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

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NETAJI SUBHAS OPEN UNIVERSITY

UG : Political Science (HPS)

Course Title: Constitutional Government and Democracy in India
Corse Code: 6CC-PS-04

Module – 1

Module – 2

Module – 3

Unit 1 ❑ Historical Background of the Constitution

Structure

1.1 Objective

After studing this unit learner will be familion with-

- Various laws enacted by the British Parliament which led to the constitution of the Constituent Assembly for making a Constitution for India on achieving independence.
- The Indian reactions to these laws.
- The British machinations to divide India on religious lines.

1.2 Introduction

India achieved independence on 15 th August, 1947. The passage of the Indian Independence Act, 1947, passed by the British parliament, led to the independence of India. The Constituent Assembly which was formed in 1946 became a sovereign body and acted as the legislature of independent India along with its original function of framing a constitution for India. The constitution was finally adopted on 26th November, 1949. Dr. RajendraPrasad was unanimously elected as the first President of India and the constitution came into force on 26th January, 1950 with India emerging as a sovereign, democratic republic securing justice, equality and fraternity for all Indians. Constitutional development in India has a long history. This history is closely linked to the history of British rule in India. The British Parliament passed several Charters and Acts which are considered as sources of the constitutional development in India. A brief discussion of these Charters and Acts is in order to get a glimpse of how they contributed to the path of constitutional development in India.

1.3 Regulating Act, 1773

The first step taken by the British Parliament to control and regulate the affairs of the East India Company in India was through this Act.It designated the Governor of Bengal (Fort William) as the Governor-General of Bengal.Warren Hastings became the first Governor-General of Bengal. Executive Council of the Governor-General

was established with four members. There was no separate legislative council. It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal. The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774. It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives. Court of Directors (the Governing Body of the Company) was entrusted with the responsibility to report its revenue.

1.4 Pitt's India Act, 1784

The Act made a distinction between commercial and political functions of the company. Under the Act, the Court of Directors would deal with commercial matters and the Board of Control would look after the political affairs. It reduced the strength of the Governor General's council to three members and placed the Indian affairs under the direct control of the British Government. The Companies' territories in India were called "the British possessions in India". Governor's councils were established in Madras and Bombay.

1.5 Charter Act, 1833

The Governor-General of Bengal became the Governor-General of India. First Governor-General of India was Lord William Bentinck. This Act centralized the administration in India. It made the Governor-General the sole authority to enact laws and regulations for British possessions in India.Beginning of a Central legislature for India took away the legislative powers of Bombay and Madras Provinces. The Act ended the activities of the East India Company as a commercial body and it became a purely political and administrative body. This Act is generally considered to be an extensive measure between the Pitt's India Act and the Queen's Proclamations of 1858.

1.6 Charter Act, 1853

The legislative and executive functions of the Governor-General's Council were separated. Six members were there in the Central legislative council. Four out of six

members were appointed by the Provisional Governments of Madras, Bombay, Bengal and Agra.It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service was opened to all).

1.7 Government of India Act, 1858

The rule of Company was replaced by the rule of the Crown in India.The powers of the British Crown were to be exercised by the Secretary of State for India and he was to be assisted by the Council of India, having 15 members. He was vested with complete authority and control over the Indian administration through the Viceroy as his agent. The Governor-General came to be known as the Viceroy of India. Lord Canning became the first Viceroy of India. The Act abolished Board of Control and Court of Directors.It formalized the process of the end of the Company rule and placed India under the direct control of the Crown. The assumption of the Government of India by the British Crown was announced formally by a proclamation of Queen Victoria on first November, 1858.

1.8 Indian Councils Act, 1861

It introduced, for the first time, Indian representation in the institutions like Viceroy's Executive-Legislative council (non-official). Three Indians entered the Legislative council. Legislative councils were established in the Center and the Provinces. The Act provided that the Viceroy's Executive Council should have some Indians as the non-official members while transacting the legislative businesses. It accorded statutory recognition to the portfolio system and initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Provinces

1.9 India Councils Act, 1892

The Act introduced indirect elections (nomination). It enlarged the size and the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive. The number of additional members in the Council was raised. Due to pressures exerted by the Indian National Congress,

the Government permitted elections to be held in India under the rules, although the members so elected could take their seats only on being nominated by the Government.

1.10 Indian Councils Act, 1909

This Act is also known as the Morley-Minto Reforms.Direct elections to legislative councils were mooted and the Act could be said to be the first attempt at introducing representative and popular elements in governance. It changed the name of the Central Legislative Council to the Imperial Legislative Council. The number of members of the Central Legislative Council was increased to 60 from 16 and introduced a system of communal representation for Muslims by accepting the concept of 'Separate Electorate'. Indians, for the first time, were given representation to the Viceroy's Executive Council. The Act sowed seeds of communal disharmony in India. It created confusion because although it introduced parliamentary reforms, it did not bestow responsibility on an equal basis. The election introduced by the Act was indirect and there was hardly any link between the people and the members on the Legislative Council. The Indian National Congress vehemently criticized the Act for its pro-communal stance and expressed its dissatisfaction at the non-establishment of a Council for the Central Provinces and Berar. K.M. Munshi went to the extent of describing the Councils as *glided shams* with 'magnified non-entities whose constituency was the Government House'

1.11 The Government of India Act, 1919 (The Mont-Ford Reforms)

This Act is also known as the Montague-Chelmsford Reforms. The Central subjects were demarcated and separated from those of the Provincial subjects. The scheme of dual governance, 'Diarchy', was introduced in the Provincial subjects. Under the diarchy system, the provincial subjects were divided into two parts– transferred and reserved. On reserved subjects, Governor was not responsible to the Legislative Council. The Act introduced, for the first time, bicameralism at the center. Legislative Assembly with 140 members and Legislative Council with 60 members. The Act also required that the three of the six members of the Viceroy's Executive

Council (other than Commander-in-Chief) were to be Indians. This Act provided for the establishment of the Public Service Commission. The Govt. of India Act, 1919 failed to bring about the desired gains for the Indians so much so that the Indian National Congress criticized the Reforms as inadequate, unsatisfactory and disappointing. The major criticism against the Act was that it destroyed the national unity by introducing separate electorates for not only the Muslims but also for the Sikhs, Christians, Anglo-Indians and Europeans.

1.12 Nehru Report, 1928

Main features of the Nehru Report :

1. There was a compromise between two groups, one who favoured dominion status and those who supported complete independence. The majority favoured dominion status not as a distant goal but as "the next immediate step".
2. Secularism was envisaged as the basic feature of the constitution. The report proposed joint electorates with reservation of seats for the minorities in proportion to population with the right to contest additional seats.
3. No seats were to be reserved for any community in Bengal and Punjab.
4. The citizens were to enjoy 19 fundamental rights.
5. The government was to derive its authority from the people.
6. The federal structure was to be introduced.
7. The report recommended the organization of the Provinces on linguistic basis and granting of Provincial autonomy in internal administration.
8. The report demanded that full responsible governments should be set up at the central and the Provincial levels.
9. The governor-general was to be appointed by the British Government. He was to act on the advice of the Executive Council. The Prime Minister was to be appointed by the governor-general and other ministers were to be appointed on the advice of the Prime Minister.
10. The report provided for two houses for Parliament.

11. The government of the Provinces was supposed to have a Governor to be appointed by the British Crown. He was to act on the advice of the Provincial Executive Council which was to be responsible to the Provincial legislature.
12. The report held that the Supreme Court was to be the final court of appeal in India.

The Nehru report suggested the establishment of parliamentary system in India both at the central and the state level.

The Congress party accepted the report in its Calcutta session on December 31 in 1928. The Muslims were critical about the report as the report did not provide for separate electorate for them as was given to them by the 1909 and 1919 Acts.

1.13 Jinnah's Fourteen Points

In response to the Nehru Report, M.A, Jinnah placed his 14-point demands. Jinnah called a meeting of the Muslim League in Delhi in 1929 and put forward his 14-points. Discarding the Nehru report, Muslim League declared that no future constitution would be acceptable to the League unless and until the 14 points areimplemented. The basic principles of Jinnah's 14-points are as follows :

1. The form of the future constitution should be federal with the residuary powers being vested in the Provinces.
2. A uniform measure of autonomy shall be granted to all Provinces.
3. All legislatures in the country and other elected bodies shall be constituted on the principle of adequate and effective representation of minorities in every Province without reducing the majority in any province to a minority or even equality.
4. The central legislature will give the Muslims one-third representation.
5. Representation of communal groups shall continue to be by separate electorates as at present provided: it shall be open to any community, at any time, to abandon its separate electorate in favour of joint electorates.
6. Any territorial re-distribution that at any time might be necessary shall not in any way affect the Muslim majority in the Punjab, Bengal and North-West Frontier Province.

7. Full religious liberty, i.e., liberty of belief, worship and observance, propaganda, association and education shall be guaranteed to all communities.
8. No bill or resolution or any part thereof shall be passed in any legislature or any elected body if three-fourths of the members of any community in that particular body oppose such a bill, resolution or part thereof on the ground that it would be injurious to the interests of that community or in the alternative method is devised as may be found possible and practicable to deal with such cases.
9. Sind should be separated from Bombay presidency.
10. Reforms should be introduced in the North-West Frontier Province and Baluchistan on the same footing as in other Provinces.
11. Provision should be made in the constitution providing the Muslims an adequate share along with other Indians in all the services of the State and in local-self-government bodies with due regards to the requirements of efficiency.
12. The Constitution should embody sufficient safeguards for the protection of Muslim culture and for the promotion of Muslim education, language, religion, personal laws and Muslim charitable organizations and for their due shone in the grants-in-aid given by the state and by the self-governing bodies.
13. No cabinet, either Central or Provincial, should be constituted without there being a proportion of at least one-third Muslim ministers.
14. No change should be effected in the constitution except with the approval of the states forming the Indian federation.

The British rulers did not accept either the Nehru report or Jinnah's 14 points. They, with communal divisions in mind, came up with the communal award which insisted on giving the Muslims, the Sikhs,the Christians and the Anglo-Indians and Europeans separate representations. The Depressed Classes were given a number of seats to be filled by election from special constituencies where the depressed class voters could only vote. Mahatma Gandhi opposed this move and as a result, Gandhi-Irwin Pact was signed. The Viceroy offered dominion status which was rejected by the Indian national congress and in its Lahore congress, it declared that Swaraj or full independence was its aim and empowered the AICC to start Civil Disobedience movement. Henceforth, 26th January, 1930 was declared as India'sIndependence Day, and civil disobedience movement started in March, 1930 followed by repressions by the British colonial rulers.

1.14 Simon Commission Report, 1930

In the midst of a very charged situation of civil disobedience movement, the Simon Commission submitted its report in June, 1930. The Commission was constituted under the provisions of the 1919 India Act. Under pressure from the rising momentum of the nationalist upsurge, the Commission was formed two years earlier in 1928 under Sir John Simon and when it landed in India, it faced widespread protests and it was shown black flags. Hartals and Boycotts were organized against the Commission. "Go back" slogans were raised. Despite all these, the Simon Commission continued its work and submitted its report in June, 1930. The main focus of the Commission was to prepare the framework of the future constitution of India and the position the Provinces should enjoy. The important recommendations of the Simon Commission were :

1. The future constitutional development of India should be on the lines of federalism.
2. Diarchy in Provinces should be done away with.
3. Each Province should be supreme in its own sphere and the Governor was to be vested with over-riding powers over the Legislature.
4. The size of the Provincial Legislature should be enhanced.
5. The Upper house of the Central Legislature would be as it is while the size of the Lower house would be enlarged and its members would be elected by the Provincial Legislative Councils.
6. There should be no responsible government at the Centre. The governor-General should be empowered to select and appoint the members of his Executive Council.
7. There should be less functions for the Council of the Secretary of the State for India and its membership should also be reduced.
8. A Council for Greater India should be set up with representatives of the States and British India for consultative purposes.
9. A Provincial Financial Fund should be created for providing enough resources to the Provinces.

10. The High Courts should be under the control of the government of India.
11. Burma should be seceded from India in the new constitutional scheme of things.
12. Sindh and Orissa should be given adequate consideration for the status of Provinces.
13. The presence of British troops and British officers in Indian regiments should be there for many years, but the Commander-in-Chief should not be a member of the Vice-Roy's Executive Council and he should not be a part of the Central Legislature.

The report of the Simon Commission could not satisfy the aspirations of the Indian people. There was fear that the Governor-General and the Governors would be very powerful if the report of the Simon Commission had been accepted. The nationalists and even the Muslim League opposed the Report. Despite the opposition to the Report by the Indians, the British Government accepted it and convened the First Round-Table Conference (1930-31) in London with a view to discussing the future constitutional reforms in India.

1.15 The Government of India Act, 1935

After the failure of the Third Round-Table Conference, the British Government decided to enact a new law for India. The Joint Committee was given the task of formulating this Act. After a year and half, the Committee came out with a draft bill on 5th February, 1935. The bill was discussed in the House of Commons and in the House of Lords and finally, the King signed the bill and it came into force as the Government of India Act, 1935 in July, 1935.

The main features of the Act are as under :

1. Federal Government was to be introduced in the Central government and the Provinces and States. But ultimately, the Central Government continued to function as per the 1919 Act and only the part of the 1935 Act dealing with the Provincial Governments came into effect.
2. The Act provided for three lists: 1. Federal List 2. Provincial List and 3. Concurrent list. The residuary powers were vested in the hands of the Governor-General.

3. The Governor-General was made the head of the Central Administration and enjoyed good amount of power relating to administration, legislation and finance. He was to be helped by the Council of Ministers in the discharge of his functions and the number of Ministers was limited to 10.
4. Diarchy was to be in operation at the center. However, it was abolished at the Provincial level.
5. The Federal Legislature was to consist of two houses, namely, the Council of State and the Federal Assembly. The term of the Federal Assembly was to be 5 years. However, the Governor-General was given the authority to extend its term.
6. The Council of State was to consist of 260 members out of which 156 were to be elected by the Britishers and the rest was to be nominated by the Princely States.
7. The Federal Assembly was to have 375 members out of which 250 were to be elected by the Legislative Assembly of the British Indian Provinces while the rest were to be nominated by the rulers of the Princely States.
8. The Central Legislature was given the power to pass any Bill subject to the approval of the Governor-General. The Governor- General was to have the power to frame ordinances.
9. The Indian Council of the Secretary of State was done away with. Instead, advisors were nominated to assist the Secretary of State for India.
10. The Secretary was barred to interfere in matters vested in the Governor.
11. Autonomy was accorded to the Provinces in relation to subjects delegated to them.
12. Indian legislatures were denied legislative powers on a number of subjects and Governor-Generals or Governors were granted powers to override their ministers and legislators in certain cases including assumption of unlimited powers in a situation of constitutional breakdown.
13. Two new Provinces Sindh and Orissa were constituted.
14. Reforms were undertaken relating to North-West Frontier Province and in other Provinces.
15. Separate electorates were retained as before.
16. Muslims were allowed to have one-third representatives in the Central legislature.

17. The federal court was constituted at the central level with jurisdictions over the States and Provinces.
18. Reserve Bank of India was formed to control currency and ensure financial stability in the country.

The Act was vehemently opposed by the Congress party and the Muslim Leaguebut they took part in Provincial elections in 1936-37 held under the provisions of the Act. When Independence came, both the two dominions, India and Pakistan accepted the Act as their provisional constitutions with certain amendments here and there.

1.16 The Cripps Mission

The First World War forced the British rulers to change their policy towards India. They sent Sir Stafford Clipps, a minister in the British cabinet, to India to find a 'just and final solution' of the constitutional crisis.

The Cripps Mission envisaged the granting of dominion status to India and framing a constitution for India after the end of the War. The Provinces were given freedom to accept or reject the constitution. The Muslim League did not accept the proposals as its demand for partition was not conceded. The National Congress also declined the proposals of the Cripps Mission. Gandhiji called the offers made by the Mission 'a post-dated cheque on a crashing bank'.

The British Government was not amenable to the conditions put forward by the National Congress leaders and as a result, the Cripps Mission ended in a total failure.

1.17 The Quit India Resolutions

Soon after the failure of the Cripps Mission, the Indian National congress leaders met at Bombay in August, 1942 and adopted the famous "Quit India" resolutions for the immediate end of the British rule in India. Gandhi played a very crucial role in adopting the resolutions.

The British Government, in response to the resolutions, put almost all the congress leaders behind bars and banned all Congress organizations. This led Indians

to waging an all-out revolution against the British known as 'August Revolution'. The British rulers crushed this revolution with all its might. Consequently, war efforts of the British Government were seriously hampered due to apathy shown by the Indians.

1.18 Simla Conference

The Allies' victory in world war-II came in 1945, three years after the Cripps Mission. The Governor-General ordered the release of the jailed Congress leaders as a step towards holding negotiations with them. A conference was convened at Simla where leaders of all political parties assembled, but no agreed solution came out of it. Lord Wavell, the then Governor-General of India went to England amidst the Labour party coming to power defeating the Conservative party. Lord Wavell came back and announced that the British Government was serious enough to give India self-governance.

1.19 Parliamentary Delegation

In 1946, the Prime Minister of Britain, Clement Attlee declared that a Parliamentary Delegation would visit India to discuss various issues connected with the self-rule in India. The Delegation came to India and discussed things with the leaders of various political parties which led to further understanding of the constitutional issues regarding self-rule of the Indians. The Labour Government in England felt convinced about the need to grant self-governance for the Indians. For this to happen, the British Government sent another Mission called 'Cabinet Mission' to India.

1.20 Cabinet Mission

The Cabinet Mission consisting of three members of the British Cabinet, Sir Stafford Cripps, Lord Pethic Lawrence and A.V. Alexander came and started deliberating on the future political set-up of India, known as 'Cabinet Mission Plan'. The Plan envisaged a confederation of three autonomous groups of states each

having separate constitution thereby creating opportunities for people belonging to various religions to live unitedly but at the same time, enjoying complete autonomy in areas where they were in a majority. The Plan had two sides- one pertaining to future political set-up of India and the second relating to the establishment of an immediate Indian Interim Government. The Cabinet Mission was against giving the Muslims a separate state. It also envisaged that the constitution of the Union and the Groups could have a provision whereby any Province, by a majority vote in the Legislature, could call for a reconsideration of the terms of the constitution after an initial period of ten years and thereafter at ten-year interval.

The Muslim League accepted both the two parts of the Plan while the Indian National Congress accepted only the long-term programmes. As a result, the Muslim League rejected the Plan wholesale and declared that it would depend on direct action to achieve its demands. Meanwhile, the elections in the British Indian Provinces were held and the Provincial autonomy scheme of the Constitution Act, 1935 was given effect to. But the issue of forming an Interim Government at the Centre still remained unresolved.

The Cabinet Mission Plan was praised and it was seen as an opportunity to reconciliate the stands taken by the Congress and the Muslim League. It upheld the long-standing demand of the Indians for establishing a Constituent Assembly. Congress was elated for the fact that the Plan rejected the demand for a separate Muslim State. Muslim League was happy for the fact that the provision of grouping of Provinces coupled with the requirement of a majority of all religious communities for settlement of all major communal issues. But it cannot be denied that this Plan also led to the passage of the Mountbatten Plan and thereafter the Indian Independence Act of 1947 leading to the partition of India.

1.21 Formation of Interim Government

The direct action programme announced by the Muslim League hampered Lord Wavell's efforts to bring the rival political parties to some agreement. Communal tensions gripped the country and communal disturbances spread like a violent conflagration. In the midst of such disturbances, Lord Wavell invited Nehru to

consider the proposals for the formation of Interim Government at the Centre and fortunately the discussions led to the formation of an Interim Government on 2nd of September, 1946.

1.22 Mountbatten Plan

Events in India were moving so fast and dangerously that it was felt both in India and England that unless immediate action was taken, things could go out of hands. The British Government replace Wavell by Lord Mountbatten as the new Governor-General of India. On 20th February, 1947, the British Government made a historic announcement of transferring power to responsible Indian hands not later than June, 1948. Lord Mountbatten, the new Governor-General, plunged into action and started negotiating with the leaders of various political parties. He came to the conclusion that the only solution to the ongoing communal violence and bloodshed was to transfer power in the hands of the Indians. With a view to transferring power and accommodating the interests of the two leading religious communities, Mountbatten devised a plan for partition of the country-India and Pakistan. It was according to the Plan that Punjab and Bengal were also partitioned between the two new nations of India and Pakistan and the Plan was accepted by both the two leading political parties- The Indian National Congress and the Muslim League.

1.23 The Indian Independence Act, 1947

The decision to transfer power was announced by the British Parliament in June, 1947 and accordingly the Indian Independence Act was passed providing for the setting up of two Dominions- the Dominion of India and the Dominion of Pakistan on August 15, 1947. As a result, on the historic day of 15th August, two Dominions of India and Pakistan were born.

Main features of the Indian Independence Act, 1947 :

a. This Act fixed 15th August, 1947 for setting up of the two Dominions.

b. The Legislatures of the two Dominions were given complete authority to legislate laws which would have extra-territorial jurisdiction.

c. The British Government was to have no control over the affairs of the Dominions after 15th August, 1947.

d. The Act made the existing Constituent Assemblies the legislatures for the Dominions for the time being. The Assemblies were empowered to exercise all powers exercised earlier by the Central Legislatures, in addition to its power to frame a new constitution.

e. Until a new constitution was framed, each of the Dominion and all the Provinces were to be governed as per the provisions of the Government of India Act, 1935. Each Dominion was empowered to make amendments to the Act as per the Indian Independence Act, 1947.

f. The Governor-General was authorized to modify the Government of India Act, 1935 as would be necessary till March, 1948 after which it was the Constituent Assembly which had the power to modify or adapt the same Act.

g. The power of the King to veto laws or to reserve laws for his pleasure was done away with and this power was given to the Governor-General.

h. The Act terminated the authority of the Crown over the Indian states. All treaties, agreements and functions exercisable by his Majesty with regard to the states and their rulers were made to lapse from 15th August, 1947.

i. Agreements with the tribal population of the North-Western Frontier Province of India were to be sorted out by the successor Dominion.

j. The office of the Secretary of State was to be done away with and his functions were to be transferred to the Secretary of State for Commonwealth Affairs.

k. The title of "Emperor of India" was to be dropped from the Royal style and titles of the King of England.

l. It was decided that there shall be a Governor-General for each of the Dominions who would be appointed by His Majesty and would represent His Majesty for the purposes of the government of the Dominions.

m. The Act laid down temporary provisions for the Government of the Dominions by giving the two Constituent Assemblies the status of Parliament with full powers of Dominion legislatures.

The Indian Independence Act, 1947 freed India from the clutches of the British colonial rulers and gave freedom but at the cost of partition. Two independent and separate countries- Pakistan and India were born on 14th and 15th August of 1947 respectively. India became an independent and sovereign country. The first Prime Minister of Independent India, Pt. Jawaharlal Nehru observed, "At the stroke of midnight hour, when the world sleeps, India will awake to life and freedom…." The Constituent Assembly started working on the drafting of a Constitution for free India since 9th December, 1946. After working for almost three years, the Constituent Assembly came out with a Constitution on 26th November, 1949 and the same was given effect to from 26th January, 1950 declaring India a Sovereign, Democratic Republic and electing Dr. Rajendra Prasad as the first President of India (26th January 1950- 13th May, 1962).

1.24 Conclusion

The constitution of India is a product of the freedom movement of the people of India against the British colonial rulers.As the freedom struggle intensified, the British colonial rulers started enacting various laws paving the way for formulating a constitution for free India. Unfortunately for the people of India, the British colonial rulers divided the country on religious lines- India and Pakistan, the roots of which are to be found in the laws enacted by the British Parliament, particularly the laws of 1909 and 1919.The British rulers were forced, both by the peaceful agitations and armed uprisings resorted to by the Indian people, to choose the legislative route to ensure a Constitution for the Indians of their own choice but it was done at the cost of the partition of the country.

1.25 Summing up

- Under pressure from the Indians, the British rulers enacted various laws towards gradually giving the Indians the opportunity to be part of the colonial administration and ultimately the right to frame their own constitution on achieving independence.
- Both the Indian National Congress and the Muslim League reacted to these laws in their own way keeping their own interests in mind.

- The British rulers sowed the seeds of communal disharmony among the Hindus and the Muslims through 1909 and 1919 Acts which ultimately led to the partition of India into two separate and independent countries—India and Pakistan.
- After partition, both the countries constituted their own Constituent Assembly to frame the constitution of their choice.

1.26 Probable Questions

Essay Type Questions :

1. Write a note on the historical background of the Indian Constitution.
2. Discuss the salient features of the Government of India Act, 1935.
3. Analyse the Nehru Report.
4. Evaluate Jinnah's Fourteen Points.
5. Briefly analyse the Indian Independence Act, 1947.

Short Questions :

1. Discuss the Government of India Act, 1919.
2. Discuss the Simon Commission Report.
3. Discuss the important features of the Cripps Mission.

Objective Questions :

1. WWhich Act made a provision for the transfer of power from the East India Company to the British crown?
2. Which Act introduced communal Electorate system in India for the first time?
3. Which Act provided for setting up of public service commissions at both the federal and provinicial levels?

1.27 Further Readings

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Unit 2 ❑ The Preamble

Structure

2.1 Objective

After going through this unit the learners will be able:

- To discuss the Preamble 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 on which the constitution is based. 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.

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 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, 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, it 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 Preamble. 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. "India is a sovereign, socialist, secular, democratic republic" – Explain.

Short Questions :

1. Why is the Preamble considered as the philosophical basis of the Indian constitution?
2. What is the significance of the Preamble of the Indian constitution?
3. Do you think that the Preamble is a part of the constitution? Give reasons for your answer.

Objective Questions :

1. Why is India called a Republic?
2. By which constitutions amendment the words socialist and secular were inserted in the Preamble?
3. What is the moral significance of the preamble?

2.11 Further Reading

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Unit 3 ❑ Features of the Constitution

Structure

3.1 Objective

After reading this unit learners will be familiar with:

- The features of the Constitution in some detail.

3.2 Introduction

The features of a constitution help us understand the nature or character of the same. The Constitution of India is a unique constitution framed by a Constituent Assembly. The Constituent Assembly took almost three years to frame the constitution after a lot of debates and discussions. It is the largest written democratic constitution of the world and it contains a number of important features which help us understand not only the character of our constitution but also the nature of the Indian political system. Since its inauguration on 26th January 1950, the Constitution of India has more or less successfully influenced the direction and progress of India.

3.3 Salient Features of the Indian Constitution

1) Written constitution – Like the constitutions of various other countries of the world, the constitution of India is also a written one. There were 395 articles and 8

schedules in the original Indian constitution. Subsequently, as a result of amendment of the constitution, the number of Articles and Schedules got increased. In the present constitution, there are more than 450 Articles and 12 Schedules. The amendments at various times have made the constitution a sizable one which has, in turn, made it a complex constitution too.

2) Unwritten conventions – Though the Indian constitution is written and there is no place for the convention in it, yet these have made their way into it. The conventions and traditions grow automatically and make their entry into the constitutional system. Though these are not recognized by the Courts, yet, these are there and not violated. The constitution of UK has influenced our constitution in this regard.

The important conventions of the Indian Constitution are :

- The PM in Lok Sabha and the CMs in the State Legislatures are the leaders of their respective parties.
- Generally, the Speaker of the Lok Sabha belongs to the majority party and Deputy Speaker is chosen from the opposition.
- The President dissolves the LokSabha on the recommendation of Prime Minister, etc.

3) Constitution starts with a Preamble – The constitution of India starts with a Preamble. Although the Preamble is not a part of the Constitution, yet through the 42nd Amendment, the Parliament has increased its importance manifold.

The Preamble has its own importance, that is why it is variously known as the "mirror of the Constitution", "soul of the Constitution" or the "key to the constitution". It includes the objectives and ideals of the Constitution such as Sovereignty, Democracy, Republicanism, Socialism, Secularism Liberty, Equality, and Justice, Fraternity etc. From the Preamble we can know the source of the constitution, date of its adoption etc.

4) Constitution was drawn from various sources – The constitution of India has been drawn from various sources as our objective was not to enact an original

constitution rather enact a good and workable constitution. The following basic principles were taken from other constitutions such as :

1. Parliamentary form of Government and the Rule of Law from the British Constitution.
2. Fundamental Rights from the Constitution of the USA.
3. Directive Principles of State Policy from the Constitution of Ireland.
4. Federal system of India from the Constitution of Canada.
5. Emergency powers of President from the Constitution of Germany.

5) Rigid as well as a Flexible constitution – The unique feature of the Indian constitution is that it is a mixture of rigidity and flexibility. It is neither as rigid as the constitution of the USA nor as flexible as the constitution of Great Britain.

Article 368

Some parts of the Constitution can be amended by the Union Parliament by passing a resolution with 2/3rd majority of the members present and voting like the Fundamental Rights, Directive Principles of State Policy etc. Then, in amending some parts like the election of the President, distribution of powers between the Center and the States etc, support of two/thirds majority is required for passage by the Parliament and then the approval of half of the Legislature of the States is a must. These two methods are proof of the rigidity of the Indian constitution. Besides, there are certain other parts of the constitution which can be amended by the Parliament with a simple majority like the changing of the boundary of a state or changing of the name of a stateand the abolition or the creation of the Legislative Council etc. So, the constitution of India is a mixture of rigidity and flexibility.

6) Universal Adult Franchise – India is a democratic state, therefore, the constitution of India, under article 326, provides for universal adult franchise and every citizen, male or female, who is 18 years of age is given the right to vote without making any discrimination on the basis of sex, caste, color, religion, etc.

7) Single Integrated Judicial system – The constitution of India provides for the single integrated judicial system. Unlike other federal countries of the world, in India, there are no separate courts for the states and the union government.

The entire judicial system of India is organized into a hierarchical order :

Supreme Court is at the top of the judicial administration. Below that there are High Courts at the state level and District courts at the district level. All the courts of India are bound to accept the decision of the Supreme Court.

8) Rule of Law – The Constitution of India provides for rule of law for which our constitution is indebted to the Constitution of Britain. The rule of law means that nobody is above law and everybody is equal before the law.

9) Single Citizenship – In some federal States,people enjoy double citizenship. First, they get the citizenship of the State in which they live and then they enjoy the citizenship of the country. This principle of double citizenship has been adopted in federal States like the USA, Canada, etc.

But in India there is single citizenship. A person may be living in any State but he is a citizen only of India.

10) Hindi to be the official language of the Union Government – The Constitution of India has given recognition to 22 regional languages and to promote unity and mutual cooperation among the people speaking different regional languages, Article 343 states, 'The official language of the Union shall be Hindi in Devnagri Script.'

11) Independent Judiciary – The Constitution of India makes provisions for the independence of the Judiciary because only an independent Judiciary can safeguard the rights and liberties of the people, and can protect the supremacy of the Constitution. To make the Judiciary independent, the following provisions have been made :

1. An impartial method has been adopted for the appointment of the Judges.
2. Provisions have been made for long tenure of the Judges. Judges of the Supreme Court work till the age of 65 and the Judges of the High Courts can be in service till the age of 62.
3. No Judge can be removed except on grounds of proved 'misbehavior' and 'incapacity'
4. No question can be asked in the Parliament relating to the reasonability of the rulings of the Judges.

5. No Judge can act as a lawyer in any court after retirement.
6. The salary and allowances of the Judges cannot be reduced generally during their office.

But the sad fact is that many Judges in our country don't hesitate to become pro-government of the day in order to have plum posting after retirement. Corruption has also made its presence felt in the Judiciary.

12) Secular State – The Constitution of India has declared India to be a secular State and the word 'secular' was inserted into the Preamble of the Constitution through the 42nd amendment of the Constitution made in the year 1976. But this does not mean that India was not secular before 1976. India was secular even before 1976 because the Right to Religious Freedom was in existence in the Constitution since the very beginning.

Every citizen is free to profess, practice and propagate the religion of his or her choice.

But it has also been directed by the Constitution that no religious instruction shall be provided in any educational institution wholly maintained by State funds. Also, no tax can be imposed by the State in the name of religion. No discrimination will be allowed to be made while making an appointment in higher offices, rather appointments are to be made on the basis of required qualifications.

13) Special provisions for the protection of the interests of the Scheduled Castes, Scheduled Tribes and Backward Classes and Minorities – The Constitution of India has made special provisions for the protection of the interests of Scheduled castes, Scheduled Tribes, Backward Classes, and the Minorities. According to the Constitution, everybody is given the right to equality. Untouchability has been prohibited and practice of it in any form is declared a crime and punishable under the law.Provisions are also there for the reservation of seats for Scheduled Castes in Lok Sabha, State Legislative Assemblies and Local Self-Governments.

Special provisions have been made for the protection of the interests of minorities under Articles 29 and 30 of the Constitution.

14) Fundamental Rights – Rights are essential for the development of an individual and to achieve this purpose, Fundamental Rights have been included in Chapter 3 of the Constitution under Articles 12 to 35.

Following are the fundamental rights of the Indian citizens :

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation
4. Right to Religious Freedom
5. Cultural and Educational Rights
6. Right to Constitutional Remedies

15) Directive Principles of State Policy – Articles 36 to 51 of the constitution deal with the Directive Principles of State Policy and the constitution makers were inspired by the Constitution of Ireland in this regard. These principles are considered to be the guiding principles for the Government to make India a welfare state. Directive Principles concerning social ideals, legal and executive reforms and international relations are also of great importance.

But we must remember that these principles are not enforceable by the Courts but these principles are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. So, these principles have moral importance to the Government and it is morally bound to fulfill these principles. In case of failure to implement these principles, the Government may have to pay a heavy political price too.

16) Balancing between the supremacy of the Judiciary and the sovereignty of the Parliament – One of the important features of the Indian Constitution is to make a balance between the supremacy of the Judiciary and the Parliamentary sovereignty. In the USA, the Supreme Court is guided by the 'due process of law' principle and hence it can declare any law passed by the Congress as null and void if such law is found to be unconstitutional or is against natural justice. But in India, the Supreme Court can consider any law passed by the Indian Parliament on the basis of the principle of 'procedure established by law', that is, it can declare any law as null and void only in case such law is not passed in accordance with the rightful procedure.

It cannot nullify any law on the ground of its being contrary to justice. On the other hand, the Indian Parliament can override any ruling of the Supreme Court by amending the Constitution. It may be mentioned that in 1986, the government headed by Rajiv Gandhi passed a law for overriding the ruling of the Supreme Court in the Shahbanu case. Earlier, by amending the Constitution (24^{th} and 25^{th} amendment acts), the then government made the ruling of the Supreme Court in Golaknath case ineffective. In Keshavananda Bharati case, the Supreme Court ruled that the Parliament has no power to amend the 'basic structure' of the constitution. But the then Government headed by Indira Gandhi passed the 42^{nd} Constitution Amendment Act and brought the matter of constitution amendment outside the purview of the consideration of the Supreme Court. In 1980 Minarva Mills Case, the Supreme Court nullified those parts of the 42^{nd} Amendment Act. Thus, a tug of war continues between the Supreme Court and the Parliament around the issue of supremacy. This is also a fact that the Supreme Court, many a time, asserted itself and acted independently leading to the emergence of 'Judicial Activism' which has become a debatable point in Indian politics.

16) Federal in form but Unitary in nature – Indian constitution is regarded as a mixture of both Federalism and Unitarianism. Features of federalism exist in India like the distribution of powers between the Center and the States by the constitution, existence of a written and rigid constitution and the presence of a Federal Court, that is, the Supreme Court. So far as centralizing tendencies are concerned, the Central Government can issue directions to the States, the President can impose President's rule in any State, the prevalence of the Central legislation over the State legislation in case of a conflict between the two. Centralization may also occur through the power of the Central Government to utilize the 'Grants-in-Aid' as per its preferences. K.C.Wheare has described the Indian constitution as 'quasi-federal'.

17) Fundamental Duties of the citizens- Although the original constitution had no provision for fundamental duties, 42^{nd} Constitution Amendment Act passed in 1976 has added 10 fundamental duties for the citizens of India by inserting IV-A in the fourth part of the constitution. Later, one more fundamental duty has been added and presently, there are 11 fundamental duties in our constitution.

18) Provisions for emergency powers of the President – To meet emergency situations, the President of India has been given three types of emergency powers and

they are there in the 18th part of the constitution. President has emergency powers relating to 1. National Emergency (Article 352) 2. President's rule in the states in case the administration of a State cannot be carried on in accordance with the constitution (Article 356) (Constitutional Failure). 3. Financial Emergency (Article 360). It should be remembered that the President cannot declare any type of emergency without the approval of the Council-of-Ministers headed by the Prime Minister.

19) Pacifism – In the Indian constitution, emphasis has been put on the establishment of world peace and fraternalism in the international sphere. Article 51 has clearly stated this position of the Indian Government. This craving for peace is most evident in the foreign policy of the Indian State. Author like A.R.Desai does not agree with this formulation. According to him, being a capitalist country, India is more inclined towards the capitalist world but the reason for India seeking world peace is that India is economically and militarily weak.

3.4 Conclusion

The features of the Indian constitution are innovative in all respects. Through these features, the ideal of individualism had been combined with the ideal of social welfare and efforts were evident in making India a welfare state. But post-economic reforms in the nineties of the last century, the concept of welfare state has taken a back seat and neo-liberal philosophy has been adopted as the guiding principle of governance. As a result, the aims and objectives of the Indian State have got changed from being a welfare State to a minimal State in keeping with the dictates of the International Financial Organizations.

3.5 Summing up

- Indian Constitution is the largest written Constitution of the World and as such, contains so many important features.
- Understanding these features is very crucial for knowing not only the character of our

constitution but also the nature of the Indian political system.

- The features of the Indian Constitution are innovative in many respects.
- These features have combined the ideal of Individualism with the ideal of Collective Welfare.
- Due to adoption of principles like Liberalization, Privatization and Globalization, many features of the Indian Constitution have lost their earlier importance.

3.6 Sample Questions

Essay Type Questions :

1. Discuss the features of the Indian Constitution.
2. Discuss how a balance has been made between the supremacy of the Judiciary and the sovereignty of the Parliament in India.
3. Write a note on the independence of the Indian Judiciary.

Short Questions :

1. Why is the constitution of India called a mixture of both rigidity and flexibility?
2. What are the emergency powers of the President of India?
3. What do you mean by integrated judicial system in India?

Objective Questions :

1. What is rule of law?
2. How many fundamental rights are there in the Indian constitution?
3. Why is India called a secular state?
4. What is single citizenship?
5. What is universal adult franchise?

3.7 Further Readings

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Unit 4 ❑ Fundamental Rights

Structure

4.1 Objectives

After reading this unit learners will be familiar with:

- The important features and amendability of the Fundamental Rights.
- 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.

4.2 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".

4.3 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."

4.4 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 Golaknath case 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 special 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.

4.5 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 to any person to public institutions, such as Hospitals, Dispensary, Educational Institutions;
2. Preventing any person from worshipping or offering prayers in any place 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 :

6. No title, not being a military or academic distinction, shall be conferred by the State
7. No citizen of India shall accept any title from any foreign State
8. No person who is not a citizen of India shall accept without the consent of the President any title from any foreign State
9. 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.

4.6 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 :

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

4.7 Restrictions on the Right to Freedom

Freedom can never 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 :

10. No person shall be convicted of any offence except for violation of existing laws.
11. No person shall be prosecuted and punished for the same offence more than once.
12. 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 of life 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 for 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:

13. The arrested person must be informed about the ground of arrest.
14. The arrested person must be allowed to consult a lawyer of his or her own choice.
15. The arrested person must be produced before nearest Magistrate within 24 hours of arrest and not to be detained beyond that period without an order of the Magistrate.

    The above safeguards are not allowed to be enjoyed by 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.

4.8 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 upholding

2. 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
3. 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.

4.9 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:

3. "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.
4. 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 related 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 compelled 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."

4.10 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, (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." [Article 30A]

4.11 Right to Constitutional Remedies (Article 32)

Mere 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 constitutional 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).

4.12 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.

4.13 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.

4.14 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.

4.15 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.

4.16 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.

Short Questions :

1. Discuss some important features of the Fundamental Rights.

2. Write a short note on the amendability of the Fundamental Rights.
3. Discuss the Right against Exploitation.
4. Evaluate the Right to Constitutional Remedies.

Objective Questions :

1. Which fundamental right is granted only to citizens of India and not the Forigners living in India?
2. What is Habeas Corpus?
3. What is Mandamas?
4. What is Certiorari?
5. What is Prohibition?
6. What is Quo Warranto?
7. What is meant by the term "Double Jeopary"?

4.17 Further Reading

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Unit 5 ❑ Directive Principles of State Policy

Structure

5.1 Objective

After reading this unit learners will be familiar with:

- 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.

5.2 Introduction

Directive Principles of state policy have been incorporated 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.

5.3 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.

5.4 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 aims towards achieving 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.

5.5 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.

5.6 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. 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.

5.7 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.

5.8 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.

5.9 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.

Short Questions :

1. What are the important features of the Directive Principles of State Policy?
2. Discuss the significance of the Directive Principles of State Policy.

Objective Questions :

1. What is the constitutional significance of the Directive Principles?
2. In what sense Directive Principles are positive in nature?
3. Mention four Directive Principles.

4. Mention two Directive Principles having social significance.

5.10 Further Reading

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Unit 6 ❑ Parliament : Lok Sabha

Structure

6.1 Objective

After reading this unit learners will be familiar with:

- the nature of the lower house of the Union Legislature
- the method of election through which the members of the lower house get elected
- the essential qualifications to become a member of the house
- the criterion through which membership can be called off
- the powers and functions of the Lok Sabha

6.2 Introduction

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 withdraw support to the government with the result that the Government, losing the support of certain groups, would fall.

6.4 Essential Qualifications to become a Member

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 are 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. 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 enhance 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 agree 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 Speaker 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.

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 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 immune 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 1991 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 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.

6.12 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.

6.13 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 criterion of qualifications and also disqualifications of the member of the lower house.
3. Analyse the position of the Speaker of Lok Sabha in India.

Objective Questions :

1. How much is the quorum of a House of the Parliament of India?
2. When does the speaker exerise casting vote?
3. Who presides over the joint session of the Parliament?

6.14 Further Reading

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Unit 10 ❑ Rajya Sabha

Structure

7.1 Objective

The present Unit will enable the learners to-

- 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

7.2 Introduction

The Constitution of India, provide a bicameral legislature at the Union in India. There are two houses or chambers in the Parliament namely Lok Sabha and the Rajya Sabha.

As the Constitution established a federal system of government, there was almost unanimity among the framers for achieving a balance between the direct representation of the people and the representation of units as such, by setting up two houses, one representing the people as a whole and the other the federated units. Infact the Parliament of India consists of the President and the two houses. The lower house is called the House of the People while the upper house is called The Council of States. This is in accordance with Article 79. The lower house is popularly known as the Lok Sabha while the upper house is well known as the Rajya Sabha. The names of the houses fairly reflect the character of their composition. The House of the People is composed of directly elected representatives on the basis of adult franchise and territorial constituencies. The Council of States is composed mainly of representatives of the states elected by the State Assemblies. The President is an integral part of the Parliamentary Government. Although the President is not a member of the Legislature, his/her participation in the legislative process is ensured by making him/her a part of the Parliament. The fact that he/she is the chief executive authority and that the executive power is co extensive with the legislative power also makes it necessary that he/she should become an integral part of the Legislature.

Now before discussing the composition and functions of both the houses it is essential for us to know what prompted India to adopt a Parliamentary model over the Presidential one? The often repeated argument of the previous experience of the Indians in running the governmental system based on Parliamentary model, no wonder, is one of the reason but it is not the only factor behind its adoption. The adoption of the Parliamentary system of governance by the Constituent Assembly was more in keeping with the advantages expected to accrue from the institution of the Parliament in future than the familiarity of Indians with the functioning of representative bodies in the country in the past.

First, as Austin pointed out, the framers sought to achieve the objective of unity in the country through the mechanism of popular government by uniting Indians into one mass electorate having universal adult suffrage and by providing for the direct representation of the voters in genuinely popular assemblies, the culmination of which are to be found in the Parliament.

Second, the parliamentary system appeared to be the thing that could have accommodated all sorts of imperatives bothering the Constitution makers on the eve of Independence, quite evidently, along with the democratic system of governance, the federal nature of polity with the supremacy of the Constitution responsible for the successful functioning of other institution, independent judiciary—all these would not have been possible without the adoption of the parliamentary model. As against it, going in for a Presidential model for the sake of a strong executive to ensure the unity and integrity, the nation may have the dangers of the President turning into a despot as happened in many other newly independent countries including her neighbours.

Finally, the institution of Parliament 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. Infact, the well thought out mechanism of ensuring the sanctity of federal nature of the polity and formulating the broad guidelines regulating the relations between the centre and the states was obtained in the form of the Parliament.

The Rajya Sabha is the indirectly elected upper chamber. The upper house created with the aim of assuring a superior quality of debates and discussions. Structurally the Rajya Sabha is made a smaller house in comparison with the Lok Sabha. The Constituent Assembly was though unanimous about the usefulness and necessity of the Council of States as an integral part of the general scheme of the Union Government, there was however, divergence of opinion with respect to its composition, maximum membership and functions. Several suggestions were made in connection with the composition of the house. Some wanted equality of status among the states in the matter of representation while other denounced it a undemocratic and outmoded. Some were bitterly opposed to nomination of members while others wanted functional representation. While indirect election was opposed by some, election by the method of proportional representation was welcomed by others. Despite the large number of amendments based upon these and other ideas, the provisions embodied in the Draft Constitution were passed without any substantial modification except in regard to the method of the election of members.

7.3 Composition

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 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, 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.

7.4 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 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, 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.

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. 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 themembers 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 political party.

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 division 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.

7.5 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.

7.6 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.

7.7 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.

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.

7.8 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 examined 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 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 in power at the centre. Infact the Rajya Sabha 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 withdrawal 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.

Domain locating Rajya Sabha enjoying more power 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 present 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 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 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.

7.9 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 note is 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 of 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.

7.10 Conclusion

A thorough study of the Council of States suggests that there may be a huge gap between what the second chamber should be and what the present Council of States is. Yet, despite its weakness it cannot be denied, that it has succeeded in not letting the floor of the Council a battleground between centre and the states. Infact, what is therefore, desired that both the houses must act in close cooperation with each other as neither of the two houses by itself constitutes the Parliament. It is both the houses together that constitute the Parliament of India.

7.11 Summing Up

- The Parliament of India consists of the President and the two houses. The lower house is called the House of the People while the upper house is called The Council of States.

- The lower house is popularly known as the Lok Sabha while the upper house is well known as the Rajya Sabha.
- The Rajya Sabha is the indirectly elected upper chamber. The upper house was created with the aim of assuring a superior quality of debates and discussions.
- 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.
- 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.
- 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.
- 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.

7.12 Probable Questions

Essay Type Questions :

1. Examine the powers and functions of the Rajya Sabha
2. Discuss the relations between Lok Sabha and Rajya Sabha of the Indian Parliament.

Short Questions :

1. Do you think a bicameral legislature was a need of the hour for India? Justify.
2. Make a critical assessment of the functioning of Rajya Sabha.

Objective Questions :

1. Who elects the Deputy Chairman of the Rajya Sabha?
2. On which matter does the Rajya Sabha enjoy exclusive jurisdiction?

7.13 Further Reading

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Unit 8 ❑ Parliamentary Procedures and Practices

Structure

8.1 Objective

The present Unit enables the learners-

- To know the procedures as practiced in the Union Legislature
- To understand the procedures followed by members in raising questions over a political issue
- To grasp how and when a discussion takes place in the Parliament
- To gain knowledge how a Bill becomes an Act.
- To get acquainted with the functioning of the different committees in the Parliament

8.2 Introduction

The significance of the Parliament consists in its multifunctional role. In a traditional sense, the Parliament is just a law making organ of the state. But in a modern empirical study, it is a multifunctional institution. However, at the same time it cannot be denied that

the primary function of Parliament is law-making. Historically, it was the function of making laws that made the legislature a distinctly separate department of the Government. Inspite of all the additional functions that a Parliament takes up as a result of the complexities of modern Government, law making still remains its most important activity. A Parliament without legislative work ceases to be a Parliament in the real sense. Now modern society is so complex that laws which govern it have necessarily to be complex. Naturally law making too has become a complex process. Further, the concept of a welfare state has entrusted additional responsibility upon the state. So not only the functions of the state have been extended but it has been done so at a rapid speed over the years.

8.3 Procedures related to sessions of the legislature

The Parliament is also required to make laws within a definite constitutional framework. Law making in every country has to be done by a process prescribed under the Constitution of the country. This is true for India as well. Here it is worthwhile to discuss in brief, about the actual working of the Parliament. For this we need to have some knowledge of its practice and procedure as prescribed in the Rules of Procedure and Conduct of Business in two houses. For the sake of convenience we may discuss them in the following manner :-

Summoning of the house :

The President summons the sessions of the both houses of Parliament. It is necessary that there should not be a gap of more than six months in the holding of the sessions. In practice the Minister for Parliamentary Affairs, proposes the date to the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha then the Secretaries General of the two houses obtain orders from the President to this effect and they issue summons to the members individually. In the new Lok Sabha the President appoints its senior most member of the house as protem Speaker who presides so as to administer the oath to the members. Then, the Speaker is elected by the house who conducts the proceedings. After sometime, the members elect a Deputy Speaker. Here it must be noted, that generally the Parliament has three sessions each year-

i) Budget Session-February to May

ii) Monsoon Session-July to August

iii) Winter Session-November to December

Inauguration of the Session :

A session of the Parliament after a general election begins with the inaugural address delivered by the President. He/she addresses both the house assembled together in the Central Hall of Parliament house. He/she reads out a speech written and approved by the Parliament. It contains a review of the activities of the Government during the preceding year as well as a statement of the policies and programmes of the new government for the ensuing year. After this, the two houses meet in their respective chambers and then the members has the right to discuss the address in the light of all aspects of administration. They also have a right to put amendments.

Quorum, Adjournment and Prorogation :

Quorum means minimum attendance without which the proceedings of the house cannot be conducted. In our country $1/10^{th}$ of the strength of the house has been fixed for this purpose. It means that there must be at least 55 members present in the Lok Sabha, if the work is to be conducted. In case the presiding officer finds that there is no quorum, he/she may ring the quorum bell so that the members sitting in the lounge or elsewhere may rush to the house. In the event of the lack of quorum the presiding officer may adjourn the sitting for some time. The President has the power to prorogue the session. In case the house is adjourned, the presiding officer may call its session as per his/her pleasure. In case it is prorogued then the President shall issue the summons for the next session.

Point of Order :

The business of the house should be conducted according to the rules of procedure as given in the Constitution and in the Rules of Procedure and Conduct of Business so that it is in order. In case there is any breach of it, a member may raise a point of order so that nothing is done that is against the rules of law or procedure.

The point of order is an extraordinary process which when raised has the effect of suspending the proceedings before the house. Hence, it is governed by certain specific conditions. It can be raised only in relation to the business before the house at that time. A member is not allowed to raise a point of order just for explaining his/her personal views, or asking for information from a minister, or when a matter is being put by the Chairman before the house for discussion or when the matter is being put to vote of the house.

8.4 Procedures for Questions in the legislature

Questions and Supplementary Questions :

The first hour of every sitting is called the Question Hour. It is during the Question Hour that the members of Parliament may ask questions on different aspects of administration and Government policy in the national and International spheres. Questions are of three types–Starred, Unstarred and Short Notice. A Starred question is one to which a member desires an oral answer in the house and which is distinguished by an asterisk mark. An unstarred question is one which is not called for oral answer in the house and on which no supplementary question can consequently be asked. An answer to such question is given in writing. Minimum period of notice for starred/unstarred questions is 10 days. A short notice question may only be answered on short notice if so, permitted by the Speaker and the Minister concerned is prepared to answer it at a shorter notice. A short notice question is taken up for answer immediately after the Question Hour. Keeping in view the time factor, it has been provided in the Rules of Procedure and Conduct of Business that a member of Lok Sabha cannot ask more than 5 questions in a day (starred as well as unstarred). Not more than 3 starred questions in the Rajya Sabha and not more than 1 starred question in the Lok Sabha by the same member can be admitted on a single day. The member in whose name the question stands may ask two supplementary questions. The total number of questions in a stirred list for a day is not more than 20 in Lok Sabha. The maximum number of questions in the unstarred list for a day is 230 in the Lok Sabha. In Rajya Sabha there is no such limit but normally the member of unstarred questions listed for a day is less than 200.

8.5 Motions and Resolutions

Apart from questions, the members may move motions and resolutions relating to a matter of urgent public importance. Motions are of different kinds. They are namely Adjournment Motion, Calling Attention Motion, No Confidence Motion, Censure Motion and Statutory Motion.

Adjournment Motion

A member may move on adjournment motion of urgent public importance having a definite and factual basis with a prior notice being given to the Speaker or the Minister or the Secretary General.

Calling Attention Motion

The concept of Calling Attention is another device which combines the asking of a question for answer with supplementary and short comments in which different points of view are expressed concisely and precisely. A member may with the prior permission of the Speaker call attention of a Minister on any matter or of urgent public importance. This gives an opportunity to the members of Parliament to highlight the failure or inadequate action of government on a matter of urgent public importance.

No Confidence Motion

Another device of utmost importance is No Confidence Motion. As the Council of Ministers is collectively responsible to the Lok Sabha, once they lose the confidence of the house, a motion of this sort can be moved with prior notice being given to the Speaker. Either the Prime Minister may move that the house has the confidence in the Government, or the members belonging to the Opposition parties may move that the house expresses the lack of confidence in the Government. Just after the Question Hour the Speaker may ask the mover to ask for leave of the house and in case the move is supported by at least 50 members he/she may rule that it is admitted. The matter is discussed within 10 days of the leave being granted and the time is specified on the recommendation of the Business Advisory Committee. However, the motion is finally decided by the votes. The Prime Minister takes care to reply all the charges. In case the motion is passed the government must resign.

Censure Motion

It is sometimes identified with the No Confidence Motion. Both have the same effect. It contains specific charges against the Government and no leave of the house is required to move it. It is in the discretion of the Government to find time and fix a date for its discussion.

Resolution :

Finally we come to resolutions which though like motions are different from them in the sense that while all the motions may not be put to vote necessarily, all resolutions are required to be voted upon. The resolutions may be moved by the Ministers as well as by private members. A member who wants to move a resolution has to give notice to the Secretary General of the house informing him/her of his/her intention to this effect the names of three members in the Lok Sabha and five members in the Rajya Sabha from among

those who have expressed their desire to move it are desired by ballot to allow them to give notice of one resolution each. In case a resolution is tabled in pursuance of a provision of the Constitution or an Act of Parliament, it is called a Statutory Resolution. Such a resolution may relate to the approval of the Parliament for the continuance of Emergency under Article 352 in the country or under Article 356 in the State of the Indian Union or under Article 249 for shifting an item of the State List to the Union List or to the concurrent list etc. When passed it has a binding effect on the government. It may also be pointed out here, that while a government resolution may be taken up on any day from Monday to Thursday, a private members resolution can be taken up only on Fridays and the time of last two and a half hours is devoted for discussion on it.

8.6 Discussion

One may also refer to discussion as an important item in the list of Parliamentary procedures. Discussions are of different types. They are-

Short Duration discussion :

At least three members of the house may demand a short duration discussion on some matter of urgent public importance. A notice to this effect should be given to the Chairman/ Speaker and in case it is admitted he/she may allot two sittings in a week for discussion. The Business Advisory Committee may be consulted for the allotment of time that is of one hour and normally Tuesdays and Thursdays are chosen for it. But in Rajya Sabha the Chairman may allot time in consultation with the leader of the house and here, the duration of allotted time may be of two and half hours. The only purpose is that ample light is thrown on a matter of urgent public importance.

Half an Hour discussion :

The members of the house may also demand discussion on some matter of urgent public importance and normally the last half an hour of the day is allotted for the purpose. Under Rule 377, a member of the Lok Sabha may raise any important matter in the house with the permission of the Speaker.

8.7 Legislative Process: Ordinary Bill

Legislative proposals are brought before in either houses in the form of a Bill. A bill is the draft of a legislative proposals, which when passed by both houses of Parliament and assented to by the President, becomes an Act of the Parliament. There are Government bills and Private members bills. Bills may also be classified as Public bills and Private bills. A Public bill is one referring to a matter applying to the Public in general, whereas a Private Bill relates to a particular person or corporation or institution.

The first stage of legislation is the introduction of the bill. It embodies the provisions of the proposed law. If a Private member desires to introduce a bill, he/she must give notice of his/her intention to the Speaker. Every bill that is introduced in the house has to be published in the Gazette. There is provision however, for the publication of any bill with the consent of the Speaker even before its formal introduction. Usually, at the time of the introduction of the bill there is no debate. The person who is given leave to introduce the bill, if he/she so chooses, may make a short statement indicating broadly its aims and objectives. The introduction of the bill is also called the first reading of the bill.

The crucial stage in the life of a bill is its second reading. Now the bill is taken up for a detailed discussion. All principles of the bill are thoroughly debated. Amendments may also be moved. The house may take one of the four options. The four options are the following :-

1. The bill may be taken into consideration.
2. It may be referred to a Select Committee of the house
3. It may be referred to a Joint Committee of both the houses.
4. It may be circulated for the purpose of eliciting public opinion on it.

In the case of any proposed legislative measure which is likely to arouse public controversy and agitate public opinion, resort to the last alternative is invariably be made. But there are many bills which are of minor importance or pertain to routine matters, and others of an emergent nature, which may not therefore, permit any long delay. In their case one or the other of the first three alternatives is adopted.

The Select Committee or Joint Committee is expected to give its report within a specified date. The members of the Select Committee are selected generally on the basis

of their ability or expert knowledge on the subject. The usual practice is that the mover of the bill will himself/herself propose the names of members of the Committee and the house adopts them. Members of the Opposition are well represented in the Committee. In the case of a Joint Committee, the concurrence of the other house is taken. Of the total number of members of the Joint Committee, two-thirds belong to the Lok Sabha and one-third to the Rajya Sabha. The Committee may give an unanimous report or a majority report. In the latter case, members in a minority will have the right to give "minutes of dissent". Submission of the report of the Committee may be taken as the beginning of the third stage. It is during this stage that members can send in their amendments to the different provisions of the Bill.

The next stage is on a date fixed by the Business Advisory Committee, the bill is taken up for the third reading. This is the last stage and this is again a formality like the first reading. No discussion takes place and within a couple of minutes this formality is done. Thereafter, the bill goes to the second house where it passes through similar stages. In case the bill has been cleared by the Joint Select Committee of the Parliament, and then there is no need to refer to a Select Committee. The second house may pass that bill or return it with its recommendations. In that case the first house may pass it again after accepting the recommendations of the other house or not. The bill shall again go to the second house and in case it sticks to its earlier recommendations, there is a situation of serious disagreement or deadlock. The President may call a Joint Session of both the houses to resolve this crisis. Two important points should be kept in view here. First, while the Lok Sabha may delay the passage of the bill for any length of time, the Rajya Sabha has to pass it after it is passed by the Lok Sabha within 6 months. Second, the Speaker shall preside over the Joint sitting and the decision shall be taken by the majority of votes. But a Joint session can be held only in the case of a non money bill to be passed by simple majority.

A bill that is finally passed by both the houses goes with the signature of the Speaker, to the President for his/her assent. This is normally the last stage. If the President gives his/her assent, the bill becomes an Act and is placed on the Statute Book. But even at this last stage, the bill can be stopped from becoming an Act. The President is empowered, if he/she so chooses to refuse assent to a bill that is placed before him/her. He/she may send the bill back to the Parliament for reconsideration. For instance, President Zail Singh returned the Postal Amendment Bill for reconsideration. This will reopen almost the whole process and if the bill is passed by both the houses again with or without amendments it

will be send to the President for the second time. At this stage the President shall not withhold his/her assent. After receiving the assent of the President, the bill becomes an Act and is placed on the Statute Book.

8.8 Legislative Process: Money Bill

There is a special procedure in respect of financial business. A money bill is introduced in the Lok Sabha. Since it can be introduced with a prior recommendation of the President, it is always a Government Bill. Article 110 defines a Money Bill as one dealing with the imposition, abolition, remission or alteration of any tax or regulation or borrowing of money by the Government or the payment of money into or their withdrawals from the Consolidated or the Contingency Fund of India, or declaring a new item to be charge on the Consolidated Fund of India and the like. It is also given that in the event of any controversy as to whether a bill introduced in the Parliament is a money bill or not, the Speaker shall decide and his/her ruling shall be final.

A money bill, like any bill, must be passed by both the houses of the Parliament. The Rajya Sabha must pass it within 14 days. In case it returns the bill with some recommendations, the Lok Sabha may accept them, or not. The bill shall not be referred to the Rajya Sabha again. The President has no power to veto such a bill. The budget or Annual Financial Statement of the Government is presented in two parts. On some date in the last week of February, the Railway Minister presents his/her budget. But on the last day of this month the Finance Minister presents his/her general budget. He/she also delivers a long speech highlighting the salient points of his/her budget. After a gap of few days the Business Advisory Committee specifies a time of about 4 days for a general discussion of the Budget. The members have the occasion to speak in favour or against the provisions of the budget. It is followed by voting on the demands for grants.

The budget has two sides namely revenues and appropriations. Thus, the budget is converted into two bills namely the Finance Bill and the Appropriation Bill. The Finance Bill incorporates all the financial proposals of the government for the ensuing year. Discussion on this bill covers matters relating to general administration. It must be passed by the Parliament and assented to by the President within a period of 75 days. The expenditure side of the budget is covered by the Appropriation Bill. It incorporates all the demands for grants voted by the Lok Sabha along with expenditures charged on the

Consolidated Fund. Discussion on this bill affords another chance to the members of the parties in Opposition to criticize the administration in general. The Government sees to it that both the bills are passed by the Lok Sabha. The Rajya Sabha is given a chance to discuss the budget and pass the bills within 14 days. It may return the two bills with some recommendations which may or may not be appreciated by the Lok Sabha. Since both the bills are Money Bills, these receive the assent of the President.

A pertinent question at this stage is to what would happen in case the budget is not passed by the Parliament before the commencement of the next financial year, or what would happen in case the government feels the need for more money to be raised and appropriated on certain unforeseen conditions as those of war and national calamity. Art 116 has a special provision for a vote on account. It empowers the Lok Sabha to sanction any grant in advance for a part of any financial year pending the completion of the budgetary process. Normally it is taken for two months and it should be roughly equal to 1/6 of estimated expenditure for the entire year under various demands for grants. This period may be enhanced to 3 or 4 months in the case of special urgency.

8.9 Committee System

One of the most crucial innovations to streamline the working of the Parliament in an increasingly complex political and administrative system is the Committee System of the Parliament. Most of the countries have adopted a welfare state system which resulted in an enhanced legal responsibility of the Parliament. So the legal responsibilities of the Parliament increases greatly. Keeping in mind the amount of legislation that takes place in a Parliament in modern times, a detailed discussion of the matter is not possible in the house. Further, the sessions in the Parliament is of short duration. What even makes things more difficult is the highly complexities of the law making procedure in India. It demands expertise knowledge over the issue. It would be wrong to expect such expertise knowledge on all matters from the general members of the Parliament. To overcome these limitations the significance of the committee system cannot be denied in a democratic state system.

The importance of the committee system is manifold. For our convenience they can be discussed in the following manner :-

1. The Parliament can save its precious time through the committee system and it can ensure required consideration by the committee over different issues.

2. Flawless, effective and high quality legislation is possible on part of the Parliament only due to the existence of the committee system. This is so since committees are usually composed by a selected few members of the Parliament who can ensure a detailed and a long drawn discussion. Generally it is Parliament through the Committee system that can assure a detailed discussion on all major issues which reduces the possibility of errors.
3. The members of the Committee are generally the experts of their chosen areas and they may discuss the matter in a committee room where they have more time to speak and also in most of the cases they are not bound by the party whips.
4. Parliament through their committees may control the activities of the executive.
5. The committees also help the Parliament to regulate the income and expenditure of the government.
6. The committees enable the Parliament to feel the pulse of the public on proposals of legislation that are introduced for its consideration. It affords a platform to the common people to participate in the decision making of the Parliament by giving written memoranda or oral depositions, as may be required, to the committees as and when asked for.
7. They also help to realize better and more constructive cooperation from the oppositions for various measures initiated by the government.

To sum up one can say that they make parliamentary work smooth, efficient and expeditious.

In India, the history of the committee system may be traced back to 1854, when the first legislature was established in the form of a Legislative Council which in turn appointed its own committees to consider what should be its standing orders. In post-independence period, Lok Sabha consisting of more than 500 members made it essential for the creation of Parliamentary Committees as well. Indian Parliament is composed of two houses namely Lok Sabha and Rajya Sabha. Several committees exist in both the houses. For the sake of convenience, all the committees may be placed into two categories namely Standing Committee and Ad hoc committees.

Standing Committees

Standing Committees are the committees elected by the house or nominated by the

presiding officer each year or from time to time and they are in permanent in nature. These are–

i) **Financial Committees** like Estimate Committee, Public Accounts Committee, Committee on Public Undertaking.

ii) **House Committees** like Business Advisory Committee, Committee on the Absence of members from the sittings of the house, Rules Committee, Committee on Private members Bills and Resolutions.

iii) **Enquiry Committee** as Committee on petitions, Privileges Committee.

iv) **Scrutiny Committee** like Committee on Government Assurances, Committee on Subordinate Legislation, Committee on papers laid on the Table of the house, Committee on the welfare of Scheduled Castes and Scheduled Tribes.

v) **Service Committee** like General Purposes Committee, house Committee, Library Committee, Joint Committee on Salaries and Allowances of MP's.

Adhoc Committees

Adhoc Committees are those committees that are constituted by the house or its presiding officer to consider and report on specific matters and which go after doing that job. A select committee or a Joint Parliamentary Committee or a Joint Committee on Offices of Profit may be referred here.

The strength of the members of the committee varies. The Public Accounts Committee and the Committee on Public Undertakings consist of 22 members each and the Committees on Welfare of Scheduled Castes and Tribes have 30 members each. Generally there are 10 members in each of the Standing Committees in the Rajya Sabha. The members of the committee are elected by the house. They may also be nominated by the Presiding Officer. In case a bill is referred to a Select Committee, it invariably includes the minister concerned, if, it is a Government bill or the mover in case it is a private member's bill and the minister concerned may be included in it. In the case of a Joint Committee of the Parliament the members are appointed on a motion nominated by one house and agreed to by the other house.

In the meetings of the committees the quorum is one third of the total strength of political parties in the house. As a result of this the ruling party has a safe position in the committees on account of being in majority in the house itself. In most of the committees

the ministers are not included unless so necessary. The whips are issued very sparingly. The backbenchers have a chance to play a noticeable role in the committees.

On 29th March, 1993, the Lok Sabha took a very important decision when it unanimously adopted a motion to set up a number of standing committees for examining grants and reports of all departments in order to ensure better and more effective parliamentary control over the functioning of the executive. Though the proposals had been hanging for the last 20 years, it could be cleared now when the rules committee of the house gave to it a final shape and the members accepted the view of the then Speaker, Mr. Shivraj Patil that this system should be given a chance for two reasons: first, it would mean better control of the Parliament over the working of all departments of the Government and second, it would reduce the burden of the business of Parliament. This motion was adopted by the Rajya Sabha as well. Accordingly, 17 Standing Committees each consisting of 30 members of the Lok Sabha and 15 of the Rajya Sabha were set up.

Apart from demands for grants, these committees shall examine bills of a technical nature, annual reports and long term policies. Political parties shall have representation on these committees in proportion to their strength in the two houses of the Parliament. The concerned committees shall discuss the grants during the break period ie, when houses are adjourned and submit their reports within the time given to them. In respect of the bills the committees shall consider general principles and clauses of the bills referred to them and then make a report on them. The committees shall consider only such bills introduced in either house of Parliament and give their reports within the allotted time. Their reports shall be based on broad consensus and the member shall have the right to give his/her note of dissent. They may avail of expert opinion or seek public reactions before making their report. No committee shall consider a matter relating to the field of other committees. The noteworthy feature is that the members of the Council of Ministers shall not be included in these committees.

Committee system exists as delegated legislation has become an absolute necessity in a modern state. Infact the utility of these committees is borne out by the fact that today most of the serious business of the Parliament is transacted through these committees. This has resulted in an innumerable increase in the numbers of committees. Delegated legislation has become an inescapable necessity in modern welfare state, as the Parliament has neither enough time nor unlimited ingenuity to make laws complete in all respects so as to require nothing by way of amplification or supplementation effected by the rule implementing organ

to the operation of its law. If delegation of legislative power to the executive department by the Parliament is unavoidable under the present conditions of Public administration, it is also required that the Parliament must keep control over the executive. For this purpose, the Lok Sabha set up its committee on subordinate legislation.

The procedure of the committee on the subordinate legislation is governed by the instructions and directions issued by the Speaker from time to time. It is required that all rules and regulations made by the executive departments be laid on the table of the house within a period of 15 days after their publication in the Gazette in case the Lok Sabha is in session. Otherwise they are to be laid on the table of the house as soon as possible but in any case within 15 days of the commencement of the next session. A preliminary scrutiny is conducted by the Lok Sabha Secretariat which examines all the legislative notifications issued by the government. After preliminary examination, the Secretariat sends its comments to the departments concerned for the latter's explanation. It may however, seek the opinion of the experts on any point in case it does not feel satisfied with departmental action.

Now let us examine the role played by some of the important committees in our Parliament. For the sake of convenience let us discuss them in the following manner :-

The Business Advisory Committee

This committee is constituted at the commencement of the house with a view mainly to regulate the time table of the work of the house and has fifteen members. The Speaker is its Chairman.

The Committee on Private Members Bills and Resolution

This again is a committee of fifteen whose main function is to examine all private members bills from different points of view before recommending them to be placed before the house for its consideration.

Select Committees on Bills

The occasion for the appointment of a Select Committee on any bill arises as and when a motion that the bill be referred to a Select Committee is made. Members of a Select Committee are appointed by the house. A Select Committee may hear expert evidence and representatives of special interests affected by the measure before them, and submit its report to the house.

The Committee on Petitions

This committee is nominated by the Speaker at the commencement of the house and it too, has strength of 15 members. The financial business of Parliament is so complex that Parliament is unable to devote to it, the time and energy required for discharging satisfactorily its responsibilities for financial control. Hence, two committees have been set up to enable Parliament to discharge its functions in this connection more efficiently namely—The Estimate Committee and the Public Accounts Committee.

The Estimates Committee

The scrutiny of the expenditure proposed by the Government is made by the house in the informal atmosphere of a committee known as the Committee on Estimates or the Estimates Committee. After the annual financial statement is presented before the House of the People, this committee is annually constituted. It is in charge with the detailed examination of the budget estimates. Therefore, it has a powerful position to influence the activities of the Government not only in the financial field but also in other fields. There are four specific functions allotted to this committee. They are :-

a) To report what economies, improvements in organization, efficiency or administrative reform, consistent with the policy underlying the estimates may be effected.

b) To suggest alternative policies in order to bring about efficiency and economy in administration.

c) To examine whether the money is well laid out within the limits of the policy implied in the estimates, and

d) To suggest the form in which the estimates shall be presented to the Parliament.

The committee has 30 members who are elected in accordance with the system of proportional representation from among the members of the Lok Sabha for a period of one year. One special feature of the work of the committee, is that, its work is not over with the final passage of the budget even though it is mainly concerned with the estimates. It goes on working all the year round selecting to its own choice, any department or agency of the Government for the purpose of its scrutiny.

The Public Accounts Committee

This committee is the twin sister of the Estimate Committee. If the latter is concerned with the examination of estimates, then the former is concerned with the manner and results of spending public funds. The Public Accounts Committee is not new to India. As early as 1923, a Public Accounts Committee was set up by the Central Legislative Assembly. So, consequently today, the Committee has behind it a set of well established traditions. The Committee consists of 22 members of whom 7 are from Rajya Sabha. The members are elected by a system of proportional representation. No minister can be a member of the committee. The term of office of the members is not to exceed one year.

The function of the committee is the examination of accounts of the Government in all its financial transactions. In this respect, it is its duty to scrutinise the appropriation accounts and the report of the Comptroller and Auditor General of India. The committee should satisfy itself the following :-

a) That the money shown in the accounts having been disbursed, were legally available for and applicable to the service or purpose to which they have been applied or charged.

b) That the expenditure conforms to the authority which governs it and

c) That every reappropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority. It is also the duty of the committee to examine the statements of accounts showing the income and expenditure of State Corporations, and Manufacturing concerns, autonomous and semi autonomous bodies, together with their balance sheets and profit and loss accounts.

Unlike the Estimate Committee, the Public Accounts Committee has, at its disposal, the expert advice of the Comptroller and Auditor General. The Comptroller and Auditor General is the guardian of the public purse and it is his/her function to see that not a paisa is spent without the authority of the Parliament. It is the business of the CAG to audit the accounts of the Union and to satisfy himself/herself that the expenditure incurred has been sanctioned by the Parliament and that, it has taken

place in conformity with the rules sanctioned by the Parliament.

The Committee of Privileges

The Speaker nominates this committee at the commencement of the house and it consists of 15 members. It is concerned with the examination of questions of privilege and the determination of any breach of privilege in the case which are referred to it.

The Committee on Subordinate Legislation

The main function of this Committee is to scrutinise and report to the house whether the powers to make regulations, rules, sub-rules, bye rules etc. conferred by the Constitution or delegated by the Parliament are being properly exercised within the limits of such delegation.

The Committee on Government Assurances

It is the function of this committee to scrutinise the various assurances, promises, undertakings etc. given by ministers from time to time on the floor of the house and to report on the extent to which such assurances have been implemented.

The Rules Committee

The main function of this Committee is to consider matters of procedure and conduct of business in the house and to recommend any amendments or additions to these rules that may be deemed necessary. The Committee is nominated by the Speaker and has 15 members. The Speaker is its ex officio Chairman.

The Committee on Public Undertakings

In November 1963, the Lok Sabha adopted a motion to set up a Committee on Public Undertakings consisting of 10 members of the Lok Sabha and 5 of the Rajya Sabha. The committee will examine the following :-

a) The reports and the accounts of the Public Undertakings

b) The reports, if any, of the Comptroller and Auditor General on the Public Undertakings

c) To check whether their affairs are being managed in accordance with sound business principles and prudent commercial practices.

A critical evaluation

A critical study of the working of the Committee on Subordinate Legislation shows that it has done much useful service to the cause of parliamentary control over executive legislation in the country. By 1971, it has been rightly observed by scholars that the committee has done a formidable task during the first four Lok Sabha and earned appreciation as a vigorous and independent body. Yet, it cannot be denied that it has failed in some other respects. The members of the committees are ranked politicians who are much more concerned with the world of politics in which they remain involved all the time and for this reason they have very little time to perform their duties. Moreover, most of them are not legal experts and as such cannot understand the legal and technical aspects of the problems.

8.10 Conclusion

Despite such criticisms, it cannot be denied that the committees have undoubtedly been an effective instrument in controlling the executive despotism. Infact the people, the press and also the Parliament have all their vigilant eyes on the executive and the rules framed by it. Infact the establishment of the Committee System has been taken as a sort of innovation in the parliamentary system of the country as a result of which a greater degree of transparency and accountability have been ensured in the functioning of the executive agencies.

8.11 Summing Up

- The significance of the Parliament consists in its multifunctional role.
- Of all the additional functions, that a Parliament takes up as a result of the complexities of modern Government, law making still remain its most important activity.
- The Parliament is also required to make laws within a definite constitutional framework. Law making in every country has to be done by a process prescribed under the Constitution of the country.
- Legislative proposals are brought before in either house in the form of a bill. A bill is the draft of a legislative proposal, which when passed by both houses of Parliament and assented to by the President, becomes an Act of Parliament.

- One of the most crucial innovations to streamline the working of the Parliament in an increasingly complex political and administrative system is the committee system of the Parliament.
- Indian Parliament is composed of two houses namely Lok Sabha and Rajya Sabha. Several committees exist in both the houses. For the sake of convenience all the committees may be placed into two categories namely Standing Committee and Ad hoc committees.

8.12 Probable Questions

Essay Type Questions :

1. Discuss the different legislative procedures practised in the Indian Parliament.
2. Evaluate the role of the Committees in Indian Parliament.

Short Questions :

1. How many types of bills are there in the Indian Parliament? Explain how a bill is passed in the Parliament?
2. Examine the provisions of motions and resolutions in the Indian Parliament.

Objective Questions :

1. What is meant by adjournment motion?
2. How is the public accounts commitee constituted?
3. What is meant by "Zero Hour"?

8.13 Further Reading

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Unit 9 ❑ The Executive : President and Vice-President of India

Structure

9.1 Objective

The present unit helps the learners 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

9.2 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 in 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 to 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.

9.3 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 not 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.

9.4 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

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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 dis-united 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.

9.5 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."

9.6 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.

9.7 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 is 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 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 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 immune 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 reserved by the Governor for the consideration of the President, he 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.

9.8 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 deal with 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 in operation 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 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 opposition 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 may use 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 the 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 dissolve 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 when 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 about a condition of economic instability. Till date the financial emergency has never been proclaimed in India.

9.9 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.

9.10 Position of the President

In view of the wide 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. 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 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 in 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 questioned 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 having 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 is 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 claim 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, is 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.

9.11 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, she/he 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 Vice President presides over the sessions of the Rajya Sabha, ensuring discipline and decorum within the House. She/he 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. She/he serve as the Acting President until a new President is 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

9.12 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 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.

9.13 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.

9.14 Probable Questions

Essay Type Questions :

1. Discuss the powers and functions of the Indian President.
2. Evaluate the emergency power as assigned to the President of India.

Short Questions :

1. How is the President of India elected? Make a critical assessment of the electoral methods followed in electing the Indian President.

2. Is the Indian President simply 'a rubber stamp?' Give arguments to justify your position.

Objective Questions :

1. How is the electoral college for president's election constituted?
2. What is meant by Pocket Veto?
3. Which is constitution Amendment Act made it obligatory for the President of India to act in accordance with the advice of the Council of Ministers?

9.15 Further Reading

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Unit 10 ❑ Prime Minister and Union Council of Ministers

Structure

10.1 Objective

The present unit introduces the learners with-

- The selection, appointment and term of office of the Prime Minister
- A detailed analysis of the powers and functions of the Indian Prime Minister
- The constitutional and real position of the Prime Minister
- Composition and classification of the Union Council of Ministers
- The powers and functions of the Union Council of Ministers

10.2 Introduction

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.

10.3 Selection and Appointment

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.

10.4 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.

10.5 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 good.

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 boy 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. Debkanta 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.

9. 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.

10.6 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 survival of the government will depend. Again, the interest and pressure groups of our country are also eager in carrying out the policies 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 is 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 era of political bargain which further restricts the powers of the Prime Minister.

10.7 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.

10.8 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.

10.9 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 which 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 which 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 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 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 keen 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.

10.10 Conclusion

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.

10.11 Summing Up

- 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.

10.12 Probable Questions

Essay Type Questions :

1. Discuss the powers and position of the Indian Prime Minister.
2. Examine the powers and functions of the Union Council of Ministers.

Short Questions :

1. Show how India has adopted a British Parliamentary model with respect to its composition of the Executive.
2. Explain how the Prime Minister heading the Union Council of Ministers enjoys the real power of the executive?

Objective Questions :

1. In which Article of the constitution of India is the principle of collective responsibility of the council of Minister's enshrined?
2. Who is the leader of the Loksabha?

3. What are the sources of the power and authourity of the Prime Minister?

10.13 Further Reading

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Unit 11 ❑ The Judiciary : Supreme Court, High Court, Judicial Activism

Structure

11.1 Objective

By reading this unit learners will be acquainted with the following :

- The evaluation of the judicial system in India.

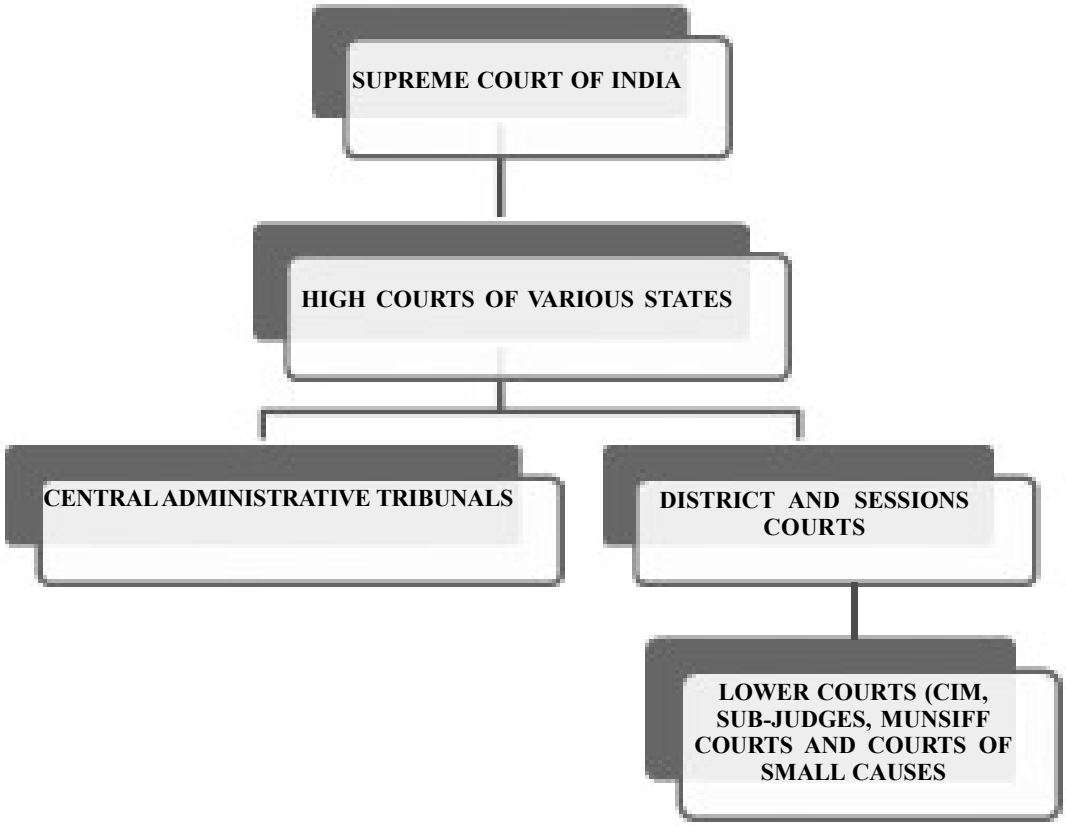
- The structure of the Indian judicial system.
- Composition, functions and jurisdictions of the Supreme Court in India.
- Composition, functions and jurisdiction of the High Courts in India.
- The concept of Judicial Activism and its implications.

11.2 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 democracy without an efficient and independent judiciary. Because judicial independence serves as a safeguard for the rights given by a written 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 according to the Constitution.

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



11.3 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 to 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.

11.4 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.

11.4.1 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.

11.4.2 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 President 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 Constitutional Amendment Act-2014**], which introduced the **National Judicial Appointments Commission (NJAC)** to replace the Collegium System for judicial appointments, thereby changing the judicial appointinent 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.

11.4.3 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.

11.4.4 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 enlarged 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 writ 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)

11.5 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. 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

1. Originally known as the Assam High Court, renamed Guwahati High Court in 1971.
2. Originally known as Mysore High Court, renamed as Karnataka High Court in 1973.
3. Originally known as Punjab High Court, renamed as Punjab & Haryana High Court in 1966.

11.5.1 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 times, deem it necessary to appoint. Since the number of the judge 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.

11.5.2 Qualifications and Tenure of judges :

The qualifications for appointment as a judge of a High Court are –

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) 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.

11.5.3 Powers and Jurisdictions of High Court :

The constitution does not attempt detailed definitions or classification of the different types of jurisdiction of the High Courts. It was presumed that the High Court's 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 subject to the provisions of the constitution and any future law that was to be made by the Legislature.

Besides, the original and appellate jurisdiction, the Constitution vests in the High Courts 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 and other employees of the High Court.

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. (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 a mandamus, writ of prohibition, quo warranto, and certiorari to protect the fundamental rights of the citizen.

B) Appellate Jurisdiction :

The Court, as stated earlier 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 or 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 to 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 th 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) Writ jurisdiction :

Article 226 of the Constitution empowers every High Court, throughout the territories 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 warrantor 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 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 Court's 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.

E) 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.

11.6 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 constitution and 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.

11.6.1 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.

11.6.2 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 fundamental right.
- Kesavananda Bharati case : In the landmark Keshvananda Bharati 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 structure of the constitution. Though the emergency 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 of 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.

11.7 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.

11.8 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, to provide adequate legal assistance.

11.9 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 reason for your answer.

Short Questions :

1. Explain the original and appellate jurisdiction of the Supreme Court.
2. Give a brief account of the judicial system of India.
3. How is judicial activism related to the protection of fundamental rights?

Objective Questions :

1. Which jurisdiction of the Supreme Court is related to its role as Federal Court?
2. On which ground constitutional validity of a law can be challenged in the Supreme Court?
3. What are the main jurisdictions of the High Court of a state?

11.10 Further Reading

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Unit 12 ❑Federalism : Meaning, Nature of Indian Federation

Structure

12.1 Objective

This unit deals with the meaning and nature of Indian Federalism. After studying this unit the learner will 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.

12.2 Introduction

The constitution of free India comes into effect on January 26, 1950. One of the most important features of the Indian Constitution is 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."

12.3 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.

12.3.1 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."

For 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."

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.

12.4 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 federal. Federalism involves the distribution of power 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. 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 defence, 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 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 states. 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.

12.5 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 clamour 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 government 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" over state 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 matters enumerated 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 action is subject to two conditions : first, that the state law should receive 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 for 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 of 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 legislature 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.

12.6 Conclusion

The theory and practice of Indian federalism indicate 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 socioeconomic challenges and strengthening national unity. Hence, it is appropriate to restructure Indian federalism to make it more effective and promote center-state partnership.

12.7 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 often regarded as unique.

12.8 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. What are the main issues against the Indian Federal system?
2. Mention any five features of Federalism.

Objective Questions :

1. What does the tender feseration imply?
2. Why is bicameral legislature considered essentime in a Fedaration?
3. What is the most unique feature of the Indian Fedaration?

12.9 Further Reading

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Unit 13 ❑ Division of Powers-Constitutional Provisions

Structure

13.1 Objectives

By reading this unit learners will be able to :

- Explain the division of power between Union and State governments.
- Understand the constitutional provision regarding the division of powers.
- Discuss the relation between center and state in India.

13.2 Introduction

In every federal constitution, the central and state governments are firmly enclosed and the jurisdiction of the one excludes the other. Division of powers is an important aspect of any federal political system and it is a typical feature of

federalism also. The power is divided between multiple vertical levels of government like union or national government, provincial or state government, district or local government which allows multiple access levels for citizens to approach. Federalism makes sure the independence and coordination go hand in hand between both union and state government ideally. The subject of federalism in any country covers a vast area, embracing legislative, executive, and judicial powers, as distributed between the union and its units. In India, the Union Government and different State governments are the two main parts to enjoy their power according to the constitution. There is also a provision for the allocation of the powers by the union to the states and vice versa. The success of such a scheme require cooperation and coordination between Centre and States.

13.3 Origin of the division of powers in the Indian Constitution

The division of powers, in general, follows the Government of India Act of 1935 both in form and substance. This Act having a proposal to establish an All India Federation which would comprise British India Provinces and princely States. The terms on which a state could join the federation were mentioned in the Instrument of Accession. It was at the discretion of the state whether to join the federation that was given by the Government of India Act, 1935. 6 Chief Commissioner's provinces and 11 Governor's provinces and some states who agreed to merge in the stated federation were constituent units of that federation.

It had been proposed through this Act that if princely states were entitled to half of the state's seats in the upper house of the federal legislature then the federation of India would come into existence. The part of the legislation that had not been implemented earlier was implemented after the first election under this Act was held. This legislation came into force in 1937 two years after the enactment of the Government of India Act, 1935.

The approach to form the federation and implement provincial autonomy paved the way for the division of subjects between the Centre and the Provinces. The division of subjects that were given by the Government of India Act, 1919 was

revised and added some more subjects in it by this Act of 1935 and included three lists. This act divided powers between the Centre/Federal and the provinces very clearly. These were :

a) Federal List (for centre)

b) Provincial List (for Provinces) and

c) Concurrent list (for both governments).

The Viceroy was vested with residual powers.

This combined with the primacy of the federal law when federal and provincial legislation clash, gave it a quasi-federal nature.

This Act centralised all the ruling power in one body, i.e., the Centre. Although the Centre possessed a lot of power, it could not interfere in the laws made on the subjects mentioned in the provincial list by the Provinces. This is because this Act gives the province the power of autonomy i.e., they can make laws on the subjects included in the provincial list and centre will not interfere.

The Governor-General on behalf of Majesty utilises its power either directly or through the appointment of subordinate officer(s). But this power did not prevent the federal legislature from functioning upon subordinate authorities. This Act proposed that a Finance Bill could not be placed in the Central Legislature unless the Governor-General gives his assent or his consent.

13.4 Division of powers : Constitutional provisions

After independence of India, the constitution of India came into effect on the 26th day of January 1950. The scheme of division of powers into three lists (Federal, Provincial and Concurrent) of the Government of India Act, 1935 appears in the constitution of India. The Constitution of India has introduced its structure having a two-fold distribution of legislative powers :

a) Concerning territory and

b) Concerning the subject matter.

a) Territorial Jurisdiction :

Article 254 (1) of the constitution says that the Parliament may make laws for the whole or any part of the territory of India. Article 254(2) provides that a law made by Parliament shall not be invalid merely on the ground that it would have extra-territorial operation.

Article 254 (1) states that the State legislature may make laws for the whole or any part of the state. In other words, the State legislature is not empowered to make such laws having extra-territorial operation i.e. state laws would be void if it has operated outside the concerned state.

b) Jurisdiction concerning the subject-matter :

There exists a threefold distribution of power under the constitution of India when it comes to subject matter. The 7th Schedule of the Indian Constitution deals with the division of powers between the Union government and State governments. The division of powers between Union and State is notified through three kinds of list mentioned in the seventh schedule :

1. Union List – List I
2. State List – List II
3. Concurrent List – List III

13.4.1 Union List, State List, Concurrent List :

Article 246 deals with the 7th Schedule of the Indian Constitution that mentions three names as Union List, State List, Concurrent List which specify the division of power between Union and different State governments.

The key features of the Union List, State List, Concurrent List are :

A) Features of the Union List :

i) It originally had **97** subjects. Now, it has 100 subjects. Some of the important subjects are-Defence, Railways, Army, International Relations, Communication, Ports Highways etc.

ii) Centre has exclusive powers to makes laws on the subjects mentioned under the Union List of Indian Constitution.

iii) The Union List signifies the strong centre as it has more subjects than the state list.

iv) It contains more important subjects than included in any of the other two lists.

v) All the issues/matters that are important for the nation and those requiring uniformity of legislation nationwide are included in the Union List.

vi) The dominance of Union List over State List is secured by the Constitution of India as in case of any conflict between the two or overlapping, the Union List prevails.

vii) Law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorise the conferring of powers and imposition of duties by the Centre upon a state.

viii) There are 15 subjects in the Union List on which Parliament has an exclusive power to levy taxes.

ix) The 88th Amendment of the constitution added a new subject in the Union List called 'taxes on services.'

B) Features of the State List :

i) It has 61 subjects. Earlier, it had 66 items. Some of the important subjects are : Public order, Police, Hospitals, and dispensaries, Betting and gambling, Public health and sanitation.

ii) The laws can be made on the subjects enumerated under the State List of the Indian Constitution exclusively by the State legislatures. However, all these can be done only under 'Normal Circumstances'.

iii) Article 249 gives Parliament the power to legislate concerning a subject enumerated in the State List in the national interest.

iv) Parliament can legislate on subjects that are enumerated under the State List on three conditions :

a) When Rajya Sabha passes resolution,

b) during a national emergency (Article 250), and

c) When two or more states pass a resolution requesting Parliament to legislate on subjects under State List.

v) The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List.

vi) There are 20 subjects in the State List on which states' legislatures have an exclusive power to levy taxes.

vii) The 69th Constitutional Amendment Act of 1991 made special provisions about National Capital. Laws cannot be made by the Delhi government on three subjects under State List named as – Public Order, Police & Land.

One of the important changes in the State list was made by the 42nd amendment of the constitution. This amendment shifted five subjects from the state list to the Concurrent list. Those are Education, Forest, Weights and measures, Protection of wild animals and birds and Administration of justice, constitution, and organisation of all courts except the Supreme Court and the High Courts.

C) Features of the Concurrent List :

i) The concept of 'Concurrent List' in the Indian Constitution has been borrowed from the Constitution of Australia.

ii) It has 52 subjects enumerated under it. some of the important subjects are Education, Forest, Trade unions, Adoption, Marriage, Succession etc.

iii) Central Government and State Government both can make laws on the subjects mentioned under the Concurrent List.

iv) While both Central and State Government can legislate on subjects mentioned under the Concurrent List, however, in case of any conflict, the law made by the Central Government prevails.

v) The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list.

vi) There are 03 subjects in the Concurrent List on which both Central and state governments have the power to levy taxes.

42nd amendment Act 1976 shifted five subjects from State list to Concurrent List : like Education, Forests, Protection of wild animals and birds, Weights and measures and Administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts.

13.5 Centre-State Relations

The Constitutional framework defines the political principles, procedures, powers, and duties of various levels of governmental institutions and lays down the fundamental rights and duties of the citizens, etc. The Constitution follows a parliamentary system of government. Further, it follows the doctrine of the division of powers. It has divided the legislative, executive, and financial powers between the centre and the states, which gives the constitution a federal character whereas the judiciary is integrated into a hierarchical structure.

The centre-state relations are divided into three parts, which are mentioned below :

(A) Legislative Relations (Article 245-255)

(B) Administrative Relations (Article 256-263)

(C) Financial relations

13.5.1 Legislative Relations :

Articles 245 to 255 in Part XI deals with different aspects of legislative relations between centre and states. These include :

a) Territorial jurisdiction of laws made by the Parliament and by the Legislatures of States (Art. 245)

b) Power of the parliament to legislate with respect to a matter in the State List (Art. 246)

c) Distribution of legislative subjects

d) Centre's control over state legislation

The extent of the parliamentary laws and the laws by the State legislature :

According to Art. 245, subject to the constitutional provisions, Parliament may legislate for the whole or any part of the Indian territory, a State legislature for the State territory, and no parliamentary legislation shall be invalid because of having extra-territorial operability.

The subject matter of the parliamentary laws and laws made by the state legislature :

According to Art. 246 :

a) The Union Parliament, notwithstanding anything under clause 2 and clause 3, is exclusively empowered to legislate in respect of any matters enshrined in the Union List (List-I).

b) The Union Parliament and the State Legislature, notwithstanding anything under clause 3 and also clause 1, is empowered to legislate on any matters contained in the Concurrent List (List-III).

c) The State Legislature, excluding anything under clause 1 and clause 2, is exclusively empowered to legislate for such state and it's any part with respect to any of the matter contained in the State List (List-II).

d) The Union Parliament is empowered to legislate with respect to any matter for any part of the Indian territory notwithstanding such matter is enumerated in the State List.

Power of the Parliament to provide for the establishment of certain additional courts :

According to Art. 247, notwithstanding anything under this chapter, the Parliament may by law provide for the establishment of any additional courts for the better administration of Parliamentary laws or of any existing laws with respect to matter enumerated in the Union List. Thus, the Parliament is empowered by the provision of this Article to establish Courts or judicial bodies for better administering the laws passed by the Parliament or relating to any laws under the State List.

Residuary power of legislation :

According to art. 248, The Parliament is exclusively empowered to legislate with respect to any matter absent in the Concurrent List or State List. Also, such power shall include the legislative power for imposing a tax not mentioned in either of those Lists.

Therefore, the Parliament has the power to make laws concerning any matter which is not present in either the concurrent list or the State List, including the power to make laws on tax imposition.

Parliamentary legislative power with respect to a matter in the State list in the national interest (Art. 249) :

According to the Art. 249 if the Rajya Sabha passes a resolution relating to a matter of national interest with a two-thirds majority that it is necessary for Parliament to legislate with respect to any matter in the State List, then it shall be lawful for the Parliament to legislate. Such legislation can extend to the whole or any part of the Indian territory. Such a resolution normally lasts for a year and may be renewed upon the necessity. In the absence of such a resolution the Parliamentary law will automatically cease to be in force within six months after the end of the year.

Power of the Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation. (Art. 250)

During the operation of the Proclamation of Emergency, the Parliament shall be empowered to legislate for the entire Indian territory or any of its parts with respect to all the matters enumerated in the State List.

However, such law shall come to cessation on the expiration of 6 months following the cessation of the Proclamation of Emergency.

During an Emergency, the Parliament has the power to make any law which shall be applicable over the entire or any part of India, and such law shall be applicable for only a year after the emergency is withdrawn.

Inconsistency between laws made by the Parliament under articles 249 and 250 and laws made by the Legislatures of States. (Art. 251)

Nothing in articles 249 and 250 shall restrict the power of the Legislature of a

State to make any law which under this Constitution it has the power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative

Parliamentary legislative power for two or more States by consent and adoption of such legislation by any other State

According to Art. 252, If it appears to the two or more State Legislatures that it is desirable that any of the matters with respect to which Parliament lacks any legislative power for the States except as provided under the Articles 249 and 250 should be regulated so that the States by Parliamentary law, and if resolutions are passed to that effect by all the House of those State Legislatures, it shall be lawful for Parliament to pass an Act to regulate that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted later through a resolution passed in that behalf by the House or Houses of the State Legislature, as the case may be. Any Parliamentary Act can be amended or repealed solely by a Parliamentary Act passed or adopted in resembling manner but not by an act of the State Legislatures.

Legislation for giving effect to international agreements (Art. 253)

Notwithstanding anything in the foregoing provisions of this chapter, the Parliament has the power to make any law for the whole or any part of the territory of India for-

- Implementation of any treaty, agreement, or other convention with another country;
- Implementing any decision made at any international conference, or international association, or international body.

The Parliament is hereby empowered to pass any law relating to implementing any international treaty, or agreement or convention, as the case may be; and related to any decision taken at any international conference or association, and shall be applicable over the whole or any part of the nation.

Inconsistency between Parliamentary laws and the laws by the State Legislature (Art. 254)

a) If any legal provision made by the State Legislature is repugnant to any legal provision made by the Parliament over which it has the competency, or to any existing legal provision with respect to any of the matters contained in the Concurrent List, then, subject to the provisions of the clause.

b) The law made by Parliament, whether passed prior or following the enactment by the State Legislature or, as the case may be, the existing law, shall prevail over the law passed by the State Legislature.

Where an enactment by the State Legislature with respect to any matter enumerated in the concurrent List is repugnant with the provisions of the prior Parliamentary law or existing law in respect to that matter, then, the State law, if it has been reserved for the Presidential consideration and has received his assent, prevail in that State.

Provided that nothing in this clause shall prevent the Parliament from legislating any law any time with respect to the same matter including the addition of law, amendment, variation, or repealing of the law enacted by the Legislature of the State.

13.5.2 Administrative Relations :

The administrative relations between the Centre and the States are stated under Article 256 to Article 263 of the Constitution of India. The Government of India has also constituted the Punchi Commission in 2007, to examine the Centre-State Relations.

Responsibility of States and the Union

Article 256 states that "The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

Control of the Union over States in certain cases. (Art. 257)

(1) The executive power of every State shall be so exercised as not to impede

or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared to be of national or military importance : Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, excess losts shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

Power of the Union to confer powers, etc., on States in certain cases. (Art. 258)

(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Jurisdiction of the Union in relation to territories outside India. (Art. 263)

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Cooperation between the Centre and the States

The constitution lays down various provisions to secure cooperation and coordination between the centre and the states. These include :

Public acts, records, and judicial proceedings. (Art. 261)

(1) Article 261 states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State."

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of

the territory of India shall be capable of execution anywhere within that territory according to law.

According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

a) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution, or control of the waters of, or in, any inter-State river or river valley.

b) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause.

Provisions with respect to an Inter-State Council. (Art. 263)

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of— (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

The inter-state council was established based on the recommendations of the Sarkaria Commission (1988). The Council was established in 1990 pursuant to a Presidential order. It functions as a permanent independent national forum for consultation. The Council was recently reconstituted in 2019, with the Prime Minister as its chairperson.

As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

Centre-State Relations during Emergency

(i) During a national emergency (under Article 352), the state government becomes subordinate to the central government. All the executive functions of the state come under the control of the union government.

(ii) During a state emergency (under Article 356), the president can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State.

(iii) During the operation of financial emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

13.5.3 Financial Relations :

The Constitution deals with the centre-state financial relations in Article 268-293 of Part XII.

Allocation of taxing powers. The Constitution has provided the union government and the state governments with independent sources of revenue. It allocates the powers to centre and the states in the following way :

(i) The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.

(ii) The state legislatures have exclusive power to levy taxes on the subjects mentioned in the State List.

(iii) Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.

(iv) The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

However, in case of tax revenue distribution :

- Article 268 states that duties are levied by the Union but are collected and appropriated by the States.
- Service tax levied by Union and collected and appropriated by the Union and the States (Article 268-A).
- Taxes levied and collected by the Union but assigned to the States (Article 269).
- Taxes were levied and collected by the Union but distributed between the Union and the States (Article 270).
- Surcharge on certain duties and taxes for purposes of the Union (Article 271).

Under Article 275, the parliament is authorised to provide grants-in-aid to any state as parliament may determine and different sums may be fixed for different States.

Under Article 282, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Under Article 352, during the operation of a national emergency, the distribution of revenues between the centre and the states can be altered by the president.

Under Article 360, during the financial emergency, the executive authority of the Union shall give directions to any State to observe such canons of financial propriety as may be specified in the directions and to give the directions as the President may deem necessary and adequate for the purpose.

The important recommendations of the first administrative reforms commission related to the centre-state relations are :

i) Decentralization of powers to the states as much as possible.

ii) More transfer of financial resources to the states.

iii) Arrangements for devolution in such a way that the states can fulfil their obligations.

iv) The advancement of loans to states should be related to as 'the productive principle'.

v) Deployment of central armed forces in the states either on their request or otherwise.

During state emergency, under Article 356, President's Rule can be imposed in event of the failure of constitutional machinery in a state.

13.6 Conclusion

The Indian Constitution aims to establish collaborative or cooperative federalism. Through the division of powers between the Centre and the States, a certain autonomy is granted to the States to ensure that the administration at the grass-root level remains efficient. Simultaneously, the Centre exercises its power over the States to maintain a balance. There are several challenges in the way of maintenance of a federation but the key solution is healthy debate and discussion between the parties involved.

13.7 Summing up

- The division of power, in general, follows the Government of India Act of 1935 both in form and substance.
- The scheme of division of powers into three lists (Federal, Provincial and Concurrent) of the Government of India Act, 1935 appears in the Constitution of India.
- According to the Constitution of India, the division of powers between Union and State is notified through three kinds of the list mentioned in the seventh schedule.
- Article 246 deals with the 7^{th} Schedule of the Indian Constitution that mentions three categories of powers to be exercised by the Union and the State and is referred under as Union List, State List and Concurrent List.

- The Constitutional framework defines the political principles, procedures, powers, and duties of various levels of governmental institutions and lays down the fundamental rights and duties of the citizens.

13.8 Probable Questions

Essay Type Questions :

1. Discuss the features of the constitutional provisions relating to the division of powers.
2. Explain the administrative relation between the union and the states.
3. In which conditions the union parliament can make laws on state subjects?-Discuss.

Short Questions :

1. What will be your suggestions for smooth Center-state relations?-Explain.
2. Discuss the legislative relations between the union and the states.
3. Explain the financial relations between the union and the states.

Objective Questions :

1. Which schedule of the constitution of India contains the three lists that divide powers between the Union and the states?
2. Which taxes are leived, collected and retaimed by the state?
3. What is the primary function of the Inter State Council?

13.9 Further Reading

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Unit 14 ❑ Emergency Provisions

Structure

14.1 Objective

After studying this unit learners 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 for 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 and their duration.

14.2 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 indicates '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 often 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.

14.3 Origin of emergency provisions under British rule in India

Before the independence of India, the Colonial ruler has also introduced certain emergency power 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 freedom to 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.

14.4 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.

14.4.1 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, it was known as an internal disturbance.

14.4.1.1 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 mean time 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.

14.4.1.2 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.

14.4.1.3 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.

14.4.1.4 Uses and Reasons of NationalEmergency in India :

This type of emergency has been proclaimed three times so far in 1962, 1971, and 1975.

The first national emergency was imposed on the country on October 26, 1962, by then-president, Dr. Sarvepalli Radhakrishnan. It was rproclamed during the Indo-China war.

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

The third time a national emergency was imposed by the President, Fakhruddin Ali Ahmed. Indira Gandhi, the then-prime minister asked for permission from the president and was successful in declaring a national emergency on 25th June 1975.

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.

14.4.2 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.

14.4.2.1 Grounds of imposition :

The president's rule 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 by 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.

14.4.2.2 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.

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.

14.4.2.3 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

14.4.2.4 Effects of Emergency in the state

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 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. Parliament 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

14.4.3 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 lies 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.

14.4.3.1 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.

14.4.3.2 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.

14.5 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. There 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 shown so far 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 like 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.

14.6 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.

14.7 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 President's rule in the state.
3. Explain the effects of a national emergency.

Short Questions :

1. Write a note on financial emergency.
2. Discuss the effects of president's rule in a state.
3. Mention the uses and reasons for the proclamation National Emergency in India to date.

Objective Questions :

1. Mention the Grounds for imposition of financial emergency.
2. How long the President's rule under Article 365 remains valid in a state?
3. What is the automatic consequence of the proclamation of emergency under Article 352?

14.8 Further Reading

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Unit 15 ❑ Constitutional Amendment

Structure

15.1 Objective

This unit deals with the objectives and the procedure of the amendment of the Indian Constitution. 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.

15.2 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 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, combines flexibility with rigidity.

15.3 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…."

15.4 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. To him,

> 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 walked 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 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 are 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.

15.5 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:

(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 or 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.

15.6 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. In L.C. Golak Nath vs. State of Punjab case (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 Kesavananda Bharati Sripadagalvaruvs. State of Kerala case (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 case (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 also 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 article 3,a reference which does not fetter the power of Parliament to make any further amendments of the Bill.

15.7 Number of Amendments in the Indian Constitution

Since its enactment in 1950, the Indian consitution has been amended 10 to times up to 2023. These are:

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-seven—2012

Ninety-eighth—2013

Ninety-ninth—2015

Hundredth—2015

Hundred and one—2017

Hundred and two—2018

Hundred and three—2019

Hundred and fourth—2020

Hundred and fifth—2021

Hundred and sixth—2023

15.8 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.

15.9 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.

15.10 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.

Short Questions :

1. Elaborate on the different opinions in the constituent assembly regarding the process of amendment.
2. Analyse the important cases relating to the Constitutional Amendment in India.
3. What are the needs for amendment of the Constitution?

Objective Questions :

1. Amendment of which provisions of the constitution requires ratification by the legislatures of not less than two-thirds of the states?

2. Which provision of the Indian constitution can be amended by the parliament by a simple majority?
3. What is meant by flexible constitution?

15.11 Further Reading

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NOTE