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Constitution of India

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Constitution of India

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Constitution of India

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Unit-I

Framing of the constitution:

Making of the constitution On 26 January 1950, the Indian constitution came into effect. By this act, the Dominion of India era constituent assembly drafted, discussed, and finalized the constitution used, and finalized by the Constituent assembly between December 1946 and December 1949. Comprising 395 articles and 8 schedules, this lengthy document set out the architecture of the new state. The deliberations of the Constituent Assembly were comparably long and painstaking. They provide a fascinating window into the range of ideas and institutions that the makers of the constitution envisioned for the new India. But these debates, and the resultant constitution, also reflected the wider context in which the Constituent Assembly met and functioned.

The Constituent Assembly of India was formed following the Cabinet Mission of 1946. The Mission's Plan rejected the idea of direct elections as too slow and provided for indirect elections by the provincial legislatures. (The provincial legislatures, we will recall, were themselves elected on a very restricted franchise.) The princely states were given a fixed number of seats in the Constituent assembly. Elections to the Assembly were held in July 1946. But, owing to the fall-out between the Congress and the Muslim League over the terms of grouping in the Cabinet Mission Plan, the Muslim League boycotted the Assembly. Some members of the League would join it after Partition had been announced, and then only because they were staying behind in India. Representatives of the princely states, too, took their time to join the Assembly. Thus when the Constituent assembly met for the first time on 9 December 1946, it was a remarkably small (numbering about 300) and unrepresentative body, dominated by the Congress Party. This trend, however, was kept in check by two factors. The Congress itself housed a variety of ideologies and viewpoints and included a substantial 'opposition' within itself. These, as one scholar has observed, 'ranged from a rabid Hindi-supporter to a secular socialist, from a strong advocate of the presidential system to a convinced parliamentarian, from a protagonist of a highly centralized state to a protagonist of loose federalism'

Second, the Constituent assembly sought submissions on various issues from the public at large. A draft of the constitution was also published in February 1948. The voluminous representations from practically every segment of Indian society might have

slowed down its proceedings, but the process broadened its outlook and strengthened its legitimacy. Much of the Constituent assembly's work was done in its numerous committees, subcommittees, and ad hoc committees. The drafting of the text was left to the seven-member Drafting Committee consisting mainly of lawyers and not politicians. The Committee was chaired by B.R. Ambedkar, the brilliant lawyer and leader of the low castes, who also ministered for law in the Union cabinet. The work of the Constituent Assembly was largely facilitated by four Congress leaders: Jawaharlal Nehru, Vallabhbhai Patel, Rajendra Prasad, and Abul Kalam Azad. The foremost historian of the Indian Constitution, Granville Austin, calls them an 'oligarchy', but one that was responsive to the various currents of opinion within the Assembly.

The nature of political institutions

The Constituent Assembly set itself a lofty goal: the creation of conditions for a major social and economic transformation of India. 'The first task of this assembly', Nehru told his colleagues, 'is to free India through a new constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity .

Hence, the major question confronting the Assembly was what form of political institutions would enable and encourage such far-reaching change. This led first to the consideration of the basic constitutional pattern of the new state. The experience of limited self-governance under colonial rule predisposed many members to look towards European-American constitutional tradition. Others, however, favoured drawing on India's own indigenous traditions. Advocates of a 'Gandhian' constitution called for the revival of the Panchayati raj system of village councils. In this scheme, the village would function as the basic unit of politics and governance.

In the event, the Constituent assembly settled for a parliamentary, federal constitution in the Euro-American model. In contrast to the 'Gandhian' model, this political system would be much more centralized. In deference to the Gandhian view, the constitution would promote administrative (as opposed to political) decentralization below the level of the provinces. The state's duty to promote the development of panchayats was written into the Directive Principles of State Policy (of which more below). In a more dramatic break with the past, the Assembly also settled for a direct election by adult suffrage. This was regarded as an essential prerequisite for socio-economic transformation. Many members of the Constituent

assembly believed that universal suffrage would shift the balance of governmental power towards the poor, and encourage policies that would be really beneficial to them. The decision in favour of a parliamentary, federal constitution was also prompted by several immediate considerations. First, in the aftermath of the Second World War, there was a severe food shortage in the country. The rise in food prices, the low grain reserve, and the differences between provinces with surpluses and with shortages, all pointed to the need for national government control of this crucial sector. More broadly, the Assembly believed that economic progress required a centralized authority and centralized planning. Second, The massive blood-bath preceding and accompanying Partition underlined both the weaknesses of the provincial law and order machinery and the need for a central power to uphold order and stability. Third, the Pakistan-abetted tribal invasion of Kashmir and the outbreak of the Communist rebellion in Telangana highlighted the importance of a strong central government capable of managing external defence and internal security. Structure of political institutions.

The structure of political institutions, too, drew on European and American models. The American presidential system and the Swiss Executive model were debated and discarded. The Assembly chose a slightly modified version of the British cabinet system. A President, indirectly elected for a term of five years, would be a constitutional head of state. The President would be commander-in-chief of the armed forces and could refer bills back to Parliament. The position, as Nehru noted, had no 'real power' but 'great authority and dignity (Constituent Assembly Debates, vol. 4, p. 734). As in Britain, there would be a council of ministers responsible collectively to the Parliament, to assist and advise the head of state.

The Parliament would be elected by the British 'first-past-the-post' system. Given the diversity of interests and groupings in India, it was felt that this would make for a strong government. The Assembly provided for an independent election commission and an independent comptroller general of accounts. To ensure the independence of the judiciary, judges of the Supreme Court and the High Courts would be appointed by the President in consultation with the chief justices. Their salaries would not be decided by Parliament but would be charged directly to the Treasury. The Supreme Court would have original jurisdiction in all 'federal' disputes between the units and the Union government. It would also have broad appellate jurisdiction. Any civil and criminal case could be appealed to it if an interpretation of the constitution was involved. The Supreme Court was thus seen as a guardian of the rights enshrined in the constitution. The federal structure adopted by the Assembly was undoubtedly biased in favour of the centre as against the constituent units. The

constitution provided for three areas of responsibility: Union, state, and Concurrent. Subjects in the first list were under the control of the central government, while those in the second fell under the remit of the provinces. The third list was the joint responsibility of the centre and the provinces. The Union list, however, was much larger than those in other countries. The centre's share in the concurrent list, too, was more expansive. Further, Article 356 gave it the power to take over a state's administration on the recommendation of the governor. Most significantly, the centre was empowered with Emergency Provisions. The President might proclaim a state of emergency if he was satisfied that national security was threatened by external aggression or internal unrest. During an emergency, the Union government and Parliament could practically dictate terms to the states.

Historians have differed on the extent of resistance put up by the representatives of the provinces. Granville Austin suggests that 'states' rights' issues never assumed much importance in the deliberations of the Constituent assembly. This was because provinces had never worked in a truly federal system like the United States or Australia (Austin 1999, 188-89). Ramachandra Guha argues, however, that not only did provincial politicians fight "hard for the rights of states … they mounted on the principle [of centralization] itself."

This set of decisions taken by the Assembly was influenced by wider concerns as well: communal violence during Partition and the need to resettle the massive flow of refugees; the need to improve agricultural and industrial productivity. Three other factors contributed to this outcome. During the period when the constitution was being framed, the provinces of India were already functioning as part of a federal structure under the Government of India Act of 1935. Hence, their bargaining power was inherently limited. Furthermore, the creation of Pakistan convinced the Assembly that no new divisive forces should be encouraged. Finally, the Congress Party dominated the political landscape. The absence of strong regional or provincially-based parties eased the path to a strong federal centre.

The model of fiscal federalism adopted by the constitution drew on the Government of India Act of 1935. In the case of some taxes, such as customs duties and company taxes, the centre would keep all the revenue. In other cases, such as income taxes and excise duties, the revenue would be shared with the states. Yet other sources, for instance, estate duties, were assigned wholly to the states. The states, for their part, could levy their own taxes, including sales tax, and land and property taxes. On the whole, though, the financial

provisions favoured the Union government. This trend towards fiscal centralization was strengthened by the unstable financial situation prevailing when the constitution was drawn up. Moreover, members of the Constituent assembly believed that the 'needs' of the provinces should determine how revenue was distributed. This was seen as a key to achieving socio-economic transformation. But it naturally required a greater role to be played by the Union government.

THE SALIENT FEATURES OF THE CONSTITUTION OF INDIA

The Modern State is considered to be a state for the welfare of the people. It is, therefore, suggested that it should have a government of a particular form with appropriate powers and functions. The document containing laws and rules which determine and describe the form of the government, and the relationship between the citizens and the government, is called a Constitution. As such a constitution is concerned with two main aspects the relationship between the different levels of government and between the government and the citizens. A constitution is the basic fundamental law of a State. It lays down the objectives of the State that it has to achieve. It also provides for the constitutional framework that is, various structures and organs of the governments at different levels. In addition, it describes the rights and duties of the citizens. It is, therefore, considered to be the basis for the governance of the country both in terms of goals and objectives as also their structures and functions.

The Constituent Assembly

The Constitution of India was framed by the Constituent Assembly. The Assembly was constituted in 1946. The members of the Constituent Assembly were indirectly elected by the members of the existing Provincial Assemblies. In addition, there were members The Constituent Assembly became a fully sovereign body with the Independence of Indianstituent Assembly became a fully sovereign body. The Constituent Assembly, following the partition of the country in 1947, consisted of 299 members as on 31st December 1947. Of these 229 members were elected by the provincial assemblies and the rest were nominated by the rulers of the princely states. The majority of the members in the Constituent Assembly belonged to the Congress party. All prominent leaders of the freedom movement were members of the Assembly.

Working of the Constituent Assembly

The Constituent Assembly was chaired by the President of the Assembly Dr. Rajendra Prasad was elected as the President of the Assembly. The Assembly worked with the help of a large number of committees and sub-committees. The committees were of two types: (a) relating to matters concerning procedures, and (b) concerning important issues. In addition, there was an Advisory Committee primarily advised from outside. The most important committee was the Drafting Committee. Dr. B.R. Ambedkar was the Chairman of the Drafting Committee. The task of the Committee was to prepare the draft of the Constitution. The Constituent Assembly met for 166 days spread over a period of 2 years 11months and 18 days. The procedure followed in the Assembly was Similar to that which is followed in the legislature. You will study the legislative procedure in detail in the subsequent lesson on Parliament and the legislative Assemblies.

The leaders of the Constituent Assembly were conscious that the need of the hour was general agreement on different issues and principles. As a result, deliberate efforts were made to achieve consensus. While arriving at any decision, the aspirations of the people were uppermost in the minds of the members of the Assembly.

Objectives of the Constitution

The Constitution of independent India was framed in the background of about 200 years of colonial rule, a mass-based freedom struggle, and the national movement, the partition of the country and the spread of communal violence. Therefore, the framers of the Constitution were concerned about the aspirations of the people, the integrity and unity of the country and the establishment of a democratic society. Amongst the members, there were some who held different ideological views. There were others who were inclined to socialist principles, still, others holding Gandhian thinking but nothing could act as any kind of impediment in the progress of the Assembly's work because all these members were of liberal ideas. Their main aim was to give India a 'Constitution' which will fulfil the cherished ideas and ideals of the people of this country.

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Conscious efforts were made to have a consensus on different issues and principles and thereby avoid disagreement. The consensus came in the form of the 'Objectives Resolution' moved by Jawahar Lal Nehru in the Constituent Assembly on December 17, 1946 which was almost unanimously adopted on January 22, 1947. In the light of these 'Objectives', the Assembly completed its task by November 26, 1949. The constitution was enforced with effect from January 26, 1950. From that day India became a Republic. Exactly twenty years before the first Independence Day was celebrated on Jan. 26, 1930, as decided by the Lahore session of the Congress on Dec. 31, 1929. Hence, January 26, 1950, was decided as the day to enforce the constitution. 5.4 The Preamble As you know that the Constitution of India commences with a Preamble.

'Preamble'

The Preamble is like an introduction or preface of a book. As an introduction, it is not a part of the contents but it explains the purposes and objectives with which the document has been written. So is the case with the 'Preamble' to the Indian Constitution. As such the 'Preamble' provides the guidelines of the Constitution.

THE CONSTITUTION OF INDIA PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation]; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

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

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

Sovereign, Socialist, Secular, and Democratic Republic Sovereignty

Sovereignty is one of the foremost elements of any independent State. It means absolute independence, i.e., a government which is not controlled by any other power: internal or external. A country cannot have its own constitution without being sovereign. India is a sovereign country. It is free from external control. It can frame its policies. India is free to formulate its own foreign policy. Socialist The word socialist was not there in the Preamble of the Constitution in its original form. In 1976, the 42ndAmendment to the Constitution incorporated 'Socialist' and 'Secular', in the Preamble. The word 'Socialism' had been used in the context of economic planning. It signifies a major role in the economy. It also means a commitment to attain ideals like the removal of inequalities, provision of minimum basic necessities to all, and equal pay for equal work. When you read about the Directive Principles of the State Policy, you will see how these ideals have been incorporated as well as partly, implemented in the Constitution. Secularism In the context of secularism in India, it is said that 'India is neither religious nor irreligious nor anti-religious.' Now, what does this imply? It implies that in India there will be no 'State' religion – the 'State' will not support any particular religion out of the public fund. This has two implications, a) every individual is free to believe in, and practice, any religion he/ she belongs to, and, b) the State will not discriminate against any individual or group on the basis of religion. The Democratic Republic As you have noticed while reading the Preamble to the Constitution, the

Constitution belongs to the people of India. The last line of the Preamble says '…. Hereby Adopt, Enact And Give To Ourselves This Constitution'.

In fact the Democratic principles of the country flow from this memorable last line of the Preamble. Democracy is generally known as the government of the people, by the people and for the people. Effectively this means that the Government is elected by the people, it is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government. There you will read in subsequent lessons. The Preamble also declares India as a Republic. It means that the head of the State is the President who is indirectly elected and he is not a hereditary ruler as in the case of the British Monarch. Under the chapter on Union Executive, you will read in detail about the election of the President of India.

Indian federal system

Federalism is a form of government in which the sovereign authority of political power is divided between the various units. This form of government is also called a "federation" or a "federal state" in the common parlance. These units are the Centre, state and panchayats or the Municipalities. The centre also is called a union. The component units of the union are called variously as states (in the United States of America), Cantolls (in Switzerland), and provinces (in Canada). Republics (in the former Union of Soviet Socialist Republic). Literally, the word 'federal' means contractual. A federal union is a contractual union. A federal state is a state brought into being through a contractual union of sovereign states. The union of states by conquest cannot be called a federal union.

NATURE OF A FEDERATION

A federation is basically formed on the basis of the principles of a contract. It means that the sovereign units' union States or local units form a federation on the basis of mutual and voluntary agreement. This kind of voluntary union1 federation is possible only in a democratic framework. It also means that the extent of the union is limited. The contracting parties never surrender their complete authority/power. Thus when two or more sovereign states unite voluntarily, they retain their internal/local autonomy and unite only on matters of common interest. More than a hundred years ago. Therefore, James Bryce declared that 'A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights.

In actual practice, however, not all-federal states have been born through the union of sovereign states. Many of them have been products of the devolution of powers by a centralized authority of a union government to the lower units. Indian federation is one such example.

Federalism in India has some similarities with that of the U.S.A. The Constitution of India like the Constitution of the U.S.A, which is the oldest federation, nowhere uses the terms "federation" or "federal union". Both countries have dual polity - one for the Central / Union government: and another for the state government. But there are two main differences between them. A person in the USA has dual citizenship. One of the states where he resides and another the citizenship of his/her country U.S.A. There is no dual citizenship in India. An Indian citizen has only one citizenship - Indian. Here is no separate citizenship for the state where a person resides. Besides, apart from the constitution of the USA, each state has its own constitution. But these are loosely interrelated. In India, there is only a single constitution for the whole country, with the exception of the state of Jammu and Kashmir. * Article 1 of the Constitution of India describes India as a '-Union of states" for Indian federalism. The word "Union" has been used because according to Ambedkar the "federation in India was not a result of an agreement between different states to join a Federation". As mentioned earlier, the federation in India is the result of the devolution of power, not the result of an agreement. This does not give a state the right to secede from India. But the pattern of division of power under the Constitution renders it a federal character. This federal character was given by the framers of the Constitution primarily for two reasons:

1) A federal state is more effective than a unitary one when the size of its territory is as large as India.

2) A federal state is more effective than a unitary one when diverse groups of its population live in a discrete territorial concentration as in India.

The Structure of the Indian Federation

The Constitution of India is written and relatively rigid. Several provisions of the Constitution can be amended only with the consent of a majority of the state legislatures. The Constitution divides power between the Union and the states. The Supreme Court of India has original jurisdiction to decide disputes between:

a) The Union and a state or a group of states:

b) One state and another state or a group of other states; and

c) One group of states and another group of states.

Territories of the States

It is said that the USA is an 'indestructible union of indestructible states. It means that the states of the USA cannot be split, merged or altered in size: but they may not leave the union. But in India boundaries of States can be altered by a law enacted by parliament. It is in this context that in India territorial reorganisation has been going on till the year 2000 and further reorganisations are possible. In the year 2000 the number of states stands at 28, and the number of Union territories at seven. According to Article 3 of the Constitution of India, Parliament has the power to separate territories from states and Union territories to create new states or Union territories, to merge two or more states or land Union territories, split a state or a Union territory into two or more states or land Union territories and to unite parts of states and Union territories to create new states or Union territories. The views of the concerned state legislatures will have to be taken beforehand but not necessarily respected.

Structure of Government

The Union and states have separate governments, both based on parliamentary systems. Like President at the Centre, the Institution head of government at the State level is Governor. However, although the President is elected indirectly by the people, the Governors of the states are appointed by the President (i.e., the Union Government). Both the President and the Governors are advised by their Councils of Ministers. But there is no strict division of public services in India. The Union and the state officials administer both the Union and state laws simultaneously. There are state civil services. But there are also All-India Services whose members serve both the Union and the state government. The Indian judiciary is, however, integrated. It is headed by the Supreme Court of India which is also the federal court.

Division of Powers

The Indian Constitution lays down an elaborate division of legislative powers between the Union and state government in the Seventh Schedule. The executive powers of the Union and state governments co-exist with their legislative powers. The powers of the Union and

state governments are enlisted in three lists known as The Union list, the State list and the Concurrent list. In List 1, the Union List, the powers of the Union government are mentioned; it contains 97 subjects; in List II, the State List, 61 subjects are mentioned on which State legislatures will enact laws. In List III, the concurrent List has mentioned the powers that are to be concurrently exercised by the Union and the state government aid 47 subjects are mentioned in this. The residual powers, not mentioned in any of these lists, belong to the Union. There are, however, three conditions attached to this division: I) If on a concurrent list subject the Union and a state's laws conflict, the Union law will prevail. 2) If the Council of States, or Rajya Sabha by a majority of two-thirds of its members, decide by a resolution that a certain subject belonging to the state list is of national importance the Parliament will be able to legislate on it. 3) When a proclamation of emergency is in operation the Parliament may legislate on any of the state subjects. The force of such law will lapse six months after the proclamation ceases to operate.

Broadly speaking, all subjects relating to defence, security, external affairs, communication, currency, banking and insurance, Inter-state River and river valleys. Interstate trade and commerce, major industries. Development and regulation of oilfields and mines declared by Parliament necessary to be controlled by it, census and universities and other institutions declared by Parliament to be of national importance are under the Union's control. Public order, police, prisons, local communication, land, agriculture, public health, local government, mines not under the Union's control, intoxicating liquor and betting and gambling are under the state's control. The concurrent jurisdiction of the Union and the state extends to criminal law and criminal procedure, preventive detention, education, forests, inland shipping and navigation, factories, boilers, electricity, newspapers, books and printing presses, weights and measures and price control.

THE UNION-STATE RELATIONS

A federal state has often been described as a union without unity: meaning that there is a division of power along with cooperation between the partners. This cooperation has been sought to be established by the Constitution in different ways:

(i) In the first place, there is a directive of the Constitution that the states should legislate on subjects belonging to their jurisdiction and the Union can legislate on subjects belonging to its jurisdiction. But, as we have seen, Parliament may legislate state subjects in some special cases.

(ii) The Governors, on the other hand, have been given the power to withhold assent to a bill and reserve it for the President's assent. The matter becomes complicated by the fact that the Governors are appointed by the President and hold office at the pleasure of the President

(iii) The Parliament delegated power to legislate on any Union subject to a state legislature. Two or more states may also delegate the power to legislate on any of the state subjects. But this can be done only if these states request the Rajya Sabha (the. Council of States) to pass a resolution empowering the parliament to legislate on the matters in the state list. Even without the request of two or more states, the Parliament can legislate on the state issue, if two-third of members present in Rajya Sabha passed a resolution to this effect.

(iv) The states have been directed to exercise their executive power in compliance with the laws of the Parliament and any existing law in operation in the state. The Union has the executive power to issue directions to the state to ensure such compliance.

(v) The Union has the power to issue directives to the state to exercise its executive power without prejudicing the executive power of the Union and the Union can issue directions to ensure this restriction.

(vi) The Union has the power to protect the states from external aggression and internal disturbance

(vii) The failure of a state to give effect to any of the directives may lead to a declaration of constitutional breakdown in a state

These generally healthy provisions, it should be noted, have sometimes been misused to the detriment of state autonomy.

The Financial Powers of the Union and the States

Like the legislative and the executive powers, financial powers are divided between the Union and the states in such a detailed and complicated way that most commentators of the Indian federal system have chosen to use the phrase 'financial relations' rather than 'division of financial power'. This is mainly due to two reasons. Politically speaking the revenues of the Union are far greater than the revenues of the states making the states dependent on federal subsidies. Constitutionally, on the other hand, the Indian Constitution makes a distinction between the power to levy taxes and the power to appropriate them. There is no concurrent jurisdiction in the matter of taxation.

Further, the division of financial powers has been subjected to four amendments: the 3rd (in 1954), the 6th (in 1956), the 46th (in 1982) and the 80th (in 2000). These amendments have

enhanced the Union's power to levy taxes but not necessarily to appropriate them. There are three kinds of taxes in the Constitution, as a result:

1) Taxes and duties are collected and appropriated by the states.
2) Taxes and duties were collected by the Union on behalf of the states and assigned to them.
3) Taxes and duties are collected by the Union and distributed among the states according to principles laid down by the Parliament. Besides these taxes and duties, the Union has unlimited power to give grants-in-aid to the states.

The States impose land revenue, agricultural income tax, succession duties and estate duty on agricultural land, taxes on lands and buildings, taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development, excise duties on alcoholic liquors, opium, Indian hemp for non-medicinal purpose, taxes on entry of goods for consumption and sales, taxes on consumption and sale of electricity, sales tax on goods other than newspapers exchanged within the State, taxes on advertisements except those on newspapers, radio or television, taxes on goods transported by roads or inland waterways and vehicles on road, taxes on animals and boats, tolls, taxes on professions, trades, callings and employments, capitation taxes, taxes in luxuries, amusements, betting and gambling and fees in respect of any of the matters in the State List.

4) The Finance Commission Every five years the President appoints a Finance Commission. The Parliament by law determines the qualification required for appointment to the Commission (Art 280). The Commission recommends to the President:

i) The distribution of the net proceeds of taxes between the Union and the states and the allocation of shares of such state proceeds among the states:

ii) The principles which should govern the grants-in-aid of the state's revenues from the Consolidated Fund of India; and

iii) The measures needed to augment the Consolidated Fund of a state to supplement the resources of the panchayats in the states. The President causes the recommendations to be presented to the Parliament (Art. 28 I). It should however be noted that the recommendations

are not mandatory. The President that is the Union government: is the final authority to decide on such recommendations.

The Planning Commission and National Development Council, Unlike the Finance Commission. The Planning Commission is not a statutory body. It was set up by a formal resolution of the Union Cabinet in March 1950. The Planning Commission plays an important role in the formulation of India's economic policies. The Prime Minister is the chairman of the Planning Commission. Some of the important members of the Planning Commission are the Union Council of Ministers, the Cabinet Secretary and other distinguished persons. It is an extra-constitutional agency and works as an advisory body. It is responsible for the Five Year Plans of the country. The plans were finalised by the Planning Commission and are discussed by the National Development Council (NDC). It is the highest reviewing and advisory body in the field of planning. It was constituted in 1952. The member of the NDC arc Prime Minster. Chief Ministers of all states. Members of the Planning Commission and all Union cabinet ministers. It is an intermediary body between the Union, state and local government. Five Year Plans become operational after the approval of the NDC.

THE UNION TERRITORIES

The Union territories are small and special areas directly under the administrative control of the Union government. Many of the former Union territories have been promoted to the status of states. The President appoints an administrator for a Union territory, sometimes designated as Lieutenant-Governor. The President may also appoint the Governor of an adjacent state as the administrator of a Union territory. Such Governors. While administering the Union territories, are not advised by the Council of Ministers of their own states. In 1962 Parliament created a Legislature and a Council of Ministers for sonic Union territories. All of them. Except for Pondicherry have by now become status. In 1991 Delhi was given special status as a Union capital territory with a large autonomy.

Federalism is a union without unity in political terms. In India, this union is n result of the devolution of power from the central government to the state governments. The Constitution divides legislative, executive and financial powers between the Union and the states with a tilt towards the Union. The Indian judicial is integrated but the highest court is also the federal court of the country. The state boundaries are not fin11 and there are occasional Union-state and centre-state tensions.

Citizenship

Citizenship is commonly understood as referring to the relationship between the individual/collective and the state. This relationship is understood as being made up of reciprocal rights and responsibilities. The most commonly accepted definition of citizenship comes from the English sociologist T.H. Marshall who describes it as 'full and equal membership in a political community. Citizenship, according to this definition, denotes membership in a political community, which in our present context is the nation-state. Citizenship would, thus, signify a specific aspect of the relationship among people who live together in a nation. It emphasises political allegiances and civic loyalties within the community rather than any cultural/emotional identity.

The Idea of Citizenship

The origins of the idea of citizenship are generally traced to the ancient Greek and Roman republics. The word itself is derived from the Latin word 'civic' and it is the Greek equivalent of 'policies', which means a member of the polis or city. However, the manner in which citizenship is understood today as a system of equal rights as opposed to inscriptive privileges deriving from conditions of birth took root in the French Revolution (1789). With the development of capitalism and liberalism, the idea of the citizen as individual bearing rights irrespective of her/his caste, class, race, gender, ethnicity, etc., became entrenched. Since the nineteen eighties, however, globalisation and multiculturalism have provided the contexts within which this notion of citizenship has been challenged. Thus, the nation is no longer seen as the sole unit of membership and the ideas of world citizenship and human rights are being earnestly talked about. Similarly, the individual has been displaced as the core of citizenship theory and the rights of cultural communities and groups have started gaining ground. Thus, it may be said that the idea of citizenship has developed over several historical periods. Its form and substance have not remained the same but changed according to specific historical contexts. The various forms that citizenship took historically have not, however, disappeared entirely. They have not only influenced the modern meanings of citizenship, but they also exist as different strands within the bundle of meanings surrounding citizenship.

The growing influence of liberalism in the nineteenth century and the development of capitalist market relations, however, saw the classical republican understanding of citizenship slip into the background. The liberal notion of citizens as individuals bearing/ enjoying

certain rights in order to protect and promote private interests gained precedence. Citizenship as a legal status, which gave the citizen certain rights assuring protection from state interference, was integral to the liberal understanding of state and politics. It would be appropriate to discuss here T.H. Marshall's account of the development of citizenship in Britain as outlined in his influential work Citizenship and Social Class, published in 1950. In this work, Marshall studies the growth of citizenship alongside capitalism and the peculiar relationship of conflict and collusion that citizenship shares with it. He describes the development of citizenship over a period of 250 years as a process of expanding equality against the inequality of social class, which is an aspect of capitalist society. Marshall distinguishes three strands or bundles of rights, which constitute citizenship: civil, political and social. Each of these three strands has, according to Marshall, a distinct history and the history of each strand is confined to a particular century. Civil rights which developed in the eighteenth century have been defined by Marshall as 'rights necessary for individual freedom'. These were 'negative' rights in the sense that they limited or checked the exercise of government power and included freedoms of speech, movement, and conscience, the right to equality before the law and the right to own property. Political rights viz., the right to vote, the right to stand for elections and the right to hold public office, developed by and large in the nineteenth century and provided the individual with the opportunity to participate in the political life of the community. Social rights, which were largely a twentieth-century development, guaranteed the individual a minimum economic/social status and provided the basis for the exercise of both civil and political rights. Social rights, says Marshall are 'positive' rights 'to live the life of a civilised being according to the standards prevailing in society. These standards of life and the social heritage of society are released through active intervention by the state in the form of social services (the welfare state) and the educational system. Marshall's scheme of the historical development of rights in England since the eighteenth century cannot, however, be held true for other societies. Civil rights, for example, were not fully established in most European countries until the early nineteenth century. Even where they were generally achieved, some groups were omitted. Thus, although the constitution granted such rights to Americans well before most European states had them, Blacks were excluded. Even after the Civil War, when Blacks were formally given these rights, they were not able to exercise them. Rights were also denied to the colonised peoples of Latin America, Africa and Asia. Women did not have the right to vote in most countries, including England, till the first quarter of the twentieth century. The modern notion of citizenship as pointed out earlier seeks to constitute free and equal citizens. This freedom and

equality, which underlies modern citizenship, is sought to be achieved by eliminating inscriptive inequalities and differences (of culture, caste, gender, race etc.). Thus, citizens are conceived as bearing rights and exercising their rights equally with other citizens. Conditions of equality i.e., conditions in which citizens are able to exercise their rights equally are ensured by making circumstances of inequality i.e. race, ethnicity, gender, caste etc., irrelevant for the exercise of the rights of citizenship. The citizen, thus, is the right-bearing individual whose caste, race, gender, ethnicity etc. are seen as unrelated to the status of citizenship. Seen in this manner, citizenship constitutes an overarching identity concealing all other identities to produce what are called masked/unmarked (and therefore) 'equal' citizens of the nation. In much of liberal theory till most of the twentieth century, the bias in favour of the individual rights-bearing citizen pursuing private interests persisted. The idea of citizenship as outlined in this (liberal) framework, has a distinctive significance as well as some obvious limitations.

CITIZENSHIP THEORY TODAY

Since the nineteen eighties, as we saw in the previous section, attempts have been made to dislodge the rights-bearing individual from the core of citizenship theory. The notion of individual rights has been counterbalanced by the claims of cultural communities to special rights catering to their distinctive needs. The centrality of rights in citizenship theory has also been questioned in some quarters and there appears to be a revival of interest in the republican tradition of citizenship with its emphasis on the primacy of the common good and civic duties over individual/private interests. We shall take up these two contests over the nature of citizenship in this section.

Individual Vs the Community

One set of divisions among citizenship theorists today can be seen along the lines of the question, who or what forms the core of citizenship- the individual or the wider context of which s/he is a part i.e., the cultural (ethnic, religious etc.) community. We have seen that the liberal (individualist) notion of citizenship emerged as a strand in the French revolutionary tradition and strengthened with the growth of capitalism. The citizen in liberal theory is the free-floating individual and citizenship is a legal status which enables citizens to enjoy rights equally with other citizens each of whom, however, pursues distinct personal interests. In this view, the conditions for equal enjoyment of rights are laid out by making irrelevant the particular contexts of individuals i.e., their special circumstances defined by factors of birth

viz., race, caste, culture, ethnicity, gender etc. This view is counterpoised by the Communitarians who, in the civic republican tradition, assert the importance of the contexts of individuals in determining the extent to which rights can be enjoyed equally with others. These theorists emphasise that instead of masking these differences in the allocation of rights, an effort must be made to take account of the specificity of the different circumstances of citizens. An increasing number of theorists referred to as 'Cultural Pluralists' argue that a large number of ethnic, religious and linguistic groups feel excluded from the 'common' rights to citizenship. These groups can be accommodated into common citizenship only by adopting what Iris Marion Young calls 'differentiated citizenship' which means that members of certain groups should be accommodated not only as individuals but also through the group and their rights would depend in part upon their group membership. Young, among the most influential theorists of cultural pluralism, asserts that the attempt to create a universal conception of citizenship which transcends group differences is fundamentally unjust to historically oppressed groups: 'In a society where some groups are privileged while others are oppressed, insisting that as citizens persons should leave behind their particular affiliations and experiences and adopt a general point of view serves only to reinforce the privileged for the perspective and interests of the privileged will tend to dominate this unified public, marginalising or silencing those of other groups.

Duties Vs Rights

The second set of divisions follows the same lines as the first. The contest here is in terms of what are the defining premises of citizenship viz., the primacy of the public/political and civic life or the primacy of individual interests and differences. The concept of 'civic virtue' and 'good' citizenship which emerged in the classical Greco-Roman world forming part of the republican tradition and revived later in Renaissance Italy and eighteenth-century America and France, forms an integral part of the notion of citizenship which affords primacy to civic and public life. Those who subscribe to these ideas give importance to the notion of active citizenship. Justice Citizenship in such a formulation becomes constitutive of civic duties, civic activity, public spiritedness and active political participation. Where civic republicanism stresses a stern adherence to the citizens' duties towards civic life, the liberal notion gives priority to individual interests and differences and stresses the citizens' entitlement to justice and rights. For them, the richness of private life is of primary importance and citizenship is constitutive primarily of some fundamental rights. Rights are primary in this formulation and their purpose is to protect the inner personal world and to

provide freedom for private pursuits and individual creativity without encroachment from conflicting interests. It may be noted here that in the civic republican tradition, rights would be regarded as conditions which follow the exercise of a citizen's duty to participate in the political process rather than being the prior condition. Since the nineteen eighties, this issue has been taken up in the growing debate between liberalism and communitarianism. Communitarian theorists such as Alisdair MacIntyre (1981) and Michael Sandel (1982) for example, dismiss the idea of the 'unencumbered self' or the de-contextualised individual of liberal theory. They argue that the 'politics of rights' should be replaced by the 'politics of common good' by an 'embedded self'. In this view liberal individualism, by focusing on individual rights and entitlements, weakens the bonds that give cohesion to socie

Fundamental Rights.

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. There are seven categories of Fundamental Rights (FR) which are covered by Articles 12-35.

ARTICLE 12: DEFINITION

In this Part, unless the context otherwise required, "the State" includes the Governmental 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.

ARTICLE 13: LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

(1) 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.
(2) 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.
(3) In this article, unless the context otherwise required, – (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in

the territory of India the force of law;

(b) "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.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

ARTICLE 14: 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.

ARTICLE 15: PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

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

(2) No citizen shall, on ground 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 –

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) or 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.

ARTICLE 16 : EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

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

(2) No citizen shall, on grounds 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.

(3) 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 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.

(4) 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.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion 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.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an 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.

ARTICLE 17: 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 the law.

ARTICLE 18: ABOLITION OF TITLES

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, 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.

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

ARTICLE 19: PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC.

(1) All citizens shall have the right –

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; and
(f) to practice any profession, or to carry on any occupation, trade or business.

(2) 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.

(3) 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 interest of the sovereignty and integrity of India or public order, reasonable restrictions on the right conferred by the said sub-clause.

(4) 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.

(5) Nothing in sub-clause (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 Schedule Tribe.

(6) 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, 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.

ARTICLE 20: PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

(1) 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, not 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.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY

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

Article 21A: 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.

ARTICLE 22: PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES

(1) 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.

(2) 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.

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize 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

(b) such a person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) 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.

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

(7) Parliament may by law prescribe –

(a) 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);

(b) 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

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)

ARTICLE 23: PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

(1) Traffic in human beings and the beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

ARTICLE 24: 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.

ARTICLE 25: FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION

(1) 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.
(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –
(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
The 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.

ARTICLE 26: FREEDOM TO MANAGE RELIGIOUS AFFAIRS

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –
(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with the law.

ARTICLE 27: FREEDOM AS TO PAYMENT OF TAXES FOR THE 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.

ARTICLE 28: FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN CERTAIN EDUCATIONAL INSTITUTIONS

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
(2) 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.

(3) 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 minor, his guardian has given his consent thereto.

ARTICLE 29: PROTECTION OF INTERESTS OF MINORITIES

(1) 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.

(2) 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.

ARTICLE 30: RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS

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

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

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

ARTICLE 31: COMPULSORY ACQUISITION OF PROPERTY

ARTICLE 31A: SAVING OF LAWS PROVIDING FOR ACQUISITION OF ESTATES, ETC.

(1) Notwithstanding anything contained in article 13, no law providing for –

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) 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

(c) 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
(d) 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 share-holders thereof, or
(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of 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 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.
(2) In this article, –
(a) 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 tenure in force in that area and shall also include –
(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;
(ii) any land held under ryotwari settlement;
(iii) any land held or let for purposes of agriculture of 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;
(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

ARTICLE 31B: 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 provision thereof shall be deemed to be void, or even 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.

ARTICLE 31C: 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 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 article 14 or article 19; 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.

ARTICLE 31D: SAVING OF LAWS IN RESPECT OF ANTI-NATIONAL ACTIVITIES

ARTICLE 32: REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART

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

(2) The Supreme Court shall have the 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.

(3) 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).

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

ARTICLE 32A: CONSTITUTIONAL VALIDITY OF STATE LAWS NOT TO BE CONSIDERED IN PROCEEDINGS UNDER ARTICLE 32

ARTICLE 33: 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, –

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counterintelligence; or

(d) persons 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.

ARTICLE 34: 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 person in respect of any act done by him in connection with the maintenance or restoration or order in any area within the territory of India where martial law was in force or validate any sentence passed, the punishment inflicted, forfeiture ordered or other act done under martial law in such area.

ARTICLE 35: LEGISLATION TO GIVE EFFECT TO THE PROVISIONS OF THIS PART

Notwithstanding anything in this Constitution, –

(a) 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.

Unit II:

Directive Principles of State Policy

Fundamental Rights envisage a liberal democratic State, and the Directive Principles of State Policy embody principles of a welfare state. The Directive Principles of State Policy are mentioned in Articles 36-51, Part IV of the Constitution. Their main purpose is to achieve social and economic development of all sections of society, aiming to set up an egalitarian society. In Granville Austin's views, Directive Principles of State Policy have been helpful in achieving the constitutional goals of social, economic and political justice for all.

The Fundamental Rights were incorporated in the Constitution according to the suggestions of the Rights Sub-committee of the Constituent Assembly. Apart from giving suggestions on Fundamental Rights, this Sub-committee gave suggestions on Directive Principles of State Policy. Indeed, there has been a debate in the Constituent Assembly on whether the rights should be divided into two parts – justiciable and non-justiciable or Fundamental Rights and Directive Principles of State Policy. They provide directives or instructions to the state to introduce policies about the welfare of different sections of society. Granville states that four members of the Constituent Agency played a decisive role in framing Directive Principles of State Policy – B.N. Rau, A.K. Ayyar, B.R. Ambedkar and K.T. Shah. Among them, B.N. Rau was "the most influential". The origin of Directive Principles of State Policy can be traded to Karachi Resolution and socialist and nationalist ideas which were prevented from the 1920s in India. The Sapru Committee suggested that rights should be divided between two parts – justiciable and non-justiciable.

Even the Right Sub-Committee made these suggestions. At the time of discussion on Directive Principles of State Policy in India, the inclusion of provisions about the state's role in the social and economic development of society was not the exception to India. For instance, provisions of Directive Principles of State Policy were borrowed from the Irish constituent. In the opinion of Granville Austin, they attracted the attention of "a wide range of Assembly members".

Durga Das Basu classifies the Directive Principles of State Policy into three groups. First, certain ideals, that the members of the Constituent Assembly expected the state to achieve. These ideals especially were economic. Second, certain directions to the Legislatures and the Executive were expected to follow for exercising their legislative and executive

powers. Third, certain rights of the citizens were not enforceable by the Courts like the Fundamental Rights but could be implemented by the state through its legislative and administrative policies. Apart from the articles mentioned in Part IV of the constitution, there are some other articles in the constitution which enjoin the state the task to make certain policies for people and non-justiciable in nature. Such articles are Articles 335, 350A and 351.

According to Article 335, the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union of a State. Article 350 A suggests that every state and every local authority within the state will provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. Article 351 enjoins the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression of all elements of the composite culture of India.

AMENDMENTS TO DIRECTIVE PRINCIPLES OF STATE POLICY

Some new clauses were added through constitutional amendments to the articles about the Directive Policy. These amendments made the list of articles about Directive Principles of State Policy more inclusive of social welfare. The 42nd Amendment Act of 1976 added four new subjects that required the State to secure the healthy development of children (Article 39), to promote equal justice and to provide free legal aid to the poor (Article 39 A), to secure the participation of workers in the management of industries (Article 43 A), to protect the environment, forests and wildlife (Article 48 A). The 44th Amendment Act of 1978 added Article 38 which required the State to minimize inequalities in income, status, facilities and opportunities. The 86th Amendment Act of 2002 modified the content of Article 45 which required the State to provide early childhood care and education for all children until they complete the age of 6 years and was directed in making education a fundamental right under Article 21 A. The 97thAmendment Act of 2011 added Article 43 B which required the State to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

EXECUTION OF DIRECTIVE PRINCIPLES OF STATE POLICY

Since Independence, various central states and governments in India have enacted several acts, launched schemes and programmes, and set up commissions according to Directive Principles of State Policy. The Planning Commission (which has been abolished and replaced by Niti Ayog) through its Five-Year Plans aimed to bring about social and economic equity and justice. The introduction of land reforms in several states which included as Zamindari Abolition, tenancy reforms, ceilings on land holdings, and cooperative farming reduced inequalities in rural society. The governments introduced several measures to help the underprivileged sections. Such measures included acts to protect the interests of the poor: ensuring minimum wages to workers, protecting contract workers, providing free legal aid to the poor, abolition of child labour, abolition of bonded labour, resolution of industrial disputes, etc. For helping women these measures included: acts about maternity benefits and the equal remuneration act was passed to protect the interests of women. The government passed acts for the protection of wildlife and conservation of forests and set up central and state pollution boards to protect the environment.

The government set up Khadi and Village Industries Board, Handlooms and Handicrafts Boards to develop cottage industries. It enacted laws for the protection of ancient and historical monuments and archaeological sites and remains, and places of national importance. To protect the interests of the SCs, STs and OBCs reservations have been given to them in government jobs and political institutions. And laws have been enacted for the protection of civil rights and the prevention of social exploitation. The establishment of village panchayats and reservations for weaker sections in them has empowered them. Programmes such as Community Development Programme, Hill Area Development Programme, Minimum Needs Programme, IRDP (Integrated Rural Development Programmes), MNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) and NRHM (National Rural Health Mission), etc. have resulted in social and economic inclusion of people.

LIMITATIONS OF DIRECTIVE PRINCIPLES OF STATE POLICY

The main limitation of Directive Principles of State Policy is that the state is not legally bound to implement them. This is despite the fact that the state has a moral duty to

implement them and they are accommodated in the constitution. Exemption of Directive Principles from being justiciable may make the state vulnerable to the pressure of politically and economically influential groups in society. Some members of the Constituent Assembly underlined their limitations, especially regarding their being non-justiciable. K.T. Shah commented that the limitation would make Directive Principles of State Policy 'pious wishes'. T.T. Krishnamachari described them as "a veritable dustbin of sentiment". K.Santhanam asserted that the Directives could lead to conflicts between the Centre and States, Prime Minister and President, and Governor and Chief Minister in terms of direction, guidance, legislation, assent, and enforcement with regard to the problem of non-compliance and discretion.

Fundamental Duties

The Fundamental Duties are incorporated into the constitution through the 42nd amendment. A set of ten duties are incorporated under the Fundamental Duties under Article 51 A. The Preamble the Preamble is an introduction to the constitution. It sets out the goals, values and ideals for which our country stands. The objectives specified in the Preamble contain the basic structure of our constitution, which cannot be amended in the exercise of power under article 368 of the constitution. (Refer to Keshvanand Bharati Vs State of Kerala, AIR 1973 SC 1461 and Indira Gandhi Vs Raj Narain, AIR 1975 SC 2299). The preamble is a part of the constitution which reads as: "WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; In our constituent assembly this twenty-sixth day of November 1949, do hereby adopt, enact and give to ourselves this constitution".

The Forty-second amendment to the Constitution in 1976 incorporated terms such as 'Socialist and Secular' and 'Unity and Integrity of the nation in the preamble. Pluralism is the keystone of Indian Culture whereas religious tolerance is the bedrock of Indian secularism. The Preamble may be involved to determine the ambit of (a) Fundamental rights and (b) Directive Principles of State Policy. From the preamble it is clear that India has emerged as a Sovereign, Socialistic, Secular, Democratic, Republic ensuring its citizens Justice, Liberty,

Equality, and Fraternity. We the People The power to govern is drawn from the people of India therefore, sovereignty, resides with the people of India. Sovereign means that India is no more under the domination of any foreign country and any external force cannot influence its decisions. It is a free and independent country. It can acquire foreign territory and if necessary, cede a part of the territory in favour of a foreign state. Socialist There is many definitions for socialism but one well-accepted explanation is the nationalization of the means of production and equal distribution of wealth.

In other words absence of private property. Secular means a State taking a neutral position on religion. It is the separation of State and religion. There is no official religion in India. Secularism pervades its provisions which give full opportunity to all persons to profess, practise and propagate the religion of their choice. All religions will receive equal treatment. It is neither a theocratic nor an atheistic state. Democratic the Democratic has been introduced with a view to realizing political, economic and social democracy. Political democracy means one vote for one person and a rotation of government. Social democracy means the absence of discrimination on the basis of caste, religion, race, gender etc. Economic democracy means to bridge the gap between rich and poor in terms of income and distribution of wealth. Republic Since the constitution has been given by the people to themselves, thereby affirming the republican character of the polity and sovereignty of the people. In independent India the Head of the Republic, President is elected which means, we have put an end to hereditary rule. (Under the British, regime we were under the Monarchy or Crown).

Justice

The term justice is being used in its widest possible sense which is made clear by the addition of the objectives 'social, economic and political to justice. It intends not only to create an environment in which social, economic and political justice is assured but also to work positively against any form of discrimination existing in the society on the basis of caste, community race, religion or otherwise. Liberty is the basic freedom set forth by the French Revolution. Our Constitution believes in freedom of different natures social, civil and political as articulated through the fundamental rights in the Constitution under Part III. Equality 'Equality before the law' and 'equal protection of laws' are guaranteed under the Fundamental Rights, enshrined in the constitution. Fraternity, according to Dr Ambedkar, is "a sense of common brotherhood and sisterhood of all Indians". Without fraternity, he was clear in his mind that "equality and liberty will be no deeper than coats of paint".

Liberty, equality and fraternity form a union of trinity in the sense that if we divorce one from the other, it defeats the very purpose of democracy. The structural part of the constitution is, to a large extent, derived from the Government of India Act, of 1935 whereas its philosophical part has many other sources. In our constitution, Fundamental rights partly derive their inspiration from the Bill of Rights, enshrined in the American constitution; Directive Principles of State Policy from the Irish Constitution. We had added the principle of cabinet government and executive legislature relationship from the British experience.

The Canadian Constitution partly proved a source for Union-State relations whereas the Australian constitution provided us concurrent lists, privileges of the members of parliament and matter related to trade and commerce. Besides these, we have also many indigenous and innovative ideas like Panchayats, international peace and security. Constitution is a living and organic thing. It is not to be construed as a mere law, but as the machinery through which laws are made. Fundamental Rights Fundamental rights are the political and civil rights meant for all citizens. Kept in Part III of the constitution, Fundamental Rights are borrowed mainly from the UDHR (Universal Declaration of Human Rights, 1948) and the Bill of Rights enshrined in the American constitution. Fundamental rights have paramount importance in the constitution as it declares that all laws inconsistent with or in derogation of fundamental rights shall be void. Further, State shall not make any law which takes away or abridge the rights conferred in Part III of the constitution. The fundamental rights are provided to protect the dignity of the individual and to create conditions in which every human being can develop his or her personality to the fullest extent possible. The constitutional remedies make the fundamental rights active, alive and functional.

PRESIDENT OF INDIA

The constitution has made detailed provisions to see that the President, the head of the state, is a ceremonial head and that he does not arrogate to himself any real power. The President is indirectly elected for a term of five years and can be removed on the basis of impeachment proceedings brought against him by the Parliament. The Constitution also provides for the post of a Vice -President. He/ she is also indirectly elected, who would serve as head of the state in the event of the President’s resignation, removal by impeachment or death.

Qualifications

Articles 58 and 59 of the Constitution of India lay down the qualifications for the office of the President of India. A candidate for the office of the President should be a citizen of India, must have completed 35 years of age and possess other qualifications which are necessary to become a member of the Lok Sabha. He/ she should not hold any office of profit under the Union, State or local governments at the time of his election, nor should he/she be a member of either House of Parliament or state legislature. Besides, the candidate should possess such other qualifications as may be prescribed by the Parliament from time to time

Method of Election

The Constitution prescribes an indirect election through an electoral college (composed of the elected members of Parliament and the elected members of the state legislative assemblies) on the basis of proportional representation and by means of a single transferable vote. Based on the system of principles of uniformity among states and parity between the centre and the states, the election procedure is designed to ensure the election of a truly national candidate. To ensure uniformity among states, the value of the votes of elected members of the state assemblies is calculated on the basis of the total population of the state. The value of a state elector's vote is worked out by dividing the total population of the state, by the total number of elected members in the assembly. The quotient obtained is divided by 1000 to obtain the value of the vote of each member of the assembly in the presidential election. The value of the vote of a member of Parliament is obtained by dividing the total number of votes given to all the elected members of the States assemblies by the total number of elected members of both houses of the Parliament.

Voting is by single transferable vote, with electors casting first and second preferences. A candidate who receives an absolute majority of votes cast by the Electoral College is declared the winner. In case no candidate secures an absolute majority in the first counting, the second preference votes of the lowest polling candidate are transferred to the other remaining candidates until one candidate crosses the threshold of 50 per cent of the votes cast. This method of election was intended to make the Presidential election broad-based to achieve a political balance between the Centre and the States. Consequently, the President represents not only the Union but also the States and it shows the federal character of the Indian polity.

Term of Office and Removal of the President

The tenure of the office of the President of India is five years. His/her term commences from the date on which he/she assumes office after taking an oath administered by the Chief Justice of India. However, the President can seek a second term. For instance, Rajendra Prasad was elected as the President twice despite not being favoured by the then Prime Minister Jawaharlal Nehru but strongly supported by a large number of Congress leaders.

The President remains in office until his/her successor enters the office. However, if the President wishes to resign, he can send his resignation letter to the Vice-president. If the post of the President falls vacant, the Vice-President takes over the charge. But the election for the post of President must be conducted within six months from the date of occurrence of the vacancy.

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

POWERS OF THE PRESIDENT

Article 53 deals with the executive powers of the President of India. The powers of the President are broadly divided into two types, namely, ordinary and emergency powers. The ordinary powers of the President can be defined as executive, legislative, financial and judicial powers.

The executive powers of the Union are vested in the President. Article 53 confers all executive powers in him and empowers him to exercise these powers directly by himself or through officers subordinate to him. Article 75 requires the Prime Minister to communicate to the President regarding all decisions of the Union Council of Ministers. Article 77 holds that all executive powers of the Union government shall be exercised in the name of the President.

The President has both administrative and military powers. The supreme command of the armed forces is vested in him/her and all appointments in the armed forces are made under the authority of the President as the supreme commander of the armed forces. The President appoints the Prime Minister and, on the latter's advice, the council of ministers, the Attorney-General, the justices of the Supreme Court and High Courts, members of special commissions (such as the Union Public Service Commission and the Election Commission), and the governors of states. The choice of the Prime Minister is not a discretionary prerogative of the President but is usually dictated by the party commanding a majority following in the Lok Sabha.

The President of India is also the Commander-in-Chief of the Defence Forces. He appoints the Chiefs of the Army, the Navy and the Air Force. He has the power to declare war and conclude peace. But all these powers have to be exercised by him subject to the ratification of the Parliament. However, the President is not a member of either house of Parliament; Article 79 states that the President is an integral part of the Union Parliament. As we saw in Unit 7, the President has the power to summon both the Houses of Parliament, nominate twelve members to the Rajya Sabha, the right to address either house or their joint session at any time and the power to dissolve the Lok Sabha. All money bills to be introduced in the Parliament have to obtain the recommendation of the President. Such a prior recommendation is also necessary for introducing bills regarding the formation of new states, alteration of areas, boundaries, names of the existing states, etc. Finally, when any bill is passed by the Parliament, it can become an Act only when it has the assent of the President. The President can withhold or return a non-money bill for reconsideration by the Parliament. However, if the same is passed by both houses with or without modifications and returned to the President, the latter is bound to give his assent.

When the Parliament is not in session, the President can promulgate ordinances in the public interest. These ordinances have the same force and effect as the laws passed by the Parliament. However, they have to be placed before the Parliament within a period of six weeks from the day of the reassembling of Parliament. Without the Parliament's approval, the ordinance will become invalid.

Article 254 empowers the President to remove inconsistencies between laws passed by the Parliament and State Legislatures and the subjects included in the concurrent list.

There is another legislative function of the President which has a bearing on states; the Governor of a state can reserve certain bills passed by the State Legislatures for the consideration of the President.

The judicial powers of the President of India include the appointment of the justices of the Supreme Court and High Courts, and the power to grant pardon, reprieve, suspension, remission or commutation of punishment or sentence of the court. These powers of granting pardons are given to the President for removing the extreme rigidity in the criminal laws and for protecting the persons on humanitarian considerations. The President also has the right to seek the advice of the Supreme Court on some important constitutional, legal and diplomatic matters. In 1977, the President sought the advice of the Supreme Court for creating Special Courts to try emergency excesses.

Emergency Power

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

The President can make a proclamation of national emergency at any time if he is assured that the security of any part of India is threatened by war, external aggression or armed rebellion. This proclamation must be submitted to the Parliament for its consideration and approval. It must be accepted within one month by both the Houses of Parliament by two-thirds of the members present and voting. If the Parliament fails to approve the proclamation bill, it ceases to operate. If approved, it can continue for a period of six months. However, it can continue for any length of time if the President approves the proclamation every six months.

The Parliament, however, has the power to revoke the emergency at any time by a resolution proposed by at least one-tenth of the total members of the Lok Sabha and accepted by a simple majority of the members present and voting. National emergency under Article 352 was proclaimed for the first time in 1962 when the Chinese aggression took place. The second proclamation was made in 1971 during the Bangladesh war. On 25 June 1975, for the

first time, the President proclaimed, on the advice of the Prime Minister, an emergency in the name of grave danger to internal security.

According to Article 356, the President can impose an emergency in a state when there is a breakdown of the constitutional machinery. However, the imposition of presidential rule in a state has become more difficult after the Supreme Court verdict in a case known as Bommai Case. According to this case, the President can dismiss a state government only after the approval of the proclamation by both houses of Parliament. If both houses of Parliament do not approve the proclamation, it lapses at the end of two months and the dismissed government is revived. In this case, in 1989, Nineteen letters from the Council of Ministers were sent to the Governor of the State (Karnataka) for withdrawing support from the ruling party under the S.R. Bommai leadership (as Chief Minister). Following this, the Governor dismissed the Bommai government. But within a short period, the defected MLAs promised to support back the Bommai government. But the governor did not give him an opportunity to Bommai to produce his majority on the floor of the house. The Governor dismissed the government on the plea that the Chief Minister lost the majority in the house. S.R. Bommai challenged the Governor's decision in the Supreme Court. The Supreme Court gave its verdict in 1994.

The proclamation of this type of emergency, popularly called President Rule, can remain in force for a period of six months. By the 44th Amendment, the Parliament can extend the duration of the state emergency for a period of six months at one instance. Ordinarily, the total period of such an emergency cannot exceed one year unless there is a national emergency in force. However, the total period of state emergency cannot go beyond three years.

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

The Prime minister and Council of ministers.

The real executive power under the Constitution vests with the Union Council of Ministers with the Prime Minister as its head. The President is obliged to act according to the advice of the Council of Ministers which is responsible in the real sense of the term, not to the President but to the Lok Sabha.

As in Britain, the Prime Minister in India is usually a member of the lower house of Parliament. When Indira Gandhi was selected as a Prime Minister in 1966, she was a member of the Rajya Sabha. By getting elected to the Lok Sabha, she strengthened the convention of the Prime Minister as a member of the lower house.

The Prime Minister is appointed by the President. However, the President has hardly any choice in selecting the Prime Minister. He can only invite the leader of the party in the majority in the Lok Sabha or a person who is in a position to own the confidence of the majority in the house. The Prime Minister holds office at the pleasure of the President. The 'pleasure' of the President in this regard is related to the unwavering majority support that a Prime Minister receives in the Lok Sabha.

The President appoints the other members of the Council of Ministers on the advice of the Prime Minister. A minister may be chosen from either house and has a right to speak and take part in the proceedings of the other house, though he can vote only in the House to which he belongs. Even a person who is not a member of either house of Parliament can be appointed as a minister, but he has to qualify for it by being elected or nominated to either house within a period of six months.

The Council of Ministers and the Cabinet

The term 'Cabinet' is used interchangeably with that of Council of Ministers. But they are different. The Council of Ministers, or the Ministry, consists of different categories of ministers. At the time of independence, there was no such institution as a cabinet in India. What existed then was the Executive Council. On 15 August 1947, the Executive Council was transformed into a Ministry or Council of Ministers that is responsible to the Parliament.

The term 'Cabinet' was used thereafter as an alternative to the Council of Ministers. At this stage, all the members of the ministry or the Cabinet except the Prime Minister had the same status. But the situation changed once junior ministers were appointed to the Council of Ministers. In 1950, based on the recommendations of Gopalswamy Ayyangar's report, a three-tier system of the ministry was established with the cabinet ministers at the

top, ministers of the state at the middle, and deputy ministers in the lowest rung. The Cabinet, composed of the 'senior-most ministers' whose responsibilities transcended departmental boundaries into the entire field of administration, is a smaller body and the most powerful body in the government. The Cabinet serves three major functions: i) It is the body which determines government policy for presentation to the Parliament, ii) It is responsible for implementing government policy, and iii) It carries out inter-departmental coordination and cooperation.

The cabinet meets regularly, as it is a decision-making body. It is assisted by the cabinet secretariat, headed by a senior member of the civil services, the cabinet secretary. To manage the volumes and complexities of work that comes before it, the cabinet members have developed standing and ad hoc committees. There are four Standing Committees which are permanent in nature. These are the defence committee, economic committee, administrative organisation committee and parliamentary and legal affairs committee. Ad-hoc Committees are constituted from time to time.

Next in rank are the ministers of state who hold independent charge of individual ministries and perform the same functions and exercise the same powers as a cabinet minister. The only difference between a minister of state and a cabinet minister is that he/she is not a member of the cabinet, but attends cabinet meetings only when specially invited to do so in connection with the subject that he/she is given charge of. There are other ministers of state who work directly under cabinet ministers.

At the bottom of the hierarchy are the deputy ministers who do not have specific administrative responsibilities. However, their duties include: i) Answering the questions in parliament on behalf of the ministers concerned and helping to pilot bills, ii) Explaining policies and programmes to the general public and maintaining liaison with members of parliament, political parties and the press, and iii) Undertaking special study or investigation of particular problems, which may be assigned to them by the particular minister. From the above, it is clear that the Cabinet is the nucleus of the Council of Ministers. Precisely because of this reason Walter Bagehot calls the Cabinet 'the greatest committee of the legislature. It is the 'connecting link between the executive and legislative power'.

Collective Responsibility

The Council of Ministers functions on the principle of collective responsibility. Under this principle, all ministers are equally responsible for each and every act of government. That is, under collective leadership, each minister accepts and agrees to share

responsibility for all decisions of the cabinet. Doubts and disagreements are confined to the privacy of the cabinet room. Once a decision has been taken, it has to be loyally supported and considered the decision of the whole government. If any member of the Council of Ministers is unable to support government policy in the Parliament or the country at large, that member is morally bound to resign from the Council of Ministers.

Even if the Council of Ministers is formed as a result of a coalition of various political parties, a minimum common programme becomes essential for maintaining the solidarity of the ministry, and the various political parties forming the coalition government have to stand behind that programme. Unless they do so, the Cabinet cannot survive. Unity within the Council of Ministers is not only essential for its very survival but also necessary for its efficiency and efficacy, and it is also necessary to enjoy the confidence of the people. Open bickering between members of the Janata government on matters of public policy was the prelude to the collapse of the government in 1979.

THE CABINET AND THE PARLIAMENT

The core of the parliamentary government is the accountability of the Prime Minister and the Cabinet to the Parliament. The Parliament does not govern but critically examines the policies and acts of the government, and approves or disapproves of them as the representative of the people. The very existence and survival of the Prime Minister and the Council of Ministers depend upon the support they receive in the Parliament. As we observed, the Council of Ministers is collectively responsible to the Parliament. Thus, the general feeling is that the Parliament controls the Executive. But in reality, the Prime Minister with his majority support controls the very working of the Parliament.

Sources of Prime Minister's Power and influence Though the Constitution does not enumerate the powers and functions of the Prime Minister, in practice he/she enjoys a wide range of powers as a leader of the Council of Ministers and the Lok Sabha.

The Prime Minister's prerogative of constituting, reconstituting and reshuffling the Ministry as well as chairing the meetings vests the office with considerable influence over the members of Parliament. It must, however, be noted that the Prime Minister's has the freedom to select his colleagues and it is subjected to his/her own position within the party. For example, India's first Prime Minister, Jawaharlal Nehru, could not ignore Sardar Patel who was very powerful in the Congress party. He was, therefore, appointed as the Deputy Prime Minister and Home Minister. Some of Patel's followers were also made members of the ministry. Similarly, Indira Gandhi in the early years of her office had to accommodate

powerful leaders of her party in the ministry. Emerging as an all-powerful leader in 71 mid-term elections, she had complete freedom in choosing and reshuffling ministers. In coalition governments, the Prime Ministers do not have much choice in choosing ministerial colleagues. In the Janata government, Morarji Desai had many ministers whom he never knew before. In H.D. Deve Gowda's and later I.K. Gujral's governments, the ministers were selected not by the Prime Minister but by the leaders of the 14 regional parties that formed the United Front.

The Prime Minister also derives power and influence from the fact that he/she is the leader of the majority party in the legislature, and sometimes even the leader of the parliamentary wing of the party. As a leader of the Lok Sabha, the Prime Minister has enormous control over parliamentary activities. He/she advises the President on summoning and prorogation of the sessions of Parliament. The Speaker consults the Prime Minister in finalising the agenda of the Lok Sabha. The Prime Minister enjoys enormous legislative power in the form of recommending Ordinances to the President for promulgation when the Parliament is not in session. But the most important power of the Prime Minister regarding Parliament is to recommend dissolution of Lok Sabha. The President has to accept the advice of the Prime Minister. It is the power by which the Prime Minister controls even the opposition.

As the head of the government, the Prime Minister enjoys the power of patronage. All the major appointments of the Central government are made by the Prime Minister in the name of the President, which includes the Chief Justice and judges of the Supreme Court and High Courts, the Attorney-General, the Chiefs of the Army, the Navy and the Air Force, Governors, Ambassadors and High Commissioners, the Chief and members of the Election Commission, etc. Further, the Prime Minister's control over the administration, including the intelligence agencies and other administrative wings of the government, enhances his/her influence over other members of parliament and administration. Apart from these structural factors, there are other features that increase the power and authority of the Prime Minister. In several instances, the general elections in most democratic systems virtually become an election of the leader, and it is interpreted as a popular mandate. Sometimes a leader derives strength from his/her charisma. Jawaharlal Nehru, Indira Gandhi and Narendra Modi present examples of charismatic leaders.

Unit III:

The Union Legislature

The Parliament plays a crucial role in the legislative process in India. It consists of is elected by state legislatures. The Council of States or the Rajya Sabha is a permanent body. It is never dissolved, but its membership rotates every two years, that is one-third of members retire from membership every two years. But the Rajya Sabha, as a House never ceases to exist. The Lok Sabha has a term of five years only. It can be dissolved earlier and in an emergency, its life can be extended. ,. The Parliament in India can make laws on the subjects specified in the Constitution. It can also make laws on subjects which are residuary subjects, that is, which are not allocated to states and which are not covered by the specified subjects allocated to Parliament. It has a function to vote on expenditure also, the government cannot spend anything unless it is voted by the Lok Sabha. The Rajya Sabha has no power of granting money. The Lok Sabha can also impose and regulate taxes. The Rajya Sabha again does not have any power in this area. Though the Rajya Sabha can make recommendations within fourteen days of receipt of a Money Bill in the Rajya Sabha, the Lok Sabha may or may not accept them or accept them with modifications. Thus, as far as the control over the purse, money, expenditure, taxation etc. is concerned, the Lok Sabha has the final say.

The legislature at the state level consists of the legislative assembly and the legislative-Structures and Processes-I council. Every state does not have a legislative council. However, the Parliament may by law provide for the abolition of the legislative council of a state having such a council or for the creation of such a council in. a state having no such council. Article 172 lays down that every legislative assembly unless sooner dissolved, shall continue for five years, but the legislative council shall not be subject to dissolution. The procedure of the bill's enactment is the same in the state legislature and the governor enjoys almost similar rights to give assent to the bill as the President. The scheme of distribution of powers between the Centre and the states, envisaged by the Constitution, emphasises in many ways the general predominance of the Parliament in the legislative field. Apart from the wide range of subjects allotted to it in the Seventh Schedule of the Constitution, even in normal times, Parliament can, under certain circumstances assure legislative power over a subject falling within the sphere exclusively reserved for the states. For example, the Parliament may legislate on a matter included in the state list if the Rajya Sabha declares by a resolution supported by a two-thirds majority, that it is necessary or expedient in the national interest to do so, further, in times of grave emergency when the security of the country or any part

thereof is threatened by war or external aggression or internal disturbance and a proclamation for an emergency is made by the President, the Parliament acquires the power to make laws with respect to any of the matters enumerated in the state list. Similarly in the event of the breakdown of the Constitutional machinery in a state, the powers of the legislature of that state become exercisable by or under the authority of the Parliament.

LEGISLATIVE PROCESS

The role of the legislature in policymaking can be determined by discussing the legislative process in India. One of the most important functions of any legislature is to legislate or make laws. As we have discussed earlier, in a federation, the Parliament's law-making power, is restricted by the division of subjects or items into different lists. In India, we have three lists-Union lists, state lists and concurrent lists enumerating the items on which the Parliament and state legislatures could make laws. The Parliament legislates on subjects in the union and the concurrent lists. In the event of any conflict between the laws made by Parliament or any state legislature on any item mentioned in the concurrent list, the law made by Parliament prevails. Before dealing with the role of the legislature in policymaking, it has to be kept in mind that its role varies from one political system to the other. Legislatures are more active in presidential systems wherein they have a say in the initiation of policies, though policies are initiated by the President the move has to be made by the legislature. In the presidential form of government, the committees perform a major role. In a parliamentary system, the legislature can only suggest and discuss proposals. The initiation of legislative proposals belongs to the executive. But to take an extreme view that the legislatures have declined as law-makers would be wrong, for the executive only provides the draft; which is refined and modified by the legislature keeping in view the national policy and social and economic needs. It is the legislature which provides a forum for the organised articulation of the various shades of public opinion in the country and exercises an influence in the legislative process by getting the principal issues thrashed out, the details of legislation scrutinised and the interests of affected parties heard. It is the legislature which provides the final touches and gives the final shape to legislation in the course of its passage through various stages before it becomes a law. All legislative proposals must be brought in the form of bills before the Parliament. When a bill is passed by the Parliament and assented to by the President, it is called an Act. We will now discuss the procedure through which a bill becomes an Act.

Government Bill

Most legislative proposals, even of the non-financial type are presented to the Parliament by ministers.-These legislative proposals take the form of government bills and are generally speaking initiated by particular ministers. As soon as a legislative proposal has been conceived, the ministry concerned examines its constitutional, administrative, political, financial and other implications. Sometimes the advice of experts is also taken. If the proposed legislation pertains to other ministries of state governments, they too are consulted. The Ministry of Law and the Attorney General of India is consulted in respect of the legal and Constitutional aspects of the proposed legislation. When the proposal has been properly examined, the sponsoring ministry prepares a memorandum for the Cabinet. The Cabinet may give its approval after properly considering the broad aspects of the policy underlying the proposed legislation or, if it is of an important or commercial character, refer it to one of its standing committees or to an ad hoc committee, so that the measure may receive a more detailed consideration (we will discuss the role of committees in our subsequent section)

In some cases, the Cabinet may after approving the underlying principles of proposed legislation, require that the bill, when it has been drafted, be submitted to it again for closer scrutiny. After a legislative proposal has received the line clear signal from the Cabinet, the sponsoring ministry sends all the relevant papers to an official draftsperson who puts the proposal into the form of a bill. The draft prepared by the drafts person is examined by the ministry concerned and more often several drafts have to be prepared before the bill is finally put into shape.

The Parliament only modifies and approves the policy proposals that come from the executive, in this context, we need ‘to mention something about the growing importance of delegated legislation. It is the inevitable outcome of increasing burden on the legislature and about this, we will read a little more in our next Unit on the relationship between governmental organs. We have to keep in mind over here that every legislative proposal that comes in the form of a bill before the Parliament does not actually originate there, the executive, both political and permanent indulges in a lot of spadework, and a lot goes into the proposal in the form of a collection of information. research, exploration of alternatives etc. before it is finally placed before the Parliament. Under delegated legislation, the permanent executive fills in the gaps in the enactments delegated to it by the Parliament. In the Parliament, a systematic procedure is followed through which a bill becomes an Act. Every bill has to undergo three readings in order to be passed in either House. We will discuss these readings briefly.

First Reading

The legislative process starts with the introduction of a Bill in either House of the Parliament-the Lok Sabha or the Rajya Sabha. It is necessary to ask for leave to introduce the bill, if leave is granted by the House, the bill is introduced. A minister desiring to ask for leave to introduce a bill has to give a notice in writing about his/her introduction to do so. This stage of the introduction of a bill is known as the first reading of the bill. If a motion for leave to introduce a bill is opposed, the speaker may, at his discretion, allow brief explanatory statements to be made by the member-in-charge. Thereafter, without further debate, the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or Appropriation Bill is forthwith put to vote of the House. A member can also oppose a bill on the ground that it initiates legislation on a matter which is outside the legislative competence of the House. After a bill has been introduced, it is published in the Official Gazette. But even before introduction, a bill might with the permission of the speaker, be published in the gazette. In such cases, leaving to introduce it in the House is not necessary and the bill is straightaway introduced.

Second Reading

The second reading consists of the consideration of the bill in two stages. The first stage consists of a general discussion on the bill as a whole when the principle underlying the bill is discussed., At this stage, it is open to the House or is referred to as a select Committee of the House or a Joint Committee of the two Houses or to circulate for the purpose of eliciting opinion or straightaway taking it into consideration. Most of the bills of complicated, technical or controversial nature are referred to a Select Committee or a Joint Select Committee. When a bill is sought to be referred to any select committee, the mover of such a proposal himself suggests the names of the members whom he would like to be on that Committee. TG consent of the members is sought beforehand. If the bill is sought to be referred to a joint select committee the other house is requested to associate its members on such a committee. The Select or Joint Select Committee considers the bill clause by clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence from associations, public bodies or experts who are interested in the measure. After the bill has been considered, the Committee submits its report to the House which considers the bill again as reported by the Committee.

If a bill is circulated for the purpose of eliciting public opinion, such opinions are obtained through the agency of the government s of the state and union territories. Where a bill has been circulated for generating opinions and options have been received and laid on

the table of the House, the next move with regard to the bill must be for reference to a Select Committee or a Joint Select Committee. It is not ordinarily permissible at this stage to move a motion for consideration of the bill unless the speaker allows it.

The second stage of the second reading consists of clause-by-clause consideration of the bill as introduced or as reported by the Select Committee or joint Select Committee. The discussion takes place on each clause of the bill and amendments to the clause can be moved at this stage. Each amendment and each clause is put to vote in the House. The amendments become parts of the bill if they are accepted by a majority of members present and voting. After the second reading is deemed to be over.

Third Reading

In the third reading the member-in-charge can move that the bill be passed. This stage is called the third or final reading of the bill. At this stage, the debate is confined to arguments either in support of the bill or its rejection, without referring to the details thereof further than is absolutely necessary. Only formal, verbal or consequential amendments are allowed at this stage. In passing an ordinary bill a simple majority of members are present and voting is necessary. But as far as a bill aiming at the amendment of the Constitution is concerned, a majority of the total membership of the House and a majority of not less than two-thirds of members present and voting is required.

After all the readings are over and the bill is passed by one House, it is sent to the other House for consideration with a massage to that effect. The other House also goes through similar three stages. As already mentioned, in regard to money bills, the Lok Sabha has got the exclusive power to legislate and the Raiya Sabha can only recommend amendments therein and must return such a bill to the Lok Sabha within fourteen days from the date of its receipt. It is open to the Lok Sabha to accept or reject any or all the recommendations of the Rajya Sabha with regard to a money bill. If a money bill passed by the Lok Sabha and submitted to the Rajya Sabha for its recommendations is not returned to the Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Lok Sabha.

If a bill passed by one house is rejected by the other house, or the houses have finally disagreed as to the amendments to be made in the bill, or more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it, the President may call a joint sitting of the two Houses to resolve the deadlock. If at the joint

sitting of the two houses, the bill is passed by a majority of the total number of members of both the Houses present and voting, with the amendments if any, accepted by them, the bill is deemed to have been passed by both the Houses. The Joint sitting of the two Houses is presided over by the Speaker of the Lok Sabha. The difference between the two houses is cleared at the joint sitting and whatever discussion is taken at the joint sitting is considered as final in the case of the differences. When a bill is passed by both Houses, the Secretariat of the House which is last in possession of the bill obtains the assent of the President. The bill becomes an Act only after the President's assent has been given thereto. The President can give his assent or withhold his assent to a bill. The President can also return the bill except, of course, a money bill with his recommendations to the House for reconsideration and if the House pass the bill again with or without amendments, the bill has to be assented to by the President.

Private Members' Bills In the case of the bills of which notice is given by private members, we have to remember a few things. Such bills can be taken up only on the days which are fixed for private members' bills. Private members' bills are scrutinised in the Secretariat of the House and members are generally assisted in drawing up the bill in a proper form. These bills are referred to a special committee called the committee on Private Members' Bills and Resolutions. The Rajya Sabha also has such a Committee. After the Committee has made its report to the House and copies of the bill as reported by the Committee have been circulated to members of the House, the bill is taken to have been formally introduced. Thereafter it goes through the same procedures and stages as applicable to other non-financial bills. The purpose of a private member's bill is to generate a public debate over the burning social, economic and political issues and make the Government conscious of the nature of thinking in various sections of society, a point to be noted over here is that private members have no say in the financial or money bills.

Before moving over to our next section, a brief mention of the legislative powers of the President must be made over here, otherwise, our discussion on the legislative process in India would be incomplete. The legislative power of the President pertains to its power to promulgate ordinances when the Parliament is not in session. Article 123 lays down that if at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinance as the circumstances require. An ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament, but every such ordinance:

a) shall be laid before both the Houses of the Parliament and shall cease to operate at the expiration of sixteen days from the reassembly of the Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, and,

b) May be withdrawn at any time by the President. The ordinance is a legislative act and has the same force and effect as an Act of "parliament.

The Parliament

The Parliament of India, the supreme legislative organ in the country, has a long historical background. While legislature in some form came into being during the days of the East India Company, it was only when the Company rule was replaced by that of the Crown that the powers of the Union Legislature as well as its democratic base began to gradually grow.

The Parliament consists of the President, the Lok Sabha and the Rajya Sabha. To get elected to the Parliament, one has to fulfil certain qualifications prescribed by the Constitution and the Parliament. Members of the Parliament have certain privileges to enable them to function better. Each house has its own presiding officer to conduct the meetings of the House and to protect the dignity and honour of the House. The primary function of the Parliament is to enact laws. In addition, it holds the Council of Ministers responsible for its policies and criticises the policies wherever necessary.

It also has the power to amend the constitution and to impeach the President. There are several Committees appointed from among its members for effective functioning. Devices like the question hour, adjournment motion, calling attention motion, etc. are available for Parliament to check the government. The passing of the budget, an important function of the Parliament, provides it with an opportunity to scrutinise the activities of the government. There is a declining trend in the position of the legislature all over the world. Delegated legislation, the ascendancy of the executive over the other organs of the government, the emergence of the strong party system, etc. are some of the reasons for such a trend. Despite these trends, the Parliament still commands respect and is able to maintain its position vis a vis the other organs of the government.

Functions and Powers

Committees have been an essential part of the procedure of the Houses of Legislature because of the need for speedy disposal of business and for thorough consideration of certain matters. A Parliamentary committee means a committee which is appointed or elected by the

House or nominated by the Speaker and which works under the direction of the speaker and presents its report to the House or to the speaker. Broadly, parliamentary committees are of two kinds-Standing Committees and Ad hoc Committees. The standing committees are elected or appointed every year or periodically and their work goes on, more or less, on a continuous basis. The ad hoc committees are appointed on an ad hoc basis as and when the need arises, and they cease to exist as soon as they complete the task assigned to them, and have submitted their reports. Committees can do and meet while the House is sitting and in this way, the House is enabled to consider a number of Items of its business at the same time. Another reason for the growing importance of Committees is the inability of the legislature to undertake detailed consideration and enumeration of witnesses and experts and deliberation over a mass of documentaries and other material which is required to arrive at a decision on complicated matters. Moreover, the procedure in a Committee is more flexible, there are no formal motions, no formal speeches and no formal divisions and the members can talk across the table and argue out issues.

As the proceedings in a Committee are not open to the public and press, the members become free from joining the party line and consider a matter from wider angles and in a spirit of give and take. Above all, the experts of the committees assume the status of expert opinions on the subject taken up by the members or the committees' work on them because of their special knowledge of, or interest1 in subject-matter being dealt with the main functions of the committees are investigatory, deliberative and recommendatory.

In performing their investigatory functions they find out facts or collect opinions by examining persons as witnesses. While performing their deliberative functions, they discuss and consider the type of conclusions to draw from the material before them. The recommendatory function, as a part of the deliberative function, consists in considering what recommendations if any, to make to the House or Houses which composed the Committee. In discharging their functions either by rules or by resolutions of the house or Houses, the same powers which belong to the House in performing their functions apply to committees. Procedure in committees is principally the same as in the Houses of the legislature. But there is a good deal of informality in such procedures. A member may speak more than once and there are few formal motions. An item is taken up and deliberated upon, and witnesses are called for finding out facts and decisions taken on the view, the committee may desire to form. There is almost no voting, though any member may insist on a vote being taken on an important issue. Committees can split themselves into sub-committees to deal with specific aspects of the question referred to them.

The Lok Sabha has around eighteen standing committees or so, and their membership varies from one committee to another e.g. Business Advisory Committee, Committee on Privileges, Committee on Private Members' Bills, Committee on Subordinate Legislation, General Purposes Committee, etc. Among the standing committees, the three financial committees-Committee on Estimates, Public Accounts Committee and Committee on Public undertakings constitute a distinct group, and they keep a vigil on government spending and performance. While members of the Rajya Sabha are associated with the Committees on Public Accounts and Public Undertakings, the members of the Committee on Estimates are drawn, entirely from the Lok Sabha The control exercised by these Committees is of a continuous nature, they gather information through questionnaires, memoranda from representative non-official organisations and knowledgeable individuals, on the spot studies of organisations and oral examination of non-official and official witnesses. Between them, the Financial Committees examine and report on a fairly large area of multifarious governmental activities. These committees have adequate procedures to ensure that their recommendations are given due consideration by the Government. The progress in the implementation of the recommendations as well as, any unresolved differences between the Committees and Government are set out in "Action Taken Reports', which are presented to the House from time to time.

CHANGING ROLE OF THE LEGISLATURE

As we have discussed in this Unit, the legislature performs a very important function of discussing and analysing the policy proposals that come before it. The success of Parliament depends upon fulfilling adequately its role by responding to the aspirations of the people and the commitment of our public functionaries in the implementation of the approved policies and programmes. Steps have been taken in a number of countries, both developed and developing to increase the role of the legislatures. Those nations who had for some reason suspended these institutions have again established their legislatures. Even in the African continent, legislatures have been created in many of the newly independent nations. The Legislatures in developing countries exist because people want them, to exist. The long-term trend is not toward the demise or decline of the legislature, which is an important channel of communication and pressure and is thus very relevant in a political system.

Parliamentary accountability to people is something which must be remembered. It has to be seen that all the three organs of the government, the legislature, the executive (permanent as well as the political) and the judiciary are interlinked with each other and all the organs by-cooperating with one another make the political system accountable to the

people. The permanent executive which comes in direct contact with the people is accountable to the legislature, it provides all the necessary information required to solve crucial social, political and economic issues. The legislature keeps a check on the executive through parliamentary proceedings, question hour sessions and cutting motions etc. In order that parliamentary control over the executive may be more effective and administrative accountability may be more precise, it is necessary that all policies laid down by the Parliament should be stated in specific terms.

In order to make the Parliament more sensitive to public opinion, the role of the press cannot be undermined. In India, the press plays an important part in parliamentary activities. It is through the press that the Parliament enjoys so much prestige in the public eye and it is with the help of the press that the Parliament is able to control the executive effectively. The press is rightly called 'an extension of the Parliament. It is the press which has the capacity to unearth administrative lapses, scandals and shortcomings. The press gives expression to public grievances and difficulties and reports on how policies are being carried out. Most of the raw material for parliamentary questions, motions and debates comes from the press and is an important movement on which, a member relies. The press keeps the public informed of what is happening in the Parliament to the utmost detail. The two-way traffic enables the press to maintain an important and strong link between the public and the Parliament. The role of the legislature is thus changing in accordance with the growing aspirations of people, new and crucial social and economic compulsions and increasing functions of the press. Our next Block would try to highlight the role of the judiciary and the intricate relationship between the three organs of government that is the executive, legislature and judiciary.

The Lok Sabha

The Lower House or the House of the People is popularly known as Lok Sabha. Its members are directly elected by the people. The maximum number of members to be elected was fixed by the Constitution at 500. It was raised to 520 members by the Seventh Constitutional Amendment (1956) and to 545 members by the 42nd Constitutional Amendment (1976). This includes not more than 525 members chosen by direct election from territorial constituencies in the States and not more than 20 members to represent the Union Territories. In addition, the President may nominate two members of the Anglo-Indian community if he is of the opinion that the community is not adequately represented in the Lok Sabha.

The distribution of seats among the States is based on the principle of territorial representation which means each State is allotted seats on the basis of its population in proportion to the total population of all the States. For election purposes, each state is divided into territorial units called constituencies which are more or less of the same size with regard to the population. The election to the Lok Sabha is conducted on the basis of the adult franchise; every adult who has attained 18 years of age is eligible to vote. The candidate who secures the largest number of votes gets elected. The Constitution provides for an independent organisation known as the Election Commission to conduct elections.

The normal life of the Lower House is five years, though it can be dissolved earlier by the President. To be a member of the Lok Sabha, a person should be an Indian citizen, must have completed 25 years of age and must possess all other qualifications that are prescribed by a law of the Parliament. A candidate seeking election to the Lok Sabha can contest from any parliamentary constituency from any of the States in India. The Constitution has laid down certain disqualifications for membership. No person can be a member of both Houses of Parliament or a member both of Parliament and of a State legislature. The candidate may contest from several seats, but if elected from more than one, he has to vacate all except one according to his choice.

If a person is elected both to the State legislature and the Parliament and if he does not resign from the State legislature within the specified time period, he will forfeit his seat in Parliament. A member should not hold any office of profit under the Central or State government except those that are exempted by a law of Parliament, and should not have been declared as insolvent or of unsound mind by a competent court. A member also gets disqualified when he remains absent from the meetings of the House for a period of sixty days without prior permission or when he voluntarily acquires the citizenship of another country or is under any acknowledgement of allegiance to a foreign state.

The Rajya Sabha

The Rajya Sabha or Council of States consists of not more than 250 members of which 12 members are nominated by the President from amongst persons having 'special knowledge or practical experience in literature, science, art, and social service.' The remaining members are elected by the members of the State Legislative Assemblies in accordance with the system of proportional representation by means of a single transferable vote. Thus, unlike Lok Sabha, Rajya Sabha adopts the method of indirect election. For the purpose of this election, each State is allotted a number of seats, mainly on the basis of its population. The Rajya Sabha thus reflects the federal character by representing the States or

the units of the federation. However, it does not follow the American principle of equality of State representation in the Second Chamber. Whereas every State of the United States sends two representatives to the Senate, in India, the number of representatives of the States to the Rajya Sabha varies from one (Nagaland) to 34 (Uttar Pradesh) depending upon the population of a state.

Rajya Sabha is a continuing chamber as it is a permanent body not subject to dissolution. One-third of its members retire at the end of every two years and elections are held for the vacant positions. A member of the Rajya Sabha has a six-year term unless he resigns or is disqualified.

Special Powers of Rajya Sabha: The Rajya Sabha has hardly any control over the ministers who are individually and jointly responsible to the Lok Sabha. Though it has every right to seek information on all matters which are exclusively in the domain of Lok Sabha, it has no power to pass a vote of no-confidence in the Council of Ministers. Moreover, the Rajya Sabha has not had much say in matters of money bills. Nevertheless, the Constitution grants certain special powers to the Rajya Sabha. As the sole representative of the States, the Rajya Sabha enjoys two exclusive powers which are of considerable importance.

First, under Article 249, the Rajya Sabha has the power to declare that, in the national interest, the Parliament should make laws with respect to a matter enumerated in the State List. If by a two-thirds majority, Rajya Sabha passes a resolution to this effect, the Union Parliament can make laws for the whole or any part of India for a period of one year. The second exclusive power of the Rajya Sabha is with regard to the setting up of All-India Services. If the Rajya Sabha passes a resolution by not less than two-thirds of the members present and voting, the parliament is empowered to make laws providing for the creation of one or more All-India Services common to the Union and the Sates.

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

PRESIDING OFFICERS

Each house of Parliament has it own presiding officers. The Lok Sabha has a Speaker as its principal presiding officer and a deputy speaker to assist him and officiates as presiding

officer in his absence. The Rajya Sabha is presided over by the Chairperson, assisted by a deputy chairperson. The latter performs all the duties and functions of the former in case of his/her absence.

The Speaker The position of the Speaker of the Lok Sabha is more or less similar to the Speaker of the English House of Commons. The office of the Speaker is symbol of high dignity and authority. Once elected to the office, the speaker severs his party affiliation and starts functioning in an impartial manner. He acts as the guardian of the rights and privileges of the members. The Speaker is conferred with a number of powers to ensure an orderly and efficient conduct of the business of the House. He conducts the proceedings of the house, maintains order and decorum in the house and decides points of order, interprets and applies rules of the house. The Speaker's decision is final in all such matters. The Speaker certifies whether a bill is money bill or not and his decision is final. The Speaker authenticates that the house has passed the bill before it is presented to the other house or the President of India for his assent. The Speaker in consultation with the leader of the house determines the order of business. He decides on the admissibility of questions, motions and resolutions. The Speaker will not vote in the first instance, but can exercise a casting vote in case of a tie. The Speaker appoints the chairpersons of all the Committees of the house and exercises control over the Secretarial staff of the house.

The Speakers conduct cannot be discusses in in the house except in a substantive motion. His salary and allowances are charged to the Consolidated Fund of India so that the independent character of the office is maintained. A special feature of the Speaker's office is that even when the House is dissolved, the Speaker does not vacate his office. He continues in office until the new House elects another Speaker. In the absence of the Speaker, the Deputy Speaker presides over the House.

Chairperson of Rajya Sabha

The Vice-President of India is the ex-officio chairperson of the Rajya Sabha; but during any period when the Vice President acts as a President or discharges the functions of the President, he does not perform the duties as a presiding officer of the Rajya Sabha. The Vice-President is elected by the members of both houses of Parliament assembled at a joint meeting, in accordance with the system of proportional representation by means of a single transferable vote and the voting at such elections is by secret ballot. The Vice President is not a member of either house of Parliament or of a house of the legislature of any State. He holds office for a term of five years from the date on which he enters his office or until he resigns his office or is removed from his office by a resolution passed by a majority of members of

the Rajya Sabha and agreed to by the Lok Sabha. The functions and duties of the Chairperson of the Rajya Sabha are the same as those of the Speaker of the Lok Sabha

Process of law-making

The Parliament is basically Legislature, i.e., a law-making body. Therefore, any proposed law is introduced in the Parliament as a Bill. After the bill is passed by the Parliament and receives Presidential assent, it becomes law.

There are two kinds of bills in the Parliament:-

- Ordinary bill and
- Money bill.

Ordinary Bills:

Each member of the Parliament can introduce an ordinary bill under Article 107. Ordinary bills are those bills for whose passage, a simple majority of the house is required. There are two types of ordinary bills, namely – Government bills and Private members' bills.

- **Private Members' bill**: Any bill moved by a non-minister is a Private Member's Bill. These bills have very less probability of becoming a lawyer since they are usually not backed by majority support (it lies with the government).
- **Government bills**: Any bill introduced by a minister of the Central Government is called a government bill. These bills consume the maximum time of the Parliament.

Money Bills:

- The money bill falls under Article 110 of the Constitution.
- It is an ordinary bill which can only be introduced in Lok Sabha with the prior approval of the President.
- In case of a dispute regarding the status of the bill, the Speaker decides whether it is money or not.
- Money bills deal with matters of money, like – imposition of taxes, governmental expenditure and borrowings etc.
- After being passed in the Lok Sabha, it is sent to the Rajya Sabha.

- Rajya Sabha has very limited powers in this regard. It has to dispose of the money bill in 14 days after which the bill is considered to be passed by the upper house even if it has not done so.
- Rajya Sabha can make recommendations on the money bill but Lok Sabha is not bound to accept them.
- Then it is sent to the President for his approval. He has to give his assent to the money bill since it is introduced in the house with his prior permission.
- **Definition of Money Bill** – "The bill that deals with the money matters i.e. imposition, abolition, alteration of any tax or the regulation of the borrowing of money or giving of any guarantee by the Government of India or amendment of the law with respect to any financial obligation undertaken by the Government of India or related to Consolidated Fund or Contingency Fund of India, is called a Money Bill."

Stage 1: First reading

The legislative procedure begins with the introduction of the bill in either house of Parliament. It can be introduced by either a minister or a private member, as explained above. The presiding officer of the house is informed first. The officer puts the question of the introduction of the bill before the house, if approved (generally by voice vote), the person introduces the bill. This is the first reading.

Stage 2: Publication in the gazette

After the bill is an introduction, it is published in the official gazette.

Stage 3: Reference to the Standing Committee

The presiding officer can refer the bill to the concerned standing committee for a thorough study and examination of the general principles and clauses of the bill. After consideration, the committee submits a report on the bill to the house. This report serves as reliable advice by the house.

Stage 4: Second Reading

This is a very crucial stage. A general discussion takes place over the bill in the house. There it can be referred to a select or joint committee for a clause-by-clause consideration along with expert opinion. Alternatively, the house can consider the bill clause by clause as introduced or reported by the select or joint committee. Here discussions take place. Putting this procedure in a quick revision pattern, please go through the following bullet points; after general discussion, the house can –

- Straightaway go into the detailed clause-by-clause consideration.
- Refer that bill to a select committee of the House.
- Refer it to the Joint Committee of both Houses.
- Circulate it among the people to elicit public opinion.
- **Stage 5: Third Reading**

After the completion of the second reading, the member-in-charge can move that the bill be passed. At this stage, any discussion is confined to arguments regarding the passage or no passage of the bill. Then voting happens and the fate of the bill is decided.

Stage 6: Bill is sent to the other House

After being passed by one house, the bill is sent to the other house for consideration. In the second house also, the bill goes through the first reading, second reading and third reading. There are four actions that might be taken up by the other house:

1. It can pass the bill in the form sent by the first house. Then the bill is sent to the President for his assent.
2. It can pass the bill with amendments. Then the bill has to be returned to the first House for reconsideration. If the first house does not agree to the recommendations, then there is a deadlock.
3. It may reject it altogether. This means there is a deadlock which can be resolved by a joint sitting.
4. It may not take any action on the bill and keep it pending.

Stage 7: President's assent to the Bill

Every bill is presented to the President for his approval after being passed by both houses of Parliament for his assent. The President can take up any of the three alternative actions over the bill.

1. He may give his assent to the bill. Thereafter, the bill becomes law.
2. He may return the bill with suggested changes for reconsideration of the House of its origin. However, if both houses pass the bill again (with or without changes), the President has to give his assent. This is known as a **Suspensive veto** of the President. It is not applicable to Money bills though.
3. He may withhold his assent, neither ratifying it nor rejecting it. This is known as the **Pocket veto** of the President. It was used for the first concerning resident Zail

Singh with respect to the Indian Post Office Bill. This is not an explicit veto mentioned in the Constitution but is exercised by the virtue of no time frame mentioned for giving assent to the bill.

Unit IV:

The Union Judiciary

The development of the judiciary in general can be traced to the growth of modern nation-states. This was the stage when it was assumed that power and administration of justice were prerogatives of the state. During ancient times, the administration of justice was not considered a function of the state as it was based on religious law or dharma. Most of the king's courts dispensed justice according to dharma, a set of eternal laws rested upon the individual duty to be performed in four stages of life (ashrama) and the status of the individual according to his status (varna)'. The king had no true legislative power, the power to make ordinances "on his own initiative and pleasure". Even if a law has been enacted and royally recognised, an individual to whom custom applies may disobey it on the ground that it conflicts with the precepts of dharma. At the village level, the local/village/popular courts dispensed justice according to the customary laws. However, during medieval times, the king arrogated to himself an important role in administering justice. He was the highest judge in the land. With the advent of British rule in India, the judicial system on the basis of Anglo-Saxon jurisprudence was introduced in India.

The Royal Charter of Charles II of the year 1661 gave the Governor and Council the power to adjudicate both civil and criminal cases according to the laws of England. But it was with the Regulating Act of 1773 that the first Supreme Court came to be established in India. Located at Calcutta, the Supreme Court consisted of Chief Justice and three judges (subsequently it was reduced to two judges) appointed by the Crown and it was made a King's court rather than a Company's court. The court held jurisdiction over "his majesty's subjects" wherever the Supreme Courts were established. Supreme Courts were established in Madras and in Bombay later. The judicial system during this period consisted of two systems, the Supreme Courts in the Presidencies and the Sadr courts in the provinces. While the former followed English law and procedure, the latter followed regulation laws and personal laws. Subsequently, these two systems were merged under the High Court's Act of 1861. This Act replaced the Supreme Courts and the native courts (Sadr Dewani Adalat and Sadr Nizamat Adalat) in the presidency towns of Calcutta, Bombay and Madras with High Courts. The highest court of appeal however was the judicial committee of the Privy Council. At this stage of development of the Indian legal system, we see the beginning of a new era in the emergence of a unified court system.

The Federal Court of India was established in Delhi by the Act of 1935. This was to act as an intermediate appellant between the High Courts and the Privy Council in regard to matters involving the interpretation of the Indian constitution. In addition to this appellate jurisdiction, the Federal Court had advisory as well as original jurisdiction in certain other matters. This court continued to function until 26 January 1950, the day independent India's constitution came into force

THE SUPREME COURT

The entire judicature has been divided into three tiers. At the top there is a Supreme Court, below it is the High Court and the lowest rank is occupied by the session's court. The Supreme Court is the highest court of law. The Constitution says that the law declared by the Supreme Court shall be binding on all small courts within the territory of India. Below the Supreme Court, are the High Courts located in the states.

Under each High Court there are District Sessions Courts, Subordinate Courts and Courts of Minor Jurisdiction called Small Cause Courts. Given the importance of the judiciary in a federal system resting on limited government, the Supreme Court was designed to make it the final authority in the interpretation of the Constitution. While framing the judicial provisions, the Constituent Assembly gave a great deal of attention to such issues as the independence of the courts, the power of the Supreme Court and the issue of judicial review.

JURISDICTION OF THE SUPREME COURT

Article 141 declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India. The different categories into which the jurisdiction of the Supreme Court is divided are as follows: 1) Original Jurisdiction, 2) Appellate Jurisdiction, 3) Advisory Jurisdiction, 4) and Review Jurisdiction.

Original Jurisdiction

The Supreme Court has original jurisdiction firstly as a federal court. In a federal system like that in India, both the Union and the State governments derive their powers from and are limited by the same constitution. Differences in interpretation of the Union-States distribution of powers, or conflicts between States' governments require authoritative resolution by a judicial organ independent of both levels of government. Under Article 131, the Supreme Court is given exclusive jurisdiction in a dispute between the Union and a State or between one State and another, or between a group of States and others. When we say that the Supreme Court has exclusive jurisdiction, we mean that no other court in India has the

power to entertain such disputes. Similarly, the original jurisdiction of the Supreme Court will mean that the parties to the dispute should be units of the federation. Unlike the Supreme Courts in Australia and the United States, the Indian Supreme Court does not have original jurisdiction to decide disputes between residents of different states or those between a State and the resident of another State.

The Supreme Court also has non-exclusive original jurisdiction as the protector of Fundamental Rights. Article 32 of the Constitution gives citizens the right to move the Supreme Court directly for the enforcement of any of the fundamental rights enumerated in Part III of the Constitution. As the guardian of Fundamental Rights, the Supreme Court has the power to issue writs such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari, and Mandamus. Habeas Corpus is a writ issued by the court to bring before the court a person from illegal custody. The court can decide the legality of detention and release the person if the detention is found to be illegal. By using the writ of Mandamus, the court may order public officials to perform their legal duties. Prohibition is a writ to prevent a court or tribunal from doing something in excess of its authority. By the writ of Certiorari, the court may strike off an order passed by any official of the government, local body or statutory body. Quo warranto is a writ issued to a person who is authorised to occupy a public office to step down from that office. In addition to issuing these writs, the Supreme Court is empowered to issue appropriate directions and orders to the executive.

Appellate Jurisdiction

The Supreme Court is the highest court of appeals of all courts in the territory of India. It has comprehensive appellant jurisdiction in cases involving constitutional issues; civil and criminal cases involving specified threshold values of the property or a death sentence; and wide-ranging powers of special appeals.

Article 132 of the Constitution provides for an appeal to the Supreme Court from any judgement or final order of a court in civil, criminal or other proceedings of a High Court if it involves a substantial question of law as to the interpretation of the Constitution. The appeal again depends upon whether the High Court certifies, and if does not, the Supreme Court may grant special leave to appeal.

Article 133 of the Constitution provides that an appeal in civil cases lies to the Supreme Court from any judgement, order or civil proceedings of a High Court. This appeal may be made if the case involves a substantial question of law of general importance or if in the opinion of the High Court the said question needs to be decided by the Supreme Court. Article 134 provides the Supreme Court with appellate jurisdiction in criminal matters from

any judgement, final order, or sentence of a High Court. This jurisdiction can be invoked only in three different categories of cases:

a) If the High Court on appeal reverses an order of acquittal of an accused person and sentenced them to death.

b) If the High Court has withdrawn trial before itself any case from any court subordinate to its authority and has in such a trial convicted the accused person and sentenced him to death, and

c) If the High Court certifies that the case is fit for appeal to the Supreme Court. Finally, the Supreme Court has special appellate jurisdiction. It has the power to grant, at its discretion, special leave appeal from any judgment, decree sentence or order in any case or matter passed or made by any court or tribunal.

Advisory Jurisdiction

The Supreme Court is vested with the power to render advisory opinions on any question of fact or law that may be referred to it by the President. The advisory role of the Supreme Court is different from ordinary adjudication in three senses: first, there is no litigation between two parties; second, the advisory opinion of the Court is not binding on the government; finally, it is not executable as a judgement of the court. The practice of seeking the advisory opinion of the Supreme Court helps the executive to arrive at a sound decision on important issues. At the same time, it gives a soft option to the Indian government on some politically difficult issues. A case in point is the controversy surrounding the Babri Masjid complex in Ayodhya. The government decided to refer aspects of the dispute to the Supreme Court for an opinion. Since there was no legal point at issue, the referral to the Supreme Court had the potential for politicising the judiciary instead of resolving what essentially a political problem was.

Review Jurisdiction

The Supreme Court has the power to review any judgement pronounced or order made by it. This means that the Supreme Court may review its own judgement order.

From the above, it is clear that the Supreme Court in India is far more powerful than its counterpart in the United States of America. The American Supreme Court deals primarily with cases arising out of the federal relationship or those relating to the constitutional validity of laws and treaties. The Indian Supreme Court apart from interpreting the Constitution, functions as the court of appeal in the country in matters of civil and criminal cases. It can entertain appeals without any limitation upon its discretion from the decisions not only of any

court but also of any tribunal within the territory of India. The advisory jurisdiction of the Indian Supreme Court also is something absent from the purview of the American Supreme Court.

Despite these powers, the Indian Supreme Court is a creature of the Constitution and depends for the continuation of these powers on the Union legislature which can impose limitations on them by amending the Constitution. Moreover, all these powers can also be suspended or superseded whenever there is a declaration of emergency in the country.

THE HIGH COURT

The constitution provides for a High Court at the apex of the State judiciary. The Constitution of India contains provisions regarding the organisation and functions of the High Court. By the provision of Article 125 which says "there shall be a High Court for each state", every state in India has a High Court and these courts have a constitutional status.

The parliament has the power to establish a common High Court for two or more states. For instance, Punjab and Haryana have a common High Court. Similarly, there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

In the case of Union Territories, the Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory. Thus, Delhi, a Union Territory, has a separate High Court of its own while, the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over Lakshadweep, the Mumbai High Court over Dadra and Nagar Haveli, the Kolkota High Court over Andaman and Nicobar Islands, the Punjab Haryana High Court over Chandigarh.

Composition of the High Court

Unlike the Supreme Court, there is no minimum number of judges for the High Court. The President, from time to time will fix the number of judges in each High Court. The Chief Justice of the High Court is appointed by the President of India in consultation with the Chief Justice of India and the Governor of the State, which in actual terms means the real executive of the State. In appointing the judges, the President is required to consult the Chief Justice of the High Court. The Constitution also provides for the appointment of additional judges to cope with the work. However, these appointments are temporary not exceeding two years period. A judge of a High Court normally holds office until he attains the age of 62 years. He can vacate the seat by resigning, by being appointed a judge of the Supreme Court or by being transferred to any other High Court by the President. A judge can be removed by the

President on grounds of misbehaviour or incapacity in the same manner in which a judge of the Supreme Court is removed.

Jurisdiction

The original jurisdiction of a High Court includes enforcement of Fundamental Rights, settlement of disputes relating to the election to Union and State legislatures and jurisdiction over revenue matters. Its appellant jurisdiction extends to both civil and criminal matters. In civil matters, the High Court is either a first appeal or a second appeal court. In criminal matters, appeal from decisions of a session's judge or an additional sessions judge where a sentence of imprisonment exceeds seven years and other specified cases other than petty crimes constitute the appellant jurisdiction of a High Court. In addition to these normal original and appellant jurisdictions, the Constituent vests the High Courts with four additional powers. These are

• The power to issue writs or orders for the enforcement of Fundamental Rights. Interestingly, the writ jurisdiction of a High Court is larger than that of the Supreme Court. It can not only issue writs not only in cases of infringement of Fundamental Rights but also in cases of ordinary legal rights.

• The power of superintendence over all other courts and tribunals except those dealing with the armed forces. It can frame rules and also issue instructions for guidance from time to time with directions for speedier and more effective judicial remedy

• The power to transfer cases to themselves from subordinate courts concerning the interpretation of the constitution.

• The power to appoint officers and servants of the High Court. In certain cases, the jurisdiction of the High Courts is restricted. For instance, it has no jurisdiction over a tribunal and no power to invalidate a Central Act or even any rule, notification or order made by any administrative authority of the Union, whether it violates of Fundamental Rights are not

SUBORDINATE COURTS

Under the High Court, there is a hierarchy of courts which are referred to in the Indian constitution as subordinate courts. Since these courts have come into existence because of enactments by the state government, their nomenclature and designation differ from state to state. However, broadly in terms of organisational structure, there is uniformity.

The state is divided into districts and each district has a district court which has an appellant jurisdiction in the district. Under the district courts, there are the lower courts such as the Additional District Court, Sub-Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of the II Class, Court of Special Judicial Magistrate of I Class, Court of

Special Munsiff Magistrate for Factories Act and Labour Laws, etc. At the bottom of the hierarchy of Subordinate Courts are the Panchayat Courts (Nyaya Panchayat, Gram Panchayat, Panchayat Adalat etc). These are, however, not considered courts under the purview of the criminal courts' jurisdiction.

The principal function of the District Court is to hear appeals from the subordinate courts. However, the courts can also take cognisance of original matters under special status, for instance, the Indian Succession Act, the Guardian Act and Wards Act and the Land Acquisition Act.

The Constitution ensures the independence of the subordinate judiciary. Appointments to the District Courts are made by the Governor in consultation with the High Court. A person to be eligible for appointment should be either an advocate or a pleader of seven years standing, or an officer in the service of the Union or the State. Appointment of persons other than the District Judges to the judicial service of a State is made by the Governor in accordance with the rules made by him on that behalf after consultation with the High Court and the State Public Service Commission.

The High Court exercises control over the District Courts and the courts subordinate to them, in matters such as posting, promotions and granting of leave to all persons belonging to the State judicial service.

JUDICIAL REVIEW

Literally, the notion of judicial review means the revision of the decree or sentence of an inferior court by a superior court. Judicial review has a more technical significance in public law, particularly in countries having a written constitution, founded on the concept of limited government. Judicial review in this case means that Courts of law have the power of testing the validity of legislative as well as other governmental actions with reference to the provisions of the constitution.

In England, there is no written constitution. Here the Parliament exercises supreme authority. The courts do not have the power to review laws passed by the sovereign parliament. However, English Courts review the legality of executive actions. In the United States, the judiciary assumed the power to scrutinise executive actions and examine the constitutional validity of legislation by the doctrine of 'due process. By contrast, in India, the power of the court to declare legislative enactments invalid is expressly enacted in the constitution. Fundamental rights enumerated in the Constitution are made justiciable and the right to constitutional remedy has itself been made a Fundamental right.

The Supreme Court's power of judicial review extends to constitutional amendments as well as to other actions of the legislatures, the executive and other governmental agencies. However, judicial review has been particularly significant and contentious in regard to constitutional amendments. Under Article 368, constitutional amendments could be made by the Parliament. But Article 13 provides that the state shall not make any law which takes away or abridges fundamental rights and that any law made in contravention of this rule shall be void. The issue is, would the amendment of the constitution be a law made by the state? Can such a law infringing fundamental rights be declared unconstitutional? This was a riddle before the judiciary for about two decades after India became a republic in the early years, the courts held that a constitutional amendment is not law within the meaning of Article 13 and hence, would not be held void if it violated any fundamental right. But in 1967, in the famous Golak Nath Case, the Supreme Court adopted a contrary position. It was held that a constitutional amendment is a law and if that amendment violated any of the fundamental rights, it can be declared unconstitutional. All former amendments that violated the fundamental rights to property were found to be unconstitutional. When a law remains in force for a long time, it establishes itself and is observed by society. If all past amendments are declared invalid, the number of transactions that took place in pursuance of those amendments becomes unsettled. This will lead to chaos in the economic and political system. In order to avoid this situation and for the purpose of maintaining the transactions in fact, the past amendments were held valid. The Supreme Court clarified that no future transactions or amendments contrary to fundamental rights shall be valid. This technique of treating old transactions as valid and future ones as invalid is called prospective over-ruling. The Court also held that Article 368 with amendments does not contain the power to amend the constitution, but only prescribes the procedure to amend. This interpretation created difficulty. Even when there is a need to amend a particular provision of the constitution, it might be impossible to do so if the amendment had an impact on fundamental rights.

In 1970, when the Supreme Court struck down some of Mrs Indira Gandhi's populist measures, such as the abolition of the privy purses of the former princes and the nationalisation of banks, the Prime Minister set about to assert the supremacy of the Parliament. She was able to give effect to her wishes after gaining a two-thirds majority in the 1971 General Elections. In 1972, the Parliament passed the 25th Constitutional Amendment act which allowed the legislature to encroach on fundamental rights if it was said to be done pursuant to giving effect to the Directive Principles of State Policy. No court was

permitted to question such a declaration. The 28th Amendment act ended the recognition granted to former rulers of Indian states and their privy purses were abolished.

These amendments were challenged in the Supreme Court in the famous Kesavananda Barathi Case (otherwise known as the Fundamental Rights Case) of 1973. The Supreme Court ruled that while the parliament could amend even the fundamental rights guaranteed by the Constitution, it was not competent to alter the 'basic structure' or 'framework' of the constitution. Under the newly evolved doctrine of 'basic structure, a constitutional amendment is valid only when it does not affect the basic structure of the constitution. The second part of Article 31C (no law containing a declaration to implement the Directive Principles contained in Article 39 (b) and (c) shall be questioned) was held not valid because the amendment took away the opportunity for judicial review, which is one of the basic features of the constitution. The doctrine of basic features gave wide amplitude to the power of judicial review.

Later history shows the significant role played by this doctrine in the review of constitutional amendments. For challenging the election to Parliament of a person who holds the office of Prime Minister, the 39th Constitutional Amendment provided a different procedure. The election can be challenged only before an authority under special law made by Parliament and the validity of such as law shall not be called into question. The Supreme Court held that this amendment was invalid as it was against the basic structure of the Constitution. It argued that free and fair elections are essential in democracy and to exclude judicial examination of the fairness of the election of a particular candidate is not proper and goes against the democratic ideal that is the basis of our constitution.

In a later case, the Minerva Mill Case, the Supreme Court went a step ahead. The 42nd Constitutional Amendment of 1976, among other things, had added a clause to Article 368 placing a constitutional amendment beyond judicial review. The Court held that this was against the doctrine of judicial review, the basic feature of the constitution.

One of the limits on judicial review has been the principle of locus stand. This means that only a person aggrieved by an administrative action or by an unjust provision of law shall have the right to move the court for redress. In 1982, however, the Supreme Court in a judgement on the democratic rights of construction workers of the Asian Games granted the Peoples Union of Democratic Rights, the right of Public Interest Litigation (PIL). Taking recourse to epistolary jurisdiction under which the US Supreme Court treated a postcard from a prisoner as the petition, the Supreme Court of India stated that any 'public spirited' individual or organisation could move the court even by writing a letter. In 1988, the

Supreme Court delineated the matters to be entertained as PIL. The categories are matters concerning bonded labour, neglected children, a petition from prisoners, a petition against police, a petition against atrocities on women, and children, Scheduled Castes and Scheduled Tribes, environmental matters, adulteration of drugs and foods, maintenance of heritage and culture and other such matters of public interest.

Since the granting of the right to PIL, which some claim to be the only major democratic right of the people of India, and granted not by the Parliament but by the judiciary, the courts have been flooded by PILs. While the flood of such litigation indicates the widespread nature of the deprivation of democratic rights, they also pose the danger of adding to the pressure on the courts that are already overloaded.

JUDICIAL REFORMS

The most striking criticism against the administration of justice is a large number of pending cases and the delay in the dispensation of justice. In the early 1990s, there were more than two crore cases pending in different courts. Reasons for the piling of a large number of cases can be attributed to structural and procedural flaws in the judiciary. The availability of multiple remedies at different rungs of the judicial ladder also enables dishonest and recalcitrant suitors to abuse the judicial system. This leads to the piling up of cases as well as delays in the dispensation of justice.

Another weakness of the judicial system is cumbersome procedures and the forbidding cost of justice. Suggestions for judicial reforms have come up, to help achieve a new order and bring economic, political and social justice.

In fact, the Tenth Law Commission had invited suggestions for judicial reforms. One suggestion was to reduce the workload of the Supreme Court of India which accepts nearly one lakh cases every year (whereas the US Supreme Court accepts only 100 to 150 cases of the five thousand filed). Among the suggestions to reduce the load of the Supreme Court, one was to establish a Constitutional Court to deal exclusively with constitutional matters and another was to establish Zonal Courts of Appeal in the country.

Appointment of Judges

The Supreme Court consists of the Chief Justice of India and another number of other judges as is provided by the law. When the Supreme Court was inaugurated, it had only eight judges. Its strength has risen to twenty-five judges. The President of India, who is the appointing authority, makes these appointments on the advice of the Prime Minister and the Council of Ministers.

The Constitution stipulates in Article 124 (2) that the President shall appoint judges of the Supreme Court under his hand and seal after consultation with such of the judges of the Supreme Court as the President may deem necessary. In the case of the Chief Justice, the President shall consult such judges of the Supreme Court and of the High Courts as he may deem necessary. In spite of this clear constitutional provision, the appointment of the Chief Justice of India has become a matter of political controversy. Here it may be worth recalling the issues that were raised in 1973 when the Government of India appointed Justice SS Ray as the Chief Justice of India superseding four other judges, against the recommendations of the outgoing Chief Justice, SM Sikri.

To eliminate politics in the appointment of judges, high minimum qualifications have been prescribed. For appointment to the Supreme Court, a person should be a citizen of India, a judge of the High Court for at least five years, or should have an advocate of the High Court for at least ten years or a distinguished jurist in the opinion of the President of India.

Tenure

Once appointed, a judge holds office until he attains 65 years. A judge of the Supreme Court may resign his office or may be removed in case of misbehaviour or incapacity. According to the procedure laid out in the Constitution, each house of the Parliament will have to pass a resolution supported by two third of the members present and voting. The motion of impeachment against a judge was tabled in Parliament for the first in 1991. This involved Supreme Court Justice V Ramaswami. When an audit report revealed several irregularities committed by the judge during his tenure as the Chief Justice of the Punjab and Haryana High Court, a three-man judicial committee was set up with a serving and a retired Supreme Court judge and the Chief Justice of the Bombay High Court. The Committee concluded that there had indeed been a wilful and gross misuse of official position and intentional and habitual extravagance at the cost of the public exchequer which amounted to ‘misbehaviour’. Justice Ramaswami, however, maintained that there were procedural irregularities in the notice of the motion, the constitution of the committee and its functioning. The impeachment motion moved in May 1993 failed with 196 out of 401 voting for it and the remaining 205 abstaining. But accepting reality, the judge subsequently resigned.

Salaries

A very important element that determines the independence of the judges is the remuneration received by them. The salaries and allowances of the judges are fixed high in order to secure their independence, efficiency and impartiality. Besides, the salary, every

judge is entitled to a rent-free official accommodation. The Constitution also provided that the salaries of the judges cannot be changed to their disadvantage, except in times of a Financial Emergency. The administrative expenses of the Supreme Court, the salaries, allowances, etc, of the judges, are charged with the Consolidated Fund of India.

Immunities

To shield judges from political controversies, the Constitution grants them immunity from criticisms against decisions and actions made in their official capacity. The Court is empowered to initiate contempt proceedings against those who impute motives to the judges in the discharge of their official duties. Even the Parliament cannot discuss the conduct of the judge except when a resolution for his removal is before it.

Functions of Indian Judiciary

The functions of the judiciary in India are:

1. **Administration of justice:** The chief function of the judiciary is to apply the law to specific cases or in settling disputes. When a dispute is brought before the courts it 'determines the facts' involved through evidence presented by the contestants. The law then proceeds to decide what law is applicable to the case and applies it. If someone is found guilty of violating the law in the course of the trial, the court will impose a penalty on the guilty person.
2. **Creation of judge-case law:** In many cases, the judges are not able to, or find it difficult to select the appropriate law for application. In such cases, the judges decide what the appropriate law is on the basis of their wisdom and common sense. In doing so, judges have built up a great body of 'judge-made law' or 'case law.' As per the doctrine of 'stare decision, the previous decisions of judges are generally regarded as binding on later judges in similar cases.
3. **Guardian of the Constitution:** The highest court in India, the SC, acts as the guardian of the Constitution. The conflicts of jurisdiction between the central government and the state governments or between the legislature and the executive are decided by the court. Any law or executive order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary. This is called 'judicial review.' Judicial review has the merit of guaranteeing the fundamental rights of individuals and ensuring a balance between the union and the units in a federal state.

4. **Protector of Fundamental Rights:** The judiciary ensures that people's rights are not trampled upon by the State or any other agency. The superior courts enforce Fundamental Rights by issuing writs.
5. **Supervisory functions:** The higher courts also perform the function of supervising the subordinate courts in India.
6. **Advisory functions:** The SC in India performs an advisory function as well. It can give its advisory opinions on constitutional questions. This is done in the absence of disputes and when the executive so desires.
7. **Administrative functions:** Some functions of the courts are non-judicial or administrative in nature. The courts may grant certain licenses, administer the estates (property) of deceased persons and appoint receivers. They register marriages and appoint guardians of minor children and lunatics.
8. **A special role in a federation:** In a federal system like India's, the judiciary also performs the important task of settling disputes between the centre and states. It also acts as an arbiter of disputes between states.
9. **Conducting judicial enquiries:** Judges normally are called to head commissions that enquire into cases of errors or omissions on the part of public servants.

Unit V:

State Government:

The very first Article of our Constitution says, "India, that is 'Bharat', shall be a Union of states." The word 'Union' has been used to mean 'Federation' in the US Constitution. In our Constitution, however, the Union is not a Federation of the type set up by the US Constitution. The Indian Constitution has several features of a Federation like the dual government; distribution of powers between federal and state governments, the supremacy of the Constitution and the final authority of courts to interpret the Constitution. On the other hand, there are several unitary features like a unified judicial system; integrated machinery for election, accounts and audit; power of superintendence of union government over state government in emergencies and to some extent even in normal times; single citizenship, etc. Due to these features, our Constitution lays down a quasi-federal polity. Granville Austin has on the other hand called our Federation a 'Cooperative Federalism' due to the need for close cooperation between the Union government, and the state governments. The purpose here is not to discuss in detail the nature of the Indian Federation, but to put the study of state administration in proper context. It is, therefore, enough for us to know that our Constitution envisages a two-tier structure of governance - one at the Union or Central level and the other at the state level. The powers and functions of the Central or Union government and the state governments are specified in the Constitution

The Constitution has adopted a three-fold distribution of legislative powers between the Union and the states (Article 246). Schedule VII of the Constitution enumerates the subjects into three lists. The list I or the Union List consists of the subjects over which the Union has exclusive powers of legislation. Similarly, List I1 or the State List comprises subjects over which the state has exclusive powers of legislation. There is yet another List (List III) known as the Concurrent List that comprises subjects over which both the Union and states have powers to legislate. The residual powers are vested in the Union. We would now briefly discuss List I1 and List 111, which enumerate the subjects over which the states have jurisdiction either exclusively or concurrently with the Union.

State List

The State List comprises 61 items over which states have exclusive jurisdiction. Some of the important ones are - Public Order and Police, Agriculture, Forests, Fisheries, Public Health, Local Government, etc. These are subjects of maximum concern to the people which can be better dealt with at the state level. These subjects are generally under the exclusive jurisdiction of the states, but under the following circumstances, the Parliament can legislate on these matters.

- In the national interest, the Council of States by a resolution of 2/3rd of its members present and voting may authorise the Parliament to legislate on a state subject. Such authorisation may be for one year at a time, but can be renewed by a fresh resolution;
- Under a proclamation of emergency, the Parliament may legislate on a state subject;
- With the consent of two or, more states, the Parliament may legislate on a state subject with respect to the consenting states;
- Parliament has powers to legislate with reference to any subject (including a state subject) for the purpose of implementing treaties or international agreements and conventions; and
- When a proclamation is issued by the President on the failure of Constitutional machinery in any state, he may declare that the powers of the state legislature shall be exercised by or under the authority of Parliament.

Concurrent List

The Concurrent List comprises 47 items over which the Union and state legislatures have concurrent jurisdiction. The important ones are Criminal Law and Procedure, Marriage, Trusts, Civil Procedure, Insurance, Social and Economic Planning, etc. While the Union and states can legislate on any of the subjects in the Concurrent List, predominance is given to the Union Legislature. It means that in case of repugnancy between the Union and a state law relating to the same subject, the former prevails. If, however, the state law was reserved for the assent of the President and has received such assent, the state law may prevail notwithstanding such repugnancy, but it would still be competent for the Parliament to override such state law by subsequent legislation. Any dispute about the interpretation of the

entries in the three lists is to be decided by the Courts. The following principles have been followed in such interpretation:

i) In case of overlapping of a subject between the three lists, predominance is to, be given to the Union Legislature.

ii) Each entry is given the widest importance that its words are capable of,

iii) In order to determine whether a particular enactment falls under one entry or Constitutional Profile of State Administration under another, its 'pith and substance' is considered.

Distribution of Executive Power

In general, the distribution of executive powers follows the distribution of legislative powers. It means that the state government has executive powers in respect of subjects in the State List. However, the executive power in respect of subjects in the Concurrent List ordinarily remains with the state governments except in the following cases:

i) Where a law of Parliament relating to such subjects vests some executive actions in the Uni6n, e.g., in Industrial Disputes Act, 1947.

ii) Where provisions of the Constitution itself vest some executive functions upon the Union, e.g., implementation of an international treaty or obligation. Moreover, the Union has the power to give directions to the state governments in the exercise of their executive powers in the following cases:

II) In Normal Times,

The State Governments have to ensure: Compliance with Union laws Exercise of the executive power of the state does not interfere with the exercise of the executive power of the Union Construction and maintenance of the means of communication of national or military importance by the state Protection of railways in the state Implementation of schemes for the welfare of Scheduled Castes and Scheduled Tribes The administration of a state is named on in accordance with the provisions of the Constitution.

III) In Emergencies

The state government functions under the complete control of the Union Government. The President may assume to himself all or any executive powers of the state on the proclamation of failure of Constitutional machinery in a state.

III**) During a Financial Emergency**.

The President can give directions to the state government to observe canons of financial propriety The President may reduce salaries and allowances of employees Money bills and other financial bills could be reserved for the consideration of the President.

ROLE OF THE GOVERNOR

Our Constitution provides for the Parliamentary form of government at the Union as well as the state levels. The Governor is the Constitutional head of the state and acts on the advice of the Council of Ministers headed by the Chief Minister. He is appointed by the President for a term of five years and holds office at his pleasure. He can be reappointed after his tenure as Governor of the same state or of another state.

According to the Constitution, the Governor has many executives, legislative, judicial and emergency powers. For example, the Governor appoints the Chief Minister and on his advice the Council of Ministers. He makes many other appointments like those of members of the State Public Service Commission, Advocate General, senior Civil Servant, etc. In fact, the entire executive work of the state is carried on in his name.

The Governor is a part of the State Legislature. He has a right of addressing and sending messages to and summoning, and proroguing the State Legislature and dissolving the Lower House. All the bills passed by the Legislature have to be assented to by him before becoming law. He can withhold his assent to the Bill passed by the Legislature and send it back for reconsideration. If it is again passed with or without modification, the Governor has to give his assent. He may also reserve any Bill passed by the State Legislature for the assent of the President. The Governor may also issue an Ordinance when the legislature is not in session.

The Governor even has the power to grant pardon, reprieve, respite, and remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law related to a matter to which the executive power of the state extends.

As far as the emergency powers of the Governor are concerned, whenever the Governor is satisfied that a situation has arisen in his state whereby the administration of the state cannot be come on in accordance with the provisions of the Constitution, he can report the fact to the President. On receipt of such a report, the President may assume to himself the powers of the state government and may reserve for the Parliament the powers of the State Legislature (Article 356).

Exercise of Discretion by the Governor

It has already been pointed out that the Governor has to exercise his powers on the advice of the Council of Ministers. He does not, therefore, have much discretion in the exercise of his powers as long as a stable Ministry enjoying the confidence of the Assembly is in office. However, this is not always the case. The Governor may then be called upon to exercise his discretion. It is this exercise of discretion that has made the Governor's office the

most controversial Constitutional office in the country. Major controversies have arisen in the following types of cases in the past:

Appointment of Chief Ministers

The Governor appoints the Chief Minister and on his advice the Council of Ministers. When a party with an absolute majority elects a leader. The Governor has no choice but to appoint him the Chief Minister and invite him to form the government. Problems arise when no political party has an absolute majority in the legislature. Here the discretion of the Governor comes into play. For example, in 1952 the Congress Party was the largest single party in Madras ' legislature but did not have an absolute majority. Still, the Governor Mr Sri Prakash invited Mr C. Rajagopalachari to form the government as the leader of the largest single party. This principle was, however, not followed in West Bengal in 1970. The CPM led by Mr Jyoti Basu was the largest single party in the West Bengal Assembly. The Governor Mr S.S. Dhavan asked Mr Basu to prove his majority. Mr Basu insisted on calling the Legislative Assembly and proving his majority on the floor of the House. The Governor ultimately did not invite him to form the government. The opponents of Congress criticised this on the ground that this was done at the behest of the Congress government which was in Office at the Centre at that time. Thus, different criteria have been followed by different Governors even in similar circumstances.

Dismissal of a Ministry

A Chief Minister and his Ministry hold office at the pleasure of the Governor, which is not subject to any scrutiny. However, the Governor has to exercise his discretion judiciously. There is a general feeling that the Governors have not done so. For example, the Governor of West Bengal, Mr. Dharma Veera dismissed the Ajoy Mukherjee Ministry in 1967 on the grounds that he did not call, a meeting of the Assembly within the time specified by the Governor for proving the majority. The action was severely criticised by many jurists who felt that it was a wrong convention to establish. It has been much better to establish the convention that a Governor can call a meeting of the Assembly to test the majority of the government, in case the Chief Minister refuses to do so. The opposition interpreted it as a deliberate attempt on the Constitutional Profile of part of the Governor for helping the ruling party at the Centre. According to State Administration, Governor's pleasure is subject to the Ministry enjoying the confidence of the Assembly, which alone should decide the fate of a Ministry.

Dissolution of the Assembly

In British Parliamentary Democracy, the king is guided by the advice of the Prime Minister in the matter of dissolution of the House of Commons. Likewise, the Governor should be guided by the advice of the Chief Minister in the matter of dissolution of the Assembly. Unfortunately, such a convention has not been established in India. For example, in 1967 the Chief Minister of Punjab, Mr Gurnam Singh advised the Governor to dissolve the Assembly. His advice was not accepted by the Governor on the grounds that as long as it is possible to form a government, the Assembly should not be dissolved. The same thing happened to the advice of Mr Charan Singh when he advised the Governor of U.P. in 1968 to dissolve the Assembly. In 2003, the Chief Minister of U.P. Ms Mayawati advised the Governor to dissolve the Assembly but the Governor did not accept the advice on the ground that the party in power had lost the majority. The opposition parties have alleged that here again the Governors have tended to act according to the wishes of the Central Government.

Use of Emergency Powers

It has also been alleged that the Governors have not used their discretion judiciously in advising the President for using his emergency powers under Article 356 of the Constitution. In 1959, the Governor of Kerala reported to the President that due to the failure of law and order, the government of the state could not be carried on according to the provisions of the Constitution. The first non-Congress state government of the country was thrown out by the President on the basis of this report, which was severely criticised by all sections of the Opposition. In 1984, the Governors of J&K and Andhra Pradesh verified the numerical support of the ruling (non-Congress) parties in the Assembly and hurriedly advised the dismissal of the state governments on the ground that in the absence of stable majorities, the governments of these states could not be carried on according to the Constitution. In either case, the majority of the government was not tested on the floor of the Assembly. Moreover, in the case of Andhra Pradesh, even the arithmetic of numbers proved to be incorrect. In these cases, there were open allegations also that the Governors had tried to reduce the state governments to a minority.

General Remarks

Thus, it appears that our Constitution envisages a dual role for the Governor. He is a Constitutional head of the state government as well as a representative of the President. The mode of appointment of the Governor and his holding office during the pleasure of the President have tended to emphasise the second role of the Governor, i.e., his role as a

representative of the President. Since the President has to act on the advice of the Council of Ministers headed by the Prime Minister, the Governor has to indirectly act according to the wishes of the leader of the ruling party at the Centre. This has been resented by the opposition parties and has also been criticised by eminent jurists. It has been argued that provisions regarding the appointment and termination of the Governor have made him a tool of the ruling party at the Centre and not an impartial head of the state. On the other side, it has been argued that the mode of appointment and termination of the Governor was deliberately adopted by the framers of the Constitution, after a good deal of debate, with a view to guard against the fissiparous tendencies present in our polity. However, it is said that by appointing pliable Governors, the ruling there have been instances where Governors have been removed due to a change of guard at the Centre. The political parties do not find it difficult to remove the Governors that belong to opposition parties in the states.

STATE LEGISLATURE

The legislation provides the framework for policy formulation and arms the government with powers to implement the policies. At the state level, the function of providing the necessary legislative framework is performed by State Legislature. Our Constitution provides that every state shall have at least one house, viz., the Legislative Assembly comprising 60 to 500 members chosen by direct election on the basis of adult suffrage from territorial constituencies. In addition, any state can create a second house, viz., Legislative Council if it so desires. This can be done by a resolution of the Assembly passed by a special majority (i.e., a majority of the total membership of the Assembly not being less than two-thirds of the members actually present and voting) followed by an Act of Parliament. By the same process, an existing Legislative Council can be abolished also. Andhra Pradesh, West Bengal and Punjab have followed this procedure to abolish their Legislative Council. At present, only Bihar, Maharqhtra, Karnataka, U.P. and J&K have two houses. Whenever constituted, the membership of the Council cannot be more than 1/3 of the membership of the Assembly, but not less than 40. The composition of Council membership is as follows:

1/ 3 elected by members of local bodies

1/12 elected by Ele~torate of graduates of 3 years standing

1/1 2 elected by teachers of 3 years experience in secondary school or above

1/3 elected by MLAs from non-members of the Assembly

1/6 nominated by the Governor

The election is to be in accordance with the principle of proportional representation by means of the single transferable vote. The duration of the Assembly is five years unless dissolved earlier by the Governor. Its term may be extended by Parliament during the Emergency up to a period of six months beyond the expiry of the proclamation of Emergency by the President. The Legislative Council is a continuing or permanent body with 1/3 of its members retiring every second year

Legislative Procedure in a Bicameral Legislature

Regarding a Money Bill

i)A Money Bill can originate only in the Legislative Assembly and not in the Council

ii)The Council cannot reject or modify this Bill passed by the Assembly. It can only make recommendations, which. may or may not be accepted by the Assembly. The Bill as passed by the Assembly with or without modification is presented to the Governor for assent. If the Council does not return the Bill within 14 days, it can straightaway be presented to the Governor for his assent.

Thus, the will of the Assembly ultimately prevails. The Council can at best delay its passage.

Regarding any Bill other than a Money Bill

i) Such a Bill can originate in either House

ii) If a Bill is passed by the Assembly, the Council may reject the Bill, modify it; or may not pass it for three months. If the Bill is again passed by the Assembly with or without modification, the Council, on its second journey, may only delay it by one month

iii) If a Bill originates in the Council and is rejected by the Assembly, the matter ends.

Thus, in every. Way, the supremacy of the Assembly is established; more so, in the case of Money Bills. The dispute between two houses is always resolved according to the will of the Assembly. This is in contrast to the Union Legislature where a dispute between the two Houses is resolved by a joint sitting. This is probably in recognition of the fact that the Upper House in the Union Legislature is representative of the states.

Governor's Veto

When a Bill, passed by State Legislature, is presented to the Governor for his assent:

i) The Governor may assent to the Bill, in which case it would become law

ii) He may withhold assent, in which case it does not become law

iii) He may, in case of a Bill other than a Money Bill, return the Bill with a message

iv) The Governor may reserve a Bill for the consideration of the President.

Options (i) and (ii) do not involve the use of discretion by the Governor. He may not withhold assent without the advice of the Council of Ministers. However, in the case of options (iii) and (iv), the Governor may act at his discretion. When a Bill is returned with a message, the legislature may again pass the Bill with or without modifications. The Governor then has no option but to signify his assent. Option (iv), however, gives the Governor and the President a real veto on a Bill passed by the State Legislature.

When a Bill is reserved for the assent of the President, he may either declare his assent; withhold his assent or return the Bill to the State Legislature with a message. The State Legislature has to reconsider the Bill within six months. Even if the Bill is passed again with or without modifications, it is not obligatory on the part of the President to signify his assent. The opposition parties have criticised that this provision of veto substantially detracts from the autonomy of the state governments. The Governor, as an agent of the President, may interfere with the legislative powers of the state.

Governor's Power to Issue Ordinances

When the Legislature is not in session, the Governor can issue Ordinances, which have the force of law. Any Ordinance so issued by the Governor has to be placed before the Legislature whenever it is convened and ceases to have an effect at the expiration of six weeks from the date of reassembly unless disapproved earlier. The Governor's Ordinance-making power is co-extensive with the legislative powers of the State Legislature and is subject to the same limitations pertaining to obtaining the previous sanction from the President.

Legislative Control over Administration

Apart from providing necessary legislative support to the executive, the Legislature also acts as an instrument of popular control over the administration. In a Parliamentary democracy like ours, this control is exercised in the following forms:

Assembly Questions

The members of the Assembly have a right to ask questions from the government. They can also ask supplementary questions. This device keeps the government on its toes. Whenever weaknesses are noticed, the government is compelled to promise and take corrective action.

Discussions

Apart from asking questions, the members may ask for discussions over important matters. They may also bring forward Call Attention Motions and Adjournment Motions on

important public matters. Even if such motions are not allowed, a lot of information has to be supplied by the government and some discussion does take place. Here again, the government is kept on a tight leash and has to answer to the representatives of the people.

Financial Control by Budget

No money can be raised and no expenditure can be incurred without a vote by the Legislature. By controlling the purse strings, the Legislature controls the programmes and activities of the government. It is true that by virtue of its majority in the Legislature, the government may ultimately get the money it wants voted for, but during the process, a lot of discussion takes place. This keeps the government in touch with the needs of the people. The discussion also highlights the weaknesses of the administration in the implementation of the voted programmes.

Post-expenditure Control

The State Legislature also scrutinises the expenditure incurred by the government through the device audit. Our Constitution provides for an integrated account and audit system. The Comptroller and Auditor General of India (CAG) gets the accounts of the state government audited and sends his report to the Assembly through the Governor. The Public Accounts Committee of the State Legislature goes through this report, examines and finally reports to the Legislature. Any instances of unauthorised, improper, or imprudent expenditure are thus discussed in detail and brought to the notice of the Legislature, which can then keep a vigilant eye on the government.

Control through Legislative Committees

Apart from the Public Accounts Committee mentioned earlier, there are several other committees, viz., Estimates Committee, Committee on Public Undertakings, Committee on Assurances, etc. These committees examine the various aspects of the working of the government and make useful suggestions. They also criticise the government for its failures and bring these failures to the notice of the Legislature and the people. This is a good device for exercising control over the government, as the Assembly is too unwieldy a body to examine the working of the government in detail.

Ministerial Responsibility

The most potent action of the Legislature is, to enforce ministerial responsibility. In a Parliamentary form of government, the political executive is a part of the Legislature and is responsible for it all the time. The government can be thrown out at any time by a vote of no-confidence or even by being rejected on its budget or any of the substantive legislative measures. As the political executive is always responsible to the legislature, the

administrators become indirectly responsible to it through the ministers. In spite of these controls, it is often felt that the administration is not responsive enough. On the other hand, it is argued that the legislative control, especially the one through an audit is too tight and takes away the initiative of the administrators.

STATE COUNCIL OF MINISTERS

As already mentioned, the executive power of the state is exercised in the name of the Governor, who is the Constitutional head of the state. But, the Governor has to have a Council of Ministers with the Chief Minister as its head to aid and advise him. But for a few discretionary functions, the Governor has to act on the advice of the Council of Ministers. It means that the real executive power is exercised by the Council of Ministers.

The Council of Ministers is appointed by the Governor on the advice of the Chief Minister and holds Oflice during his pleasure. It means that a minister can also be dismissed by the Governor on the advice of the chief minister. On the pattern of the Union government, ministers in the state governments are of the following categories:

i) Cabinet Ministers

ii) Ministers of State

iii) Deputy Ministers

iv) Parliamentary Secretaries

In the Government of India, only Cabinet Ministers attend the meetings of the Cabinet. Some of these committees are Standing Committees, while some are ad-hoc committees that are constituted to deal some specific problems. The system of Cabinet Committees is not as so popular in the state governments as in the Central government. Most of the important matters in the states are placed before the Cabinet, which meets quite frequently. As per the recent Ninety First Constitutional Amendment Act 2003, the total number .of Ministers including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of the State, provided that number of Ministers, including the Chief Minister in a State, shall not be less than twelve. This is the first time that such an Amendment providing for the total strength of Ministers has been enacted

Powers and Functions of the Council of Ministers

The Council of Ministers is the highest policy-making body of the state government. It lays down policy with respect to all matters within the legislative and administrative competence of the state government. The Council also reviews the implementation of the policy laid down by it and can revise any policy in view of the feedback received during

implementation. Since the Governor has to exercise his executive powers on the advice of the Council of Ministers and all the executive power is exercised in the name of the Governor, there is no limitation on the powers of the Council except the following: i) The limits imposed by the Constitution and the laws passed by the Union and State Legislature. ii) Self-imposed limits to exclude consideration of less important matters.

Division of Work into Departments at the State Level

According to the doctrine of Ministerial Responsibility, the Council of Ministers is collectively responsible to, the State Assembly. It is, however, impossible for the Council to take all the decisions collectively. During the early British period, the administration of the state was carried on by the Governor-in-Council. At that time, most of the decisions were taken collectively, because the number of decisions to be taken was not very large. With the passage of time, the scope of governmental activity increased and the matters that came up for the decision of the Council also proliferated. This led to the development of a 'portfolio system' in which the Councillors were placed in charge of certain specified subjects leaving only a few important matters to be placed before the whole Council. The same system continued after Independence. Under our Constitution, the Governor has to make rules for the efficient conduct of business [Article 166(3)]. The state governments have framed 'Allocation of Business Rules', according to which the work is divided among different ministers. This division of work can be done on the basis of functions, on the basis of clientele, or on a geographical basis or on the basis on a combination of these factors. Very often, the division of work is decided on personal considerations rather than rational criteria. Most of the work in respect of subjects allotted to a minister is disposed of by the minister. However, according to the rules of business, some matters have to be reserved by the minister for:

Consideration of the Chief Minister

These are called coordination cases. In these cases, the minister in charge of, a portfolio, records his recommendations and submits the file to the Chief Minister for his orders. Rules of business give a list of such cases. The Chief Minister may also reserve some cases or classes of cases for his orders.

Presentation before the Cabinet

These are important policy matters, which have wide repercussions. Important cases of disagreement between two or more ministers are also brought before the Cabinet for its decision. A list of such cases is given in the rules of business. In addition, the Chief Minister

may require any particular case of any department to be placed before the Cabinet. A few of the typical Cabinet cases are given below:

i) Annual Financial Statement to be laid before the Legislature and demands for supplementary grants

ii) Proposals affecting state finance not approved by the Finance Minister

iii) Exemption of important matters from the purview of the State Public Service Commission

iv) Proposals for the imposition of new taxes, etc

ROLE OF THE CHIEF MINISTER

The Chief Minister performs the same functions in respect of the state government as the Prime Minister does in respect of the Union Government. Although the real executive power of the state government vests in the Council of Ministers, the Chief Minister has acquired a very special role in the exercise of this executive power. He is not the first among equals but is the prime mover of the executive government of the state.

The Chief Minister is appointed by the Governor and holds Office at his pleasure. However, when a single political party has an absolute majority in the Assembly, the Governor has only a ceremonial role in these matters. He has to invite the leader of the majority party to form the government and cannot dismiss him so long as he enjoys the confidence of the Assembly. The only exception probably may occur when the majority party changes its leader in the Assembly. Of course, the Governor does have some discretion in these matters during periods of instability when no single party can claim an absolute majority in the Assembly.

Powers of the Chief Minister in Relation to the Council of Ministers

The Chief Minister is the leader of the Council of Ministers. With the passage of time, the position of Chief Minister has strengthened vis-his his Council of Ministers. He has to assign portfolios among his ministers and can change such portfolios when he likes. He plays a coordinating role in the functioning of his Council of Ministers. He has to see that the decisions of the various departments are coherent. He has to lead and defend his Council of Ministers in the Assembly. In short, he has to ensure the collective responsibility of the Council of Ministers to the State Assembly. The Chief Minister sets the agenda for the Cabinet and greatly influences its decisions. He takes decisions on important matters of coordination even though these are allotted to individual ministers. Moreover, the Governor appoints the Council of Ministers on the advice of the Chief Minister and the ministers hold Office at the pleasure of the Governor. As a result of these provisions, the Minister, in fact, holds Office at the pleasure of the Chief Minister. This power of dismissing the ministers at

will and the power to change their portfolios has greatly strengthened the power of the Chief Minister in relation to his ministers and ultimately the Council of Ministers.

It must also be realised that the power of the Chief Minister in relation to his Council of Ministers also depends on political conditions prevailing in the state. If a cohesive party has an absolute majority in the Assembly, the Chief Minister becomes very powerful and the ministers are afraid of him. His power is further enhanced in case of a state-wide regional party for, in that case he is not subject to the discipline of the national leadership. The position of a Chief Minister gets weakened if he heads a coalition government or a faction-ridden party. In either case, he or she has to effect compromises to keep a balance among the coalition partners or various factions within the party.

Powers of the Chief Minister in Relation to the Governor

The powers of the Chief Minister in relation to the Governor have not been mentioned anywhere in the Constitution. A convention was sought to be established whereby the Chief Minister could be consulted regarding the appointment of the Governor in his state. Even this has not been followed by the Union government in many cases. The only other power, which can be indirectly inferred from the Constitution is the power to exercise the executive power of the state in the name of the Governor. All the public appearances of the Governor and the speeches delivered by him on such occasions have to be in accordance with the policy laid down by the Council of Ministers headed by the Chief Minister. Similarly, the speeches of the Governor on ceremonial occasions and the annual speech before the Assembly have to be approved by the Cabinet.

Powers of the Chief Minister in Relation to the Legislature

The Chief Minister is also the leader of the House. Apart from this formal position, the Chief Minister provides real legislative leadership to the House in the sense that -he sets the legislative {agenda. The legislative measures are brought before the Assembly after the approval of the Council of Ministers headed by the Chief Minister. It is true that private members may also bring a Bill before the Assembly. But, that has a limited chance of success. Apart from the fact that it has ao backing of the majority party, the private members do not have the wealth of information that is available to the government. Apart from setting up the legislative agenda, the Chief Minister has to keep the Assembly informed about the various activities of the government by answering questions, making statements, intervening in debates, etc.

Powers of the Chief Minister in Relation to the Executive

By virtue of being the head of the political executive, the Chief Minister controls the entire bureaucracy of the state. In this function, he is assisted by the Secretariat headed by the Chief Secretary. He approves all senior appointments like those of Secretaries and Additional / Joint /Deputy Secretaries. Heads of the Departments, Chairpersons and Managing Directors of Public Sector Undertakings, etc. Through his Cabinet, he controls their service conditions and disciplinary matters. He provides them with leadership to ensure good performance and good morale. At the same time, he has to keep a watch on their performance through administrative channels as well as through his own sources like party workers, complaints from aggrieved persons and actual observation during tours etc.

As already mentioned earlier, one of the basic features of our Constitution is the division of functions between the Union (Centre) and the states. The scheme of division itself is biased towards the Union and gives greater financial and administrative powers to it. Over time, the Union has emerged stronger. In this connection, the following features deserve notice:

i) The Union government has more lucrative sources of revenue. Moreover, it can generate money and also indulge in external borrowing. The states, on the other hand, have meagre revenues and are unable to finance their development programmes without assistance from the Centre. In a way, it has helped' weaker states to get more resources but has also given a handle to the Union to discipline the states, which do not fall in line with its thinking. This has, to a great extent, undermined the autonomy of the states. Such a trend is visible even in Federations like the USA.

ii) The establishment and functioning of a non-statutory body like the Planning Commission have tended to strengthen the Union vis-a-vis the states. The discretionary grants of the Government of India are given on the recommendations of the Planning Commission. Many schemes of the state government require clearance from the Planning Commission. The Five Year Plans and Annual Plans of the states are decided according to the priorities laid down by the Planning Commission and with their consultation and concurrence. This has severely undermined the autonomy of the states.

iii) For a long time, the Congress governments remained in power at the Union and also in the states. In addition to the Constitutional discipline, there was the party discipline, which kept states almost in subordination. With the emergence of the non-Congress governments, e.g., the Bhartiya Janata Party at the Centre as well as

in many states, this trend is now changing. The state governments are now asserting their autonomy.

iv) Article 356 of the Constitution has been used too often to dismiss the state governments belonging to opposition parties. In this connection, one may recall a large-scale supersession of state governments by Janata Government in 1977 and by the Congress government in 1980. Even otherwise, this emergency provision has been used far too frequently. This has also undermined the autonomy of the state governments. In the recent Inter-State Council Meeting held in Srinagar in August 2003, it has been resolved that the Centre may impose President's rule under Article 356, but should invoke it "sparingly" and only as a "last resort". It is expected that the Centre will move the Parliament to introduce a Constitutional Amendment in this regard.

v) Most of the matters connected with development concern the states as well as the Union. For example, subjects like agriculture, rural development, and forest, although falling in the state sector, concern the Union also. We, therefore, find big departments of agriculture, rural development, etc. at the Union level too. Apart from providing finance to the states, they also provide expertise, which can be better hired at the Union level rather than at the state level. This has also increased the dependence of the states on the Union.
