INDIAN CONSTITUTION

Author

Dr. R. RAMASUBRAMANIAN
Assistant Professor
Department of History
Manonmaniam Sundaranar University
Tirunelveli – Tamil Nadu

DEPARTMENT OF HISTORY
MANONMANIAM SUNDARANAR UNIVERSITY
DIRECTORATE OF DISTANCE AND CONTINUING EDUCATION
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Unit - I

Historical background - Sources of the Indian Constitution - Preamble-citizenship

Objectives

- After going through this unit, you will be able to:
- Explain the reforms initiated by the British Governor Generals of India
- Discuss the salient features of the crown rule
- State the formation of the interim government in India after the end of the Second World War

The 18th century in India was an important period of transition and remains the subject of continuing debate among scholars of late medieval and modern Indian history. The two main debates on the 18th century are the nature of transition from a centralized Mughal polity to the emergence of regional confederations, and the nature of the transformation brought about by the increasing role of the English East India Company in the economic, commercial, and financial life of the subcontinent. We see the rise of a new economic order, and decentralization of political power which went hand-in-hand with a broader localization process. The death of Aurangzeb in 1707 laid bare a patchwork of several sovereignties, a network of fragmented and layered forms of regional political powers that had been partly masked and managed by the practices of Mughal state and sovereignty. The 18th century was marked by the emergence of regional polities, the so called successor states like Awadh, Bengal and Hyderabad, although they were politically and financially independent from Mughal state, but always used the Mughal symbols and titles for legitimacy and political stability. It is generally viewed that the East India Company's expansion in India took place due to a power vacuum left after Aurangzeb's death. In the debates of continuity and change, historians have presented enduring socio-economic structures such as financial institutions and information networks that emphasize the utility of

Indian agents or collaborators in facilitating early company rule. East India Company Rule brought about dramatic changes in the Indian political situation. Company officials were mostly interested in enriching themselves and plundering India for company profits. Whatever administrative reforms that were brought in were an attempt to create an efficient plundering machine and to stabilize Company rule in India. Due to the terrible conditions under the Company, it was inevitable that Indians would rise in revolt. The 1857 revolt resulted in India transitioning from Company to Crown Rule. It was under Crown Rule after 1857 that some attempts were made by the British to create a modern administrative set-up. These were the first steps that went into the making of the Indian Constitution. However, conditions were far from perfect. India was still a colony of a foreign country. Indian nationalism took birth in the nineteenth century as a result of the conditions created by British rule. Nationalist leaders of India demanded many reforms in constitutional arrangements during the colonial rule. To meet some of their demands, the British enacted some legislation, such as the Government of India, Act 1858; the Indian Council Act, 1861; the Indian Council Act, 1892; the Indian Council Act, 1909; the Government of India Act, 1919; and the Government of India Act, 1935. The Constituent Assembly of India was elected in 1946 to write the Constitution of India. Following India's independence from Great Britain, its members served as the nation's first Parliament. In this unit, you study about the advent of the Company rule followed by the Crown rule and the establishment of the interim government in India.

Company Rule (1773-1858)

In 1717, the Mughal emperor issued a farmaan by which it granted special benefits to the English East India Company, namely, exemption of taxes on goods imported and exported from Bengal.

However, this concession did not ensure that they could trade in Bengal without paying any taxes. The Company servants like other Indian traders had to pay taxes. This misinterpretation of the farmaan became a constant cause of dispute between the nawabs of Bengal and the Company. All the nawabs of Bengal, beginning from Murshid Quli Khan to Alivardi Khan, refused to sympathize with the Company's misconstrued explanation of the farmaan and even forced them to pay a huge amount as indemnity if they used the dastaks wrongly.

In 1741, when Muhammad Shah Rangila was the Mughal sovereign, Alivardi Khan, the governor of Bengal, announced himself independent and established his capital at Murshidabad. In 1756, with Alivardi's demise, and in the absence of any rightful successor, several factions vied with each other to make their chosen candidate the Nawab of Bengal. Though Alivardi wanted his grandson, Siraj-udDaulah, son of his youngest daughter, to acquire the nawabship, the latter's succession to the throne was not accepted by other contenders, such as Shaukat Jang (faujdar of Purnea) and Ghasiti Begam, eldest daughter of Alivardi.

In the wake of increasing court intrigues, the English East India Company took the opportunity to win factions in their favour and work against the Nawab, and thereby lead to a headlong confrontation with the Nawab. As Bengal, in the 18th century, was the most prosperous province, the English East India Company considered it economically and politically, extremely lucrative. Hence, it is natural that they wanted to consolidate their position further in Bengal. They wanted to base their operations in Calcutta. There were other European contenders too in Bengal, namely, the Dutch, having their factory at Chinsura, and the French with their factory at Chandernagor. Siraj-ud-Daulah became the Nawab of Bengal in 1756.

Apart from having several foes in the family who were not happy with the succession, he was immature and lacked adequate skills to tackle the situation. In the South, the English East India Company and the French were vying against each other. Without seeking Nawab Siraj-ud-Daulah's consent, the English began to build fortifications in Calcutta. They even chose to disregard the Nawab's order to curtail augmentation of their military resources and abuse the use of dastaks granted to them by the farmaan of 1717. Also, Company servants began misusing the concessions granted by the farmaan of 1717 by extending the privileges over their private trade too. Causing further economic loss to Bengal, the officials began to profit by selling off the dastaks to the Indian merchants. Another cause of discontentment towards the English for Siraj was their conscious move to give protection to Siraj's foe Krishna Das, son of Raja Rajballava.

The Battle of Plassey (1757)

To punish the highhandedness of the Company, Siraj-ud-Daulah retaliated by striking Calcutta on 16 June 1756 and bringing it under his sway by 20 June 1756. The English were caught unawares and the Nawab's huge force was no match to their troops. Most Englishmen escaped to Fulta, only twenty miles down the Hoogly, and the rest were held back as prisoners. It was Siraj's folly to have allowed the English to flee to Fulta and not annihilate them entirely from Fulta. Again, after capturing Calcutta, he did not attempt to consolidate his position and ensure its defense from any counter attack. Such errors are seldom overlooked in history. In January 1757, the English troops, headed by Robert Clive and Watson, attacked Calcutta and recaptured it. Sirajud-Daulah was compelled to consent to the Treaty of Alinagar (as Calcutta was renamed in 9 February 1757), agree to all their claims. Having strengthened their position, the English wanted to embarrass the Nawab further and in March 1757,

they sent their troops to strike at the French settlement at Chandernagor. As Siraj wanted to seek French support in his fight against the English, he requested Clive to refrain from aggression towards the French. This prompted Clive to conspire against the Nawab and ally with those in the court and army who were dissatisfied with Siraj's succession to the throne, namely, Mir Jafar, Mir Bakshi, Jagath Seth and Amin Chand. Owing to the betrayal of Mir Jafar and Rai Durlab, Siraj, despite being armed with a huge contingent, was defeated by the small army of English soldiers under Robert Clive in the Battle of Plassey (23 June 1757). Siraj-ud-Daulah was held captive and finally was killed by Mir Jafar's son Miran. Clive placed Mir Jafar on the throne of Bengal. In lieu of nawabship, Mir Jafar had to pay a huge sum to the English, and part with the 24 Parganas. The enormity of the wealth looted from Bengal can be gauged by the fact that almost 300 boats were required to carry the spoils to Fort William. The Battle of Plassey was not a battle in the real sense, as the Nawab's army was headed by Mir Jaffer and Rai Durlabh, who had shifted their allegiance towards the English and made no effort to contest the English troops. As demands for more presents and bribes from the Company's servants increased, the coffer of Mir Jafar soon became barren. When Mir Jafar became unable to meet the Company's expectations any further, the English replaced him by his son-in-law Mir Qasim. The newly appointed nawab won the favour of the English by granting them the zamindari of the districts of Burdwan, Midnapur and Chittagong and rewarding them with expensive gifts.

Consequences of Plassey

According to Sir Jadunath Sarkar, an eminent historian, 23 June 1757, marked the end of the medieval period in India and the beginning of the modern period. Retrospectively speaking, in the years following Plassey (1757–76), that not even covered a single

generation, one notices the waning out of the medieval practice of theocratic rule, which can be considered as fallout of the Battle.

The Company's resident at the Nawab's durbar, Luke Scrafton, in his observations on post-Plassey Bengal had commented, 'The general idea at this time entertained by the servants of the Company was that the battle of Plassey did only restore us to the same situation we were in before the capture of Calcutta (by Siraj-ud-Daulah); the Subah (subedar) was conceived to be as independent as ever, and the English returned into their commercial character...' This observation overlooks the fact that most of the restrictions inflicted on the nawab post Plassey had been already been enforced on Mir Jafar in a treaty signed (5 June 1757) before the onset of the battle.

However, Plassey did not make the English the rightful legal rulers of Bengal. The Supreme Court of Calcutta even pointed out that apart from those living in Calcutta; other English officials were not British subjects. Thus, post Plassey, the English did not shed their 'commercial character'. This was all the more evident when the English won the Battle of Buxar (1764). However, the commercial activities of the English were gradually becoming political as Clive, determined to yield more benefits, pressurized the meek puppet nawab, Mir Jafar, to concede more privileges. During this period, the Marathas also suffered a crushing defeat at Panipat and the French underwent heavy losses owing to a shipwreck in South India, thereby leaving no serious contenders to challenge the English in Bengal. After Plassey, it was quite unexpected that the Marathas would be routed, or the French would be subdued, thereby allowing the English to gain control over Bengal. It was the event of the next ten years that turned paramount influence into a new regime.

The English obtained a few immediate military and commercial benefits after Plassey. They worked their way to

consolidate their position politically in the 'three provinces abounding in the most valuable production of nature and art'. Their confidence got further boosted when the French were ousted from Bengal. They took this opportunity to consolidate their position in the south. In fact, foreseeing perhaps the potentials of the English, Clive had advised Pitt the Elder, a prominent member of the King's government in London, to request the Crown to take over direct control over Bengal and lay the foundation of the British Empire.

Dual Government

In Bengal's history, the Treaty of Allahabad (1765) is extremely significant as it ushered in a new administrative mechanism, which laid down the foundation of the British administrative system in India. Hence, the Nawab's administrative powers were clipped, bringing in a new mechanism of power devoid of responsibility and vice versa. We need to understand the meaning of the diwani and nizamat functions to understand the dual system of government better. The provincial administration in the Mughal period was divided into two levels: the nizamat (military defense, police and administration of justice) functions which were looked after by subedar or governor and his officials, and the diwani affairs (management of revenues and finances) which were handled by another similar such set of officials under another subedar. These officers were answerable to the central government and they kept a check on each other. Murshid Quli was in charge of Bengal, when Aurangzeb died.

By signing the treaty of Allahabad (with Shah Alam II), the English obtained diwani and nizamat rights in lieu of 26 lakh as annual pension and 53 lakh, respectively. However, the Company had received the diwani rights from the Mughal emperor and the nizamat powers from the nawab. In a treaty signed earlier in February 1765 with Nawab Najm-ud-Daulah, the Company had already secured all

nizamat powers, including military, defence and foreign affairs. Though the Company kept all administrative matters under his control, the diwani and the nizamat operations were handled by its Indian representatives. As this administrative mechanism involved both the Nawab and the Company, it is referred as the Dual or double Government of Bengal.

The Dual Government had badly affected the administration. While there was no discipline and order, trade and commerce suffered, and merchants almost became paupers, thriving industries, such as of silk and textiles, collapsed, agriculture was evaluated by the Company to be unyielding and thereby, peasants were subjected to dire poverty. The outbreak of the great famine of 1770 reflected the flaws of the Company's indirect governing policy. Around 10 million people lost their lives in the famine, which meant almost a third of the population of Bengal and Bihar. However, during this period of utter distress when the people in desperation were even feeding on the dead to survive, Company's servants and gomastas continued with their illegal private trade. While exercizing monopoly over the obtainable grain, they even seized the seeds to be used for successive harvests from the peasants.

The Company, under Cartier's governorship (1769–1772), chose to overlook the high mortality and the reduction of cultivable land, granted absolutely no remittance on land revenue, instead increased it by 10 per cent for the following year. The high mortality rate affected the obtainable quantum of production from agriculture and seriously upset the economic well-being of the province. As the revenue-paying capacity dwindled, the zamindars failed to collect adequate revenue. This in turn had an impact on the Company's income and as it lost its cultivators and artisans.

East India Company as Sovereign Ruler of Bengal

Clive's Dual Government proved to be a complete failure. In 1772, Warren Hastings became the governor of Bengal, and embarked upon an offensive plan that would remove 'the mask of Mughal sovereignty' from the soil of Bengal, and make the English the rightful rulers. The Company servants were made responsible for dual administration The Nawab practically had no share in administration. The pension granted to Shah Alam II was discontinued and he was compelled to part with Allahabad and Kora, which were sold out to shuja-ud-Daulah. In this way, within a span of two decades, the reins of Bengal's administration passed over to the Company. Unfortunately, under Company rule, the most prosperous and industrially developed province soon became steeped in abject poverty and suffering that became augmented in the wake of famines and epidemics. Gaining control over Bengal, the English had become successful in founding a colonial empire and fulfill its imperial designs.

Battle of Buxar

The Battle of Buxar (1764) was fought between the forces under the command of the British East India Company led by Hector Munro, and the combined armies of Mir Qasim, the Nawab of Bengal; Shuja-ud-Daula the Nawab of Awadh; and the Mughal Emperor Shah Alam II. When Robert Clive and his Company officials had emptied the Nawab's treasures completely, they thought Mir Jafar to be incapable of yielding any further benefits. Few English officials like Holwel were lobbying against Mir Jafar. Mir Qasim, son-in-law of Mir Jafar replaced him as nawab on 27 September 1760. As rewards of his nawabship, Mir Qasim had to concede Burdwan, Midnapore and Chittagaon to the East India Company. He shifted the capital to Mungher. Though during the initial years, he accepted British

domination, however, the increasing misuse of the dastaks by the Company servants and the consequent losses to the treasury exasperated him to abolish the dastak system and exempt duties on trade for all. This precipitated the deposition of Mir Qasim, with Mir Jafar being reinstated to nawabship. Mir Qasim planned an offensive at Buxar (22 October 1764) against the English by allying with Shah Alam II, the Mughal king and Shuja-ud-Daulah, the Nawab of Awadh. However, the joint forces of the Indian sovereigns could not win against the well-trained and regulated English troops, armed with advanced ammunitions. The failure at Buxar made it evident that India lacked in industrial and technological development.

After reinstating Mir Jafar to the throne of Bengal, the English negotiated a treaty with Shah Alam at Allahabad in 1765 by which the latter conceded diwani rights to the Company in lieu of a pension of 26 lakhs from the Company and 53 lakhs from the Nawab of Bengal. Shuja-ud-Daulah, who was a party to the same treaty had to agree to give Allahabad and Kara to the Mughals as well as part with the zamindari of Banaras to Balwant Rai, who was an English loyalist. In Bengal, between 1765 and 1772, an innovative governing machinery, the dual system of administration, was introduced. With the Company's consent, the Nawab appointed Raja Shitab Rai and Reza Khan as deputy diwans, who in actual terms were delegated to work for the English rather than the Nawab. By acquiring the diwani rights (authority of revenue collection), the Company virtually became the de facto power, while the Nawab remained the titular head responsible for civil and criminal administration. The inhabitants of the region suffered the most through this arrangement. To understand the motive behind such a decision, it many be reasoned out that this system of administration reflected the Company's inexperience in matters related to administration, as the Company was essentially a trading body.

Since 1765, the Company became the actual sovereign of Bengal, gaining exclusive rights over all military and political affairs. The Nawab was made responsible for the defense of the British, within and outside Bengal. The East India Company exercised direct control over diwani functions, which gave them the right to collect the revenues of Bengal, Bihar and Orissa. The Company had indirect hold over the nizamat functions, namely, judicial and police rights, also possessing the right to nominate the deputy subedar.

Political Implications of the Battle of Buxar

The Battle of Buxar established British control over Bengal. Buxar revealed the political and military shortfalls of the Indian rulers and the decadence of the Mughal Empire. With increasing intrigues and factionalism at the Nawab's court, and with vested interests coming into play, corruption increased and Company officials like Clive used the opportunity to become wealthy. The Treaty of Allahabad signed by Shuja-ud-Daulah and Shah Alam II with the English granted the latter the right to trade freely in Awadh. Moreover, the English possessed the right to station an army at Awadh, which were to be maintained by Shujaud-Daulah. In lieu of transferring the diwani rights over Bengal, Bihar and Orissa to the English, Shah Alam II received Kora and Allahabad and an annual pension of 26 lakhs.

Consequences of the Battle of Buxar

Though the Battle of Buxar was precipitated by the alliance drawn by Mir Qasim with Shuja-ud-Daulah and thereby had caused political repercussions in Bengal, Mir Qasim's decision to break up the alliance even before Munro's attack, saved him. It appears that Shuja-ud-Daulah was the most affected by the defeat at Buxar, making him a nominal power. The influential position that he held in North India got curbed overnight. To get back his lost prestige, he tried to annex Varanasi, Chunar and Allahabad, but could not progress further when

his troops abandoned him. Trying to launch another offensive against the English, he went from place to place to ally with other powers. He even sought shelter from the Ruhelas and Bangash Afghans, who had been traditional enemies of his family. However, with all his attempts becoming futile, he surrendered to the English in May 1765 and sought shelter. Prior to Shuja's surrender, Shah Alam had accepted the English supremacy and remained under their protection.

Militarily Buxar was very significant for the English. The English victory at Plassey was not entirely commendable as Siraj suffered defeat when his generals betrayed him. However, there was no instance of betrayal at Buxar. The English troops emerged victorious defeating an experienced politically influential personality like Shuja. After having established their position in Bengal, Buxar laid out the path for British supremacy over north India.

Treaty of Allahabad

In May 1765, Clive was entrusted the governorship of Bengal for the second time. The Company officials were looking for the appropriate means to tackle Shuja and Shah Alam. There were no further annexation plans with regard to Shuja's territories, which was already under the sway of the English forces. The newly acquired responsibility of governing both Awadh and Allahabad prompted the English to look for innovative designs.

According to the Treaty of Allahabad, the concluding agreement drawn with Shuja-ud-Daulah, (16 August 1765), the territories earlier belonging to Shuja, except Allahabad and Kora, were given back. Shah Alam was given Allahabad and Kora. Also, Shuja was assured regular revenue payment from his zamindari of Varanasi, which was presented by the English to Balwant Singh for having helped them during Buxar. In this way, the Company established 'Perpetual and universal peace, sincere friendship and firm union' with

the Nawab. It was also agreed that if a third party attacked any one of the powers, the other party to the Treaty would assist him in ousting the intruder by sharing his troops totally or partially. The Nawab had to bear the expenses of the Company's army if it assisted the Nawab. However, it is not clear if the Company met the expenses of the Nawab's army when the Company used its services. Also, the Nawab had to pay 50 lakh as compensation for the war, and grant permission to the Company to continue duty-free trade in his territories.

The Puppet Nawabs of Bengal

Post-Buxar, Mir Jafar was reinstated to the throne of Bengal by the English. By agreeing to reduce his troops, Mir Jafar had curbed the military powers of the nawab further. He was unable to bring in any formidable political or administrative changes in Bengal at this stage because he had a very weak personality and had developed a negative approach considering the unpleasant political situation he had to tackle and his ailment (believed to be suffering from leprosy).

The English success at Buxar, followed by Mir Jafar's demise sealed the fate of the nawabs in Bengal and laid the foundation of the British empire in Bengal. The Company made Najm-ud-Daulah, Mir Jafar's minor son, the nawab and signed a treaty with him that made the throne completely subservient to the English Muhammad Reza Khan was appointed deputy governor by the nawab under English directives. Khan looked after the entire administration, and he could only be replaced with the approval of the governor and Council. The governor and Council's approval were also essential while appointing or removing revenue collectors.

Subsequently, the Nawab's status deteriorated further. After resuming for his second term of governorship in May 1765, Clive pressurized Najm-ud-Daulah to grant all the revenues to the Company in exchange of an annual pension of 50 lakh. When Najm-ud-Daulah

died in 1766, he was succeeded by his minor brother Saif-ud-Daulah, who was granted a pension of 12 lakh only. Before his death (1770), he had signed a treaty with the English in 1766 by which he had granted all matters related to the administration and protection of the provinces of Bengal, Bihar and Orissa to the English. The pension amount was further reduced to 10 lakh when Najm-ud-Daulah was succeeded by his minor brother Mubarak-ud-Daulad. That the powers of the nawabs had been completely curbed is evident from the following comment made by a judge of the Supreme Court at Calcutta in 1775 regarding the status of the nawab and calling him as 'a phantom, a man of straw'.

- Let us now study the efforts taken by the following British Governor Generals of India.
- Feforms Initiated by Warren Hastings
- Working as an administrative clerk in the East India Company, Warren Hastings reached Calcutta in 1750. He gradually climbed up the ladder and was appointed as the the President of Kasimbazar, by Governor of Bengal in 1772. Later, he became Governor General of Bengal in 1774 under the Regulating Act.

Administrative Reforms

- Warren Hastings embarked upon the task of initiating the following administrative measures:
- Setting up a Board of Revenue at Calcutta: Replacing the diwans, a Board of Revenue was created at Calcutta. It was entrusted with the task of overseeing the collection of land revenue.
- Appointment of English collectors: Revenue was to be collected by English collectors directly chosen by him.

- Transfer of treasury from Murshidabad to Calcutta: Bengal became the administrative capital when the coffer was shifted to Calcutta.
- Reorganization of the Nawab's affairs: Munni Begum, the widow of Mir Jaffer was given the responsibility to supervise household affairs and become the regent to the minor Nawab.
- Stoppage of tribute to Shah Alam: Hastings discontinued the payment of
- Pension to Shah Alam II.
- Reduction of pension of the Nawab of Bengal: The pension to the Nawab of Bengal was decreased to 16 lakh.

Judicial reforms

- The judicial reforms, initiated by Hastings include:
- Clipping judicial powers of zamindars
- Setting up civil and criminal courts in every district
- Creating the Sadar Diwani Adalat
- Writing out judicial proceedings
- electing the Indian judges in criminal courts
- Changes initiated in existing rules and laws wherever deemed necessary
- Meting out justice to Muslims as per the Quran, and insisting on following the shastras to settle matters related to marriage, succession and religion.

Financial Reforms

- To improve the financial status of the Company, at a time when the treasury was almost bare and the Company was compelled to take loans, Hastings introduced the following measures:
- In lieu of a payment of 30 lakhs, the districts of Kara and Allahabad were sold to Shuja-ud-Daulah–Nawab of Awadh

- The annual tribute to the Nawab of Bengal was reduced to 16 lakhs from 32 lakhs.
- To enhance the financial position of the Company, he wanted to develop trade relations with Bhutan and Tibet where he sent a mission.
- When Shah Alam sought Maratha protection, he stopped the payment of the annual pension of 25 lakh payable to him.
- In lieu of the district of Benaras and a sum of 40 lakh, he agreed to assist Shuja-ud-Daulah .
- To reduce expenditure the amount of money given as pension to Company servants were reduced. Currency was regularized.
- Unyielding offices were closed to minimize expenditure.

Revenue Reforms

The following revenue reforms were proposed by Hastings:

- British land revenue collectors were directly chosen by him to collect land revenue and execute the reforms.
- The Board of Revenue at Calcutta was appointed to supervise land revenue administration.
- The Quinquennial land revenue system was initiated.
- To help the members of the Revenue Board, local officers called Rai Rayan, were appointed.
- The Quinquennial system was replaced by the one-year settlement which was decided in favour of the highest bidder.
- Understanding the sufferings of the people, other taxes were removed, but land revenue was collected at a set rate.

Commercial Reforms

- Hastings introduced the following commercial reforms:
- Decreasing customs duties: Apart from salt, betel nut and tobacco, duties on all goods were decreased by 2.5 per cent. Both locals and Europeans had to pay customs duties.

- Removing numerous customs posts: As trade got affected owing to a large number of customs posts, only five customs posts were retained, namely, Calcutta, Hughli, Murshidabad, Patna and Dhaka

Abolition of the Dastak System

With the removal of dastaks, the Company servants had no option but to pay duties for their personal goods, which reduced corruption and augmented the Company's revenues.

Sending commercial mission to other countries: To improve trade, commercial missions were dispatched to countries like Bhutan, Tibet and Egypt.

Social reforms

To encourage Islamic studies, he founded the Calcutta Madrassa in 1781, which was the first educational institution founded by the British Government. Thereafter, the Sanskrit College was established at Benaras by Jonathan Duncan in 1792. Under Hastings' patronage William Wilkins had translated the Gita and Nathaniel Halhed had compiled a digest of Hindu laws.

Consequences of these Reforms

Though he succeeded in improving the governing machinery, he did not receive adequate government support. Also, he had to entertain the whims and fancies of his seniors who wanted to fill up the posts by their favoured candidates and not by those chosen on the basis of their merit. Struggling against all odds, he managed to provide his successor, Lord Cornwallis, with a strong administrative structure. Hence, it may well be said that if Lord Clive had established the territorial foundation of the British Empire in Bengal, Hastings had given the British administrative structure a solid foundation.

Impeachment

In protest against the Pitts India Bill, Warren Hastings resigned from office in 1785. Accused of the Rohilla War, Nand Kumar's murder, the case of Chet Singh and for having accepted bribes, he was impeached for seven years from 1788 to 1795. By the time he was acquitted (23April 1795), he had no money left and had become a pauper.

Regulating Act of 1773

The British government directed the affairs of the Company through the Regulating Act, 1773. It was particularly initiated with to serve this purpose. Warren Hastings was formally declared to be as Governor General of Bengal and he was to be assisted by an executive council comprising four members. The Act empowered the Governor General-in-council to make rules, ordinances and regulations that were meant to bring order and establish civil government. Through this Act, Hastings was able to convert a trading company into an administrative body that formed the basis of the British Empire in India.

Main Provisions

- The main specifications of the Regulating Act, 1773 are listed below:
- The King of England was in charge of the East India Company. High officials of the company, judges and member of the court of directors were to be nominated.
- The qualifying sum to gain voting right in the court of proprietors was increased from £500 to £1000.
- The directors, who were earlier elected annually, had to continue office for four years, and a quarter of the number were to be re-elected annually.
- A Supreme Court comprising a Chief Justice and three other judges was established in Bengal. Apart from the Governor General and the members of his Council, it entailed civil,

criminal, admiralty and ecclesiastical jurisdiction over all British subjects in the Company's dominions.

- The Governor General and his four councillors were to look after civil and military affairs and they who were mentioned in the Act in the first instance. They were to hold office for five years and during their tenure they could only be removed by the king on the representation of the court of directors.
- Though he had a casting vote which were to be used to break a stalemate, the Governor General had to abide by the decision of the majority of the Council.
- In matters of war and peace, the Governor General's decision was considered final, above the opinions expressed by the Governors of Madras and Bombay. Salaries were augmented if officers showed better merit. Company servants were not permitted to accept presents or bribes and indulge in private trade.
- Only with the prior permission of the Home Secretary could the Governor General- in-council make rules.
- The Governor General-in-council had the right to issue rules, ordinances and regulations, though they had to be registered in the Supreme Court.

Important Features of the Act

Important features of this Act include:

- It made it clear that the administration of Indian territories was not a personal affair of the Company servants. The British Parliament was empowered to make amendments.
- This Act initiated the course of territorial integration and administrative centralization in India.
- It started a process of parliamentary control over administrative decisions taken by the Company.

- The Act set up a Supreme Court of Judicature comprising a Chief Justice and three other members. The Act provided the license to the British government to have a say in the internal affairs of the Company.
- A council of four members was established to help the Governor General. Though these members were to hold office for five years, they could only be removed by the British Crown.
- The Supreme Government was entrusted 'from time to time to make and issue rules, ordinances, and regulations the good order and civil government' of the British territories.
- The Presidency of Bengal was made superior to other presidencies and the governor of Bengal was appointed as Governor General. Governors and the Councils of Madras and Bombay were had to follow the decisions taken by the Governor General and Council of Bengal.

The Defects of the Regulating Act

The defects of the Regulating Act of 177 have been outlined below

- The Governor General did not have any veto power. Hastings often had to struggle with his councillors who could easily impose their decisions on him by majority voting.
- The jurisdiction of the Supreme Court and its relation with the Governor General in Council was not specified.
- The presidencies of Madras and Bombay often declared war, without consulting the Governor General and Council of Bengal. In case of Marathas and Haidar Ali, the Bombay government and Madras Council, respectively, chose to decide on their own.

- The reports sent by the Governor General in council in India was not considered seriously and was not analyzed systematically.
- The Court of Directors had become ‘more or less permanent oligarchy’ Also, the Court of proprietors enjoyed immunity from any scrutiny based on moral grounds. These privileges gave them allowance to participate in intrigues and create factions which plagued the home government internally.

Reforms Initiated by Charles Cornwallis

Charles Cornwallis was sent to India by the Court of Directors in the year 1786. He was entrusted the responsibility of executing the policy of peace given in Pitt’s India Act and to restructure the administrative system in India. Some of his major responsibilities were as follows:

- To find out a solution for land revenue problem.
- To set up a judiciary which is honest as well as efficient.
- To restructure the commercial division of the East India Company.

In order to restructure the administrative system, Cornwallis used the basic structure of administration designed by Warren Hastings and made some modifications in it. The structure designed by Cornwallis remained in force till 1858.

Reforms in Judicial Administration, Public Revenue and Other Services

Cornwallis became Governor General of Bengal and he introduced a number of reforms, which are as follows

Reforms in the judicial system

Cornwallis believed that District Collector should have more authority than they already had. The Court of Directors had also instructed the same. Thus, in 1787, Collectors were appointed judges

of Diwani Adalats and were given charge of districts. The District Collectors were given powers of Magistrates so that they could judge criminal cases. However, some limitations were imposed on them in trying these cases. Some more changes were made in the administrative structure from 1790 to 1792. Foujdari Adalats were abolished and four circuit courts were established in their place. Out of these four circuit courts, three were for Bengal and one was for Bihar. The European servants were given the authority to preside over these courts. These European servants took help from Muftis and Qazis while trying the cases. These courts went to districts two times in a year and tried cases. The Sadr Nizamat Adalat at Murshidabad was also abolished. A Mohammedan judge used to preside over this court. In place of this court, another court was established in Calcutta. These courts consisted of the Governor General and members of the Supreme Council. The Chief Qazis and two Muftis assisted them. Thus, the new judicial system had petty courts, districts courts, four provincial courts and Sadr Diwani Adalat. Daroga courts and district courts, four circuit courts and Sadr Nizamat Adalat were established for trying criminal cases.

Cornwallis code

In 1793, Cornwallis made a code of regulations for guiding those servants of the East India Company who were working in the judicial department. Cornwallis took Sir George Barlow's help for preparing this code. The commercial and administrative services were demarcated clearly in this code. Before the preparation of this code, Cornwallis realized that the Board of Revenue was not able to settle a large number of cases. In order to solve this matter, mal adalats were formed in every district. Collectors were made the heads of these courts and they were given revenue powers as well. The administrative structure was in existence even before Cornwallis but he was the one

who made the system harmonious and cohesive. Cornwallis introduced a system in which people could lodge a complaint against collectors and servants for not fulfilling their duties. The government could also be sued in the court. He abolished inhuman punishments such as capital punishment and mutilation of limbs. The European people living in the districts had to follow the new judicial system

Reforms in Public Services

The servants of East India Company wanted to earn a lot of money. Since, the salaries of these servants were low, they accepted bribe from people in order to earn more money. They also confiscated the lands of zamindars in an unjust manner. In order to solve these problems, Cornwallis raised their salaries and terminated some of the servants. After this, he hired employees for the Company solely on the basis of their merits. He did not allow any of the employees to carry out trade in their private capacity. He did not trust Indians and behaved with them in a scornful manner. Thus, his behaviour towards Indians was criticized. He did not recruit Indian on high posts and gave such posts to Europeans. He divided districts into small units and took away police powers from the zamindars. A superintendent and representative of the company, who resided in those districts, were given the charge of these units.

Reforms in the Commercial Department of the Company

When the Board of Trade was established, it were asked to obtain goods from Indian and European contractors. These contractors supplied goods of inferior quality at a very high price. The Board instead of checking these practices, took bribe through them. Due to these corrupted practices of the commercial department, Cornwallis took action against the Board of Trade. He reduced the number of Board members from eleven to five. The method of obtaining goods was also changed and the Board was instructed to obtain goods from

commercial agents and residents. This way, he brought reforms in the commercial department.

Reforms in the Collection of Revenue and Permanent Settlement

It is really important to find a suitable method for revenue collection in order to improve the condition of farmers. The methods used by Robert Clive and Warren Hastings worsened the situation of farmers. Thus, in 1786, the Court of Directors recommended that Cornwallis should make ten years settlement with zamindars which can later be made permanent. Cornwallis with the help of John Shore tried to find a suitable method for revenue collection.

Permanent Settlement

Some of the important features of Permanent Settlement were as follows:

- The settlement was made with zamindars as they were recognized as owners of land as long as they pay revenue.
- Zamindars were asked to pay land revenue to the government. The amount of land revenue was made fixed and they were promised that it would not be increased. In case zamindars failed to pay revenue, the government had the authority to sell their land through public auction. They were required to pay 89 per cent of the collected rent to the state and could keep the rest with themselves.
- Zamindars were allowed to sell or mortgage their land. They were also allowed to give their land to someone else if they wanted to.
- It was expected that zamindars would made efforts to improve the conditions of the farmers or tillers who were working on their land.
- The Government promised them that it would not interfere in its matters till the time they pay their revenue in time.

Merits of Permanent Settlement

- Under Permanent Settlement, zamindars had to pay fixed amount as land revenue. In cases when zamindars were not able to pay their land revenue, the government used to sell their lands to recover their land revenue. Thus, the British government was sure of its income.
- The fixed income in the form of fixed land revenue gave economic stability to the British government. This made the province of Bengal prosperous.
- Permanent Settlement saved the British government from the expenditure which it had to incur in order to extract land revenue from zamindars. Earlier the British government spent a lot of money in order to assess land on a regular basis.
- This settlement encouraged zamindars to improve the agricultural land to earn more money. Earlier the zamindars did not make efforts to improve their land as the British government used to take away most of their profit in the name of land revenue.
- This settlement made zamindars wealthy and they could invest money in trade, commerce and industry. It helped the provinces to prosper at a fast pace.
- The settlement made zamindars loyal to the British so much so that they supported the British even during the rebels in India.
- Though the government could not increase the amount of land revenue yet it could extract more money from the zamindars in the form of taxes.

Demerits of Permanent Settlement

Since the zamindars did not take part in the cultivation of land, they moved to cities to spend a luxurious life. Before moving to cities, they appointed some middlemen to take care of their land. These

middlemen exploited the farmers and tillers and made their lives miserable. The system of the Permanent Settlement ignored the interests of peasants, farmers and tillers. They were left on the misery of zamindars who oppressed them for earning more. In the long run, the Permanent Settlement proved disadvantageous to the government as they could not increase the amount of land revenue when the prices of the crops increased.

Reforms Initiated by Lord Wellesley

Though the Subsidiary Alliance System was formed in the second half of the 18th century, yet the credit of this policy goes to Lord Wellesley as it developed from 1798 to 1805 when Lord Wellesley was the Governor General of India. The system of Subsidiary Alliance was introduced by Dupleix, the French Governor by giving his army to Indian rulers on rent. The same policy was adopted by many Governor Generals of the East India Company such as Robert Clive. In 1765, the English signed a treaty with Awadh at Allahabad. As per this treaty, the English promised that their troops would protect Awadh and the Nawab would bear the expenses of the troops. They also appointed an English resident in the court of the Nawab and was asked to bear his expenses as well. In 1787, when Lord Cornwallis was the Governor General, the Nawab of Carnatic promised that he would not take help from any foreign power without obtaining permission from the Company. Similarly, in 1798, the Nawab of Awadh promised Sir John Shore that no European would be employed in Awadh. In this way, the Subsidiary alliance system was in existence even before the Governor Generalship of Lord Wellesley. However, the system developed fully when he added some elements in this system. Indian states were asked to yield some of the territories to the Company if they wanted to sign this treaty. This way, the company

succeeded in expanding its empire in India. Let us study the development stages of the policy of Subsidiary Alliance.

Features of the Subsidiary Alliance

Some features of the Subsidiary Alliance were as follows:

The Company promised to protect the states from outside attack. The rulers had to bear the expenses of the British force which was employed for the protection of the state. The rulers could not employ any foreigner in their states without the permission of the Company. They could not build diplomatic ties with other States. The rulers had to bear the expenses of the British resident which was appointed in their court. The Company followed the policy of non-interference as far as the internal matters of the states were concerned.

Advantages of the Subsidiary Alliance to the Company

The Subsidiary Alliance proved advantageous for the Company in many ways. With the help of this system, the Company maintained a large army at the expense of the Nawabs. They could use this army in annexing other territories or protect their own empire. As per the treaty, the Nawabs were not allowed to employ any foreigner in their states without their permission. This reduced the threat which the Company had from Europeans and the French. Since the states were not allowed to build ties with other states, the Company felt secured in India as Indian states could not stand united to rebel against the Company. The treaty made Nawabs puppets in the hands of the Company as they had to seek permission from the Company on a number of issues. In lieu of the 'services', the Company asked for fertile lands of the territories of Nawabs so that they could earn more money with the help of these lands. This way, Nawabs lost a lot of money of the States and this made the states poor.

Lord Dalhousie: Doctrine of Lapse

Punjab

The Sikhs were defeated by the British in the First Sikh War but had not made Punjab part of the Empire. Even after the defeat the Sikhs were strong and powerful. They were keen on taking revenge. Lord Dalhousie was part of the second war. After the war, Punjab became part of British Empire. Maharaja Dalip Singh sent to England on a pension. Under Sir John Lawrence as Chief Commissioner of the province, Sikhs became loyal to the British. After this, he made the settlement of the province.

Sikkim

When the King of Sikkim arrested two British officers, Dalhousie attacked Sikkim and made it a part of the Empire.

Lower Burma

After the defeat of Burma after the Burmese War in 1824, trade relations were established with Burma and it also became part of the Empire.

Doctrine of Lapse

The rulers of Indian princely states had the right to adopt a child and make that child the successor. The British government agreed to this and made this right official by declaring, 'Every ruler, under Hindu laws, is free to nominate his successor, real or adopted son. The Company's government is bound to accept this right'. In 1831, the Company declared, 'The Government may accept or reject, according to the situation, the application of Indian rulers to nominate his adopted son as his heir.' The policy of the British administration was not clear. At times it rejected such an application at times it accepted. There was no real logic given behind such decisions. For example, it permitted Baijabai, the widow of Daulat Rao Sindhia, to nominate Jankoji, her adopted son, as the successor king in 1827.

However, the Company rejected the claim of Ram Chandra Rao's adopted son at Jhansi in 1835.

Lord Dalhousie made three distinct categories for Indian States:

- British Charter created states: If there was no biological heir then the British Empire would annex the state.
- Subordinate States: Permission of the East India Company was needed to validate the heir in case of adoption.
- Independent States: These had the freedom to appoint any heir as they chose.
- The first policy was called the Doctrine of Lapse. Satara was the first State to which this policy was applied in 1848.

Appa Sahib, the king of this state, did not have any child and before his death he had adopted a son. Other states to which this policy was applied were Jaipur, Sambhalpur, Baghat, Udaipur, Jhansi and Nagpur. The queen of Jhansi, Rani Laxmi Bai stood up for her right and fought the British. But when her struggle was not successful she rebelled against the Empire in the revolt of 1857. Dalhousie also annexed the state of Karoli and did not accept the adopted son as heir. But this decision was overruled by the court. The rules of annexure between the second and third category were not clear. Even though many of the states so annexed were under the control of the Mughals, they had no power to decide the legality of the heir, as the East India Company by then had become very powerful. And on the pretext of some excuse or the other, the states were annexed. This arbitrary rule of annexure became one of the reasons for the Revolt of 1857 and all united to stand up against the British. Lord Canning another Governor General, later legalized adoption.

Reforms

Social Reforms

He enacted the Widow Remarriage Act. And also amended the conversion laws of Hindus which made it possible for Hindus who converted into other religion to inherit. Even though this could have led to opposition from orthodox Hindus, it was a bold step on his part

Administrative and Military Reforms

He revamped the working of the administration and made different departments for different jobs and got rid of old systems. He appointed a separate Lieutenant Governor for Bengal. A separate District Magistrate was appointed for each district and given greater powers. He introduced Non Regulation System in newly conquered territories. In newly annexed states of Punjab and Pegu in Burma he made many new administrative changes which were appreciated widely. By appointing a Chief Commissioner with civil and military powers the efficiency of the Government improved. This system was introduced in Punjab, Central Provinces, Oudh and Burma. The Commissioner reported directly to the Governor General and Simla became the summer capital of India. The policies helped expand the British Empire. This enabled to take strategic steps regarding deploying of troops.Thus the headquarters of the Bengal Artillery were shifted from Calcutta to Meerut. Simla became the permanent headquarters of the army.

Commercial Reforms

Lord Dalhousie advocated a free trade policy which immensely benefitted the British.

Establishment of Public Works Department

The public works department that he set up made roads, bridges and canals. The Grand Trunk Road and a road from Dhaka to Arakan made it possible for army movement from Bengal to Burma.

He modernized the postal and telegraph system in India. He was the one who introduced a uniform postage stamp for all in India. Through irrigation canals and steamer services on major water ways like Hooghly, Indus and Irravaddy also improved and so did other means of communication.

Educational Reforms:

Many reforms were also made in the field of education, one of them being the introduction of the Indian Civil Services Examination. In 1853 Sir Charles Wood sent out a policy document on education. This was known as the Woods Dispatch.

Regional language was to be taught in the Anglo-Vernacular Schools Universities were set up in Bombay, Calcutta and Madras Colleges offering degrees were affiliated to the Universities Education was made secular in nature Each province set up an education department Teacher's Training Institutions were to be set up Privatization of education was encouraged and Government aid was given A Director General of Education was recommended for the whole of India.

Post, Railways, and Telegraph

A lot of attention was paid to this area as the defense and law and order of the country depended on this. Through this he encouraged British enterprises to invest in India. Lord Dalhousie also promised all facilities to these companies. The railways changed the face of the country and brought people from all corners and regions together.

CROWN RULE (1858-1947)

The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown. The Company's rule was, thus, terminated and the administration was carried out in the name of the Crown through the Secretary of the State. The Secretary assumed the powers of the

Company's Board of Directors as well as the Board of Control. The Secretary of State, accountable to the British Parliament, needed to be supported by the Council of India consisting of 15 members. The Crown was required to appoint eight members for the Council, while the Board of Directors was to elect the remaining seven. The main features of this Act were as follows:

It made the administration of the country unitary as well as rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant Governor headed by his executive council, yet the provincial governments were mere agents of the Government of India. They had to function under the superintendence, direction and control of the Governor General in all matters related to the governance of the province.

It made no provision for separation of functions. The entire authority for the governance of India—civil, military, executive and legislative was handed over to the Governor-General of the Council, who was accountable to the Secretary of the State.

The Secretary of the State had absolute control over the Indian administration. The entire machinery of administration was made bureaucratic. The Act of 1858 was initiated for 'the better Government of India'. Thus, it introduced many significant changes in the home government. However, these changes were not related to the administrative set-up of India. Major changes were made in the Constitution of India after the severe crisis of 1857–58. There were many reasons behind the introduction of these changes. All legislative procedures were centralized by the Charter Act of 1833. The sole authority for legislating and passing decrees, while implementing them for the economy, rested with the Legislative Council (Centre). Though the functioning of the Legislative Council was set up by the Charter Acts of 1833, the Act was not followed properly. The Council resulted

into a debating society or a Parliament on a smaller scale, claiming all privileges and functions of the representative body. While acting as an independent legislature, the Council did not function well with the home government. As a result, the first Council Act was passed in 1861 after holding discussions between the home government and the Government of India.

Indian Council Act, 1861

The Indian Council Act, 1861 introduced a representative institution in India for the first time. As per this Act, the Executive Council of the Governor-General was to comprise some Indians as non-official members for transactions of legislative business. It initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Presidencies. Another feature of the Act was its statutory recognition of the portfolio system. If we see in depth, the Indian Council Act was a part of a legislation that was passed by the Parliament of Great Britain in 1861, which converted the Executive Council of the Viceroy of India into a Cabinet on the portfolio system.

This cabinet had six ordinary members, each of whom was in charge of an independent department in the Calcutta Government comprising home, government, revenue, law and finance, and public works (post 1874). The Military Commander in Chief worked with the Council as a special member. Under the provisions of the Act, the Viceroy was allowed to overrule the Council when he deemed it necessary. The Act offered many advantages to the members of the legislative council. They could discuss legislation and give their inputs or suggestions. The legislative power that was taken away by the Charter of 1833 was restored through this Act.

On the other hand, there were some drawbacks of the Act as well. The members of the council were not allowed to implement any

legislation on their own. The Act added a fifth member to the executive council of the Viceroy. The member was assumed to be a gentleman of legal professional service and a jurist. The Act further gave powers to the Governor-General to enact rules for convenient business transactions in the Council. Lord Canning used the power to pioneer the portfolio system in the Government of India. Until then, the Government's rules administered the executive council as a whole due to which all official documents were brought under the notice of the council members. As per the provisos of the Act, Canning divided the government amongst the council members. With this, the foundation of the Cabinet government was formed in India. The Act further declared that each administrative branch would have its own spokesman and head in the government, who would be responsible for the entire administration and defence. The new system witnessed the daily administrative matters taken care by the member-in-charge. In important cases, the concerned member used to present the matters before the Governor-General and consult him before taking any decision. The decentralization of business brought in some efficiency in the system, however, it could not be accomplished thoroughly.

The Indian Council Act of 1861 also introduced a number of legislative reforms in the country. The number of members in the Viceroy's executive council was increased, wherein; it was declared that additional members should be six to the minimum and twelve to the maximum. These were directly nominated by the Governor-General for two years. Not less than 50 per cent of the members were non-official members. The Act did not make any statutory provisions for admitting Indians. However, a few non-official seats of high rank were offered to Indians. The Council's functions were strictly confined to the legislative affairs. It did not have any control over the administration, finance and the right of interpellation.

The Act reinstated the legislative powers of implementing and amending laws to the provinces of Madras and Bombay. Nevertheless, the provincial councils could not pass any laws until they had the consent of the Governor-General. Besides, in few matters, the prior approval of the Governor-General was made compulsory. After the Act, the legislative councils were formed in Bengal, Punjab and the northwestern provinces during 1862, 1886, 1889, and so forth. The Act significantly laid down the mechanical set-up of the government. There were three independent presidencies formed into a common system. The legislative and the administrative authority of the Governor-General-in-Council was established over different provinces. Further, the Act also gave legislative authority to the governments of Bombay and Madras. It laid many provisos for creating identical legislative councils in other provinces. This led to the decentralization of legislative powers which culminated in autonomy grants to the provinces under the Government of India Act, 1935.

However, no attempts were made under the Council Act of 1861, to distinguish the jurisdiction of the Central Legislature from the Local Legislature in the federal Constitution. Furthermore, the main functions of the Legislative Councils, as established under the Act, were not carried out properly. Even the Councils could not perform in conformity to the Act. The Act could not establish representative government in India on the basis of the England Government. It declared that the colonial representative assemblies would largely discuss financial matters and taxation. The Act paved the path for widespread agitation and public alienation.

Indian Council Act, 1892

It is important to understand the evolution of this Act. The Indian Constitution was incepted after the Act of 1861. The legislative

reforms created under the Acts of 1861 failed miserably in meeting the demands and aspirations of the people of India. The small elements of non-officials, which mainly comprised big Zamindars, Indian princes or retired officials, were entirely unaware of the problems of the common man. Thus, the commoners of India were not happy. The nationalist spirit began to emerge in the late 19th century. The establishment of universities in the presidencies led to educational developments in the country. The gulf between the British and the Indians in the field of Civil Services.

was not liked by the Indians. The Acts enacted by Lord Rippon, that is, the Vernacular Press Act and the Indian Arms Act of 1878, infuriated Indians to a great extent. The controversy between the two governments over the banishment of 5 per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885. The main aim of the Congress was to organize public opinions in India, make the grievances public and demand reforms from the British Government.

Initially, the attitude of the British Government towards the Indian National Congress was good but it changed when Lord Dufferin attacked the Congress from the front. He tried to belittle the significance of the Congress leaders and ignored the importance of the movement launched by the Congress. He secretly sent proposals to England to liberalize the councils and appoint a committee which would plan the enlargement of the provincial councils. As a result, a Committee Report was sent to the home authorities in England to make changes in the Councils' composition and functions. The Report was aimed at giving Indians a wider share in the administration.

In 1890, the Conservative Ministry introduced a bill in the House of Lords in England based on these proposals. The House of Lord took two years to adopt measures in the form of the Indian

Council Act of 1892. The Indian Council Act of 1892 was known to have dealt entirely with the powers, functions and compositions of the legislative councils in India. In respect of the Central Legislature, the Act ensured that the number of additional members should only be between six and twelve. An increase in the members was regarded worthless. Lord Curzon supported it saying that the efficiency of the body had no relation with the numerical strength of its members.

The Council Act of 1892 affirmed that 2/5th of the total members in the Council should be non-officials. Some of them were to be nominated and others were elected. The election principle was compromised to some extent. According to the Act, the members of the legislatures were given equal rights to express themselves in financial issues. It was decided that all financial affairs statements would be prepared in the legislation. However, the members were not allowed to either move resolutions or divide the houses as per financial concerns. The members could only put questions limited to the governmental matters of interest on a six days' notice.

The Indian Council Act of 1892 also brought in many new rules and regulations. However, the only significant feature of the Act was the introduction of election procedure. The term 'election' was carefully used in the Act. In addition to the elected official members, the Act pronounced that there should be five nonofficial members. It further said that these members should be elected by the official members of the provincial legislatures of Bombay, Madras, Calcutta, the north-western province and the Calcutta Chamber of Commerce. The Governor General had the authority to nominate the five non-official members. The bodies were allowed to elect the members of District Boards, Municipalities, Universities and the Chamber of Commerce but the election methods were not clearly mentioned. The elected members were officially regarded as 'nominated' in spite of

the fact that the recommendations of each legislative body was taken into consideration for the selection of these members. Often the person favoured by majority was not considered 'elected', but was directly recommended for nomination.

According to this Act, the members were allowed to make observations on the budget and give their suggestions on how revenue can be increased and expenditure can be reduced. The principle of election, as introduced by the Acts of 1892, was used in the formation of the Constitution as well. Nevertheless, there were numerous faults and drawbacks in the Acts of 1892 because of which the Act could not satisfy the needs of the Indian nationalists. It was criticized in various sessions of the Indian National Congress. The critics did not like the election procedure mentioned in the Act. They also felt that the functions of the legislative councils were rigorously confined.

Indian Council Act, 1909

This Act changed the name of the Central Legislative Council to the Imperial Legislative Council. The size of the councils of provinces was enlarged by including non-official members. The functions of the legislative councils were increased by this Act.

Lord Morley, the Secretary of State for Indian Affairs, announced that his government wished to create new reforms for India, wherein the locals would be granted more powers in legislative affairs. Both Lord Morley and Lord Minto believed that terrorism in Bengal needed to be countered. The Indian Government appointed a committee to propose a scheme of reforms. The committee submitted the report and the reforms mentioned in the report were agreed upon by Lord Minto and Lord Morley. Thus, the Act of 1909 was passed by the British Parliament, also referred as the Minto-Morley Reforms.

- It facilitated elections of Indians in Legislative Councils. Prior to this, some Indians were appointed at Legislative Councils,

majority of which remained under the appointments of the British Government.

- The electoral principle introduced under the Act laid down the framework for a parliamentary system.
- Muslims had expressed serious concern that a 'first past the post' British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 as demanded by the Muslim leadership stipulated:
- That Indian Muslims should be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils, and in the Imperial Legislature.
- That the number of reserved seats be in excess of their relative population (25 per cent of the Indian population).
- That only Muslims should vote for candidates for Muslim seats ('separate electorates')
- The number of members of the Legislative Council at the Centre was increased from sixteen to sixty.
- The number of members of the Provincial Legislatives was also increased. It was made fifty in the provinces of Bengal, Bombay and Madras. For the rest of the provinces, the number was thirty.
- The members of the Legislative Councils were divided into four categories both at the Centre and within the provinces. These categories were ex-officio members (Governor-General and the members of their Executive Councils), nominated government official members by the Governor-General, nominated non-governmental and non-official members by the Governor-General, and members elected by different categories of Indians.
- Muslims were granted the right of a separate electorate.

- Official members were needed to be in majority. However, in provinces, non-official members formed the majority.
- The Legislative Council members were allowed to discuss budgets, recommend amendments, and vote in some matters excluding some matters which were categorized under 'non-voted items'. The members were also entitled to seek answers to their concerns during the legislative proceedings.
- India's Secretary of State was empowered to increase the number of executive councils from two to four in Madras as well as Bombay.
- Two Indians were to be nominated in the Council of the Secretary of State for Indian affairs.
- The power for nominating one Indian member to the executive council was with the Governor-General.
- The provision for concessions under the Act was a constant source of strife between the Hindu and Muslim population from 1909 to 1947. British statesmen generally considered reserved seats as regrettable as it encouraged communal extremism. The Hindu politicians tried to eliminate reserved seats as they considered them to be undemocratic. They also believed that the reserved seats would hinder the development of a shared Indian national feeling among Hindus and Muslims.

Government of India Act, 1919

The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand participation of the natives in the Government of India. The Act embodied the reforms recommended in the joint report of Sir Edwin Montagu and Lord Chelmsford. The retraction of British imperialism was a result of India's enthusiastic participation in World War I. The Act broadly ideated a dual form of government, called diarchy, for the

major provinces. It also affirmed that a High Commissioner residing in London would represent India in Great Britain. The Government of India Act was enacted for ten long years, i.e. from 1919 to 1929.

According to the Act, the Viceroy was responsible for controlling areas of defence, communications and foreign affairs. The Government was responsible to take care of the matters related to health and education. Besides, there was a bicameral legislature located at the Centre, comprising legislative assembly with 144 members, out of which 41 were nominated. The Council of States constituted 34 elected members and 26 nominated members.

The Princely States were responsible for keeping control over political parties. The Indian National Congress was not satisfied with this law, and regarded it as 'disappointing'. There was a special session held in Bombay under Hasan Imama, wherein reforms were degenerated. Nevertheless, leaders, such as Surendranath Banerjee, appreciated these reforms.

System of diarchy in the provinces

According to this system, the subjects of administration were to be divided into two categories: central and provincial. The central subjects were exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.

Central control over the provinces was relaxed

Under this provision, subjects of all-India importance were brought under the category 'central', while matters primarily relating to the administration of the provinces were put under 'provincial' subjects. This meant a relaxation of the previous central control over the provinces not only in administrative but also in legislative and financial matters. The previous provincial budgets were removed by the Government of India and the provincial legislatures were

empowered to present their own budgets and levy taxes according to the provincial sources of revenue.

Indian legislature was made more representative

The Indian legislature was made bi-cameral. It consisted of the upper house named the Council of States and the lower house named the Legislative Assembly. The Council of States had 60 members out of which 34 were elected. The Legislative Assembly had 144 members out of which 104 were elected. Nevertheless, the Centre did not introduce any responsibility and the Governor-General in Council remained accountable to the British Parliament. The Governor-General's overriding powers in respect of the central legislation were retained in many forms.

The British Government in 1927 appointed a Statutory Commission, as envisaged by the Government of Act of 1919, to make an enquiry in the functioning of the Act and to announce that the domination status was the goal of Indian political developments. Sir John Simon was the Chairman of the Commission which gave its final report in 1930. This report was given consideration at a Round Table Conference that created a White Paper. The White Paper was examined by Joint Select Committee of the British Parliament. Lord Linlithgow was appointed the President of the Joint Select Committee. The Committee presented a draft Bill on 5 February 1935. The Bill was discussed for forty-three days in the House of Commons and for thirteen days in the House of Lords. After the signatures of the King, the Bill was enforced in July 1935 as the Government of India Act, 1935.

Government of India Act, 1935

The main features of the system introduced by the Government of India Act, 1935 were as follows:

Federal features with provincial autonomy

The Act established an all-India Federation comprising the provinces and princely states as units. It segregated powers between the Centre and the units into three lists, i.e., the Federal List, the Provincial List and the Concurrent List. Though the Act advocated the use of the provinces and the Indian states as units in a federation, it was optional for the Indian states to join the federation. No Indian state accepted this provision and hence the federation envisaged by the Act was not operational. The provincial autonomy was initiated in April 1937. Within its defined sphere, the provinces were no longer delegates of the central government but were autonomous units of the administration. The executive authority of a province was to be exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor acted in consultation with the ministers who were accountable to the legislature. However, the Governor was given some additional powers which could be exercised by him at his 'discretion' or in the exercise of his 'individual judgment' in certain matters without ministerial advice.

System of Diarchy at the centre

The Act abolished the Diarchy in the provinces and continued the system of Diarchy at the centre. According to this system, the administration of defence, external affairs, ecclesiastical affairs, and of tribal areas, was to be made by the Governor-General in his discretion with the help of 'counselors' appointed by him. These counselors were not responsible to the legislature. With regards to matters other than the above reserved subjects, the Governor-General was to act on the advice of a Council of Ministers who was responsible to the legislature. However, in regard to the Governor-General's 'special

responsibilities', he could act contrary to the advice given by the ministers.

Bi-cameral legislature

The Central Legislature was made bi-cameral which consisted of the federal assembly and Council of States. It also introduced bicameralism in six out of eleven provinces, such as Assam, Bombay, Bengal, Madras, Bihar, and the United Province. However, the legislative powers of the central and provincial legislatures had various limitations and neither of them had the features of a sovereign legislature. Federal Legislature needed to comprise two houses: The Council of State (Upper House) and the Federal Assembly (Lower House). The Council of State was required to have 260 members, out of which 156 needed to be elected from British India and 104 to be nominated by the rulers of princely states. The Federal Assembly was required to include 375 members, out of which 250 members were required to be elected by the Legislative Assemblies of the British Indian provinces and 125 to be nominated by the rulers of princely states.

Division of powers between Centre and provinces

The legislative powers were divided between the provinces and the centre into three lists—the Federal, List, the Provincial List, and the Concurrent List. There was a provision for Residuary Subjects also. The Federal List for the Centre consisted of fifty-nine items such as External Affairs; Currency and Coinage; Naval, Military and Air forces; and Census. The Provincial List consisted of fifty-four items which dealt with subjects such as Police, Provincial Public Services and Education. The Concurrent List comprised thirty-six items dealing with subjects like Criminal Law and Procedure, Civil Procedure, Marriage and Divorces, and Abortion. The Residuary powers were given to the Governor-General. He was empowered to authorize the

Federal or the Provincial Legislature to ratify a law for any matter if not listed in any of the Legislative Lists. The provinces were, however, given autonomy with respect to subjects delegated to them.

- The Central Legislature was empowered to pass any bill though the bill required the Governor-General's approval before it became law. The Governor-General too had the power to pass ordinances.
- The Indian Council was removed. In its place, few advisors were nominated to assist the Secretary of State of India.
- The Secretary of State was not allowed to interfere in the governmental matters of Indian Ministers. Sind and Orissa were created as two new provinces.
- One-third of members could represent the Muslim community in the Central Legislature.
- Autonomous provincial governments were set up in eleven provinces under ministries which were accountable to legislatures.
- India was separated from Burma and Aden.
- The Federal Court was established in the Centre.
- The Reserve Bank of India was established.

The Indian National Congress as well as the Muslim League were strictly against the Act but they participated in the provincial elections of 1936-37, which were held under stipulations of the Act. At the time of independence, the two dominions of India and Pakistan accepted the Act of 1935, with few amendments, as their provisional constitution.

Government of India Act, 1947

The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India. The legislation of the Indian Independence Act was designed by Clement Attlee. The Indian

political parties, the Indian National Congress, the Muslim League and the Sikh community came to an agreement on the transfer of power from the British Government to the independent Indian Government, and the Partition of India. The Agreement was made with Lord Mountbatten, which was known as the 3 June Plan or Mountbatten Plan. The Indian Independence Act, 1947 can be regarded as the statute ratified by the Parliament of the United Kingdom propagating the separation of India along with the independence of the dominions of Pakistan and India.

Events leading to the Indian Independence Act (a) 3 June Plan

On 3rd June 1947, a plan was proposed by the British Government that outlined the following principles: The principle of Partition of India was agreed upon by the British Government. The successive governments were allotted dominion status.

Attlee's Announcement

On 20th February 1947, the Prime Minister of UK, Clement Attlee announced: (i) Latest by June 1948, the British Government would endow absolute self-government to British India. (ii) After deciding the final transfer date, the future of princely states would be decided. The Indian Independence Act, 1947 came into inception from the 3rd June Plan.

The Indian Independence Bill was formally introduced in the British Parliament on 4 July 1947 and received the royal assent on the 18 July 1947. It removed all limitations upon the responsible government (or the elected legislature) of the natives. It said that until they developed their own Constitutions, their respective Governor-Generals and Provincial Governors were to enjoy the same powers as their counterparts in other dominions of the Commonwealth. It meant that India and Pakistan would become independent from 15 August 1947.

Interim Government

After the end of the Second World War, and the large scale protest that followed the INA trials, it became clear to the British that it was not possible for them to hold on to India. Thus, the interim government of India was formed on 2nd September 1946 from the newly elected constituent assembly of India that had the task of assisting the transition of India and Pakistan from British rule to independence. After the Second World War ended, all the prisoners who participated in Quit India Movement were released. A Cabinet Mission in 1946 formulated proposals for the formation of a government that would lead to an independent India. The elections related to constituent assembly were not directly done, instead members were elected from each provincial assemblies. The Indian National Congress won some 69% seats where majority elected were Hindus. Muslims retained those seats which were allocated to them.

Viceroy's executive council

The Viceroy's executive council became the executive branch of the interim government. With the powers of prime minister bestowed on the vice-president of the council, it was transformed. It was a position headed by the Congress leader Jawaharlal Nehru. The senior Congress leader Vallabhbhai Patel held the second most powerful position in the council, heading the department of home affairs, information and broadcasting. Asaf Ali, a Muslim leader of the Congress, was the head for the department of railways and transport. Jagjivan Ram, a scheduled caste leader, headed the department of Labour and Rajendra Prasad headed Food and Agriculture. Liaquat Ali Khan, member of the League, headed the department of Finance.

Nature of the assembly

The constituent assembly consisting of indirectly elected representatives was set up for drafting a constitution for India. The

constituent assembly took three years to draft the constitution and acted as the first parliament of India. The members of the assembly were not elected on the basis of adult franchise and Muslim and Sikhs were given special representation as 'minorities'. The assembly met for the first time in New Delhi on 9th December 1946 and the last session of assembly was held on 26 November 1947. The total number of sittings of the constituent assembly was 166.

Background and election

The constituent assembly was held when India was under British Rule and negotiations were made between the leaders and members in the cabinet mission of 1946. The constituent assembly consisted of 217 representatives, inclusive of 15 women. In June 1947, when the Partition of India seemed inevitable, delegations from the various provinces of Sindh, East Bengal, Baluchistan, west Punjab withdrew in order to form the constituent assembly of Pakistan for which the meeting was held in Karachi.

Constitution and elections

The assembly began its first session with 207 members attending on 9th December 1946. The assembly approved the draft constitution on 26th November 1949. On 26th January 1950, the constitution took effect in India and India was proclaimed as a Republic. The constituent assembly became the provisional parliament of India which continued till the first elections took place in 1952.

Organization

On 9 December, 1946 Dr. Sachchidananda Sinha was made the pro-term chairman of the constituent assembly. After that Dr. Rajendra Prasad became the president of constituent assembly. Sir Benegal Narasingh Rau was the one to prepare the original draft of the constitution. B.R. Ambedkar later became the chairman of the drafting committee of the constitution.

The Assembly's work was organized into five stages

- A report was asked to be presented by the committee on basic issues
- B.N. Rau, prepared an initial draft, on the basis of these committees as well as the research made by him into the constitutions of other countries
- B.R. Ambedkar presented a detailed draft of the constitution that was published for public discussion and comments and later became the chairman of the drafting committee
- The constitution that was drafted was then discussed and amendments were made as per requirement before enactment
- Lastly, the constitution was adopted. A committee called the Congress assembly party played a critical role in its adoption.

Sources of the Indian Constitution

India is declared to be a sovereign, socialist, secular, and democratic republic by the constitution and also ensures its people liberty, justice, equality, and endeavors to promote fraternity. The Indian constitution is the longest national written social code in the world.

The Constitution was ratified on 26 November 1949 and legally validated on 26 January 1950. There are a total of 105 amendments in the Constitution. The main authors of the Constitution were Dr. Ambedkar, who was the chairman of the drafting committee, and other members of the constituent assembly.

There were 284 signatories who were all members of the constituent assembly. The Constitution is more powerful than the Parliament, and thus Parliament cannot override it.

The Constitution wasn't created by the Parliament rather was created by the constituent assembly. To honour the legal effect of the Constitution, we celebrate Republic Day on 26th January every year.

- The father of the Constitution is Ambedkar, Dr. B.R. Ambedkar. Ambedkar was prepared to burn the prestigious Constitution if it failed to protect its people. On 9th December 1946, the constituent assembly met for the first time.
- When the first draft was put up for feedback and exchange of views, 2000 amendments took place. Initially, there were 389 members in the assembly with 15 women. However, the number of members was reduced to 299 after the partition. Both English and Hindi were mediums in which original copies were written. The English version of the Constitution consists of 117,369 words.
- There were a total of 395 articles, 22 parts, and eight schedules; however, now there are 470 articles, 25 parts & 12 schedules. This longest constitution was never typed or printed. Prem Behari Narain Raizada wrote it down with his own hands.
- The authentic Constitution was written in italics style, which was flowing. What makes the Constitution more special is that every page was uniquely designed by the art prodigies from Shantiniketan.
- It took more than two years, 11 months, and 18 days to write the Constitution. 26th November is now celebrated as the constitution day because the final draft was ready on that day.
- On 24 January 1950, 284 signatories signed the constitution. On 26 January 1950, the Constitution came into effect also the national emblem of India was sanctioned on the same day.

- The Constitution of India is a mixed constitution that is neither rigid nor flexible.
- Currently, the original copies are preserved in helium filled containers in the Indian Parliament at Delhi, India. One more amusing fact about the Indian Constitution is that the last article is still numbered "395." Hence, all the amendments added after the Constitution came into effect, are organised alphabetically. Since the Constitution first came into effect in 1950, there have been 105 amendments till now.

Government of India Act 1935

The Constitution of 1950 was a by-product of the legacy started by the Government of India Act 1935. This was the longest act passed by the British government with 321 sections and 10 schedules. This act had drawn its content from four sources – Report of the Simon Commission, discussions and deliberations at the Third Round Table Conference, the White Paper of 1933 and the reports of the Joint select committees.

This act abolished the system of provincial dyarchy and suggested the establishment of dyarchy at the centre and a 'Federation of India' consisting of the provinces of British India and most of the princely states. Most importantly, the act established the office of the Governor; all the executive powers and authority of the centre was vested in the Governor.

Some features of the Government of India Act 1935 were:

Federal Legislature

The act suggested that the legislature will have two houses, i.e., the Council of States and a Federal Assembly. **The Council of States** was the upper house which was a permanent body with a tenure of three years and composed of 260 members of which 156 were representatives of British India and 101 of the Princely Indian

states. **The Federal Assembly** was the lower house with a tenure expanding up to five years and its composition included 250 representatives of British India and 125 members from Princely states.

Provincial Autonomy

This act enabled the Provincial Governments to be responsible only to Provincial Legislatures and helped them break free from external control and intrusion. It was with the establishment of this act that the powers between the centre and provinces were divided in terms of **three lists** – Federal list (59 items for the Centre), Provincial list (54 items for Provinces) and Concurrent list (36 items for both). The Residuary powers were handed over to the Viceroy.

The United Kingdom

A lot of concepts and features of the Indian Constitution have its roots in Great Britain. Some of those are:

Parliamentary form of government

In such form of government, the country is governed by a cabinet of ministers led by the Prime Minister. The Prime Minister is the head of the government whereas the President i.e. the nominal head, is the head of the state. The main feature of the parliamentary form of government is the availability of one or more opposition parties that exists to keep a check on the ruling party and its functioning.

Rule of Law

This basically states that a State is not governed either by the representatives or by the people but only by the law of that country. The concept of rule of law states that everyone is equal before the law; even the ones making it. **Article 14** of the Indian Constitution codifies the rule of law.

The idea of a single citizenship

This implies that a person born or migrated to Indian Territory can enjoy the political and civil rights of India alone and no other country at the same time. Therefore, India does not allow dual citizenship. Indian state also does not recognize state citizenship implying that there should not be any demarcation made between the citizens of two or more states within the territory of India.

Writs

The Supreme Court and High Courts in India has the power to issue writs in order to make the **Right to Constitutional Remedies** [Article 32 to 35] available to the citizens. There are five writs – **Habeas Corpus** (produce the detained person before the court and release him if detention is found illegal),**Mandamus** (an order from the Supreme Court or the High Court to a lower court to perform public duty), **Certiorari** (SC or HC issues the writ for quashing the order already passed by an inferior court), **Prohibition** (issued by the SC or the HC to a lower court to stop the latter from continuing with the procedures) and **Quo-Warranto** (restrains a person from holding a public office he is not entitled to hold). The Indian Constitution provides for these writs in Articles 32 and 226.

Article 32 (1)

The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

Article 32 (2)

The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may

be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 226 (1)

Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

The United States of America

Some of the features borrowed from the USA are:

- **Fundamental Rights: Articles 12 to 32** of the Indian Constitution contains all the fundamental rights. Fundamental rights are the basic human rights given to the citizens of the country to assure them an equal stance in society. **The six fundamental rights are** – Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and Right to Constitutional Remedies.
- **Judicial Review:** The provision of Judicial Review gives the judiciary an upper hand in interpreting the Constitution. The judiciary can thus nullify any order by the legislature or executive if that order is in conflict with the Constitution of the country.

Major Sources of Indian Constitution	
Provisions	**Source/country**
Constitution of the United States	➢ Preamble ➢ Fundamental Rights ➢ Federal structure of government ➢ Electoral College ➢ Independence of the judiciary and separation of powers among the three branches of the government ➢ Judicial review ➢ President as Supreme Commander of Armed Forces ➢ Equal protection under law
British constitution	➢ Parliamentary form of government ➢ The idea of single citizenship ➢ The idea of the Rule of law ➢ Writs ➢ Institution of Speaker and his role ➢ Lawmaking procedure ➢ Procedure established by Law
Canadian constitution	➢ A quasi-federal form of government — a federal system with a strong central government ➢ Distribution of powers between the central government and state governments ➢ Residual powers retained by the central government
Irish constitution (Ireland)	➢ Directive Principles of State Policy ➢ Nomination of members to Rajya Sabha ➢ Method of Election of President
French constitution	➢ Republic and the ideals of Liberty, Equality and Fraternity in the Preamble
Australian constitution	➢ Freedom of trade and commerce within the country and between the states ➢ Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction ➢ Concurrent List
Constitution of Soviet Union (USSR)	➢ Fundamental Duties under Article 51-A ➢ A Constitutionally mandated Planning Commission to oversee the development of the economy

Constitution of South Africa	➢ Procedure for amendment ➢ Election of Rajya Sabha members
Constitution of Germany	➢ Emergency powers to be enjoyed by the Union ➢ Suspension of Fundamental Rights during emergency.
Constitution of Russia	➢ Procedure Established by Law
Government of India Act 1935	➢ Federal Scheme ➢ Emergency Provisions ➢ Public Service Commissions ➢ Office of Governor ➢ Judiciary ➢ Administrative Details

Impeachment of the President and Removal of Judges

Article 61 of the Indian Constitution provides for the impeachment of the President through legislative procedures carried out by the two houses of the Parliament. **Article 124 (4)** of the Indian Constitution and the provisions of the **Judges Inquiry Act of 1968** deal with the removal of judges.

Article 124 (4)

A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported 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 has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Ireland

The main feature borrowed from the Irish Constitution is the provision of the **Directive Principles of State Policy (DPSP)**. The DPSP are listed in the **Part IV** of the Indian Constitution and it clearly states that it is the duty of the State to apply these principles in the

process of law making. There are mainly three categories of these principles – Socialist Directives, Gandhian Directives and Liberal Intellectual Directives. The procedure for the nomination of members to the Rajya Sabha is also borrowed from Ireland.

Canada

The provisions of a Federation with a strong centre, Residuary powers of the Centre, appointment of State governors by the Centre and the advisory jurisdiction of the Supreme Court, have all been borrowed from the Canadian constitution. **Article 248** of the Indian Constitution states that the Parliament has the sole power to make laws regarding any item not mentioned in the Union and State lists respectively. **Article 143** provides for an advisory jurisdiction for the Supreme Court. Under this provision, the President may seek opinion of the Supreme Court on public matters and the Supreme Court may then further give its opinion after studying the case properly.

France

The Indian Preamble borrowed its ideals of **Liberty, Equality and Fraternity** from the French Constitution. The Indian state came to be recognized as the 'Republic of India' in the lineage of the Constitution of France.

Australia

The Constitution of Australia lent us the provisions of **Freedom of Trade and Commerce** within the country and between the states. The provisions of the same are laid down in the **Articles 301-307** of the Indian Constitution. We also received the provisions of the Concurrent list and the joint sitting of both the houses of Parliament from Australia.

South Africa and Germany

While the Constitution of South Africa gave us the provisions of the procedure of the amendment and the Election of the Rajya Sabha members, the German Constitution, gave us the provision of suspension of fundamental rights during emergency.

These were the major sources of the Indian Constitution. As the father of our Constitution and the Chairman of the Drafting Committee, Dr. B.R. Ambedkar said, **"**As to the accusation that the Draft Constitution has [re]produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution."

Preamble

- The Preamble to the Constitution of India reads: We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to its citizens:

- JUSTICE, social, economic and political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and opportunity; and to promote 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.

The wordings of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity. These

objectives help us to decode the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

Amendment to the Preamble

By Section 2 of the Constitution (forty-second Amendment Act, 1976), two amendments were made in the Preamble.

- Instead of 'Sovereign Democratic Republic' India was declared 'Sovereign Socialist Secular Democratic Republic.'
- For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.

Explanation of the Preamble

Source of the Constitution:

The first and the last words of the Preamble, i.e., 'We, the people of India adopt, enact and give to ourselves this Constitution' convey that the source of the Constitution is the people of India. The people have formulated their Constitution through the Constituent Assembly which represented them.

Nature of the Indian political system

The Preamble also discusses the nature of Indian political system. The Indian polity is sovereign, socialist, secular, democratic republic.

Sovereign

After the implementation of the Constitution on 26 January 1950, India became sovereign. It was no longer a dominion. Sovereignty means the absence of external and internal limitations on the state. It means that Indians have the supreme power in deciding their destiny.

Socialist

After the forty-second Constitutional Amendment, the Constitution of India declares itself a socialist polity. The Indian socialist state aims at securing to its people 'justice—social economic and political'. A number of provisions in Part IV of the Constitution dealing with the Directive Principles of State Policy are intended to bring about a socialist order of society.

Secular

Secularism is another aspect of the Indian polity which was included by the forty-second Constitutional Amendment. Secularism in India contains both negative as well as positive connotation. In its negative connotation, it denotes absence of religious discrimination by the State. Positively; it means right to freedom of religion. However, secularism does not mean the right to convert from one religion to another.

Democracy

The Preamble declares India to be a democratic country. The term 'democratic' is comprehensive. In its broader sense, it comprises political, social and economic democracy. The term 'democratic' is used in this sense in the Preamble and calls upon the establishment of equality of status and opportunity. In a narrow political sense, it refers to the form of government, a representative and responsible system under which those who administer the affairs of the state are chosen by the electorate and are accountable to them.

Republic

Lastly, the Preamble declares India to be a republic. It means the head of the state is elected. The position is not hereditary. The President of India, who is the head of the state, is elected by an electoral college.

Objectives of the political system

The Preamble proceeds further to define the objectives of the Indian political system. These objectives are four in number: Justice, Liberty, Equality and Fraternity.

Justice

The term implies a harmonious reconciliation of individual• conduct with the general welfare of the society. In the light of 'Objectives Resolution' and the Preamble, the idea of socio-economic justice signifies three things: (i) The essence of socio-economic justice in a country can be valued only in terms of positive, material and substantive benefits to the working class, in the form of services rendered by the state. Socio-economic justice, in the negative sense, means curtailment of the privileges of the fortunate few in the society, while positively, it suggests that the poor and the exploited should have the full right and opportunity to rise to the highest station in life. (ii) Socio-economic justice is qualitatively higher than political justice. (iii) The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the common man. On an empty stomach, adult franchise would soon become a mockery. Political justice too, would soon lose its significance if socio-economic justice is not forthcoming. The objectives to secure justice for the citizens got concrete reflection in the provisions of Chapters III and IV, namely, the Fundamental Rights and Directive Principles.

Liberty

The term 'liberty' is used in the Preamble both in the positive and negative sense. In the positive sense, it means the creation of conditions that provide the essential ingredients necessary for the fullest development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. In the negative

sense, it means absence of any arbitrary restraint on the freedom of individual action.

Equality

Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality signifies equality of status, the status of free individuals and equality of opportunity.

Fraternity

Finally, the Preamble emphasizes the objective of fraternity in order to ensure both the dignity of the individual and the unity of the nation. 'Fraternity' means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions.

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Dignity

It is a word of moral and spiritual import and imposes a moral obligation on the part of the Union to respect the personality of the citizen and to create conditions of work which will ensure self-respect.

The use of the words, unity and integrity, has been made to prevent tendencies of regionalism, provincialism, linguism, communalism and secessionism and any other separatist activity so that the dream of national integration on the lines on enlightened secularism is achieved.

Citizenship

Citizenship at the commencement of the Constitution.—At the commencement of this Constitution, every person who has his domicile in the territory of India and

- who was born in the territory of India; or
- either of whose parents was born in the territory of India; or
- who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Rights of citizenship of certain persons who have migrated to India from Pakistan

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if

- He or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him there for to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Rights of citizenship of certain migrants to Pakistan

Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India: Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Rights of citizenship of certain persons of Indian origin residing outside India

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him there for to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Persons voluntarily acquiring citizenship of a foreign State not to be citizens

No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

Continuance of the rights of citizenship

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Parliament to regulate the right of citizenship by law

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

How is Citizenship Defined?

Citizenship signifies the relationship between the individual and the state. Like any other modern state, India has two kinds of people - citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens.

There are two well-known principles for the grant of citizenship:

- While 'jus soli' confers citizenship on the basis of place of birth, 'jussanguinis' gives recognition to blood ties.
- From the time of the Motilal Nehru Committee (1928), the Indian leadership was in favour of the enlightened concept of jus soli.
- The racial idea of discriminations was also rejected by the Constituent Assembly as it was against the Indian ethos.
- Constitutional Provisions
- Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament.
- The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part 2 (Articles 5 to 11).

- Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on November 26, 1949 itself, when the Constitution was adopted.

Article 5

It provided for citizenship on commencement of the Constitution. All those domiciled and born in India were given citizenship. Even those who were domiciled but not born in India, but either of whose parent was born in India, were considered citizens. Anyone who had been an ordinary resident for more than five years, too, was entitled to apply for citizenship.

Article 6

It provided rights of citizenship of certain persons who have migrated to India from Pakistan. Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India. But those who entered India after this date needed to register themselves.

Article 7

Provided Rights of citizenship of certain migrants to Pakistan. Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net. The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

Article 8

Provided Rights of citizenship of certain persons of Indian origin residing outside India. Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was

born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

Article 9

Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

Article10

It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11

It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

Acts and Amendments

- The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship.
- Acquisition and Determination of Indian Citizenship
- There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalization. The provisions are listed under the Citizenship Act, 1955.

By Birth

Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.

- Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least

one parent is a citizen and the other is not an illegal migrant at the time of birth.

By Registration

Citizenship can also be acquired by registration. Some of the mandatory rules are:

- A person of Indian origin who has been a resident of India for 7 years before applying for registration
- A person of Indian origin who is a resident of any country outside undivided India
- A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration Minor children of persons who are citizens of India.

By Descent

A person born outside India on or after January 26, 1950 is a citizen of India by descent if his/her father was a citizen of India by birth. A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth. If a person born outside India or after December 3, 2004 has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

By Naturalization

- A person can acquire citizenship by naturalization if he/she is ordinarily resident of India for 12 years (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all qualifications in the third schedule of the Citizenship Act.
- The Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under

the provisions above ie: by birth, descent, registration or naturalization.

- The act has been amended four times — in 1986, 2003, 2005, and 2015.
- Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- Moreover, the Foreigners Act places a heavy burden on the individual to prove that he/she is not a foreigner.
- 1986 amendment: Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the principle of jus soli to everyone born in India, the 1986 amendment to Section 3 was less inclusive.
- The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.
- 2003 amendment: The amendment made the above condition more stringent, keeping in view infiltration from Bangladesh.
- Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other should not be an illegal migrant.
- With these restrictive amendments, India has almost moved towards the narrow principle of jus sanguinis or blood relationship.

- This lays down that an illegal migrant cannot claim citizenship by naturalization or registration even if he has been a resident of India for seven years.
- Citizenship (Amendment) Bill 2019: The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.
- It also reduces the requirement for citizenship from 11 years to just 6 years.
- Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- A large number of organizations in Assam protested against this Bill as it may grant citizenship to Bangladeshi Hindu illegal migrants.
- The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.
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Self Assessment Questions

- Explain the role of the Indian National Congress in the making of the Indian Constitution.
- Discuss the significance of the Government of India Act, 1935
- What is the significance of the Preamble in the Indian Constitution?

Unit – II

Fundamental Rights–Directive Principles of State Policy – Fundamental Duties-important amendments to the Constitution

Objectives

- To comprehend the significance of Fundamental Rights
- To elucidate the concept and importance of Fundamental Duties
- To compare the provisions of Fundamental Rights, Directive Principles, and Fundamental Duties in the Indian Constitution

Fundamental Rights

Definition

In this Part, unless the context otherwise requires, ―the State‖ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Laws inconsistent with or in derogation of the fundamental rights

- All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- In this article, unless the context otherwise requires
- ―law‖ includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
- laws in force‖ includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously

repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

- Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

Right to Equality

Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Nothing in this article shall prevent the State from making any special provision for women and children. Nothing in this article or in clause (*2*) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

Nothing in this article or in sub-clause (*g*) of clause (*1*) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their

admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (*1*) of article 30.]

Nothing in this article or sub-clause *(g)* of clause (1) of article 19 or clause (2) of article 29 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); and any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation

For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

Equality of opportunity in matters of public employment

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or

appointment to an office 3[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

Nothing in this article shall prevent the State from making any provision for reservation 5[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (*4*) or clause (*4A*) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation on total number of vacancies of that year.

Nothing in this article shall affect the operation of any law which provides that the incumbent of an Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

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 than the classes

mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.

Abolition of Untouchability

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.

Abolition of titles

- **N**o title, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign State.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- 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.

Right to Freedom

Protection of certain rights regarding freedom of speech, etc.,

All citizens shall have the right

- to freedom of speech and expression;
- to assemble peaceably and without arms;
- to form associations or unions 2[or co-operative societies];
- to move freely throughout the territory of India;
- to reside and settle in any part of the territory of India; 3[and]

Nothing in sub-clause (*a*) of clause (*1*) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of

the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

Nothing in sub-clause (*b*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 6[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in 1[sub-clauses (*d*) and (*e*)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, 2[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (*ii*) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

Protection in respect of conviction for offences

- No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- No person shall be prosecuted and punished for the same offence more than once.
- No person accused of any offence shall be compelled to be a witness against himself.

Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Right to education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Protection against arrest and detention in certain cases

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from

the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(*3*) Nothing in clauses (*1*) and (*2*) shall apply.

- to any person who for the time being is an enemy alien; or
- to any person who is arrested or detained under any law providing for preventive detention.

No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless. (*a*) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*b*) of clause (*7*); or

Such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (*a*) and (*b*) of clause.

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

Nothing in clause (*5*) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

Parliament may by law prescribe

The circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without

obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (*a*) of clause (*4*)];

The maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and the procedure to be followed by an Advisory Board in an inquiry under sub-clause (*a*) of clause (*4*).

Right against Exploitation

Prohibition of traffic in human beings and forced labour

Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

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 or any of them.

Prohibition of employment of children in factories, etc.,

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.

Right to Freedom of Religion

Freedom of conscience and free profession, practice and propagation of religion

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Nothing in this article shall affect the operation of any existing law or prevent the State from making any law.

Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.

The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.

In sub-clause (*b*) of clause (*2*), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

- To establish and maintain institutions for religious and charitable purposes;
- To manage its own affairs in matters of religion;
- To own and acquire movable and immovable property; and
- To administer such property in accordance with law.

Freedom as to payment of taxes for promotion of any particular religion

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 denomination.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions

No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

Nothing in clause (*1*) shall apply to an 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 institution.

No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

Protection of interests of minorities.

Any section of the 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.

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

Right of minorities to establish and administer educational institutions

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

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

The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Saving of laws providing for acquisition of estates, etc.,

Notwithstanding anything contained in article 13, no law providing for

- The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- The amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- The extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,
- Shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by 5 article 14 or article 19.

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such

law, having been reserved for the consideration of the President, has received his assent.

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

The expression ―estate‖ shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include.

- any *jagir*, *inam* or *muafi* or other similar grant and in the States of 1[Tamil Nadu] and Kerala, any *janmam* right;
- any land held under ryotwari settlement;
- any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

The expression ―rights‖, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, 2 [*raiyat, under-raiyat*] or other intermediary and any rights or privileges in respect of land revenue.

Validation of certain Acts and Regulations

Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void,

or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

Validation of certain Acts and Regulations

Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

Saving of laws giving effect to certain directive principles

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing 5[all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by 6[article 14 or article 19]; 7[*and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy]:*

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.]

Remedies for enforcement of rights conferred by this Part

The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Without prejudice to the powers conferred on the Supreme Court by clauses (*1*) and (*2*), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (*2*).

The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Constitutional validity of State laws not to be considered in proceedings under article 32.].– Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 3 (w.e.f. 13-4-1978).

Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.,

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

- The members of the Armed Forces; or
- The members of the Forces charged with the maintenance of public order; or
- Persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- Person employed in, or in connection with, the telecommunication systems set up for the purposes of any

Force, bureau or organisation referred to in clauses *(a)* to *(c)*, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Restriction on rights conferred by this Part while martial law is in force in any area

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Legislation to give effect to the provisions of this Part

Notwithstanding anything in this Constitution,.

Legislation to give effect to the provisions of this Part

Notwithstanding anything in this Constitution,

Parliament shall have, and the Legislature of a State shall not have, power to make laws—, (*i*) with respect to any of the matters which under clause (*3*) of article 16, clause (*3*) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and (*ii*) for prescribing punishment for those acts which are declared to be offences under this Part, and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (*ii*); (*b*) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (*i*) of clause (*a*) or providing for punishment for any act referred to in sub-clause (*ii*) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made

therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation

In this article, the expression ―law in force‖ has the same meaning as in article 372.

Directive Principles of State Policy

Definition

In this Part, unless the context otherwise requires, ―the State‖ has the same meaning as in Part III.

Application of the principles contained in this Part

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down 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.

State to secure a social order for the promotion of welfare of the people

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.

The State shall, in particular, strive to minimise the inequalities in income, and endeavour 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.]

Certain principles of policy to be followed by the State

The State shall, in particular, direct its policy towards securing

- That the citizens, men and women equally, have the right to an adequate means of livelihood;

- That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- That there is equal pay for equal work for both men and women;
- 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; that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

Organisation of village panchayats

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

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 want.

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.

Living wage, etc., for workers

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Participation of workers in management of industries

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

Promotion of co-operative societies

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

Uniform civil code for the citizens

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

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.

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.

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.

Organisation of agriculture and animal husbandry

The State shall endeavour to organise 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.

Protection and improvement of environment and safeguarding of forests and wild life

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

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, 2[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.

Separation of judiciary from executive

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

Promotion of international peace and security

The State shall endeavour to—

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

Fundamental Duties (Article 51(a))

The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties. It was during the 'Internal Emergency', declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The Committee suggested for inclusion of a chapter of fundamental duties, provision for imposition of appropriate penalty or punishment for non-compliance with or refusal to observe any of the duties and also recommended that payment of taxes should be considered as one of the fundamental duties. But these recommendations were not accepted by the Congress government.

However, under the Forty-Second Amendment, carried out in 1976, a set of fundamental duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51(a). Under this Article, this shall be the duty of every citizen of India:

It shall be the duty of every citizen of India.

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- To cherish and follow the noble ideals which inspired our national struggle for freedom;
- To uphold and protect the sovereignty, unity and integrity of India;
- To defend the country and render national service when called upon to do so;
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- To value and preserve the rich heritage of our composite culture;
- To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- To develop the scientific temper, humanism and the spirit of inquiry and reform;
- To safeguard public property and to abjure violence;
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Insertion of these Fundamental Duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, the Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their

violation. According to D. D. Basu, the legal utility of these duties is similar to that of the directives as they stood in 1949, while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

Also the duties enumerated are quite vague and can be interpreted in more than one ways. It is, therefore, very difficult to have their universally acceptable definitions. One of the duties of the citizens is to follow the noble ideals that inspired our freedom struggle, while each section, which participated in freedom struggle, had its own ideals. The term 'noble ideal', therefore, becomes ineffable and vague. Another duty expects every citizen of India to value and preserve the rich heritage of composite culture. A question that can be asked as to which is India's composite culture. Similarly, it is difficult to define scientific temper, humanism or spirit of enquiry.

Notwithstanding these criticisms, the fundamental duties have been the accepted part of the Constitution. These duties may act as a social check on reckless activities indulged in by irresponsible citizens and as a reminder to citizens that while exercising or claiming the right they have also to be conscious of these duties they owe to the nation and to their fellow citizens. In brief, the incorporation of fundamental duties in the Constitution was, no doubt, an attempt to balance the individual's civic 'freedoms' with his civic 'obligations' and, thus, to fill a gap in the
Constitution.

Self Assessment Questions

- Discuss any three Fundamental Rights guaranteed by the Indian Constitution
- xplain the purpose of Directive Principles of State Policy and their significance in governance.
- What are Fundamental Duties, and why were they incorporated into the Indian Constitution?

Unit – III

Indian Federalism: Distribution of powers: Legislative – Administrative and Financial relation- Emergency Provisions

Objectives

- To grasp the concept of federalism and its application in the Indian context.
- To examine the concurrent list and understand how it facilitates cooperative federalism.
- To understand the provisions related to national emergency,

Indian Federalism

Historical Background

Historically, the Government of India (GOI) was unitary in nature. However, at the end of First World War, it began to be realized that purely unitary government was not befitting to Indian system of administration. The Act of 1919 introduced 'diarchy', which can be regarded, as a first step towards federalism in British India. Further, the enactment of the Government of India Act, 1935 specifically provided for provincial autonomy. When the Constituent Assembly met in 1946, it was agreed upon to have a federal form of government in India. The Constitution of India incorporated many provisions of 1935 Act, but without using the word 'federalism' anywhere in its text.

Federal Features of Indian Constitution

Rigidity

Making amendments to the Constitution is a very rigid, process as compared to passing of ordinary laws. Amendments pertaining to those parts of the Constitution, which define the relationship between the Union and States, are required to be passed by a two-third majority of the members present and voting in the Parliament and be ratified by half of the states of the Indian Union.

Written Constitution

In India, we have a written Constitution, which is the supreme law of the land. Both the Central and State governments derive their powers from it. It serves, as a written contract between the two levels of governments.

Division of Powers

The very objective for, which a federation is formed, is the division of powers between the union and the states. There seems to be a comprehensive attempt to define the limits of the Central and State governments in the Indian Constitution. The Constitution has three lists, List I that is the Union List, List II that is the State List, and List III that is the Concurrent List. List III includes residuary subjects on which both the governments can make laws. In fact, it was presumed that central coordination in certain fields would be desirable in the national interest and, therefore, the subjects of national and common interest were placed in the concurrent jurisdiction of the two governments. This exhaustive attempt to define the jurisdiction of the two governmental levels supports the federal claim of the Indian Constitution.

Independent Judiciary

Indian Constitution provides a system of judicial review of the governmental legislations by the Supreme Court and the High Courts. Judiciary can set aside an Act of any government, if it goes against the provisions of the Constitution or if, in its opinion, has been passed without concurrence to the procedure laid down by the law.

Bicameralism Bicameralism means there are two houses of Parliament-a lower house or a popular house having representatives elected directly by the people; and an upper house or a second chamber representing the federating units. The Indian Federalism Indian Parliament is also bicameral. It has two houses, namely the

lower house, that is, the Lok Sabha; and the upper house namely the council of states, that is, the Rajya Sabha

Unitary Features of Indian Constitution

The features that highlight the unitary trend of our Constitution are discussed below:

Absence of word 'Federation' in the Constitution

Our Constitution makers have conspicuously avoided the use of the word 'federation' in the Constitution. This can be considered, as a deliberate attempt on part of the constitution makers to keep India unitary in spirit. India has been described, as a 'Union of States' in the Constitution.

Single Constitution for the Union and States

Both the Union and state governments derive their authority from the Constitution. States do not have their own constitutions. This upholds uniformity in adherence to laws.

Single Citizenship

Indian Constitution does not provide for dual citizenship. Every citizen of India is Indian by birth. There is only one nationality.

Centre's Supremacy Theoretically, in a federation, both the governments should be independent of each other and none should be allowed to encroach upon the autonomy of the other. In our federation, we have a strong Centre, as compared to the states. Owing to its strong position politically, economically, and financially, the Centre can makes inroads into the provincial sphere of action. This does not uphold the federation spirit. It is not just 'distribution of powers' but it is the constitutional guarantee of the state autonomy that makes the 'distribution of powers' the essence of federalism. In Indian case, a powerful Centre with a large jurisdiction can always show its supremacy over the states. The Unitary Territories in India are also administered by the central government. Other than this, the 42nd

Constitutional amendment has empowered the Central government to deploy armed forces in any state to deal with law and order situations. The Indian government follows an integrated judicial system with composition of state High Courts being decided by the centre. Besides, the Supreme Court of India is authorized to reverse the decisions of these courts.

Dominance of Parliament

The Parliament reigns supreme in the following manner:

- As per Article 249, the Rajya Sabha can transfer any of the subjects included in the state list to Parliament, when viewed from the perspective of national interest. However, this has set in a wrong precedent. This is usually resorted to when different political parties hold the forte at the centre and states.
- Under Article 253, Parliament has got the supreme power to make laws for the whole or any part of the country. Likewise, it can take decisions for implementing any treaty, agreement, and convention with any other country or countries.
- Parliamentary supremacy over the State Legislature is also indicated in Article 3. By virtue of this Article, the Union Government can at any time change the boundaries of any existing state, merge it with some other state, create a new state out of an existing one, or abolish a state altogether.

Appointment of Governors and other High Appointments

The Governors are appointed by the President at the behest of the Centre. State governors hold office at the pleasure of President. There is no effective say of a state government in regard to the appointment or removal of a Governor. A Governor merely acts, as an agent of the centre. Apart from the appointment of Governors, the judges of the High Courts, who come under the jurisdiction of the state, are appointed by the President of india. Centre also dominates

the States in regard to All India Services (AIS) like Indian Administrative Services (IAS) and Indian Police Services (IPS). Members of AIS are appointed by the President of India. The Parliament may also create a new AIS, if the Rajya Sabha passes a resolution by a 2/3rd majority of its members present and voting. The manner of posting and promotion of the members of AIS is also decided by the Centre. Disciplinary action against such officers can be initiated by the UPSC alone. The Election Commissioner and the Comptroller and Auditor General of India are the central government employees and they do work for the states also. This reflects the state governments are virtually run by the high officials of the Union Government.

Provisions regarding Emergency

Articles 352, 356, and 360 provide for the emergency powers. They are bestowed on the President of India to be exercised owing to the existence of either condition, that is, when there is threat to sovereignty of the nation or break down of constitutional machinery in a State or financial instability and bankruptcy of any government respectively. These powers are so sweeping in their effects that the very nature of the Indian state gets altered into a purely unitary one.

Distribution of powers

Legislative Sphere

The legislatives powers are divided into three exhaustive lists, as per the Seventh Schedule. These lists are Union List, State List, and Concurrent List. The Union List included 97 subjects and now has 100 subjects. Some of these include defence, war & peace, railways, foreign affairs, etc. The State list, which had 66 subjects initially and now, has 61 subjects, such as public health, agriculture, police, irrigation, prisons, etc. are the ones on, which the states are free to legislate. The Concurrent List, which earlier had 47 subjects and now

include 52 subjects, are the ones on, which both the Union and State governments can legislate. However, in case of conflict, the Centre prevails. Residuary subjects in the Constitution have been left with the Union government, which refers to a subject that is not included in any of the three lists. As per Article 249, the Rajya Sabha can pass a resolution by two-third majority of its members present and voting that a particular subject in the state list is of national importance and need to be transferred to Parliament to legislate. Moreover, during emergency Parliament gets power to legislate on the entire state subjects. As per Article 250, such legislation ceases to have any effect after expiry of six months of the ceasing of emergency. Similarly, the Union Parliament may also legislate on any State subject, if the legislatures of two or more States require the Parliament to do so. Some of the selected subjects under the three lists are depicted in Chart No.5.1 below.

Administrative Sphere

Articles 257, 258, 262, and 263 of the Indian Constitution deals with the administrative arrangement between centre and the states. Article 257 provides that the states will exercise their executive powers in such a way, as not to impede or prejudice the exercise of executive powers of the Union. The GoI may give directions to a State, as may appear to it necessary for the purpose. Article 258 provides that the President can conditionally or unconditionally entrust to the states functions to, which the executive power of the Union extends. Article 262 empowers the President to provide the law for adjudication of any dispute among States with respect to the use, distribution, and control of river waters. Article 263 deals with the establishment of an Inter-State Council. All these provisions do ensure a cordial relationship between the two levels of government. However, during an emergency, the power to give directions to the state vis-à-vis the

exercise of executive power relating to any matter rests with the centre.

Financial Sphere In a federal set up, it is necessary that the division of legislative and executive powers must be accompanied equally by division of financial powers and resources too. Article 264 to 300 of the Constitution provide for allocation of financial resources:

- Exclusive Financial Sources of Union Government

  The sources of revenue exclusively under the domain of the Union are enumerated in the Union List. Corporate tax, currency, foreign exchange, customs and export duties, income tax, estate duty, posts and telegraphs, railways, etc. come under the List.

- Financial Sources of State Governments

  Capitation taxes, duties in respect of succession to agricultural land, taxes on agricultural income, land revenue, taxes on land and buildings, excise duty on goods produced or manufactured in the states, such as, alcohol, opium, etc.; taxes on consumption of electricity, taxes on sale of goods other than newspapers, taxes on goods and passengers carried by road or inland waterways, taxes on luxuries, and taxes on entertainments and amusements are the sources of revenue of the states.

- Taxes Levied by the Union but Collected and Appropriated by States

  Indian Federalism Article 268 lays down that certain taxes that shall be levied by the Union but shall be collected and appropriated by states. These are: Stamp duties on bills of exchange, cheques, promissory notes, bills of lending, letter of credit, policies of insurance, transfer of shares, etc. Excise

duties on medicinal and toilet preparations containing alcohol and opium.

- Taxes Levied and Collected by Union but Assigned to States

Article 269 of the Constitution provides for duties and taxes that shall be levied and collected by the Union government but shall be assigned to the States. These include estate duty in respect of property, taxes on railway fares and freights, taxes on sale/purchase of newspapers, and terminal taxes. Besides the above, there is also provision of taxes, which are levied and collected by the Union but distributed between centre and states such as taxes on income and excise duty. There is a provision of grants-in-aid to the states. Articles 275 and 282 contain an elaborate system for conditional and unconditional grants. Parliament may give grants-in-aid to the needy States. The States can also make requests for borrowing for their specific projects. Article 280 provides for a Finance Commission to be appointed by the President at a five years interval. The Commission is responsible for the assessment of needs of the States and, as per, recommend for the financial assistance required. It makes recommendations for the distribution of the proceeds of taxes between the union and states. It also suggests the principles that should govern the grantin-aid to the States.

Administrative and financial Relation

Administrative Relations

The administrative relations between the union and the states may well be studied as under: (i) normal and (ii) emergency conditions. The constitution has devised several techniques of control to be exercised over the states by the Union government under normal circumstances. The states shall not interfere with the legislative and executive policies of the Union government.

Techniques of Union control over States

In normal times:

Even in normal times, the Indian Constitution has devised techniques of control over the states by the Union to ensure that the state governments do not interfere with the legislative and executive policies of the union and also to ensure the efficiency and strength of each individual unit which is essential for the strength of the union. Some of these avenues of control arise out of the executive and legislative powers vested in the President, in relation to states. For instance, the President of India has power to appoint and dismiss the Governor, (Art. 155-156) and other dignitaries in the state, if they were found guilty.

The President has also got some powers relating to the legislation. His previous sanction to introduce legislation in the state legislature (Art. 304); assent to specified legislation which must be reserved for his consideration (Art. 31A), instruction of President is required for the Governor to make ordinances relating to specified matters (Art. 213), veto power in respect of other State bills reserved by the Governor (Article 200).

Specific Agencies for Union Control

The fathers of Indian Constitution, in order to safeguard the infant democracy of India provided several means to control administrative affairs of the states. They are:

Directions to the State Governments

The Union Government is competent to give directions to a state government and to secure compliance with such directions. President's rule can be imposed, in case the State government fails to comply with any directions issued by the union government in the exercise of its executive powers.

Delegation of Union functions

The Constitution has enabled the union and the state governments to exchange their respective administrative functions. For example, the President with the consent of the State government may entrust any executive function of the union to the states (Art. 258) while legislating on a Union Subject, Parliament may delegate powers to the state governments and their officers in so far as the statue is applicable in respective states. Conversely, a State government may, with the consent of the Government of India, confer administrative functions upon the latter relating to State Subjects.

Disputes relating to Water

Article 262 authorises the Parliament to provide by law for adjudication of any dispute or complaint with respect to the uses, distribution or control of the waters of any Inter-State rivers and River Valleys under clause (2) of this Article. Parliament may by law provide that neither the Supreme Court nor any other court shall have any jurisdiction in respect of such disputes and complaints relating to water of Inter-State rivers and River Valleys. Under the Article 262, Parliament passed Inter-State Water Disputes Act, 1956. This Water Disputes Act empowers the Central government to set up a Tribunal for the adjudication of such disputes. The decision of the Tribunal shall be final and binding on the parties to the disputes. Neither Supreme Court nor any other court shall have jurisdiction in respect of any water dispute which may be referred to such a Tribunal under that Act.

Inter-State Council (Art. 263)

The President of India is empowered to establish Inter-state Council, if at any time it appears to him that the public interests would be severed thereby. The duty of Inter-State Council is to inquire and advise upon disputes which may have arisen between states. It also

investigates and discusses subjects of common interest between the union and states or between two or more states, for instance, research in such matters as agriculture and forestry.

Grants-in-aid (Art. 275)

The Constitution of India has given the Parliament the power to make such grants as it may deem necessary to give financial assistance to any state which is in need of such assistance. By means of this, the union can correct Inter-state disparities in financial resources and can exercise control and co-ordination over the welfare schemes of the states on a national scale. The Union government also provides for specific grants for welfare of Scheduled Tribes and development of tribal areas.

All India Services (Art. 312)

There are certain services common to the union and the states called 'All India Services', of which the Indian Administrative Service and the Indian Police Service are the existing examples. "The constitution also gives the power to create additional All India Services, if the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that is necessary or expedient in the national interests".

Advisory bodies

There are a few advisory bodies at the union level which co-ordinate the activities of the states in India, for example, National Planning Commission (1950) and National Integration Council (1986).

In Emergencies

The Indian Constitution provides for three kinds of emergency situations where the provisions available in the constitution can be pressed into service. These three situations are related to imposition of National Emergency (Art. 352) when there is war, threat of war or internal rebellion. The second situation is related to the breakdown of

the constitutional machinery in the state where the centre intervenes through the President of India for the imposition of President's Rule in the state under Article 356. The third situation is related to grave financial crisis and there is need to impose Financial Emergency under Article 360. The Government of India, under proclamation of emergency, shall acquire the power to give directions to a state, on any matter. Though the state government will not be suspended, but it will be under the complete control of the union executive. During the operation of emergency, Parliament shall have the power to legislate on any matter in the State List. It can modify the provisions of the constitution relating to the allocation of financial resources.

Financial Relations

Money is the life-blood of all governments without which they could not function and undertake obligations to improve the lots of the people. Since in a federal polity two sets of governments operate, it is necessary that each of them has sufficient funds. It is well said that "No system of federation can be successful unless both the union and the states have at their disposal adequate financial resources to enable them to discharge their respective responsibilities under the Constitution". To achieve this, Indian Constitution has made elaborate provisions relating to the distribution of the taxes as well as non-tax revenue and the power of borrowing, supplemented by provisions for grants-in-aid by the union to the states.

Principles underlying distribution of Tax Revenues

The Indian Constitution makes a distribution between the legislative power to levy a tax and the power to appropriate the proceeds of a tax so levied. In India, the powers of a Legislature in these two respects are not identical.

Distribution of Legislative Powers to levy taxes

The Legislative power to make a law for imposing a tax is divided between the union and the states by means of specific entries in the union and state Legislative Lists in the VII Schedule of the Indian Constitution. For instance, the State Legislature has the power to levy an estate duty in respect of non-agricultural land belongs to Parliament. Similarly, it is the State Legislature which is competent to levy a tax on agricultural income, while the Parliament has the power to levy income tax on all incomes other than agricultural. The residuary power as regards taxation belongs to Parliament and the Gift Tax and Expenditure Tax have been held to derive their authority from this residuary power. There is no concurrent sphere in the matter of tax legislation.

Limitations on States' Taxing power

A State Legislature has the power to levy any of the taxes enumerated in the state list, but this power is subject to certain limitations imposed by the substantive provisions of constitution. The following are a few examples of this kind.

Profession Tax (Art. 276)

A State Legislature is empowered to levy a tax on profession, trade calling or employment. But the total amount payable by a person or an authority in the state shall not exceed Rs.2500 per annum.

Sales Tax (Art. 286)

The power to impose taxes on sale and purchase of goods other than news papers belong to the state, but taxes on imports and exports and taxes on sales in the course of Inter-State trade and commerce are exclusive union subjects. Article 286 is intended to ensure that sales taxes imposed by states do not interfere with imports and exports or Inter-State trade and commerce, which are maters of national

importance and should therefore, be beyond the competence of the states.

Tax on consumption or sale of electricity (Art. 287)

The State Legislatures shall not impose a tax on the consumption or sale of electricity which is consumed by the Government of India or sold to the Government of India for consumption by that government without the authorization of law of Parliament. Exemption of Union and State Properties from Mutual Taxation (Art. 285, 289)

The property of the union is exempted from all taxes imposed by a state or by any authority within a state, but Parliament may authorize to do so. Conversely, the property and income of a state is exempted from union taxation, but the other than the ordinary business of the government shall not be exempted from union taxation. The immunity again relates to a tax on property. Yet, the property of a state is not immune from customs duty.

Tax-Revenue of the Union and the States: The distribution of the tax-revenue between the union and the states is given in the following Table.

Union Taxes (Exclusive)	State Taxes (Exclusive)
Customs duty, Corporation tax. Taxes on Capital value of assets of individuals and companies Surcharge on income tax etc., Fees in respect of matters in the Union List.	Land Revenue, Stamp Duty except in documents included in the Union List. Succession duty, Estate duty, Income tax on agricultural land, Taxes on passengers and goods carried on inland waterways. Taxes on lands and buildings, Mineral rights, Taxes on animals and boats, Road Vehicles, Advertisements, Consumption of electricity, Luxuries and amusements, Taxes on entry of goods into local areas, Sales tax, Tolls, Fees in respect of matters in the State List, Taxes on professions, Trades etc.,

Source: D.D.Basu, Introduction to the Indian Constitution, 2005, p.327.

Scheme of Distribution of Tax Revenue between the Union and the States

Article 268 provides the scheme of the distribution of revenue between the union and the states. The states possess exclusive jurisdiction over taxes enumerated in the State List. The Union is entitled to the proceeds of the taxes in the Union List. The Concurrent List includes no taxes. However, it is to be noted that while the proceeds of taxes within the state lists are entirely retained by the states, proceeds of some of the taxes in the Union List may be allowed, wholly or partially to the States. The constitution mentions the following categories of the union taxes which are wholly or partially assigned to the states.

Duties Levied by the Union but collected and appropriated by the States (Art. 268)

Stamp duties on bills of exchange, excise duties on medicinal and toilet preparations containing alcohol, though they are included in the Union List and levied by the union government. However, it is shall be collected by the state governments which collects and appropriate these taxes, states by in so far by whom they are collected.

Taxes Levied and collected by Union but Assigned to States (Art. 269)

There are certain taxes which are levied and collected by the union but are assigned to the states in which they are collected. Such taxes include like the duties in respect of succession to property other than agricultural land, estate duty in respect of property other than agricultural land, terminal taxes on goods or passengers carried by railway, air or sea, Taxes on railway fares and freights, taxes on stock exchange other than stamp duties, taxes on sale of and advertisements

in newspapers, taxes on the sale or purchase of goods other than newspapers, where such sale or purchase taken place in the course of Inter-State trade or commerce, taxes on Inter-State consignment of goods.

Taxes levied and collected by the Union and distributed between the Union and the States (Art. 270, 272)

There are certain taxes which shall be levied as well as collected by the union, but their proceeds shall be divided between the union and the states in a certain proportion, in order to effect an equitable division of the financial resources. These are:

- Taxes on income other than on agricultural income (Art. 270).
- Duties of excise as are included in the Union List, excepting medicinal and toilet preparations may also be distributed, if Parliament by law so provides (Art. 272).

Non-tax Revenues of the Union and the State (Source of Receipts)

Union States	Union States
Railways; Posts and Telegraphs, Broadcasting, Opium, Currency and mint, Industrial and Commercial undertakings of the Central Government relating to the subjects over which the Union has jurisdiction.	Forests, Irrigation Commercial enterprises like Electricity, Road Transport, Industrial undertakings such as soap, Sandalwood, iron and steel in Karnataka paper in Madhya Pradesh, Milk supply in Mumbai etc.

Source: Johari, J.C., The Constitution of India, 1996, p.329.

Grants-in-Aid

Even though, the Union government assigns to the state governments of a share of the central taxes, but the resources of all the States may not be adequate to discharge their functions properly. The constitution, therefore, provided that grants-in-aid shall be made in each year by the union to such states as Parliament may determine to

be in need of assistance particularly for the promotion of welfare of tribal areas, including special grants to Assam in this respect (Art. 273).

Finance Commission (Art. 280)

Article 280 of Indian Constitution provides for the constitution of a Finance Commission to recommend to the President certain measures relating to the distribution of financial resources between the union and the states. For example, the percentage of the net proceeds of income-tax which should be assigned by the union to the states and the manner in which the share to be assigned shall be distributed among the states.

It shall be the duty of the Finance Commission to make recommendations to the President as to –

- The distribution between the union and the states of the net proceeds of taxes which are to be or may be, divided between them under this chapter and the allocation between the states of the respective shares of such proceeds.
- The principles which should govern the grants-in-aid of the revenues of the states out of the Consolidated Fund of India.
- The measures needed to augment the Consolidated Fund of a state to supplement the resources of the Panchayats in the states.
- The measures needed to augment the Consolidated Fund of a state to supplement the resources of the Municipalities in the State, and
- Any other matter referred to the Commission by the President of India in the interests of sound finance.

Borrowing powers of the Union and the States

The Union government has unlimited power of borrowing, upon the security of the revenues of India either within India or

outside. The Union executive exercises this power subject only to such limits as may be fixed by Parliament from time to time (Art. 292).

The borrowing power of a state is, however, subject to a number of constitutional limitations. They are;

The state governments cannot borrow outside India. Under the Government of India Act, 1935, the states had the power to borrow outside India with the consent of the centre but this power is totally denied to the states by the constitution. The Union shall have the sole right to enter into the International money market in the matter of borrowing.

State Governments could borrow within the territory of India

The State executive shall have the power to borrow within the territory of India upon the security of the revenues of the state subject to the following conditions. They are given below:

- Limitations as may be imposed by the State Legislature.
- If the Union has guaranteed an outstanding loan of the State, no fresh loan can be raised by the State without consent of the Union Government.

Government of India may itself offer a loan to a state, under a law made by Parliament. So long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the state without the consent of the Government of India. The Government of India may impose terms in giving its consent as above (Art. 293). From the scheme of the distribution of powers between the centre and the states it appears that the framers have opted for a stronger centre. Article 256 to 263 provide for Union control over states even in normal times through various ways. The centre has power to give directions to the states as to the manner in which they shall exercise their executive powers. The constitution provides a coercive sanction for the enforcement of the directions through Article 356. Thus, the state

governments are not even in their own sphere independent. This is a very substantial limitation on the autonomy of the states. The control of centre over the states is also evident in the scheme of distribution of revenues. The sources of income of the centre are more than that of the states. While the responsibilities of the states in a welfare state are mani-fold. They are responsible for the well-being of the citizens. For this purpose, they need sufficient funds. It is true that states are assigned a considerable amount of income from taxes levied by the union, but they are still dependent on the union in this matter. The shares in taxes are given to the states on the recommendations of the Finance Commission. This is not a statutory body.

Large parts of the central assistance to the states are given on the recommendations of the Planning Commission which is a quasipolitical body. These grants are discretionary. Out of the total grants made in a year to the states in any year only 30 percent is under the purview of the Finance Commission and the remaining 70 percent is discretionary grant given to the states on the advice of the Planning Commission. The financial adjustments between the union and the states must be studied in the context with the underlying principle accepted by the constitution viz., the central control for consolidating and strengthening the Unity of India. This tendency towards centralization in the distribution of revenues is seen in modern days practically in all federations. The ultimate responsibility for the welfare of the country rests on the centre. In this background, the demand for more autonomy, more powers and more funds for the state has become vociferous. The entire subject of centre-states relations have been reviewed by the Sarkaria Commission.

Emergency Provisions

- A state of emergency in India refers to a period of governance under an altered constitutional setup that can be proclaimed by

the President of India, when they perceives grave threats to the nation from internal and external sources or from financial situations of crisis. Under the advice of the cabinet of ministers and using the Constitution of India, the President can overrule many provisions of the constitution, which guarantee fundamental rights to the citizens of India and acts governing devolution of powers to the states which form the federation.

- The term emergency maybe defined as a difficult situation arising suddenly and demanding immediate action by public authorities under powers specially granted to them by the Constitution. WHAT IS AN EMERGENCY ?
- The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360.
- The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.
- Dr. Ambedkar claimed that the Indian federation was unique in as much as in times of emergency it could convert itself into an entirely unitary state.
- The Constitution of India stipulates three types of emergency
  1. National Emergency (Article 352)
  2. State Emergency (Article 356)
  3. Financial Emergency (Article 360).
- In the history of independent India, a state of emergency has been declared thrice.
- The first instance was between 26 October 1962 to 10 January 1968. during the India-China war, when "the security of India" was declared as being "threatened by external aggression".

- The second instance was between 3 December 1971 to 21 Marchϖ 1972, which was originally proclaimed during the Indo-Pakistan war.
- The third proclamation between 25 June 1975 to 21 March 1977ϖ under controversial circumstances of political instability under Indira Gandhi's prime ministership, on the basis of "internal disturbance"
- The Term "internal disturbance" substituted by the wordsϖ "armedrebellion" by 44th amendment act 1978.

Proclamation of Emergency was issued by President

- First time on the ground of external aggression from Chinese side on October 26, 1962 and continued in force until January 10, 1968.
- Second time on the ground of external aggression from Pakistanϖ side on December 3, 1971 and continued till March 27, 1977.
- Third time on the ground of internal disturbance on June 25, 1975ϖ and continued till March 21, 1977.

National Emergency (Articles 352 to 354, 250, 83, 358, 359).

After 44th Amendment, It is the President who can proclaim an Emergency when he received in writing a decision of Union Cabinet to that effect.

Grounds for Proclamation of Emergency If the security might be threatened by:

War External Aggression

Armed Rebellion

Internal Disturbance

Publication of Proclamation of Emergency

- Article 352 does not prescribe any particular mode in which a Proclamation should be published.

- The Proclamation may be published in such manner as theϖ authority issuing it would deem fit in order to make it known to the public.
- Satisfaction of the President – Its Judicial Reviewϖ Ghulam Sarwar v. Union of India.

  State of Rajasthan v. Union of India.

Territorial extent of Proclamation of Emergency Article 352 (1)

- Article 352 initially did not contain a provision regarding territorial extent where Proclamation could be confined.
- The Constitution (42nd Amendment) Act, 1976, amended Clause (1)ϖ of Article 352 which enables the President to make a Proclamation of Emergency: "
- In respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation".

Duration of Proclamation of Emergency – Without Approval Article 352 (4)

- A Proclamation of Emergency made under Article 352 (1) may continue in force for a period of ONE MONTH from the date of proclamation without approval by Houses of Parliament.
- Prior to the 44th Amendment, the period was of two months.
- If Proclamation is issued at the time when the House of People has been dissolved, during the period of one month, the Proclamation expires within 30 days from the date on which the House of People first sits after its reconstitution after elections.
- If only one of either Houses passes the resolution, theϖ Proclamation ceases to operate at the expiration of this one month.

Duration of Proclamation of Emergency – With Approval Article 352 (5)

Once approved by Houses of Parliament, Emergency may continue in force for SIX MONTHS from the date of such approval. Prior to the 44th Amendment, 1978, once approved by both theϖ Houses, the Proclamation could continue in force indefinitely, until the President revoked it by making another Proclamation for this purpose. If the resolutions for approval are passed by two Houses onϖ different dates, the period of six months would run from the date of the passing of the later of the resolutions. The Proclamation can be renewed after every six months byϖ passing from both the Houses.

Procedure for Approval of Proclamation Article 352 (6)

Prior to the 44th Amendment, 1978, for approving the Proclamation of Emergency, were required to be passed by the simple majority of members present and voting. The Constitution (44th Amendment) Act, 1978 amended articleϖ 352, providing the same 'special majority ' procedure. A Proclamation of Emergency needs to be approved by resolutionsϖ passed in each House of Parliament, by the majority of the total membership of that House and by the majority of not less than two thirds of the members of the House present and voting.

Revocation of Proclamation of Emergency Article 352 (2) and (7)

Prior to the 44th Amendment, 1978, a Proclamation of Emergency once approved by both Houses of Parliament could be revoked only by President. Thus, the Executive was the sole judge to decide as to when the Proclamation should be revoked. The 44th Amendment, 1978, has made the following importantϖ changes in regards to revocation of Emergency – Proclamation of Emergency may be revoked by the President by making a subsequent

Proclamation. A Proclamation of Emergency shall on its own cease to operate on the expiration of the period for which the Proclamation has been approved by the Houses of Parliament. President shall revoke the Proclamation of Emergency, if the Lok Sabha passes a resolution by a special sitting held for this purpose.

Consequences of Proclamation of Emergency

The following consequences ensue on the Proclamation of Emergency made under Article 352: Extension of Executive Power of the Union Article 353 (a) Legislative Power of Parliament extends to State Matters Articleϖ 250 and 353 (b) Alteration in Distribution of Revenue Article 354 (1) Extension in Distribution of Houses of People and Legislativeϖ Assemblies of States Article 83 and Article 172 Suspension of Fundamental Freedoms of Article 19 [Article 358]ϖ Suspension of Enforcement of other Fundamental Rights Articleϖ 359.

State Emergency

Arts. 356 and 357 - the failure of the constitutional machinery in a State. President – receives a report from the Governor of a State orϖ otherwise- satisfied - a situation has arisen in which the government of the State cannot be carried out in accordance with the provisions of the Constitution.

If The President:

Assume functions of the Government of the State and powers vested in the Governor or any body or authority in the State. Powers of the Legislature of the State exercised by Parliament. Any other incidental or consequential provision necessary to give effect to the object of proclamation. Proclamation to be laid before each House of Parliament and has to be approved within two months.

The life span of the proclamation- 6 months – for extension - to afford an opportunity to the parliament to review Such a proclamation

may be revoked or varied [Art. 356 (2) If the Lok Sabha is dissolved. [Proviso to Art. 356(3) The maximum period for which a proclamation can remain in force in a State is 3 years. [First Proviso to Art. 356(4) But the 44th Amendment has introduced a new provision to put restraint on the power of Parliament to extend a proclamation issued under Art. 356 beyond one year. Again the Parliament may pass a resolution approving continuance of a proclamation beyond one year provided the following two conditions are satisfied:

A National Emergency is already in operation; or if b) The Election Commission certifies that the election to the State Assembly cannot be held. Thus a proclamation under 356 (1) expires in the following modes: a) After two months of its making if the Houses does not approve b) Before two months if the Houses refuses to accept the same c) After 6 months if no further approval was given by the Houses d) The overall limit of 3yrs for extending the proclamation has reached e) The date on which the President issues a revocation of the declaration of the proclamation.

Self Assessment Questions

- Describe the legislative powers of the Union and the states as outlined in the Indian Constitution.
- Explain the circumstances under which emergency provisions can be invoked in India.
- Analyze recent legislative or policy developments impacting federalism, such as the implementation of the Goods and Services Tax

Unit – IV

Union Government – President: Election – Powers and Functions – Cabinet: Prime Minister – Parliament Composition, Powers and functions- Process of lawmaking – Speaker – Parliamentary Committees – Supreme Court of India:Composition, powers and functions

Objectives

- To comprehend the structure and functioning of the Union Government of India
- To evaluate the role of the President in various constitutional functions
- To comprehend the composition, powers, and functions of the Parliament of India

Union Governance

We quite often discuss about the President of India, the Prime Minister, Ministers, bureaucrats, politicians and others. These interactions happen in our homes, at our offices, tea-stalls, canteens and even on street corners. Have you ever pondered over it and wondered why do we discuss these people so often? It is because being key functionaries of the government their views and actions, in one way or the other, affect us. The government plays a critical role in shaping the development and quality of life of the people of a country. That is why, we want to know more about them. Since our country is a federation, we have governments at the union and the state levels, besides having local governments at the grassroot level, villages, cities and towns. Both the Union and the State governments are organized and function based on the principles of parliamentary system of government. Accordingly, the Constitution of India has made elaborate provisions for the structure and functioning of all the three branches of the government, executive, legislature and judiciary. The President and the Council of Ministers with the Prime Minister at its head constitute the executive branch of the Union government. The Parliament is the

legislative branch and the Supreme Court constitutes the judicial branch. In this lesson, we shall discuss the structure and functioning of these branches of the government.

The President

The illustration below is showing the Republic Day Parade. We celebrate 26 January as Republic Day every year. India is known as a Republic. Do you know why? It is because our Head of the State, the President of India is elected. It is not so in Great Britain where the Head of State happens to be either the King or the Queen. The office there is hereditary.

Process of Election of the President

The President is indirectly elected by an Electoral College which consists of the elected members of both the Houses of Parliament as well as of State Legislative Assemblies. Moreover, the elected members of the Legislative Assemblies of the Union Territories of Delhi and Puducherry (earlier known as Pondicherry) also participate in this election. The voting is by secret ballot. She/he is elected according to the system of proportional representation by means of the single transferable vote

Qualifications for election as President

In order to be qualified for election as President, a person must

- Be a citizen of India;
- Have completed the age of 35 years;
- Be qualified for being elected as a member of the House of the People (Lok Sabha); and
- Not hold any office of profit under the government of India, any State government or under any local authority or any other authority of the said government.

Term of Office

The President is elected for a term of five years, but even after the expiry of the term, he/she may continue to hold office until his/her successor enters the office. There is a provision for the re-election of a person who is holding or who has held the office as President. A vacancy in the office of the President may be caused in any of the following ways:

- in the event of his/her death;
- if he/she resigns;
- if he/she is removed from office by impeachment. Impeachment (a resolution to remove the President for his/her unconstitutional act need) to be adopted by a special majority of votes in both the Houses of Parliament

As provided in the Constitution, in the event of the occurrence of any vacancy in the office of the President, the Vice President acts as President until the date on which a new President is elected and enters upon his/her office. But the Vice-President can act as the President for not more than six months

The emoluments, allowances and privileges of the President are determined by a law passed by the Parliament. The President used to get a monthly pay of Rs. 10,000 as per the Constitution. It was raised to Rs. 50,000 in 1998 and again to Rs. 1,50,000 in 2008. He/She also has other perks and allowances and lives in an official residence popularly known as Rashtrapati Bhawan in New Delhi.

Powers of the President

As we have seen earlier, the President is Head of the State. It is the highest public office in the country. All executive actions of the government of India are carried out in his/her name. The President has the following powers:

Executive Powers

The Constitution of India vests the executive powers of the Union in the President. He/She appoints the Prime Minister, who is the leader of the majority party or group of parties having majority in the lower house, the Lok Sabha. He/She also appoints other members of the Council of Ministers on the recommendations of the Prime Minister. Since the President is the formal head of the administration, all executive actions of the Union must be expressed to be taken in the name of the President. The executive power of the President includes the power of appointment of Governors in the States, the Attorney General of India, the Comptroller and the Auditor General of India, the Ambassadors and High Commissioners as well as the Administrators of the Union Territories. He/She also appoints the Chairman and Members of the Union Public Service Commission as well as the Chief Justice and Judges of the Supreme Court and the High Courts. Moreover, the President is the supreme commander of the Armed Forces and appoints the Chiefs of the three wings, Army, Airforce and Navy. The President has the power to remove: (a) a Minister; (ii) the Attorney General of India (iii) Governors of the States; (iv) the Chairman and Members of the Union Public Service Commission (on the report of the Supreme Court) (v) the Chief Justice And Judges of the Supreme Court and High Courts and (vi) the Chief Election Commissioner and the Election Commissioners on an address of parliament. All diplomatic work is conducted and all international treaties and agreements are negotiated and concluded in his/her name.

Legislative Powers

The President is an integral part of the Parliament and in this capacity he/she enjoys many legislative powers. The President addresses the Parliament every year at the commencement of the first session and after each general election to the Lok Sabha. He/She

summons and prorogues the sessions of Parliament and can dissolve the Lok Sabha on the advice of the Council of Ministers. Without his/her assent no bill can become a law or an Act. If the Lok Sabha and the Rajya Sabha fail to agree on the passage of any bill, the President can call a joint session to resolve the issue. Whenever Parliament is not in session, the President on the request of the Prime Minister, can issue an ordinance, which has the force of a law.

Financial Powers

In addition to the above mentioned executive and legislative powers, the President enjoys certain financial powers. No money bill can be introduced in the Lok Sabha without his/her prior recommendation. In other words, all the money bills are initiated in the Lok Sabha only with the assent of the President. You must have heard about the Budget. It is a document which contains the details of annual income and expenditure of the Indian government. The President gives his consent for it to be laid before the Lok Sabha before the beginning of every financial year.

Judicial Powers

The President of India, as Head of the State, possesses certain special judicial prerogatives. He/She has the power to grant pardon or reduce sentence of a person convicted of offence. For example, he/she can suspend, commit or reprieve the sentence of a criminal convicted by a court of law, or even by a military court.

The President and Emergency Provisions

We have discussed so far the powers of the President of India that are exercised during normal period. Over and above these powers, he/she has important powers that are exercised during abnormal situations. These are known as emergency powers. The Constitution has made provisions for these powers to meet three specific extraordinary or abnormal situations arising in the country. These

situations may be: (a) war or external aggression or armed rebellion; (b) failure of the constitutional machinery in any State; and (c) Deep financial crisis.

War, External Aggression or Armed rebellion

A 'proclamation of emergency' is made by the President, if he/she is satisfied that the security of India or any part thereof is threatened by war, external aggression or armed rebellion. However, the President issues such a proclamation, only when a decision of the Union Cabinet, (the Prime Minister and the Ministers of the Cabinet rank,) to that effect is communicated to him/her in writing. Every proclamation is to be laid before two Houses of Parliament and if it is not approved within one month, it automatically ceases to operate. With the proclamation of emergency, the Union government can give directions to the State governments in respect of their executive powers and the Parliament may assume legislative powers of State legislatures. The President may also order the suspension of the enforcement of fundamental rights.

In 1975, an emergency was declared by the President because of the threat to internal security when Indira Gandhi was the Prime Minister. It has continued to be very controversial, and even now many people consider it as a black period in the history of democratic India. Collect information about the reasons for declaration of that emergency from books or through internet, your teachers and other informed adults.

Activity - I

- Based on the collected information, do you think the declaration was justified? Please provide at least two reasons.
- Based on your conversation with an adult who has been through this emergency, write at least 2 ways in which the emergency impacted the lives of ordinary citizens.

- The second type of emergency relates to the situation in State. It may be proclaimed when the constitutional machinery of any State breaks down. If the President is satisfied on the basis of the report of the Governor or otherwise that the State cannot be administered in accordance with the provisions of the Constitution, he/she can proclaim emergency. This is known as President's Rule. Such a proclamation must be approved by both the Houses of Parliament within two months. If the Parliament's approval is not obtained, it ceases to operate at the expiry of two months. After Parliament's approval it may continue for not more than six months at a time and by no means for more than three years. During this period the concerned State Assembly is either dissolved or remains suspended. The Governor of the State performs all the executive functions in the name of the President. The Parliament assumes legislative powers for that particular State.

Activity – II

Collect information about any one time that the President's Rule was imposed in the State to which you belong? If President's Rule has never been imposed in your State, collect information about any other State. For getting information consult books or your teachers/tutors or internet. Write 2 -3 reasons for imposition of President's Rule. Did the government that was dismissed come back to power after elections?

The third type of emergency, which is called 'financial emergency', is declared when a situation arises whereby the financial stability or credit of India or of any part of the country is threatened. Like the other two emergencies, this proclamation also must be approved by Parliament within two months. Once it is approved by the Parliament, it may continue indefinitely until it is revoked. In this

situation, the President can reduce the salaries of all the government officials including the judges of the Supreme Court and the High Courts. The financial emergency has not been proclaimed in India so far.

Emergency was proclaimed in 1951 in the State of Punjab, and then in Kerala in 1959. With the passage of time, this power has been used with increasing frequency. It has been alleged that President's Rule has been used to dislodge the State governments of parties other than the party in power at the Centre. Article 356 deals with this type of emergency, which includes the imposition of President's Rule over a State of India. When a State is under President's Rule, the elected State government is suspended, and administration is conducted directly by the Governor of the State. Article 356 is controversial because some people consider it undemocratic, as its provides too much power to the Centre over the State governments. After the landmark case of S. R. Bommai v. Union of India (1994), the misuse of Article 356 was curtailed by the Supreme Court, which established strict guidelines for imposing President's Rule.

Position of the President

Have you observed that when the functioning of Union government is discussed either in the Parliament or in the newspapers or on television, the roles of the Prime Minister and the Ministers are often discussed? But we have seen earlier that the Constitution vests all executive powers in the President. He/She also has extensive emergency powers. Does this mean that the President is all powerful? No! In reality, the President is a nominal executive or a constitutional Head of the State. No doubt the government is run in his/her name, but according to the Indian Constitution, the President has to exercise his/her powers on the aid and advise of the Council of Ministers headed by the Prime Minister. And that is not a simple advice, but is

binding. This indicates that the Prime Minister and the Council of Ministers are the real rulers in the government. All decisions are taken by the Council of Ministers headed by the Prime Minister. The President has the right to be informed of those decisions. Similarly, the emergency provisions also do not grant any real powers to the President. True. The President has been given the task of preserving, protecting and defending the Constitution. He/She is the custodian of the democratic process as enshrined in the Constitution. In uncertain political situations, the President can play a decisive role in the formation of government. There have been some occasions when the President has asserted his/her position. However, in practice the President acts as a nominal or constitutional head. It has rightly been stated that in our constitutional system the President enjoys the highest honour, dignity and prestige but not the real authority.

The Prime Minister

Do you know who was the first Prime Minister of India? Yes, it was Chacha Nehru, that is, Jawahar Lal Nehru. How do you think he felt when taking up this important post? Remember that India at that time had just gained Independence from British rule. What were the challenges he faced? Let us see, from his own words (written in his book The Discovery of India): "India is not a poor country. She is abundantly supplied with everything that makes a country rich, and yet her people are very poor…. India has the resources as well as the intelligence, skill and capacity to advance rapidly." He added, "We must aim at equality…. Not only must equal opportunities be given to all, but special opportunities for educational, economic and cultural growth must be given to backward groups so as to enable them to catch up with those ahead of them. Any such attempt to open the doors of opportunity to all in India will release enormous energy and ability to transform the country with amazing speed." Nehru felt a great sense

of responsibility to take the country forward because, as Prime Minister, he had a major role to play.

If you listen to the news on television or radio, you will find even today that we hear about the Prime Minister, much more frequently than any other office under the Union government. In fact, the Prime Minister is the most important functionary at the Centre. If you go through the Constitution, you may get a different impression, because all the powers are mentioned as powers of the President. But one provision turns the situation. According to the Constitution, there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall act according to that advice. In fact, the President is bound to exercise all the powers exactly according to the advice of the Council of Ministers, which is headed by the Prime Minister. It is the Prime Minister who is the real head of the Union executive.

The Prime Minster is appointed by the President, but the President has to invite only that person to be the Prime Minister, who is the leader of the majority in the Lok Sabha. Earlier the person to be invited used to be the leader of only one political party commanding absolute majority in the Lok Sabha. But with the initiation of the phase of coalitions, he/she may be the leader of a group of more than one political party. In the changed situation, the President invites the person who is the leader elected by the political party that has the largest number of seats in the Lok Sabha and who receives the support of other political parties to manage the needed majority. Besides being the leader of the majority in Lok Sabha, to be the Prime Minister, the person has to be a Member of Parliament. If he/she is not a Member at the time of appointment, he/she has to acquire it within six months from the state of his appointment as PM.

Functions of the Prime Minister

Is it not interesting to note that the Constitution does not make any specific provision for the powers of the Prime Minister, though he/she is the most powerful functionary of the Union government? The only provision in the Constitution is that the President shall exercise his/her powers on the aid and advise of the Council of Ministers with the Prime Minister at the head, and that advice will be binding. But in practice, it is the Prime Minister who makes and unmakes the Council of Ministers. It is on his/ her recommendations that the President appoints the members of the Council of Ministers and distributes portfolios among them. He/She presides over the meetings of the Cabinet and communicates its decisions to the President. The Prime Minister acts as the link between the President and the Council of Ministers. If, due to any reason, he/she submits his/her resignation, the entire Council of Ministers stands dissolved. As and when the necessity arises, he/she may recommend to the President that the Lok Sabha be dissolved and fresh general elections be held. In fact, the Prime Minister is not only the leader of the majority party, or the leader of the Parliament but he/she is also the leader of the nation. His/Her office is the office of power, while that of the President is the office of honour, respect and dignity. The Prime Minister is the Ex-officio Chairman of the Planning Commission as well as of the National Development Council. He/She represents the nation at the international conferences as the head of the government.

The Union Council of Ministers

As you have noted above, the Constitution of India states that, "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice, provided that the President may require 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 consideration." The members of the Council of Ministers are appointed by the President on the recommendations of the Prime Minster. The Council of Ministers has three categories of Ministers – Cabinet Ministers, Ministers of State and Deputy Ministers. These Ministers work as a team under the leadership of the Prime Minister. The Ministers hold office during the pleasure of the President, but they cannot be removed so long as they have the support of the majority in the Lok Sabha, In fact, according to the Constitution, Ministers are collectively responsible to the Lok Sabha. If the Lok Sabha passes a 'no-confidence motion', the entire Council of Ministers including PM has to resign. A no-confidence motion is a legislative motion brought by the members of the Lok Sabha, expressing lack of trust in the Council of Ministers. That is why, it is said that the ministers swim and sink together. Regarding the functions of the Council of Ministers, these are the same as those of the Prime Minister.

The proceedings of the Cabinet or Council of Ministers are kept secret. The Council of Ministers is a large body of Ministers. We have seen during recent years, the top category, known as the Ministers of Cabinet rank are about 20 to 25 and they hold the charge of important departments. Then there is a group of ministers, called Ministers of State, some of them hold independent charges of ministries while others are attached to Cabinet Ministers. Yet another category of ministers known as Deputy Ministers are attached to Cabinet Ministers or Ministers of State. The Cabinet meeting is attended only by the Ministers of Cabinet rank, but if need be the Ministers of State also may be invited to attend such meeting.

Position of the Prime Minister

In the background of the above discussion, it is obvious that the Prime Minister occupies a key position in the Union government. He/She is the 'principal spokesperson' and defender of the policies of the government in the Parliament. The Council of Ministers functions as his/her team. The nation looks to him/her for needed policies and programmes and required actions. All international agreements and treaties with other countries are concluded with the consent of the Prime Minister. He/She has a special status both in the government and in the Parliament. The Prime Minister chooses his team (Council of Ministers) very carefully and gets willing cooperation from them. However, it is true that in a coalition government the Prime Minister has to seek help from like-minded political parties. The experience of the last ten to twelve years has shown that in such a scenario he/she has to be very vigilant and diplomatic. He/She has to take major decisions regarding defence and security of the country. He/She has to formulate policies not only for providing better living conditions but also to maintain peace, friendly relations with the neighbouring countries. It is because of the facts mentioned above that the Prime Minister is keystone of the cabinet arch.

Powers and Functions of Prime Minister of India

There is no direct election to the post of the Prime Minister. The President appoints the Prime Minister. But the President cannot appoint anyone he likes. He appoints the leader of the majority party or the coalition of parties that commands a majority in the Lok Sabha, as Prime Minister. In case no single party or alliance gets a majority, the President appoints the person most likely to secure a majority support. The Prime Minister does not have a fixed tenure. He continues in power so long as he remains the leader of the majority party or coalition. Article 74(1) of the Constitution states that there

shall be a council of ministers with Prime Minister as its head to aid and advice the President who shall exercise his function in accordance with advice tendered. Thus the real power is vested in council of ministers with Prime Minister as its head.Since the Prime Minister is the head of the government, he enjoys wide-ranging powers :

Formation of the Ministry

The Prime Minister forms the Ministry. With the appointment of the Prime Minister, the essential task of the President is over, for it is left to the Prime Minister to select his Ministers and present a list to the President. The President has no other alternative but to appoint the Ministers as recommended by the Prime Minister. It is correctly said that the Prime Minister "is central to its (Ministry's) formation, central to its life and central to its death". The Prime Minister has the privilege to select his Cabinet colleagues. If the Prime Minister resigns, it means the resignation of the whole Ministry. When the Prime Minister dies, the Council of Ministers will automatically cease to exist. The Prime Minister may remove the members of Council of Ministers at any time by demanding the Ministers' resignation or getting them dismissed, by the President.

Distribution of Portfolios

Distribution of portfolios is another important task of the Prime Minister. He has a free hand in assigning various departments to his colleagues. It is for him to determine the size of the Cabinet and the Ministers to be included in it. He may even select ministers outside the rank if he feels that a person is fit for a job. While distributing portfolios he is to look that important members of the party do get important portfolios. In a federal State like India be is to see that Ministers are selected from all parts of the country. Further, there might be some aspirants for a few important portfolios like Home, Defence or Finance. He has to bring amity and satisfy all in

distributing the portfolios. His work is indeed a difficult one. As Lowell points out. "His work is like that of constructing a figure out of blocks which are too numerous for the purpose and which are not of shapes fit perfectly together".

Chairman of the Cabinet Committee

The Prime Minister is the Chairman of the Cabinet Committee. He convenes and presides over all the meetings of the Cabinet. He is to fix the agenda of such meetings. The Ministers are individually responsible to him for the good administration of their respective departments. The Prime Minister may warn advice or encourage them in discharge of their functions. He is the head of the Council of Ministers. He acts as the Chairman of various standing and ad-hoc Committees of the Cabinet.

Chief Co-ordinator of Policies

The Prime Minister is the chief co-ordinator of the policies of several Departments. In case of conflicts between two departments, he acts as the mediator. He irons out quarrels among various Ministers and departments. He keeps an eye on the working of all Departments of the Government of India. He can ask for any file from any Ministry for his perusal. In case of appointment of Governors and other high federal officers, the voice of the Prime Minister counts and not that of the other Ministers. He is always vigilant regarding the working of the important departments like the Finance, the Foreign Affairs and Home. He also keeps close touch with foreign ambassadors and represents the Union Government at the Conferences of Heads of Foreign Governments.

Sole Adviser to the President

The Prime Minister is the sole adviser to the President. The right to advice for dissolution of the Lok Sabha rests with Prime Minister. The President is expected to accept the advice of the Prime

Minister and not that of other Ministers. The Prime Minister is the only channel of communication between the President and the Cabinet. He informs the President all the decisions taken in the Cabinet. If the President does not accept the advice of the Prime Minister, the Prime Minister may resign. The resignation of the Prime minister will create difficulty for the President to find out an alternative Ministry. As long as the Prime Minister enjoys the confidence of the majority members of the Lok Sabha it is difficult for the President to dismiss him. The Prime Minister is the main channel of communication between the President and the Cabinet. He communicates to the President all decisions of the Cabinet, and puts before the Cabinet the views of the President. This is the sole privilege of the Prime Minister and no other minister can, of his own convey the decisions or reveal to the President the nature or summary of the issues discussed in the Cabinet.

Leader of the Nation

The Prime Minister is the leader of the nation. He is the chief spokesman of the Governmental policies in the Parliament. All important policy announcements are made by him in the Parliament. He is the leader of the majority party and as such he usually becomes the leader of the House. The British convention is that the Prime Minister should belong to the House of Commons. Such a convention is expected to develop in India whereby the Prime Minister will belong to the Lok Sabha which is the popular House in India. Personality and prestige of the Prime Minister helps the party to get more votes during the time of election. The General Election is in reality the election of the Prime Minister. In India, the choice of the First Prime Minister fell on Jawaharlal Nehru who brought absolute majority to his party in the Centre and the States in the First General Elections of India.

Leader of the Parliament

As the leader of the majority in the Lok Sabha, the Prime Minister is also the leader of the Parliament. In this capacity, it is the PM who, in consultation with the Speaker of this Lok Sabha, decides the agenda of the House. The summoning and the proroguing of Parliament is in fact decided by him and the President only acts upon his advice.

Power to get the Parliament Dissolved

The Prime Minister has the power to advise the President in favour of a dissolution of the Lok Sabha. This power of dissolution really means that the members hold their seats in the House at the mercy of the Prime Minister. No member likes to contest frequent elections as these involve huge expenditures and uncertainties. It has been rightly remarked that this is such an important weapon in the hands of the Prime Minister that it binds his party men, and even the members of opposition.

Position of the Prime Minister

The Constitution of India, as already pointed out, does not describe the office of the Prime Minister in detail. It is, therefore, difficult to State what is the exact position of the Prime Minister. The general accepted theory is that the Prime Minister is just like "primus inter pares" or "first among equals". This is the phrase, which is used to describe the office of the Prime Minister ship in a parliamentary system. A study of the powers and functions of the Prime Minister clearly brings out the fact that he holds the most powerful office in the Indian. He exercises real and formidable powers in all spheres of governmental activity—executive, legislative and financial. The Prime Minister is the captain of the ship of state, the key stone of cabinet arch, the steering wheel of government, and the moon amongst lesser stars.

The whole organisation and working of the Council of Ministers depend upon the Prime Minister. The President always acts in accordance with the advice of the Prime Minister. The ministry-making is the sole right of the Prime Minister. The resignation or removal of the Prime Minister always means the resignation of the Council of Ministers. Hence, Prime Minister is the centre of gravity and the foundation stone of the Council of Minister The President always acts upon the advice of the Prime Minister. The constitution assigns to the latter the role of being the chief advisor to the President. All the powers of the President, both the normal powers and the emergency powers, are really the powers of the Prime Minister. As the head of the government, leader of the Cabinet, leader of the majority, leader of the Parliament and the leader of the nation, the Prime Minister plays an important an powerful role in the Indian Political System. Indeed the Prime Minister occupies a very powerful rather the most powerful position in India. Undoubtedly, the Prime Minister of India enjoys a very strong position, yet he can neither be a dictator nor even behave like a dictator. His office is a democratic office to which he rises only through an effective participation in the democratic process. The party to which the Prime Minister belongs, his own ministerial colleagues who are also his competitors, the leaders of the opposition parties, the President of India, the Parliament, the Press, the Constitution, and the public in general, all act as limitations upon him. These prevent him from becoming a dictator and from acting in an arbitrary way. His personality and skills are continuously on test. Any failure or lapse can cause his exit. The office of the Prime Minister of India is a powerful democratic office. Its actual working depends upon the personal qualities and political status of the person who holds this office. However no one can convert his office into an authoritarian or

dictatorial office. A person can remain Prime Minister only so long as he follows democratic norms and values.

The Union Parliament

Do you recognise the institution in the illustration given below? Yes, it is the Parliament House. The legislative branch of the Union government is called the Parliament that consists of the President and two Houses known as the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). It is important to appreciate that making the President a part of the Parliament is in conformity with the principles and traditions of the parliamentary form of government. We shall now discuss the composition, powers and functions of both the Houses of the Parliament.

Lok Sabha

Lok Sabha or the House of the People is the lower house. It is the people's representative body. The members of the Lok Sabha are directly elected by the people of India. The number of its members cannot exceed 550. Out of these, 530 are directly elected by the people of the States, and the remaining 20 members are elected from the Union Territories. All the citizens who are 18 years of age and above have the right to vote and elect the members of the Lok Sabha. According to the Constitution if there is no member of the Anglo-Indian Community in the Lok Sabha, the President can nominate two persons of this community as members. When the elections are announced, each State and Union Territory is divided into various territorial constituencies based on population. These are known as Parliamentary Constituencies. One representative to Lok Sabha is elected from each of the constituencies The term of the Lok Sabha is five years. However, it can be dissolved even earlier by the President. During an emergency, its term can be extended for a period of one year. Those who want to be a member of the Lok Sabha must (i) be a

citizen of India, (ii) be of at least of 25 years of age, and (iii) not hold an office of profit under the central, state or local governments. He/She should possess such other qualifications as may be specified by law made by Parliament from time to time.

Rajya Sabha

Rajya Sabha (the Council of States) is the upper house of Parliament. The maximum number of members of this house cannot exceed 250. Out of these, 238 members represent the States and Union Territories and 12 are nominated by the President of India. The nominated members are distinguished persons in the field of literature, art, science and social service. The elected representatives are elected by the State Legislative Assemblies according to the system of proportional representation by means of single transferable vote. The number of members from each State depends on the population of that State.

The Rajya Sabha is not subject to dissolution. The members of the Rajya Sabha are elected for 6 years. But there is an arrangement according to which one-third of the members retire every two years and new members are elected. The retiring member can be re-elected. To be eligible to be a member of the Rajya Sabha, a person must (a) be a citizen of India, and (b) be at least 30 years of age. Other qualifications are the same as those for the members of the Lok Sabha. The sessions of the Parliament are summoned by the President. There should not be a gap of more than six months between the two sessions. The President has the right to prorogue the sessions. Lok Sabha can be dissolved by the President but not the Rajya Sabha, as it is a permanent house of the Parliament.

Presiding Officers

Lok Sabha is presided over by the Speaker and in his/her absence by the Deputy Speaker. Members of the Lok Sabha elect the

Speaker and the Deputy Speaker from among themselves. He/She maintains order and discipline in the lower house as well as supervises its proceedings. He/She decides who will speak and for how long. He/She normally does not cast his/her vote but can vote in case of a tie. The Speaker decides whether a bill is an ordinary or a money bill and his/her decision is final. Besides, he/she is the custodian of the rights and privileges of the members. In case of a joint sitting of the Lok Sabha and the Rajya Sabha, the Speaker of the Lok Sabha, presides over such meetings.

Rajya Sabha is presided over by the Vice President of India who is its ex-officio Chairman. The Chairman (Vice-President) is not a member of the Rajya Sabha. He/ She is elected by an electoral college consisting of the members of both the Houses of Parliament. During his/her absence, the House is presided over by the Deputy Chairman. Like the Speaker of Lok Sabha, the Chairman of the Rajya Sabha also does not normally vote but in case of a tie, he/she may exercise the casting of vote.

Functions of Parliament

The Parliament is the supreme legislative body. It performs functions that may be categorized as follows:

Legislative Functions

Parliament is a law making body. It legislates on the subjects mentioned in the Union List and the Concurrent List by the Constitution. If there is a clash between the Union government and the State government regarding any concurrent subject, the central law will prevail. Besides, if there is any subject not mentioned in any list, known as residuary subjects, it comes under the jurisdiction of the Parliament. An ordinary bill can be introduced in any of the two houses. If a bill is passed by the Lok Sabha, it is sent to Rajya Sabha which may pass the same or may suggest amendments in the bill. If the

disagreement between the two Houses continues, it has to be resolved in a joint sitting of the two Houses. In the joint sitting, Lok Sabha has an upper hand with 550 members over the Rajya Sabha which has only a maximum of 250 members. Till date there have been only three 'joint sittings' of both the Houses. Once the bill is passed by both the Houses, it is sent to the President for his/ her assent and with his/her assent it becomes a law or an act.

Executive Functions

In a parliamentary system, there is a close relationship between the legislature and the executive. As discussed above, the real executive i.e. the Council of Ministers is collectively responsible to the Lok Sabha which can dislodge a ministry by passing a no confidence motion against it. In 1999 Atal Bihari Vjpayee's government lost the confidence motion in the Lok Sabha and it resigned. However, both the Houses of Parliament maintain their control over the Council of Ministers through several other ways such as:

- By asking questions and supplementary questions: The first hour of every working day of Parliament relates to Question Hour in which the Ministers have to answer the questions raised by the members
- By discussing and passing motions: Calling Attention Motion, Adjournment Motion or Censure Motion can be moved and policies of the government can be debated and criticized.
- By expressing lack of confidence: The Lok Sabha can express its lack of confidence in the executive by disapproving the budget or money bill or even an ordinary bill.

Financial Functions

The Parliament of India has been entrusted with the performance of important financial functions. It is the custodian of the public money. It controls the entire purse of the Union government. It

sanctions, from time to time, money to the government to enable it to run the administration effectively and successfully. The Parliament may pass, reduce or reject the demands for grants presented to it by the government. No taxes can be collected and no expenditure can be made without the approval of the Parliament. There are, however, certain limitations on the Rajya Sabha. These are: (a) a money bill cannot be introduced in the Rajya Sabha. It has no power either to reject or amend a money bill. It can only make recommendations on the money bill. If the Rajya Sabha along with its recommendations (if any) does not return it to Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses. As regards the Annual Budget (Annual Financial Statement), it is presented in the Lok Sabha and the Rajya Sabha may only discuss it but can not stop it from becoming law.

Judicial Functions

The Parliament is empowered to prescribe the number of Judges of the Supreme Court by law. It is also authorized to establish a common High Court for two or more States as well as to constitute a High Court even for a Union Territory. A Chief Justice or Judge of the Supreme Court or of any High Court can be removed from his/her office by the President only after an impeachment process by both the Houses of Parliament.

Miscellaneous Functions

The Parliament has the power to remove the President and the Vice President by a special majority of votes. This process is called as Impeachment. It has the power to amend the Constitution. Certain parts of the Constitution can be amended by a simple majority and certain others require two-thirds majority. Some other parts of the Constitution can be amended with special majority of the Parliament and the approval of the Legislatures of half of the States.

Comparative Position of Both the Houses of Parliament

In a parliamentary system the lower house always plays a more important role. Accordingly, in our country also, the Lok Sabha is more powerful and effective. The following points are important for understanding the comparative position of both the Houses:

- Lok Sabha is directly elected and the true representative of the people of India. Rajya Sabha on the other hand is indirectly elected. Moreover, Rajya Sabha is a permanent body, whereas the Lok Sabha is elected for a definite period. of 5 years. Its tenure can be increased and it can be dissolved even earlier than the expiry of the term.
- In case of an ordinary bill, both the Houses have equal powers. But if the differences between both houses continue and a joint session is convened, the Lok Sabha gets an upper hand, as its membership is more than double of that of the Rajya Sabha.
- In respect of having control over the Council of Ministers, once again the Lok Sabha is more effective. Rajya Sabha can have some control by debating on the policies and programmes and criticizing the government. But only the Lok Sabha has the power to pass a no-confidence motion which if done, the Council of Minister resigns.
- With regard to the constitutional amendments, election of the President and the Vice-President and impeachment or removal of President, Vice President, Chief Justice and Judges of the Supreme Court and High Courts, both the Lok Sabha and the Rajya Sabha have almost similar powers.
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Supreme Court and High Courts, both the Lok Sabha and the Rajya Sabha have almost similar powers.

- Whereas in financial matters, the Lok Sabha has an upper hand, it is only Rajya Sabha that may create a new All India Service and declare a subject in the State List to be of national importance.
- In view of the above comparison, Lok Sabha is definitely more powerful than the Rajya Sabha. But it will not be appropriate to state that the Rajya Sabha is not only the second chamber, but also a secondary chamber. We have seen how important a role Rajya Sabha also plays and there are certain functions which only Rajya Sabha can perform.

The Supreme Court

Supreme Court of India

According to the Indian Constitution, the Supreme Court of India is the highest judicial court in India and the ultimate court of appeal. It is also the highest constitutional court with judicial review authority. The first Supreme Court was established in Calcutta as a superior court, and the first Chief Justice, Sir Elijah Impey, was appointed. The court was formed to settle disputes in Bengal, Orissa, and Patna. As a result, King George III founded the other two Supreme Courts in Bombay and Madras in 1800 and 1834, respectively.

The Supreme Court is our country's highest appeals court. The people of India are announcing justice with its establishment. It requires safeguarding the fundamental rights of the Citizens and also settles disputes between various government authorities as well between different levels of the government in the country. The Supreme Court's authority is to provide a proper hearing in cases

involving the Indian Constitution. This court can also override the legislature in the favour of basic structures of the Indian Constitution.

Law which is declared by the Supreme Court is binding for all the courts present at all levels within India and also for Union and State Governments. As per, Article 142 of the Indian Constitution, it is the duty of the President of India to enforce decrees of the Supreme Court, and the court is conferred with inherent jurisdiction.

History of Supreme Court

The Federal Court of India was established as per the Government of India Act in 1935. This Court is important as it settles the disputes between the provinces and the federal states and also hears appeals against the judgments of the high courts.

After Independence, the Federal Court and also the Judicial Committee of the Privy Council was replaced by what came to be known as the Supreme Court of India, which came to be on January 1950. The Constitution of 1950 envisaged Supreme Court with one Chief Justice and around 7 other Judges. The count of Judges in the Supreme Court was increased by the Parliament and is around 34 judges now including the Chief Justice of India.

We have mentioned in the beginning of this lesson that the Supreme Court represents the Union judiciary. But the structure and functioning of the judicial branch is different from those of the executive and the legislative branches. Do you have some idea or experience of judicial actions? You may have heard at some point of time that a case that began in the lower court was considered by the courts at the district level, then by the High Court and ultimately by the Supreme Court. This happens because India has a unified judiciary. It means that there is a hierarchy of Courts, at the highest level of which is the Supreme Court, then at the state level there are High

Courts and at the district and still lower levels there are subordinate courts.

As provided in the Constitution, the Supreme Court of India consists of the Chief Justice and other Judges whose number is prescribed by the Parliament from time to time. In 1950 there was a Chief Justice and there were 7 Judges. But the number of Judges continued increasing as per the need. The Supreme Court, at present, consists of the Chief Justice and 30 Judges. The Chief Justice and other Judges of the Supreme Court are appointed by the President of India.

For appointing the Chief Justice of India, the other Judges of the Supreme or High Courts may be consulted. Usually, the senior-most Judge in the Supreme Court is appointed as the Chief Justice. For the appointment of other Judges of the Supreme Court, the Chief Justice has to be consulted. Usually, the Chief Justice himself consults a collegium of the four senior-most Judges, and all of them need to agree for any candidate to be recommended for the appointment of a judge.

A person can be appointed as a Judge of the Supreme Court only if he/she:

- Is a citizen of India;
- Must have been at least a Judge of a High Court or of two or more such Courts in succession for at least five years; or
- must have been an advocate of a High Court or of two or more such Courts in succession for at least ten years; or
- Is, in the opinion of the President, a distinguished jurist.

Judges of the Supreme Court hold office till they attain the age of 65 years. But they may be removed from office by an order of the President, passed after an address by each House of Parliament supported by a special majority on the ground of proved misbehaviour or incapacity. This is known as impeachment procedure. No Chief

Justice or Judge of the Supreme Court has been impeached so far. A Judge who has served in the Supreme Court is barred from pleading in any court within the territory of India after retirement.

The Jurisdiction of the Supreme Court

The Supreme Court has three types of jurisdiction — Original, Appellate and Advisory

Original Jurisdiction: The Supreme Court alone has the authority to hear directly certain cases. These are :

- Disputes between the Union government and one or more State governments,
- Disputes between two or more States,
- Disputes between the Government of India and one or more States on the one side and one or more States on the other side.

Appellate Jurisdiction

The power of a superior or higher court to hear and decide appeals against the judgment of the lower court is called appellate jurisdiction. The Supreme Court is a court of appeal for constitutional, civil and criminal cases. It can hear appeals against the judgments of the High Courts. It also has the power to review its own judgment. It may in its own discretion grant special lease to appeal against any judgment or order delivered or passed by any court or tribunal within the territory of India. Moreover, an Appeal may come to the Supreme Court in any criminal case, if the High Court certifies that the case is fit for appeal to the Supreme Court. The special appellate power has become a handy weapon in the hands of the Court to review the decisions pertaining to elections and Labour and Industrial Tribunals.

Advisory Jurisdiction

The Supreme Court has a special advisory jurisdiction in matters which may specifically be referred to it by the President of

India. If at any time, it appears to the President that a question of law or fact has arisen or is likely to arise, which is of such public importance that it is urgent to obtain the opinion of the Supreme Court on it, he/she may refer it to the Supreme Court. The Supreme Court may, after such hearing as it thinks fit report to the President its opinion thereon. The report or the opinion of the Supreme Court is of course, not binding on the President. Similarly, there is no compulsion for the Court to give its advice.

The Supreme Court is a court of record. The records of the Supreme Court, in matters of interpretation of the law or of the constitution, have to be accepted when produced before the lower courts. Besides the above mentioned jurisdictions there are a few more special functions of the Supreme Court of India. These are:

Guardian of the Constitution

As the interpreter of the Constitution, the Supreme Court has the power to protect and defend the Constitution. If the Court finds that any law or executive order is against the Constitution, the same can be declared unconstitutional or invalid. Similarly the Supreme Court also acts as the custodian and protector of Fundamental Rights. If any citizen feels that his/her fundamental rights have been infringed, he/she may move to the Supreme Court directly for the protection of his/her fundamental rights. The Right to Constitutional Remedies empowers the Supreme Court to act as the guardian of the Constitution.

Judicial Review

The Supreme Court of India has the power to examine the validity of laws or executive orders. The Supreme Court has the powers to interpret the Constitution, and through this it has assumed the power of judicial review.

Judicial Activism

Judicial activism has been defined as 'innovative interpretation' of the Constitution by the Court. This has often been criticized as the judiciary taking over the powers of the legislature. But in India it has enjoyed support from the public, because it has concentrated on giving the disadvantaged the access to justice. It uses the instrument of Public Interest Litigation (PIL). With public interest litigation, any person can bring a petition about a problem before the court, and not just the person affected by the problem. PIL has often been used on behalf of people who are poor or disadvantaged and do not have the means to approach the court. With judicial activism and PIL, courts have given judgments on pollution, the need for a uniform civil code, eviction of unauthorized buildings, stopping child labour in dangerous occupations, and other issues.

Significance of Supreme Court of India

The Indian Constitution deals with the Supreme Court's power, function, nomination, retirement, jurisdiction, and so on, from Article 124 to Article 147. The following are the reasons why the Supreme Court was established:

- The Supreme Court possesses Judicial Review power under Article 13 of the Constitution, which means it has the authority to reject any law or executive action that is determined to be incompatible with the Indian Constitution.
- The Supreme Court is India's highest court ruling, commonly referred to as the country's top court or even the final chance, where people can seek justice if they are dissatisfied with a High Court decision.
- If certain fundamental rights are violated, Indian individuals can claim compensation immediately through writs under Article 32 of the Constitution.

Functions of the Supreme Court

- It functions as a medium for settling disputes between various governmental entities, the federal government, and state governments.
- In accordance with Article 141 of the Constitution, all courts in the Indian Territory must obey legislation made by the Supreme court.
- In response to an appeal from one of the High courts or another subordinate court, the Supreme court gives the final decision.
- The Supreme Court can make decisions and act independently in specific cases.
- It is the highest court of appeals in civil and criminal cases.

Composition of Supreme Court

Along with the Chief Justice of India, there are around 34 judges in the Supreme Court. The judges sit in benches of 2 or 3, which is known as the Division Bench, or in benches of 5 or more, known as the Constitutional Bench when there are some matters which include the fundamental questions of the law which are to be decided.

Supreme Court Jurisdiction

The Jurisdiction of the Supreme Court are of three types mostly and each of them is discussed in detail below:

- Original Jurisdiction
- Advisory Jurisdiction
- Appellate Jurisdiction

Powers of the Supreme Court

The Supreme Court has the following judicial powers:

- Original Jurisdiction
- Appellate Jurisdiction
- Advisory Jurisdiction

- Review Jurisdiction

Original Jurisdiction

- In cases when there are disagreements between the Central government and the state government or between two or more state governments, the Supreme Court serves as the original jurisdiction authority under Article 131 of the Constitution.
- According to Article 139A of the Constitution, the Supreme Court may, at its judgment or on the advice of the Attorney General of India, accept matters from the high courts while they are still pending if they involve the same legal problem that has to be decided by the Supreme Court.
- Additionally, it has the power to transfer cases that are still ongoing, appeals, or other legal actions from one High Court to another High Court.
- The Supreme Court has the authority to issue writs, orders, or directions under Article 139 of the Constitution.
- The Supreme Court is also able to uphold fundamental rights, according to section 32 of the Constitution.

Appellate Jurisdiction

The Supreme Court has administrative authority in cases involving civil, criminal, or constitutional law, according to articles 132, 133, and 134 of the Constitution. Additionally, under article 136, the Supreme Court has the authority to grant exceptional leave requested by any Indian judicial court, but not by Army courts.

Advisory Jurisdiction

According to article 143 of the Constitution, the Supreme Court may provide the President of India with legal advice where the basis of the issue is related to the public interest. Additionally, the President has the right to consult others on problems relating to Article 131 of the Constitution.

Review Jurisdiction

The Supreme Court has the authority to examine any laws that are being approved by the legislature under article 137 of the Constitution.

Court of Record

The Supreme Court is a Court of Record whose judgments are recorded as evidence and testimony.

Various Provisions Regarding Supreme Court of India

The Constitution of India provides the provision of the Supreme Court under Part V (The Union) and Chapter 6 (The Union Judiciary). Articles 124 to 147 in Part V of the Constitution deals with the organization, independence, jurisdiction, powers as well as procedures of the Supreme Court. Indian Constitution in Article 124(1) states there will be a Supreme Court of India constituting Chief Justice of India and until Parliament by the law prescribes a large number of around 7 judges.

Self Assessment Questions

- Explain the role of the President in the appointment of the Prime Minister
- Explain the composition of the Supreme Court of India,
- Analyze the functions of the Supreme Court

Unit – V

State Government: Role of the Governor - State Legislature – Cabinet- High Courts

Objective

- To comprehend the structure and functioning of the State Government in India
- To evaluate the role of the Governor in various constitutional functions such as the appointment of the Chief Minister
- To comprehend the composition, powers, and functions of the State Legislature

State and Government

Government is regarded as an essential element of the state. In actual practice, the state is represented by the government. Governments exercise all authority and functions on behalf of the state. However, the terms 'state' and 'government' should not be used synonymously. 'State' represents a wider and more stable entity than 'government'. As R.M. Maclver (The Web of Government; 1965) has elucidated: When we speak of the state we mean the organization, of which government is the administrative organ.

Every social organization must have a focus of administration, an agency by which its policies are given specific character and translated into action. But the organization is greater than the organ. In this sense, the state is greater and more inclusive than government. A state has a constitution, a code of laws, a way of setting up its government, a body of citizens. When we think of this whole structure we think of the state. Thus, so long as a state maintains its identity and independence, governments may be formed and dissolved according to the established procedure without affecting the character of the state. But a state itself may lose its identity when it is suppressed and conquered by an alien power and its constitution or the established procedure of forming a legitimate government is suspended.

The subjugated people may, however, retain or revive their feeling of national solidarity and re-establish their state in due course. The state serves as a symbol of unity of the people. The image of the state inspires unity among the people and provides them with an identity as a nation. It arouses national pride and a spirit of sacrifice among the people. Government only represents a working arrangement to carry out functions of the state. Government commands our obedience; the state commands our loyalty. Government may be good or bad, efficient or inefficient, but the state will continue to be a symbol of our national greatness.

We may criticize or condemn the government, and still acclaim the greatness of our state! It is, however, essential that our duties and obligations toward the state should be determined by the character of the government it creates. If the government loses its 1 credibility, it should either be replaced according to the established procedure, or the credibility of the state itself will be eroded. The government should be subjected to constant watch so that it conforms to the image of the state as the protector and promoter of our common interests. Any theory which does not provide for a concrete control mechanism over the government is bound to have disastrous consequences. The idealist theory does not make a distinction between state and government.

It creates an image of the perfect state. Hegel eulogized the state, especially the nation-state, as the 'march of God on earth'! This theory demands complete subordination of man to the authority and command of the state, without ensuring whether the actual government which makes such demands, conforms to the image of the ideal state or not! The liberal-democratic theory is more rational in this respect. It treats the state as a product of the 'will of society', an instrument of 'conflict-resolution' and of securing the common interest; then it authorises society to constitute a government by free choice, and

demands that the government should be responsible to the people, and should work with the continuous consent of the people. Any political theory which creates a truly constitutional government cannot be ignorant of the fallibility of government.

It must recognise the distinction between the state and government. Marxist theory treats government as agency of the state. It attributes any imperfection of government to the state itself. Accordingly, so long as society is divided into dominant and dependent classes, any government is bound to serve as an instrument of the dominant class. Thus, Marxist theory regards the state itself as an instrument of class exploitation, and advocates transformation, and ultimate withering away, of the state in order to restore 'authority' to a classless society.

Difference between State and Government

Some of the main differences between state and government are as follows:

Government is only an element of the state

A State has four essential elements—Population, Territory, Government and Sovereignty. Government is only one element of the State. It is just one part of the State which acts for the state.

Government is an Agency or Agent of the State

Government is an agency of the State. It acts for the state. It is that agency of the State which formulates the will of the state into laws, implements the laws of the state and 2 ensures conformity to the laws of the state. Government exercises power and authority on behalf of the state.

State is Abstract, Government is Concrete

State is a concept, an idea or a name used to denote a community of persons living on a definite territory and organised for the exercise of sovereignty. State cannot be seen. Government is made

by the people of the State. It is formed by the representatives of the people. It has a definite and defined organisation and form. It can be seen as a team of people exercising the power of the State.

Government is organised only by a portion of the population of State

The whole population is a part of the State. All the people are citizens of the State. However, government is made by the representatives of the people. Only some people, who get elected act as representatives of the people, form the government of the State. Their number is limited to few hundred only. In India around 5500 MPs and MLAs represent the total population of around 110 crores and exercise the political power at the centre and in all states of India.

Membership of a State is compulsory but not of Government

All people are citizens of the State. They together constitute the population of the State. Each one normally gets the membership (citizenship) of a state automatically right at the time of one's birth and continues to live life as such. However, membership of the government is not automatic. No one can be forced to become its part. Anyone can voluntarily seek an election, get elected as a representative of the people and become a part of the government. Only some persons form the government.

State is Permanent, Government is Temporary

Governments come and go regularly. After every general election the government changes. It can also undergo a total change through an election or even through a revolution. State is permanent. It continuously lives so long as it continues to enjoy sovereignty. Independent India continues to live as a sovereign independent state since 1947. However, she has witnessed the rise and fall of several governments at the national and state levels.

Power & Role of Governor under Constitution of India

The post of governor of a state is of immense importance in our political system. It is considered as one of the pivotal parts of "checks and balances" that our democracy is proud of. Powers and functions bestowed upon the governors and lieutenant-governors of the states and union territories of India are similar in nature to that of the President of India at Union level. Being de jure head of the state government, all its executive actions are taken in the governor's name. While the President of India is 'elected', the governor is 'selected' by the existing central government via imperative processes.

History of origin of office of Governor in India

The origin of the office of the Governor in India, as we know it today, can be traced to the advent of the "East India Company" to India. The word "Governor" is historically also associated to the Portuguese "Afonso de Albuqerque" who held the position of Governor and Captain General in India in the year 1509.

Further, with the issuance of the charter of 1601 by Queen Elizabeth –I, Governor was bestowed with the legislative powers to make, ordain and constitute such laws, orders and ordinances as required for the Governance of the East India Company.

With the transfer of power from the East India Company to the British Crown through the Government of India Act, 1858 as enacted by the British Parliament, the Governor General of India was granted the power to issue ordinances and veto any Bill. The overriding powers of the Governor General of India with respect to legislature continued even after the enactment of the Government of India Act, 1935, which provided for a provincial executive consisting of the Governor and Council of Ministers to advise him.

The Governor of a province was provided with 3 types of powers:

1. Discretionary

2. Powers exercised in his individual judgment and

3. Powers to be exercised on the advice of the Ministers.

With the enactment of the Indian Independence Act, 1947, India was divided into two independent dominions. Both the two Dominions were to have a Governor General each who was to be appointed by the King of England as his representative.

Originally, the Provincial Constitution Committee of the Constituent assembly had recommended that the governor should be directly elected by the people of the state. The proposal of an elected governor was criticized on the ground that the presence of two persons in the government namely the Governor and the chief minister, each deriving his mandate from the people, might lead to friction.

While the Constitution was being framed and discussed upon, Sardar Patel sought to make it explicit that "special powers" endowed upon the Governor would not create dissonance between him and the ministry. He stressed that there would be no "invasion of the field of ministerial responsibility". The "special powers" would primarily be limited to sending a report to the Union President when "a grave emergency arose, threatening menace to peace and tranquility". At one point there was also an argument put forward that the governor should be elected directly by the people of that province, but it did not find assent. Jawaharlal Nehru had emphasized that this post could be utilized to bring distinguished people from eclectic backgrounds as well as academics into the field of public service, as they might not have necessary expertise or zest for winning an election.

Constitutional Provisions related to Governor

- The appointment and powers of government can be derived from Part VI of the Indian constitution. Article 153 says that

there shall be a Governor for each State. One person can be appointed as Governor for two or more States.

- The governor acts in 'Dual Capacity' as the Constitutional head of the state and as the representative.
- He is the part of federal system of Indian polity and acts as a bridge between union and state governments.
- Article 157 and Article 158 of the Constitution of India specify eligibility requirements for the post of governor. They are as follows:

Eligibility

A governor must

- Be a citizen of India.
- Be at least 35 years of age.
- Not be a member of the either house of the parliament or house of the state legislature.
- Not hold any office of profit.

Term of governor's office is normally 5 years but it can be terminated earlier by:

- Dismissal by the president on the advice of the council of minister headed by the prime minister of the country.
- Dismissal of governors without a valid reason is not permitted. However, it is the duty of the President to dismiss a governor whose acts are upheld by courts as unconstitutional and malaise.
- Resignation by the governor.
- Article 163: It talks about the discretionary power of governor.
- Article 256: 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.

- Article 257: 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 in the direction to be of national or military importance:
- Article 355: It entrusts the duty upon Union to protect the states against “external aggression” and “internal disturbance” to ensure that the government of every State is carried on in accordance with the provisions of Constitution.
- Article 356: In the event that a state government is unable to function according to constitutional provisions, the Central government can take direct control of the state machinery. The state's governor issues the proclamation, after obtaining the consent of the President of India.
- Article 357: It deals with Exercise of legislative powers under Proclamation issued under Article 356 by the central government.

Role, Power and Function of Governor under Constitution of India

- As provided by Articles155 and 156 of the existing Constitution of India, Governors of the States are appointed by the President of India and are answerable to him and hold their offices during the pleasure of the President of India
- The Governor, thus, is an appointee of the Central Government in the State, and, in so far as he acts in his discretion, he shall be answerable to the Union Government.
- Except in matters in which the Governor is required by or under the Constitution to exercise his function in his discretion, the Governor is the Constitutional or formal head of the State and he exercises all his powers and functions on the aid and

advice of his council of Ministers. This is so because our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British Model both at the Union and the States

- Article 164 (1) of the Constitution of India empowers the Governor to appoint the Chief Minister. However, like the discretion of the president in the appointment of the Prime Minister, the Governor's discretion in the appointment of Chief Minister is conditioned by an essential form of Parliamentary form of Government that the Council of Ministers shall be collectively responsible to the State legislative assembly. This means that the leader of a party which commands majority in the legislative assembly is eligible for appointment as Chief Minister, and the Governor is bound to request him to form the Government. If there is no party commanding a clear majority in the legislative assembly, the Governor may exercise his discretion in the appointment of Chief Minister according to his personal assessment of the situation at that time.
- Article 72 of the Constitution of India could be reconciled with Article 161 by limiting the power of the Governor to grant pardons to cases not covered by Article 72. If so read, the President alone has the exclusive powers to grant pardons, reprieves, and respites in all cases where the sentence is a sentence of death and both the President and the Governor have concurrent powers in respect of Pardon, Suspension, remission and commutation of a sentence other than that of death. In other matters, that is in respect of offences against any law relating to a matter to which the executive power of the State extends, the Governor has all the powers enumerated in

Article161 of the Constitution of India including the power to grant pardons, reprieves and respites.

- To put it briefly, the Power of Governor to grant pardons, reprieves and respites in all cases where the sentence is not a sentence of death, and to suspend, remit or commute the sentence of any person, is co – extensive with the executive power of the State. It, therefore, follows that the Governor has the power to grant a pardon or remit the sentence of a person who is transported for life.
- In a 5 Judge Bench, the Supreme Court of India has held in BP Singhal v. Union of India1 that the role of the Governor of a State is to function as a vital link or bridge between the Union Government and the State Government. He is required to discharge the functions relate to his different roles harmoniously, assessing the scope and ambit of each role properly.
- A Governor of a State has dual role. The first is that of a Constitutional head of the State bound by the advice of his Council of Ministers. The second is to function as vital link between the Union Government and the State Government. In certain special or emergent situations, he may also act as a special representative of the Union Government.
- The Governor of a State is neither an employee of the Union Government nor the agent of the party in power nor required to act under the dictates of political parties. His office is not subordinate or subservient to the Government of India.
- He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. The fact that the Governor holds office during the

pleasure of the President does not make the Government of India an employer of the Governor.

- There is a distinction between the powers of the President under Article74 and the Governor under Article 163 of the Constitution. There is some qualitative difference between the position of the President and the Governor. The President under Article 74 has no discretionary powers but the Governor has certain discretionary powers under Article 163(2) of the Constitution of India.
- In contrast to Article 74, even though Article163similarly provides that the Governor of a State is to exercise his functions in consonance with the aid and advice tendered to him by the council of Ministers with the Chief Minister as the head, yet Article 163(2) confers discretionary powers with the Governor when it is so expressly mandated by or under the Constitution.
- To a limited extent Article 163(2) authorizes Governor to act in his own discretion and in that sense there is a clear distinction between the power vested in the President and the power vested in the Governor.
- Governor should act as per the will or advice of the majority party only when the same is in accord with the Constitution and the laws. (B.R. Kapur v. State of T.N. & Another).

Power and Function of Governor

- The Governor of the State, like the President, is entitled to specific powers. They are-
- Legislative – affiliated with ordinance making and State Legislature;
- Executive – affiliated with administrative appointments and discharge;

- Judicial – affiliated with power to grant pardons and respites;
- Financial – authority over the state budget and money bills;
- Discretionary – to be exercised at the discretion of the Governor; to, as stipulated under Article 159, preserve, protect and defend the Constitution and the law. Unlike the President, however, the Governor does not possess any diplomatic or military powers.

Executive Power

- As per Article 154, the Constitution states that the executive power of the State shall be vested in the Governor who can exercise them through directly or indirectly through subordinate officers
- The State Government undertakes all executive action in the name of the Governor
- As per Article 164, the Governor has the power to appoint the Chief Minister of the State, and upon the Chief Minister's recommendation, the appointment of other ministers.
- The Governor appoints the Advocate General of the State, State Election Commissioners and the chairman and members of the State Public Service Commission. However, the Governor cannot remove the members of the State Public Service Commission as they can only be removed by an order of the President.
- In States with bicameral legislature, the Governor can further nominate to the Legislative Council persons with special knowledge or practical experience in matters of literature, art, science, cooperative movement and social service.

Legislative Power

- The Governor can summon, prorogue, defer or dissolve the State Legislative Assembly, his decisions often taken in counsel with the Chief Minister and the Council of Ministers.
- The Governor has the power to nominate 1/6th of the State Legislative Council.
- The Governor can nominate a member of the Anglo-Indian community to the Legislative Assembly of the State, if he feels the community is under-represented in Vidhan Sabha.
- As per Article 200, the Constitution confers the Governor with the power to assent, withhold assent, return for reconsideration, or reserve for President's consideration any Bill. But should the Vidhan Sabha send back a returned Bill to the Governor the second time, then he has to sign it.
- As per Article 213 the Constitution of India confers the Governor the power to promulgate an ordinance when the Legislative Assembly of the State is not in session. Notwithstanding the immediate effect of the law, it must be presented in the next session in the State Legislature, and unless approved, remains active for a six-week period.
- The Governor lays reports of State Finance Commission, State Public Service Commission and Comptroller and Auditor General relating to the account of the State in the Legislative Assembly.
- The Governor inaugurates the State Legislature, outlining new administrative policies of ruling government at the first session every year.

Financial Power

- The Governor constitutes the Finance Commission to oversee financial positions of Panchayats and Municipalities, and, in

the case of any unforeseen circumstances, holds the power to make advances out of the State Contingency Fund.

- A prior recommendation of the Governor is necessary before the introduction of any Money Bills or Demands for Grant.
- The Governor ensures that the annual financial statement or State Budget is laid before the State Legislature.

Judicial Power

- As per Article 161, the Governor can grant pardons, reprieves, respites or remission of punishments, or suspensions, remittances or commutes of sentences of those convicted of an offence to which the executive power of the State extends
- The Governor is consulted by the President, as well as the Chief Justice of India, in the appointment of the Chief Justice to the High Court, judges of the High and District Courts, their postings and promotions.

Discretionary Power

- The Governor may recommend an imposition of the President's Rule on the President's behalf and in such circumstances, override the Council of Ministers and directly handle the workings of the State.
- The Governor may exercise his function as the administrator of adjoining Union Territory.
- The Governor holds the power to select the Chief Minister should no political party win a majority in the Vidhan Sabha of the state, or in the Chief Minister's demise without any obvious successor.

State Legislature

India is a Union of States. It means that there is one Union Government and several State Governments; It also means that Union (Centre) is more powerful than States. At present there are 28 States in

the Indian Union and each one of them has a Legislature. You have already read in lesson no.11 about the Parliament of India, which is the law making body at the Union level. The State Legislature is a law making body at state level. In this Lesson you will read about the composition of State Legislature, qualifications and election of their members, powers and functions of the Legislature, and comparison of the powers of two Houses of the Legislature.

Composition of The State Legislature

In most of the States, the Legislature consists of the Governor and the Legislative Assembly (Vidhan Sabha). This means that these State have unicameral Legislature. In a few States, there are two Houses of the Legislature namely, Legislative Assembly (Vidhan Sabha) and Legislative council (Vidhan Parishad) besides the Governor.Where there are two Houses, the Legislature, is known as bicameral. Five States have the bicameral, legislature. The Lagislative Assembly is known as lower House or popular House. The Legislative Council is known as upper House. Just as Lok Sabha has been made powerful at the Union level, the Legislative Assembly has been made a powerful body in the States.

Legislative Assembly (Vidhan Sabha)

There is a Legislative Assembly (Vidhan Sabha) in every State. It represents the people of State. The members of Vidhan Sabha are directly elected by people on the basis of universal adult franchise. They are directly elected by all adult citizens registered as voters in the State. All men and women who are 18 years of age and above are eligible to be included in the voters' List. They vote to elect members of State Assembly. Members are elected from territorial constituencies. Every State is divided into as many (single member) constituencies as the number of members to be elected. As in case of Lok Sabha, certain number of seats are reserved for Scheduled Castes,

and in some States for Scheduled Tribes also. This depends on population of these weaker sections in the State.

In order to become a Member of Vidhan Sabha a person must:

Be a citizen of India;

Have attained the age of 25 years;

His/her name must be in voters' list;

Must not hold any office of profit i.e.;

Should not be a government servant

The number of Vidhan Sabha members cannot be more than 500 and not less than 60. However, very small States have been allowed to have lesser number of members. Thus Goa has only 40 members in its Assembly. Uttar Pradesh (is a big state even after creation of Uttaranchal from this state in 2002) has 403 seats in the Assembly. The Governor of the State has the power to nominate one member of Anglo-Indian community if this community is not adequately represented in the House. As in case of the Lok Sabha, some seats are reserved for the members of Scheduled Castes and Schedule Tribes. The tenure of Vidhan Sabha is five years, but the Governor can dissolve it before the completion of its term on the advice of Chief Minister. It may be dissolved by the President in case of constitutional emergency proclaimed under Article 356 of the Constitution. In case of proclamation of national emergency (under Article 352) the Parliament can extend the term of the Legislative Assemblies for a period not exceeding one year at a time.

Presiding Officer (The Speaker)

The members of Vidhan Sabha elect their presiding officer. The Presiding officer is known as the Speaker. The Speaker presides over the meatings of the House and conducts its proceedings. He maintains order in the House, allows the members to ask questions and speak. He puts bills and other measures to vote and announces the

result of voting. The Speaker does not ordinarily vote at the time of voting. However, he may exercise casting vote in case of a tie. The Deputy Speaker presides over the meeting during the absence of the Speaker. He is also elected by the Assembly from amongst its members.

Legislative Council (Vidhan Parishad)

Vidhan Parishad is the upper House of the State Legislature. It is not in existence in very State. Very few States have bicameral Legislature that means having two Houses. At present five states viz. Utter Pradesh, Bihar, Karnataka, Maharashtra and Jammu & Kashmir have Vidhan Parishad while, remaining 23 States have one House, i.e. Vidhan Sabha. Legislative Councils are legacy of the British period. The Parliament can create Vidhan Parishad in a State where it does not exist, if the Legislative Assembly of the State passes a resolution to this effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the members of the Assembly present and voting, and sends the resolution to the Parliament. Similarly, if a State has a Council and the Assembly wants it to be abolished, it may adopt a resolution by similar majority and send it to Parliament. In this situation Parliament resolves to abolish the concerned Legislative Council. Accordingly, Councils of Punjab, Andhra Pradesh, Tamil Nadu and West Bengal were abolished.

According to the Constitution, the total number of members in the Vidhan Parishad of a State should not exceed one-third of the total number of members of Vidhan Sabha but this number should not be less than 40. The Jammu & Kashmir is an exception where Vidhan Parishad has 36 members.

In order to be a member of the Legislative Council the person concerned should

Be a citizen of India:

Have attained the age of 30 years;

Be a registered voter in the State;

Not hold any office of profit.

The Vidhan Parishad is partly elected and partly nominated. Most of the members are indirectly elected in accordance with the principle of proportional representation by means of single transferable vote system. Different categories of members represent different interests. The composition of the Legislative Council is as follows:

Chairman of the Legislative Council (Presiding Officer)

The presiding officer of the Vidhan Parishad (Legislative Council) is known as the Chairman, who is elected by its members. The business of Vidhan Parishad is conducted by the Chairman. He presides over the meetings and maintains discipline and order in the House. In addition to his vote as a member, he can exercise his casting vote in case of a tie. In his absence, Deputy Chairman presides over the House. He is also elected by the members of the Parishad from amongst themselves.

Sessions of the State Legislature

The State Legislature meets at least twice a year and the inteval between two sessions cannot be more than six months. The Governor summons and prorogues the sessions of State Legislature. He addresses the Vidhan Sabha or both Houses (if there is bi-cameral Legislature) at the commencement of the first session after each general election and at the commencement of the first session of the year. This address reflects the policy statement of the government which is to be discussed in the Legislature, and the privileges and immunities of the members of the State Legislature are similar to that of members of Parliament.

Powers and Functions of The State Legislature

Law Making Function

The primary function of the State Legislature, like the Union Parliament, is law-making. The State Legislature is empowered to make laws on State List and Concurrent List. The Parliament and the Legislative Assemblies have the right to make the laws on the subjects mentioned in the Concurrent List. But in case of contradiction between the Union and State law on the subject the law made by the Parliament shall prevail. Bills are of two types-Ordinary bills and Money bills. Ordinary bills can be introduced in either of the Houses (if the State Legislature is bicameral), but Money bill is first introduced in the Vidhan Sabha. After the bill is passed by both Houses, it is sent to the Governor for his assent. The Governor can send back the bill for reconsideration. When this bill is passed again by the Legislature, the Governor has to give his assent. You have read when the Parliament is not in session and if there is a necessity of certain law, the President issues Ordinance. Similarly, the Governor can issue an Ordinance on the State subjects when legislature is not in session. The Ordinances have the force of law. The Ordinances issued are laid before the State Legislature when it reassembles. It ceases to be in operation after the expirty of six weeks, unless rejected by the Legislature earlier. The Legislature passes a regular bill, to become a law, to replace the ordinance. This is usually done within six weeks after reassembly of Legislature.

Financial Powers

The State Legislature keeps control over the finances of the State. A money bill is introduced first only in the Vidhan Sabha. The money bill includes authorisation of the expenditure to be incurred by the government, imposition or abolition of taxes, borrowing, etc. The bill is introduced by a Minister on the recommendations of the

Governor. The money bill cannot be introduced by a private member. The Speaker of the Vidhan Sabha certifies that a particular bill is a money bill. After a money bill is passed by the Vidhan Sabha, it is sent to the Vidhan Parishad. It has to return this bill within 14 days with, or without, its recommendations. The Vidhan Sabha may either accept or reject its recommendations. The bill is deemed to have been passed by both Houses. After this stage, the bill is sent to the Governor for his assent. The Governor cannot withhold his assent, as money bills are introduced with his prior approval.

Control over the Executive

Like the Union Legislature, the State Legislature keeps control over the executive. The Council of Ministers is responsible to Vidhan Sabha collectively and remains in the office so long as it enjoys the confidence of the Vidhan Sabha. The Council is removed if the Vidhan Sabha adopts a vote of no-confidence, or when it rejects a government bill. In addition to the no-confidence motion, the Legislature keeps checks on the government by asking questions and supplementary questions, moving adjournment motions and calling attention notices.

Electoral Functions

The elected members of the Vidhan Sabha are members of the Electoral College for the election of the President of India. Thus they have say in the election of the President of the Republic (see Lesson No. 10) The members of the Vidhan Sabha also elect members of the Rajya Sabha from their respective States. One-third members of the Vidhan Parishad (if it is in existence in the State) are also elected by the members of the Vidhan Sabha. In all these elections, members of the Vidhan Sabha (Assembly) cost their votes in accordance with single transferable vote system.

Constitutional Functions

You have learnt about the procedure of amendment of the Constitution. An Amendment requires special majority of each House of the Parliament and ratification by not less than half of the States relating to Federal subjects. The resolution for the ratification is passed by State Legislatures with simple majority. However, a constitutional amendment cannot be initiated in the State Legislature.

Limitation of The Powers of the State Legislature

The powers of law-making by the Legislature are limited in the following manner: As explained above, State Legislature can make a law on the subjects listed in the State List and also the Concurrent List. But in case, the State law on a subject in the Concurrent list is in conflict with the Union law, the law made by the Parliament shall prevail. The Governor of the State may reserve his assent to a bill passed by the State Legislature and send it for the consideration of the President. It is compulsory in case the powers of Structure of Government the High Court are being curtailed. In some other cases, prior approval of the President for introducing the bill in the Legislature is essential such as, for imposition of restriction on the freedom of trade and commerce within the State or with other States. The Parliament has the complete control on the entire State List at the time when the national emergency has been declared (under Art. 352), although the State Legislature remains in existence and continues to perform its functions. In case of breakdown of constitutional machinery (under Art. 356) after fall of popular Government in the State, the President's rule is imposed. The Parliament then acquires the power to make laws for that State, for the period of constitutional emergency. The Parliament can also make laws on a subject of the State list in order to carry on its international responsibility. If the Rajya Sabha adopts a resolution by two-thirds majority to this effect,

on its own or at the request of two or more States, the Parliament can enact laws on a specified subject of the State list. Fundamental rights also impose limitations on the powers of the State Legislature. It cannot make laws which violate the rights of the people. Any law passed by the State Legislature can be declared void by the High Court or Supreme Court if it is found unconstitutional as violate of the fundamental rights.

Comparison of the two Houses of the State Legislature

Legislative Assembly (Vidhan Sabha) like the Lok Sabha, occupies a dominant position. Legislative Council (Vidhan Parishad) enjoys much less powers as compared to the powers of Vidhan Sabha even in relation to ordinary bills. The Rajya Sabha at the Centre enjoys equal powers in consideration of bills other than money bills; but Vidhan Parishad enjoys much lesser powers as compared to the Rajya Sabha.

The relative position of the Vidhan Sabha and Vidhan Parishad is as under:

In Relation to Ordinary Bills

In case of the Parliament, if there is disagreement between the two Houses over an ordinary bill, the President summons a joint sitting of both the Houses and if the bill is passed there by the majority of votes, the bill is taken as passed by both Houses of the Parliament. But this provision of the joint sitting does not exist in the States. Although an ordinary bill can originate in either House of the State Legislature, yet both Houses have unequal powers. If a bill is passed in the Vidhan Sabha, it is transmitted to the Vidhan Parishad for consideration. When it is passed by Vidhan Parishad without any amendment, the bill is sent to the Governor for his assent. In case, the bill is (a) rejected by the Parishad or (b) more than three months elapsed without the bill being passed by the Parishad, or (c) bill is passed with amendment to

which the Vidhan Sabha does not agree, the Vidhan Sabha may pass the bill again in the same or in the subsequent session. After that the bill is again sent to the Vidhan Parishad. If the Vidhan Parishad does not return the bill within a period of one month, the bill is deemed to have been passed by both Houses of the State Legislature and is sent to Governor for his assent. Thus the Vidhan Parishad can delay the bill for a maximum period of four months. On the other hand, if the bill is first passed by the Vidhan Parishad and rejected by the Vidhan Sabha, the bill is rejected and cannot become a law.

In Relation to Money Bills

Like in the Lok Sabha, money bill is introduced first in Vidhan Sabha. It cannot be initiated in the Vidhan Parishad. The Speaker of the Vidhan Sabha certifies whether a particular bill is a money bill. After the bill is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad. The Vidhan Parishad gets 14 days time to consider the bill. If the Parishad passes the bill, it is sent to the Governor for his assent. If the bill is not returned by the Vidhan Parishad within 14 days, it is deemed to have been passed by the Vidhan Parishad. If it suggests certain changes in the bill and sends to Vidhan Sabha, the Vidhan Sabha may accept or reject the changes suggested by the Parishad. The bill is then sent to the Governor for his assent who is bound to give his assent.

Control over the Executive

The Council of Ministers of the State is responsible to the Vidhan Sabha only and remains in the office so long as it enjoys the confidenc of the Assembly (Vidhan Sabha). Although members in the Vidhan Parishad can ask questions, introduce adjournment motions, calling attention notives, etc. yet the Vidhan Parishad cannot remove the government.

Electoral Functions

Only the elected members of the Vidhan Sabha are entitled to participate in the election of the President of India. The members of the Vidhan Sabha do so in their capacity as the members of the Electoral College. But the members of the Vidhan Parishad are not entitled to vote in the election of the President. Members of the Rajya Sabha from each State are elected only by the members of Assembly and not of the Council. The above discussion makes it clear that the Vidhan Parishad is powerless and noninfluential House. It has become a secondary House. Thus many States prefer to have unicameral Legislature. But the Vidhan Parishad is not superflous. It serves as a check on hasty Legislation made by Vidhan Sabha by highlighting the short bills comings or defects of the bill. It lessens the burden of the Vidhan Sabha, as some bill are initiated in the Vidhan Parishad.

High Courts

You have already read about the role of India's highest Court called the Supreme Court. Just below the Supreme Court, there are High Courts which are the highest courts of law in States. The High Courts are part of the Indian judiciary, and function under the supervision, guidance and control of the Supreme Court. As highest court in the State, a High Court supervises the subordinate courts in the State. The High Courts are mainly courts of appeal. These Courts hear appeals from numerous subordinate courts working at district level. The system of appointment of judges, their qualifications and the working of subordinate courts is under the direct control and supervision of the High Court of the State concerned. In this lesson you will read about the State High Courts. You will also get an idea of subordinate courts, including the District and Session Courts.

The State High Courts

At present there are 21 High Courts for 28 States and seven Union Territories. The High Courts are the highest courts at State level, but being part of integrated Indian judiciary they work under the superintendence, direction and control of the Supreme Court.

There is a High Court for each State. However, there can be a common High Court for two or more States. For example, the States of Punjab and Haryana and the Union Territory Structure of Government of Chandigarh have a common High Court situated at Chandigarh. Similarly, the High Court of Guwahati is common for seven northeastern States of Assam, Nagaland, Manipur, Meghalaya, Mizoram, Tripura and Arunachal Pradesh. Delhi, though not a State, has its own separate High Court. Every High Court has a Chief Justice and a number of judges. The number of judges varies from State to State. The number of judges of each High Court is determined by the President.

The judges of the High Courts are appointed by the President of India. While appointing Chief Justice of a High Court, the President has to consult the Chief Justice of the Supreme Court and the Governor of the State concerned. While appointing other judges, the President consults the Chief Justice of the Supreme Court, the Chief Justice of the High Court and Governor of the State concerned. The judges can be transferred from one High Court to another by the President. As mentioned earlier, consultation with the Chief Justice of the Supreme Court in respect of appointments and transfers of the judges of the High Court is also obligatory and binding for the President. While the constitutional status of the President remains intact, the actual selection of judges is made by a team of senior judges of the Supreme Court, headed by the Chief Justice of India in accordance with 1993 ruling as reinterpreted in 1999 by the Supreme

Court.This is known as Collegium of the Supreme Court. Its recommendations are binding on the President.

Qualifications, Tenure and Removal of the Judges

In order to be appointed as a judge of a High Court, the person concerned should possess following qualifications:

- He or she should be a citizen of India.
- He or she should have held a judicial office, at the district level or below for at least ten years. Or He or she should have been an advocate in one or more High Courts for at least ten years continuously without break.

Once appointed, the High Court judges hold office till they attain the age of 62 years. After retirement, they may be appointed judges of the Supreme Court or they may practise as advocates either in the Supreme Court or in any High Court other than the High Court in which they served as judges. A High Court judge may be removed before he or she attains the age of 62 years, only on the ground of incapacity or proved misbehaviour. He or she may be removed if both the Houses of Parliament adopt a resolution by a majority of their total membership and by two thirds majority of members present and voting, separately in each House in the same session. Such a resolution is submitted to the President, who then can remove the concerned judge. This procedure is same as for removal of judges of the Supreme Court.

Powers and Jurisdiction of the High Court

The High Courts have the power to hear and decide cases which are brought directly to it. This power is called Original Jurisdiction. When a High Court hears an appeal against the decision of a lower court, it is called Appellate Jurisdiction. A High Court is mostly a court of appeal. Appeals in both civil and criminal cases are brought to it against the decisions of the lower courts.

Original Jurisdiction

The original jurisdiction of the High Courts is very limited. Cases of alleged violation of fundamental rights can be started in High Courts, or in the Supreme Court. The High Courts have the power to issue orders to restore the fundamental rights of the people. You will recall that these orders are called writs.

Power to Issue Writs

You have read in the 'Right to Constitutional Remedies' in the lesson on Fundamental Rights that the Supreme Courts and High Courts can issue writs to ensure that rights of the people are not violated either by State or otherwise. The Constitution has specifically given the power 'to issue certain writs' to the High Courts. These Courts can issue writs (which are binding directions of the Court) to any person or authority, including government of the State concerned. The writs in the nature of Habeas, Corpus, mandamus, prohibition, quo warranto, and certiorari (explained in lesson 6) for the enforcement of rights of the people. This power is exercised in the original jurisdiction of the High Court, and is not derogatory to similar power of the Supreme Court.

A High Court can hear election petition in its original jurisdiction, challenging the election of a Member of Parliament or State Legislative Assembly. It can set aside the election of a member if it finds that he or she used corrupt means in his or her election. All the lower courts function under the superintendence control and guidance of the High Court in the State. High Courts hear appeals against the judgements of the subordinate courts. In civil cases, appellate jurisdiction extends to all such cases which involve an amount exceeding Rs. 5 lakh. Any party to a civil dispute, which is dissatisfied with the decision of the District Court may appeal against the decision of the District Court in the High Court. It Structure of Government

also hears cases relating to patents and designs, succession, land acquisition, insolvency and guardianship. The High Courts hear and decide appeals against decisions of the sessions courts in criminal cases. An accused who is found guilty by a sessions court, and awarded a sentence may file an appeal against the verdict of the sessions court. Sometimes even State may appeal against a sessions court judgement for enhancement of punishment. The High Court may accept the decision of the sessions court, or alter it and increase or reduce the sentence, or change the nature of sentence, or may acquit an accused. However, if an accused is awarded death sentence by the sessions court, the sentence must be confirmed by the High Court before the person is hanged to death. Even if the accused does not file an appeal against death sentence, the State refers it to the High Court for confirmation.

Transfer of Cases to the High Court

If a High Court is satisfied that a case pending in a subordinate court involves a substantial question of law as to the interpretation of the Constitution, the High Court may withdraw such a case from the lower court. After examining the case, the High Court may either dispose it off itself, or may return it to the lower court with instructions for disposal of the case.

Superintendence of Subordinate Courts

A High Court has the right of superintendence and control over all the subordinate courts in all the matter of judicial and administrative nature. In the exercise of its power of superintendence, the High Court may call for any information from the lower courts; may make and issue general rules and prescribe norms for regulating the practice and proceedings of these courts; and it may issue such directions, from time to time, as it may deem necessary. It can also make rules and regulations relating to the appointment, demotion,

promotion and leave of absence for the officers of the subordinate courts.

Court of Record

A High Court is also a court of record, like the Supreme Court. Lower courts in a State are bound to follow the decisions of the High Court which are cited as precedents. A High Court has also the power to punish for its contempt or disrespect.

Qualifications and Appointment of Judges

The judges of subordinate courts are appointed by the Governor in consultation with the Chief Justice of the High Court of the concerned State. These days, in most of the States judicial service officers including the magistrates are selected through competitive examinations held by the State Public Service Commission. They are finally appointed by the Governor. Any person who has been an advocate for at least seven years or one who is in the Structure of Government service of the State or the Central Government is eligible to be a judge of the District Court provided he/she possess the required legal qualifications.

Civil Courts

The Court of the District Judge is the highest civil court in a district to deal with civil cases. Very often the same court is called the Court of District and Sessions Judge, when it deals with both civil and criminal cases at the district level. The judge of this court is appointed by the Governor of the State. Below the Court of District Judge, there may be one or more courts of sub judges in the district. Separate family courts, which are equal to courts of sub judge, have been established in districts to exclusively hear cases of family disputes, like divorce, custody of children, etc. Below them there are courts of munsifs and small causes courts which decide cases involving petty amounts. No appeal can be made against the decisions of the small

causes courts. All these courts hear and settle civil disputes. The Court of the District Judge (called the District Courts) hears not only appeals against the decisions of the courts of sub judges, but also some of the cases begin directly in the Court of District Judge itself. Appeals against the decisions of this court may be heard by the High Court of the State. Civil Courts deal with cases pertaining to disputes between two or more persons regarding property, divorce, contract, and breach of agreement or landlord – tenant disputes.

Criminal Courts

The Court of the Sessions Judge (known as Sessions Courts) is the highest court for criminal cases in a district. Below this court, there are courts of magistrates of First, Second and Third class. In metropolitan cities like Delhi, Calcutta, Mumbai and Chennai, First Class Magistrates are called Metropolitan Magistrates. All these criminal courts are competent to try the accused and to award punishment, as sanctioned by law, to those who are found guilty of violation of law. Criminal Courts hear criminal cases which are related to violation of laws. These cases involve theft, dacoity, rape, arson, pick-pocketing, physical assault, murder etc. In such cases the guilty person is awarded punishment. It may be fine, imprisonment or even death sentence. Normally every accused is presented by the police before a magistrate. The magistrate can finally dispose off cases of minor crime. But, when a magistrate finds prima-facie case of serious crime he/she may commit the accused to the sessions court. Thus, sessions courts try the accused who are sent upto them by the magistrate concerned. As mentioned above, an accused who is awarded death sentence by the sessions court, can be hanged to death only after his sentence is confirmed by the High Court.

Revenue Courts

Revenue courts deal with cases of land revenue in the State. The highest revenue court in the district is the Board of Revenue. Under it are the Courts of Commissioners, Collectors, Tehsildars and Assistant Tehsildars. The Board of Revenue hears the final appeals against all the lower revenue courts under it.

Self Assessment Questions

- Describe the composition of the State Legislature and its role in the legislative process.
- Explain the jurisdiction and functions of High Courts in states.
- Analyze the role of High Courts in resolving disputes between the state government.

Recommended Books

Austin Granville, The Indian Constitution: Cornerstone of A Nation,Oxford University Press,1999

Agarwal, R.C. Constitutional Development and National Movement of India, S. Chand & Co. 1996

Durga Das Basu,An Introduction to Indian Constitution,Wadha& Company, 2001

Shukla, V.N, The Constitution of India, Eastern Book Company,1977

5. Khanna, V.N, Constitution and Government of India, S. Chand & Co., 1981

References

Bhargava Rajeev, *Politics and Ethics of the Indian Constitution*, Oxford University,2009

Durga Das Basu, *Commentary on the Constitution of India*,Wadha& Company,2000

Gautam Bhatia, *Transformative Constitution: A Radical Biography in Nine Acts*, Harper Collins India, 2019

Misra, B.R., *Economic Aspects of Indian Constitution*, Orient Longman,1952