Court and can even remove a member of the UPSC after having an enquiry report from a Judge of the Supreme Court.

4. The President is the administrator of all Union Territories and Tribal areas. Every union territory is administered by him/her through an administrator appointed by him/her. He/she may also entrust the administration of a neighbouring union territory to the Governor of a state who will act according to the instructions of the President and not according to the Council of Ministerss of his/her State.
5. By virtue of being the head of the State, the President maintains the foreign relations. All diplomatic business is conducted in the name of the President. All treaties and international agreements are negotiated in his/her name, though they cannot be effected unless ratified by the Parliament subsequently.
6. The President is the Supreme Commander of the Defence Forces. He/she appoints the Chiefs of the Army, Navy and Air Force. He/she may confer the title of Field Marshall. He/she is the head of the National Defence Committee. Thus, as per the decision of this important body, he/she may make a declaration of war and peace.
7. The President has the power of making rules and regulations governing matters like the Joint Session of the Parliament, appointment of the officers of the Supreme Court, administrative power of the Comptroller and Auditor General and so on. Similarly the prior approval of the President is necessary for certain administrative actions or decisions of other authorities as those of the Supreme Court governing its procedure, determination of the forms of accounts by the Comptroller and Auditor General and Union Public Service Commission or Joint Public Service Commission serving the needs of some of the States.
8. Finally, the President can issue directives to the State Governments whereby their administration should be carried on. In this direction, he/she has the power of exercising superintendence and control over the administration of the States. He/she can issue instructions which the State Governments must follow to ensure due compliance with the Union Laws and unimpeded operation of the union administration. In case a State Government fails to carry out the instructions or directions of the President, he/she may invoke Article 356 to take over its administration in his/her own hands.

Legislative Powers :

Like the British Monarch the President is the integral part of the Parliament. Our Constitutional arrangement like that of its English counterpart should be described in this connection, as the President in Parliament. The legislative powers of the President should be taken as a supplementary part of his/her formal powers vested in him/her as the Head of the State. The legislative powers of the President can be enumerated in the following manner :

1. The President has the power to summon and prorogue the session of the Parliament. He/she can dissolve the Lok Sabha. It is required that the President shall summon the sessions of the Parliament in a way that the intervening gap is of a duration of not more than six months. In case of a deadlock situation between the two houses on a non- money bill, the President may call a joint session of the Parliament and frame rules for the transaction of business therein.
2. The President nominates twelve members to the Rajya Sabha from among persons having special knowledge or practical experience in respects of literature, science, arts and social service. He/she can nominate two persons from the Anglo Indian Community to the Lok Sabha in case he/she finds that this community has not been able to have its adequate representation in the popular chamber.
3. The President has the power to address and send messages to the Parliament. He/she may address either house of the Parliament or both assembled together and for that purpose require the attendance of the members. The first session of the Parliament after a General election and its first session of a new year must open with the inaugural address of the President. The President may send his/her message to either house of Parliament with respect to a bill then pending or otherwise, and may be required by the President to be taken up for consideration.
4. The bills passed by the Parliament can only become laws after the President has given his/her assent to them. The President has veto power over bills passed by the Parliament. In the case of a Non-Money Bill, he/she may either give his/her assent, or withhold it or he/she may return the bill to the

Parliament for its reconsideration. It is provided, that in case the same bill is re passed by the Parliament, whether his/her recommendations have been accommodated or not, he/she cannot withhold his/her assent. However, it must be noted that he/she has no veto power over the money bills and constitutional amendment bills nor does he/she have a pocket veto like that of the American President.

5. Money bills cannot be introduced in the Lok Sabha without prior consent of the President. Bills seeking alterations of State boundaries or changes in the name of State again has to be introduced in the Parliament with the prior consent of the President. This category also includes a bill making provision for the enactment of certain laws relating to some language, or an amendment affecting taxation in which the States are interested, or which involves expenditure from the Consolidated Fund of India.
6. In the event of some special necessity, but at a time when the Parliament is not in session, the President may promulgate an ordinance that shall have the force of law. Such a step is taken by the President if he/she is satisfied that the obtaining circumstances so require. The 42nd Amendment Act has made the Presidential act immuned from judicial scrutiny but the 44th Amendment Act has repealed it. The President may withdraw his/her ordinance at any time, or it shall cease to have effect after six weeks.
7. The President is required to lay before the Parliament, the reports and recommendations of several important bodies like the Union Public Service Commission, Finance Commission, Comptroller and Auditor General of India and so on.
8. The President has absolute veto power over bills passed by the State Legislatures. In case of a state bill which may be reserved by the Governor for the consideration of the President, if it happens to be essential by the Parliament or may be in conflict with the Union legislation already in force, or with any policy matter considered essential by the Governor of the state. The President for such bills may give his/her assent, withhold it, with or without assigning any reason, or may return it to the state after seeking the opinion of his/her Council of Ministers or of the Supreme Court.

9. Finally, the President has the power to direct by a public notification that from such date, as may be specified therein, some Union or State law shall not apply to any major part or shall apply the subject to such exceptions or modifications as may be specified therein.

Financial Powers :

The financial powers of the President may include the following :-

1. No money bill and particularly no bill imposing or varying any tax or duty in which the states are interested can be introduced in the Lok Sabha without his/her prior recommendations.
2. The Contingency Fund of India is at his/her disposal. He/she can make advances out of it to meet unforeseen expenditure pending its authorization by the Parliament.
3. The President shall cause to be laid before the Parliament the budget and supplementary budget if any, for its approval.
4. The President can also appoint from time to time a Finance Commission to make recommendations regarding the distribution of certain taxes between the Union and the States. He/she may take action on the report of the Finance Commission, if he/she thinks it to be necessary.
5. The President has the power to determine state's share of the income tax, and the amount of yearly grants-in-aid to certain eastern states in lieu of their share of the jute export duty.

Judicial Powers :

The judicial powers of the President constitute his/her prerogative of mercy. He/she has the power to pardon offenders, or remit, or suspend or commute their sentence in three cases-

i) Where the punishment is given by the court martial
ii) Where it is for an offence against a law relating to a matter to which the executive power of the Union extends and

iii) Where it is a sentence of death.

In Kehar Singh's case in the year 1989 the following principles were laid down :-

a) The convict seeking relief has no right to insist on oral hearing.

b) No guideline needs to be laid down by the Supreme Court for the exercise of the power.

c) The power is to be exercised by the President on the advice of the Central Government.

d) The President can go into the merits of the case and take a different view.

e) Exercise of the power by the President is not open to judicial review.

Miscellaneous Powers :

There are some miscellaneous powers of the President which are the following:

1. The President may refer any question of public importance involving a question of law as well as of fact to the Supreme Court for having its opinion.
2. He/she may make regulations determining the number of the members of the Union Public Service Commission, their tenure and conditions of service etc.
3. In the matter of official language, although the use of English has been retained by the Official Language Act of 1963 (as amended in 1967) he/she can authorize the use of Hindi in addition to it for such official purposes as he/she thinks fit and may appoint the Official Language Commission from time to time for their recommendations over the issue.
4. The President has some very important powers in regard to the administration of Jammu and Kashmir. He/she may issue orders for the extension of the provision of fundamental rights, or of the jurisdiction of the Election Commission and the Supreme Court. His/her prerogative of mercy covers the state of Jammu and Kashmir as well.

7.8 Emergency Powers

The executive of Indian administration is assigned with certain special powers to

meet the critical situation. This is required since normal powers do not help to face the abnormal or emergency situation. That is why, in most of the states at the time of emergency the chief of the executive is granted with certain additional special powers. This is more required in case of a federal system of administration since in a federation the power is decentralized. With decentralized power structure, it is not possible to overcome the emergent conditions. As such its definition and its nature cannot be determined. K.V. Rao in his book entitled, *Parliamentary Democracy in India* has stated that emergency situation creates such a dangerous situation that immediate action becomes inevitable. Such a situation as arisen is sudden and unexpected.

The Government of India Act of 1935 has also mentioned about the system of rules related with the emergent situation. Article 102 of this Act grants the power to proclaim the emergency to the Governor General of our country. The administrative legacy of the colonial period finds its reflection in the Constitution of India as well. That is why, the President of India is granted with three kinds of emergency powers. The abnormal functions and powers of the President are contained in Part XVIII of the Constitution titled, 'Emergency Provisions'. The Constitution stipulates three kinds of emergencies namely the National Emergency caused by war, external aggression or armed rebellion, in the country (Art 352); State Emergency caused by the breakdown of constitutional machinery in a state (Art356) and Financial Emergency when the financial stability or the credit of India or any part thereof is in danger (Art 360). Let us discuss these three emergency powers of the President in the following manner :-

National Emergency :

Article 352 empowers the President to declare National Emergency whenever he/she is satisfied that a serious situation has arisen, or is most likely to arise, threatening the security of the country by war, external aggression or armed rebellion in the country. The satisfaction of the President, for all practical purposes, depends upon the advice of the Council of Ministers. It is, however, subject to the control of the Parliament. Such a Proclamation shall be laid before the Parliament and unless approved by it shall cease to have its effect. Such a proclamation can remain in force

for a period of one month at the most, or its extension must be approved by the Parliament. The Constitution, further, provides that in case the Lok Sabha stands dissolved, the power of giving any approval shall be exercised by the Rajya Sabha. If the Rajya Sabha passes it, it must still be approved by the house within thirty days after the meeting of the new Lok Sabha. If the Rajya Sabha itself has not approved the proclamation, it will cease to be valid. It must also be noted that the power of the President to declare an Emergency may be made use of even before the actual occurrence of the aggression or disturbance, if the President is satisfied that there is imminent danger.

The 44th Constitutional Amendment Act of 1978 has made some important changes. Apart from substituting the phrase 'internal disturbance' by 'armed rebellion' and reducing the period of 'two months' by 'one month' at the most whereby the declaration of the President may remain imposed without the approval of the Parliament, it makes the following important arrangements :-

1. Such a proclamation can be made by the President on the written advice of the Union Cabinet.
2. The approval of the Parliament shall require adoption of the resolution in each house by a majority of the members, present and voting.
3. A specific time limit has now been set. It says that the extension of duration in one instance cannot be for a period of more than six months. However, no maximum time-limit has been specified.
4. It is also given that at least one tenth members of Lok Sabha may place a requisition of a special session at any time to reconsider the continuity of the proclamation. Such a notice shall be addressed to the Speaker (in case the house is in session) or to the President (in case the house is not in session). Thus, a special sitting would be held within fourteen days of the receipt of such notice.
5. Such a proclamation may be varied or revoked by the President at any time by a subsequent proclamation.

The effects of a Proclamation of Emergency may be discussed under four heads

namely Executive ii) Legislative iii) Financial and iv) As to Fundamental Rights. For our convenience, we will discuss them in the following manner :-

(i) **Executive :** When a proclamation of emergency has been made, the executive power of the Union shall, during the operation of the proclamation extends to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised [Art 353(a)]. In normal times, the Union Executive has the power to give directions to a state, which includes only the matters specified in Arts. 256-257. But under a proclamation of emergency, though the State Government will not be suspended, it will be under the complete control of the Union Executive, and the administration of the country insofar as the proclamation goes, will function as under a unitary system with local sub-divisions.

(ii) **Legislative :** (a) While a proclamation of emergency is in operation, Parliament may, by law, extend the normal life of the Lok Sabha for a period not exceeding one year at a time and not extending in any case beyond the period of six months after the period of proclamation has ceased to operate. (b) During the operation of Proclamation of Emergency, Parliament shall have the power to legislate as regards State List as well [Art 250(1)] though the Proclamation will not suspend the State Legislature; it will suspend the distribution of legislative powers between the Union and the States. So far as, the Union is concerned, the Union Parliament may meet the emergency by legislation over any subject as may be necessary as if, the Constitution were unitary. (c) in order to carry out the laws made by the Union Parliament under its extended jurisdiction as outlined above, Parliament shall also have the power to make laws, in respect of any matter, even though such matter normally belonged to state's jurisdiction [Art 353(b)].

(iii) **Financial :** During the operation of the proclamation of Emergency the President shall have the constitutional power to modify the provisions of the Constitution relating to the allocation of financial resource relation between the Union and the States, by his/her own order. But no such order shall have effect beyond the financial year in which the proclamation itself ceases to

operate, and further such order of the President shall be subject to approval by the Parliament [Art 354].

(iv) **As regards Fundamental Rights :** Articles 358-359 lay down the effects of a proclamation of emergency upon fundamental rights. With a proclamation of National Emergency Article 358 comes into operation automatically to suspend Art 19. Again the suspension of enforcement under Article 359 shall relate only to those fundamental rights which are specified in the President's order, excepting Articles 20 and 21.The President shall be entitled to suspend fundamental freedoms enshrined in Article 19 and their enforcement given in Arts 32 and 226 of the Constitution. He/she shall also be entitled for suspending the enforcement of any of the fundamental rights except those of life and personal liberty given in Articles 20 and 21. It is, however, required that such an order of the President shall be placed for the approval of the Parliament, as soon as possible. It does leave some option for the President to make reasonable delay in placing his/her order for the suspension of enforcement of fundamental rights before the Parliament for its approval.

National Emergency has been declared in our country three times so far. For the first time, emergency was declared on 26 October 1962 after China attacked the Indian borders in the north-east. This national emergency lasted till 10 January 1968. For the second time, it was declared on 3 December 1971 in the wake of the second India-Pakistan war, and was lifted on 21 March 1977. While the second emergency on the basis of external aggression was in operation, third national emergency (called internal emergency) was imposed on 25 June 1975. This emergency was declared on the ground of internal disturbance. Both the second and third proclamations were revoked in March, 1977.

State Emergency

The provision of State Emergency is contained in Art 356 of the Constitution that empowers the President to take over the administration of any state in the event of the breakdown of the constitutional machinery there. Either on the report of the Governor of the state concerned or on the basis of his/her own satisfaction, that virtually implies the satisfaction of the Union Cabinet, the President may invoke this

article of the Constitution. The proclamation under Art. 356, shall remain in force for a period of two months at the most, unless the period of extension is approved by the Parliament. In regard to the duration of this type of emergency, the constitution provides that a resolution to this effect must be passed by each house in with simple majority. Incase the Lok Sabha stands dissolved the Rajya Sabha may pass a resolution to this effect. However, the duration so extended by the Rajya Sabha shall continue for thirty days at the most. The 44th Amendment Act has once again restored the original position of six months. It means that a resolution of the Parliament can extend the duration of state emergency for a period of six months in one instance which may be further extended for the same length of time. However, the total period of state emergency cannot go beyond three years.

It should carefully be noted here that phrase 'breakdown of the constitutional machinery in the states' as described by M.C.Setalvad, is of 'widest import'. It may mean anything from the actual disintegration of the state administration to the struggle for preventing the option from parties forming an alternative government. In June, 1977 it was invoked by the Janata Government to sack nine Congress Government on the plea that the Lok Sabha election results of March, 1977 had demonstrated loss of people's faith in Congress rule. The Congress (I) Government under Mrs. Gandhi took almost a similar stand some three years after.

The scrutiny of the political development, in this direction, leaves this important impression that the rulers of the centre has largely may use of this important reserve power in the interest of their party politics. While factional rivalry between the two congress leaders like Gopi Chand Bhargava and Bhim Sen Sachar was enough to call for the invocation of the Art.356 in Punjab for the first time in 1951, smooth transfer of the assets and liabilities between the state of Punjab and the newly created state of Haryana warranted the imposition of state emergency in 1966. The extraordinary arrangement of half state emergency was withdrawn after the state of Haryana found its place in the political map of India. We find that the Centre has made use of this reserve power sometimes to remove a political deadlock and sometimes to maintain he status quo in its own favour, while at other times to frustrate the efforts of other parties to have the opportunity of making an alternative government. This constitutional provision has been said to be explained by the ruling party at the Centre according

to its political expediency. That is why, a good number of states have come under the President's rule on several occasions.

Again, one peculiar development that has taken place in this regard is the imposition of, what may be termed, 'half emergency'. It depends upon the will of the President to dissolve or suspend the State Legislative Assembly. In case the Assembly is dissolved, there is full state emergency and the way is cleared for the next general election, in case there is half emergency, it means that the Assembly is placed under 'suspended animation' and it depends upon the President to revive it or to destroy it. That is, half emergency may be converted into full emergency or non emergency.

The effects of the imposition of emergency under Art 356 may be given below :

1. The President shall assume all functions of the State Government and conduct its administration through the Governor or administrator who may, or may not, be assisted with some advisors.
2. As the state legislature shall be out of work on account of being dissolved or kept in a state of suspended animation, the Parliament shall have the power to make laws or pass budget for that state. It should be noted here that the law made by the Parliament for such a state during this period shall remain in force unless withdrawn by it earlier, but cease to operate beyond a period of six months at the most after the revocation of the emergency. A State law already in force shall be treated as 'suspended' during the period of emergency to the extent it is repugnant to the law made by the Parliament.
3. In case the Lok Sabha is not in session, the President may issue an order authorizing the expenditure out of the Consolidated Fund of that State subject to the eventual sanction of the Parliament.
4. The President may make any necessary or incidental or consequential changes in the provisions of the Constitution relating to the state authority so as to give desirable effect to the objects of the proclamation. The President either on his/her own initiative or on the resolution of the Parliament may confer powers or impose duties upon the Union, its officers and authorities.
5. This type of emergency does not entitle the President to curtail or take away the powers of the High Court.

Emergency under Article 356 was first imposed in 1951 in the state of Punjab. In 1959, Kerala was put under the President's Rule. There have been many cases of proclamation of state emergencies over the years like in Orissa in 1961, Haryana in 1967, U.P. in 1970, Tamil Nadu in 1976, nine states in India in 1977, Pondicherry in 1978 and so on. In fact emergency under Art 356 has been imposed in various states for one reason or the other for more than hundred times. However, after 1995 the use of this provision has rarely been made.

Financial Emergency

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he/she may by a proclamation make a declaration to that effect [Art 360(1)].

The consequences of such declaration are :

1. During the period any such proclamation is in operation, the executive authority of the Union shall extend to the giving of directions to any state to observe such canons of financial propriety as may be specified in the directions.
2. The President may give any direction that includes a provision requiring the reduction of the salaries and allowances of all or of any class of persons serving in connection with the affairs of the State Governments, or a provision requiring that all money bills or other bills to which the provision of Art. 270 apply to be reserved for his/her consideration by the Governors after they are passed by the legislators of the States.
3. It shall be competent for the President during the period that any such proclamation is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Court [Art 360 (3) and (4)].

The language of Art 360 is delightfully vague. It is not clear whether proclamation of such an emergency shall apply to the whole of the country or to some of its part or parts. It may also be pointed out that while other types of emergencies shall be

declared in the event of some factual situation, it might be invoked in the event of the opinion of the President acting on the advice of his/her Council of Ministers. The most formidable part of this provision finds place in its psychological impact. Instead of dealing with a situation of emergency, it might lead to the emergence of a situation of greater emergency. Finance is a very delicate matter and any declaration of emergency in this regard would create such a panic as any bring about a condition of economic instability. Till date the financial emergency has never been proclaimed in India.

7.9 Critical Appraisal of Powers

The enormous powers of the President during the times of three kinds of emergencies have been studied by the critics with a sense of lurking apprehensions. These have been labelled as 'undemocratic' 'unfederal' and inherent with the possibilities of any amount of mischief.

1. It is pointed out that these provisions confer sweeping power on the President who may transform himself/herself from the role of a guardian to a power drunk ruler. Here, is discovered a very dangerous opening for the creation of an absolute State with unlimited sovereignty.
2. The emergency provisions are incompatible with the doctrine of federalism. The way Art. 356 has been invoked in the past bears a clear testimony to the fact that the ruling party at the centre has broken the tips of the State Governments in the hands of other parties and played havoc with the phrase 'breakdown of the constitutional machinery'. In fact on the unscrupulous use and deliberate misuse of Art 356, Prof. Rao comments that, no doubt, our constitution contains many unfederal features, but this Article "may be called the crown of all".
3. A deeper study of the provision of the State Emergency leads to the examination of many serous loopholes. If the people are the makers of the Government, they are capable enough to be also its unmakers, or the judges, or the controllers of its activities. Whenever there is a political crisis in a state, the people must look towards the centre to come to their rescue, or,

they must create problems for the centre so that the imposition of the President's rule becomes unavoidable. The issue then becomes like a tussle between the centre and the people of the state.

4. What is a matter of grave concern is that the duration of national and financial emergencies can be extended for any length of time and the government may not like to revoke it even when normal times may be said to prevail.

7.10 Position of the President

In view of the powers of the President we need to analyse the position that he/she occupies in the political system. The Indian Constitution has hardly any detailed explanation with regard to the real nature of the Indian Presidency. As such it has given rise to serious debates and controversy amongst the scholars on the Indian Constitution. An overall assessment however, suggests that in different aspects the President has been assigned with greater powers by the Constitution of India. Judged from a theoretical perspective this cannot be denied. Despite such enormous powers assigned to the President by the Constitution, yet like Pylee, we too fear whether these powers are at all to be exercised by him/her or not. On the answer to this question will depend the real position of the President in the governmental system established by the Constitution rather than what may appear from a literal reading of the Constitutional provisions. It is here, that we have to turn to the nature as well as the working of the Government of India. Infact to a great extent the position of the President depends on the nature of relationship which he/she shares with the Council of Ministers more particularly with that of the Prime Minister.

To view the actual position of the Indian President it is essential for us to review the political system of the country. Along with it, is equally essentially to examine the vision or the objective which the framers had in their mind in creating the post of the President. In a Parliamentary form of government, the tenure of office of the virtual executive is dependent on the will of the Legislature while in a Presidential government the tenure of office of the executive is independent of the will of the Legislature. Thus, in the Presidential form, the model for which is the United States-

the President is the real head of the executive who is elected by the people for a fixed term. He/she is independent of the Legislature as regards his/her tenure and is not responsible to the Legislature for his/her acts. On the other hand, in the parliamentary system represented by England, the head of the executive i.e. the Crown is a mere titular head and the virtual executive power is wielded by the Cabinet, a body formed of the elected members of the legislature and is responsible to the popular house of the legislature for their office and actions.

Being a Republic, India could not have a hereditary monarch. So an elected President is at the head of the executive power in India. The tenure of his/her office is for a fixed term of years as of the American President. But on the other hand, he/she is more akin to the English king than the American President insofar as he/she has no 'functions' to discharge on his/her own authority. While the Cabinet of the American President is responsible to himself/herself and not to the Congress, the Council of Ministers of our President shall be responsible to the Parliament. The reason why, the framers of the Constitution discarded the American model after providing for the election of the President of the Republic by an electoral college lies in the fact, that in combining stability with responsibility, they gave more importance to the latter and preferred the system of 'daily assessment of responsibility' to the theory of 'periodic assessment' upon which the American system is founded. Under the American system, conflicts are bound to occur between the Executive, Legislature and Judiciary. What was wanted by the framers of the Constitution was that India on her attaining freedom after one and half century of bondage was a smooth form of government which would be conducive to the manifold development of the country without the least friction. Thus, parliamentary system was better suited than the presidential.

In due time, a serious controversy had arisen with regard to the real position of the Indian President and the relation on which he/she shares with that of the Council of Ministers. A section of constitutional experts theoretically believed that the President is the real executive. They affirm that our President is much more than the mere replica of the English Monarch, since he/she is endowed with an area of discretionary powers whereby he/she may act like an independent ruler over and

above the head of the Council of Ministers and the Parliament and he/she may choose to establish what may be termed as 'constitutional dictatorship'. On the other hand, there is a second school known as the Political School who believed that the President is the mere constitutional head. Infact, they designate our President as the prototype of English Monarch and carry their argument to the extent of treating him/her as a powerless officer, virtually a constitutional non entity. Now, let us examine the logical arguments of each school one by one. The first or the legal school advanced several arguments to show that the President may enhance his/her authority to act like real executive. Such arguments may be enumerated as under :-

1. According to Article 53(1) of the Indian Constitution the executive power of the Union shall be vested on the President and shall be exercised by him/her either directly or through his/her officers subordinate to him/her and this to be exercised in accordance with the Constitution. According to Article 74 there shall be a Council of Ministers headed by the Prime Minister to aid and advice the President. To many constitutional experts, the subordinate officers as mentioned in Article 53 and the Council of Ministers as mentioned in Article 74 are replica of each other. So, the Council of Ministers are the officials placed under the President and it is the President who can exert his/her commands over them.
2. According to Article 75(1), it is the President who appoints the Prime Minister and other ministers. Not only that, but they remain in their post at the pleasure of the President. Though it is mentioned in the Constitution that the President is to act on the aid and advice of the Council of Ministers yet there still remains an area of what may be termed as prerogative powers where the President may act independently. He/she may at times use these prerogatives in the matter of appointment and dismissal of the Prime Minister and in a very limited measure in the matter of dissolution of the Lok Sabha.
3. When the Parliament is not in session, the President may promulgate an ordinance if he/she is satisfied that circumstances exists compelling him/her to take immediate action. A Presidential Ordinance has the same force and

effect as an Act of Parliament. The President may also withdraw the Ordinance at any time he/she likes. Nowhere in the Constitution is it stated that such Ordinances has to be promulgated on the advice of the Council of Ministers thereby indicating his/her power of discretion.

4. The entire administration of the country is carried out in the name of the President. All the decisions and directions of the union government are taken in his/her name. How the directives are to be made effective depends on the rules and regulations which are being made under his/her name. Not only that but also so far as the legal aspect of these rules are concerned, it cannot be questions in the judiciary. So according to the Constitution, these directives as issued by the President are not created by the Council of Ministers but by the higher officials in the department of the administration.
5. Indian President is entrusted with certain constitutional powers which may fall under his/her power of prerogatives. The President may proclaim an emergency. Through such proclamation, the President may convert a democratic political system into a dictatorship in which he/she himself/herself may emerge as dictator with immense power. He/she may in such a situation establish his/her constitutional dictatorship. Again, it must at the same time be noted that the President is the supreme commander of the armed forces. All these may make out the passage for his/her despotic rule.
6. According to 42nd and 44th Constitutional Amendment Act the President is bound to act on the advice of the Council of Ministers. Such advice tendered to the President cannot be inquired in any court. Though 42nd Amendment Act has made the advice of the Council of Ministers binding upon the President, the 44th Amendment Act has retained the language of Art 74(1) and added another provision i.e. the provision of asking for recommendation of such advice by the President to the Council of Ministers. So, a new power added to the list of powers enjoyed by the President.
7. It has been argued that if, the President declines to act in accordance to the advice of the Council of Ministers then it is not clearly mentioned in either he 42nd or 44th Amendment Act the punishment which the President may

entail. Though there is a provision of impeachment for the violation of the Constitution yet the required majority for an impeachment is not always available to the Union Ministry. Again the procedure of impeachment is also inherent with serious loopholes and an ambitious President may very well make use of them for the sake of his/her defence.

8. The President may want to know regarding an important decision of a minister or Council of Ministers. In this respect, it is the responsibility of the Prime Minister to make him/her acquainted with the decision and provide necessary information in this regard. This implies that he/she is not a mere titular head. He/she may seek for information with regard to the administration of the state.
9. According to Article 53(1) the Indian President has to act in accordance with the provisions of the Constitution. Besides he/she takes an oath to preserve and protect the Constitution. If at any time, the President feels that any particular decision of the Union Cabinet is likely to undermine seriously the Constitution, then the President may reject such an advice and thereby, face the consequences.
10. On several matters like dismissing the ministry, if, it loses its majority in the Parliament , enjoying his/her discretion of appointing the Prime Minister or if none of the political party exerts their majority in forming the government, or even dismissing the Prime Minister, if he/she loses his/her command over the political party, dismissing the Lok Sabha, proroguing and summoning the session of the Parliament or if there is a coalition at the Union or if there is no party demanding majority in the house – in all such cases the President has an area of discretion in which he/she may act independently of the Council of Ministers.

The above arguments show that the President is not a mere constitutional head like that of the British Crown. In contrast to the above arguments, the political school forward their arguments in establishing that he/she is a mere constitutional entity. They forwarded the following arguments in their favour :

1. It is an indisputable fact that India have adopted the parliamentary form of

government on the lines of British constitutional system that places our President in the position of the dignified executive of the land. The real working head of the State is not the President but the Prime Minister who along with his/her Council of Ministers is collectively responsible to the Lok Sabha. Infact, there remained no doubt at all when Dr. B.R.Ambedkar declared that the President occupies the same position as the king in the British Constitution.

2. In carrying out the administration of the country it is the Council of Ministers that are collectively responsible to the Lok Sabha. This is in accordance with Article 75(3) of the Indian Constitution. So, it implies that the Council of Ministers enjoys the real powers since without granting real powers the question of responsibility does not arise. Thus, it is the responsibility of the Prime Minister with the support of the Council of Ministers to govern the country while the President may be permitted now and then to seek for their aid and advice.
3. There are certain provisions in the Constitution on the basis of which the President is required in almost all the cases to act in accordance with the advice provided to him/her by the Council of Ministers headed by the Prime Minister. In fact the President may likely to execute all his/her executive powers in accordance with the provisions of the Constitution. It is pointed out that the Indian President cannot violate the Constitution. He/she is under an oath to protect and preserve it. In case the President is found guilty, he/she can be removed by impeachment. Leaving aside his/her normal powers even his/her emergency powers can also be exercised only on the advice of the Cabinet.
4. Article 74(1) says that there shall be a Council of Ministers with Prime Minister at the head to aid and advice the President who shall in the exercise of his/her functions act in accordance with such advice, though he/she may require them to reconsider their view. It is argued that the President has no area of reserve powers where he/she may act without the aid and advice of the Union Council of Ministers.

5. Article 74(1) state that there shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President in the exercise of his/her functions. Though nowhere in the original Constitution, it has been stated that the President is bound to act in accordance to the advice provided to him/her by the Council of Ministers headed by the Prime Minister but the 42nd Amendment Act of the Constitution (1976) modified this provision to the effect that in the exercise of his/her functions, the President shall act in accordance with such advice. The 44th Amendment Act however, added further to Article 74(1) according to which the President may, if require, ask the Council of Ministers to reconsider such advice either generally or otherwise and the President shall act in accordance with the advice tendered after such recommendation. No court of law has the power to enquiry as to whether any advice was given by the Ministers and if so, what it was. So acceptance by the President of the advice tendered by the Council of Ministers has become obligatory, particularly, after the 42nd and 44th Constitutional Amendment.
6. It has been argued that the President is not directly elected by the people. So he/she cannot demand to be representative of the people. On the other hand, the Council of Ministers is constituted by the real representatives of the people. As such on the basis of people's representation, it is Council of Ministers and not the President who wield the real powers. The President has been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet.
7. Again to say, that the President may go to the last extent of using his/her military powers to repudiate the control of the Cabinet and the Parliament is altogether implausible in view of his/her authority being very much tied by the Acts of the Parliament and other elaborate arrangements like those of the National Defence Committee. It is on record that President Radhakrishnan felt bewildered when he/she heard the news about the march of our armed forces into the Lahore sector in 1965. Thus, much could happen at the behest of the Prime Minister that he/she communicated to the President afterwards.

8. According to the Constitution, the decision with regard to the policy formulation and its execution is required to be intimated to the President. The President may even seek for information with regard to administration of the country. It is the responsibility of the Prime Minister to convey the decision over the policy formulation and execution to the President. The President may simply be acquainted with the decision. He/she cannot request the Prime Minister or give any advice to him. The decision are however, taken by the Council of Ministers headed by the Prime Minister thereby, making explicitly clear that the Prime Minister is the real executive while the President being the nominal head.
9. Finally, the Supreme Court through its judgements in various cases however, has asserted that the role of the President in Indian administration is mere constitutional. For instance, in several famous cases like Ram Jawaya vs. State of Punjab in 1955, Samsher Singh vs. State of Punjab in 1974, the Supreme Court gave its judgement that India has the same system of parliamentary executive as in England. So, the role of the President like the British Crown will be mere constitutional.

7.11 The Vice President

The Vice President of India is the second-highest constitutional authority in the country. The Vice President primarily acts as the ex-officio Chairman of the Rajya Sabha and assumes the duties of the President in specific circumstances.

Constitutional Provisions and Qualifications : The office of the Vice President is defined under **Articles 63 to 71** of the Indian Constitution.

As per Article 66, a candidate for the Vice President of India must be a citizen of India and at least 35 years of age. Additionally, they must be qualified to be elected as a member of the Rajya Sabha and should not hold any office of profit under the Government of India, any state government, or any local authority.

Election Procedure : The Vice President of India is elected by an electoral college comprising members of both Houses of Parliament, including nominated members,

unlike in the Presidential election. The election follows the system of proportional representation through a single transferable vote, ensuring a fair process. Voting is conducted by secret ballot to maintain confidentiality, and the entire election is overseen by the Election Commission of India.

Tenure and Removal : The tenure of the position is 5 years, with eligibility for re-election. The holder can resign by submitting a letter to the President. Removal can occur through a resolution passed by the Rajya Sabha with an absolute majority (more than 50% of the total membership), which must also be agreed to by the Lok Sabha.

Powers and Functions

i) As the Ex-Officio Chairman of the Rajya Sabha, the individual presides over the sessions of the Rajya Sabha, ensuring discipline and decorum within the House. They hold the authority to cast a deciding vote in case of a tie and refer bills and motions to committees for further discussion and deliberation.

ii) In the event of a vacancy in the office of the President due to death, resignation, removal, or incapacitation, the Vice President acts as the President of India. He or She serve as the Acting President until a new President it elected.

iii) The Vice President also represents India at national and international events when required and plays an advisory role in legislative matters, offering guidance when necessary.

The role of the Vice President is significant in maintaining continuity in governance, especially by stepping in as Acting President when necessary. This ensures that the executive branch functions without interruption in the event of a presidential vacancy.

The Vice President plays a crucial role in ensuring the smooth functioning of parliamentary proceedings, particularly by presiding over the Rajya Sabha and maintaining discipline during its sessions.

Additionally, the Vice President strengthens the bicameral legislative system by facilitating the effective operation of both houses of Parliament, ensuring that the legislative process is orderly and efficient.

7.12 Selection and Appointment of the Prime Minister

The Prime Minister is selected by the party commanding clear majority in the Lok Sabha and appointed by the President. Normally selection by the party comes first and appointment by the President afterwards. What really matters is not the action of the President in issuing invitation to form the government but the role of the party commanding absolute majority in the Lok Sabha that has to deal with the crucial issue of choosing its nominee. In such a situation, the President is expected to act very cautiously. He/she should either invite the leader of the majority party in case he/she is sure that the party has no other possible contestant. He/she must wait till the decision of the party in clear majority is available to him/her in case he/she finds that the battle for selection is impending. As an instance, it is worth to note that President S. Radhakrishnan appointed Gulzarilal Nanda as the officiating Prime Minister after the death of Nehru in response to the recommendations of the Emergency Committee of the cabinet. A new practice started henceforth, that in case of sudden vacancy, the senior most member of the cabinet shall have the chance to act as the officiating Prime Minister until the decision of the majority party is available. A fundamental change, in this direction, occurred in March 1977, when the acting President (B.D. Jatti) appointed Morarji Desai as the fourth Prime Minister of India. The election results registered thumping victory for the Janata Party (a combination of four parties namely, Bharatiya Lok Dal, Congress O, Bharatiya Jana Sangh and Socialists and also in alliance with the CFD, CPM, Akali Dal and the DMK). Infact, the problem of appointing the Prime Minister found its manifestation in the political development of July, 1979 when Morarji Desai, instead of facing the no-confidence motion tabled against his/her ministry by the then leader of the Opposition, Mr. Y. B. Chavan of the Congress (S) resigned. A section of the erstwhile Janata Party formed the Janata (S) and thus, under the leadership of Charan Singh staked its claim. The President gave the first opportunity to the leader of the Opposition. Since, Chavan regretted his/her inability, the claims of the Janata leader (Desai) and of the Janata (S) (Charan Singh) were carefully studied. Both leaders submitted lists of their supporters. Since the side of Charan Singh became heavier the chance of forming an alternative government was given to him by the President with

a word of advice that he would seek the confidence of the Lok Sabha at the earliest possible date. However, this government failed to secure the vote of confidence. It fell after 24 days, when the Congress (I) decided not to support the confidence motion tabled by the Prime Minister. Once again, the war of succession ensued. The newly elected leader of the Janata Party (Jagjivan Ram) staked his claim without agreeing to submit a list of his supporters. The President thought mid-term poll as the only way out to solve the tangled issue. So, we see the President, for the first time, exercised his/her discretion and then won the applause of the people for taking the best possible action under the obtaining circumstances. On 31st October 1984, President Zail Singh took a different step by appointing Rajib Gandhi within hours of Mrs. Gandhi's assassination on the advice of some very senior Cabinet Ministers. Subsequently, his name was approved by the CPP. Undoubtedly, the language of Art 75 (1) is quite vague in regard to the appointment of the Prime Minister by the President. It simply says that the Prime Minister shall be appointed by the President. It therefore, says nothing about the discretionary authority of the Head of the Stat in this regard, nor does it lay down anything about the Prime Minister's being a member of the Parliament at the time of appointment. It is further inferable from the said illustration that the President may perhaps be in a position to exercise his/her individual judgement under abnormal conditions, that is, in case no party secures absolute majority in the Lok Sabha. In fact an examination of the whole arrangement leaves an impression that the President may appoint anyone as the Prime Minister provided (i) he/she is able to carry the majority of the members of the Lok Sabha with him/her and (ii) in the event of being the non member of the Parliament, he/she is able to get his/her seat preferably in the Lok Sabha within the period of next six months as happened in the case of P.V.Narasimha Rao.

7.13 Term of Office

Generally the Prime Minister stays in his/her office for a period of five years i.e. from one General election of the Lok Sabha till the next parliamentary election. However, at the time of extraordinary or emergency situation the period may enhance and so accordingly is enhanced the tenure of the Prime Minister. Again, if Lok Sabha

is dissolved by the President before normal terms of five years then that too brings an end to the tenure of the Prime Minister. In other words, the term of Prime Minister actually depends on the term of the Lok Sabha.

7.14 Powers and Functions

There is no doubt that the Indian Constitution confers a position of importance upon the Prime Minister but the Constitution does not confer on the Prime Minister of India any specific powers and functions. Actually, the powers and functions of the Prime Minister can be derived from two major sources. They are firstly, some through the constitutional provisions assigned for the Council of Ministers headed by the Prime Minister and secondly, the norms and conventions of the Parliamentary democracy. To analyse the real powers and functions of the Prime Minister we need to examine the relation which the Prime Minister shares with that of the President, Council of Ministers, Parliament, Political Party to which he/she belonged and the popular masses. For our convenience, let us discuss them in the following manner :-

1. Prime Minister and the President :

As a chief advisor the Prime Minister is the leader of the Council of Ministers. By virtue of his/her position he/she is the chief advisor of the President. On the basis of the advice provided to the President by the Prime Minister the entire administration of the country is carried out. It is on the advice of the Prime Minister that the President makes appointment of several important posts like the Governors of the State, Comptroller and Auditor General, Attorney General, the Chairman of Election Commission and so on. Again, the decision to proclaim an emergency is also done by the President on the advice of the Prime Minister. Art 74(1) of the Constitution mentioned about the advice of the Council of Ministers but in effect, it has virtually turned out to be the advice of the Prime Minister. For instance, it was on the advice of Mrs. Indira Gandhi that in 1975 the controversial decision to proclaim an emergency was made.

Prime Minister is the sole channel of communication between the President and the Council of Ministers. The Constitution enjoins upon him/her to communicate to

the President all decisions taken by his/her cabinet and to furnish him/her information relating to the administration of the country as well as the proposals for legislation as the President may call for. It indicates that, like the British Monarch, our President has no official means of knowing anything about cabinet's decision except what the Prime Minister may choose to tell him. Infact the President has the right to be kept informed. Though the cabinet meeting is never presided over by the President, it is the duty of the Prime Minister to communicate to the President either personally or through his/her ministers all decisions of his/her Council of Ministers relating to the administration of affairs to the Union and proposals for legislation. It is, indeed, by meeting the ministers individually that the President knows about the decision taken by them relating to the departments and, if he/she does not agree with any of them, he/she may ask the Prime Minister to submit a matter for the consideration of the Council of Ministers provided it has not already been considered by it.

2. Prime Minister and the Council of Ministers :

Conventionally, the position of the Prime Minister within the Council of Ministers is usually first amongst equals but in India this is not entirely true. According to Art. 74 of the Indian Constitution the Prime Minister is the leader of the Council of Ministers. So his/her position is at the top. The first and foremost function even the most difficult of all functions, of the Prime Minister relates to the composition of the Council of Ministers. The text of Art 75(1) is very sketchy. It says that all ministers shall be appointed by the President on the advice of the Prime Minister. The selection of the names and the distribution of portfolios among them is a matter of exclusive concern of the Prime Minister and the appointment of the ministers by the President is just mere observance of a technical formality. In a real sense, the function of the President is to accept the lists of the ministers with their portfolios submitted to him/her by the Prime Minister. While forming the Council of Ministers the Prime Minister enjoys the prerogative of selecting his/her colleagues so that he/she can retain his/her strong position within the party and also preserving comfortable majority in the popular chamber of the Parliament. The Indian Prime Ministers, authority in this respect is also circumscribed by various considerations like administrative, political, territorial, religious and the like. Again, there are

instances when we find the Prime Minister keen to experiment in forming a Cabinet of all talents. Such had happened in India at the initial stages when Pandit Nehru included in his cabinet leading Non- Congressman like Shanmukham Chetty (a man of parochial disposition by virtue of his intimate association with the Justice Party of Madras), Dr. B. R. Ambedkar (a leader of the depressed classes and highly critical of the Congress policies towards the untouchables), Dr. S. P. Mookerjee (a man of alleged Hindu communalist disposition by virtue of his long association with the Hindu Mahasabha), and John Mathai (an advocate of free enterprise). Again some of the ministers consider and claim themselves to be specially cut out for certain jobs and the Prime Minister has to take their claims into consideration in view of his/her awareness of the political fact that their exclusion may be a source of embarrassment. Some instances are available in our country like Sardar Patel insisted and got the portfolio of Home in the interim Government. Again, T.T. Krishnamachari declined the offer of Nehru to rejoin the cabinet after the third general elections of 1962 unless he was given the portfolio of Economic Coordination. Further, sometimes even the Prime Minister may be compelled by the demands of the senior members of the Party at a particular situation while forming the Council of Ministers. Infact, Mrs. Gandhi's preparedness to take Morarji Desai as her deputy Prime Minister with the portfolio of Finance instead of Home after the Fourth General election of 1967 may be cited as the most glaring case where a powerful party leader could tighten the hands of the Prime Minister resulting in the materialization of a package deal after a lot of intense and tough political bargaining. However, the authority of the Prime Minister with regard to the selection of his/her colleagues and distribution of portfolios among them however, ought to be studied in a very careful manner. True that the hands of the Prime Minister are sometimes tightened by the factors of party politics, it does not imply that his/her colleagues may have very much to say about their political assignments at every turn of movement. Authentic evidence illustrates the point that the party stalwarts, who stake their claims are not unaware of the fact that any serious point of difference with the Prime Minister must not be taken to an unpatchable extent as their dropping out from the first selection might entail their exclusion from office not merely for that term of the Parliament but for the good of all.

Now if the Prime Minister enjoys the prerogative of making his/her Council of Ministers, he/she has the complementary power, equally discretionary in character to a quite large extent, of making changes in it subject to the political considerations before him/her and the circumstances in which he/she is caught up. He/she has the undisputed right to get appointed, reshuffled or even removed his/her colleagues in the interest of his/her effective and efficient administration. He/she may keep any department under his/her control or bifurcate even trifurcate a department to be placed under the charge of a different minister. He/she may, in a direct or indirect manner, demand the resignation of his/her ministers or even advice the President to dismiss one if he/she forfeits his/her confidence. Further, there may arise a situation when a reluctant minister may have no better course than to resign in order to save the position of the Prime Minister feeling equally reluctant to allow his/her colleague to go. It happened in the case of Defence Minister Menon in Jan, 1963 when Nehru yielded to the pressure of circumstances in first demoting and then removing his blue eyed son from his government. As the cabinet is a team of very important ministers the Prime Minister carefully includes only those who are his/her best confidants. Besides, as the element of confidence is quite unstable, changes in the ministerial assignments take place from time to time. However, this is not applicable to a coalition government in the like manner. The way Morarji Desai and V.P.Singh formed Council of Ministers in two installments' is a clear testimony to this fact that the hands of the leader of a coalition government are very much tied by the tugs and pulls of the intra party politics.

3. Prime Minister and the Party :

The leader of the political party having a majority in the Parliament is appointed as the Prime Minister of the country. So, the party commanding a majority in the Lok Sabha is the very basis of his/her significant position. Practically, the powers of the President and his/her party are interrelated to each other. The Prime Minister is always very careful in retaining the dignity and image of the party both within the house and also outside it. He/she plays a special role in preserving the unity and fraternity amongst the party members. The party provides the Prime Minister with the

required support and so in return the party expects a responsible leadership and also expects effort to fulfill the promises it had made to the masses before the election. To a great extent the fate of the party depends on his/her potential to provide able leadership. The power of the party also depends on the personality and dignity of the concern individual who occupies the office of the Prime Minister. In fact the future of the party depends on several issues, such as, how the Prime Minister carries out the administration of the country, how far he/she succeeds in fulfilling the promises made before the people, formulating and implementing policies in this regard, how far could he/she popularize the governmental programmes and so on. He/she is required to play a lead role in the General Lok Sabha election so that his/her party could manage to win majority seats and thereby, form the Government. Here, it may also be noted that the personality, dignity and popularity of the Prime Minister are used as a means for propaganda for the upcoming elections.

The relationship between the Prime Minister and the Political Party remains incomplete if we do not take into account the relation which the Prime Minister shares with that of the Party President. Although the two great offices of the President of the Party and the Prime Minister seem to be essentially complimentary in theory, the case is quite different in practice. Sometimes the Party President acts as a king maker. Such an incident was evident when the Congress President Mr. Kamraj played the role of a king maker in selecting Mrs. Indira Gandhi for the candidature of the third Prime Minister. However, this trend proved a short lived affair, as the influence of Prime Minister Indira Gandhi did not take long to over-shadow the influence of the king maker. It confirmed that the influence of the Congress President will depend upon not only upon her own leadership capacities but also upon the degree to which she enjoys the confidence of the Prime Minister. Again at times the party President surrenders all his/her authority in favour of the Prime Minister thereby, playing the role of an obedient student subservient to the Prime Minister. In this respect, the role played by Congress Party President Mr. Debhanta Barua at the time, when Mrs. Gandhi was the Prime Minister of India is worth mentioning. Again, there are times when the Party President and the Prime Minister are found to be in constant confrontation with each other thereby, balancing the political power to a great extent. As an illustration one can cite the relation between

Mr. Kripalani and Pt. Nehru, Nehru and Tandon, Indira Gandhi and Nijlingappa and so on. Moreover, there are occasions when the same individual occupies both the post that is the post of the Party President and that of the Prime Minister. For instance Nehru shortly after the defeat of his candidate, Kripalani in the party elections of 1949, by all means became the centre of power in his party as well as in his government after he virtually grabbed the highest office of the party by the apparently unanimous resolve of the AICC in its meeting held in New Delhi in Oct, 1951. Mrs. Gandhi in her second phase of Prime Ministership became very influential and established her authority over both the party and the government. Again, Prime Minister Rajib Gandhi also held the post of the President in the Party.

4. Prime Minister and the Lok Sabha :

By virtue of being the leader of the majority party, the Prime Minister functions as the leader of the Lok Sabha as well. In this regard two practices have developed. First, in case the Prime Minister does not belong to the Lok Sabha (as Mrs. Indira Gandhi was a member of the Rajya Sabha at the time of her first appointment in Jan. 1966). Second, it has been the practice that during the protracted absence of the Prime Minister as in the event of his/her going abroad, the minister for Parliamentary Affairs in consultation with the Prime Minister intimates to the Speaker as to who would act as the leader of the house. Thus, the office of the leader of the house has a significance of its own as the Prime Minister is privileged with a dual capacity—leader of the Parliamentary Party and of the Lok Sabha- that makes him/her the central figure in the Parliamentary business.

The functions of the Prime Minister as the leader of the house is very important. He/she makes proposals for the dates of summoning and proroguing the session for the approval of the Speaker. He/she has to draw up the programme of official business to be transacted in a session of Parliament- bills, motions, discussions on various important activities of the government and the like. He/she is the member of the Business Advisory Committee that determines the allocation of time for official bills and other business on the basis of suggestions made by him/her from time to time. He/she shapes the course and content of legislation in as much as often his/her is the final voice in deciding as to what amendments will be acceptable, what private

members bill will receive support of the government and whether question should be left to a free vote or a whip be issued invariably. Though it is true, that the President alone can dissolve the house, but it can happen only on the advice of the Prime Minister. However, two important points are taken for consideration by the Prime Minister and the President before resorting to this drastic measure. These are firstly; President must accept the advice of the Prime Minister only when he/she is not a defeated leader of the Council of Ministers and that there are no prospects of forming an alternative ministry. Second, having a multi – party system, the President should be guided more by the practices of the dominions than by the English convention alone.

As the leader of the house, the Prime Minister deals with the procedural matters relating to the business of the house, and advises the house in moments of some difficulty or crisis. He/she can request the Speaker to fix a date for the closed session of the house or move a resolution that a seat of such a member be declared vacant under clause (4) of Art 101 or that the proceedings of the house of a secret session be no longer treated as secret. Two important points should be noted in this direction. First, while acting as the leader of the house, the Prime Minister not merely behaves like the leader of the majority party, it is also expected that he/she should behave like the leader of the house having other parties as well. Thus, the words of the leader of the house are sometimes taken as the voice of the mouthpiece of the whole house. Second, the Prime Minister by virtue of being the leader of the house, in a way becomes the guardian of the legitimate rights of the Opposition. He/she is expected to see as to what the Opposition leaders are really striving for and how far their demands can be conceded.

It is therefore, clear that the Prime Minister by virtue of holding the office of the leader of the house functions vis-à-vis three important counts namely The Speaker, the Government and the Opposition. He/she assists the Speaker in maintaining order and discipline in the house so that parliamentary business is conducted smoothly.

5. The Prime Minister and the People:

The Prime Minister is the real chief of the executive in India. In this respect he/

she is recognized as the mass leader. It is his/her responsibility to realize and understand the public mind and accordingly control it in his/her favour. It is through print and electronic media that propaganda regarding the personality, dedication to truth, bravery and popularity of the Prime Minister is highlighted. Accordingly, the image of the Prime Minister is brightened. All these campaigns create a feeling of trust and attraction towards the Prime Minister. His/her political activity, public speeches, comments over various, issues even his/her dress code, attitude creates an impression in the minds of the people. The success and popularity of the Government to a great extent depends on the role played by the Prime Minister. His ability to lead the country at critical juncture of crisis helps him/her to strengthen his/her position as the Prime Minister. Infact, it is on the popularity of the Prime Minister that the popularity of his/her Government and his/her political party depends. As such he/she is always eager to create a favourable image for his/her Government as well as for his/her political party. The Prime Minister uses the mass media to meet this end. Through television, radio and public meetings the speeches of the Prime Minister reaches the masses. The Prime Minister made the people aware over important governmental socio economic policies of the country. At the time of socio-economic or political crisis the governmental concern over the issues, effort taken at the governmental level to resolve it and employment of governmental mechanisms in this regard is intimated to the public so that they are not panic stricken and feel relieved. Practically, it is the sole responsibility of the Prime Minister to communicate to the people, the governmental opinion over important national and international issues.

7.15 Position of the Prime Minister

The powers and responsibility of the Prime Minister are quite wide in a parliamentary democratic system of India. In reality, it is the Prime Minister who is the leader of the people. The success and failure of the Indian Government to a great extent depends on the leadership provided by the Prime Minister. It is argued, that, over the years the powers and position of the Prime Minister has been enhanced with the centralization of bureaucracy which is placed mainly at the disposal of the Prime

Minister. As such many were of the opinion in calling Indian administrative system, instead of a cabinet system as the Prime Ministerial Government. However, in this regard, it is also essential to point out that the Indian Prime Minister cannot convert himself/herself into a dictator since not only the constitutional provisions but there are certain political limitations of his/her powers and authority as well. First of all, public opinion can serve as an important check on the powers of the Prime Minister. The Prime Minister cannot ignore the desires and demands of the citizens, since it is on their electoral support that the future existence to political power will depend n. Again, the interest and pressure groups of our country are also eager in carrying out the demands in their favour. Similarly, the criticisms of the governmental policies by the opposition and mass media further checks and balance the powers and authority of the Prime Minister. What are perhaps more interesting lies in the fact that since nineties, due to the formation of coalition government at the centre, the role played by the regional parties has assumed a greater significance. Infact, these regional parties has opened a new vista of an era of political bargain which further restricted the powers of the Prime Minister.

7.16 Union Council of Ministers

According to Article 74, of the Indian Constitution there shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President. The President appoints the leader of the Party having a majority in the Lok Sabha as the Prime Minister. While the Prime Minister is selected by the President, the other Ministers are appointed by the President on the advice of the Prime Minister [Art 75 (1)] and the allocation of portfolios amongst them is also made by him/her. Further, the President's power of dismissing an individual minister is virtually a power in the hands of the Prime Minister. Ministers may be chosen from members of either house and a minister who is a member of one house has a right to speak in and to take part in the proceedings of the other house though he/she has no right to vote in the house of which he/she is not a member (Art 88). Under our Constitution, there is no bar to the appointment of a person from outside the Legislature as Minister. But he/she cannot continue as Minister for more than six months unless he/she secures a seat

in either house of the Parliament (by election or nomination as the case may be). By virtue of this provision, Pandit Pant, who was not a member of Parliament, was appointed Minister for the Union and, subsequently, he secured a seat in the Upper house, by election. Even Dr.Manmohan Singh, when he assumed the office of the Prime Minister in 2004 was not a member of the Lok Sabha but that of the Rajya Sabha. Thus, the convention that the Prime Minister belongs to the Lok Sabha has not always strictly been followed.

Earlier the number of members of the Council of Ministers was not specified in the Constitution. By the Constitution 91st Amendment Act, 2003, the total number of ministers, including the Prime Minister, shall not exceed 15% of the total number of the members of the House of the People.

Term of the Council of Ministers

Generally the term of the Council of Ministers is same as that of the term of the Lok Sabha i.e. of 5 years. But, if the Lok Sabha is dissolved before the tenure of 5 years then the term of Council of Ministers will also come to an end. Again if, the tenure is enhanced then the tenure of the Council of Ministers will also enhance. Again, if a vote of No Confidence is passed then in the Lok Sabha, then the Council of Ministers shall be under a constitutional obligation to resign as soon as it looses the confidence of the popular house of the legislature. The collective responsibility is to the House of the People even though some of the ministers may be members of the Council of States. This indicates that their tenure depends upon the support of the majority members within the Lok Sabha. So, long as they could retain their majority in the Lok Sabha the term of their office is ensured and secured.

7.17 Composition and Classification

At this juncture of our discussion, it is essential for us to know what exactly is meant by the term Council of Ministers. According to Prof. D. D. Basu the Council of Ministers is a composite body, consisting of different categories. The Constitution does not classify the members of the Council of Ministers into different ranks. All

this has been done informally, following the English practice. It has now got legislative sanction, so far as the Union is concerned, in Section 2 of the Salaries and Allowances of the Ministers Act 1952. Mr. Gopalswami Ayyenger in his report presented in the year 1949, classified the Ministers into three broad categories namely (1) Cabinet Ministers, (2) Ministers of State and (3) the Deputy Ministers. The rank of different ministers is determined by the Prime Minister according to whose advice the President appoints the ministers and also allocates business amongst them. While the Council of Ministerss is collectively responsible to the House of the People, Art 78 (c), enjoins the Prime Minister, when required by the President, to submit for the consideration of the Council of Ministerss any matter on which a decision has been taken by a minister but which has not been considered by the council. In practice, the Council of Ministerss seldom meets as a body. It is the cabinet, an inner body within the council, which shapes the policy of the Government. While cabinet ministers attend meetings of the cabinet of their own right, ministers of state are not members of the cabinet and they can attend only if, invited to attend any particular meeting. A Deputy Minister assists the Minister in Charge of a Department of Ministry and takes no part in Cabinet deliberations. Let us examine these three types in the following manner :-

1. **Cabinet Ministers :**

   The first categories of ministers are the Cabinet Ministers. They are the members of the cabinet and are in charge of important ministries. They play a major role in the formulation and implementation of governmental policies. Generally, a cabinet is composed of the Prime Minister and the experienced members of the Council of Ministerss.

2. **Ministers of State :**

   The second categories of ministers are known as the Ministers of State. They are not the members of the Cabinet. However, despite being non members of the cabinet they were called upon for attending cabinet meeting in case there is a discussion with related to their concerned department at the cabinet meeting. The Minister of State can be either entrusted with independent charge of a particular department or can be placed under a cabinet minister.

3. **Deputy Minister :**

So far as importance and position is concerned, the deputy ministers occupies the third category of ministries. They help the departmental minister in carrying out the administration of the department. They never could attend the cabinet meeting.

Accordingly, as observed by Prof. Pylee a three tier ministerial hierarchy was established, with the cabinet Ministers at the top, Ministers of State in the middle and Deputy Ministers in the lowest rung of the ladder. A clear distinction was drawn between Ministers who were members of the cabinet and others. The cabinet was composed of senior most ministers who were not mere departmental chiefs but whose responsibilities transcended departmental boundaries into the entire field of administration. It was, naturally, a smaller body and the most powerful body in the Government. Thus, the growth of the cabinet as a separate body from the Council of Ministerss was only a natural product of the application of the administrative theory of organization. Soon, the cabinet became not only a distinct entity, different from the Council of Ministerss, but also an institution with its own detailed organization. In the process, it has also taken over functions assigned by the Constitution to the Council. For instance, the constitutional responsibility of advising the President is the Council's. But this function, today, is exercised exclusively by the cabinet.

Here, it must be noted that in recent years the authority of the cabinet is well established in India. Though theoretically, the real powers and responsibility of the executive are entrusted to the Council of Ministers's but in reality it is the cabinet who wields the actual power. Many describe the dominance of the cabinet as the cabinet dictatorship. Consequently, Lok Sabha controlling the Council of Ministerss has been converted into a mere myth. Lok Sabha cannot control the Council of Ministerss instead it is the cabinet who regulates the Parliament. So, the first line of leaders belonging to a political party having a majority in the Lok Sabha together constitutes the cabinet who established their supremacy and dominance in the executive.

The strength of the Indian cabinet today, is the result of support that it receives from the party to which it belongs and the overwhelming strength of the party in

Parliament. With a stable parliamentary support, the cabinet, in reality, becomes the leader of Parliament. The initiatives for all the policies and programmes of the Government are in the hands of the cabinet. Nevertheless, it must be pointed out that the Indian cabinet has been treating Parliament with greater consideration and respect than is usual elsewhere under conditions of overwhelming parliamentary majorities. This has been mainly due to two reasons. First, on some occasions, on questions of great importance which vitally affect the nation as a whole, the cabinet itself has given over the initiative to Parliament. The best example of this is provided by the initiative taken by Parliament in settling the question of reorganization of the state of Bombay at the time of adoption of the States Reorganization Act of 1956. Secondly, members of Parliament have often evinced a willingness to forget party affiliation when questions of purity in administration are brought before it. On such occasions, the Indian Parliament has shown that it is the mirror and custodian of public opinion in the country and a true representative of the electorate. The manner in which Parliament dealt with the allegations brought before it against a State enterprise like the Life Insurance Corporations in 1957 is a classic example in point. Parliamentary pressure has also brought about perceptible changes in later years in the policies of the government towards industry, labour, taxation, defence, etc.

However, despite the threefold classification of the ministers, it is the Prime Minister who has the final say with regard to the composition, reorganization, distribution of portfolios and dismissal of a minister within the council. In the Indian Constitution there is no mention of the post of Deputy Prime Minister. But in the tenure of different Prime Minister a number of cabinet Minister has been appointed as the Deputy Prime Minister. Even in the report of the Administrative Reforms Commission the post of the deputy Prime Minister was supported. While unfurling the pages of history, we find that when Nehru was the Prime Minister, Sardar Patel was appointed as the Deputy Prime Minister. Again, at the time of Indira Gandhi, Morarji Desai was appointed as the Deputy Prime Minister, when Morarji Desai became the Prime Minister of the Janata Government there were two Deputy Prime Ministers namely Mr. Charan Singh and Mr. Jagjivan Ram and so on.

7.18 Powers and Functions

Today the functions of the cabinet, for all practical purposes, are identified with those assigned to the council under the Constitution. For our convenience they can be summed up in the following manner :-

1. **Determination and implementation of the policies:**

   Theoretically in a Parliamentary administrative system, it is the Parliament which determines the policy. On the basis of such policies the cabinet takes the official decision and accordingly directs the governmental works. So, cabinet is expected to act as a functional committee of the Parliament. But the real situation is somewhat different from the theoretical position. It is the cabinet who determines the policies. Such policies are recognized and ractified in the Parliament. The cabinet ministers are usually the first rank of leaders of the Party. That too of a party having a majority in the Parliament. So the policies as determined by the cabinet have therefore, the assurance of acceptance and getting ratified in the Parliament. In other words, the policies as determined by the cabinet are therefore, final and their ratification in the Parliament is a mere routine or official function.

2. **Formulation of Laws :**

   The Parliament is empowered to formulate laws but in reality it is on the initiative of the Council of Ministerss that laws are being made. The number of Private Bills by an individual member is hardly any placed before the Lok Sabha. Infact, most of the bills are Governmental and are placed before the Parliament by the Minister. Even with regard to the formulation of the bills the primary role is being played by the cabinet members. The draft of the bills is made under the direction and supervision of the union cabinet. Since the cabinet members enjoyed the support of the majority in the Lok Sabha, so they hardly face any difficulty in passing the bill into a law.

3. **Administrative Responsibility :**

   The most important role of the cabinet is in the field of administration. Though the Indian Constitution has granted the executive power to the President of the country yet it is the Council of Ministerss more particularly

the cabinet who carries out the administration of the country. Through the permanent government officials of the various department the concerned ministers discharges the executive functions of the Government. So, the cabinet is the real administrative authority of India. Not only that, the cabinet also plays an active role in implementing the laws passed in the Parliament.

4. **Financial Responsibility :**

One of the primary responsibilities of the cabinet is to determine the income and expenditure of the Indian Government. At the beginning of a financial year, an annual budget is presented before the Parliament. In this respect, the primary responsibility of the budget lies with the Finance Minister. But all the major financial issues like imposition of Income Tax, allocation of funds and so on are determined by the cabinet members.

5. **Ensuring coordination :**

The cabinet coordinates between the Executive and the Legislature in the Parliament. The role played by the cabinet in this respect is highly significant. All the cabinet ministers are in charge of one and sometimes even more than one departments. Through the officials of the department the ministers discharges their responsibilities. Such a situation demands inter departmental coordination for the smooth functioning of the Government. It is the cabinet who takes serious initiative in retaining coordination amongst the department. For example, it can be cited that the cabinet creates opportunities for consultation and discussion amongst the departments, appoint inter departmental committees and so on. Here, the role played by cabinet Secretariat particularly the role of the Cabinet Secretary deserves a special mention.

6. **Powers related to Appointment :**

Article 74 of the Constitution lays down that the President, in the exercise of his/her functions, act in accordance with the advice tendered by the Council of Ministerss. The President appoints Governors, Ambassadors and other diplomatic representatives, the Chief Justice and other Judges of the Supreme Court, High Courts, Attorney General and Auditor General of India and various Commissions such as the Finance Commission of India, and the

Election Commission of India. All these appointments are suggested by the cabinet which is the main body of the Council of Ministerss and on the basis of such recommendations the President makes all appointments to the posts mentioned above. The President has a power to remove the Attorney-General of India, the Governors of the States, etc. but in removing these officers he/she has to act on the advice of the Council of Ministerss.

7. **Powers related to Foreign States :**

One of the principal responsibilities of the cabinet is to determine, control and execute the foreign policies. On the basis of political ideology of the existing ruling party at the union, the foreign policy of India is formulated and thereby executed. The External Affairs Department plays a crucial role and this department occupying an important position is placed under a cabinet minister. However, the Prime minister also takes eager interest in supervising and providing leadership in the formulation of foreign policies. Infact, the executive power relating to foreign affairs is exercised by the Council of Ministerss in reality. All treaties and international agreements are negotiated and concluded by the Council of Ministerss in the name of the President. Declaration of war and conclusion of peace are performed by the Council of Ministerss in the name of the President.

8. **Power related to Emergency :**

Though constitutionally it is the President who is empowered to declare an emergency yet he/she does so mostly on the advice of the Council of Ministerss particularly the Prime Minister. So, the decision of declaration of emergencies, whether arising out of war, aggression or armed rebellion, emergency arising out of failure of constitutional machinery in a State and financial emergency are done or are exercised by the cabinet in the name of the President. Infact, the President can declare emergency only under the written advice of the cabinet specially the Prime Minister.

The above discussion on the powers and functions of the Council of Ministers particularly, the cabinet suggests that the cabinet is the steering wheel of the ship of

the State. The cabinet is in practice the Government of India. The voice of the State at a given time, to all intense and purposes, is a voice of the cabinet. That is why S.L. Sikri in his *Indian Government and Politics* wrote that the cabinet is the core of the Indian Constitutional system. It is also the most powerful organ of the Union Government. Its functions are numerous and as varied as the functions performed by a country's Government.

7.19 Conclusion

After examining the two sides of the controversy, to conclude we may say that while the Constitution places the President in the category of the English Monarch, much depends upon the personal equation of the holder of the office and the role he/she plays in the moments of exceptional crises. The President is the head of the State. He/she is the guardian of the Constitution. But he/she is neither a real executive like the American President, nor he/she is a mere figurehead of no worth like the President of France under the Third and Fourth Republics. If the nature of Presidency is judged from a judicial perspective then the President may appear as a mere political non entity or just like a rubber stamp. But again, if we unfurl the pages of history and examine the role of different Presidents of India, then no wonder the tenure of Dr. Rajendra Prasad earmarked a difference. The way he/she acted in visiting the Somnath temple and then attending the funeral ceremony of Sardar Patel or visiting foreign countries like the Soviet Union or even showing resentment towards Nehru's China's policy when Tibet was raped and so on indicated his/her sensitivity in exercising his/her powers thereby converting the post from a mere non entity to a one with independent authority. Again, the inherent power of the great office could be noticed when the philosopher President Dr. Radhakrishnan occupied the post of a President against a weak Prime Minister Mrs. Indira Gandhi as she was then. If it is absurd to call the Indian President a rubber stamp, it is equally untenable to regard him/her as quiescent volcano. What is really expected and desired is mutual harmony and cooperation between the President and his/her Ministers. In fact the Indian President has to perform the role of a friend, philosopher and guide of the government.

Despite several limitations, the Prime Minister need not always be constrained and guided by the political situation of a time. Infact, much depends on the personal equation of the holder of the office of the supreme ruler along with the nature of the prevailing political situation. In case, the Prime Minister has been able to establish his/her legitimacy independently of his/her constitutional and institutional power structure he/she would be in a safe position to exercise more powers than a person whose support structure is coterminous with the legal and constitutional boundaries of the political system. Keeping in view the position of Mrs. Indira Gandhi, one may observe that, in case the Prime Minister succeeds in earning legitimacy from the people and establishes a sort of direct rapport with them then she would enjoy a comfortable situation of less constraints over her authority.

7.20 Summing Up

- At the head of the union executive stands the President of India.
- The President of India is elected by indirect election, that is, by an electoral college, in accordance with the system of proportional representation by means of a single transferable vote.
- The President holds his/her office for a period of five years from the date he/she takes the oath in the presence of the Chief Justice of India.
- The normal powers and functions of the President can be classified into five categories namely- Executive, Legislative, Financial, Judicial and others.
- The President of India is assigned with certain special powers to meet the arisen critical situation. The abnormal functions and powers of the President are contained in Part XVIII of the Constitution titled, 'Emergency Provisions'. The Constitution stipulates three kinds of emergencies namely the National Emergency (Art 352); State Emergency (Art356) and Financial Emergency (Art 360).
- The President of India is neither a real executive like the American President, nor he/she is a mere figurehead of no worth like the President of France under the Third and Fourth Republics.

- Just like in England, in India too, the Prime Minister has a pre eminence, by convention and usage. Art 74(1) of our Constitution expressly states that the Prime Minister shall be at the head of the Council of Ministerss.
- According to Article 74 of the Indian Constitution, there shall be a Council of Ministerss with the Prime Minister at the head to aid and advice the President. The President appoints the leader of the party having a majority in the Lok Sabha as the Prime Minister. While the Prime Minister is selected by the President, the other ministers are appointed by the President on the advice of the Prim Minister [Art 75 (1)] and the allocation of portfolios amongst them is also made by him/her.
- Generally the Prime Minister stays in his/her office for a period of five years i.e. from one General election of the Lok Sabha till the next Parliamentary election. However, if Lok Sabha is dissolved by the President before normal terms of five years then that too brings an end to the tenure of the Prime Minister.
- The powers and functions of the Prime Minister can be derived from two major sources. They are firstly, some through the constitutional provisions assigned for the Council of Ministerss headed by the Prime Minister and secondly, the norms and conventions of the parliamentary democracy.
- The real powers and functions of the Prime Minister can be examined through the relations which the Prime Minister shares with that of the President, Council of Ministerss, Parliament, Political Party to which he/she belong and the popular masses.
- The Prime Minister is selected by the President, the other ministers are appointed by the President on the advice of the Prime Minister [Art 75 (1)] and the allocation of portfolios amongst them is also made by him/her.
- Mr. Gopalswami Ayyenger in his/her report presented in the year 1949 classified the Ministers into three broad categories namely (1) cabinet Ministers, (2) Ministers of State and (3) the Deputy Ministers.
- The functions of the cabinet, for all practical purposes, are identified with those assigned to the council under the Constitution.

7.21 Probable Questions

Essay Type Questions :

1. Discuss the powers and functions of the Indian President.
2. Evaluate the emergency powers as assigned to the President of India.
3. Discuss the powers and position of the Indian Prime Minister.
4. Examine the powers and functions of the Union Council of Ministers.
5. How is the President of India elected? Make a critical assessment of the electoral methods followed in electing the Indian President.
6. Is the Indian President simply 'a rubber stamp?' Give arguments to justify your position.
7. Show how India has adopted a British Parliamentary model with respect to its composition of the Executive.
8. Explain how the Prime Minister heading the Union Council of Ministers enjoys the real power of the executive.

Short Questions :

1. Write a short note on the legislative powers of the President
2. Explain briefly, the tenure and the procedure of removal of the President from his/her office.
3. Write a short note on the classification of the Union Council of Ministers.
4. How the Prime Mister is appointed in India with special reference to a coalition?

Objective Questions :

1. Who is the Head of the State in India?
2. Who participate in the election of the President of India?
3. Under which article can the President's rule be imposed?
4. Which article deals with the formation of Council of Ministers?
5. Who is the Head of the Council of Ministers?

7.22 Further Reading

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Unit 8 ❑ Emergency Provisions

Structure

8.1 Objective

After studying this unit, the learner will be able to :

- Explain the origin of emergency provisions under British rule in India.
- Discuss the conditions in which the President can proclaim a national emergency under Article 352.
- Discuss the various effects of National Emergency relating to the executive, legislative, and financial matters, and fundamental Rights.
- Understand the process of approval of the parliament against the proclamation of national emergency.
- Explain the circumstances in which the President can proclaim 360.
- Discuss the effects of an emergency in the state or president's rule.
- Cite examples of national emergencies proclaimed in the country with their duration.

8.2 Introduction

Almost all constitutions are intended to cope with uncertain times and events, therefore, emergency provisions are highly important. In constitutional terms, an emergency is a situation that includes 'some imminent danger to the life of the nation, requiring some immediate action' by the government to preserve the prevailing constitutional order. The concept of emergency has passed into political theory. However, the exercise of emergency powers is oftentimes curtailed by various conditions, both in theory and in practice. To guard against the accidental emergence of dictatorship as a result of war, external aggression, or internal disturbance, it is always desirable to make specific emergency provisions in the constitution. With this end in view, the Constitution of India has allotted a separate part altogether to emergency provisions. Part XVIII, therefore, is an element of modernism in our Constitution.

8.3 Origin of Emergency Provisions under British Rule in India

Before the independence of India, the Colonial ruler has also introduced certain emergency provisions for the Governor-General and the Governors of Indian states for managing the affairs of the Indian Colony. In the Government of India Act. 1935, various provisions established the executive's supremacy over other branches of the government, especially through the execution of emergency provisions. The head of the executive was the Governor-General, a nominee of the British government, who had enormous powers over his dominion. emergency provisions in the 1935 Act were introduced not to preserve the constitutional order, but to provide an opportunity to the colonial rulers to declare a state of siege or to take extra-constitutional steps. Section 12(1) of the 1935 Act defines some special responsibilities of the Governor-General, including :

(a) the prevention of any great menace to peace or tranquillity of India.

(b) safeguarding the financial stability and credit of the Federal government.

This section is the source for granting complete freedomto the Governor-General and the Governors of Indian states for proclaiming emergency and promulgating laws accordingly.

The 1935 Act defined two types of emergencies : those emerging from a failure of constitutional machinery (Section-45); and those arising due to 'war or internal disturbance' (Section-102). In the case of failure of constitutional machinery, the Governor-General had vast discretionary powers to proclaim emergency at the Federal level. In contrast, the Federal Legislature was toothless and had no role to play in circumscribing the authority of the Governor-General either by ensuring that the emergency was proclaimed as the last resort or in checking the Governor General's law-making powers for the duration of the emergency.

Nonetheless, the proclamation of emergency had to be approved by the British Parliament within six months of its proclamation, and this extended the period of the emergency for another year from the date of such approval. Overall, an emergency could not carry on continuously for more than three years. Thus, the Governor General's emergency powers were time-bound under the first kind of emergency.

However, the laws made under the exercise of emergency powers could continue to have effect for up to two years after the emergency had expired, unless repealed or re-enacted by the Federal Legislature. Similar emergency powers vested in Governors in their respective provinces, empowering them to proclaim emergency at the provincial level (Section 93).

In the second type of emergency, emerging from war or internal disturbance, the power of proclamation of emergency once again vested in the Governor-General without any checks and balances to ensure its use only in extreme circumstances. As with the first kind of emergency, the British Parliament had to approve the proclamation within six months. However, the second kind was not time-bound and was not subject to any form of legislative approval for continuance in force.

Though, the law-making power with regards to provinces during the emergency was granted to the Federal Legislature. Still, the ultimate authority to repeal or approve a statute remained with the Governor-General.

8.4 Emergency Provisions in the Indian Constitution

The Indian Constitution is one of the few constitutions which provide some provisions for dealing with extraordinary situations. In doing so it follows the Government of India Act 1935, which embodied emergency provisions in section 45 in the case of the Centre and section 93 in the case of the Provinces. Moreover, present provisions for an emergency in India are borrowed from the Weimar Constitution of Germany. Emergency Provisions in the Constitution of India are contained in Part-18 and are embodied in 9 articles (352-360). Three types of extraordinary or crises are envisioned. First, when there is a war or external aggression has been committed or there is the threat of the same, or if internal disturbances amounting to armed rebellion take place. Second, when it becomes impossible for the government of a State to be carried on in accordance with the Constitution; and third, if the credit or financial stability of the country is threatened. In each case, the Indian Constitution gives President the authority to declare three types of emergencies with varying consequences.

a) National Emergency (Article 352)

b) Emergency in state or president's rule (Article 356) and

c) Financial Emergency (Article 360)

However, it's only in some of the special and pre-mentioned cases that such a huge step can be taken by the president of the country. Also, with the amendments, it has now been mandated to present the declaration of emergency in the written form.

8.4.1 National Emergency (Article 352)

Article 352 states that if the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether, by war or external aggression or armed rebellion, he/she may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation. The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression. The term 'armed rebellion is inserted by the 44th amendment of the constitution, 1978. Before this term, it was known as an internal disturbance.

8.4.1.1 Parliamentary Approval and Duration

The proclamation of emergency must be approved by both the houses of the Parliament within one month from the date of its issue.

However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.

Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority. Special majority means a majority of 2/3rd. members present and voting supported by more than 50% of the total strength of the house.

8.4.1.2 Revocation of Proclamation

A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval. The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

8.4.1.3 Effects of National Emergency

A proclamation of Emergency has drastic and wide-ranging effects on the political system. These consequences can be categorised into 3 groups :

i) Effects on the centre-state relations :

While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change. this can be studied under three heads :

Executive : Centre becomes entitled to give executive directions to a state on 'any' matter

Legislative : The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the parliament become inoperative six months after the emergency has ceased to be in operation.

Financial : The president can modify the constitutional distribution of revenues between the centre and the states.

ii) Effect on the life of the Lok Sabha and State Assembly :

iii) While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond the normal term for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

Similarly, the Parliament may extend the normal tenure of a state Legislative Assembly by one year each time during a national emergency, subject to a maximum period of six months after the emergency has ceased to operate.

iv) Effect on fundamental rights :

Articles 358 and 359 describe the effect of a National Emergency on Fundamental Rights. These two provisions are explained below :

1. **Suspension of Fundamental rights under Article 19 :** According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
2. The 44th Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
3. **Suspension of other Fundamental Rights :** Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, remedial measures are suspended and not the Fundamental Rights.
4. a. The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
   b. The suspension could be for the period during the operation of an emergency or for a shorter period.
   c. The Order should be laid before each House of Parliament for approval.
   d. The 44 Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Articles 20 and 21.

8.4.1.4 Uses and Reasons of National Emergency in India :

This type of emergency has been proclaimed three times so far in 1962, 1971, and 1975. All three emergencies were held between the years 1962 to 1977.

The first national emergency was imposed on the country from October 26, 1962, to January 10, 1968, by then-president, Dr. Sarvepalli Radhakrishnan. It was regarding the rising external aggression during the Indo-China war.

The second time, the national emergency was imposed from December 3, 1971, to March 21, 1972. This emergency was imposed by the president, V.V. Giri. Here also, the reason was the external aggression but during the Indo-Pak war.

The third time a national emergency was imposed by the President, Fakhruddin Ali Ahmed. Indira Gandhi, then-prime minister asked for permission from the president and was successful in declaring a national emergency.

It lasted for nineteen months, that is from 25 June 1975 to 21 March 1977. Here, the reason was stated to be a clash between the legislature and the Judiciary.

8.4.2 Emergency in State or President's Rule (Article 356)

When the constitutional machinery breaks down in a state, the president's rule is imposed by centre. This can be proclaimed if the president is satisfied that the governance of a state can't be carried in accordance with the constitution. In this case, the president can act with or without the governor's report. Also when a state doesn't follow any directive from the centre, the president's rule can be imposed.

8.4.2.1 Grounds of Imposition :

The president's ruler can be proclaimed under Articles 355, 356 and 365. Article 355 says it shall be the duty of the union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provision of the constitution.

Article 356 says 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 provisions of this constitution, he/she may issue a proclamation.

Article 365 says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the President to hold that a

situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.

By that proclamation, the president-

a) may assume to him/herself all or any of the powers vested to the Governor.

b) May declare that the powers of the legislature of the state shall be exercisable to the President.

The president cannot, however, assume to himself. Any of the power vested in the High court or suspend the operation of any provisions of the Constitution relating to the high Court.

The Parliament can confer on the President, the power to make laws for the state. The parliament may also authorise the president to delegate such power to any other authority as specified by him/herself.

If the Lok Sabha is not in session, the President may authorise expenditure from the consolidated fund of the state, pending sanction of such expenditure by the parliament.

8.4.2.2 Approval of the Parliament and Duration :

a) Under article 356, the president acts on the report of the Governor, or otherwise, the president can act even without the Governor's report. A proclamation issued under article 356 must be laid before each House of the Parliament and must be approved by both the houses of parliament by a simple majority within two months from the date of its issue. However, if the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime.

b) A proclamation so approved shall, unless revoked, be in operation for six

months from the date of the issue of the proclamation. It can be approved by the parliament for a future period of six months.

c) A proclamation issued under Art. 356, can, therefore, be in force normally for a maximum period of one year. Stretch.

However, it can be extended by the parliament not beyond three years from the date of issue of the proclamation, if

i) A proclamation of emergency under art. 352 is in operation in the whole of India or any part of the country at the time of passing of such resolution.

ii) The Election commission certifies that the continuance in force of the proclamation beyond the one year is necessary on account of difficulties in holding the general election to the legislative assembly of the concerned date.

8.4.2.3 Revocation of Proclamation

A presidents proclamation can be revoked by the president anytime [this doesn't need parliament's approval]. Parliament on its own can't revoke the president's rule.

The President rule has been imposed four times in West Bengal

Term	Date of imposition	Date of revocation	Duration	Reasons to impose the President Rules
1	1 July 1962	8 July 1962	7 days	Interim Period between the death of incumbent Chief Minister and election of the new leader.
2	20 February 1968	25 February 1969	1 year, 5 days	The state was placed under the president's rule following the collapse of two successive short-lived coalition governments.
3	19 March 1970	2 April 1971	1 year, 14 days	The collapse of the United Front
4	28 June 1971	19 March 1972	265 days	The collapse of the United Front

8.4.2.4 Effects of Emergency in the State or President's Rule

The President acquires the following extraordinary powers when the President's rule is imposed in a state :

The President of India assumes all executive power of the state to him/herself. The state administration is run directly by him/her or through a person the designated for the purpose by him/her. It is the Governor of state who runs the state administration on behalf of the President.

During the President's rule, the state assembly is either dissolved or kept under suspension. The State assembly is kept under suspended animation if there is hope that a new Council of Ministers can be formed within a short time. During this period, the MLAs do not lose their membership of the Assembly, nor there is an election held to the Assembly.

The President makes laws on all subjects included in the State List. It also passes the state budget. However, if the Lok Sabha is not in session, the president may authorise any expenditure from the Consolidated Fund of State.

The president can declare that the powers of the state legislature are to be exercised by the parliament.

He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

During the state emergency, the High Court of the state, as before, functions independently without any of its powers being curtailed. The President has also the power to proclaim guidelines in the state.

Scope of judicial review : The 38th Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.

But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review. That means, Presidential proclamation imposing the president's rule is subject to judicial review.

8.4.3 Financial Emergency (Art. 360)

Grounds of declaration : Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

The authority to impose such an emergency is with the President only. However, this does not exempt the President's power from judicial review. The 44th Amendment, 1978 says that the top court has the power to review the declaration of Financial Emergency.

Parliamentary approval and duration :

A proclamation declaring financial emergency must be approved by both the Houses of Parliament by a simple majority within two months from the date of its issue.

However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

Once the declaration is approved by both the Houses it lasts indefinitely till it is revoked (no maximum period) without the need for further legislative approvals. This proclamation may also be revoked by the president at any time without the consent of parliament.

8.4.3.1 Effects of Financial Emergency

Extension of the executive authority of the Union over the financial matters of the States.

The President may order the States to limit the salary, and allowances of government employees or any class of persons serving in the State.

Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.

Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

8.4.3.2 Financial Crisis and Financial Emergency in India :

Financial Emergency has never been imposed in India to date. Though, India faced an economic crisis in 1991 and Covid-19 pandemic in 2020. The crisis of 1991, was the serious financial crisis in the history of India. The Indian economy was in a state of flux. The 1980s saw significant and increasing fiscal imbalances, which contributed to the economic crisis. The federal government's and states' combined cumulative fiscal deficits increased dramatically. India's foreign exchange reserves had depleted to the point that it could only fund three weeks' worth of imports, because of this, the Indian rupee was devaluated sharply. The exchange rate of India was severely adjusted in mid-1991.

But even in such a tough situation that took India to the brink of bankruptcy, the financial emergency was not declared. While this situation posed a classic cause for calling a financial emergency, it was averted by restructuring and devaluing the rupee.

During the lockdown in March 2020, the Center for Accountability and Systemic Change (CASC) filed a writ petition in the form of Public Interest Litigation, requesting that a financial emergency be declared as a result of the Covid-19 outbreak. However, the plea was rejected because though courts have special authority, the law of separation of powers mandates that the president determine the viability of a financial emergency.

The President has the authority to declare a financial emergency, the Supreme Court can only review such declaration. The petition stated that: covid-19 is the country's most serious emergency since independence, and it must be handled in accordance with constitutional laws by a joint command between the Union and state governments. It would help in the recovery of the economy after the nationwide lockdown is over.

8.5 Conclusion

Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds :

i) The federal character of the constitution will be destroyed and the union will become all-powerful.

ii) The powers of the State- both the Union and the Units- will entirely be concentrated in the hands of the union executive.

iii) The president will become a dictator.

iv) The financial autonomy of the state will be nullified.

v) Fundamental rights will become meaningless and, as a result, the democratic foundation of the constitution will be destroyed.'

While defending the emergency provisions in the Constituent Assembly, Dr. Ambedkar accepted the possibility of their misappropriation. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes.'

Having dealt with all the Emergency provisions, it is easy to see what the purpose was behind making such provisions available in the Constitution in the first place. But in reality, it has been seen that even if these provisions are provided for the security of the nation and also the protection of the people, the provisions in themselves give a lot of drastic discretionary powers in the hands of the Executive. It affects the federal structure of the nation essentially turning it into a unitary one while it seeks to safeguard the interests of the state and the people. It should be a system of check and balance brought into place so that unlike in the 1975 emergency, there is no misuse of power by the ruling party and the executive.

Though suspension of Fundamental Rights has been time and again tried to be justified, it is true that they are the most basic to the very existence of the citizens in a democracy. As the experience has been so far and observed in our study that inspires the safety measures that were added by the 44th Amendment to the Constitution in the emergency provisions there are still chances for the unjust violation of the fundamental rights. Therefore, as there is a provision in the other federal constitutions such as of Australia and Canada the courts should be given the

power to agree to the extent the Centre can expand its powers, as it will act as a built-in mechanism to check the arbitrary use of the discretionary powers available under the emergency provisions to the parliament and the executive.

8.6 Summing Up

- In constitutional terms, an emergency is a situation that includes 'some imminent danger to the life of the nation, requiring some immediate action' by the government to preserve the prevailing constitutional order.
- The Government of India Act. 1935, defined two types of emergencies.
- The Indian Constitution is one of the few constitutions which provide some provisions for dealing with extraordinary situations.
- Emergency Provisions in the Constitution of India are contained in Part-18 and are embodied in 9 articles (352-360).
- The Indian Constitution gives President the authority to declare three types of emergencies with varying consequences.
- Three types of emergencies are National Emergency (Article 352) Emergency in state or president's rule (Article 356) and Financial Emergency (Article 360).
- The National emergency has been proclaimed three times so far in 1962, 1971, and 1975.
- Financial Emergency has never been imposed in India till date.

8.7 Probable Questions

Essay Type Questions :

1. Write a critical note on the emergency provisions in the Indian constitution.
2. Discuss the reasons and methods to impose emergency in the state or president's rule.
3. Explain the effects of a national emergency.

4. Write a note on financial emergency.
5. Discuss the effects of an emergency in the state or president's rule.
6. Mention the uses and reasons for the National Emergency in India to date.

Short Questions :

1. Mention the grounds of imposition of financial emergency.
2. Write a short note on article 356.
3. What are the methods of parliamentary approval for the proclamation of national emergency?

Objective Questions :

1. Who can declare national emergency in India?
2. Under which article President's rule can be imposed in a state?
3. Which fundamental right cannot be taken away even when national emergency is declard?
4. Who is the approving authority of emergency?

8.8 Further Reading

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Unit 9 ❑ Supreme Court

Structure

9.1 Objective

By reading this unit, the learner will be acquainted with the following :

- The evaluation of the judicial system in India.
- The structure of the Indian judicial system.

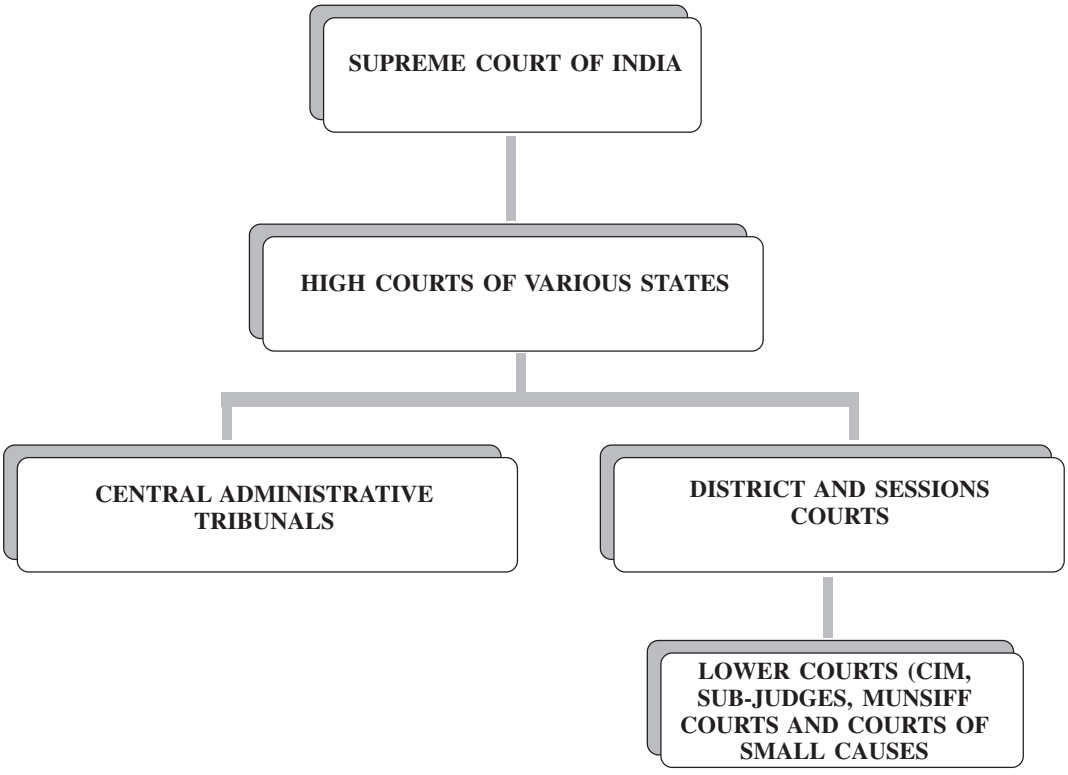
- Composition, functions and jurisdictions of the Supreme Court in India.
- Composition, functions and jurisdiction of the High Courts in India.
- The concept of Judicial Activism and its overview.

9.2 Introduction

Judicial System in India is one of the most positive and effective systems in the world. Like many other countries, the constitution of India also maintained mainly three independent organs which work in parallel and independently for protecting the rights of its citizen and making law and order system in the country. The legislative organ (The Parliament) makes laws for the country, the executive organ of the government enforces those laws, and the Judiciary act as the guardian of the constitution of India. The judiciary guarantees fairness and justice and protects the citizen from the despotism of the Government. There is no such democracy without an efficient and independent judiciary. Because judicial independence serves as a safeguard for the rights and privileged by a limited constitution and prevents executive and legislative encroachment upon those rights of the citizen. It also serves as a foundation for the rule of law and democracy.

There are various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government. The Indian judiciary is independent of the executive and legislative branches of government as per the constitution.

The hierarchy of the Indian Judicial System is as shown below :



9.3 The Expansion of Judicial Process in India

The Government of India Act.1935 introduced the federal principle into Indian constitutional law. It also made necessary a Federal Court decide constitutional matters. Appeals lay from the Federal Court to the Judicial Committee. Under the constitution of India, 1950, and preceding Indian legislation, the Supreme Court succeeded to the jurisdiction of the Federal Court and the Judicial Committee. The constitution of India, with its chapters on Fundamental Rights and Directive Principles coupled with the federal system, inevitably threw new burdens on the Indian judiciary. The Indian Judiciary has, during the last few decades, acted extensively in the case where protection of fundamental rights or basic human rights is concerned.

9.4 The Supreme Court

The Constitution of India has established an integrated judicial system. Supreme Court at the apex of the Indian Judiciary is the highest authority to uphold the constitution of India, to protect the rights and liberties of citizens, and to uphold the values of rule of law. Hence it is known as the guardian of our Constitution. On 26 January 1950, the day India's constitution came into force, the Supreme Court of India was formed in Delhi. On January 28, 1950, the Supreme Court of India was inaugurated by the president, Babu Rajendra Prasad, Present on the occasion were Chief Justice Harilal Kania, along with Justice Fazal Ali, Patanjali Sastri, Mehr Chand Mahajan, B.K. Mukherjee and S.R. Das, Attorney General Setalvad, and Advocate Generals of different states. Also, present the first prime minister of India, Pandit Jawaharlal Nehru, his Cabinet colleagues, and members of the diplomatic corps.

9.4.1 Composition and Appointment :

The constitutional provisions related to the Supreme Court are contained in part V from articles 124 to 147.

The Indian constitution under Article 124(1) states that there shall be a Supreme Court of India consisting of a Chief justice of India and 32 other judges. The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne Judges-leaving it to Parliament to increase this number. In the early years, all the Judges of the Supreme Court sit together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to accumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, and 26 in 1986. As the number of Judges has increased, they sit in smaller Benches of two and three–coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

9.4.2 Tenure and Qualifications for Judges of the Supreme Court :

According to article 124(3), a person for appointment as a judge of the Supreme court requires qualifications as follow :

- He or she must be a citizen of India.
- He or she must a judge in the high court for at least 5 years. or.
- He or she should have worked as an advocate of a high court for at least 10 years. or.
- He or she must be a distinguished jurist in the opinion of the President of India.

Article 124(2) states that every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of Supreme Court and the High Courts in the states.

Art 127 states that if at any time there is a lack of quorum of Judges of Supreme Court, the Chief justice of India may with the previous consent of the President and Chief Justice of High Court concerned request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of Supreme Court.

Art 128 states that the Chief Justice of India at any time with the previous consent of the Presedent appoint retired judges of the supreme court or high court.

In the matter of judicial appointments, the Collegium System was followed here. However, due to a lack of transparency and delays in appointments, a new **Article 124A** was added to the Constitution [through the **99th Costitutional Amendment Act-2014**], which introduced the **National Judicial Appointments Commission (NJAC)** to replace the Collegium System for judicial appointment, thereby changing the judicial appointment process as per the pre-amended Constitution. However, the **Supreme Court** struck down this amendment. Therefore, the existing **Collegium System** remains in place.

Tenure :

According to article 124, every judge of the Supreme Court holds office till the age of 65 years. To be appointed as a Judge ofthe Supreme Court, a person must be a citizen of India and must have been, for atleast five years, a Judge of a high court or two or more such Courts in succession, or an advocate of a high court or two or

more such Courts in succession for at least 10 years or he/she must be, in the opinion of the president, a distinguished jurist.

9.4.3 Removal of Judges :

According to article 124(A), a judge of the Supreme Court can be removed only from the office by the President based on a resolution passed by both the Houses of parliament with a majority of the total membership and a majority of not less than two-thirds of the members present and voting in each house, on the grounds of proved misbehavior or incapacity of the judge in question.

Hence, a democratic country like India needs a judiciary because democratic values tend to lose their prominence without proper checks and balances.

9.4.4 Powers and Jurisdictions :

The Jurisdiction of the Supreme Court of India can broadly be categorised into :

a) Original jurisdiction (Article–131)

b) Appellate jurisdiction (Article–132-134) and

c) Advisory jurisdiction (Article–143)

However, there are other multiple powers of the Supreme Court.

Original jurisdiction : This jurisdiction extends to cases originating in Supreme Court only and states that Indian Supreme Court has original and exclusive jurisdiction in cases between :

i) Government of India on one hand and one or more states on the other

ii) Government of India and any state or more states on one side and one or more states on the other

iii) Two or more states

In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court regarding enforcement of Fundamental Rights. It is empowered to issue directions, orders, or writs, including writs like habeas corpus, mandamus, prohibition, quo warranto, and certiorari to enforce them. The Supreme Court has

been conferred with power to direct transfer of any civil or criminal case from one State.

Appellate Jurisdiction (Art 132, 133, 134) :

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgment, decree, or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.

Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies :

(a) that the case involves a substantial question of law of general importance, and

(b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

In criminal cases, an appeal lies to the Supreme Court if the High Court :

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or a period of not less than 10 years, or

(b) Has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or imprisonment for life or a period of not less than 10 years, or

c) Certified that the case is a fit one for the appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order, or sentence in a criminal proceeding of a High Court.

The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution 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.

Advisory Jurisdiction :

Article 143 of the Indian Constitution confers upon the Supreme Court advisory jurisdiction. The President may seek the opinion of the Supreme Court on any question of law or fact of public importance on which he thinks it expedient to obtain such an opinion. On such reference from the President, the Supreme Court, after giving it such hearing as it deems fit, may report to the President its opinion thereon. The opinion is only advisory, which the President is free to follow or not to follow. However, even if the opinion given in the exercise of advisory jurisdiction may not be binding, it is entitled to great weight.

The first reference under Article 143 was made in the *Delhi Laws case*, (1951) SCR 747. In almost sixty years, only twelve references have been made under Article 143 of the Constitution by the President for the opinion of the Supreme Court.

Enlargement of the jurisdiction of the Supreme Court :

The Jurisdiction of the Supreme Court may also be enlarging concerning any matter in the Union List by a parliamentary law. The Parliament may confer on the court the power to issue directions, orders, or write for any other purpose in addition to the enforcement of Fundamental Rights. it may also invest the court with additional power, not consistent with the Constitution, to enable it to discharge its duties more effectively. (Art. 138)

9.5 Judicial Activism : Meaning

Judicial Activism means the rulings of the court based on political and personal rational and prudence of the Judges presiding over the issue. It is a legal term referring to court rulings based, in part or in full, on the political or personal factors of the Judge, rather than current or existing legislation. According to Black's Law Dictionary, judicial activism is a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.

The judicial activism was evolved through the process of judicial review which can be pursued from the unwritten constitution of Britain during the period of Stuart

(1603-1688). In the year 1610, the power of Judicial Review was acknowledged for the first time in Britain through the activism of Justice Coke. The then Chief Justice Coke stated that if a law made by Parliament breached the principles of common law; and reason, then it could be reviewed and adjudicated as void by the judiciary.

In the modern age, the concept of Judicial activism was reshaped in the US in 1947. It has been seen in India since the Emergency days. Judicial activism in India implies the authority of the Supreme Court and the high courts, but not the subordinate courts, to declare the regulations unconstitutional and void if they breach or if the legislation is incompatible with one or more of the constitutional clauses.

A judiciary is an independent body that is even-handed, unbiased, and unprejudiced. It functions within the framework of the constitution, defined under the concept of the separation of powers. It interprets the supreme constitution and at times needed, supports the rule of law and the standards laid down in the constitution. The Supreme Court of India is considered the sentinel quiver and protects the fundamental and constitutional rights of the people.

The Supreme Court of India in its initial years was more technocratic but slowly began to become more active through constitutional interpretation. The court became an activist through its involvement and interpretation of law and statutes but the whole transformation took years and it was a gradual process. The origins of Judicial activism can be seen in the court's premature and early assertion regarding the essence and nature of Judicial Review.

India's Judicial activism can be positive as well as negative :

1. A court engaged in altering the power relations to make them more equitable is said to be positively activist and
2. A court using its ingenuity to maintain the status quo in power relations is said to be negatively activist.

Judicial activism reflects the suggested patterns in the administrative namely : expansion of hearing privileges over administrative lapses, the extension of judicial control over discretionary forces, expansion of judicial review over the administration,

and extending the conventional translation guidelines in its quest for financial, cultural, and academic goals.

9.6 Methods of Judicial Activism

Various methods of judicial activism are followed in India. They are :

1. Judicial review (power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it find them in conflict with the Constitution).
2. PIL (The person filing the petition must not have any personal interest in the litigation, this petition is accepted by the court only if there is an interest of large public involved; the aggrieved party does not file the petition).
3. Constitutional interpretation.
4. Access to international statute for ensuring constitutional rights.
5. Supervisory power of the higher courts on the lower courts.

9.7 Some Examples of Judicial Activism

After the independence, Judicial activism was almost silent for the first decade. The executive and legislative organs of the government actively dominated and intervened in the working of the judiciary. It was started in 70s when the Allahabad High Court rejected the candidature of Indira Gandhi in 1973.

- In 1979, The Supreme Court of India ruled that undertrials in Bihar had already served time for more period than they would have, had they been convicted.
- Golaknath case : The questions, in this case, were whether the amendment is a law; and whether Fundamental Rights can be amended or not. SC contended that Fundamental Rights are not amendable 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.

- Kesavananda Bharati case : In the landmark Keshvananda Bharti case, just two years before the emergency declaration the apex court of India declared that the executive had no right to intercede and tamper with the basic tructure of the constitution. Though the exigency imposed by the then Prime Minister Indira Gandhi could not be prevented by the Judiciary, the concept of judicial activism started gaining more power from there.
- In the 2G scam, the Supreme Court cancelled 122 telecom licenses and spectrum allocated to 8 telecom companies because the process of allocation was flawed.
- The Supreme Court rolled out a blanket ban on firecrackers in the Delhi–NCR area with certain exceptions in 2018.

Judicial activism is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fail to do so.Citizens have the judiciary as the last faith for protecting their rights when all other doors are closed. The Judiciary of India has also been considered as the guardian of the Indian Constitution. There are provisions in the constitution itself for the judiciary to adopt a proactive role. Article 13 read with Articles 32 and 226 of the Constitution provides the power of judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the Constitution.

Judicial activism has also faced criticism several times. In the name of judicial activism, the judiciary often mixes personal bias and opinions with the law. Another criticism is that the theory of separation of powers between the three arms of the State goes for a toss with judicial activism. So many times, the judiciary, in the name of activism, interferes in an administrative domain, and undertakings into judicial adventurism. In many cases, no fundamental rights of any group are involved. In this context, judicial restraint is talked about.

9.8 Conclusion

India, since independence, has remained firmly embedded in rule of law and democracy. In addition to devotion to the rule of law and principles of democracy,

the presence of a strong and independent judiciary, free press, and the growth of a wide network of NGOs has contributed greatly to the awareness of human rights and the protection of human rights of individuals, groups, minorities, and others. Indian Constitution has given special status to the Supreme Court and High Courts. Indian higher judiciary has the power to review any legislative, executive, and administrative activities of the State. The Higher Courts in India entertain the petitions which are being filed by the public-spirited persons in the public interest. It is also true that it is all because of the judicial activism that the needy persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of a beggar, transgender, etc. have somehow been provided with adequate legal assistance in the process of the enforcement of their fundamental rights. Moreover, Article 142 of the Indian Constitution gives the Supreme Court the power to pass a suitable decree or order for doing complete justice in any pending matter. It is no exaggeration to say that the ability, wisdom, and patriotism of our future judges depends to some extent on the future of the rule of the law and parliamentary democracy in India.

9.9 Summing Up

- One of the basic principles of democracy is the presence of a strong and independent judiciary.
- India has a strong independent judiciary.
- Indian Constitution has given special status to the judiciary.
- Article 142 of the Indian Constitution assigns the Supreme Court, the power to pass a suitable decree or order for doing complete justice in any pending matter.
- The judicial activism also supports needy persons, provides adequate legal assistance to those in need.

9.10 Probable Questions

Essay Type Questions :

1. "Supreme Court is the Guardian of Indian Constitution and a Protector of Fundamental Rights"–Explain.
2. Describe the composition, powers and jurisdiction of High Courts of Indian States.
3. Do you think that judicial activism can lead to a conflict between the judiciary and the executive? Give reasons for your answer.
4. Explain the original and appellate jurisdiction of the Supreme Court.
5. Give a brief account of the judicial system of India.
6. How is judicial activism related to the protection of fundamental rights? Has it helped in expanding the scope of fundamental rights?

Short Questions :

1. Discuss the Supreme Court to be a court of record.
2. Discuss the qualifications and appointment of judges of the Supreme Court.
3. Mention four examples of the cases of judicial activism in India.

Objective Questions :

1. Who appoints the Judges of the Supreme court?
2. What is the retirement age of the Supreme Court Judges?
3. Who can remove the Judges from office?
4. What is the full form of PIL?

9.11 Further Reading

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Unit 10 ❑ Constitutional Amendment

Structure

10.1 Objective

After studying this unit, the learner will able to :

- Understand the objectives of the amendment of the Indian constitution
- Explain the procedure of the amendment of the Indian constitution.
- Identify the special features of the amendment of the Indian constitution.
- Understand the needs for amendment of the constitution.
- Explain the differences between the rigid and flexible constitution.

10.2 Introduction

A Constitution is the supreme law of a country. In contrast to ordinary legislation, a Constitution embodies the fundamental choices made by a country and its people that establish the basis for political and social, and economic life. Constitutions establish the

system of government, distribute and constrain power, protect the rights of citizens and deal with various additional issues of identity or substantive policy that are considered foundational in the specific context of a particular country. But the question is whether it should be rigid or flexible. Generally, constitutions are classified as 'flexible' or 'rigid' depending upon the process through which they can be amended. Prof. A.V. Dicey defines two types of constitutions-the flexible as 'one under which every law of every description can legally be changed with the same ease and in the same manner by the same body, and the rigid constitutions as 'one under which certain laws generally known as constitutional or fundamental laws, cannot be changed in the same manner as ordinary laws 'The United Kingdom' having an unwritten constitution, is the best example of an extremely flexible constitution. As opposed to the U.K. system, the constitutional amendment has an important place under a written constitution like that of the U.S.A. Its importance increases where the system is federal. In most of the written constitutions, the power to amend the constitutions is either vested in a body other than the ordinary legislature or it is vested in the ordinary legislature, subject to a special procedure. In a federal system, additional safeguards like the involvement of legislatures at the state level, are also provided to ensure that the federal setup does not get altered only at the will of the federal legislature. In the case of the Indian Constitution, it is neither purely flexible not rigid.

10.3 Flexibility of the Constitution

Explaining why it was necessary to introduce an element of flexibility in the Constitution, Pandit Jawaharlal Nehru observed in the Constituent Assembly : ''While we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be certain flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people. Therefore, it has to be flexible.… In any event, we should not make a Constitution, such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing conditions. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible…."

10.4 Constituent Assembly and the Constitutional Amendment Procedure in India

The makers of the Indian Constitution were neither in favour of the traditional theory of federalism, which entrusts the task of a constitutional amendment to a body other than the legislature nor in prescribing a rigid special procedure for such amendments. Similarly, they never wanted to have an arrangement like the British set-up where the Parliament is supreme and can do everything humanly possible. Adopting the combination of the 'theory of fundamental law', which underlies the written Constitution of the United States with the 'theory of parliamentary sovereignty as existing in the United Kingdom, the Constitution of India vests constituent power upon the Parliament subject to the special procedure laid down therein. During the discussion in the Constituent Assembly on this aspect, some of the members were in favour of adopting an easier mode of amending procedure for the initial five to ten years.

Dr. P.S. Deshmukh was of the view that the amendment of the Constitution should be made easier as there were contradictory provisions in some places which would be more and more apparent when the provisions are interpreted. If the amendment to the Constitution was not made easy, the whole administration would suffer. Shri Brajeshwar Prasad was also in favour of a flexible Constitution to make it survive the test of time.

On the other hand, Shri H.V. Kamath was in favour of providing procedural safeguards to avoid the possibility of a hasty amendment to the Constitution. Dr. B.R. Ambedkar, speaking in the Constituent Assembly on 4th. November 1948, made certain observations in connection with the provisions relating to the amendment of the Constitution.

It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is regarded as one of the absurdities of the Draft Constitution.

I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum…. It is only for amendments of specific matters- and they are only a few-that the ratification of the State Legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive of a simpler method of amending the Constitution.

Categories of Constitutional Amendments in India

We have had the benefit of a galaxy of visionaries who were definitive about the path we should chart out for ourselves and were fully conscious of the enormity of the task involved in drafting the Constitution for a newborn nation. It is due to their sagacity and statesmanship that special provisions for 'amendment to the Constitution were incorporated in the Constitution. These provisions enabled Parliament to amend periodically the Constitution to meet the changing needs of the time. In our Constitution, Parliament has been empowered to amend any provision in compliance with the procedure laid down in article 368. Besides procedural limitations under article 368, the Supreme Court has, by judicial innovation, enunciated the 'Basic Structure Doctrine, i.e., if a Constitution amendment seeks to alter, take away or destroy the basic structure or framework of the Constitution, the Court has the power to declare it void or ultra vires. The basic features are not finite and have been spelled out in different rulings, with the Supreme Court itself asserting that the claim of any particular feature of the Constitution to be a basic feature would be determined by the Court in each case that comes before it.

The Constitution of India provides for a distinctive amending process as compared to the leading Constitutions of the world. It may be described as partly flexible and partly rigid. The Constitution of India provides for a variety in the amending process-a feature which has been commended by Prof. K.C. Wheare for the reason that

uniformity in the amending process imposes "quite unnecessary restrictions" upon the amendment of parts of a Constitution.

The Constitution of India provides for three categories of amendments namely—

First, those that can be affected by Parliament by a simple majority such as that required for the passing of any ordinary law the amendments contemplated in articles 4, 169, para 7(2) of Schedule V and para 21(2) of Schedule VI fall within this category and are specifically excluded from the purview of article 368 which is the specific provision in the Constitution dealing with the power and the procedure for the amendment of the Constitution.

Second, those amendments that can be effected by Parliament by a prescribed 'special majority; and

Third, those that require, in addition to such 'special majority', ratification by at least one-half of the State Legislatures.

The last two categories being governed by article 368. In this connection, it may also be mentioned that there are, as pointed out by Dr. Ambedkar, ''innumerable articles in the Constitution'' which leave the matter subject to the law made by Parliament. For example, under article 11, Parliament may make any provision relating to citizenship notwithstanding anything in articles 5 to 10. Thus, bypassing ordinary laws, Parliament may, in effect, provide, modify or annul the operation of certain provisions of the Constitution without actually amending them within the meaning of article 368. Since such laws do not make any change whatsoever in the letter of the Constitution, they cannot be regarded as amendments of the Constitution nor categorised as such.

10.5 Amendment to the Constitution of India : Procedure

In so far as the constituent power to make formal amendments is concerned, it is article 368 of the Constitution of India which empowers Parliament to amend the Constitution by way of addition, variation, or repeal of any provision according to the procedure laid down therein, which is different from the procedure for ordinary legislation. Article 368, which has been amended by the Constitution (Twenty-fourth Amendment), Act, 1971 and the Constitution (Forty-second Amendment) Act, 1976, reads as follows :

368 : Power of Parliament to amend the Constitution and Procedure, therefore :

(1) Notwithstanding anything in this Constitution, Parliament may in the exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill :

Provided that if such amendment seeks to make any change in : (a) article 54, article 55, article 73, article 162 or article 241, or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or (c) any of the lists in the Seventh Schedule, or (d) the representation of States in Parliament, or (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States… by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to the amendment made under this article.

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before o after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation, or repeal the provisions of this Constitution under this article.

An analysis of the procedure prescribed by article 368 for amendment of the Constitution shows that :

(i) An amendment can be initiated only by the introduction of a Bill in either House of Parliament;

(ii) The Bill so initiated must be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the

members of that House present and voting. There is no provision for a joint sitting in case of disagreement between the two Houses;

(iii) When the Bill is so passed, it must be presented to the President who shall give his assent to the Bill;

(iv) Where the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368, it must be ratified by the Legislatures of not less than one-half of the States;

(v) Such ratification is to be by resolution passed by the State Legislatures;

(vi) No specific time limit for the ratification of an amending Bill by the State Legislatures is laid down; the resolutions ratifying the proposed amendment should, however, be passed before the amending Bill is presented to the President for his assent;

(vii) The Constitution can be amended:

a) Only by Parliament; and

b) In the manner provided. Any attempt to amend the Constitution by a Legislature other than Parliament and in a manner different from that provided for will be void and inoperative.

Whether the entire Constitution Amendment is void for want of ratification or only an amended provision required to be ratified under clause (2) of Article 368, is a very significant point. In a case as decided in 1992, this issue was debated before the Supreme Court and is now popularly known as the Anti-Defection case, in which the constitutional validity of the Tenth Schedule of the Constitution was inserted by the Constitution (Fifty-second Amendment) Act, 1985 was challenged. In this case, the decisions of the Speakers/Chairmen on disqualification, which had been challenged in different High Courts through different petitions, were heard by a five-member Constitution Bench of the Supreme Court. The Constitution Bench in its majority judgment upheld the validity of the Tenth Schedule but declared Paragraph 7 of the Schedule invalid because it was not ratified by the required number of the Legislatures of the States as it brought about in terms and effect, a change in articles 136, 226 and 227 of the Constitution. While doing so, the majority treated Paragraph 7 as a severable

part of the rest of the Schedule. However, the minority of the Judges held that the entire Constitution Amendment Act is invalid for want of ratification.

10.6 Constitutional Amendment : Some Important Cases

Article 368 is not a ‘‘complete code’’ in respect of the legislative procedure to be followed at various stages. There are gaps in the procedure as to how and after what notice a Bill is to be introduced, how it is to be passed by each House and how the President's assent is to be obtained. This point was decided by the Supreme Court in Shankari Prasad’s case. Shankari Prasad Singh Deo vs. Union of India, (1951) Hence, barring the requirements of special majority, ratification by the State Legislatures in certain cases, and the mandatory assent by the President, a Bill for amending the Constitution is dealt with the Parliament following the same legislative process as applicable to an ordinary piece of legislation. L.C. Golak Nath vs. State of Punjab (1967) the Court held that an amendment of the Constitution is a legislative process.

A Constitution amendment under article 368 is ‘‘law’’ within the meaning of article 13 of the Constitution and therefore if a Constitution amendment ‘‘takes away or abridges’’ a Fundamental Right conferred by Part III, it is void. The Court was also of the opinion that Fundamental Rights included in Part III of the Constitution are given a transcendental position under the Constitution and are kept beyond the reach of Parliament. The incapacity of Parliament to modify, restrict or impair Fundamental Freedoms in Part III arises from the scheme of the Constitution and the nature of the freedoms. In His Holiness Kesavananda Bharati Sripadagalvaruvs. State of Kerala (1971), the Supreme Court reviewed the decision in the Golak Nath's case and went into the validity of the 24th, 25th, 26th and 29th Constitution Amendments. The case was heard by the largest ever Constitution Bench of 13 Judges. The Bench gave eleven judgments, which agreed on some points and differed on others. The Court held that the expression 'amendment' of this Constitution in article 368 means any addition or change in any of the provisions of the Constitution within the broad contours of the Preamble and the Constitution to carry out the objectives in the Preamble and the Directive Principles of State Policy. Applied to Fundamental Rights, it would be that while Fundamental Rights cannot be abrogated, a reasonable abridgment of Fundamental Rights could be effected in the public interest. The true position is that every provision of the Constitution can be amended provided the basic foundation and structure of the

Constitution remain the same. The theory of the basic structure of the Constitution was reaffirmed and applied by the Supreme Court in Smt. Indira Nehru Gandhi vs. Raj Narain (1975) case and certain amendments to the Constitution were held void. Subsequently, on the basis of the Court's view in Kesavananda Bharati's case, upholding the concept of the basic structure, the Supreme Court in Minerva Mills Ltd. vs. Union of India (1980) declared section 55 of the Constitution (Forty-second Amendment) Act, 1976 as unconstitutional and void.

The power and procedure for the constitutional amendment in India have some special points of interest :

(i) There is no separate constituent body for the purposes of amendment of the Constitution; constituent power being vested in the Legislature.

(ii) Although Parliament must preserve the basic framework of the Constitution, there is no other limitation placed upon the amending power, that is to say, there is no provision of the Constitution that cannot be amended.

(iii) The role of the States in the Constitution amendment is limited. The State Legislatures cannot initiate any Bill or proposal for amendment of the Constitution. They are associated in the process of the Constitution amendment by the ratification procedure laid down in article 368 in case the amendment seeks to make any change in any of the provisions mentioned in the proviso to Article 368. Besides, all that is open to them is

(1) to initiate the process for creating or abolishing Legislative Councils in their respective Legislatures and

(2) to give their views on a proposed Parliamentary Bill seeking to affect the area, boundaries or name of any State or States which has been referred to them under the proviso to article 3 a reference which does not fetter the power of Parliament to make any further amendments of the Bill.

10.7 Number of Amendments in the Indian Constitution

During the last seventy years of its operation, the Constitution has been amended on more than one hundred occasions :

First—1951;

Second—1952;

Third—1954;

Fourth and Fifth—1955;

Sixth and Seventh—1956;

Eighth and Ninth—1960;

Tenth and Eleventh—1961;

Twelfth, Thirteenth and Fourteenth—1962;

Fifteenth and Sixteenth—1963;

Seventeenth—1964;

Eighteenth, Nineteenth and Twentieth—1966;

Twenty-first—1967;

Twenty-second and Twenty-third—1969;

Twenty fourth, Twenty-fifth, Twenty-sixth and Twenty-seventh—1971;

Twenty eighth, Twenty-ninth and Thirtieth—1972;

Thirty-first and Thirty second—1973;

Thirty-third, Thirty-fourth and Thirty-fifth—1974;

Thirty-sixth, Thirty-seventh, Thirty-eighth and Thirty-ninth—1975;

Fortieth, Forty-first and Forty-second—1976;

Forty-third-1977; Forty-fourth—1978;

Forty-fifth-1980; Forty-sixth—1982;

Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth and Fifty-first—1984;

Fifty-Second—1985;

Fifty-third, Fifty-fourth and Fifty-fifth—1986;

Fifty-sixth, Fifty seventh and Fifty-eighth—1987;

Fifty-ninth, Sixtieth and Sixty-first—1988;

Sixty-second and Sixty-third—1989;

Sixty-fourth, Sixty-fifth, Sixty-sixth and Sixty-seventh—1990;

Sixty-eighth and Sixty-ninth—1991;

Seventieth, Seventy-first, Seventy-second, Seventy-third and Seventy-fourth—1992;

Seventy-fifth and Seventy-sixth—1994;

Seventy seventh and Seventy-eighth—1995;

Seventy-ninth—1999;

Eightieth, Eighty-first, Eighty-second and Eighty-third—2000;

Eighty-fourth and Eighty-fifth—2001;

Eighty-sixth—2002;

Eighty-seventh, Eighty-eighth, Eighty-ninth, Ninetieth, Ninety-first and Ninety-second—2003;

Ninety third—2005;

Ninety-fourth—2006;

Ninety-fifth—2010;

Ninety-sixth—2011;

Ninety-seventh—2012;

Ninety-eighth—2013;

Ninety-ninth—2015;

Hundredth—2015;

Hundred and one—2017;

Hundred and two—2018;

Hundred and three—2019;

Hundred and four—2020.

10.8 Conclusion

Although constitutional amendments require the support of a two-thirds majority in both houses of Parliament (with some amendments requiring ratification by a majority of state legislatures), the Indian Constitution is the most amended national constitution in the world. The Constitution spells out governmental powers with so much detail that

many matters addressed by statute in other democracies must be addressed via constitutional amendment in India. As a result, the Constitution is amended roughly twice a year.

10.9 Summing Up

- Generally, Constitutions are classified as 'flexible' or 'rigid' depending upon the process through which they can be amended.
- The United Kingdom has an unwritten Constitution, which is the best example of an extremely flexible Constitution.
- In most of the written Constitutions, the power to amend the Constitutions is either vested in a body other than the ordinary legislature or it is vested in the ordinary legislature, subject to a special procedure.
- The Constitution of India provides for a distinctive amending process as compared to the leading Constitutions of the world.
- The Parliament has been empowered to amend any provision in compliance with the procedure laid down in article 368.
- The Constitution of India provides for three categories of amendments
- Besides procedural limitations under article 368, the Supreme Court has, by judicial innovation, enunciated the 'Basic Structure' doctrine.

10.10 Probable Questions

Essay Type Questions :

1. Analyse the procedure of the Constitutional Amendment in India.
2. Explain the special features of the Constitution Amendment procedure in India.
3. Elaborate on the different opinions in the constituent assembly regarding the process of amendment.
4. Analyse the important cases of the Constitutional Amendment in India.
5. What are the needs for amendment of the Constitution?

Short Questions :

1. Write a short note on the Keshavananda Bharati case.
2. Write a short note on number of Amendments to the Indian Constitution.
3. Mention the differences between rigid and flexible constitution.

Objective Questions :

1. By which article can Parliament amend the constitution?
2. In which year was the first amendment of the contitution made?
3. How many methods are there for amendment of the Indian Constitution?
4. Give an example when the prior Presidential assent is required.

10.11 Further Reading

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Module - 3

Unit 11 ❑ State Legislature

Structure

11.1 Objective

After studying this unit, the learner will be able to

- Understand the composition of government in the state.
- Explain the powers and functions of the state legislature.
- Discuss the differences between the two houses of the state legislatures.
- Understand the position of the state legislature in the Indian Parliamentary system.

11.2 Introduction

The most important role of the State legislatures is to represent the people. It is, however, important to remember that in parliamentary polity the legislature has also to provide from within itself a representative, responsible and responsive government to the people. One way to judge whether the system is working well or not is to see whether it has brought into being governments that last their terms and succeed in providing good governance to the community. The overriding objective has to be to make both government and legislature relevant to meet today's challenges which bear little comparison to those faced by our society in the middle decades of the twentieth century. The fundamental challenges are economic and technological. The legislature has a decisive role in refashioning the national economy, keeping in the forefront the ideas of a self-reliant economy that serves the real needs and aspirations of our vast masses. State Legislature can play this historic role only if it consciously reforms its procedures and priorities its work. India is a Union of States. It means that there is one Union Government and several State Governments, it also means that Union (Centre) is more powerful than States. At present, there are 28 States in the Indian Union and each one of them has a Legislature. The State Legislature is a law-making body at the state level.

11.3 Composition of State Legislature

In most of the States, the Legislature consists of the Governor and the Legislative Assembly (Vidhan Sabha). This means that these states 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. Six states have a bicameral, legislature (Andhra Pradesh, Karnataka, Telengana, Maharashtra, Bihar and Uttar Pradesh). The Legislative Assembly is known as the lower house or popular house. The Legislative Council is known as the 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.

11.3.1 The Legislative Assembly (Vidhan Sabha) :

Composition : There is a Legislative Assembly (Vidhan Sabha) in every State. It represents the people of the State. The members of Vidhan Sabha are directly elected by people based on the 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 the 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 the case of Lok Sabha, a certain number of seats is reserved for Scheduled Castes and in some States for Scheduled Tribes also. This depends on the population of these weaker sections in the State.

The number of Vidhan Sabha members cannot be more than 500 and not less than 60. However, very small States have been allowed to have a lesser number of members. Thus Goa has only 40 members in its Assembly. Uttar Pradesh (is a big state even after the creation of Uttaranchal from this state in 2002) has 403 seats in the Assembly. As in the case of the Lok Sabha, some seats are reserved for the members of Scheduled Castes and Schedule Tribes.

Qualifications for members : To become a Member of Vidhan Sabha a person must: be a citizen of India; have attained the age of 25 years; his/her name must be in voters' list; must not hold any office of profit i.e.; should not be a government servant.

Tenure : The tenure of Vidhan Sabha is five years, but the Governor can dissolve it before the completion of its term on the advice of the Chief Minister. It may be dissolved by the President in case of a constitutional emergency proclaimed under Article 356 of the Constitution. In case of a proclamation of national emergency (under Article 352) the Parliament can extend the term of the Legislative Assemblies for a period not exceeding one year at a time.

11.3.1.1 Speaker and Deputy Speaker of Legislative Assembly :

The members of Vidhan Sabha elect their presiding officer. The Presiding officer is known as the Speaker. The Deputy Speaker presides over the meeting during the

absence of the Speaker. He is also elected by the Assembly from amongst its members.

11.3.1.2 Powers and Functions of the Speaker

There is a need for a head or a supreme authority of every legislative part. The Speaker and Deputy Speaker perform the same purposes in the Legislative Assembly. Therefore, Article 178 of the Indian Constitution has provisions about the same. The Constitution contains identical provisions relating to the Speaker and Deputy Speaker of the Lok Sabha and their counterparts in the state legislative assemblies. It lays down only the main duties and power of the Speaker. Which are as follows :

1. To permit a member who cannot adequately express himself in Hindi or English or the official language of the state, to address the House in his mother tongue.
2. To exercise a casting vote in the case of an equality of votes.
3. To determine whether a Bill is a Money Bill and to certify a Money Bill.
4. To preside over the House, whenever he is present in the House, excepting when a resolution for his removal from office is under consideration.
5. To adjourn the House when there is no quorum.

The detailed duties and responsibilities of the Speaker are laid down in the Rules of Procedure which each House is empowered to make under Article 208 of the Constitution with, of course, the condition that such rules shall be "subject to the provisions of the Constitution". Though the Rules of Procedure vary from state to state, the position regarding the powers and functions of the Speaker is more or less identical, as generally the rules of the assemblies on this behalf are modeled on the Lok Sabha Rules. The more important powers and functions of the Speakers of state assemblies, in general, are briefly noted below.

As the principal spokesman of the House, the Speaker represents its collective voice and is its sole representation to the outside people. His position as the presiding officer of the House is one of essential authority :

- He regulates the debates and proceedings of the House

- He is charged with the maintenance of order in the House and is equipped with all powers necessary for enforcing his decisions.
- He also works on points of order raised by members and his decision is final.

Various powers are conferred on the Speaker about asking questions to Ministers. Though the guiding principles regarding admissibility of questions are prescribed in the rules and its interpretation is vested in the Speaker. He/she has a general discretion regarding the admissibility of resolutions and motions also, similar to the one relating to the admissibility of questions. He/she decides whether a motion expressing want of confidence in the Council of Ministers is in order. The Speaker has also the power to select amendments concerning Bills and motions and can refuse to propose an amendment which in his opinion is trivial.

It is the fundamental duty of the Speaker to maintain order in the house. He derives his disciplinary powers from the rules, and the decisions taken by him in matters of discipline are not to be challenged except on a substantive motion. He/she may direct any member guilty of disorderly conduct to withdraw from the House, and name a member for suspension if the member disregards the authority of the chair and persists in obstructing the proceedings of the House. The Speaker also has the power that he/she may also adjourn or suspend the business of the House in case of grave disorder.

To enable the Speaker to deal with unexpected situations and regulate matters of detail, the rules expressly vest "residuary powers" in him/her.

In fine, the Rules of Procedure and Conduct of Business in the state assemblies confer wide discretionary powers on the Speaker. The rules have been codified on the premise that the Speaker's chair would be occupied by scrupulously dispassionate and impartial persons. The Speaker's supreme authority inside the House is based on his absolute and unvarying impartiality and all the powers vested in him are intended to enable him to ensure the smooth functioning of the House. Therefore, in no case would it be justified for a Speaker to use his powers arbitrarily or in such a manner as to prevent the House from functioning.

11.3.2 The Vidhan Parishad (Upper House of the State Legislature) :

Vidhan Parishad is the upper House of the State Legislature. It is not in existence in every State. Very few States have a bicameral Legislature that means having two Houses. Legislative Councils are the legacy of the British period. The Parliament can create Vidhan Parishad in a State where it does not exist, if the Legislative Assembly of the State passes a resolution to this effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting, and sends the resolution to the Parliament. Similarly, if a State has a Council and the Assembly wants it to be abolished, it may adopt a resolution by a similar majority and send it to Parliament. In this situation, Parliament resolves to abolish the concerned Legislative Council. Accordingly, Councils of Punjab, Andhra Pradesh, Tamil Nadu and West Bengal were abolished.

Qualifications for members :

In order to be a member of the Legislative Council the person concerned should

i) be a citizen of India.

ii) have attained the age of 30 years.

iii) be a registered voter in the State.

iv) not hold any office of profit.

Composition :

According to the Constitution, the total number of members in the Vidhan Parishad of a State should not exceed one-third of the total number of members of Vidhan Sabha but this number should not be less than 40. The Vidhan Parishad is partly elected and partly nominated. Most of the members are indirectly elected in accordance with the principle of proportional representation using single transferable vote system. Different categories of members represent different interests. The composition of the Legislative Council is as follows :

a) One-third of members of the Council are elected by the members of the Vidhan Sabha.

b) One-third of the members of the Vidhan Parishad are elected by the electorates consisting of members of Municipalities, District Boards and other local bodies in the State.

c) One-twelfth members are elected by the electorate consisting of graduates in the State with a standing of three years.

d) One-twelfth members are elected by the electorate consisting of teachers of educational institutions within the State not lower in standard than a secondary school who have teaching experience of at least three years.

e) The remaining, i.e. about one-sixth members are nominated by the Governor from amongst the persons having special knowledge in the sphere of literature, science, arts, co-operative movement and social service.

The Vidhan Parishad, like Rajya Sabha, is a permanent House. It is never dissolved. The tenure of its members is six years. One-third of its members retire after every two years. The retiring members are eligible for re-election. In case of a vacancy arising out of resignation or death by-election is held for the remaining period of such members' tenure.

Chairman : The presiding officer of the Vidhan Parishad (Legislative Council) is known as the Chairman, who is elected by its members. The business of Vidhan Parishad is conducted by the Chairman. He presides over the meetings and maintains discipline and order in the House. In addition to his vote as a member, he can exercise his casting vote in case of a tie. In his absence, Deputy Chairman presides over the House. He is also elected by the members of the Parishad from amongst themselves.

Sessions :

The State Legislature meets at least twice a year and the interval between two sessions cannot be more than six months. The Governor summons and prorogues the sessions of State Legislature. He addresses the Vidhan Sabha or both Houses (if there is a bi-cameral Legislature) at the commencement of the first session after each general election and at the commencement of the first session of the year. This address reflects

the policy statement of the government which is to be discussed in the Legislature, and the privileges and immunities of the members of the State Legislature are similar to that of members of Parliament.

The privileges of the members of State Assembly :

The members of a state Assembly enjoy the same privileges and immunities as the members of the Parliament. They have freedom of speech in the House and they cannot be tried in any court in respect of anything said by them on the floor of the house. They are entitled to receive such salaries and allowances as re-fixed by the Legislature of the state.

11.4 Powers and Functions of State Legislature

The functions of the state legislature are legislative, financial, and relating to control over administration.

Legislative powers :

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. Bills are of two types-(a) Ordinary bills and (b) Money bills. Ordinary bills can be introduced in either of the Houses (if the State Legislature is bicameral), but the Money bill is first introduced in the Vidhan Sabha. After the bill is passed by both Houses, it is sent to the Governor for his assent. The Governor can send back the bill for reconsideration. When this bill is passed again by the Legislature, the Governor has to give his assent. You have read when the Parliament is not in session and if there is a necessity of certain law, the President Issues Ordinance. Similarly, the Governor can issue an Ordinance on the State subjects when the legislature is not in session. The Ordinances have the force of law. The Ordinances issued are laid before the State Legislature when it reassembles. It ceases to be in operation after the expiry of six weeks unless rejected by the Legislature

earlier. The Legislature passes a regular bill, to become a law, to replace the ordinance. This is usually done within six weeks after the reassembly of 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 passed 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 :

The control of the legislative Assembly over the Council of Ministers is real and complete. The Minister is drawn from the majority party in the assembly over the Council of Minister is real and complete. The Ministers are drawn from the majority party in the Assembly. Constitution holds them collectively responsible to the legislature. The term responsibility implies that the Ministry can remain in the office during the pleasure of the Assembly. It can make its influence felt by accepting adjournment motion, censure motion, a cut in the Minister's salary, or by rejecting a Government Bill. By expressing its lack of confidence, it can obtain the registration of the Ministry. The Council of Ministers has only one weapon to use against the Assembly. It can have recommended the dissolution of the House leading to fresh elections.

Electoral Powers

The elected members of the Vidhan Sabha are members of the Electoral College for the election of the President of India. Thus they have to 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 of 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) cast their votes in accordance with a single transferable vote system.

11.5 Comparison of Two Houses of State Legislature

Legislative Assembly (Vidhan Sabha) like the Lok Sabha, occupies a dominant position.

Legislative Council (Vidhan Parishad) enjoys much fewer powers as compared to the powers of Vidhan Sabha even in relation to ordinary bills. The Rajya Sabha at the Centre enjoys equal powers in consideration of bills other than money bills, but Vidhan Parishad enjoys much lesser powers as compared to the Rajya Sabha. The relative position of the Vidhan Sabha and Vidhan Parishad is as under. In the case of the Parliament, if there is a disagreement between the two Houses over an ordinary bill, the President summons a joint sitting of both the Houses and if the bill is passed there by the majority of votes, the bill is taken as passed by both Houses of the Parliament. But this provision of joint sitting does not exist in the States. Although an ordinary bill can originate in either House of the State Legislature, yet both Houses have unequal powers. If a bill is passed in the Vidhan Sabha, it is transmitted to the Vidhan Parishad for consideration. When it is passed by Vidhan Parishad without any amendment, the bill is sent to the Governor for his assent. In case, the bill is (a) rejected by the Parishad or (b) more than three months elapsed without the bill being passed by the Parishad, or (c) bill is passed with an amendment to which the Vidhan Sabha does not agree, the Vidhan Sabha may pass the bill again in the same or the subsequent session. After that, the bill is again sent to the Vidhan Parishad. If the Vidhan Parishad does not return the bill within one month, the bill is deemed to have been passed by both Houses of the State Legislature and is sent to Governor for his assent. Thus the Vidhan Parishad can delay the bill for a maximum period of four months. On the other hand, if the bill is first passed by the Vidhan Parishad and rejected by the Vidhan Sabha, the bill is rejected and cannot become a law.

Like in the Lok Sabha, the money bill is introduced first in Vidhan Sabha. It cannot

be initiated in the Vidhan Parishad. The Speaker of the Vidhan Sabha certifies whether a particular bill is a money bill. After the bill is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad. The Vidhan Parishad gets 14 days to consider the bill. If the Parishad passes the bill, it is sent to the Governor for his assent. If the bill is not returned by the Vidhan Parishad within 14 days, it is deemed to have been passed by the Vidhan Parishad. If it suggests certain changes in the bill and sends to Vidhan Sabha, the Vidhan Sabha may accept or reject the changes suggested by the Parishad. The bill is then sent to the Governor for his assent who is bound to give his assent.

Only the elected members of the Vidhan Sabha are entitled to participate in the election of the President of India. The members of the Vidhan Sabha do so in their capacity as members of the Electoral College. But the members of the Vidhan Parishad are not entitled to vote in the election of the President. Members of the Rajya Sabha from each State are elected only by the members of the Assembly and not of the Council. The above discussion makes it clear that the Vidhan Parishad is a powerless and non influential House. It has become a secondary House. Thus many States prefer to have a unicameral Legislature. But the Vidhan Parishad is not superfluous. It serves as a check on hasty Legislation made by Vidhan Sabha by highlighting the short bills comings or defects of the bill. It lessens the burden of the Vidhan Sabha, as some bills are initiated in the Vidhan Parishad.

11.6 Conclusion

The State Legislature consists of the Governor, the Legislative Council (Vidhan Parishad) and the Legislative Assembly (Vidhan Sabha). In most 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 a permanent House like the Rajya Sabha. It is never dissolved. The tenure of its members is six years. One-third of 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. Members of the Vidhan Sabha are directly elected by the people of

the State based on 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.

11.7 Summing Up

- The State Legislature consists of the Governor, the Legislative Council (VidhanParishad) and the Legislative Assembly (Vidhan Sabha).
- In most states, there are unicameral Legislatures.
- The elected members of the Vidhan Sabha are members of the Electoral College for the election of the President of India.
- The power of the State Legislature includes law-making, control over the finances, and the executive, electoral functions and constitutional functions.
- The State Legislature is empowered to make laws on State List and Concurrent List.

11.8 Probable Questions

Essay Type Questions :

1. Discuss the composition and functions of the state legislature.
2. Discuss the power and functions of the Speaker of the state Legislative Assembly.
3. Compare the Vidhan Sabha and Vidhan Parishad.
4. Discuss the composition, tenure and qualifications for members of the state legislature
5. Analyse the law-making functions of the state legislature.
6. Explain the composition and qualifications for the member of Vidhan Parishad

Short Questions :

1. Point out the role of Chairman of Vidhan Parishad.

2. Write a note on the importance of State Legislatures in an Indian state.
3. Write a short note on the Privileges of the members of the State Assembly.

Objective Questions :

1. Who presides over the Legislative Assembly?
2. What age is required for a person to become a member of the Legislative Council?
3. Who can issue an ordinance in a state?
4. Name a state where bicameral legislature exists.
5. On which lists can a state Legislature enact laws?

11.9 Further Reading

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Unit 12 ❑ State Executive

Structure

12.1 Objective

After studying this unit, the learner will be able to

- Understand the role of the state executive in the state administration.
- Explain the powers, functions and the role of the Governor.
- Explain the functions and the role of the Chief Minister of a state.
- Understand the functions of the state Council of Ministers.
- Discuss the relation between the Chief Minister and the Council of Ministers.

12.2 Introduction

The legislature, executive and judiciary are the three organs of government. Together, they perform the functions of the government, maintain law and order and look after the welfare of the people. The Constitution ensures that they work in coordination with each other and maintain a balance among themselves. In a parliamentary system, the executive and the legislature are interdependent : the legislature controls the executive, and, in turn, is controlled by the executive. In this unit, we shall discuss the composition, structure and function of the executive organ of the state government. India is a federation having governments at two levels : state level and union or central level. Every citizen is related to and influenced by the governments functioning at both levels. We are all guided by the laws made by state and union legislatures, administered by both the governments and get justice from courts at both levels. All the three branches of government, executive, legislature and judiciary exist and function at both levels. The executive is the branch of government responsible for the implementation of laws and policies adopted by the legislature. The executive is often involved in the framing of policy. The official designations of the executive vary from country to country. Some countries have presidents, while others have chancellors. The executive branch is not just about presidents, prime Ministers, and Ministers. It also extends to the administrative machinery (civil servants). While the heads of government and their Ministers, saddled with the overall responsibility of government policy, are together known as the political executive, those responsible for day-to-day administration are called the permanent executive.

12.3 The State Executive

The State executive consists of the Governor, the Chief Minister, and the Council of Ministers and Advocate-General of State.

12.4 The Governor

The Governor, as President, heads the state government. Article 153-167 in the Indian Constitution deal with the provisions related to the state governments of the country.

Governor is a titular head or nominal executive head and also the constitutional head of the state. He/she forms an important part of the state executive where he acts as the chief executive head. Central Government nominates the Governor for each state. Normally, the Governor exercises all his/her powers on the advice of the Council of Ministers.

12.4.1 Appointment :

Constitution of India lays down for the office the Governor of each State." However, one person can also function as a Governor of two or more states (Article 153). The President of India appoints the Governor of each state and while doing so he acts upon the advice of the Prime Minister.

Two important practices regarding the appointment of a Governor :

i) The first practice is that the person being appointed as the Governor is mostly not a resident of the state for which he is appointed.

ii) Before appointing a Governor, the Union Governments consults the concerned State Government particularly the Chief Minister of that State. It is now a respected rule. Along with these two healthy practices, an unhealthy practice has also developed. Sometimes 'defeated' or very old political leaders are appointed as Governors. Further, sometimes the unhealthy practice of wholesale transfers or removals of Governors takes place after a change of government at the Centre.

Term of office of the Governor (Art. 156)

a) The Governor shall hold office during the pleasure of the President.

b) The Governor may, by writing under his hand addressed to the President, resign his office.

c) Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters upon his office. Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Qualifications for appointment as Governor (Art. 157)

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Tenure :

The Governor is appointed for five years. However, he holds office during the pleasure of the President. The President can remove or transfer him at any time.

Oath or Affirmation by the Governor :

Every person appointed as Governor has to take the oath of his office. It has to be taken in the presence of the Chief Justice of the concerned State High Court.

12.4.2 Powers and Functions of the Governor :

A) Executive Powers :

Governor is the head of the State. The Constitution gives executive powers of the state to the Governor. He appoints the Chief Minister and other Ministers on the advice of the Chief Minister. Ministers hold office during the pleasure of the Governor. The Governor can remove the Chief Minister of the province in case he feels that his government does not enjoy the confidence of the majority in the State Legislative Assembly or is not working according to the provisions of the Constitution.

All major appointments (Advocate General, Chairman and Members of Public Service Commission, Vice-Chancellors) in the state are made by the Governor. But in doing so, the Governor depends upon the advice of the State Chief Minister and the State Council of Ministers.

The Chief Minister of the State has to keep the Governor informed about the state administration and the decisions taken by his ministry. Governor can seek from the Chief Minister any information about the state administration. He may call upon the Chief Minister to place the decision of an individual Minister before the Council of Ministers for consideration. The President consults the Governor while appointing the judges of the State High Court. The Governor acts as the Chancellor of the state universities. Normally, the Governor exercises all his executive powers in accordance with the advice of the State Council of Ministers and the Chief Minister. The Ministers are responsible for all the acts of the Governor. But during a constitutional emergency in the states the Governor becomes a real executive head of the state uses all executive powers with the help of some advisors.

B) Legislative Powers :

The Governor is not a member of the state legislature and yet he is a part of it. All bills passed by the state legislature become laws only after the signatures of the Governor. He can withhold his assent or can return a bill (other than a money bill) to the legislature for reconsideration. But if the bill is passed a second time, he cannot withhold his assent from that bill. Several legislative measures can be reserved by him for Presidential assent.

The Governor summons and prorogues the sessions of the state legislature. He can dissolve the state legislative assembly. He nominates 1/6 members of the Legislative Council from persons having distinguished careers in the field of science, art, literature, or social service, normally all these functions are performed by the Governor under the advice of the State Chief Minister.

When the state legislature is not in session, the Governor can issue ordinances. Any ordinance so issued by the Governor has the same force as the law of the legislature. It, however, ceases to operate after six weeks from the date on which the state legislature comes into session. It also ceases to operate when a resolution is passed by the state legislature disapproving the ordinance. The Governor issues ordinances only on the advice of the state Chief Minister and his Council of Ministers.

C) Financial Powers :

A money bill can be introduced in the state legislature only with the prior permission of the Governor. He orders that the annual budget be placed before the state legislature. The contingency fund of the state is at his disposal and he can order expenditure out of it to meet any unforeseen expenditure. In reality, these powers are also exercised by him under the advice of the CM and his State Council of Ministers.

D) Judicial Powers :

The Governor of the state has some judicial powers. He can influence the appointments, postings and promotions of the district judges and other judicial officials. He has the power to grant pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offense against any law. While appointing the Chief Justice and other judges of the State High Court, the President of India consults the Governor of the Concerned State.

12.5 The Chief Minister

Each State has a Council of Ministers to aid and advise the Governor in the exercise of his functions. Chief Minister is the head of the government in the State. The Council of Ministers with the Chief Minister as its head exercises real authority at the State level.

Qualifications : The Constitution does not prescribe any qualifications for the office of the Chief Minister. Although it is expected that he/she must be a member of the legislative assembly. It may be noted that there is no constitutional bar to the appointment of the outsider of a non-member of the assembly Chief Minister. On several occasions, a person has been appointed as Chief Minister even though they were not members of the state legislature. There have been instances where the leaders defected at the poll were appointed as a Chief Minister. However, such person on appointment as Chief Minister must become the members of the state legislature within six months, otherwise, they cease to be Chief Ministers.

Tenure : Under normal circumstances, the term of the Chief Minister is five years. The term of the Chief Minister is automatically extended, if, the life of the State legislature is extended. The term of Chief Minister can be cut short by his/her resignation, death, or removal from party leadership.

Appointment of Chief Minister

The Chief Minister of a state is appointed by the Governor of that state. The leader of the political party/coalition that gets the majority of the seats of the Legislative assembly, is appointed as the Chief Minister of the state. In case, no party gets a majority, then the Governor uses his discretion and appoints a Chief Minister.

12.5.1 Powers and Functions of the Chief Minister :

The Chief Minister plays an important role in the administration of the State. We can discussh is functions as follows :

Head of the Council of Ministers

The Chief Minister is the head of the Council of Ministers. The Ministers are appointed by the Governor on the advice of the Chief Minister and he also has a free hand in making a list of his colleagues. The Chief Minister can reconstruct his Ministry as and when the need arises.

He/she further has the right to demand the resignation of any of the Ministers under him. The Chief Minister also controls the agenda for the Cabinet meetings. Furthermore, he supervises and coordinates the policies of several Ministers and Departments.

Chief Minister presides over the Cabinet meetings. He/she coordinates the functioning of different ministries. He/she guides the functioning of the Cabinet.

Aids and Advises the Governor

- The Constitution provides that the Chief Minister shall communicate to the Governor all decisions of the Council of Ministers relating to the administration and the affairs of the State and proposals for legislation.
- The Chief Minister is the sole link of communication between the Cabinet and the Governor. The Governor has the right to be informed by the Chief Minister about the decisions taken by the Council of Ministers.
- He/she also needs to furnish any information relating to the administration of the State as the Governor may call for.
- If the Governor so requires, the Chief Minister submits for 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 Cabinet.

Leader of the House

a) Being the leader of the house, he gets to make all the announcements concerning the new or amended policies. Maintaining discipline of the Members of his/her party also comes under his hat. Adding to this, the Chief Minister can appoint a whip whose directive must be obeyed by all the legislators.

b) Chief Minister plays a key role in framing the laws and policies of the State Government.

c) Bills are introduced by the Ministers in the State legislature with his/her approval.

d) He/she is the chief spokesman of the policies of his government both inside and outside the State Legislature. All the policies are announced by him/her on the floor of the house.

e) He/she recommends the dissolution of the legislative assembly to the Governor.

f) He/she advises the Governor regarding summoning, proroguing the sessions of the State Legislative Assembly from time to time.

Other Functions

- At the ground level, he is the authority to be in contact with the people regularly and knows about their problems to bring about policies on the floor of the assembly.
- He/she acts as the chairman of the State Planning Commission.
- He/she is the vice-chairman of the concerned zonal council in rotation for a period of one year.
- During the crisis in the state, he/she acts as the crisis manager in the state.

The above functions show that the real authority is vested with the Council of Ministers headed by the Chief Minister. The Council of Ministers is the real executive in the State. The position of the State Council of Ministers largely depends upon the strength of the ruling party in the State Assembly and the personality of the Chief Minister. The position of the Chief Minister is more powerful when his party is in power in the Centre as well. As long as the Chief Minister and his Council of Ministers enjoy the confidence of a majority in the Legislative Assembly, he exercises the real executive power in the State.

12.6 The State Council of Ministers

According to article 163(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

The Governor appoints the Chief Minister and other Ministers on the advice of the Chief Minister. The Ministers included in the Council of Ministers must belong to either House of the State legislature. A person who is not a member of the State legislature may be appointed a Minister, but he/she ceases to hold office if he/she is not elected to the State

legislature within six months of his appointment. The portfolios to the members of the Council of Ministers are allocated by the Governor on the advice of the 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 Council of Ministers constitutes the real executive in the State. Although the administration is carried on in the name of the Governor, actual decisions are normally made by Ministers. Under ordinary circumstances, the Governor has to follow their advice. The Chief Minister of a State has to communicate to the Governor regarding administration and the affairs of the State. Thus, in theory, the Governor may dismiss a Minister if he so likes, but because of the collective responsibility of the Council of Ministers to the State Legislative Assembly, he /she is not likely to use this power in actual practice.

The Constitution defines the position of the Council of Ministers about the State Legislature by providing that the Council of Ministers is collectively responsible to the Legislative Assembly of the State. This means that they can remain in office only if they enjoy the support of a majority of members of the State Legislative Assembly. The only constitutional requirement is that in the States of Bihar, Madhya Pradesh, and Orissa the Council of Ministers must have a Minister in charge of Tribal welfare and the same Minister may also be entrusted with the welfare of the Scheduled Castes and Backward Classes in the State.

12.6.1 Powers and Functions of the State Council of Ministers :

The Council of Ministers performs the following functions :

Legislative functions : Most of the bills passed by the legislature are government bills, prepared by the ministries. They are introduced, explained and defended in the State Legislature by the Ministers. The Cabinet prepares the Governor's Address in which it sets forth its legislative programme at the commencement of the first session of the Legislature each year. For weeks at a stretch, the Cabinet's proposals take over every working moment of the House. The Cabinet makes sure that all government bills will be translated into laws.

Executive functions : The executive power is to be exercised in such a way as to ensure compliance with state laws. The Constitution empowers the Governor to make -rules for the more convenient transaction of the business of the Government. All such rules are made on the advice of the Council of Ministers.

Formulation of the Policies : The Ministers formulate the policies of the government. The Cabinet takes decisions on all major problems-public health, relief to the disabled and unemployed, prevention of plant diseases, water storage, land tenures and production, supply and distribution of goods. When it has formulated a policy, the appropriate department carries it out.

Financial Functions : The State budget containing the estimates of income and expenditure for the ensuing year is placed by the Finance Minister before the State Legislature. The Legislature cannot take the initiative in the case of a Money Bill. Such a Bill must be recommended by the Governor and can be introduced only by a Minister. The initiative in financial matters lies with the Executive.

Functions about the execution of Union laws : The Union Government is empowered to give directions to the State-governments in certain matters. The States should exercise their executive power to ensure compliance with the laws made by Parliament. They should not do anything which would hamper the executive power of the Union. Railways, for instance, is a Union subject, but police, including railway police, is a State Subject. The Union Government can give directions to the State Executive as to the measures to be taken for the protection of railways within the State.

Appointment-related functions : The Governor has the power to appoint the Advocate-General and the Members of the State Public Service Commission. The Vice-Chancellors of the State Universities and members of various Boards and Commissions are all appointed by the Governor. The Governor cannot make these appointments at his will. He must exercise these functions on the advice of his Ministers.

12.7 Conclusion

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 a 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 sends a report to the President whenever he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution and thereby inviting the President to impose President's rule in the concerned State.

12.8 Summing Up

- In a parliamentary system, the executive and the legislature are interdependent.
- The executive is the branch of government responsible for the implementation of laws and policies adopted by the legislature.
- The Governor, like the President who heads the country, heads the state government. This is in accordance with Article 153-167.
- Governor is a titular head or nominal executive and is regarded as mere constitutional head of the state.
- Each State has a Council of Ministers to aid and advice the Governor in the exercise of his functions.
- Chief Minister is the head of the government in the State.
- According to article 163(1) there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor.
- The Council of Ministers constitutes the real executive in the State.
- The Constitution defines the position of the Council of Ministers in relation to the State Legislature by providing that the Council of Ministers is collectively responsible to the Legislative Assembly of the State.

12.9 Probable Questions

Essay Type Questions :

1. Analyse the functions of a Chief Minister of a state in India.
2. Explain the powers and functions of the Governor of a state.
3. Discuss the composition and functions of the state Council of Ministers.
4. Elaborate on the relationship between the Governor and the Chief Minister of a state.
5. Analyse the relation between the Chief Minister and the Council of Ministers.
6. Write a short note on the composition of the state executive.

Short Questions :

1. Point out the appointment procedure of the Chief Minister.
2. Discuss the term of office and removal of Governor.
3. Write a short note on the judicial powers of the Governor.

Objective Questions :

1. Who is the real head of a state?
2. Who appoints the Governor of a state?
3. Who can dissolve the state Legislative Assembly?
4. Who is the chairman of State Planning Commission?
5. Which article states that there shall be a council of Ministers headed by the Chief Minister to and aid advise the Governor?

12.10 Further Reading

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Unit 13 ❑ High Court

Structure

13.1 Objective

After studying this unit, the learner will be able to

- Understand the judicial system at the state level
- Know the composition of the High Court
- Know the powers of the High Court
- Understand the jurisdiction of the High Court
- Understand the importance of the High Court as a part of the integrated judicial system in India.

13.2 Introduction

According to Arside 214 of the India constitution, every state will have a High court.

However, the parliament, by law, provides for a High Court for two or more states (231(i)). Thus, West Bengal, and Andaman and Nicobar Islands have one High Court, that is, Calcutta High Court, Kerala High Court for Kerala and Lakshadweep, Chennai High Court for Tamil Nadu and Puducherry. Allhough High Court stands a top of the state judiciary, as there exests an integrated judicial system, Supreme Court has been placed above the High Court. In other words, from Supreme Court to the lowest Courts of the states—all are stitehed together in the same judicial garland.

13.3 The High Courts

The High Court stands at the head of a State's judicial administration. The Constitution provides for a High Court for each state. However, the Parliament can by law establish a common High Court for two or more states and a Union Territory. At present Punjab, Haryana and Chandigarh have a common High Court. Besides this, there is a common High Court for seven North-eastern states- Assam, Nagaland, Manipur, Tripura, Meghalaya, Arunachal Pradesh, and Mizoram. Tamil Nadu and Pondicherry also have a common High Court. All 21 High Courts are working in India. These are next only to the Supreme Court of India.

JURISDICTION AND SEAT OF HIGH COURTS

Sl. No.	Name	Year of establish-ment	Territorial establishment jurisdiction	Seat
1.	Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
2.	Andhra Pradesh	1956	Andhra Pradesh	Hyderabad
3.	Bombay	1862	Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu	Bombay (Benches at Nagpur, Panaji and Aurangabad)

4. Calcutta	1862	West Bengal	Calcutta (Circuit Bench at Port Blair)
5. Delhi	1966	Delhi	Delhi
6. Guwahati[1]	1948	Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh	Guwahati (Benches at Kohima, Aizwal & Imphal. Circuit Bench at Agartala & Shillong)
7. Gujarat	1960	Gujarat	Ahmedabad
8. Himachal Pradesh	1971	Himachal Pradesh	Shimla
9. Jammu & Kashmir	1928	Jammu & Kashmir	Srinagar & Jammu
10. Karnataka[2]	1884	Karnataka	Bangalore
11. Kerala	1958	Kerala & Lakshadweep	Ernakulam
12. Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
13. Madras	1862	Tamil Nadu & Pondicherry	Madras
14. Orissa	1948	Orissa	Cuttack
15. Patna	1916	Bihar	Patna
16. Punjab & Haryana[3]	1975	Punjab, Haryana & Chandigarh	Chandigarh
17. Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
18. Sikkim	1975	Sikkim	Gangtok
19. Chhattisgarh	01/11/2000	Chhattisgarh	Bilaspur (Chhattisgarh)
20. Jharkhand	2000	Jharkhand	Ranchi
21. Uttarakhand	2000	Uttarakhand	Nainital

13.3.1 Composition and Appointment :

The constitution says that there shall be a High Court for each State. Every High Court shall consist of one chief justice and such other judges as the President may from time to time deem it necessary to appoint. Since the number of the judges of the state High Courts has not been fixed by the constitution, it varies from court to court. The Chief Justice of the High Court is appointed by the President of India in consultation with the Chief justice of India and the Governor of the State. In appointing other judges of the High Court, the President, besides consulting the Chief Justice of India and the Governor, also consults the Chief justice of the High Court.

Besides, the President has the power to appoint

(a) Additional Judges for a temporary period not exceeding two years, for the clearance of areas of work in a High Court;

(b) an acting judge, when a permanent judge of a High Court (other than Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice.

13.3.2 Qualifications and Tenure of judges :

The qualifications for appointment as a judge of a High Court are that–

i) A person must be a citizen of India.

ii) He/she has, for at least ten years, held a judicial office or

iii) Has, for at least 10 years, been an advocate of a High Court in any State.

Tenure

A Judge of the High Court shall hold office until the age of 62 years.

Every Judge, permanent, additional, or acting, may vacate his office earlier in any of the following ways;

a) by resignation in writing addressed to the President;

b) by being appointed a Judge of the Supreme Court or being transferred to any other High Court, by the President;

c) by removal by the President on an address of both Houses of Parliament (supported by the vote of 2/3 of the members present and voting) on the ground of proved misbehaviour or incapacity, the mode of removal of a Judge of the High Court shall thus be the same as that of a judge of the Supreme Court.

13.3.3 Powers and Jurisdictions of High Court :

The constitution does not attempt detailed definitions or classification of the different types of juris diction of the High Courts. It was presumed that the High Court which were functioning with well-defined jurisdiction at the time of the framing of the Constitution would continue with it and maintain their position as the highest courts in the States.

The Constitution, accordingly, provided that the High Courts would retain their existing jurisdiction and any future law that was to be made by the Legislatures.

Besides, the original and appellate jurisdiction, the Constitution vested in the High Court's four additional powers :

(1) The power to issue writs or orders for the enforcement of Fundamental Rights or any other purpose.

(2) The power of superintendence over subordinate courts.

(3) The power to transfer cases to themselves pending in the subordinate courts involving interpretation of the Constitution; and

(4) The power to appoint officers.

A) Original Jurisdiction :

The Constitution does not attempt detailed definitions and classification of the different types of the jurisdiction of the High Court as it has done in the case of the supreme court. This is mainly because most of the High Courts at the time of the framing of the constitution had been functioning with well-defined jurisdictions whereas the Supreme Court was a newly-created institution necessitating a clear definition of its power and functions**.**

The High Courts are primarily courts of appeal. Only in matters of admiralty,

probate, matrimonial, contempt of Court, enforcement of Fundamental Rights, and cases ordered to be transferred from a lower court involving the interpretation of the Constitution to their file, they have original jurisdiction.

Formally, the High Court of Bombay, Calcutta, and Madras had both Original and Appellate jurisdictions. They could hear civil cases involving an amount exceeding Rs. 2000 (two thousand). They had original jurisdiction regarding criminal cases referred to as presidency magistrates. The new constitution has not withdrawn their rights. Every high Court has original jurisdiction regarding admiralty, will, divorce, marriage laws, fall outside their pale of influence. According to Art. 225 the present Constitution has extended their original jurisdiction to revenue cases also. Besides passing the right to issue a writ of habeas corpus, High Courts have now been empowered to issue writs like mandamus, prohibition, quo warranto, and certiorari to protect the fundamental rights of the citizen.

B) Appellate Jurisdiction :

The High Court, as stated earlier also, is the highest court of appeal in any State. It entertains appeals against the judgments of the subordinate courts. If a Sessions Judge awards death sentence, an appeal lies to High Court. On the civil side, it entertains appeals involving an amount exceeding rupees five thousand. It also hears cases relating to patent and designs, succession, land acquisition, insolvency, and guardianship.

C) Power of Superintendence and Transfer :

Every High Court has a power of superintendence over all courts and tribunals throughout the territory concerning which it exercises jurisdiction, excepting military tribunals [Art. 227]. This power of superintendence is very wide in as much as it extends to all courts as well as tribunals within the State, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not.

Further, this power of superintendence would include a revisional jurisdiction to intervene in case of gross injustice or non-exercise of abuse of jurisdiction, even though no appeal or revision against the orders of such tribunal was otherwise available.

However, this jurisdiction of the High Court has been taken away in respect of Administrative Tribunals set up under Article 323A, by the Administrative Tribunals Act. 1985. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, it may transfer the case of itself.

After the case has come to the file of the High Court, it may dispose of the whole case itself or may determine the constitutional questions involved and return the case to the court from which it has been withdrawn together with a copy of its judgment on such question and direct it to dispose of the case in conformity with such judgment.

The Constitution, thus, denies subordinate courts the right to interpret the Constitution so that there may be the maximum possible uniformity as regards constitutional decisions. It is, accordingly, the duty of the subordinate courts to refer to the High Court a case that involves a substantial question of law as to the interpretation of the Constitution and the case cannot be disposed of without the determination of such question. The High Court may also transfer the case to itself upon the application of the party in the case.

D) Power of Judicial Review :

This power of High Courts includes the power to examine the constitutionality of legislative and executive orders of both the central and state governments. It is to be mentioned that the word judicial review is nowhere mentioned in the constitution but Article 13 and 226 clearly provide High Court with this authority.

E) Writ Jurisdiction :

Article 226 of the Constitution empowers every High Court, throughout the territories about its which exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs like **habeas corpus, mandamus, prohibition, quo warranto and certiorari,** or any of them, for the enforcement of any of the Fundamental Rights and for any other purpose.

The Constitution by 42nd. amendment omitted the provision "for any other purpose", but the Forty-fourth amendment has restored it. The peculiarity of this jurisdiction is that is conferred by the Constitution, it cannot be taken away or abridged by anything short of an amendment of the Constitution itself.

Although the Supreme Court and the High Courts have concurrent jurisdiction in the enforcement of Fundamental Rights, the Constitution does not confer to the High Courts the special responsibility of protecting Fundamental Rights as the Supreme Court is vested with such a power.

Under Article 32 the Supreme Court is made the guarantor and protector of Fundamental Rights whereas in the case of the High Court the power to enforce Fundamental Rights is part of their general jurisdiction.

The jurisdiction to issue writs under these Articles is larger in the case of High Court in as much as while the Supreme Court can issue them only where a fundamental right has been infringed, a High Court can issue them not only in such cases but also where an ordinary legal right has been infringed, provided a writ is a proper remedy in such cases, according to well-established principles.

F) Court of Record :

The High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The two characteristics of a court of record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any court and that it has the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High Court of its power of punishing contempt of itself.

The High Court of India has been given full freedom and independence in imparting justice to the people and ensure that the executive and legislature shall in no way interfere in the day-to-day life of the people. As a Court of record, the High Court has the power to punish those who are adjudged as guilty of contempt of court. All its decision is binding and cannot be questioned in the lower court. As the Judiciary has a vital role in the working of the constitution and in the maintenance of the balance of authority and liberty and as a safeguard against the abuse of power

by the executive, its independence is secured by the permanence of tenure and the conditions of service of the judges.

13.4 Conclusion

India, since independence, has remained firmly embedded in rule of law and democracy. In addition to devotion to the rule of law and principles of democracy, the presence of a strong and independent judiciary, free press, and the growth of a wide network of NGOs has contributed greatly to the awareness of human rights and the protection of human rights of individuals, groups, minorities, and others. Indian Constitution has given special status to the Supreme Court and High Courts. Indian higher judiciary has the power to review any legislative, executive, and administrative activities of the State. The Higher Courts in India entertain the petitions which are being filed by the public-spirited persons in the public interest. It is also true that it is all because of the judicial activism that the needy persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of a beggar, transgender, etc. have somehow been provided with adequate legal assistance in the process of the enforcement of their fundamental rights. Moreover, Article 226 of the Indian Constitution gives the High Court the power to pass a suitable writ for doing complete justice in case any fumdamental right is infringed upon. It is no exaggeration to say that the ability, wisdom, and patriotism of our future judges depend, to some extent, on the future of the rule of the law and parliamentary democracy in India.

13.5 Summing Up

- One of the basic principles of democracy is the presence of a strong and independent judiciary.
- India has a strong independent judiciary headed by the Supreme Court and High Courts.
- Indian Constitution has given special status to the judiciary.

- The judiceary of state is headed by High Court.
- Article 226 of the Indian Constitution assigns the High Courts the power to pass a suitable decree or order for doing complete justice in any pending matter.
- The judicial activism supports the needy persons and provides adequate legal assistance to them.

13.6 Probable Questions

Essay Type Questions :

1. Describe the composition, powers and jurisdiction of High Courts of Indian states.
2. Do you think that judicial activism can lead to a conflict between the judiciary and the executive? Give reason for your answer.

Short Questions :

1. Explain the original jurisdiction of the High Court.
2. How does the High Court protect fundamental rights?
3. How can the judges of the High Court be removed from office?
4. Discuss the qualifications and appointment of judges of the High Court.

Objective Questions :

1. Who appoints the judges of the High Courts?
2. Who can propose removal of the judges of the High Courts?
3. At what age do the judges of the High Courts retire?
4. Under which Article can the High Courts issuse writs?
5. Which Article deals with the fact that there shall be a High Court for each state in India?

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Unit 14 ❑ Local Self Government in India : Panchayati Raj

Structure

14.1 Objective

After studying this unit, the learner will be able to—

- Understand the concept and theoretical outline of Panchayat Raj Institutions.
- Discuss the composition and functions of Panchayat Raj Institutions in West Bengal.
- Identify and explain the different tires of Panchayat Raj Institutions in West Bengal.
- Discuss the functions of different levels of Panchayat Raj Institutions in West Bengal.

14.2 Introduction

Democracy is considered one of the best forms of government because it ensures participation and control of governance by the people of the country. Such participation is possible only when the powers of the state are decentralised to the district, block, and village levels where all the sections of the people can sit together, discuss their problems and suggest solutions and plan to execute as well as monitor the implementation of the programs. It is called the root of democratic decentralisation. Panchayat Raj is an interconnected and interdependent pattern of democracy, a system of sharing powers and responsibilities with the people. The Panchayat system is the prototype of all forms of self-government and democracy that have ever been evolved in various parts of the world. India is a vast agrarian country, it needs some healthy institutions to work or administrative, economic and social development to the people living in widespread villages. Panchayat Raj Institutions (PRI) are successfully meet up those needs. Panchayat Raj provided a system of self-governance at the village level or grass-roots level. It is a complex unit of Local Self Government consisted of popular representatives and exercising the function of coordination and possessing a degree of autonomy. The institution of Panchayat Raj has been the main pillar of rural social structure also. In India, there was the option to introduce panchayat, but after the 73rd amendment (1993) of the constitution, it is mandatory and gets constitutional status. West Bengal has also introduced the panchayat system after independence.

14.3 Panchayati Raj : The Concept

Democracy at the top could not be a success unless it was built on the foundation below. In India, Mahatma Gandhi, Jawaharlal Nehru and Jai Prakash Narayan described democracy as the government that gives ‘power to the people. Gandhi said : ‘‘True democracy could not be worked by some persons sitting at the top. It had to be worked from below by the people of every village.’’ Nehru also advocated democracy at the lower levels when he opined : ‘‘Local self-government was and must be the basis of any true system of democracy. People had got into the habit of thinking of democracy at the top and not so much below.’’ Jai Prakash Narayan also favoured power to the people of

the village along with the government at the centre when he remarked : ‘‘To me the Gram Sabha signifies village democracy. Let us not have only representative government from the village up to Delhi, one place, at least let there be direct government, direct democracy. The relationship between the Panchayat and the Gram Sabha should be that of Cabinet and the Assembly.’’

Mahatma Gandhi’s vision was that democracy through people’s participation could be ensured only by way of ‘Gram Swarajya’. He wanted Gram Swarajya in villages where there will be a village republic and the management of the village would be done by the people themselves. They would elect their president and common decisions would be taken unanimously by the Gram Sabha of the village. According to Gandhiji’s Gram Swarajya, ‘‘every village should be a democracy in which they will not depend even on neighbour for major needs. They should be self-sufficient. For other needs, where cooperation of others would be essential, it would be done through cooperation. It will be swarajya of the poor. No one should be without food and clothing. Everybody should get sufficient work to meet one’s necessities. This ideal can be asset only when the means of production to meet to the primary needs of life are under the control of the people. True swarajya cannot be achieved by power to a few people. People should have the capacity to prevent misuse of power. People have the capacity to get hold of power and regulate it.’’

The late Prime Minister of India, Lal Bahadur Shastri, also opined that only the panchayats know the needs of villages and hence the development of villages should be done only by the panchayats. Prosperous people in villages should ensure that powers given to the panchayats are used in the interests of the poor. The panchayats are the foundation of democracy and if the foundation is based on correct leadership and social justice, there can be no danger to democracy in this country.

The theoretical assumptions underlying thinking can be classified into four categories :

i) That Panchayati Raj will enable the people to effectively participate in politics;

ii) That by making the local community the author of the change, and by awakening plan-consciousness among the people, it will make economic development both speedy and efficient;

iii) That the 'transference' of power to village panchayats will enable basic institutions-the cooperatives, the community development centres and the Jojana Samiti to usher in a new social order. Panchayati Raj, in other words, will pave the way for a Sahakari Samaj; and lastly,

iv) Based on common and shared experiences among the people at large, such a system of political organisation would lead to genuine national unity. In sum, Panchayati Raj is conceived as the closest approximation, under existing conditions, to the ancient concept of direct democracy as practiced in Athens and also in ancient India as well.

On this conceptual basis, in the discussion of the constitutional Assembly, Gandhiji's dream of building democracy at and from the bottom was sought to be fulfilled. But the Draft Constitution of independent India framed by the Drafting Committee, of which Dr. Ambedkar was the Chairman, contained nothing about the village Panchayats. In the Constituent Assembly Dr. Ambedkar, in justifying this deliberate omission, condemned these villages in very strong terms. He said : ''That they have survived through vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low selfish level. I hold that these village republics have been the ruination of India. I am, therefore, surprised that those who condemn provincialism should come forward as champions of the village. What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit''. Perhaps Dr. Ambedkar, though correct to some extent, carried things to an excess and his statement raised a storm of protest and reaction in different quarters. All felt that Dr. Ambedkar did not attach proper value, and significance to the role the villages played in the past and are expected to play in the future. The Constituent Assembly then started the discussion of the Directive Principles during which an amendment was moved for inserting a provision regarding the panchayat. Dr. Ambedkar accepted the amendment, and it is finally enacted as a Directive Principle of our Constitution that ''The state governments shall take steps to organise Village Panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government'' (Article 40 of the Constitution of India).

14.4 Development of PRI in India (since independence)

India made its own Constitution and it was implemented in 1950. Under the Indian Constitution, article 40 states that the state must encourage the introduction of Gram panchayats. The first five-year plan mentioned the dissemination of the powers reflecting the concept of development of rural and urban development. There were various committees set up regarding the local self-governments :

Balwant Rai Mehta Committee : It was established in 1957, it showed the importance of proper functioning of elected organisation at the ground level and recommended a three-tier system of governance.

Ashok Mehta Committee : It was incorporated in 1977 and suggested the need for 2 tier system at the ground level of governance.

Sarkaria Commission : It was incorporated in 1983, it observed that dissemination of the powers to the ground level will not be effective until the management of villages i.e. rural areas is improved.

GVK Rao Committee : It submitted its report in 1985 and put forward the problem that election in local governments is required to be conducted regularly.

L.M. Singhvi Committee : It was the most significant committee in the upliftment of local self-governments, in 1987 it emphasised the need for constitutional recognition of the local self-government. To protect their autonomy and systematically providing monetary assistance.

The 73rd Amendment (1992) : The 73rd Amendment added a new Part IX to the constitution titled "The Panchayats" covering provisions from Article 243 to 243(O); and a new Eleventh Schedule covering 29 subjects within the functions of the Panchayats.

This amendment implements article 40 of the Directive Principles of State Policy which says that "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" and have upgraded them from non-justifiable to justifiable part of the constitution and has put a constitutional obligation upon states to enact the Panchayati Raj Acts as per provisions of Part IX. However, states have been given

enough freedom to take their geographical, politico-administrative and other conditions into account while adopting the Panchayati Raj System.

The basic features of the 73rd amendment are :

- Establishment of 'Gram Sabha' at the village level comprising of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat.
- Establishment of a three-tier system of Panchayat.
- All levels of Panchayats will consist of persons elected directly from the territorial constituencies in the Panchayat area.
- All members of the Panchayat whether or not directly elected shall have the right to vote in the meetings of the Panchayats.
- Reservation of seats for SCs/STs in proportion to their population in the Panchayat area and seats may be allotted by rotation.
- One-third of the total number of seats, both in reserved and unreserved categories shall be kept apart for women in every Panchayat and seats may be allotted by rotation.
- Fixed tenure of five years for Panchayats from the date fixed for its first meeting and the tenure cannot be extended.
- Constitution of a Finance Commission in the State within one year from the commencement of the Constitution Amendment Act.
- An audit of the accounts of the Panchayats must be done.

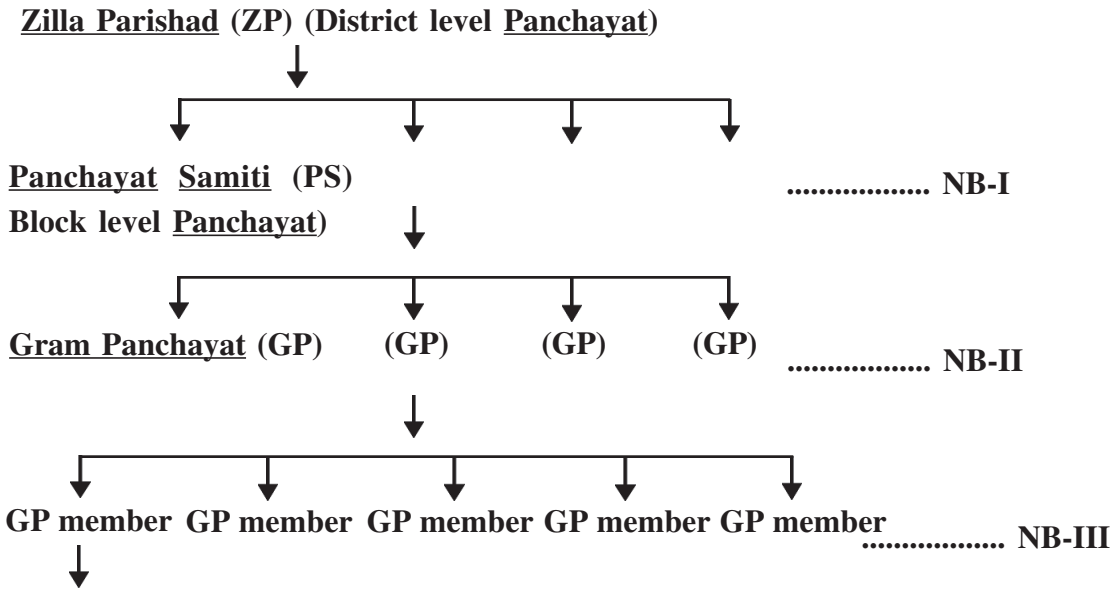
14.5 The Panchayati Raj Institutions (PRI) in West Bengal

Since independence, all these attempts has been done to improve the Panchayats and renewed emphasis has been given on the revival of the panchayats. Different states have enacted the necessary and relevant laws and now there is panchayat legislation in all the states of India. West Bengal took various initiatives after independence.

The West Bengal Panchayat machinery, as envisaged under the Act of 1957, is a two-tier system-the Gram Panchayats and the Anchal Panchayats. After that, the West Bengal

Panchayat Act of 1957 was passed for establishing Panchayats in the state. The Act recommended the constitution of four-tier bodies by splitting the earlier Union Board into Gram Panchayat and Anchal Parisad. In 1963 West Bengal Zilla Parisad Act was passed to replace the District Board with Zilla Parishad and provided for the constitution of Anchal Parishad at the block level. However, the system never took root because of a lack of political will resulting in the little assignment of responsibilities and flow of funds to those bodies as well as political unrest during the period. Ultimately, all the representatives of 15 Zilla Parishads and 315 Anchal Parisads were removed in the year 1969 and Administrators were engaged. All those local bodies remained under the Administrators till the election was held in the year 1978.

The legal framework for the second generation of Panchayats was established through the passing of the West Bengal Panchayat Act, 1973. The Act provided for the establishment of three-tier Panchayats. Thus, Gram Panchayat (GP) was to be constituted for a cluster of villages; Panchayat Samiti (PS) was to be constituted at the Block level and Zilla Parishad (ZP) was to be constituted at the District level.



NB-I : All the Panchayat Samitis within the geographical limit of a district come under the said District Panchayat or Zilla Parishad.

NB-II : All the Gram Panchayats within the geographical limit of Panchayat Samiti come under it. Panchayat Samiti and Development Block is co-Terminus.

NB-III : A Gram Panchayat will have at least five and a maximum of 30 members. Each member has a specified area and voters (constituency) that he/she represents which is called Gram Sansad (village parliament)

The main features related to the legal framework of the Act were :

i) Members will be elected directly for each tier from respective constituencies.

ii) Candidates may contest the election with their party symbol.

iii) The members will elect their Chairperson and Vice Chair-Persons for each Panchayat to be called Pradhan and Upa-Pradhan for the GP; Sabhapati and Saha-Sabhapati for the PS and Sabhadhipati and Saha-Sabhadhipati for the ZP.

iv) Vertical division of power was made by assigning different duties and responsibilities to different tiers of Panchayats. v) Within each tier responsibility was divided among various Standing Committees (for ZP and PS) and Upa-Samitis (for GP) to deal with different subjects.

v) There has to be an election after every five years.

vi) Direct accountability to the people at the Gram Sansad level for ensuring their participation in the functioning of the Gram Panchayat. However, election to the three-tier Panchayats was conducted based on the new Act in the year 1978 only and elections are being held regularly after every five years. Many of the State Government employees were given a dual role by giving them responsibilities for working for the Panchayats in their ex- officio capacities.

14.5.1 The Gram Panchayat (GP) Composition and Functions :

Gram Panchayat is the primary unit of Panchayati Raj Institutions (PRI) or local self-government. It is the Executive Committee of Gram Sabha. Out of three institutions established under the Act, the Gram Panchayat (GP) constitutes the most effective tier of PRI. Every GP is a body corporate with perpetual succession, capacity to acquire, hold, transfer the property and authority to enter into contracts. It functions as a unit of local self-government with the participation of people. All villages do not have

Panchayats as some of them are very small. That is why some very small villages are clubbed to make a Panchayat.

A Gram as defined under the Act (meaning a village or a cluster of villages) is divided into a minimum of five constituencies (again depending on the number of voters the Gram is having). From each of these constituencies, one member is elected. The body of these elected members is called the Gram Panchayat. The size of the GPs varies widely from state to state. In states like West Bengal, Kerala etc. a GP has about 20000 people on average, while in many other states it is around 3000 only. In most of the states, each constituency of the members of the Gram Panchayat is called the Gram Sabha and all the voters of the same constituency are members of this body. In West Bengal, it is called Gram Sansad (village parliament). Gram Sabha in West Bengal has a different meaning. Here all the voters of the Gram Panchayat as a whole constitute the Gram Sabha. Under the Constitution, there can be only three tiers of the Panchayat. The Gram Sabha is not a tier of the PR system. It does not have any executive function and operates as a recommending body only.

Every Gram Panchayat shall, at its first meeting at which a quorum is present, elect, in the prescribed manner, one of its members to be the Pradhan and another member to be the Upa-Pradhan of the Gram Panchayat.

Gram Unnayan Samiti (GUS) : Gram Unnayan Samiti (GUS) (Village Development Committee) is a small committee constituted by Gram Sansad and chaired by the elected GP member of the same Gram Sansad. Its function is to help the GP prepare village level plan, execute them through social mobilization etc. Generally speaking, the functions related to a particular locality are entrusted to the village panchayat. This is the reason why the functions of panchayats in most of the states are similar. The provisions of panchayat acts of the various states relating to the functions of the panchayats in India are not identically worded.

Functions : The functions of the GUS are to help and assist the Gram Sansad in the preparation of its perspective plan for five years and annual plan as a part of the same, for achieving the economic development and social justice, mobilization of revenue from the Gram Sansad area etc. So that the entire population, irrespective of their political identity or orientation, can work together the GUS is to be constituted based on consensus between the elected and the opposition member and there should be fair

representation from all the categories of people living in that area. However, the overt or covert political rivalry has dampened the spirit of bringing all the people together to work for their development. Where the GUS has been formed and functioning well they are also allowed to open a bank account and receive fund from the GP for taking up petty works

Gram Sansad :

Gram Sansad is the assembly of all the voters of a polling station and is the forum for direct accountability of the GP to all its voters. Meetings of the Gram Sansad are to be held in every Gram Sansad twice a year and the date & time of the meeting is to be publicized at least seven days before the meeting. The Gram Sansad will guide and advise the GP regarding the schemes to be undertaken and identify or lay down the principles for the identification of beneficiaries. A Gram Panchayat shall not ordinarily omit or refuse or act any recommendations of the Gram Sansad. The proper functioning of the Gram Sansad is very important for effective local governance. Necessary information as mentioned above has to be disclosed to the public by circulating printed booklets. Ideally the same should be published well before the meeting or the documents should be available in the rural library for wider dissemination. However, the same is hardly done and people are not in a position to participate with prior information about the functioning of the Gram Panchayat. Participation of the people in the meeting is also important, which is still quite low and on the decline.

Powers and Duties of Gram Panchayat :

Obligatory duties of Gram Panchayat :

(1) A Gram Panchayat shall function as a unit of self-government and to achieve economic development and secure social justice for all, shall, subject to such conditions as may be prescribed or such directions as may be given by the State Government.

(a) Prepare a development plan for the five-year term of the office of the members and revise and update it as and when necessary with regard to the resources available;

(b) Prepare an annual plan for each year by October of the preceding year for the development of human resources, infrastructure and civic amenities in the area;

(c) Implement schemes for economic development and social justice as may be drawn up by or entrusted upon it.

(2) The duties of a Gram Panchayat shall be to provide within the area under its jurisdiction for

(a) Sanitation, conservancy and drainage and the prevention of public nuisances;

(b) Curative and preventive measures in respect of malaria, smallpox, cholera or any another epidemic;

(c) Supply of drinking water and the cleansing and disinfecting of the sources of supply and storage of water;

(d) The maintenance, repair, and construction of public streets and protection thereof;

(e) The removal of encroachments of public streets or public places;

(f) The protection and repair of buildings or other property vested in it;

(g) The management and care of public tanks, subject to the provisions of the Bengal Tanks Improvement Act, 1939, common grazing grounds, burning ghats and public graveyards;

(h) The supply of any local information which the District Magistrate, the Zilla Parishad [the Mahakuma Parishad, the Council] or the Panchayat Samiti within the local limits of whose jurisdiction the-Gram Panchayat is situated may require;

(i) Organising voluntary labour for community works and works for the upliftment of its area;

(j) The control and administration of the Gram Panchayat Fund established under the Act.

(k) The imposition, assessment and collection of the taxes, rates or fees leviable under the Act.

(l) The maintenance and control of Dafadars, Chowkidars and Gram Panchayat Karmees within its jurisdiction and securing due performance by the Dafadars, Chowkidars and Gram Panchayat Karmees of the duties imposed on them under the Act.

(m) The constitution and administration of the Nyaya Panchayat.

(3) A Gram Panchayat shall not omit or refuse to act upon any recommendations of a Gram Sansad relating to prioritisation of any list of beneficiaries or scheme or programme so far as it relates to the area of the Gram Sansad unless it decides in a meeting for reasons to be recorded in writing that such recommendation or recommendations are not acceptable or implementable under the provisions of the Act or any rule, order or direction thereunder; such decision of the Gram Panchayat shall be placed in the next meeting of the Gram Sansad.

Other Duties of Gram Panchayat

(1) A Gram Panchayat shall also perform such other functions as the State Government may assign to it in respect of

(a) Primary, social, technical [vocational, adult or non-formal education;].

(b) Rural dispensaries, health centres and maternity and child welfare centres.

(c) Management of any public ferry under the Bengal Ferries Act, 1885.

(d) Irrigation [including minor irrigation, water management and watershed development].

(e) Agriculture including agricultural extension and fuel and fodder.

(f) Care of the infirm and the destitute.

(g) Rehabilitation of displaced persons.

(h) Improved breeding of cattle, medical treatment of cattle and prevention of cattle disease.

(i) It's acting as a channel through which Government assistance should reach the villages.

(j) Bringing wasteland under cultivation [through land improvement and soil conservation].

(k) Promotion of village plantations [social forestry and farm forestry].

(l) Arranging for the cultivation of land lying fallow.

(m) Arranging for co-operative management of land and other resources of the village.

(n) Assisting in the implementation of land reform measures in its area.

(o) Implementation of such schemes as may be formulated or performance of such acts as may be entrusted to the Gram Panchayat by the State Government.

(p) Field publicity on matters connected with development works and other welfare measures undertaken by the State Government.

(q) Minor forest produce.

(r) Rural housing programme

(s) Rural electrification including distribution of electricity.

(t) Non-conventional energy sources; and

(u) Women and child development.

(2) If the State Government is of opinion that a Gram Panchayat has persistently made default in the performance of any of the functions assigned to it under sub-section (7), the State Government may, after recording its reasons, withdraw such function from such Gram Panchayat.

Discretionary Duties of Gram Panchayat

Subject to such conditions as may be prescribed, a Gram Panchayat may, and shall if the State Government so directs, make provision for-

(a) The maintenance of lighting of public streets.

(b) Planting and maintaining trees on the sides of public streets or in other public places vested in it;

(c) The sinking of wells and excavation of ponds and tanks;

(d) The introduction and promotion of co-operative fanning, co-operative stores, and other co-operative enterprises, trades and callings;

(e) The construction and regulation of markets, the holding and regulation of fairs, meals and hats and exhibitions of local produce and products of local handicrafts and home industries;

(f) The allotment of places for storing manure;

(g) assisting and advising agriculturists in the matter of obtaining State loan and their distribution and repayment;

(h) Filling up of insanitary depressions and reclaiming of unhealthy localities;

(i) The promotion and encouragement of cottage [Khadi, village and small- scale including food processing] industries;

(1) Promotion of dairying and poultry;

(2) Promotion of fishery;

(3) Poverty alleviation programme;

(j) The destruction of rabbit or ownerless dogs;

(k) Regulating the production and disposal of foodstuffs and other commodities in the manner prescribed;

(l) The construction and maintenance of surais, dharmasalas, rest houses, cattle sheds and cart stands;

(m) The disposal of unclaimed cattle;

(n) The disposal of unclaimed corpses and carcasses;

(o) The establishment and maintenance of libraries and reading rooms;

(p) The organisation and maintenance of akharas, clubs and other places for recreation or games;

i) Cultural activities including sports and games.

ii) Social welfare including the welfare of the handicapped and mentally retarded.

iii) Welfare of socially and educationally backward classes of citizens and, in particular, of the Scheduled Castes and the Scheduled Tribes;

iv) public distribution system;

v) maintenance of community assets;

(q) the maintenance of records relating to population census, crop census, cattle census and census of unemployed persons and of other statistics as may be prescribed;

(r) the performance in the manner prescribed of any of the functions of [the Zilla Parishad or the Mahakuma Parishad or the Council, as the case may be,] with its previous approval, calculated to benefit the people living within the jurisdiction of the Gram Panchayat;

(s) rendering assistance in extinguishing fire and protecting life and property when fire occurs;

(t) assisting in the prevention of burglary and dacoity; and

(u) any other local work or service of public utility which is likely to promote the health, comfort, convenience or material prosperity of the public, not otherwise provided for in this Act.

14.5.2 Panchayat Samiti : Composition and Functions

Composition

(1) For every Block the State Government shall constitute a Panchayat Samiti bearing the name of the Block.

(2) The Panchayat Samiti shall consist of the following members, namely :

(i) Pradhans of the Gram Panchayats within the Block, ex-officio;

(ii) Elected members of the block area, such number of persons not exceeding "three" as may be prescribed to be elected from each Gram within the Block, the Gram being divided for the purpose into as many constituencies as the number of persons to be elected and the election being held by secret ballot at such time and in such manner as may be prescribed.

(iii) Members of the House of the People and the Legislative Assembly of the State elected thereto from a constituency comprising the Block or any part thereof, not being Ministers.

(iv) Members of the Council of States, not being Ministers, [(registered as electors within the area of the Block;)]

(v) Members of the Zilla Parishad, not being Sabhadhipati or Sahakari Sabhadhipati, elected thereto from the constituency comprising any part of the Block.

Sabhapati is the head of the Panchayat Samiti (block level) elected by the Panchayat Samiti members. The Block Development Officer is the Executive Officer of Panchayat Samiti and a key functionary in the functioning of the Panchayat Samity. Sector officers at the block level are members of different standing committees. The Joint Block Development Officer assists the Block Development Officer in the regular implementation of developmental activity in the block.

Power, Duties, and Functions of Panchayat Samiti

(1) A Panchayat Samiti shall function as a unit of self-government and, to achieve economic development and secure social justice for all, shall prepare.

(i) A development plan for the five-year term of the office of the members, and

(ii) An annual plan for each year by the month of January of the preceding year, in furtherance of its objective of development of the community as a whole and socio-economic upliftment of the individual members of the community and, without prejudice to the generality of the above provisions, shall have power to

(a) (i) undertake schemes or adopt measures, including the giving of financial assistance, relating to the development of agriculture, fisheries, livestock, khadi, cottage and small-scale industries, the co-operative movement, rural credit, water-supply, irrigation and minor irrigation including water management and watershed development, public health and sanitation including establishment and maintenance of dispensaries and hospitals, communication, primary and secondary education, adult and non-formal education, the welfare of students, social forestry and farm forestry including fuel and fodder, rural electrification including distribution, non conventional energy sources, women and child development, social welfare and other objects of general public utility;

(ii) undertake the execution of any scheme, performance of any act, or management of any institution or organisation entrusted to it by the State Government or any other authority;

(iii) manage or maintain any work of public utility or any institution vested in it or under its control and management;

(iv) make grants in aid for any school, public institution or public welfare organisation within the Block;

(b) make grants to the Zilla Parishad [or Mahakuma Parishad or Council] or Gram Panchayat:

(c) contribute with the approval of the State Government such sum or sums as it may decide, towards the cost of water-supply or anti- epidemic measures undertaken by a municipality within the Block;

(d) adopt measures for the relief of distress;

(e) co-ordinate and integrate the development plans and schemes prepared by Gram Panchayats in the Blocks if and when necessary;

(2) Notwithstanding anything in sub-section (1), a Panchayat Samiti shall not undertake or execute any scheme confined to an area over which a Gram Panchayat has jurisdiction unless the Gram Panchayat is of opinion that the implementation of such a scheme is beyond its competence financially or otherwise and passes a resolution to that effect. In the latter case the Panchayat Samiti may execute the scheme itself or entrust its execution to the Gram Panchayat and give such assistance as may be required:

(3) A Panchayat Samiti may undertake or execute any scheme if it extends to more than one Gram.

Power of Panchyat Samiti to transfer roads or properties to the State Government or the Zilla Parishad or a Gram Panchyat.

A Panchayat Samiti may transfer to the State Government or to the Zilla Parishad [or Mahakuma Parishad or Council] [or to a Gram Panchayat] any road or part of a road or any other property, which is under its control or management, or which is vested in it, on such terms and conditions as may be agreed upon.

Power of Panchyat Samiti to divert, discontinue or close road.

A Panchayat Samiti may direct, discontinue or close temporarily any road, which is under its control and management or is vested in it, and may, with the approval of the State Government, close any such road permanently.

Power of supervision by Panchyat Samiti over the Gram Panchyat, etc.

(1) A Panchayat Samiti shall exercise general powers of supervision over Gram Panchayats in the Block and it shall be the duty of these authorities to give effect to the directions of the Panchayat Samiti.

(2) A Panchayat Samiti may

(a) inspect, or cause to be inspected, any immovable property used or occupied by Gram Panchayat within the Block or any work in progress under the direction of a Gram Panchayat,

(b) inspect or examine, or depute an officer to inspect or examine, any department of a Gram Panchayat, or any service, work or thing under the control of the Gram Panchayat,

(c) inspect or cause to be inspected utilization of funds in respect of schemes or programmes assigned to the Gram Panchayats by the State Government for execution either directly or through the Zilla Parishad [or the Mahakuma Parishad or Council] or the Panchayat Samiti,

(d) require a Gram Panchayat, for inspection or examination,

(i) to produce any book, record, correspondence or other documents, or

(ii) to furnish any return, plan, estimate, statement of accounts or statistics, or

(iii) to furnish or obtain any report or information.

Power to prohibit certain offensive and dangerous trades without license and to levy fee.

(1) No place within a Block shall [on conviction by a Magistrate,] be used for any trade or business declared by the State Government, by notification, to be offensive or dangerous, without a license, which shall be renewable annually, granted by the Panchayat Samiti, subject to such terms and conditions as the Panchayat Samiti may think fit to impose.

(2) The Panchayat Samiti may levy in respect of any license.

(3) Whoever uses without a license any place for any trade or business declared under sub-section (1) to be offensive or dangerous, or fails to comply with any condition in respect of such license, shall be punished with a fine, which may extend to one hundred rupees, and to a further fine, which may extend to twenty-five rupees for each day after conviction during which he continues to do so.

(4) The Panchayat Samiti may, upon the conviction of any person for failure to comply with any condition of a license granted under subsection (1), suspend or cancel the license granted in favour of such person.

Power of Panchyat Samiti to grant a license for market.

A Panchayat Samiti may require the owner or the lessee of a hat or market or an owner or a lessee of land intending to establish a hat or market thereon, to obtain a license in

this behalf from the Panchayat Samiti on such terms and conditions as may be prescribed and subject to the provisions of section 133, on payment of a fee for such license.

Powers, functions and duties of Sabhapati and Sahakari Sabhapati.

(1) The Sabhapati shall

(a) be responsible for maintenance of the records of the Panchayat Samiti;

(b) have general responsibility for the financial and executive administration of the Panchayat Samiti :

(c) exercise administrative supervision and control over the work of the staff of the Panchayat Samiti and the officers and employees whose services may be placed at the disposal of the Panchayat Samiti by the State Government;

(d) for the transaction of business connected with this Act or to make any order authorised thereby, exercise such powers, perform such functions and discharge such duties as may be exercised, performed or discharged by the Panchayat Samiti under this Act or the rules made thereunder:

(e) exercise such other powers, perform such other functions and discharge such other duties as the Panchayat Samiti may, by general or special resolution, direct or as the State Government may by rules made in this behalf, prescribe.

(2) The Sahakari Sabhapati shall

(a) exercise such of the powers, perform such of the functions and discharge such of the duties of the Sabhapati as the Sabhapati may, from time to time, subject to rules made in this behalf by the State Government, delegate to him by order in writing:

(b) during the absence of the Sabhapati, exercise all the powers, perform all the functions and discharge all the duties of the Sabhapati;

(c) exercise such other powers, perform such other functions and discharge such other duties as the Panchayat Samiti may, by general or special resolution, direct or as the State Government may, by rules made in this behalf, prescribe.

14.5.3 Zilla Parishad : Composition and Functions

Composition

For every district [except the district of Darjeeling] the State Government shall constitute a Zilla Parishad bearing the name of the district.

The Zilla Parishad shall consist of the following members, namely :

(i) Sabhapatis of the Panchayat Samitis within the district, ex officio;

(ii) Such number of persons, not exceeding three, as may be prescribed on the basis of the number of voters in the area from each Block within the district, the Block being divided for the purpose into constituencies in the prescribed manner, elected by secret ballot at such time and in such manner as may be prescribed from amongst the persons whose names are included in the electoral roll, about any Block within the district, prepared in accordance with such rules as may be made in this behalf by the State Government and in force on such date as the State Election Commissioner may declare for an election, by persons whose names are included in such electoral roll about the constituency comprised in such Block.

Every Zilla Parishad constituted under this section 7 shall be notified in the Official Gazette and shall come into office with effect from the date of its first meeting at which a quorum is present.

Every Zilla Parishad shall be a body corporate having perpetual succession and a common seal and shall by its corporate name sue and be sued.

Notwithstanding anything contained in the foregoing provisions of this section, when the area of a district (herein after referred to as the former district) is divided to constitute two or more districts, for each of the newly constituted districts the State Government shall by notification constitute a Zilla Parishad bearing the name of the district with the following members, namely :

(i) Sabhapatis of the Panchayat Samitis within the newly constituted district, ex officio;

(ii) the members elected to the Zilla Parishad of the former district under clause (ii) of sub-section (2) from the constituencies referred to therein comprised in the Blocks within the newly constituted district;

(iii) members of the House of the People and the Legislative Assembly of the State elected thereto from a constituency comprising the newly constituted district or any part thereof, not being Ministers;

(iv) members of the Council of States, not being Ministers, having a place of residence in the newly constituted district.

The Sabhadhipati (head of the Zilla Parishad) is a key functionary of the Zilla Parishad elected by Zilla Parishad members. He/she chairs the district planning board meeting as head of the District Panchayat Administration. He/she is assisted by District Magistrate as the executive officer of Zilla Parishad. The DM is assisted by an Additional Executive Officer in the rank of Additional District Magistrate. The DM is responsible for all matters, relating to the implementation of schemes approved by the Zilla Parishad through its standing committees. There are ten different standing committees headed by Karmadhakya elected from among the members of Zilla Parishad.

These Standing committees are

i) Artha Santha Unnayan O Parikalpana Sthayee Samity

ii) Janaswastha O Paribesh Sthayee Samity

iii) Krishi, Sech O Samabaya Sthayee Samity

iv) PurtaKarya O Paribahan Sthayee Samity

v) Siksha, Sanskriti, Tathya O Krira Sthayee Samity

vi) Khadya Silpa Tran O Janakalyan Sthayee Samity

vii) Bon O Bhumi Sanskar Sthayee Samity

viii) Matsya O Prani Sampad Bikash Sthayee Samity

ix) Khadya O Sarbaraha Sthayee Samity

x) Bidyut O Achiracharit Shakti Sthayee Samity.

Powers, Function and Duties of Zilla Parishad

A Zilla Parishad shall function as a unit of self-government and, to achieve economic development and secure social justice for all, shall prepare

(i) a development plan for the five-year term of the office of the members, and

(ii) an annual plan for each year by the month of January of the preceding year, in furtherance of its objective of development of the community as a whole and socio-economic upliftment of the individual members of the community and, without prejudice to the generality of the above provisions, shall have power to

A) (i) undertake schemes or adopt measures, including the giving of financial assistance, relating to the development of agriculture, fisheries, live- stock, khadi, cottage and small-scale industries, cooperative movement, rural credit, water-supply, irrigation and minor irrigation including water management and watershed development, public health and sanitation including establishment and maintenance of dispensaries and hospitals, communication, primary and secondary education, adult and non-formal education, physical education and games and sports, the welfare of students, social forestry and farm forestry including fuel and fodder, rural electrification including distribution, non-conventional energy sources, women and child development, social welfare and other objects of general public utility,

(ii) undertake the execution of any scheme, the performance of any act, or management of any institution or organisation entrusted to it by the State Government or any other authority,

(iii) manage or maintain any work of public utility or any institution vested in it or under its control and management,

(iv) make grants in aid of any school, public library, public institution or public welfare organisation within the district,

(v) contribute such sums as may be agreed upon towards the cost of maintenance of any institutions, situated outside the district, which are beneficial to, and habitually used by, the inhabitants of the district,

(vi) establish scholarships or award stipends within the State for the furtherance of technical or other special forms of education,

(vii) acquire and maintain village hats and markets;

B) make grants to the Panchayat Samitis or Gram Panchayats;

C) contribute, with the approval of the State Government, such sum or sums as it may decide, towards the cost of water-supply or anti-epidemic measures undertaken by the commissioners of a municipality within the district;

D) adopt measures for the relief of distress;

E) co-ordinate and integrate the development plans and schemes prepared by Panchayat Samitis in the district; and

(2) A Zilla Parishad shall have the power to advise the State Government on all matters relating to the development work among Gram Panchayats and Panchayat Samitis.

(3) Notwithstanding anything in sub-section (1), a Zilla Parishad shall not undertake or execute any scheme confined to a block unless the implementation of such a scheme is beyond the competence of the Panchayat Samiti concerned financially or otherwise. In the latter case the Zilla Parishad may execute the scheme itself or entrust its execution to the Panchayat Samiti and give it such assistance as may be required:

Provided that a Zilla Parishad may undertake or execute any scheme referred to in sub-clause (ii) of clause (a) of sub-section (1) confined to an area over which a Panchayat Samiti has jurisdiction.

(4) A Zilla Parishad may undertake or execute any scheme if it extends to more than one block.

Zilla Parishad to have powers of Magistrate in district to which the Vaccination Act extends.

In a district to which the Bengal Vaccination Act, 1880, has been, or may hereafter be extended, the Zilla Parishad shall exercise all or any of the powers exercisable by the Magistrate of the district under section 25 of the said Act.

Power of Zilla Parishad to divert, discontinue or close road.

A Zilla Parishad may divert, discontinue or close temporarily any road, which is under its control and management or is vested in it, and may, with the approval of the State Government, close any such road permanently.

Power of Zilla Parishad to transfer roads to State Government or Panchayat Samiti.

A Zilla Parishad may transfer to the State Government, the commissioners of a municipality, Panchayat Samiti or a Gram Panchayat any road or part of a road or any other property which is under its control or management or which is vested in it, on such terms and conditions as may be agreed upon.

Vesting of Zilla Parishad with certain powers.

(1) A Zilla Parishad may be vested by the State Government with such powers under any local or special Act as the State Government may think fit.
(2) A Zilla Parishad shall perform such functions as may be transferred to it by notification under section 31 of the Cattle-trespass Act, 1871.
(3) A Zilla Parishad shall exercise such other powers, perform such other functions or discharge such other duties as the State Government may, by general or special order, direct.

Power of Zilla Parishad to grant a license for fair or mela.

A Zilla Parishad may require the owner or the lessee of a fair or mela or an owner or a lessee of land intending to hold a fair or mela thereon to obtain a license in this behalf from the Zilla Parishad on such terms and conditions as may be prescribed and on payment of a fee for such license.

Power of supervision by Zilla Parishad over the Panchayat Samiti, etc.

(1) A Zilla Parishad shall exercise general powers of supervision over Panchayat Samitis and Gram Panchayats in the district and it shall be the duty of these authorities to give effect to any directions of the Zilla Parishad.
(2) A Zilla Parishad may-
   (a) inspect, or cause to be inspected, any immovable property used or occupied by a Panchayat Samiti under it or any work in progress under the direction of the Panchayat Samiti,
   (b) inspect or examine, or depute an officer to inspect or examine, any department of the Panchayat Samiti, or any service, work or thing under the control of the Panchayat Samiti,

(c) inspect or cause to be inspected utilisation of funds in respect of schemes or programmes assigned to the Panchayat Samiti by the State Government for execution either directly or through the Zilla Parishad,

(d) require a Panchayat Samiti, for the purpose of inspection or examination,

(i) to produce any book, record, correspondence or other documents, or

(ii) to furnish any return, plan, estimate, statement, accounts or statistics, or

(iii) to furnish or obtain any report or information.

14.6 Conclusion

Studies of the actual working of panchayats in States where democratic decentralisation has been implemented have, in fact, shown that while progress has been made on some counts, the new system has failed to evoke individual initiative. But it was precisely the need for such initiative that led to the advocacy of the new system. Functioning of the Panchayats critically depends on proper understanding of roles and responsibilities of all the Panchayat functionaries including the employees and competence of discharging their assigned responsibilities. The ordinary elected member should also have adequate knowledge for playing their role. In addition to that, it is the ordinary citizen who needs to participate in various affairs of the Panchayats and keep a vigilant eye for ensuring that the Panchayats are working in their interest. Out of all those, the most crucial is the capability of the elected functionaries. They need to understand the basic rules related to the functioning of the Panchayats, their powers and limitations, the accountability mechanism in the system and the need for maintaining the transparency of functioning etc. They should also internalise the essentiality of functioning based on rules and laid down procedures and to always maintain objectivity in decision making. They, therefore, need to be trained on those issues in adequate depth, which is quite difficult. The problem is aggravated by the fact that most of the members change after the election due to rotation in the reservation as well as other factors and many of them are being associated with the public office for the first time. Thus, there is little accumulation of experiences. In fact, out of all those members elected during the general election to Panchayats in 2008 only around 23% had some training on the functioning of Panchayats before being elected. In addition to that the individual capacity to learn about the

governance and functioning of Panchayats varies widely due to variation of their personal background. Therefore, building individual capacity through training as well as improving institutional capacities through various methods like clearly prescribing procedures, reengineering the processes involved in the functioning of the Panchayats and introduction of Information and Communication Technology (ICT) is a tremendous need. All the Panchayat functionaries are, therefore, given training after taking responsibility as well as subsequently. To augment the training infrastructure, District Training Centres (DTC) are being established in every district in addition to strengthening the State Institute of Panchayat and Rural Development (SIPRD) and the five Extension Training Centres (ETC) of the SIPRD. All the employees working for the Panchayats are also trained regularly and the process needs to be strengthened for equipping them in carrying out their responsibilities. Special measures are also taken for capacity building under the BRGF and the ISGP as mentioned earlier. Training a huge number of personnel who are associated with the functioning of the Panchayats is also attempted to be addressed by the satellite-based communication channel through which training can be organised in distance mode with a classroom at the Block Development office and the ETC/DTC and teaching end at the PRDD Headquarter. The PRDD also takes measures for improving understanding of the ordinary rural people to know better about the Panchayats and how they can participate better in the functioning of the Panchayats. One such initiative is the weekly radio programme which propagates important information on the institutional aspect as well as the implementation of various programmes related to Panchayat and Rural Development.

14.7 Summing Up

- Panchayat Raj is an interconnected and interdependent pattern of democracy, a system of sharing powers and responsibilities with the people.
- The Panchayat system is the prototype of all forms of Self-Government and democracy.
- In India, Panchayat Raj provided a system of self-governance at the village level or grass-roots level.
- In India, Mahatma Gandhi, Jawaharlal Nehru and Jai Prakash Narayan described democracy as the government that gives ‘power to the people’.

- Mahatma Gandhi's vision was that democracy through people's participation could be ensured only by way of 'Gram Swarajya'.
- Under the Indian Constitution article 40 states that the state must encourage the introduction of Gram Panchayats as independent bodies.
- The Constitution (Seventy-Third Amendment) Act, 1992, which came into force with effect from 24th April, 1993, inserted Part IX in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self- governance for rural India.

14.8 Probable Questions

Essay Type Questions :

1. Analyse the concept of Panchayati Raj institutions in India.
2. Discuss the composition and functions of Gram panchayat in West Bengal.
3. Explain the composition and functions of Zila Parishad in West Bengal.
4. Explain the functions of Panchyat Samiti in West Bengal.
5. Evaluate the importance of Gram Samsad.
6. Discuss the main features of 73rd. Constitutional Amendment Act, 1992.

Short Questions :

1. Point out the basic features of Panchayati Raj institutions in West Bengal.
2. Write a note on Gram Unnayan Samiti.
3. Mention the name of the different sub-committee of Zila Parishad.

Objective Questions :

1. Which article of the Indian Constitution is related to Panchayat?
2. Which constitution amendment act gives constitutional status to Panchayati Raj in India?
3. Which is the lowest tier of Panchayati Raj system?
4. Who can remove the gram Panchayat members?
5. Who is the executive officer of the Zilla Parishad?

14.9 Further Reading

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Unit 15 ❑ Municipal Administration

Structure

15.1 Objective

By reading this unit, the learners will be able to :

- Understand the objectives of the urban local self-government
- Explain the structure of the urban local self-government
- Discuss the composition and function of the Municipal Corporations.
- Understand the composition and function of the Municipalities

15.2 Introduction

In the developing countries, the Colonial Governments during the period of their domination established several statutory institutions. Among them Urban Local Self-Government institutions are most prominent. Ever since the establishment of Madras (Chennai) Municipal Corporation four centuries ago, there has been a proliferation of municipal bodies to manage the town and city. Lord Rippon's resolution in 1882 sought to place these Urban Local Government institutions on a sound organisational footing. They have been working with different degrees of success in administering the city. In this Unit, we shall examine the nature of urbanisation in India, different types of urban

local bodies, administrative structure, the role of bureaucracy, municipal finance, control over local bodies and their problem areas. Two common forms of Local Self-Government are Urban Local Self-Government and Rural Local Self-Government. We have Panchayati Raj Institutions in the rural areas. In the urban areas - in the cities and towns-there are Municipal Corporations and Municipalities. According to the 74th Constitutional Amendment the Urban-Local Self-Government has been classified into three types, that is, Municipal Corporation, Municipal Council, and Municipal Committee. Far-reaching changes have been brought about for both Municipal Government and Panchayati Raj Institutions through the two Constitutional Amendments : The Seventy-third (73rd) Constitutional Amendment Act, 1992 for Panchayati Raj, and the Seventy-fourth (74th) Constitutional Amendment Act, 1992 for Municipal Bodies. The Constitution of India now provides for three types of institutions of Urban Local Self-Government. These are Municipal Corporations in larger urban areas, Municipal Councils in urban settlements, and Nagar Panchayats in 'transitional' areas, which are neither fully urban nor fully rural. In addition, it provides for decentralisation of municipal administration by constituting Ward Committees in territorial areas of such municipalities, which have more than three lakh populations.

The Constitution (74th Amendment) Act, 1992 is a landmark initiative of the Government of India to strengthen local self-government in cities and towns. The Act stipulates that if the state government dissolves a Municipality, election to the same must be held within six months. Moreover, the conduct of municipal elections is entrusted to the statutory State Election Commission, rather than being left to executive authorities. The mandate of the Municipalities is to undertake the tasks of planning for economic development and social justice and implement city/town development plans.

The main features of the 74th Constitutional Amendment are as under :

a) **Committee :** Committee means a Committee constituted under article 243S of the Constitution.

b) **Metropolitan area :** Metropolitan area means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more

Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area.

c) **Municipal area :** Municipal area means the territorial area of a Municipality as is notified by the Governor.

d) **Municipality :** Municipality means an institution of self-government constituted under Article 243Q of the Constitution. As per Article 243Q, every State should constitute three types of municipalities in urban areas. Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

The constitution of three types of municipalities by every State are as under :

i) **Nagar Panchayat :** Nagar Panchayat (by whatever name called) for a transitional area, that is to say, is an area in transition from a rural area to an urban area.

ii) **Municipal Council :** A Municipal Council is constituted for a smaller urban area; and

iii) **Municipal Corporation :** A Municipal Corporation is constituted for a larger urban area.

The Governor declares a transitional area, or smaller urban area or larger urban area based on the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non- agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes.

15.3 Municipal Corporations : Composition and Functions

The administration of civic affairs in a city is a challenge. The distinct characteristic of a city is the huge concentration of population within a limited area. The management

of civil services, therefore, requires an effective organisational structure, adequate finance, and efficient personnel.

The Municipal Corporation as a form of city Government occupies the top position among the local authorities in India. Normally, the Corporation form of urban Government is found in major cities like Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore, etc. Municipal Corporation is established through a special statute, which is passed by the State legislature. In the case of Union Territories, they are established through Acts passed by the Parliament. Such legislation may be enacted especially for a particular corporation or for all Corporations in a State, for example, the Mumbai and Kolkata Corporations were established through separate legislation. Whereas in Uttar Pradesh and Madhya Pradesh, the State level legislation governs the constitution and working of the Corporation. The Municipal Corporation generally enjoys a greater measure of autonomy than other forms of local government.

In almost all the States, the Municipal Corporations have been assigned numerous functions such as the supply of drinking water, electricity, road transport services, public health, education, registration of births and deaths, drainage, construction of public parks, gardens, libraries, etc. These functions are normally divided into obligatory and discretionary. In Haryana, there is only one Municipal Corporation (MC) that is in Faridabad with more than 5 lakhs population. MC is constituted for governing the area. It has both elected and nominated (ex-officio) members. MC, Faridabad has at present 24 elected Councillors. Under the amended municipal law of the State, election to the municipal bodies must take place every five years, unless a municipal body is dissolved earlier. The Mayor elected by the members of the Corporation from amongst themselves is the first citizen of the city and presides over the meetings of the city Corporation. Because of the importance of the city, the Mayor who is the first citizen of the city is a Political Head. He presides over the meetings of the Corporations and generally exercises limited administrative control over the working of the Municipal Corporation. The general pattern in India is that the Council elects the Mayor for a term of one year and he can be re-elected. Normally, the Mayors are ceremonial Heads without any executive authority.

West Bengal has seven Municipal Corporations at present (2021)

Sl. No.	Name of the Municipal Corporation	District
1.	Asansol Municipal Corporation	Paschim Barddhaman
2.	Bidhan Nagar Municipal Corporation	North 24-Parganas
3.	Chandernagore Municipal Corporation	Hooghly
4.	Durgapur Municipal Corporation	Paschim Barddhaman
5.	Howrah Municipal Corporation	Howrah
6.	Kolkata Municipal Corporation	Kolkata
7.	Siliguri Municipal Corporation	Darjeeling

Municipal Corporation : It is the topmost of urban local government and is for an urban area/centre with a population above 3 lacs. As an institution, it is more respectable and enjoys a greater measure of autonomy than other forms of local government. It is set up under a special statute passed by the respective state's legislature. However, in an exception, in Delhi (due to it being the National Capital Territory), the power to set up a Municipal Corporation lies with the Union Parliament.

2. **Councillor :** Members of the Municipal Corporation are elected based on universal adult suffrage for five years and they are called Councillors. These Councillors collectively called the Municipal Council, exercise deliberative functions and the executive functions are performed by the Municipal Commissioner.

3. **Municipal Commissioner and Mayor :** He is an Indian Administrative Services official appointed by the state government and has the executive powers of the government of Municipal Corporations. The other executives known as the Mayor and deputy Mayor are political executives elected for a period of one year by the members of the Corporation. The Mayor is the titular head of the corporation and presides over the meetings of the corporation. These Municipal Corporations are in charge of Wards (subdivision or district of a town/city) according to its population and representatives are elected from each ward. The Municipal Corporation of Greater Mumbai which is the

civic body that governs Mumbai city is divided into 6 zones each consisting of 3-5 wards each. Individual wards or collections of wards within a corporation sometimes have their own administrative body known as ward committees. The basic objective of an urban local government has changed from the maintenance of law and order in the early years to the promotion of the welfare of the community in recent times. The State Municipal Acts provide an exhaustive list of functions, which are classified into obligatory and optional or discretionary functions. The former has to be necessarily performed by the local government and for which sufficient provision in the budget has to be made. Failure to perform any of these functions may compel the State government to supersede a municipality. Discretionary functions may be taken up depending upon the availability of funds. Municipal functions listed in the State Municipal Acts generally fall in the following broad categories: (a) public health and sanitation; (b) medical relief; (c) public works; (d) education; (e) development; and (f) administrative.

15.4 Municipalities : Composition and Functions

Composition of Municipalities : Article 243R of the Constitution makes the provision for the composition of Municipalities. All the seats in a Municipality are filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards. The Legislature of a State may, by law, provide the manner of election of the Chairperson of a Municipality.

Wards Committees : Article 243S of the Constitution makes the provisions for constitution and composition of Wards Committees, etc. consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more. A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee. Where a Wards Committee consists of two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee shall be the Chairperson of that Committee.

Article 243T makes the provisions for the reservation of seats. Seats are reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality. Not less than one- third of the total number of seats reserved Scheduled Caste are reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality are reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. The office of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

Duration of Municipalities : As per Article 243U of the Constitution, every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date of its appointent for its first meeting and no longer provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

Powers and Functions of Municipalities :

Article 243W of the Constitution states the powers, authority and responsibilities of Municipalities, etc. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow :

(a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

i) The preparation of plans for economic development and social justice;

ii) The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Article 243X of the Constitution states the power to impose taxes by, and Funds of, the Municipalities. The Legislature of a State may, by law :

a) Authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

b) Assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

c) Provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

d) Provide for the constitution of such Funds for crediting all amounts of money received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such amounts of money therefrom.

Article 243Z of the Constitution states the audit of accounts of Municipalities. The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

A) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to :

(i) The preparation of plans for economic development and social justice;

(ii) The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

B) The committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

i) Urban planning, including town planning;

ii) Regulation of land-use and construction of buildings;

iii) Planning for economic and social development;

iv) Roads and bridges;

v) Water supply for domestic, industrial and commercial purposes;

vi) Public health, sanitation, conservancy and solid waste management;

vii) Fire services;

viii) Urban forestry, protection of the environment and promotion of ecological aspects;

ix) Safeguarding the interests of weaker sections of society, including the handicapped & mentally retarded;

x) Slum improvement and up-gradation;

xi) Urban poverty alleviation;

xii) Provision of urban amenities and facilities, such as parks, gardens, playgrounds;

xiii) Promotion of cultural, educational and aesthetic aspects;

xiv) Burials and burial grounds; cremations, cremation grounds and electric crematoriums;

xv) Cattle pounds; prevention of cruelty to animals;

xvi) Vital statistics, including registration of births and deaths;

xvii) Public amenities, including street lighting, parking lots, bus stops and public conveniences; and

xviii) Regulation of slaughterhouses and tanneries.

Roles and Duties of a Councillor : The Councillors under the Municipal Corporations perform the following duties :

a) To work towards the welfare and interests of the municipality as a whole.

b) To participate in the council meetings, council committee meetings and meetings of other related bodies.

c) To participate in developing and evaluating the programs and policies of the municipality.

d) To keep the privately discussed matters in council meetings in confidence.

e) To get all the information from the chief administrative officer about the operation and administration of the municipality.

f) To perform any other similar or necessary duties.

15.5 Conclusion

The growing population and urbanization in various cities of India needed a local governing body that can work for providing necessary community services like health care, educational institution, housing, transport etc., by collecting property tax and fixed grant from the State Government. Urban governments are the organs for promoting grass-root democracy and providing not only civic services for the welfare of the local people but also for carrying out the task of urban development and planning. In this context, the proper functioning of the municipal corporation for large cities and municipalities in urban areas must be monitored for enduring free fair and transparent public service delivery.

15.6 Summing Up

- Two common forms of Local Self-Government are Urban Local Self- Government and Rural Local Self-Government.
- Lord Rippon's resolution in 1882 sought to place these Urban Local Government institutions on a sound organisational footing.
- Urban governments are the organs for promoting grass-roots democracy in urban areas and is also responsible in providing civic services for the welfare of the local people.
- The Constitution of India provides for three types of institutions of Urban Local Self-Government namely Municipal Corporation, Municipal Council, and Municipal Committee.
- The Constitution (74th Amendment) Act, 1992 is a landmark initiative of the Government of India to strengthen local self-government in cities and towns.
- 74th Constitutional Amendment the Urban- Local Self-Government has been classified into three types, that is, Municipal Corporation, Municipal Council, and Municipal Committee.

15.7 Probable Questions

Essay Type Questions :

1. Analyse the composition and functions of the Municipal Corporation.
2. Discuss the composition and function of a Municipality.
3. Explain the role of the Municipal Corporation as a unit of urban local self-government.

Short Questions :

1. Discuss the composition of a Municipality.
2. Mention four features of the 74th Constitutional Amendment Act.
3. What are the objectives of urban local self-government?

4. Point out the role of the Ward Committee.
5. Briefly discuss the role of councillors.
6. Write a short note on Mayor of the Municipal Corporation.

Objective Questions :

1. Name the constitution amendment act relating to Municipal governance.
2. By which name is the Head of a Municipality known?
3. By which name is the Head of a Municipal Corporation known.
4. Name a Municipal Corporation in West Bengal.

15.8 Further Reading

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