

INDIAN CONSTITUTION

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INDIAN CONSTITUTION

Unit-I: Sources – Preamble – Salient Features – Citizenship – Amendments

Course Objectives

1. To examine the sources and influences of the Indian Constitution.
2. To analyse the significance and ideals of the Preamble.
3. To understand the salient features of the Constitution.
4. To study the provisions relating to citizenship.
5. To evaluate the process and importance of constitutional amendments.

Introduction

India from the beginning of recorded history had to face a long succession of foreign invasions. In the 16th century, the wealth of India attracted a host of European traders to India. The Dutch, the French and the British merchants became the favorable rivals to the earlier traders, the Portuguese. All of them were attracted to India by its fabulous wealth, and none came to settle here. The British traders came to India in the 17th century and certain British traders approached their Queen for a charter to carry on trade with East Indias. The charter was granted in December 31, 1660 and there by the East India Company was given exclusive right to carry on trade with India. During the 17th century the Mughal Empire expanded and reached its zenith in India. After the death of Aurangzeb, the Mughal Empire rapidly disintegrated. This gave East India Company a chance to establish its dominion in India. It began its career of conquest in 1757, the battle of Plassey. A hundred years after the battle, the East India Company established its undisputed sovereignty over the whole of India. By the great revolt of 1857, the company's rule was terminated and the country passed under the direct rule of the British Crown; under the Government of India Act. 1858. The Act was dominated by the principle of absolute imperial control without any popular participation of Indians in the administration of India. The subsequent history of India upto the making of the constitution (1949) is of gradual relaxation of imperial control and the evolution of responsible government.

An Analysis of National Movement

The Constitution of India was adopted in, November, 1949 and enacted in January 1950. It was influenced by numerous political system of the world and numerous Acts passed by British Government, especially the Government of India Act 1935. The English East India

Company was founded in London in 1600, whose one share holder was Queen Elizabeth I, to have trade with India. Within a span of about 150 years, the company became a territorial power. The company's commercial activities came under cloud and the British Government sought to regulate its affairs and assert sovereignty over the company's expanding territories, until the British Government finally took over region of India in 1958. But for the people of India the rule continued to be the same suppressive and exploitive. Social and religious renaissance made a ground for political awakening in India. Raja Ram Mohan Roy rightly regarded as the prophet of Indian Renaissance, was, indeed, the father of modern India. The Indian dailies like Amrit bazar Patrika, the Indian Mirror, the Hindu, the Kesari, the Bengali and like contributed a lot to the growth of Indian nationalism. The English language, the means of transport and communication bring the Indians closer. Before the birth of Indian National Congress, there had emerged numerous provincial organisations in the country. They were the British Indian Society, the

British Indian Association, the Bombay Presidency Association, and the Mahajan Sabha etc. The Indian National Congress was founded in 1885 by an English East India Company's retired official, A O. Hume. The first session of Indian National Congress began in Bombay, on December 28, 1885 with W C. Bannerjee, who was the first president, in the chair. The Indian liberation struggle, spearheaded mainly by the Indian National Congress, witnessed a fairly long period of struggle, passed through reforms (1885 – 1905), the demand for Swaraj (1906 -1928), and sought independence (1929 – 1947), largely a peaceful and non-violent movement. The three major stages through which the Indian national movement passed were: (a) the moderate period, (b) the extremist period, and (c) the Gandhian period. The moderate period, from 1885 - 1905, was led by Hume, Naoroji, Mehta, Rande, Gokhale and the like. These leaders thought of English rule in India as a blessing and related India's social economic development to the just rule of British in the country; their method is limited prayers, petitions, and sending deputations to the authorities in India as well as in England in order to build a favorable public opinion for India. Extremism, was led by Bal GangadarTilak , Lala Lajpath Rai, Bipin Chandrapal, and Aurobindo Ghosh . The partition of Bengal which was revoked in 1905 gave birth to the protest movement engulfing whole nation. Together with the anti- partition feelings, there spread swedesi and boycott activities; the whole country was ablaze with sentiments full of nationalism. The nationalist movement came to be led by the extremists demanding Swaraj with measures such as passive resistance and national wide protests. The Gandhian era the nationalist liberation

struggle began around 1917 and covered almost three decades. With the techniques of non-violent Satyagraha – Gandhi rose from local mass struggle at Champaran, Kheda and Ahamadabad to the nationalist movements. He used the methods including the Non-Cooperation Movement (1920 -1922), the Civil Disobedience Movement (1930 -34), the Individual Satyagraha (1940), and the Quit India Movement (1942). Truth was his goal; non – violence, his means; humanity, his religion. Rabindranath Tagore gave Gandhi the title of Mahatma, and the nation, the ‘Father’. So many legislative provisions were made and administrative reforms were implemented by British India through Indian Council Acts 1861, 1892 etc. The first attempt of British administration to introduce a representative and popular government was made by the Minto-Moreley reforms of 1909.

Indian Councils Act 1909 The Indian Councils Act 1909 is commonly known, as the Morely-Minto Reforms. It was an Act of the Parliament of the United Kingdom that brought about a limited increase in the involvement of Indians in the governance of British India. John Morley, the then Secretary of State for India, and the Governor General of India Minto believed that cracking down on terrorism in Bengal was necessary but not sufficient for restoring stability to the British Raj after Lord Curzon’s partitioning of Bengal. They believed that a dramatic step was required to put heart into loyal elements of the Indian upper classes and the growing westernized section of the population. They produced the Indian Councils Act of 1909 (Morely – Minto reforms). These reforms did not go any significant distance towards the Indian National Congress demand for ‘the system of government obtaining in Self-Governing British Colonies’. The Act of 1909 was important for the following reasons. It effectively allowed the election of Indians to the various legislative councils in India for the first. Previously some Indians had been appointed to legislative councils. The majorities of the councils remained British government appointments. Moreover, the electorate was limited to specific classes of Indian nations. The deliberative functions of the Legislative Councils were also increased by the Act. It gave them the opportunity to move resolutions on the Budget and any matter of public interest. An element of election was also introduced in the Legislative Councils at the Centre.

The system of election introduced by the Act provided for separate representation for Muslim Community. It sowed the seeds of separation which led to the partition of the country. The Act provides that

- a) Indian Muslims be allotted reserved seats in the Municipal and District Board, in the Provincial Councils and in the Imperial Legislature; ·
- b) the number of reserved seats be in excess of their relative population (25 percent of the Indian population); and ·
- c) only Muslims should vote for candidates for Muslim seats (separate electorates) · The number of the members of the Legislative Council at the center was increased from 16 to 60 ·
- d) The number of the members of the Provincial Legislatures was also increased. It was fixed as 50 in the provinces of Bengal, Madras and Bombay, and for the rest of the provinces it was 30. ·
- e) The member of the Legislative Councils, both at the Centre and in the provinces, were to be of four categories ie, ex-officio members (Governor General and the members of their Executive Councils) nominated official members (those nominated by the Governor General and were government officials), nominated non-official members (nominated by the Governor General but were not government officials and elected members (elected by different categories of Indian people) ·
- f) The right of separate electorate was given to the Muslims.
- g) Official members were to form the majority but in provinces non-official member would be in majority.
- h) The members of the Legislative Councils were permitted to discuss the budgets, suggest the amendments and even to vote on them; excluding those items that were included as non-vote items. They were also entitled to ask supplementary questions during the legislative proceedings.
- i) The Secretary of State for India was empowered to increase the number of the Executive Councils of Madras and Bombay from two to four.
- j) Two Indians were nominated to the Council of the Secretary of State for Indian Affairs.
- k) The Governor General was empowered to nominate one Indian member to his Executive Council. ·
- l) Subsequently, to this, the Government of India Act 1919, as passed merely to consolidate all the preceding Government of India Acts.

The Constituent Assembly of India

The Constituent Assembly of India was set up as a result of negotiations between the Indian leaders and members of the British Cabinet Mission. The constituent assembly was elected indirectly by the members of the Provincial legislative assembly. The Congress secured an overwhelming majority in the general seats while the Muslim League managed to sweep almost all the seats reserved for Muslims. The Congress had majority of 60%. There were also members from smaller parties like the Scheduled Caste Federation, the Communist Party of India and the Unionist Party.

It first met on December 9, 1946 in Delhi, while India was still under British rule. It originally included the provinces that now compose Pakistan and the representation of the princely states of India. In June 1947, the delegations from the provinces of Sindh, East Bengal, Baluchistan, West Punjab and the North West Frontier Provinces withdrew in order to form the Constituent Assembly of Pakistan in Karachi. The Constituent Assembly took almost three years (two years, eleven months and seventeen days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. As to its composition, members were chosen by indirect election by the members of the Provincial Legislative Assemblies according to the scheme recommended by the Cabinet Mission. The arrangement was (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners Provinces. The total membership of the Assembly thus was to be 389. However, as a result of the partition under the Mountbatten Plan of 3 June, 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

On 13 December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution. The Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.

Late in the evening of 14 August, 1947 the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of an Independent India. On 29 August, 1947 the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R Ambedkar to prepare a Draft Constitution for India. While deliberating upon the draft Constitution, the Assembly move, discussed and disposed of as many as 2,473 amendments out of

a total of 7, 635 tabled. The Constitution of India was adopted on 26 November, 1949 and the hon'ble members appended their signatures to it on 24 January, 1950. In all, 284 members actually signed the Constitution. The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952. Dr. Sachchidananda Sinha was the first President (temporary Chairman of the Assembly) of the Constituent Assembly when it met on December 9, 1946. Dr. Rajendra Prasad then became the permanent President of the Constituent Assembly, and would later become the first President of India. The Vice President of the Constituent Assembly was Professor Harendra Kumar Mukarjee.

Source of the constitution

The opening words "We the people of India" and the closing words, 'adopt enact and give to ourselves this constitution' convey that the constitution emanated from the 'people' and the sovereignty under the constitution is vested in the people. Most of the modern constitutions emphasize the same principles.

Types of Government

The polity (Type of government) enacted adopted and assumed in the preamble by the people of India themselves, is 'Sovereign Socialist, Secular Democratic, Republic'. The words 'socialist' and 'secular' were added in the preamble by 42nd amendment of the constitution.

The expression 'sovereign' signifies that the Republic is externally sovereign. By the passing of the 'Indian Independence Act, 1947' India ceased to be a dependent of British Empire and from 15th August 1947 to 26 the January 1950, it remained with a 'dominion status' in the British commonwealth of nations. But, with the inauguration of the Indian constitution. On 26th January 1950, India became 'a Sovereign Republic' However, India is still a member of commonwealth of nations. This voluntary membership of India in the commonwealth indicates a free association with no legal obligation

The concepts of socialism was implicit in the constitution in a number of provisions in Part IV dealing with Directive Principles of State Policy (Eg. Art. 38,39,40&41) Articles 14, 15 16 and 25 to 28 are intended to ensure the establishment and maintenance of 'secular' state in India. In order to explicit these concepts in the preamble itself, the 42nd amendment (1976) added the words 'Socialist, Secular' in it.

The word “socialist” added in the preamble is intended to bring out that ours is a socialist state which aims to secure to its people ‘justice’ – social economic and political. Its inclusion in the preamble was objected on the ground that it is a vague expression and mean different things to different persons. The term ‘socialism’ was defined by Janatha Government in the 45th constitutional amendment bill; but the bill was defeated in Rajya Sabha and hence the expression ‘socialism’ still remains undefined.

The word ‘secular’ has also been added in the preamble by the 42nd amendment of 1976. It gives the idea that India shall have no religion of its own and all persons shall be equally entitled to profess, practice and propagate religion. Its omission in the original preamble was deliberate, because Prof. K.T Shah made two attempts for that by suggesting amendments but, every time he was opposed. Dr. B.R. Ambedkar thought that the principles of ‘secularism’ are already enshrined in the chapter on Fundamental Rights.

The term ‘Democratic’ is comprehensive. In a narrow political sense, it refers only to the form of government, a representative and responsible system. The administrators of the affairs of the state are chosen by the electorate and accountable to them. But in the broadest sense, it embraces social and economic democracy.

The term ‘Republic’ implies an elected head of the state. A democratic state may have an elected or hereditary head. Britain has a hereditary head (The king/Queen). Under a republican form, the head of the state, is always elected for a prescribed period. In USA, the President, is the head and elected for a term of four years. India has chosen the system of electing one of its citizen as its President, for a term of five years.

Objectives of the Indian Republic

The preamble proceeds further to define the objectives of the Republic. These Objectives are four: Justice, Liberty, Equality and Fraternity.

Justice implies a harmonious reconciliation of individual conducts with the general welfare of the society” The essence of justice is the attainment of the common good. It embraces the entire social, economic and political spheres of human activity.

The term ‘liberty’ is used in the Preamble not merely in a negative but also in a positive sense. It signifies not only the absence of any arbitrary restraint on the freedom of the individual action, but also the creation of conditions for the fullest development of the personality of the

individual. Since society is constituted of individuals, social progress depends on the progress of the individual.

‘Equality’ is complementary to ‘Liberty’. Equality does not mean that all human beings are equal mentally and physically. It really signified the equality of status, the status of free individuals and equality of opportunity. Equality of opportunity implies the availability of opportunity to everyone to develop his or her potential capacities. The concept of ‘equality’ envisaged in the Preamble as it embraces both equality of status and of opportunity. Finally, the Preamble signifies the objective of ‘Fraternity’. The concept of fraternity ensures both the dignity of the individual and the unity and integrity of the nation. The spirit of brotherhood among citizens was first emphasized by the French revolution and ever since, it has become a slogan of universal application. In the declaration of Human Rights, the UNO proclaims “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. This spirit of brotherhood is emphasized by the use of term ‘fraternity’ in the Preamble.

The Preamble

An introductory statement in speech or writing to a statute or constitution is called as ‘Preamble’; Every written constitution has a preamble. It embodies the objectives or basic purposes of it. It states the object or policy which it is designed to achieve. The preamble of Indian constitution was an opportunity for the framers of the constitution to give expressions to the dreams of a new order they were dreaming for years. Naturally they draw up a preamble, which embodies the fundamental principles of that new order. The first meeting of the Constituent Assembly, was held on December 09, 1946, had taken the task of formulating the objectives and guiding principles of the constitution. The “objectives resolution “ moved by Jawahar Lal Nehru on December 13, 1946, was adopted by the Constituent Assembly on January 22, 1947 and has been appreciated as the nature of the preamble of the Indian Constitution. The Drafting Committee of the Constituent Assembly while formulating the ‘preamble’ in the light of the ‘objectives resolution’ felt that the preamble restricted to defining the essential features of the new state. The Committee adopted the expression ‘Sovereign Democratic Republic’, in place of ‘Sovereign Independent Republic’, as used in the “objective resolution” . The Committee also adopted the clause ‘fraternity’ which did not see in the ‘objectives resolution. By 42nd

constitutional amendment Act of 1976, two amendments were made in the original preamble and the preamble after it, now reads as follows:

“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 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”.

Reading through the preamble, one can see the purposes that it serves. They are the declaration of (i) the source of the constitution (2) types of govt. (3) objection of the political system and (4) the date of its adoption.

The following are some of the salient features of the Indian constitution.

1. Longest Written constitution:

The Republic of India has a written and enacted constitution. The original constitution contains 395 Articles divided into 22 parts. In the later period, a number of amendments were made on the constitution. Provisions were either added or deleted. Even after these amendments Indian constitution still remains as the largest written constitution in the world.

2. Popular Sovereignty: Indian constitution upholds popular sovereignty. The will of the people that prevails ultimately in the affairs of the state. The sovereignty of the people is proclaimed in its opening words itself. The preamble begins with the word “We the people of India” Elections to the Indian parliament and state legislatures shall be on the basis of adult suffrage. Governments derive their authority from the people, who elects their representatives at regular intervals. The idea of popular sovereignty is affirmed in several places in the constitution.

3. Sovereign, Democratic, Republic: The preamble of the constitution declares that India to be a sovereign democratic, republic. The Dominion status established under the

Independence Act of 1947 has been terminated and India emerged itself as a completely independent, sovereign state. India is totally 'democratic' because the real power emanates from the people. The word 'Republic' denotes that the state is headed by a president, elected indirectly by the people.

4. **Rigid and Flexible:** Indian constitution is partly rigid and partly flexible. The procedure for the amendment of Indian constitution is neither very easy, as in England, nor very rigid as in USA. Indian parliament has given the power to amend many provisions of the constitution by a simple majority, as it required for general legislation. Some other provisions may be amended by a special majority of the Indian Parliament. ie. a majority not less than 2/3 of the member of the each house present and voting, which again, must be a majority of the total membership of the House. A very few provisions, of the Indian constitution required a further ratification of not less 1/2 of the state legislatures for its amendment.
5. **Cabinet System of Government:** Indian constitution established cabinet system of government both at the centre and in the states. The governments should be always responsible to respective popular chambers of legislatures. At the centre, the Cabinet composed of a Prime Minister and a number of ministers. Cabinet is the policy formulating and executing body of the government. An executive system always responsible to the popular chamber of the legislature, is a contribution of Britain to the world.
6. **Secular State:**
The commitment to the goal of 'secularism' has been spelled out in clear terms. The word 'secular' has been added in the preamble, by 42nd amendment of the constitution (1976). In India there is no official or state religion. It treats all its citizens alike and give them equal opportunities. Indian constitution, guarantees freedom of religion to all persons.
7. **A Federal System with Unitary bias:** Normally in India the system of government is federal but the constitution enables the federation to transform into a Unitary State. The constitution establishes a Federal polity with division of powers. India has a written constitution, with dual polity and division of powers between the centre and states. There is also a provision for a Supreme Court, the guardian of the constitution. The Supreme Court decides all disputes which arise between the states and centre. Not outstanding with

all these features of a federal set up, Indian constitution has a Unitary bias too. Eg. After distributing the governmental powers in three lists: Union list, state list, and concurrent list; the residual subjects are left with the centre, by which the centre is made more powerful than the states. Even in matters relating to concurrent list, the Union government has the final say. Besides that the head of state (Governor) is appointed by the President and they as mere agents in the states. At any time, the centre can, declare emergency in the states (Art 356) and can take over the administration of any state.

8. Universal Franchise: Act 326 ensures the adoption of Universal adult suffrage. It enables any citizen of India to cast his vote, without considering any caste, colour, sex, qualification on property or the like. The suffrage in India is wider than that in Great Britain and U.S.A. The concept of popular sovereignty which underlies in the declaration in the preamble would have been hollow unless the franchise were extended to the entire population. Another creditable point of the constitution, is the abolition of communal representation. In the constitution, there was no reservation of seats except for the SCs and STS and for the Anglo Indian community.
9. Compromise between Judicial review and parliamentary superiority. Indian parliament is not supreme as that of British parliament. At the same time Indian judiciary is not as supreme as in USA. Indian constitution follows a via-media between the two. Indian constitution endows the judiciary with the power of declaring any law as unconstitutional, if it is beyond the competence of legislature; or if it is in contravention of the fundamental rights guaranteed by the constitution. Major portions of the constitution is liable to be amended only by the parliament by special majority, the judiciary proves too obstructive. Ultimately the fact remains that the legislature must be supreme and the judiciary must not be interfered in such measures as social reforms.
10. No double citizenship: Double citizenship has not been provided for all citizens of India, even though India has a federal system of administration. In USA, double citizenship has been provided. All Indians irrespective of their domicile enjoy single citizenship.
11. Impartial and independent Judiciary. Democratic freedom is meaningful only in the presence of an impartial and independent judiciary. The framers of the Indian constitution were highly conscious of this fact. The judiciary of India is not an agent or subordinate of the Government of India. If the Judiciary is a subordinate or agent of the government; it

could not be trusted as an impartial interpreter of the constitution, and conflicts and controversies between the centre and the states. These facts compelled the constitution makers to adopt judicial independence as a basic principle of Indian constitution.

12. **Fundamental Rights:** The constitution of India, includes a separate chapter which guarantees the fundamental rights to all citizens. These fundamental rights are justifiable and inviolable. They are binding on the legislature as well as executive. A citizen of India has the right to seek the protection of the judiciary, if any of the fundamental rights is violated. Any parliamentary act or executive order can be declared null and void by the Supreme Court/ High Courts, if it violates any of the fundamental rights, guaranteed by the constitution.
13. **Fundamental Duties.** Article 51 A (Part IV A) was incorporated to the Indian constitution in 1976 by the 42nd Amendment. It introduced fundamental duties, which cannot be judicially enforceable. This incorporation was an attempt to balance individual freedom with individual duties.
14. **Directive Principles of State Policy:** Another distinctive feature of Indian constitution is the Directive principles of state policy. This feature has been taken from Irish constitution. The philosophy behind the Directive Principles is that the state and its agencies are commanded to follow certain fundamental principles while they frame their policies. These principles are assurances to the people. At the same time, they are directions to the Government, both central and state. The percepts of Directive Principles are not justifiable and hence they are not enforceable by a court order. They are designed to serve as a guide for the Union Parliament and the state assemblies in framing new legislation.
15. **Unamendable basic feature:** Indian constitution has a basic structure, which cannot be amended. Democracies, federal and republican character, secularism, judicial review, system of free and fair elections etc. are some of the features, which constitute the basic structure of Indian Constitution.

Salient Features of the Indian

Every constitution aims to build up a political structure based upon certain principles and ideologies. Some of these principles vary from constitution to constitution. These variations are the product of varying conditions and circumstances that determines the very nature of a

constitution. Indian constitution is not an exception to this rule. Indian constitution has its own characteristics. The theory, philosophy, and ideology that influenced the constitution of India were the result of the ideological background and philosophical knowledge of the members of Constituent Assembly, which drafted the constitution. The most important ideological groups represented the Constituent Assembly were the socialists, the Gandhians and the rightists. The socialist groups were divided into two: the Marxian socialists and democratic socialists. Marxians advocated a revolutionary reconstruction of society; while democrats wanted to transform society through peaceful parliamentary methods. Both these groups were opposed to the private ownership of the important means of production. The rightist group, supported the interests of bourgeoisie and landed class. The Gandhians criticized the capitalists mode of production. They wanted the renewal and promotion of village and small scale industries. In the political field, they proposed a decentralized democracy based on self-sufficient village panchayats. All these ideologies have some influence on the constitution of India. Besides these ideological and philosophical commitments, the constitution of India continued the constitutional developments that took place under the British, retaining the basic concepts of the Government of India, Act 1935. Dr. Subhash Kashyap observes, "the constitution of India is a most comprehensive document. It is unique in many ways. It cannot be fitted in any particular model. It is a blend of the rigid and flexible, federal and unitary and presidential and parliamentary. It attempts a balance between the fundamental rights of the individual on the one hand and the socio-economic interests of the people and security of the state on the other. It represents a via-media between the principles of parliamentary sovereignty and judicial supremacy".

Citizenship Amendment Act

Citizenship by birth 1

1. Except as provided in sub-section
2. Every person born in India,-
 - a. on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986;
 - b. On or after such commencement and either of whose parents are a citizen of India at the time of his birth, shall be a citizen of India by birth.
3. A person shall not be such a citizen by virtue of this section if at the time of his birth.

- a. His father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or
 - b. His father is an enemy alien and the birth occurs in a place then under occupation by the enemy.
4. Citizenship by registration
- a. Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories,.
 - b. Persons of Indian origin who are ordinarily resident in India and have been resident for five years immediately before making an application for registration;
 - c. persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
 - d. Persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration.
 - e. minor children of persons who are citizens of India; and
 - f. Persons of full age and capacity who are citizens of a country specified in Schedule I: PROVIDED that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.

Explanation

For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India.

- 1. No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in Schedule II.

2. No person who has renounced, or has been deprived of his, Indian citizenship, or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.
3. The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.
4. A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause of Article 6 or Article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

Citizenship by Naturalization

1. Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in Schedule I for the grant of a certificate of naturalization to him, the Central Government may, if satisfied that the applicant is qualified for naturalization under the provisions of Schedule III, grant to him, a certificate of naturalization: PROVIDED that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in Third Schedule III.
2. The person to whom a certificate of naturalization is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in Schedule II, be a citizen of India by naturalization as from the date on which that certificate is granted. 5[6A. Special provisions as to citizenship of persons covered by the Assam Accord (1) For the purposes of this section:
 - a. "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;
 - b. "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;
 - c. "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

- d. a person shall be deemed to be Indian origin, if he, or either of his parents or any of his grandparents was born in India;
 - e. a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.
3. before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.
4. Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who-
- a. came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and
 - b. has, since the date of his entry into Assam, been ordinarily resident in Assam; and
 - c. has been detected to be a foreigner; shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted there from.

Explanation

In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,-

- i. if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

- ii. if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passport Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

Without prejudice to the provisions of section 8,-

- a. if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;
- b. if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985 for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation

Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force, to act in his behalf.

Nothing in sub-sections (2) to (6) shall apply in relation to any person- (a) who, immediately, before the commencement of the Citizenship (Amendment) Act, 1985, for year is a citizen of India; (b) who was expelled from India, before the commencement of the Citizenship (Amendment) Act, 1985, for year under the Foreigners Act, 1946 for year.

Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.

If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

Termination of Citizenship

Any citizen of India who by naturalization, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India: PROVIDED that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs. (2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Course Outcomes (COs) – 5

After completing this unit, students will be able to:

1. Explain the major sources of the Indian Constitution.
2. Interpret the ideals and values enshrined in the Preamble.
3. Describe the key features of the Indian Constitution.
4. Analyse the concept and provisions of citizenship in India.
5. Evaluate the amendment procedure and its significance.

Programme Outcome (PO) – Any One

PO1: Constitutional Awareness and Critical Analysis

Students will develop the ability to critically understand constitutional principles and evaluate their application in governance.

S.NO	QUESTIONS	LOCF Mapping		
	Five questions			
1	What are the main sources of the Indian Constitution?	CO1	PO1	K1
2	Explain the influence of the British Constitution on India.	CO4	PO1	K4
3	Write a note on the Preamble of the Indian Constitution.	CO2	PO1	K2
4	Explain the term “Sovereign” in the Preamble.	CO2	PO1	K2
5	What is meant by “Secularism”?	CO1	PO1	K1
6	Describe the salient features of the Indian Constitution.	CO5	PO1	K5
7	Write a note on Fundamental Rights.	CO2	PO1	K2
8	Explain the concept of single citizenship.	CO2	PO1	K2
9	Describe the modes of acquiring Indian citizenship.	CO3	PO1	K3
10	What are the ways of losing citizenship?	CO1	PO1	K1
	Eight-mark questions			
1	Analyse the sources of the Indian Constitution and their influence.	CO4	PO1	K4
2	Examine the significance of the Preamble of the Indian Constitution.	CO4	PO1	K4
3	Discuss the salient features of the Indian Constitution.	CO2	PO1	K2
4	Evaluate the federal and unitary features of the Constitution.	CO5	PO1	K5
5	Analyse the concept of secularism in the Indian Constitution.	CO4	PO1	K4
6	Discuss the provisions relating to citizenship in India.			
7	Examine the modes of acquisition and loss of citizenship.	CO2	PO1	K2
8	Analyse the procedure for constitutional amendments under Article 368.	CO4	PO1	K4
9	Evaluate the importance of constitutional amendments in a democracy.	CO5	PO1	K5
10	Examine the philosophical foundations of the Preamble.	CO4	PO1	K4

Unit – II

Fundamental Rights – Directive Principles – Fundamental Duties

Course Objectives (COs) – 5

1. To examine the concept and classification of Fundamental Rights in the Indian Constitution.
2. To analyse the nature and significance of Directive Principles of State Policy.
3. To understand the role and importance of Fundamental Duties.
4. To evaluate the relationship between Rights, Duties, and Directive Principles.
5. To assess the role of constitutional provisions in promoting social justice and welfare

Fundamental Rights

An eternal problem that faced statesmen and political scientists was how to make a proper adjustment between individual freedom and social control. Under a democratic system this problem assumes extreme difficulty. The success or failure of democracy depends largely on the extent to which civil liberties are enjoyed by citizens. A democracy aims at the maximum development of individual's personality and this personality is inseparably bound with his liberty. Therefore, every democracy pays full attention to secure maximum freedom, without endangering the state itself. A common device adopted for this purpose is to incorporate a list of fundamental rights in their constitution and guarantees them from violation by executive and legislative authorities.

The idea of incorporating a list of fundamental rights in a new constitution of India had excited the imagination of almost all political thinkers and constitutionalists in India, from the time, the idea of transfer of power had taken shape. None of the Indian Acts passed by the British parliament contained any fundamental rights. All the members of the Constituent Assembly, accepted the idea of incorporating a chapter on fundamental rights in the constitution of India. Part III of the constitution deals with fundamental rights. It is described as the most criticized part of the constitution, by Dr B.R. Ambedkar. It was discussed 11 days in the sub-committee, 2 days in the Advisory committee and 25 days in the constituent assembly. As mentioned earlier, part III of the constitution covering from Articles 12 to 35 deals with fundamental rights. These rights are characterised by certain features which may be as follows:

1. Integral parts of the constitution Fundamental are an integral part of the constitution. They cannot be altered or taken away by the ordinary legislation. Any law passed by any legislature in the country could be declared null if it is derogatory to the rights guaranteed by the constitution.
2. **Detailed and comprehensive:** The chapter in fundamental rights in the constitution is most comprehensive and elaborate. All Articles included in this chapter is within an elaborate set of limitations and reservations.
3. **Positive and Negative rights:** Fundamental rights can be divided into two broad categories: namely, positive rights and negative rights. Positive rights which confer privileges on the people. Right to liberty, equality or freedom to express or worship. etc come under positive rights. Negative rights are which impose certain restrictions on the state.
4. **Fundamental rights are justifiable:** Another feature of fundamental rights is that are justifiable. If any of these rights is violated, the affected individual is entitled to move either to Supreme Court or High court for the protection and enforcement of his rights.
5. **Restrictive nature of fundamental rights:** Fundamental rights , guaranteed in Part III of the constitution, are not absolute rights. They are subjected to reasonable limitations provided in the constitution itself. Every right is permitted under certain limitations and reasonable restrictions. It can be imposed at anytime for the longer interest of the general community
6. **Suspension of rights:** The President of India may suspend to all or any of the fundamental rights during the emergency operation. He may also suspend the right of the people to move the courts for the enforcement of fundamental rights.
7. **Citizens alone enjoy fundamental rights:** Another feature of the fundamental rights is that some of the fundamental rights are available to Indian citizens alone E.g. Art 15, 16,18,29,30. Rights relating to protection of life, freedom of religion, and right against exploitation are guaranteed to every citizen with Indian or alien.
8. **No natural or un enumerated rights:** F.Rs in the Indian constitution is not based on the theory of natural rights. Besides that, Indian constitution has left no scope for unenumerated rights. 9.Amendable: In Kesavananda Bharati case the Supreme Court

ruled that the fundamental rights can be amendable under article 368, but subject to the condition that its “basic structure” cannot be changed.

9. **Classification of fundamental rights:** The constitution itself classifies the FRs under 7 groups:

- a. Right to equality
- b. Right to freedom
- c. Right against exploitation
- d. Right to freedom of religion
- e. Cultural and Educational Rights
- f. Right to constitutional remedies

Out of these, “Right to property” has been deleted by 44th constitutional amendment (1978) and consequently it is not a fundamental right now. A separate Article 31-A has been added to the constitution to protect it as a constitutional right.

1. **Right to equality** Articles 14 to 18 of the constitution deals with the right to equality. Equality is the principal foundation of all other rights and liberties. (a) Equality before law: Article 14 declares that “the state shall not deny to any person equality before the law or equal protection of laws within the territory of India”. ‘Equality before law’ is an expression of English common law, while ‘equal protection of laws’ owes to the American Constitution.

‘Equality before law’ is a negative concept implying the absence of any special privilege in favour of any individual. Equal protection of laws is a positive concept, implying equality of treatment in equal circumstances. ‘Equality before law’ is the second corollary of Dicey’s concept of the ‘Rule of law’.

It means that no man is above the law of the land and that every person is subject to ordinary law. But certain exceptions are recognized to the above rule of equality in the public interests. E.g., The exercise and performances of the power and duties of the President of India or governors of states. ‘Equal protection of laws’ is borrowed from the American constitution .It means the right to equal treatment in similar circumstances both in the privileges conformed and in the liabilities imposed by the laws.

2. **Prohibition of discrimination on certain grounds (Article 15)** Art 15 is a particular aspect of equality guaranteed by Art 14. Article 15, forbids discrimination on certain grounds;

The state shall not discriminate against any persons on grounds of religion ,caste ,sex, or place of birth or any of them. Every person shall have equal access to public places like public parks, museums, wells etc. However, the state may make any provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward classes or SCs or STs. Interpreting the Article, Supreme Court rejected the plea that ‘residence’ in the state was equivalent to place of birth, and held that these are two distinct conceptions both in ,law and in fact.

3. Equality of opportunity in matters of public employments(Art.16) Article 16 guarantees equality of opportunity in matters of public employment. The state is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, place of birth or residence. The only exceptions to the above rule of equality are:
 - a. Residence within the state may be laid down by parliament as a condition for particular classes of employment;
 - b. The state may reserve any post of appointment in favour of any backward class of citizens, who are not adequately represented in the services under the state.
 - c. The claim of members of scheduled castes and scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the states.
 - d. The claim of members of scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the union and the states.
4. Abolition of Untouchability: (Article 17) Article 17 abolishes untouchability and its practice in any form is made an offence punishable under law. Parliament is authorized to make a law prescribing the punishment for this offense(Art.35).In the exercise of this power, parliament has enacted the untouchability (offenses) Act 1955.This Act has been amended and renamed in 1976 as the ‘Protection of civil Rights Act,1955’.
5. Abolition of titles (Art 18): Article 18 prohibits the state to confer titles on anybody, whether Indian or alien. Military and academic distinctions are,however, exempted from this prohibition. In 1954the Government of India introduced decorations of four categories, namely, Bharata Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri. These awards were mere decorations and are not prohibited. They are mere state recognitions of good work by citizens in various fields of activity. There was a vehement criticism from some quarters that the introduction of these awards violates Article.

Right to Freedom

According to M.V.Pylee, “Personal liberty is the most fundamental of all fundamental rights”. Articles 19 to 22 of the constitution guarantees to the citizens of India, a set of rights, collectively known as ‘Right to freedom’. Article 19, is the most important of these. Art.19 originally guarantees seven fundamental freedoms to the citizens of India. They are: (a) Freedom of speech and expression.(b)freedom to assemble peacefully ,without arms(c)freedom to form associations or unions,(d)freedom to move freely throughout the territory of India(e)freedom to reside and settle in any part of the territory of India;(f)freedom to acquire ,hold and dispose of property and (g) freedomto practice any profession or to carry any occupation, trade or business. The 44th amendment act 1978, omitted the “right to property “ and hence it is ceased to be a fundamental right and became only a legal right, under the control of ordinary law. The rest of rights guaranteed by the Article 19 are, popularly known as ‘six’ freedoms under the constitution.

Limitations upon Article 19

The rights or freedoms guaranteed by the Art 19 are not absolute. The guarantee of each of the above rights is limited by the constitution itself by conforming upon the state a power to impose by law reasonable restrictions as may be necessary in the larger interest of the community. The restrictions on their freedoms are provided in clauses 2 to 6 of the Article 19 of the constitution. It should be noted that when a proclamation of emergency (Article 352), Article 19 itself remains suspended. The freedom of speech and expression is subjected to reasonable restrictions imposed by the state relating to (a) defamation;(b) contempt of court;(c)decency or morality;(d) security of the state; (e)friendly relations with foreign states;(f) incitement to an offence;(g)public order; (h)maintenance of sovereignty and integrity of India. The freedom of assembly is subject to the qualification that the assembly must be peaceful and without arms and subject to such reasonable restrictions as may be imposed by the ‘state’ in the interest of public order. Again, the right to form associations or union is also subject to reasonable restrictions imposed by the state. Similarly the right of everyone to move freely throughout the territory of India or to reside and settle in any part of the country shall also be subjected to restrictions imposed by the state in the interest of general public or for the protection of any scheduled tribes.

Similarly, the right of every citizen to practice any profession or to carry on any occupation trade or business is subject to reasonable restrictions imposed by the state and subject

to any law laying down qualifications for carrying on any profession or a technical occupation or enabling state itself to carry as any trade or business to the exclusion of the citizens.

Freedom of the press:

There had been no special provision in the constitution, guaranteeing the freedom of the press. The Constituent Assembly did not think it necessary to incorporate a separate right of the press in the chapter on 'fundamental rights.' Freedom of the press' is included in the wider freedom of 'expression' and is comprehensive enough to cover the press.

Protection in respect of conviction for offenses-Article 20

Article 20 affords protection against arbitrary punishment to any person who commits an offense. There are four such guaranteed protections:

- a. A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed an offense;
- b. No person can be subjected to a greater penalty than what might have been given to him under the law that was prevalent when he committed the offense;
- c. No person can be prosecuted and punished for the same offense more than once;
- d. No person accused of an offense can be compelled to be a witness against himself.

According to M.V. Pylee, "These provisions guard against retrospective application of a punitive law and double punishment for the same offence. These are, indeed guarantees of great importance which establish the primacy of law over the passions of man' ".

Protection of life and personal liberty (Art.21)

Article 21 of our constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The keynote in Article 21 is law." The Supreme Court in 1992, declared that Indians have a fundamental right to education 'at all levels'. This right has been held to be part of the fundamental right to life under Article 21 of the constitution. The Supreme Court stated that the right to life and dignity of an individual "cannot be assured unless it is accompanied by the right to education". With this judgment the Supreme Court has converted the non enforceable' right to education' in the Directive Principles of the constitution into an enforceable fundamental right. By the 86th constitutional amendment, 2002, the following Article has been inserted after article 21 of the constitution: "21 A –States that the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the state may, by law, determined".The Right of Children to Free and

Compulsory Education Act has come to force from 1st April, 2010. Now every child in the age group of 6-14 years will be provided eight years of elementary education in an age appropriate class room in the vicinity.

The 44th amendment had declared the right to life and liberty inviolate. The fundamental right to life and liberty must continue in all circumstances. Article 21 was thus made an exception to the general rule laid down in Article 359-that the President has the power to suspend the enforcement of any or all of the fundamental rights during an emergency. The Supreme Court ruled later in another case that a person whose fundamental right under Article 21 has been violated has a right to monetary compensation as a remedy in public law.

Protection against arrest and detention (Article 22)

Article 22 guarantees three rights:

1. It guarantees the right to every person who is arrested to be informed of the cause of his arrest
2. His right to consult and to be defended by a lawyer of his choice.
3. Every person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours and shall be kept in continued custody only with his authority.

There are, however two exceptions to the universal application of the rights guaranteed under the first two clauses of Article 22. These relate to:

- a. Any person who is for the time being an enemy alien: or
- b. Any person who is arrested or detained under any law providing preventive detention.

Preventive Detention

Preventive detention means detention of a person without trial. Preventive detention is resorted to in a circumstance that the evidence in possession of the authority is not sufficient to make charge or to secure the conviction of the detente by legal proves, but may be sufficient to justify his detention on the suspicion that he would commit a wrongful act unless he is detained.

The Constitution imposes certain safeguards against the abuse of the power of Preventive Detention. The Parliament has the power to prescribe the maximum period for which a person may be retained under a law of preventive detention. The Preventive Detention Act 1950 was passed by the parliament which constituted the law of preventive detention in India. It continued for two decades-from 1950 to 1970, The act came to an end in the year 1969. The parliament

enacted a new act named the Maintenance of Internal Security Act.(MISA)in 1971.In 1974, parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling activities Act 1974(COFEPOSA). Further, in 1980, National Security Act (NSA) was enacted. According to this Act, the maximum period for which a person may be detained shall be six months from the date of detention. The Congress Govt. again revived the MISA to TADA in 1984.But this measure did not stay long period because, its misuse had killed thousands of innocent people and put some thousands of men and women behind bars. In 2001,the Govt. promulgated the Prevention Of Terrorism Ordinance (POTO).The Lok Sabha passed the POTA in 2002,but the bill was not passed due to the rejection of Rajya Sabha. In 2002 POTA was passed in a joint session of Parliament. It is a measure of inaccessibility because 21 states had declined to use POTA. Special provisions such as the Preventive Detention law is still be needed in India in order to retain democratic freedom and to make the country capable of defending itself.

Right against Exploitation

Article 23 and 24 deal with right against exploitation .This right seeks to ban traffic in human beings, beggar or any other form of forced labour. Employment of children below 14 years of age is also prohibited by law. Exploitation means misuse of services of others with the help of force. In India prior to the promulgation of Constitution, services of backward communities and weaker sections were used without any payment. This was known as the practice of beggar. The Constitution abolished this hated practice. Similarly in India, women from backward areas were purchased and sold elsewhere. Under the right, trafficking in women has been abolished. By this Acts the Constitution has put an end to child labour as well. The Constitution also prohibits forced labour of any form which is similar to beggar. The abolition of forced labour and of economic and physical exploitation of the weaker sections of the people has been taken by the enactment of the Bonded Labour System (Abolition) Act 1976, by the parliament.

Right to freedom of Religion

The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. They adopted a separate group of Articles dealing solely with the right to freedom of religion. India

being a secular state, observes an attitude of neutrality and impartiality towards all religions. Articles 25, 26, 27 and 28 provide freedom of religion. Article 25 enacts that all persons are equally entitled to freedom of conscience and the right to profess practice and propagate religion. There are only three restrictions to the freedom of religion, namely, public order morality and health, Article 26 is a corollary to Article 25. It guarantees the freedom to manage religious affairs. According to this, every religious denomination is given 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. 4) To administer such property in accordance with law.

Article 27 provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes. Article 28 prohibits religious instruction in any educational institution whether such instruction is given by the state or by other body. But this prohibition will not apply to any educational institution which is established under any endowment or trust. Religious instruction should be imparted in such institutions, even if it happens to be administered by the state. No person attending such institution shall be compelled to receive that religious instruction without the consent of himself or of his guardian. Thus, while the secular character of the state is demonstrated by all state educational institutions, private or denominational institutions, even when they receive state aid, are given freedom to maintain their religious character.

Cultural and Educational Rights

The Constitution provides that a minority shall have the right to conserve its own language, script, literature and culture. Admission to any state aided educational institution shall not be refused to anybody on grounds of religion race, caste or language (Article 29). Article 30 provides that all 'minorities', whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." The state shall not on 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.

Right to Constitutional Remedies

A declaration of fundamental rights is meaningless unless there is effective machinery for the enforcement of rights. This is provided in Article 32, which adopts special provisions

guaranteeing the right to constitutional remedies. It guarantees the individual right to move the Supreme Court by appropriate proceedings for the enforcement of his fundamental rights. The second section of this Article empowers the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quowarranto and certiorari for the enforcement of the rights. Further, the parliament may by law, empower any other court to exercise all or any of the powers exercisable by the Supreme Court without prejudice to the powers of the Supreme Court. The right to constitutional remedies may be suspended as provided by the Constitution under Articles 353 and 359. The importance of this Article (32) as such, was quite realised in the Constituent Assembly, and majority of the members agreed that, "it is the very soul of the Constitution and the very heart of it".

Writs mentioned in the Constitution:

a. Habeas Corpus

The term literally means, "You may have the body". In India the power to issue a writ of Habeas Corpus is vested only in the Supreme Court and the High Courts. It is issued in the nature of an order calling upon the person who has detained another to produce the latter before the court to let the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment. The writ has only one purpose to set at liberty to a person who is confined without legal justification. The writ is issued not only against authorities of the state but also to private individuals or organisations if necessary. court or the Supreme court commanding a person or body to do that which is his, or its, duty.

b. Mandamus

It literally means command. The writ of mandamus is an order of the High Court or the Supreme Court commanding a person or a body to do that which is his, or its, duty to do. Usually it is an order directing the performance of ministerial acts. A ministerial act is one which a person or body obliged by law to perform under given circumstances.

c. Prohibition

Prohibition is a writ issued by the Supreme Court or High court to an inferior court forbidding the latter to continue proceedings therein in excess of its jurisdictions or to

usurp a jurisdiction with which it is not legally vested .The object of the writ is to compel inferior courts to keep themselves within the limits of their jurisdiction.

d. Certiorari

It is a prerogative writ which orders the removal of a suit from an inferior court to a superior court. It may be used before trial to prevent an excess or abuse of jurisdiction and to remove the case for trial to a higher court. Prohibition and certiorari are both issued against courts or tribunals exercising judicial or quasi- judicial powers. Certiorari is issued to quash the order or decision of the tribunal, while prohibition is used to prohibit the tribunal from making the ultra vires order or decision. While prohibition is available at an earlier stage, certiorari is available at a later stage, on similar grounds.

e. Quo warranto

It is a proceeding whereby the court enquires in to the legality of the claim which a party assents to a public office, and to oust him from its enjoyment if the claim be not well founded. The fundamental basis of the proceeding of quo warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. Thus Article 32 provides a guaranteed remedy for the enforcement of fundamental rights and this remedial right is itself made fundamental by being included in Part III. The court is, constituted the protector and guarantor of the fundamental rights. The Indian Constitution by providing this right, that is, by making that remedial right itself a guaranteed fundamental right has gone a step further than most of the constitutions of the world.

An assessment on Fundamental Rights

The chapter on fundamental rights has been subject to a number of criticisms. In the first place, it is criticised on the ground that it omits number of important economic and social rights. Right to work, rest and leisure social security etc are not included in it. Another criticism directed against the Fundamental Rights is related to the restrictions, exceptions and explanations which accompany them. These restrictions, exceptions and explanations have the effect of really depriving all rights. A critic even suggested that the chapter on fundamental rights may be renamed as “limitations on fundamental rights.” Some other critics think that the spirit of the whole chapter and much of its substance are taken away by the provisions such as preventive

detention, and suspension of the right to constitutional remedies. The provision for preventive detention is harder to justify. The suspension of fundamental rights by the union executive under emergency is another controversial feature of the constitution. It is also alleged that the fundamental rights are in difficult language, so they are beyond the apprehension of an ordinary reader of the constitution. Thus, even with these criticisms,” the chapter on Fundamental Rights remains of formidable bulwark of individual liberty, a code of public conduct and a strong and sustaining basis of Indian democracy.

The Directive Principles OF State Policy

Part IV of the Constitution (Articles 36-51) provides the Directive Principles of state policy. These principles may include certain ‘economic ideals’ that states may, strive for; certain directions to the legislature and executive intended to show the manner in which the state should exercise their executive and legislative powers; and certain rights of the citizens which shall not be enforceable like the fundamental rights .It shall be the duty of administrators to follow these principles both in administration and legislation. They embody the object of the state under the republican.

The Directive principles of state policy were aptly described by Dr. Ambedkar as a ‘novel feature of the constitution’. Sir Iyor Jennings claims that this part of the constitution expresses, ‘Fabian socialism’ without the word ‘socialism’. These principles are directives to the various governments and governmental agencies to be followed as fundamental in the governance of the country. It shall be the duty of the state to apply these principles in making laws. Thus they place an ideal before the legislatures of India while they frame new legislation.

They lay down a code of conduct for the administrators of India. In short, the Directive Principles enshrines the fundamentals for the realization of which the state in India stands. They guide the path which will lead the people of India to achieve the noble ideas which the Preamble of the constitution proclaims: Justice, Liberty and Fraternity. DPSP are not legally enforceable by any court and the state cannot be compelled through the courts to implement them nevertheless the constitution declares that they are “fundamental in the governance of the country and that it shall be the duty of the state to apply these principles in making laws.”

Classification of Directive Principles

In order to understand the comprehensiveness of the DP, it is convenient to classify them into related groups. Dr.M.P. Sharma has suggested that they can be grouped into three

categories, viz., socialistic, Gandhian and liberal intellectualistic. The generally accepted classifications are:

Directive principles aiming at the establishment of a welfare state:

A large number of DPs aim at the establishment of a welfare state in India..E.g. .Articles 38, 39, 41, 42, 43, 46, and 47. These Articles cover a wide range of state activity embracing economic , social, legal educational and international problems.

These Articles direct: To organise village panchayats;
to secure the right to work, education and public assistance in cases of unemployment, old age, sickness etc.;

To secure just and humane conditions of work and maternity relief;

To secure uniform civil code;

To promote the educational and economic interests of the weaker sections of the people;
and

To secure the improvement of public health and the prohibition of intoxicating drinks and drugs.

Taken together, these principles lay down the foundations on which a new democratic India will be built up.

Directions related with cultural and educational matters

Another group of directive principles relates to the obligations of the state in educational and cultural matters. Article 45 declares that the state shall endeavour to provide within a period of ten years from the commencement of the constitution, for free and compulsory education for all the children until they complete age of fourteen years.

Directive principles aiming to implement Gandhian Principles

There are a number of DRs aiming to implement Gandhian Principles. Some of the important principles are:

- a. Article 40- the state shall organise village panchayats as units of self government;
- b. Article 45- state shall promote with special care the educational and economic interests of the weaker sections of the people;

- c. Article 43-State shall try to promote cottage industries;
- d. Article 48-State shall preserve and improve the breeds and prohibit the slaughter of cows ,calves and other mulch and draught cattle;
- e. Article 47-State shall try to improve public health and the prohibition of intoxicating drinks and drugs.

Directions related with International peace

There are certain DPs related with international peace and security. Article 51 declares that the shall Endeavour to (a)promote international peace and security; (b)maintain just and honorable relations between nations; and (c) the settlement of international disputes through arbitration.

Miscellaneous

Some other important directive principles are (1) To separate judiciary from executive(Article 50);(2)to secure uniform civil code applicable to the entire country(Article 44); (3)toorganise agriculture and animal husbandry on scientific lines, etc. By the 42nd amendment, certain changes have been introduced in Part IV, adding new directives to accentuate the socialistic bias of the constitution. By 44th amendment, the Janatha government inserted section (2) in Article 38 and it reads now as, “The state shall, in particular, strive to minimize the inequalities in income, and Endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

Criticism of Directive Principles

The DPs were strongly criticized by several members of the Constituent Assembly. They have since been criticized on the following grounds:

1. **Lack of legal sanction:** Though DPs are fundamental in the governance of the country , they are expressly made non- justifiable. The courts of India have no power to enforce them. But fundamental rights are justifiable and therefore , enforceable by the courts of Law. The DPs have been described by K.C.Wheare as a “manifesto of aims and aspirations”.
2. **Vague and illogically arranged:** Ivor Jennings has expressed that fundamental rights as well as DPs are “based on no consistent philosophy” According to Sreenivasan, the formulation of the directives of the state policy can hardly be considered inspiring. It

is both vague and repetitive. The Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital, economic and social questions.

3. **Moral precepts:** According to the critics the DPs are little more than a set of moral precepts. These principles were no better than 'new year resolutions which are broken on 2nd January.' Professor K.T Shah described them as a cheque payable by the bank only when the resources of the bank permit.

Just because of the DPs are not legally enforceable it would be rather cynical to say that, they are no more than "a parade of high sounding sentiments couched in vain glorious verbiage". Nevertheless, their incorporation in the constitution has been justified by a consensus of opinion, as well as the working of the constitution since 1950. The real importance of DPs is that they contain the positive obligations of the state towards its citizens. If the fundamental rights guarantee a political democracy in India, the directive principles ensure the eventual emergence of an economic democracy, to sustain the former.

Fundamental Duties

Rights and duties are the two sides of the same coin. They are the same things viewed from different angles. The condition of duty of one individual becomes the condition of right of others in society. In a democratic society, rights are now regarded by the citizens as their claims which they fight for. But the enjoyment of rights involves fulfillment of certain obligations. Rights imply duties; rights and duties are correlative. The two go hand in hand. There is a common tendency on the part of the individual to be more aware of his rights than of his obligations towards his fellow citizens and the community. He needs the laws and the authority of the states to protect the privileges which his rights confer upon him. It follows from this that the individual owes some duties to the state. Laski has described the relation between rights and duties in its three aspects:

- a. It is the imperative duty of a citizen to use his rights in such a way as contribute to social richness;
- b. The enjoyment of his rights by an individual enjoins on him the duty to let others enjoy the same rights;
- c. Since this state protects my rights, therefore, it is my duty to perform my obligations towards it.

Gandhiji attach far greater importance to duties than rights. Rights are the opportunity for self- realization. The way to self -realization is the realization of one’s spiritual unity with others. Thus every right is the right to do one’s duty. To quote Gandhiji “ the right to perform one’s duties is the only right that worth living for and dying for. It covers all legitimate rights”.

The constitutions of most western countries give a prominent place to the rights of the citizens but make no mention of his duties. E.g. USA On the contrary, the constitutions of socialist states give equal importance to the fundamental rights and duties of their citizens. The Constitution of India (1950) did not incorporate any chapter of fundamental duties. It was during the period of internal emergency declared in 1975 that need and necessity of fundamental duty was felt. A committee under Swaran Singh was appointed to make recommendations about fundamental duties. The committee emphasized the inclusion of a chapter on fundamental duties in the constitution. The committee proposed that “the parliament provide for the imposition of such penalty or punishment as may be considered appropriate for any non- compliance with or refusal to observe any of the duties”. But these recommendations were not accepted by the congress party. As a result of the 42nd amendment (1976), the Indian Constitution has incorporated a set of fundamental duties in a separate part added to chapter IV (Article 51 A). The fundamental duties are eleven in number. Under this article, it shall be the duty of every citizen of India.

- a. To abide by the Constitution and respect the National Flag and the National Anthem;
- b. To cherish and follow the noble ideas which inspired our national struggle for freedom;
- c. To protect the sovereignty, unity and integrity of India;
- d. To defend the country;
- e. To promote the spirit of common brotherhood amongst all the people of India; VI To preserve the rich heritage of our composite culture;
- f. To protect and improve the natural environment;
- g. To develop the scientific temper and spirit of inquiry;
- h. To safeguard public property;
- i. To strive towards excellence in all spheres of individual and collective activity. By 86th Constitutional Amendment Act,2002 in Article 51A of the Constitution after Clause (j) the following clause has been added, namely:

- j. “(K) Who is parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Fundamental duties are inserted in Article 51-A(Part IV),just after the Directive Principles of state policy .Since this part was not added after Fundamental Rights but after Directive Principles of state policy , it is clear that the intention of the 42nd amendment was to keep duties at par with the directive principles and not with fundamental rights. As regards the legal utility of these duties,D.D. Vasu is of the view that, “ the legal utility of the fundamental duties is similar to that of the Directives as they stood in the Constitution of 1950, while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens ,without any legal sanction for their violation.”

The only way to bring about adherence to fundamental duties is through public opinion and education in citizenship, values and duties and building adequate awareness wherein every citizen feels proud and bound to perform his constitutional duties to the nation and pay his debt to society.

Course Outcomes (COs) – 5

After completing this unit, students will be able to:

1. Explain the various Fundamental Rights guaranteed by the Constitution.
2. Describe the principles and objectives of Directive Principles of State Policy.
3. Analyse the significance of Fundamental Duties in civic life.
4. Evaluate the interrelationship between Rights and Duties.
5. Interpret the role of constitutional provisions in governance and welfare.

Programme Outcome (PO) – Any One

PO1: Constitutional Awareness and Civic Responsibility

Students will develop an understanding of constitutional values and responsibilities essential for responsible citizenship.

S.NO	QUESTIONS	LOCF Mapping		
	Five-mark questions			
1	What are Fundamental Rights?	CO1	PO1	K1

2	List the six Fundamental Rights in India.	CO1	PO1	K1
3	Explain the Right to Equality.	CO2	PO1	K2
4	Write a note on the Right to Freedom.	CO2	PO1	K2
5	What is the Right against Exploitation?	CO1	PO1	K1
6	Explain the Right to Constitutional Remedies.	CO2	PO1	K2
7	What are Directive Principles of State Policy?	CO1	PO1	K1
8	Describe the features of DPSP.	CO2	PO1	K2
9	Explain the importance of Fundamental Duties.	CO2	PO1	K2
10	Distinguish between Fundamental Rights and Directive Principles.	CO4	PO1	K4
	Eight mark questions			
1	Analyse the nature and importance of Fundamental Rights in India.	CO4	PO1	K4
2	Discuss the classification of Fundamental Rights.	CO2	PO1	K2
3	Evaluate the significance of the Right to Constitutional Remedies.	CO5	PO1	K5
4	Analyse the Directive Principles of State Policy and their objectives.	CO4	PO1	K4
5	Discuss the role of DPSP in establishing a welfare state.	CO4	PO1	K4
6	Examine the importance of Fundamental Duties in modern society.	CO4	PO1	K4
7	Analyse the relationship between Fundamental Rights and Directive Principles.	CO4	PO1	K4
8	Compare Fundamental Rights and Fundamental Duties.	CO4	PO1	K4
9	Discuss the importance of Rights and Duties in democracy.	CO4	PO1	K4
10	Assess the role of the Constitution in promoting equality and justice.	CO5	PO1	K5

Unit – III

Union Government: President – Prime Minister and Council of Ministers – Parliament – Supreme Court of India

Course Objectives (COs) – 5

1. To examine the structure and functions of the Union Government in India.
2. To analyse the powers and position of the President of India.
3. To understand the role of the Prime Minister and Council of Ministers.
4. To study the composition and functions of Parliament.
5. To evaluate the role of the Supreme Court in the Indian constitutional system.

Government is the most important organ of the state. It is the instrument through which the state does everything. The government is the administrative organ of the state. A government works through its organs. The three organs of the government are: legislature, executive and judiciary. The executive is the important organ of the government, usually referred to as the government itself. The executive is identified by the head of the government. The executive enforces the laws, runs the administration, make appointments, and formulates policies. Legislature is the law making body in a democratic system. In a parliamentary system of government, Legislature is formally supreme and appoints the executive. Legislature has exclusive authority to raise taxes and adopt budget and other money bills, amend the constitution, control the executive, participate in the electing officials. Judiciary is the third organ of the government. The judges are usually appointed by the executive heads and can be removed through impeachment by the legislature. Its main functions include the settlement of disputes, interpretation of law and the constitution; to protect constitution, the federal system and the rights and liberties of the people. The Constitution of India has adopted the British model of Parliamentary system of government. The President at the union and the Governor at the state level constitute the head of the state in whose name there are power but who do not exercise them. The Prime Minister and his council of ministers at the union level and the Chief Minister and the council of ministers at the state level exercise all the powers vested in the nominal executive. Part V, Chapter 1, from article 52 to 78, of the constitution of India deal with the union executive, i.e. ,the President, vice President, the council of ministers and the Prime Minister .Under the Indian constitution, the political executive is legally and democratically constituted and is subjected to legislative control and judicial review.

The President of India

Article 52 of our constitution provides for a President of India .Article53 (1) says that the executive power of the union shall be vested in the President and shall be exercised by him either by directly or through officers subordinate to him in the constitution .Article 53(2) declares the President as the supreme commander of the defence forces and exercise of his power would be regulated by law. However, this article states that any function can be transferred to the President and permits the Parliament to confer any function to authorities other than the president. This article makes the following things clear:

- a. The President can exercise the executive power of the union himself;
- b. He can exercise these powers through officers subordinate to him;
- c. Either he or his officers subordinate to him would exercise these powers in accordance with the constitution;
- d. His function can be increased by Parliament, and that the function can be conferred on authorities other than President.

Election of the President

The election of the President is indirect. Article 54 of the constitution says that the President shall be elected by members of an electoral college consists of the elected members of both house of the Parliament and the elected members of the legislative Assemblies of the states. Article 55 explains the manner of the election of the President. The election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot. Value of votes of elected members of the state legislative assemblies and parliament is decided as per provisions of article 55(2) of the Constitution of India. Presidential election of India involves proportional representation from respective states. The number of votes assigned to a particular vote from a state assembly is decided as follows.

$$\frac{\text{Total Population of the State} \times 1}{\text{Total Number of elected member 1000}}$$

The value of votes of each MLA varied from state to state.(for example the President election of 2007 in Andhra Pradesh each MLA had 148 votes ,inBihar ,each MLA had 173 votes ,and so on). The number of votes each elected Member of Parliament is entitled to the

Presidential election is arrived at by dividing the total number of votes given to all the elected members of the state assemblies by the total number of elected members of both house of parliament. Value of vote of each elected.

Members of parliament = Total value of votes of all the elected MLAs of
28 state Legislative Assemblies

Total number of elected MPs

The election is held in accordance with the system of proportional representation by means of single transferrable vote. The voting at the election is by secret ballot. In order to win a Presidential election a candidate has to secure a minimum fixed quota of votes which is calculated in accordance with Droop Method that is:

Total number of valid votes polled + 1

Total number of seats to be filled + 1

Term of Office

According to Article 56 the term of office of the President is five years with a provision for re-election. He can resign before the expiry of his usual term, resignation to be addressed to the Vice-President or can be removed by impeachment for violation of constitution in the manner as in Article 61(1).

Qualification

Article 58 prescribes the qualifications for the election as President. These are: (e) be a citizen of India.

Have completed the age of thirty five years

Be qualified for election as a member of the house of the Parliament; and

Must not hold any office of profit under the government of India or state government or other authority subject to the control of any of the said.

But sitting President or Vice-President or the Governor of any state or a minister either of union or any state is not disqualified for election as president.

Emoluments and allowances of the President

The President shall be entailed without payment of rent to use of his official residence and shall be also entailed to such emoluments, allowances and privileges as may be determined by Parliament by law. The emoluments and allowances of President shall not be diminished during his term of office.

Procedure for Impeachment of the President

When a President is to be impeached for violation of the constitution, the charge shall be preferred by either house of Parliament. The proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the house has been given of their intention to move the resolution and such resolution has been passed up by a majority of not less than two-thirds of the total membership of the house. When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation. If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or, caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

The President of India: Powers and Functions Administrative Powers

Under Article 53 of the constitution the executive power of the union vested in the President who is empowered to exercise it either directly or through officers subordinate to him. This may be broadly classified under three categories: Executive powers, Legislative powers and Emergency powers. All executive actions of the Government of India are expressed to be taken in his name. All orders and instruments are to be made and executed in his name. He appoints the Prime Minister and other ministers on the advice of the Prime Minister.

He allocates portfolios of the ministers. The ministers hold the office during the pleasure of the President. He appoints the Chief Justice of India, Judges of the Supreme court and High court of the States, Governor of the State, Lt. Governors and Chief Commissioners of the Union Territories, Attorney General of India, Comptroller and Auditor General of India, Chairman and Members of the UPSC, Election Commissioners and other statutory commissioners and India's Ambassadors, High Commissioners and Envoys to other countries. As the Head of the State, The President accredits India's Ambassadors and envoys to foreign countries and receives foreign Ambassadors to India. All diplomatic activities are taken place in his name. All international treaties and agreements, multilateral as well as bilateral are negotiated by the Government of India in the name of the President.

Establishment of diplomatic relationship with new state is done in his name. The President is the Supreme Commander of the Defence Forces of India. He makes all higher appointments and promotions in respect of the Defence Force. He grants all honours and titles for acts of bravery and commendable services to the nation during war and peace. The administration of the Union Territories is under the President. Article 243 of the constitution empowers the President to administer the union territories through the Governors or Chief Commissioners or any authority to be appointed him. He can entrust administration of a Union Territory to the Governor of the neighboring state.

Such Governors always acts in accordance with the instruction of the President. The President has also the power to administrate the Scheduled and Tribal areas. He can set up an Inter-State council for duly investigate into a dispute and advising upon disputes between or among states. The President can make regulations for the peace, progress, and good governance of the Union Territories of Andaman and Nicobar Islands. The President has the power to appoint statutory commission as well as the right to declare any area as Tribal or Scheduled Area.

Role in Law –Making

The legislative powers of the Union are vested with the President. Article 79 of the constitution states: “There shall be a Parliament for the Union which shall be consisting of the President and the two Houses to be known respectively as the Council of the States and the House of the People”. It means that without becoming a member of the Parliament, the President is an integral part of the Parliament. No bill passed by the Parliament becomes an act without the signature of the President.

The President has the power to summon and prorogue the session of the Parliament or either of its two houses. The President can address both house of Parliament at the first session after general election, and the commencement of the first session of the Parliament of each year. The President can dissolve the Lok Sabha before the expiry of its full term of five years. In case of an unresolved deadlock in respect of any bill between the two houses, the President can summon, a joint sitting of the two houses. The President can nominate two members from Anglo Indian community to the Lok Sabha in case that community has not got adequate representation in the house.

President nominates 12 members to Rajya Sabha from the fields of Arts, Science, Literature, or Social Services. Money bills can be introduced in Lok Sabha with the prior consent of the President. A bill passed by the Parliament becomes a law only after it gets the signature of the President. The President can also withhold his assent. He can return any bill to the Parliament for reconsideration. However, in case the Parliament passes it a second time, the President has to sign the bill and it essentially becomes law. During the intervals between the two sessions of Parliament, the President can issue ordinances which have the same force and effect of an act of Parliament. Such ordinance has to be placed before the Parliament, when they came into session' and it ceases to operate at the expiry of six weeks from the reassembly of the Parliament or earlier if it fails to get approval of both the houses.

Financial Powers

No money bill can be introduced in the Parliament without the prior consent of the President. The President controls the contingency fund of India. He has the power to order expenditure out of it for meeting an unforeseen expenditure. From time to time President appoints a Finance Commission which makes recommendations for the distribution of revenue between the Union and the States.

Judicial Powers

The President has the power to grant pardons, reprieves, respites or remissions of punishment or suspended, remit, or commute the sentence of any person convicted by any offence. He has the power to make rules and regulations relating to various matters. He has the power to refer any question of public importance for the opinion of the Supreme Court. The Supreme Court is bound to give such an advice (Art 143). However, the President is not bound to accept the advice given by the Supreme Court.

Emergency Powers

The Constitution of India contains special provision for dealing with emergencies. The President can declare three types of emergencies: National Emergency (Article 352), Constitutional Emergency in a State (Article 356), and Financial Emergency (Article 360). National Emergency is declared, when the President is satisfied that the security of India threatened by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such an emergency was declared in 1962 (India- China war), 1965 (Indo - Pak war), and 1975-77 (declared by Indira Gandhi on account of 'internal disturbances').

After the 44th amendment the President can declare such an emergency only on the basis of a written request by Council of Ministers headed by Prime Minister. Such proclamation must be approved by the Parliament within one Month. Such emergency can impose for six months. It can be extended by six months by Parliamentary approvals. In such emergency, fundamental rights of India can be suspended. Constitutional Emergency in a State is declared due to failure of constitutional machinery in a state. This emergency is also known as President's rule.

If President is satisfied, on the basis of the report of the Governor of the state or from other sources that the governance in a state cannot be carried out according to the provisions of the constitution, he can declare emergency in the state. Such emergency must be approved by the Parliament within a period of two months. It is imposed for six months and can last for a maximum period of three years with repeated Parliamentary approvals in every six months. During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President.

The Parliament makes laws on the subject of the state list. All money bills have to be referred to the Parliament for approval. If the President is satisfied that there is an economic situation in which financial stability or credit of India is threatened, he can proclaim Financial Emergency as per Article 360. Such an emergency must be approved by Parliament within two months. It has never been declared. In case of financial emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Court.

All money bills passed by the State Legislature are submitted to the President for his approval. The President can suitably modify the distribution of revenues between the Union and the State. He can direct the states to observe certain principles relating to financial matters. A review of the working of the provisions of the office of the President reveals that all the Presidents accepted their positions as the constitutional head of the state and they always acted upon the advice of the Council of Ministers.

Vice-President of India

Article 63 of the constitution provides for the office of the Vice-President .Articles 64 and 89(1) provides that the Vice-President of India shall be ex-officio Chairman of Rajya Sabha and shall not hold any other office of profit. In the constitutional set-up, the holder of the office of Vice-President is part of the executive but as Chairman of Rajya Sabha, he is a part of Parliament.

Qualifications for the office of the Vice-President

1. He must be a citizen of India.
2. He must not be less than 35 years of age.
3. He must possess all those qualifications which can entitle him to become a member of the Rajya Sabha.
4. He must not hold any office of Profit in Union or State Government
5. He must not be a member of either house of Parliament or any state legislature. In case he is a Member of Parliament or State legislature, he must resign his membership before assuming the office.

Election

Vice-President is elected by members of an electoral college consisting of members of both houses Parliament in accordance with the system of proportional representation by means of single transferable vote. The voting at such election is done by secret ballot.

Functions

Vice-President performs a dual role : (1) as Vice-President (2) as the Chairman of Rajya Sabha. Under Article 65 of the constitution of India, the Vice-President act as the President in the event of a vacancy occurring due to death, resignation or removal of the President, or otherwise. When the President is unable to act owing to his absence, illness or any other cause, the Vice-President discharges the President's functions for a temporary period until the President resumes his duties. As the Chairman of the Rajya Sabha, the Vice-President presides over the meetings of the House. As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the house. He is the custodian of the rights and privileges of the House.

The Council of Ministers (The Cabinet) and the Prime Minister

The Constitution of India provides for a parliamentary system of government and, therefore, divides the executive into two parts: the nominal and real executive. The President of India is the nominal executive and the Council of Ministers is the real executive which works under the leadership of Prime Minister. Article 74, 75, and 78 of the constitution provide for provisions relating to the council of Ministers and the Prime Minister.

Organization of the Council of Ministers

The Prime Minister shall be appointed by the President and other Ministers shall be appointed by the President upon the advice of the Prime Minister. The Ministers hold office during the pleasure of the President. The council of Ministers shall be collectively responsible to the Lok Sabha. A minister who for any period of six consecutive months is not a member of the Parliament shall at the expiration of that period cease to be a Minister. The salaries and allowances of Ministers shall be such as Parliament may from time to time determine by law.

Powers and Functions Prime Minister

Article 78 prescribes the duties of the Prime Minister. It says: It shall be the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposal for legislation. To furnish such information relating to the administration of the affairs of the Union and proposal for the legislation as the President may call for; and if the President requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. The above provisions suggest that there has to be a Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his powers. The powers of the Prime Minister are enormous and his position is paramount.

Formation of the Council of the Ministers

The task of the formation of the ministry begins with the appointment of the Prime Minister by the President. After this, the President appoints all other ministers on the advice of the Prime Minister. He is free to determine the strength of his ministry and also select the ministers as per his choice. **Allocation of Portfolios**

It is an undisputed privilege of the P M to allocate portfolios to his ministers, which particular department shall be entrusted to which minister is determined by him. The Prime Minister has the power to shuffle his ministry.

Chairman of the Cabinet

The Prime Minister is the leader of the Cabinet. He presides over the meetings. He decides the agenda of the meeting. In fact all matters are discussed in Cabinet with the approval and consent of the Prime Minister. The Ministers have to accept his leadership. In all cases of disagreement with him, they have to quit. The Prime Minister can demand resignation from any minister any time.

Chief Link between the President and the Cabinet

The Prime Minister is the main channel of communication between the President and the Cabinet. He communicates to the President all decisions arrived at in the Cabinet and puts before the Cabinet the views of the President.

Chief Co-ordinator

The Prime Minister acts as the Chief Co-ordinator of the government. It is his responsibility to co-ordinate the activities of all the departments and to secure co-operation amongst all departments. He exercises a general supervision on individual ministers and ensures smooth working of departments. He removes the differences if any, among the ministers and ensures the working of each ministry without coming into conflict and clash with other ministers.

Leader of the Parliament

The Prime Minister, as the leader of the Lok Sabha, is also the leader of the Parliament. In the capacity as the leader of the majority party it is he who decides, in consultation with the Speaker, the complete agenda of the house. The summoning and proroguing of the house is decided upon by him. He can address each house of the Parliament but can vote only in the house to which he belongs. The Prime Minister has the most effective power to ask for dissolution of the Lok Sabha.

Determines the Foreign Policy

As the Powerful and real head of the government, the Prime Minister always plays a key role in determining the foreign policy of the country and India's relation with other countries. He is the mainly responsible for country's prestige and participation in international relations. He represents the country in all important international conferences.

Role in Economic Planning

Prime Minister is the main spirit behind all economic planning. He plays a leading role in all fiscal and developmental planning. Prime Minister is the ex-officio chairman of the Planning Commission. He plays a leadership role at the national level and leads the country both times of peace and war.

Role of Prime Minister during an Emergency

The President declares an emergency only under the advice of the Cabinet, which in reality means the advice of the Prime Minister. During an emergency under Art.352 the Prime Minister becomes very powerful and perhaps can act in a manner that may be a dictator. The

account of powers and functions the Prime Minister clearly reveals that this is the most powerful office in the Indian political system. He exercises real and formidable powers in all spheres of governmental activity. The Prime Minister is the captain of the ship of the state, the key stone of cabinet arch, and the steering wheel of the government.

The Union Council Of Ministers

The council of Ministers headed by Prime Minister is the real executive in India. The President exercises all his powers and performs all his functions with the aid and advice of the Council of Ministers. The Ministers of the Council is appointed by the President on the recommendation of the Prime Minister. Each minister is allocated a department and all the ministers' work under the supervision of Prime Minister. All the ministers are collectively responsible to the House of the People. This responsibility, called the collective responsibility implies that the ministers work as one unit, one team; they swim and sink together. For attaining political homogeneity in a parliamentary democracy, the members are belonging to the majority political party (coalition). The Council of Ministers is large body of ministers consisting of 80-85 ministers. Among them, the top category called Ministers of Cabinet Rank, which holds charge of the important ministries. Below this category, there is the body of ministers called the Ministers of State: some of them hold independent charge of some relatively minor departments while others are attached to the Cabinet Ministers. Still below is the body of ministers called the Deputy Ministers, each attached to the ministers of the two above categories. The usual cabinet meeting is attended by the Ministers of Cabinet Rank; the Ministers of State attended the Cabinet meeting only when they are invited. The Council of Ministers work on certain features: ministers are members of the Parliament or they become members of either house with in a period of six months; they are collectively responsible to the Lok Sabha; they work as a team; they belong to the majority party; the proceedings of the cabinet meeting is kept secret; all the ministers work under the leadership of the Prime Minister.

Cabinet

Article 74 of the Constitution provides only the Council of Ministers and makes no mention of Cabinet. The Cabinet is as such an extra constitutional body. The following points illustrate the difference between the Council of Ministers and the Cabinet: The Cabinet is the part of Council of Ministers. The Council of Ministers is wider body of which Cabinet is small but very powerful All the ministers constitute the Council of Ministers, whereas the Cabinet

consists of the top 15 20 ministers who stand designated as Cabinet Ministers. Only the Cabinet ministers take part in the meetings of the Cabinet which are regularly held under the chairmanship of the Prime Minister. Policy making is the function of the Cabinet and not of the Council of Ministers.

Tenure

Article 75 reveals that ministers hold office during the pleasure of the President, which really means so long as they enjoy the confidence of the majority in Lok Sabha or the confidence of the Prime Minister. The Prime Minister can, any time, demand a resignation from any minister. The Prime Minister can recommend the dismissal of any minister, and the President always acts up on his advice. The resignation of Prime Minister means the resignation of the entire Council of Ministers. The Lok Sabha can pass a vote of no- confidence against the ministry cause its fall any time. Any minister can resign from the ministry anytime either on moral ground or an account of disagreement with the government policy or of difference with the Prime Minister.

The Council of Ministers perform very important functions: it formulates and determine all policies of the government; it carries on the whole administration of the Union Government; it recommends all major appointments; it prepare and enacts the national budget; it alone take the decisions of the administration; it conducts and regulate foreign relations; it helps all government legislations. There is a Cabinet Secretariat headed by an administrative official called the Cabinet Secretary who, conduct and coordinates the whole administration. The powers and function of the Council of Ministers reveals that the strong and central position it occupies as the real and powerful executive in the Indian political system. As the maker of all policies, the director of administration and the supreme coordinator of government activity, the Cabinet enjoys an enviable position. The Council of Ministers is the centre of gravity and the most powerful institution of the Indian political system.

Union legislature Parliament : Lok Sabha and Rajya Sabha

Article 79 of the Indian constitution says, the Indian Parliament consists of the President and the two Houses: the Council of State (Rajya Sabha) and the House of the People (Lok Sabha).The Union Parliament exercises only those powers which the constitution has granted to it. It works under the constitution. The President can use veto over the ordinary law passed by the Parliament. The Supreme Court of India can conduct judicial review over all laws enacted by

Union Parliament for determining constitutional validity. The Parliament is bicameral, with an upper house called as Council of States or Rajya Sabha, and a lower house called as House of People or Lok Sabha. The Members of either house are commonly referred as Members of Parliament or MP. The MPs of Lok Sabha are elected by direct election and the MPs of Rajya Sabha are elected by the members of the State Legislative Assemblies and Union territories of Delhi and Pondicherry in accordance with proportional voting

The Parliament consists of the President of Republic of India and both the Chambers. The main functions of parliament are : {a} legislation, within its jurisdiction; {b} amendments of the constitution; {c} approval of presidential ordinances and proclamations; {d} consideration of presidential addresses and messages; {e} considerations of various resolutions and motions; {f} social legislation. The House and the Council are equal partners in the legislative process; however, the Constitution grants the House of People some unique powers. Revenue-raising or “Money” bills must originate in the House of People. The Council of States can only make recommendations or suggestions over these bills to the House, within a period of fourteen days – lapse of which the bill is assumed to have been passed by both the Chambers.

The Upper House of the Union Parliament

The Rajya Sabha (The Council of State) The Rajya Sabha, i.e., the Council of States, is the upper house of the Union Parliament. It gives representation to the states of the Indian Union. These have been given representation on the basis of the size of their population. The Council of States is designed to maintain the federal character of the country. The number of members from a state depends on the population of the state.

Composition

The Rajya Sabha can have maximum strength of 250 members out of which 238 can be the representatives of the States and 12 can be nominates members. The President nominates them to the Rajya Sabha. They are from amongst persons who have achieved distinctions in the fields of art, literature, science or social service. The 238 members representing the States are elected by State Legislative Assemblies. Presently the strength of the Rajya Sabha stands at 245 out of which 233 are the representatives of the States and Union Territories and 12 are nominated members. The members of Rajya Sabha are elected indirectly by the members of the State Legislative Assemblies through the method of proportional representation by single transferable vote system.

Qualification of Members

- He must be a citizen of India.
- He must be above the age of 30 years.
- He must not hold an office of profit under the Central or State Government.
- He should not be a insane or a bankrupt.
- He should not have been disqualified under any law of the Parliament.

Chairman and the Deputy-Chairman of the Rajya Sabha

The Vice- President of India is the ex-officio Chairman of Rajya Sabha. When the Vice – President is absent, the meetings of Rajya Sabha are presided by the its Deputy –Chairman. He is elected by the members of Rajya Sabha from amongst themselves. The Rajya Sabha also has a panel of members called Vice- Chairmen panel nominated by the Chairman for the purpose of presiding over the House in the absence of both the Chairman and Deputy- Chairman.

Powers and Functions of Rajya Sabha

Legislative Powers

The Rajya Sabha enjoys equal powers with the Lok Sabha in the ordinary law making. An ordinary bill can introduce in the Rajya Sabha and it cannot become law unless and until the Rajya Sabha approves it. In case of deadlock between the two Houses of the Parliament over an ordinary bill, and if the conflict remains unresolved for six months, the President convenes a joint sitting of the two Houses for resolving the deadlock.

Financial Powers

A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited. Rajya Sabha has to return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within that time, the Bill 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 Lok Sabha. Again, Rajya Sabha cannot amend a Money Bill; it can only recommend amendments and Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha. Apart from a Money Bill, certain other categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some other types of Financial Bills on which there is no limitation on the power of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial

Bills like any other Bill. From all this, however, it does not follow that Rajya Sabha has nothing to do in matters relating to finance.

The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of various Ministries - a matter exclusively reserved for Lok Sabha - no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill has been passed by both the Houses. Similarly, the Finance Bill is also brought before Rajya Sabha. Besides, the Department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees having ten members from Rajya Sabha.

Executive Powers

The Rajya Sabha has limited role in the exercise of executive powers. The Council of Ministers is collectively responsible to the Lok Sabha. The Lok Sabha can cause the exit of the ministry by passing a vote of no-confidence. The members of Rajya Sabha can only check the ministers by seeking information regarding their work, criticise policies adopted by them, by asking questions, and by adjournment motions. Prime Minister and ministers are also taken from the Rajya Sabha.

Constitution Amending Powers

Any amendment bill can introduce in either Houses of Parliament. If the Rajya Sabha first adopts it then it goes to the Lok Sabha for approval and if the Lok Sabha passes it first then it goes to the Rajya Sabha for approval. No Constitutional Amendment Bill can be considered to have been passed unless approved by both Houses. Both the Houses of Parliament as such enjoy co-equal powers in the field of amendment procedure.

Electoral Powers

The elected members of Rajya Sabha take part in the election of the President of India. The members of Rajya Sabha along with the members of Lok Sabha also take part in the election of vice-President of India; members of Rajya Sabha also elect a Deputy Chairman from amongst themselves.

Judicial Powers

The Rajya Sabha plays some role in the exercise of some Judicial Powers. The Rajya Sabha acting along with Lok Sabha impeaches the President of India. It can pass a special address for causing the removal of a judge of the Supreme Court and High Court. The charge

against the Vice-President can be levelled in the Rajya Sabha only. The Rajya Sabha can pass resolution for the removal of some high officers like the Attorney General, Comptroller and Auditor General of India and Chief Election Commissioner. In case Lok Sabha stands dissolved, the Rajya Sabha is competent to give approval to an emergency proclamation of the president.

Special Powers of Rajya Sabha

Rajya Sabha being a federal chamber enjoys certain special powers under the Constitution. All the subjects/areas regarding legislation have been divided into three Lists - Union List, State List and concurrent List. Union and State Lists are mutually exclusive - one cannot legislate on a matter placed in the sphere of the other. However, if Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting saying that it is "necessary or expedient in the national interest" that Parliament should make a law on a matter enumerated in the State List, Parliament becomes empowered to make a law on the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further. If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament becomes empowered to create by law such services.

Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under articles 352, 356 and 360.

The Lower House of Union Parliament: The Lok Sabha (The House of the People)

Lok Sabha is the lower house of the Union Parliament. It represents the people of India. Lok Sabha is also known as the "House of the People" or the lower house. All of its members are directly elected by citizens of India on the basis of Universal Adult Suffrage, except two who are appointed by President of India. Every citizen of India who is over 18 years of age, irrespective

of gender, caste, religion or race, who is otherwise not disqualified, is eligible to vote for the election of Member of Lok Sabha. The Constitution provides that the maximum strength of the House be 552 members. It has a term of five years.

To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt and should not be criminally convicted. At present, the strength of the house is 545 members. Up to 530 members represent the territorial constituencies in States, up to 20 members represent the Union Territories and no more than two members from Anglo-Indian community can be nominated by the President of India if he or she feels that the community is not adequately represented. House seats are apportioned among the states by population in such a manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States. Several seats are reserved for representatives of Scheduled Castes and Scheduled Tribes as per reservation quota implemented. There is currently no quota in India's parliament for participation from women; however, the Women's Reservation Bill proposes to reserve 33% of the seats in Lok Sabha for women.

Membership qualifications

To contest an election for Lok Sabha a person must have the following qualifications.

- He must be a citizen of India.
- He must not be less than 25 years of age.
- He must not hold any office of profit under the Union or State Governments.
- He should not have an unsound mind.
- He should not be a bankrupt.
- He should not have been declared an offender of a grave crime by any court of law.
- He should possess all such qualifications as may be prescribed by a law of the Parliament.
- For reserved seats, one should be member of the appropriate castes and/or tribes.

Legislative Powers

An ordinary bill can become a law only after it has been passed by both Houses of Parliament. It can introduced either in the Lok Sabha or in the Rajya Sabha. In matters relating to ordinary bills, after the bill has been passed by the House where it was originally tabled (Lok

Sabha or Rajya Sabha), it is sent to the other house, where it may be kept for a maximum period of 6 months. If the other House rejects the bill or a period of 6 months elapses without any action by that House, or the House that originally tabled the bill does not accept the recommendations made by the members of the other house, it results in a deadlock. This is resolved by a joint session of both Houses, presided over by the Speaker of the Lok Sabha and decided by a simple majority. The will of the Lok Sabha normally prevails in these matters, as its strength is more than double that of the Rajya Sabha.

Executive Powers

The Council of Ministers shall be collectively responsible to the House of the People. Infact it is responsible before the Lok Sabha for all its acts of omission and commission. Motions of no confidence against the government can only be introduced and passed in the Lok Sabha. If passed by a majority vote, the Prime Minister and the Council of Ministers resign collectively. The Rajya Sabha has no power over such a motion, and hence no real power over the executive. However, the Prime Minister may threaten the dissolution of the Lok Sabha and recommend this to the President, forcing an untimely general election. The President normally accepts this recommendation unless otherwise convinced that the Lok Sabha might recommend a new Prime Minister by a majority vote. Thus, both the executive and the legislature in India have checks and balances over each other.

Financial Powers

Money bills can only be introduced in the Lok Sabha, and upon being passed, are sent to the Rajya Sabha, where it can be deliberated on for up to 14 days. If not rejected by the Rajya Sabha, or 14 days lapse from the introduction of the bill in the Rajya Sabha without any action by the House, or recommendations made by the Rajya Sabha are not accepted by the Lok Sabha, the bill is considered passed. The budget is presented in the Lok Sabha by the Finance Minister in the name of the President of India. Lok Sabha is the real custodian of the national purse.

Judicial Powers

The Lok Sabha performs several judicial functions also. Lok Sabha has equal powers with the Rajya Sabha in initiating and passing a motion for the impeachment of the President by two-thirds of the membership of the House. Equal Powers with the Rajya Sabha in initiating and passing a motion for the impeachment of the judges of the Supreme Court and the state High Courts by a majority of the membership of the House and at least two-thirds majority of the

members present and voting. It also investigates the charges levied by Rajya Sabha against the Vice-President of India. It can also jointly pass a special address to the President for the removal of some high officers of the state like the Attorney General, the Chief Election Commissioner, and the Comptroller and Auditor General of India. It can also take a disciplinary action against any member or any citizen who is found by it guilty of committing contempt of the House.

Amendment Power

Constitutional Amendment bill can be introduced in either House of the Parliament. Lok Sabha has equal Powers with the Rajya Sabha in initiating and passing any Bill for Constitutional Amendment by a majority of the total membership of the House and at least two-thirds majority of the members present and voting. The Lok Sabha and Rajya Sabha can together amend all articles of the Constitution, with the exception of those which require, along with their approval, a special approval by one- half of the State Legislatures.

Supreme Court of India

The Constitution of India declares it to be a sovereign, socialist, secular, democratic republic. It also affirms a determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity. The preamble to the Constitution resolves to provide justice to our people in all its forms: social, economic and political. Our Constitution intends to remove social and economic disparities, so as to make equal opportunities available to all and make the life of the poor, disadvantaged and disabled citizens of the country really meaningful and worthwhile, by removing economic inequalities, protecting the weaker sections of the society, and providing a decent standard of living to our people.

The success of Indian Judiciary on the constitutional front is unparalleled and its contribution in enlarging and enforcing human rights is universally appreciated. Indian courts are held in high esteem not only by developing, but, by developed countries as well. There is widespread praise for the quality of the judgments delivered and the work being done by Indian Judiciary. Their handling of Public Interest Litigation has brought Judicial Institutions closer to the oppressed weaker sections of the Society. Using tools of innovating and creative interpretation of Constitutional provisions, our courts have consistently endeavoured to render meaningful justice to the women, children, undertrial prisoners, bonded and casual labourers and other weaker and socially oppressed sections of the society. The concept of right to life has been expanded so as to include the right to live with dignity with bare necessities such as adequate

nutrition, health, clothing and shelter. The enormous work done by Supreme Court of India in developing the concept of rule of law and due process of law, enshrined in Article 21 of our Constitution, and enlarging its scope, has been publicly appreciated at various international forums and we, the citizens of India, can legitimately feel proud of this recognition. Judicial intervention has made it possible to seek enforcement of rights such as right to food, right to education and right to live in a healthy environment. However, there is also a growing criticism, sometimes from uninformed or ill-informed quarters, about the inability of our Justice Delivery System to provide timely justice and wipe out the huge backlog of cases at all levels. India has been making rapid strides in almost all the fields.

Brief History of the Supreme Court of India

- The promulgation of Regulating Act of 1773 established the Supreme Court of Judicature at Calcutta as a Court of Record, with full power & authority.
- It was established to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions in Bengal, Bihar and Orissa.
- The Supreme Courts at Madras and Bombay were established by King George – III in 1800 and 1823 respectively.
- The India High Courts Act 1861 created High Courts for various provinces and abolished Supreme Courts at Calcutta, Madras and Bombay and also the Sadar Adalats in Presidency towns.
- These High Courts had the distinction of being the highest Courts for all cases till the creation of Federal Court of India under the Government of India Act 1935.
- The Federal Court had jurisdiction to solve disputes between provinces and federal states and hear appeal against Judgements from High Courts.
- After India attained independence in 1947, the Constitution of India came into being on 26 January 1950. The Supreme Court of India also came into existence and its first sitting was held on 28 January 1950.
- The law declared by the Supreme Court is binding on all Courts within the territory of India.
- It has the power of judicial review – to strike down the legislative and executive action contrary to the provisions and the scheme of the constitution, the distribution of power

between Union and States or inimical to the fundamental rights guaranteed by the Constitution

Constitutional Provisions

- The Indian constitution provides for a provision of Supreme Court under Part V (The Union) and Chapter 6 (The Union Judiciary).
- Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers and procedures of the Supreme Court.
- The Indian constitution under Article 124(1) states that there shall be a Supreme Court of India constituting of a Chief Justice of India (CJI) and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
- The Jurisdiction of the Supreme Court of India can broadly be categorised into original jurisdiction, appellate jurisdiction and advisory jurisdiction. However, there are other multiple powers of the Supreme Court.

Organisation of Supreme Court

- At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges).
- Supreme Court (Number of Judges) Bill of 2019 has added four judges to strength. It increased the judicial strength from 31 to 34, including the CJI.
- Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges).
- The Parliament is authorised to regulate them.

Appointment of Judges

- The judges of the Supreme Court are appointed by the President. The CJI is appointed by the President after consultation with such judges of the Supreme Court and high courts as he deems necessary.
- The other judges are appointed by the President after consultation with the CJI and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.
- Appointment of Chief Justice From 1950 to 1973: The practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India. This established

convention was violated in 1973 when A N Ray was appointed as the Chief Justice of India by superseding three senior judges. Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge.

- This discretion of the government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the senior most judge of the Supreme Court should alone be appointed to the office of the Chief Justice of India.

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

- He should be a citizen of India.
- He should have been a judge of a High Court (or high courts in succession) for five years; or
- He should have been an advocate of a High Court (or High Courts in succession) for ten years; or
- He should be a distinguished jurist in the opinion of the president.
- The Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

- He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
- He can resign his office by writing to the President.
- He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

- A judge of the Supreme Court can be removed from his office by an order of the President. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- He address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds

of the members of that House present and voting). The grounds of removal are two—proved misbehavior or incapacity.

- The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment: No judge of the Supreme Court has been impeached so far. Impeachment motions of Justice V Ramaswami (1991–1993) and the Justice Dipak Misra (2017-18) were defeated in the Parliament.

Acting Chief Justice

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

- the office of Chief Justice of India is vacant; or
- the Chief Justice of India is temporarily absent; or
- the Chief Justice of India is unable to perform the duties of his office.

Supreme Court of India – Functions

- ❖ It takes up appeals against the verdicts of the High Courts, other courts and tribunals.
- ❖ It settles disputes between various government authorities, between state governments, and between the centre and any state government.
- ❖ It also hears matters which the President refers to it, in its advisory role.
- ❖ The SC can also take up cases suo moto (on its own).
- ❖ The law that SC declares is binding on all the courts in India and on the Union as well as the state governments.

Independence of Judiciary

The Constitution has many provisions to ensure the judiciary's independence. They are discussed below:

1. **Security of tenure:** The judges of the SC are given security of tenure. Once appointed, they will retain their office until the age of 65 years. They can be removed only by a presidential order on grounds of proven misbehaviour and/or incapacity. This requires a Special Majority according to Article 368. Read more about the types of majorities in Parliament in the linked article.
2. **Salaries and allowances:** The judges of the SC enjoy good salaries and allowances and these cannot be decreased except in the case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the state legislature.

3. Powers and Jurisdiction: The SC's powers and jurisdiction can only be added by the Parliament and not be curtailed.
4. The conduct of any judge of the Supreme Court in the discharge of his/her duties cannot be discussed in the legislature.
5. The SC has the power to punish any person for its contempt, as per Article 129. (Read about Contempt of Court in India in the linked article.)
6. Separation of the Judiciary from the Executive: A Directive Principle of State Policy says that the state shall take steps to separate the judiciary from the executive in the public services of the state. According to Article 50, there shall be a separate judicial service free from executive control.

Course Outcomes (COs) – 5

After completing this unit, students will be able to:

1. Explain the structure of the Union Government.
2. Describe the powers and functions of the President.
3. Analyse the role of the Prime Minister and Council of Ministers.
4. Evaluate the functioning of Parliament.
5. Interpret the role of the Supreme Court in safeguarding the Constitution.

Programme Outcome (PO) – Any One

PO1: Constitutional and Political Understanding

Students will develop analytical skills to understand and evaluate the functioning of India's central government institutions.

S.NO	QUESTIONS	LOCF Mapping		
	Five-mark questions			
1	Explain the executive powers of the President.	CO2	PO1	K2
2	Write a note on the legislative powers of the President.	CO2	PO1	K2
3	Describe the emergency powers of the President.	CO2	PO1	K2
4	Explain the role of the Prime Minister.	CO2	PO1	K2

5	Write a note on the Council of Ministers.	CO2	PO1	K2
6	Explain the functions of Lok Sabha.	CO2	PO1	K2
7	Write a note on Rajya Sabha.	CO2	PO1	K2
8	What are the powers of Parliament?	CO2	PO1	K2
9	Write a note on Fundamental Rights protection by courts.	CO2	PO1	K2
10	Explain the relationship between executive and legislature.	CO4	PO1	K4
Eight-mark questions				
1	Discuss the functions of the Council of Ministers.	CO2	PO1	K2
2	Analyse the legislative functions of Parliament.	CO4	PO1	K4
3	Examine the relationship between the President and Prime Minister.	CO4	PO1	K4
4	Discuss the role of Parliament in controlling the executive.	CO4	PO1	K4
5	Analyse the importance of judicial review in India.	CO4	PO1	K4
6	Discuss the role of the Supreme Court as the guardian of the Constitution.	CO4	PO1	K4
7	Examine the system of checks and balances in Indian government.	CO4	PO1	K4
8	Analyse the role of Lok Sabha and Rajya Sabha.	CO4	PO1	K4
9	Discuss the emergency powers of the President.	CO2	PO1	K2
10	Evaluate the independence of the judiciary in India.	CO5	PO1	K5

Unit – IV

Course Objectives (COs)

1. To examine the structure and functioning of State Governments in India.
2. To analyse the powers and position of the Governor.
3. To understand the role of the Chief Minister and Council of Ministers.
4. To study the composition and functions of State Legislature.
5. To evaluate the role of High Courts in the state judicial system.

State Chief Minister

The Chief Minister is the head of the State Council of Ministers, which is the real executive. As the leader of his State, the leader of the majority party, the head of the Council of Ministers, the Chief Advisor of the Governor and the representative of the people of the State, the Chief Minister plays a leading and powerful role in the administration of the State. The Chief Minister is appointed by the Governor. The Chief Minister has the power of forming a ministry on his choice. The Chief Minister holds office during the pleasure of the Governor. The Legislative Assembly can remove him by passing a vote of no-confidence.

Powers and Functions of the Chief Minister

1. Formation of the Council of Ministers

The Constitution gives him the legal right to select his ministers. All ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister has the privilege to re-organize the Council of Ministers, if he desires. He can ask any ministers to resign from his Cabinet.

2. Distribution of Portfolios

The Chief Minister allocates the portfolios among the ministers. He decides who will be a Cabinet Minister or a Minister of State or Deputy Minister. The Chief Minister also has the power to re-shuffle the portfolios of the ministers in his Cabinet.

3. Chairman of the Council of Ministers

The Chief Minister preside over the meetings of the Cabinet. He prepares the agenda of the meetings, communication it to the ministers and then presides over the meetings.

4. The Chief Link and the Advisor

The Chief Minister is the link between the Governor and the Council of Ministers. It is his duty to communicate to the Governor all the decisions of the Council of Ministers, relating to the administration of the State and proposal of the legislation. He is the chief advisor of the Governor

5. To manage and Co-ordinate the working of the various Departments

The Chief Minister has the responsibility of coordinating the work of various departments of the government. He resolves the conflict or deadlocks between any two or more departments. His decisions supersede the decisions of the ministers.

6. Role as the Leader of the State Legislative Assembly

The Chief Minister is the leader, not only of his party, but also of the Legislative Assembly. He acts as the spokesmen of the government and makes important announcement on behalf of the government. He is the chief defender of the policies of the government.

7. Appointment making Powers

All the major appointments and promotions are made by the Governor on the advice of the Chief Minister.

8. Power of getting the state Legislature Dissolved

The Chief Minister has the right to advice the Governor to dissolve the State Legislative Assembly. The advice is binding upon the Governor when the Chief Minister still has a majority support.

State Legislature

In every State in India, there is a provision for legislature which consist of the Governor and the Legislative Assembly and Legislative Council. Article 170 says that the maximum number in the State Legislative Assembly can be 500 and the minimum 60. It is the house which is directly elected by the people. Article 171 says that maximum number in the Legislative Council is one – third of the number of the Legislative Assembly and the minimum 40.

Legislative Assembly or Vidhan Sabha

The Legislative Assembly is the lower house (in states with bicameral) or the sole house (in unicameral states) of the state legislature in the different states of India. The same name is also used for the lower house of the legislatures for two of the union territories, Delhi and Pondicherry. The upper house in the five states with a bicameral legislature is called the

Legislative Council. Members of the Legislative Assembly are direct representatives of the people of the particular state as they are directly elected by citizens of that state. Its maximum size as outlined in the Constitution of India is not more than 500 members and not less than 60. The Governor can appoint one member to represent the Anglo-Indian community if he or she finds that community is not adequately represented in the House.

Qualifications required becoming a member

To become a member of Legislative Assembly a person must be a citizen of India, not less than 25 years of age. He should be mentally sound and should not be a bankrupt.

Term

The normal term of Legislative Assembly is five years. However, it can be dissolved by Governor at any time. The life of the Assembly can be extended during the operation of an emergency under Article 352.

Powers and Functions of the Legislative Assembly

Legislative Assembly holds equal legislative power with the upper house of state legislature, the Legislative Council (' Vidhan Parishad '), except in the area of money bills in which case the Legislative Assembly has the ultimate authority. If conflicting legislation is enacted by the two Houses, a joint sitting is held to resolve the differences.

Control over the Executive

The Chief Minister is the leader of the majority party in the Legislative Assembly and the council of ministers is collectively responsible to the Legislative Assembly. A motion of no confidence against the government in the state can only be introduced in the Vidhan Sabha. If it is passed by a majority vote, then the Chief Minister and his Council of Ministers must collectively resign.

Financial powers

The Legislative Assembly controls the finance of the State. A money bill can only be introduced in Vidhan Sabha. After it is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad, where it can be kept for a maximum time of 14 days. After 14 days, irrespective of the fact whether it has been passed or rejected by the Legislative Council, it is considered to have been finally passed. Legislative Assembly passed the annual budget. No money can be raised, no tax can be levied, and no expenditure can be incurred without the sanction of the Legislative Assembly.

Legislative Powers

The State Legislative Assembly has got the power of making laws on the subject of the State List and the Concurrent List. In matters related to ordinary bills, after it is passed by the originating house that is either Vidhan Sabha or Vidhan Parishad it is sent to the other house, where it can be kept for a maximum period of 6 months time. If the other house rejects the bill or 6 months pass or the suggestions made by the other house is not acceptable to the originating house, it results in a situation of deadlock. This is resolved by the Governor by calling a joint session of both houses which is presided over by the speaker of the Vidhan Sabha and decided by a simple majority. Since the Vidhan Sabha has greater numerical strength, it is in a position of advantage unless fractured by many different parties.

Amendment Powers

The Legislative Assembly enjoys some powers with regard to the amendment of the Constitution. Some parts of the Constitution can be amended by the Union Parliament, only if half of the State Legislature ratifies the amendments.

Electoral Functions

The state Legislative Assembly elects its own Speaker and Deputy Speaker. Members of the Legislative Assembly take part in the elections of the President of India. One-third of the Legislative Council members are also elected by the State Legislative Assembly.

Speaker of the Legislative Assembly

In the Legislative Assembly, the Speaker's Chair is distinctively placed and, gets a commanding view of the entire House. Insofar as the proceedings are concerned, he is guided by the provisions of the Constitution and the Rules of Procedure and Conduct of Business in the Assembly. In the absence of the Speaker, the Deputy Speaker discharges his functions

- To preside over the meetings of the House The Speaker presides over the meetings of the House and conducts its proceedings; he also presides over the joint sitting of the two houses.
- To maintain discipline in the Legislative Assembly The Speaker maintains discipline in the House. If any members disrupt or try to disrupt the proceedings of the House, the

Speaker can warn him or can ask him to leave the House. He can suspend from the House a member whom he finds guilty of violating the discipline and decorum.

- To fix the Agenda of the House The Speaker, in consultation with other members and the Chief Minister fixes agenda of the meeting of the House.
- Permission Ask Questions Each member of the House can put question to the minister for getting information on various matters. For the exercise of this power, however the permission of the Speaker is required
- To Conduct the Business of the House The Speaker conduct the business of the House, allows the members to introduce the bill or the call attention and adjournment motions, recognise the members on the floor of the House, gives them time for speaking, puts the matters to vote, and announces the results.
- Interpretation of Rules and Procedures. In case a dispute regarding the rules of the House, the Speaker interprets and applies the rules. The interpretation of the Speaker is final and cannot be challenged in any court of law.
- Power to adjourn the House The Speaker can adjourn the meeting of the House when it is not complete or if the conduct of the business of the House is not possible due to the disorderly behaviour of its members or for any other purpose.
- Decision about the Money Bill If a dispute arising regarding the question as to the whether a bill is a Money Bill or not, the decision is made by the Speaker. Such a decision is final and it cannot be challenged inside or outside the House.
- Protection of the Privileges of the Members The members of the House enjoy many privileges which are protected by the Speaker. All cases of disputes relating to the privileges of the members are referred by the Speaker to the committee on privileges.
- Link between the Governor and the Legislative Assembly The members of the Legislative Assembly can approach the Governor through the Speaker who acts a link between Governor and the Legislative Assembly.
- Administrative Functions The Speaker has several administrative responsibilities. He appoints the employees of his office, determines the several rules for them and supervises their work.

Legislative Council or Vidhan Parishad

The Legislative Council or the Vidhan Parishad is the Upper Chamber of the State Legislature. Union Parliament has the power' to create or abolish the Legislative Council in various states on the basis of resolutions adopted by special majority in the Assemblies. As mentioned in the constitution the total membership of the Legislative Council shall not be less than forty and more than one third of the total number of members of the Legislative Assembly of the concerned state. All the members of the Legislative Council are either indirectly elected or nominated by the Governor. Let us take a look at the way the Legislative Council is constituted.

- ❖ One-third of the members of this House are elected by the Legislative Assembly from amongst persons who are not its members.
- ❖ One-third of its members "are elected by the local bodies like Municipalities or District Boards or any other local authority as specified by the law of the Parliament.
- ❖ One-twelfth of the members are elected by graduates of at least three years standing.
- ❖ One-twelfth of the members are elected by teachers of secondary schools having at least three years experience.
- ❖ About one-sixth of the members are nominated by the Governor from among persons possessing. Special knowledge and experience in the field of art, science, literature, social service and cooperative movement.

Qualifications

Very simple qualifications are prescribed for membership in the Vidhan Parishad. Any Indian citizen who is 30 years of age or more having such other qualifications as prescribed by the Parliament can become a member of the Vidhan Parishad. Of course a person cannot simultaneously be a Member of Parliament and State Legislature. The Legislative Council like the Council of States is a permanent chamber, not subject to dissolution. The members are elected for a period of six years and like Rajya Sabha one-third of members retire every second year. The Legislative Council elects its Chairman and Deputy Chairman from amongst its members.

Powers and Functions of Legislative Council

Theoretically the powers of the Legislative Council are coequal with the Assembly. But in reality the Council is a weak partner of the Legislative Assembly.

Legislative Powers

Ordinary bills can originate in any chamber of the legislature. A bill in order to become an Act must be approved by both the chambers and receive the assent of the Governor. The Governor may give his assent or return the bill back to" legislature with his observations. If the Legislative Council disagrees with a bill passed by the Legislative Assembly, then the bill must have a second journey, from the Assembly to the Council. But ultimately the views of the Assembly shall prevail. The Council has no powers to advise a bill passed in the Assembly. It can only delay the passage of the bill for 3 months in the first instance and for one month in the second. There is no provision of joint sitting as in case of disagreement in Parliament over ordinary bills. In the ultimate analysis the Legislative Council is a dilatory chamber so far as ordinary legislation is concerned. It can delay the passage of the bill maximum for a period of four months.

Financial Powers

In the domain of finance it has almost no powers. Like the Council of States, it enjoys a subordinate position in financial matters. Money Bills originate only in Assembly. After they are passed in the Assembly it is sent to the Council. The Council can keep it maximum for a period of 14 days. If it does not pass it within that period, it is deemed to have received the approval of that House.

Control over the Executive

The Council can control the executive by way of putting questions to ministers, by raising debates and adjournment motions to highlight the lapses of the government but it cannot throw a government out of power. The Legislative Assembly in addition, to the powers discussed above enjoys the power to move vote of no confidence which can force the government to resign. In case of controlling the executive the final say lies with the Legislative Assembly. The makers of the Constitution have deliberately given a secondary position to the Legislative Council so that both the chambers in the state do not compete with each other for supremacy. The purpose was to accommodate various professional interests in the Legislative Council, who through their experience can act as the friend, philosopher and guide of the Legislative Assembly.

Government of the States the Governor

The Governor is the head of the state executive. He is also the representative of the Centre in the state. The Governors and Lieutenant-Governors of the states and territories of India

have similar powers and functions at the state level as that of the President of India at Union level. Governors exist in the states while Lieutenant- Governors exist in union territories and in the National Capital Territory of Delhi. The Governor acts as the nominal head whereas the real power lies in the hand of the Chief Ministers of the states and the Chief Minister's Council of Ministers. The Governors and Lieutenant-Governors are appointed by the President for a term of 5 years. Article 153 of the Constitution provides that “There shall be a Governor for each state”. Article 155 lays down that “Governor of a state shall be appointed by the President by a warrant under his hand and seal”. The President appoints the Governor on the advice of the Prime Minister.

Qualifications

- ❖ He must be a citizen of India.
- ❖ He must not be less than 35 years of age.
- ❖ He must not hold any office of Profit in Union or State Government.
- ❖ He must not be a member of either house of Parliament or any state legislature. In case he is a Member of Parliament or State legislature is appointed as a Governor, he must resign his membership before assuming the office.
- ❖ He should not be a insane or a bankrupt.

Legal Immunities of the Governor

The Governor of the state enjoys certain legal immunities in the discharge of his functions as the Head of the State. The Governor of a state is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or and performance of his powers and duties. No civil or criminal proceedings can be instituted against the Governor during his term of office. No writ for the arrest or imprisonment of the Governor can be issued by any court during his term of office.

Powers and Functions of the Governor

The Governor enjoys many different types of powers: Executive, Legislative, Financial, Judicial and Discretionary powers.

Executive powers

The Constitution vests in the Governor all the executive powers of the State Government. The Governor appoints the Chief Minister who enjoys the support of the majority in the Legislative Assembly (Vidhan Sabha). The Governor also appoints the other members of the

Council of Ministers and distributes portfolios to them on the advice of the Chief Minister. The Council of Ministers remains in power during the 'pleasure' of the Governor, but in the real sense it means the pleasure of the Vidhan Sabha. As long as the majority in the Vidhan Sabha supports the government, the Council of Ministers cannot be dismissed. The Governor appoints the Chief Minister of a state . He/she also appoints the Advocate General and the chairman and members of the State Public Service Commission. The President consults the Governor in the appointment of judges of the High Courts and the Governor appoints the judges of the District Courts. The Governors of Assam and Sikkim have special powers for protecting the interests of the Scheduled Tribe.

Legislative powers

The Governor summons the sessions of both houses of the state legislature and prorogues them. The Governor can even dissolve the Legislative Assembly. These powers are formal and the Governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister. The Governor inaugurates the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. The Governor's address on these occasions generally outlines new policies of the state government. A bill that the state legislature has passed can become a law only after the Governor gives his assent. The Governor can return a bill to the state legislature, if it is not a money bill, for reconsideration. However, if the state legislature sends it back to the Governor for the second time, the Governor must assent to it. The Governor has the power to reserve certain bills for the President. When the state legislature is not in session and the Governor considers it necessary to have a law, then the Governor can promulgate ordinances. These ordinances are submitted to the state legislature at its next session. They remain valid for no more than six weeks from the date the state legislature is reconvened unless approved by it earlier.

Financial powers

Money bills can be introduced in the State Legislative Assembly only on the prior recommendation of the Governor. Further no demand for grant shall be made except on his/her recommendation. He can also make advances out of the Contingency Fund of the State to meet any unforeseen expenditure. Moreover, he constitutes the State Finance Commission.

Judicial Powers

Under Article.161, he has the power to grant pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offence against any law relating to the matter which the executive authority of the state extends.

Discretionary Powers

Normally, the Governor has to act on the aid and advice of the Council of ministers headed by the Chief Minister. However, there are situations when the Governor has to act as per his/her own judgment and take decisions on his own. These are called the discretionary powers of the Governor. The Governor exercises them in the following cases:

In the appointment of the Chief Minister of a state

When no party gets a majority in the Legislative Assembly, the Governor can either ask the leader of the single largest party or the consensus leader of two or more parties (that is, a coalition party) to form the government. The Governor then appoints the leader of the largest party as Chief Minister.

In informing the President of the failure of constitutional machinery in a state

The Governor can send a report to the President informing him or her that the State's constitutional functioning has been compromised and recommending the President impose "President's rule" upon the state.

Powers and Functions

- ❖ Formulation State Policies. The Council of Ministers has the responsibility of formulating and determining the policies of the state. All the policies are discussed and decided upon by it.
- ❖ Running Administration. The ministers are responsible for the running the administration of the State in accordance with the policies of the government and the laws passed by the legislature.
- ❖ Appointment – making powers. The Cabinet, in fact the Chief Minister, makes all appointments in the state. All the appointments of the high dignitaries of the state made by the Governor on the advice of the State Council of Ministers.
- ❖ Law Making. It is the ministry which really decides the legislative programme. Most of the bills are introduced by the ministers in the state legislature. The Governor summons, prorogues and dissolve the State Legislature upon the advice of the Council of Ministers.

Financial Functions

The Council of Ministers really controls the finance of the State. It determines the fiscal policy of the State. The Cabinet formulates and implements all development policies and plans. It manages the finance of the State in accordance with the policy and budget as passed by the State Legislature.

High Courts

Among the noble aims and objectives of the Constitution, the founding fathers accorded the highest place to „Justice“. The Preamble speaks of “We, the people of India” resolving to secure inter alia “Justice – social, economic and political” to “all its citizens”. The juxtaposition of words and concepts in the Preamble is important. Most significantly, „Justice“ is placed higher than the other principles of „Liberty“, „Equality“ and „Fraternity“. Again, the Preamble clearly enjoins precedence to social and economic justice over political justice. People turn to the judiciary in the quest of justice. There is need to review the working of the judiciary during the last half-a-century and more, to assess how far our justice delivery system has been able to ensure equal social, economic and political justice to all the people as ordained by the Constitution and its Preamble.

The Constitution lays down the structure and defines, delimits and demarcates the role and functions of every organ of the State including the judiciary and establishes norms for their inter-relationships, checks and balances. Independence of judiciary is essential to the rule of law and constitutional norms.

Provisions in regard to the judiciary in India are contained in Part V („The Union“) under Chapter IV titled „The Union Judiciary“ and Part VI („The States“) under Chapter VI titled „Subordinate Courts“ respectively. It is, however important to emphasize that unlike other federal systems, for example, that of the United States, we do not have separate hierarchies of federal and State Courts. In India, though the polity is dual, the judiciary is integrated. For the entire republic of India, there is one unified judicial system – one hierarchy of courts – with the Supreme Court as the highest court and also as the arbiter in matters of relations between the Union and the States and the States inter se.

The Supreme Court and the High Courts as the custodians and watchdog of the fundamental rights and freedoms of the people and their constitutional rights have an awesome responsibility. The Superior Judiciary has successfully preserved and protected the fundamental

rights of the citizens and vulnerable groups against the innovations of “an excited democracy” and for that purpose, it has drawn substantially upon the Directive Principles.

Speaking of the Supreme court of the United States, a writer said, “the Court has not been infallible. It has made mistakes. It sometimes has run counter to the deliberate and better judgement of the community. But the final judgement of the American people will unquestionably be that their constitutional rights are safe in the hands of the federal judiciary. Throughout the whole history of the United States, it furnishes the highest example of adequate results of any branch of our government. It has averted many a storm which was threatening our peace and has lent its powerful aid in uniting the whole country in the bonds of justice. To paraphrase the language of William Wirt, „if the judiciary were struck from our system“, there would be little of value that would remain.”

Appointment, Transfer and Removal of Judges of the Superior Courts

Article 124 vests the power of appointment of the Chief Justice of India (C.J.I.) and the Judges of the Supreme Court in the President. The President shall by warrant, make the appointment after consultation with such of the judges of the Supreme Court and the High Courts of the States, as he may deem necessary. Also, the provision speaks of „after“ consultation and not „in“ consultation. In the case of appointment of a judge other than the Chief Justice of India, the C.J.I. shall always be consulted. On a plain reading of the provision, the power of appointment vests in the President. The President, of course, means the Executive i.e. The President acting on the advice of Council of Ministers. The C.J.I. and other such judges of the Supreme Court and the High Courts shall be consulted by the President, as he may deem necessary.

Articles 124 and 217, respectively, provide for the manner of appointment of the judges of the Supreme Court and the various High Courts. It is provided that every judge of the Supreme Court or a High Court shall be appointed by the President by warrant under his hand and seal. The persons to be consulted before such an appointment is made by the President has been provided in the said articles. The Supreme Court in the *Supreme Court Advocates-on-Records Association v. Union of India*

The matter relating to manner of appointment of judges had been debated over a decade. The Constitution (Sixty-seventh Amendment) Bill, 1990 was introduced on 18th May, 1990 (9th Lok Sabha) providing for the institutional frame work of National Judicial Commission for

recommending the appointment of judges to the Supreme Court and the various High Courts. Further, it appears that latterly there is a movement throughout the world to move this function away from the exclusive fiat of the executive and involving some institutional frame work whereunder consultation with the judiciary at some level is provided for before making such appointments. The system of consultation in some form is already available in Japan, Israel and the UK. The Constitution (Sixty-seventh Amendment) Bill, 1990 provided for a collegium of the Chief Justice of India and two other judges of the Supreme Court for making appointment to the Supreme Court. However, it would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making such recommendations. The Commission proposes the composition of the Collegium which gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of judges. This Commission, accordingly, recommends the establishment of a National Judicial Commission under the Constitution. The National Judicial Commission for appointment of judges of the Supreme Court shall comprise of:

S. No.	Category	Position
1	The Chief Justice of India:	Chairman
2	Two senior most judges of the Supreme Court:	Member
3	The Union Minister for Law and Justice:	Member
4	One eminent person nominated by the President after consulting the Chief Justice of India:	Member

The recommendation for the establishment of a National Judicial Commission and its composition are to be treated as integral in view of the need to preserve the independence of the judiciary.

Removal of Judges and remedies for deviant behavior

A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court shall be exclusively empowered to examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity against judges of The Supreme Court and the High Courts. Their scrutiny at this stage would be confined to ascertain whether.

- a. There is substance at all in the complaint; or
- b. There is a prima facie case calling for a fuller investigation and enquiry; or

- c. Whether it would be sufficient to administer an appropriate advice/warning to the erring Judge or give other directions to the concerned Chief Justice regarding allotment of work to such Judge or to transfer him to some other court.

If, however, the committee finds that the matter is serious enough to call for a fuller investigation or inquiry, it shall refer the matter for a full inquiry to the committee [constituted under the Judges' (Inquiry) Act, 1968]. The committee under the Judges Inquiry Act shall be a permanent committee with a fixed tenure with composition indicated in the said Act and not one constituted ad-hoc for a particular case or from case to case, as is the present position under Section 3(2) of the Act. The tenure of the inquiry committee shall be for a period of four years and to be reconstituted every four years. The inquiry committee shall be constituted by the President in consultation with the Chief Justice of India. The membership of the inquiry committee shall not be full time salaried employment. But the terms and other conditions of service of the Members of the committee shall be such as may be specified in the notification constituting the inquiry committee. The inquiry committee shall inquire into and report on the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with the sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India, who shall place before a committee of seven senior-most judges of the Supreme Court. The Committee of seven Judges shall take a decision as to - whether (a) findings of the inquiry committee are proper and (b) any charge or charges are established against the judge and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other court (i.e. deviant behaviour not amounting to misbehaviour). If the decision of the said committee of judges recommends the removal of the Judge, it shall be a convention that the judge promptly demits office himself. If he fails to do so, the matter will be processed for being placed before Parliament in accordance with articles 124(4) and 217(1) Proviso (b). This procedure shall equally apply in case of Judges of the Supreme Court and the High Courts except that in the case of a Supreme Court Judge the judge against whom complaint is received or inquiry is ordered, shall not participate in any proceeding affecting him.

Age of Retirement of Judges of the Supreme Court and the High Courts

The Commission recommends that the retirement age of the Judges of the High Court be increased to 65 years and that of the Judges of the Supreme Court be increased to 68 years. The Commission recommends that in the matter of transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.

Other Courts and Tribunals: Power to Punish for Contempt

The power of court to punish for contempt of itself is part of sovereign power and can inhere only in a sovereign. Articles 129 and 215 recognize the existence of such power in the Supreme Court and the High Courts as they exercise inter alia the sovereign judicial power. Parliament and State Legislatures exercise sovereign legislative power. It is for that reason that the power to punish for contempt of itself inheres in Parliament and State Legislatures as part of their privilege. No other court, tribunal or authority can have a power to punish for contempt of itself, either inherently or conferred by a law of legislature. It is only the power to punish for contempt of itself mentioned in articles 129 and 215 and the privilege of Parliament and State Legislatures that is implicit in the words “in relation to the contempt of court” occurring in article 19(2) of the Constitution.

The jurisdiction to order arrest of a person or attachment of properties of a person to implement or execute an order of court or tribunal is a sanction of law to enable the enforcement of the orders against those who are bound thereby (example Order XXXIX, Rule 3 of the Code of Civil Procedure). They are remedial in nature.

Courts other than the Supreme Court and the High Courts do not have inherent jurisdiction to exercise a power of „contempt of itself“. Section 10 of the Contempt of Courts Act, 1971 confers power on the High Court to exercise the same jurisdiction, powers and authority in respect of contempt of the Courts subordinate to it. Under the proviso thereto, no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it, where such contempt is an offence punishable under the Indian Penal Code, 1860. Section 228 of the IPC provides for such a situation and rightly does not describe it as the contempt of court. (See also illustratively sections 178, 179, 180 of the Indian Penal Code, 1860 and section 10A of the Commissions of Inquiry Act, 1952.

Section 15(2) of the Contempt of Courts Act, 1971 enacts that in the case of criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General, “Criminal Contempt” deals with scandalizing or lowering or tending to lower the authority of any Court (not any Tribunal or other quasi-judicial authority) prejudicing or interfering or tending to interfere or obstructing or tending to obstruct administration of justice in any other manner. These are the limited areas which could be the subject of legislation in the legislative field of Entry 14 of List III and if necessary, read with Entries 1 and 2 of List III of the Seventh Schedule to the Constitution of India.

The Commission, therefore, recommends that a proviso be inserted in article 129 that the power of court to punish for contempt of itself inherent only in the Supreme Court and the High Courts and is available as part of the privilege of Parliament and State Legislatures, and no other court, tribunal or authority should have, or be conferred with, a power to punish for contempt of itself. Judicial Review of Legislation: Article 13 and the power of the Supreme Court and the High Courts to declare a law unconstitutional or ultra vires or as beyond legislative competence

Parliament/State Legislatures enact laws in exercise of sovereign power of the State. Their validity either on the ground of unconstitutionality or on the ground of lack of legislative competence can be adjudicated only by another limb of the sovereign power, viz. the Supreme Court and the High Courts. No other authority can exercise such powers and cannot be conferred such powers even by legislation. To so confer and vest a sovereign power in any authority except on another limb of sovereign, viz. the Supreme Court and the High Court, would amount to an impermissible abdication of sovereign power exclusively inhering under the Constitution, only in the Supreme Court and the High Court as judicial limb of sovereign power. The decisions of courts to the effect that an authority constituted under a statute cannot question only those legislative provisions under which they are constituted but can adjudicate on the unconstitutionality and lack of legislative competence of other legislative enactments may be inconsistent with basic postulates of the constitution. Article 228 of the Constitution and Order XXVIA Rule 1 of the Code of Civil Procedure, 1908 and sections 395 and 396 of the Criminal Procedure Code, 1973 are instances of recognition of this position. It is, therefore, recommended that a suitable provision may be inserted in the Constitution to the effect that except the Supreme Court and the High Courts no other court, tribunal or authority shall exercise any jurisdiction to

adjudicate on the validity or declare an Act of Parliament or State Legislature as being unconstitutional or beyond legislative competence and so ultra vires. Such a provision may be made as clause (5) of article 226.

Financial Planning and Judicial Autonomy

Judicial administration in the country suffers from deficiencies due to lack of proper planning and adequate financial support for establishing more courts and providing them with adequate infrastructure. For several decades the courts have not been provided with any funds under the five-year plans nor has the Finance Commission been making any separate provisions to serve the financial needs of the courts.

Judicial Councils

The Commission recommends the setting up of a 'Judicial Council' at the Apex level and Judicial Councils at each State at the level of the High Court. There should be an Administrative Office to assist the National Judicial Council and separate Administrative Offices attached to Judicial Councils in States. These bodies must be created under statute made by Parliament. The Judicial Councils will be in charge of the preparation of plans, both short term and long term, and for preparing the proposals for annual budget.

Functioning of the Judiciary

In terms of performance, there has been a certain amount of uneasy dissatisfaction in the functioning of the judiciary. In particular, the problem areas are:-

- Undue delays in the disposal of cases and lack of sensitivity (accountability) to the mounting arrears of cases.
- Injecting avoidable uncertainties in the law and thereby making the task of the Executive more difficult and sometimes unmanageable.
- Lack of transparency in judicial appointments and transfers.
- Poor management of resources and ineffective standards of judicial administration including legal aid.
- Absence of strategic Action Plans for clearance of arrears in courts.

Systems for Urban Litigation

The Gram Nyayalayas as contemplated by the Law Commission will process 60 to 70 per cent of rural litigation leaving the regular courts in districts and sub-divisions to devote their time to complex civil and criminal matters. With a participatory, flexible machinery available at the village level where non-adversarial, settlement-oriented procedures are employed, the rural people will have a fair, quick and inexpensive system of dispute settlement. Only revision jurisdiction on civil matters and that also on questions of law may be left to the district courts.

Today, the pendency in various courts in urban areas is staggering. Rent and eviction suits constitute a considerable chunk of litigation in urban courts, and that they take on an average three or more years to get adjudicated in the court at first instance, the Law Commission felt that an alternative method for these disputes is imperative. The Law Commission examined several alternatives and preferred to recommend the model of Conciliation Court along with a participatory model where a professional judge interacts with two lay judges and evolves a reasonable solution. There will not be any appeal against the decision and only a revision petition will be permissible on questions of law to the district Court.

Criminal Justice Administration

The criminal investigation system needs higher standards of professionalism and it should be provided adequate logistic and technological support. Serious offences should be classified for purpose of specialized investigation by specially selected, trained and experienced investigators. They should not be burdened with other duties like security, maintenance of law and order etc., and should be entrusted exclusively with investigation of serious offences.

The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced.

The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalization.

The greatest asset of the police in investigation of crimes and maintenance of law and order is the confidence of the people. Today, such public confidence is at the lowest ebb. The police are increasingly losing the benefit of this asset of public confidence. Hard intelligence in investigations comes from public cooperation. If police are seen as violators of law themselves or if they abuse their powers for intimidation and extortion, public develop an attitude of revulsion and the onerous duties and responsibilities that the police shoulder become more onerous and difficult.

In order that citizen's confidence in the police administration is enhanced, the police administration in the districts should periodically review the statistics of all the arrests made by the police in the district and see as to in how many of the cases in which arrests were made culminated in the filing of charge-sheets in the court and how many of the arrests were ultimately turned out to be unnecessary. This review will check the tendency of unnecessary arrests. Some statistics indicate that in some districts in the country, nearly 80% of the arrests were made in respect of boailable offences.

Digital legal information system

The Commission notes that the law libraries available in the country are limited. Further, the cost of maintaining modern law libraries in various parts of the country would be enormous. With a view to providing a satisfactory justice delivery system, access to law books, law journals and other legal literature by all concerned needs no special emphasis.

The Commission, therefore, recommends that the National Informatics Centre in collaboration with or with the assistance of the Indian Law Institute and the Government Law Departments should set up a Digital Legal Information System in the country so that all courts, legal departments, law schools would be able to access and retrieve information from the data bank of the important law libraries in the country."

Subordinate Judiciary

The jurisdiction and nomenclature of subordinate courts in the various States of the country are different. At present, there are three or more tiers of civil and criminal courts below the High Court. Cases at the trial stages are decided by and assume finality at the level of the subordinate courts. The trial system is the cutting edge of the judicial machine. It would, therefore, be necessary that the presiding officers of these courts are impartial and competent. It will also enhance the quality and quantity of their output. The administration of justice at this grass root level needs standardization. The Commission recommends that progressively the hierarchy of the subordinate courts should be brought down to a two tier of subordinate judiciary under the High Court. Further, strict selection criteria and adequate training facilities for the presiding officers of such courts should be provided. The Commission also recommends that to cope up with the workload of cases at the lower level and also to curtail arrears and delay, the States should appoint honorary judicial magistrates selected from experienced lawyers on the criminal side to try and dispose less serious and petty cases on part-time basis on the pattern of

Recorders and Assistant Recorders in UK. They could set for, say, 100 days in a year and hold court later in the evenings after regular court hours. This would relieve the load on the regular magistracy.

Habeas Corpus and the Human Rights Courts

Section 491 of the Code of Criminal Procedure, 1898 (since repealed and re-enacted as the Code of Criminal Procedure, 1973) vested the power to issue directions of the nature of habeas corpus in all the High Courts. The power was available since the Code was enacted in 1898 when the constitutional provisions of judicial review of the nature provided in article 226 in relation to the High Courts and article 32 for the enforcement of fundamental rights in relation to the Supreme Court of India were not available. The power under section 491 of the Code continued to be available simultaneously with the power of the High Courts and the Supreme Court to issue writs of the nature of a habeas corpus vested in them under article 226 and article 32 of the Constitution respectively even after coming into force of the provisions of the Constitution. However, when the new Code was enacted in 1973, it was thought that, in face of the constitutional provisions under article 226 and article 32, the power of the nature of section 491 of the Code of Criminal Procedure, 1898 is redundant and was thus not provided for in the new legislation.

Since the enactment of the Code of Criminal Procedure, 1973, issues relating to the human rights have found a prominent place throughout the world. In India, the Protection of Human Rights Act, 1993 was enacted with a view to providing for establishment of the National Human Rights Commission and the various State Human Rights Commissions. Section 30 of the said Act provides that the State Governments may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a court of session to be a Human Rights Court to try the offences relating to human rights.

Since the issues relating to human rights, more particularly relating to unlawful detention, have now occupied a center-stage, both nationally and internationally, it shall be desirable that the Protection of Human Rights Act, 1993 may be suitably amended to provide that, in addition to the powers generally vested in that Court, such courts shall have the power to issue directions of the nature of a habeas corpus as was available to the High Court's under section 491 of the Code of Criminal Procedure, 1898. Vesting of such power will go a long way in providing help

to the indigent and vulnerable sections of the society in view of the proximity and easy accessibility of the Court of Session."

Course Outcomes (COs)

After completing this unit, students will be able to:

1. Explain the structure of State Government.
2. Describe the powers and functions of the Governor.
3. Analyse the role of the Chief Minister and Council of Ministers.
4. Evaluate the functioning of State Legislature.
5. Interpret the role of High Courts in protecting rights and law.

Programme Outcome (PO) – Any One

PO1: Constitutional and Administrative Understanding

Students will develop the ability to critically analyse the functioning of state-level governance in India.

S.NO	QUESTIONS	LOCF Mapping		
	Five marks questions			
1	Who is the Governor?	CO1	PO1	K1
2	Explain the executive powers of the Governor.	CO2	PO1	K2
3	Write a note on the legislative powers of the Governor.	CO2	PO1	K2
4	What are the discretionary powers of the Governor?	CO1	PO1	K1
5	Who is the Chief Minister?	CO1	PO1	K1
6	Explain the role of the Chief Minister.	CO2	PO1	K2
7	Write a note on the Council of Ministers at the state level.	CO2	PO1	K2
8	Describe the composition of the State Legislature.	CO2	PO1	K2
9	Explain the functions of Legislative Assembly.	CO2	PO1	K2
10	Write a note on Legislative Council.	CO2	PO1	K2
	Eight marks questions			
1	Discuss the functions of the Council of Ministers at the state level.	CO2	PO1	K2

2	Analyse the legislative functions of State Legislature.	CO4	PO1	K4
3	Analyse the importance of judicial review by High Courts.	CO4	PO1	K4
4	Discuss the role of High Courts in protecting Fundamental Rights.	CO4	PO1	K4
5	Examine the system of checks and balances at state level.	CO4	PO1	K4
6	Discuss the discretionary powers of the Governor.	CO2	PO1	K2
7	Evaluate the independence of the judiciary at the state level.	CO5	PO1	K5
8	Assess the functioning of State Government in India.	CO5	PO1	K5
9	Evaluate the structure and jurisdiction of the High Courts of India.	CO5	PO1	K5
10	Evaluate the composition and powers of the State Legislature	CO5	PO1	K5

Unit – V

Local Government: Urban – Rural

Course Objectives (COs) – 5

1. To examine the structure and significance of local self-government in India.
2. To analyse the constitutional provisions relating to rural and urban local bodies.
3. To understand the functions and powers of Panchayati Raj Institutions.
4. To study the composition and role of urban local bodies.
5. To evaluate the importance of decentralisation and grassroots democracy.

Local Government

Introduction

In a democracy, it is not sufficient to have an elected government at the centre and at the State level. It is also necessary that even at the local level, there should be an elected government

to look after local affairs. In this chapter, you will study the structure of local government in our country. You will also study

- The importance of the local governments and ways to give them independent powers. After studying this chapter, you will know:
- The importance of local government bodies;
- The provisions made by the 73rd and 74th Amendments; and
- Functions and responsibilities of the local government bodies.

Local Governments

Geeta Rathore belongs to Jamonia Talab Gram Panchayat, Sehore district, Madhya Pradesh. She was elected Sarpanch in 1995 from a reserved seat; but in 2000, the village people rewarded her for her admirable work by electing her again - this time from a non-reserved seat. From a housewife, Geeta has grown into a leader displaying political farsightedness - she has harnessed the collective energy of her Panchayat to renovate water tanks, build a school building, construct village roads, fight against domestic violence and atrocities against women, create environmental awareness, and encourage afforestation and water management in her village. - Panchayati Raj Update, Vol. XI, No. 3, February 2004. There is another story of yet another woman achiever. She was the President (Sarpanch) of a Gram Panchayat of Vengaivasal village in Tamil Nadu.

In 1997, the Tamil Nadu government allotted two hectares of land to 71 government employees. This piece of land fell within the vicinity of this Gram Panchayat. On the instructions of higher authorities the District Collector of Kancheepuram directed the President of the Gram Panchayat to pass a resolution endorsing the allotment of the said land for the purpose already decided. The President and the Gram Panchayat refused to pass such an order and the Collector issued an order to acquire the land. The Gram Panchayat filed a writ petition in the Madras High Court against the Collector's action. The single judge bench of the High Court upheld the Collector's order and ruled that there was no need to take the Panchayat's consent. The Panchayat appealed to the Division bench against the single judge's order. In its order, the Division Bench reversed the order of the single judge. The judges held that the government order amounted to not only infringement of the powers of the Panchayats but a gross violation of the constitutional status of the Panchayats. - Panchayati Raj Update, Vol. XII, June 2005. Both these stories are not isolated incidents. They are representative of a larger transformation that is taking

place across India especially after constitutional status was accorded to local government institutions in 1993.

Local government is government at the village and district level. Local government is about government closest to the common people. Local government is about government that involves the day-to-day life and problems of ordinary citizens. Local government believes that local knowledge and local interest are essential ingredients for democratic decision making. They are also necessary for efficient and people-friendly administration. The advantage of local government is that it is so near the people. It is convenient for the people to approach the local government for solving their problems both quickly and with minimum cost. In the story of Geeta Rathore, we noticed that she was able to bring about a significant change in Jamonia Talab because of her pro-active role as Sarpanch of the Gram Panchayat. Vengaivasal village is able to still retain its land and the right to decide what to do with it because of the relentless efforts of its Gram Panchayat President and members. So, local governments can be very effective in protecting the local interests of the people.

Democracy is about meaningful participation. It is also about accountability. Strong and vibrant local governments ensure both active participation and purposeful accountability. Geeta Rathore's story is one of committed participation. Vengaivasal village Gram Panchayat's relentless efforts to secure its rights over its own land were an example of a mission to ensure accountability. It is at the level of local government that common citizens can be involved in decision making concerning their lives, their needs and above all their development. It is necessary that in a democracy, tasks, which can be performed locally, should be left in the hands of the local people and their representatives. Common people are more familiar with their local government than with the government at the State or national level. They are also more concerned with what local government does or has failed to do as it has a direct bearing and impact on their day-to-day life. Thus, strengthening local government is like strengthening democratic processes.

Growth of Local Government In India

Let us now discuss how local government has grown in India and what our Constitution says about it. It is believed that self-governing village communities existed in India from the earliest times in the form of 'sabhas' (village assemblies). In the course of time, these village bodies took the shape of Panchayats (an assembly of five persons) and these Panchayats resolved

issues at the village level. Their role and functions kept on changing at different points of time. In modern times, elected local government bodies were created after 1882.

Lord Rippon, who was the Viceroy of India at that time, took the initiative in creating these bodies. They were called the local boards. However, due to slow progress in this regard, the Indian National Congress urged the government to take necessary steps to make all local bodies more effective. Following the Government of India Act 1919, village panchayats were established in a number of provinces. This trend continued after the Government of India Act of 1935. During India's freedom movement, Mahatma Gandhi had strongly pleaded for decentralization of economic and political power. He believed that strengthening village panchayats was a means of effective decentralization. All development initiatives must have local involvement in order to be successful. Panchayats therefore were looked upon as instruments of decentralization and participatory democracy. Our national movement was concerned about the enormous concentration of powers in the hands of the Governor General sitting at Delhi. Therefore, for our leaders, independence meant an assurance that there will be decentralization of decision making, executive and administrative powers.

When the Constitution was prepared, the subject of local government was assigned to the States. It was also mentioned in the Directive Principles as one of the policy directives to all governments in the country. As you have read in Chapter 2, being a part of the Directive Principles of State Policy, this provision of the Constitution was non-justiciable and primarily advisory in its nature.

It is felt that the subject of local government including panchayats did not receive adequate importance in the Constitution. Do you know why this happened? A few reasons can be advanced here. Firstly, the turmoil due to the Partition resulted in a strong unitary inclination in the Constitution. Nehru himself looked upon extreme localism as a threat to unity and integration of the nation.

Secondly, there was a powerful voice in the Constituent Assembly led by Dr. B.R. Ambedkar which felt that the faction and caste-ridden nature of rural society would defeat the noble purpose of local government at the rural level. However, nobody denied the importance of people's participation in development planning. Many members of the Constituent Assembly wanted Village Panchayats to be the basis of democracy in India but they were concerned about factionalism and many other ills present in the villages.

Local Governments in Independent India

Local governments got a fillip after the 73rd and 74th Constitution Amendment Acts. But even before that, some efforts in the direction of developing local government bodies had already taken place. First in the line was the Community Development Programme in 1952, which sought to promote people's participation in local development in a range of activities. In this background, a three-tier Panchayati Raj system of local government was recommended for the rural areas. Some States (like Gujarat, Maharashtra) adopted the system of elected local bodies around 1960. But in many States those local bodies did not have enough powers and functions to look after the local development. They were very much dependent on the State and central governments for financial assistance. Many States did not think it necessary to establish elected local bodies. In many instances, local bodies were dissolved and the local government was handed over to government officers. Many States had indirect elections to most local bodies. In many States, elections to the local bodies were postponed from time to time.

73rd and 74th Amendments

In 1989, the central government introduced two constitutional amendments. These amendments aimed at strengthening local governments and ensuring an element of uniformity in their structure and functioning across the country.

Later in 1992, the 73rd and 74th constitutional amendments were passed by the Parliament. The 73rd Amendment is about rural local governments (which are also known as Panchayati Raj Institutions or PRIs) and the 74th amendment made the provisions relating to urban local government (Nagarpalikas). The 73rd and 74th Amendments came into force in 1993. We have noticed earlier that local government is a 'State subject'. States are free to make their own laws on this subject. But once the Constitution was amended, the States had to change their laws about local bodies in order to bring these in conformity with the amended Constitution. They were given one year's time for making necessary changes in their respective State laws in the light of these amendments.

73rd Amendment

Let us now examine the changes brought about by the 73rd amendment in Panchayati Raj institutions. Three Tier Structure All States now have a uniform three tier Panchayati Raj structure. At the base is the 'Gram Panchayat'. A Gram Panchayat covers a village or group of villages. The intermediary level is the Mandal (also referred to as Block or Taluka). These bodies

are called Mandal or Taluka Panchayats. The intermediary level body need not be constituted in smaller States. At the apex is the Zilla Panchayat covering the entire rural area of the District. The amendment also made a provision for the mandatory creation of the Gram Sabha. The Gram Sabha would comprise all the adult members registered as voters in the Panchayat area. Its role and functions are decided by State legislation. Elections. All the three levels of Panchayati Raj institutions are elected directly by the people. The term fresh elections must be held within six months of such dissolution. This is an important provision that ensures the existence of elected local bodies. Before the 73rd amendment, in many States, there used to be indirect elections to the district bodies and there was no provision for immediate elections after dissolution. Reservations One third of the positions in all panchayat institutions are reserved for women. Reservations for Scheduled Castes and Scheduled Tribes are also provided for at all the three levels, in proportion to their population. If the States find it necessary, they can also provide for reservations for the other backward classes (OBCs).

It is important to note that these reservations apply not merely to ordinary members in Panchayats but also to the positions of Chairpersons or 'Adhyakshas' at all the three levels. Further, reservation of one-third of the seats for women is not merely in the general category of seats but also within the seats reserved for Scheduled Castes, Scheduled Tribes and backward castes. This means that a seat may be reserved simultaneously for a woman candidate and one belonging to the Scheduled Castes or Scheduled Tribes. Thus, a Sarpanch would have to be a Dalit woman or an Adivasi woman. Transfer of Subjects Twenty-nine subjects, which were earlier in the State list of subjects, are identified and listed in the Eleventh Schedule of the Constitution.

These subjects are to be transferred to the Panchayati Raj institutions. These subjects were mostly linked to development and welfare functions at the local level. The actual transfer of these functions depends upon the State legislation. Each State decides how many of these twenty-nine subjects would be transferred to the local bodies. of each Panchayat body is five years.

The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations in many States of India. In 1996, a separate act was passed extending the provisions of the Panchayat system to these areas. Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs,

etc. Therefore, the new act protects the rights of these communities to manage their resources in ways acceptable to them. For this purpose, more powers are given to the Gram Sabhas of these areas and elected village panchayats have to get the consent of the Gram Sabha in many respects. The idea behind this act is that local traditions of self government should be protected while introducing modern elected bodies. This is only consistent with the spirit of diversity and decentralization.

State Election Commissioners

The State government is required to appoint a State Election Commissioner who would be responsible for conducting elections to the Panchayati Raj institutions. Earlier, this task was performed by the State administration which was under the control of the State government. Now, the office of the State Election Commissioner is autonomous like the Election Commissioner of India. However, the State Election Commissioner is an independent officer and is not linked to nor is this officer under the control of the Election Commission of India.

State Finance Commission

The State government is also required to appoint a State Finance Commission once in five years. This Commission would examine the financial position of the local governments in the State. It would also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other. This innovation ensures that allocation of funds to the rural local governments will not be a political matter.

74th Amendment

As we mentioned earlier, the 74th amendment dealt with urban local bodies or Nagarpalikas. What is an urban area? It is very easy to identify a big city like Mumbai or Kolkata, but it is not so easy to say this about some very small urban areas that are somewhere between a village and a town. The Census of India defines an urban area as having: (i) a minimum population of 5,000; (ii) at least 75 per cent of male working population engaged in non-agricultural occupations and (iii) a density of population of at least 400 persons per sq. km. As per the 2011 Census, about 31% of India's population lives in urban areas. In many ways the 74th amendment is a repetition of the 73rd amendment, except that it applies to urban areas. All the provisions of the 73rd amendment relating to direct elections, reservations, transfer of subjects, State Election Commission and State Finance Commission are incorporated in the 74th

amendment also and thus apply to Nagarpalikas. The Constitution also mandated the transfer of a list of functions from the State government to the urban local bodies. These functions have been listed in the Twelfth Schedule of the Constitution.

Implementation of 73rd And 74th Amendments

All States have now passed a legislation to implement the provisions of the 73rd and 74th amendments. During the ten years since these amendments came into force (1994- 2004) most States have had at least two rounds of elections to the local bodies. States like Madhya Pradesh, Rajasthan and a few others have in fact held three elections so far.

Today there are more than 600 Zilla Panchayats, about 6,000 block or intermediary Panchayats, and 2,40,000 Gram Panchayats in rural India and over 100 city Corporations, 1400 town Municipalities and over 2000 Nagar Panchayats in urban India. More than 32 lakh members are elected to these bodies every five years. Of these, at least 13 lakhs are women. In the State Assemblies and Parliament put together we have less than 5000 elected representatives. With local bodies, the number of elected representatives has increased significantly. The 73rd and 74th amendments have created uniformity in the structures of Panchayati Raj and Nagarpalika institutions across the country. The presence of these local institutions is by itself a significant achievement and would create an atmosphere and platform for people's participation in government.

The provision for reservation for women at the Panchayats and Nagarpalikas has ensured the presence of a significant number of women in local bodies. As this reservation is also applicable for the positions of Sarpanch and Adhyaksha, a large number of women elected representatives have come to occupy these positions. There are at least 200 women Adhyakshas in Zilla Panchayats, another 2000 women who are Presidents of the block or taluka panchayats and more than 80,000 women Sarpanchas in Gram Panchayats.

We also have more than 30 women Mayors in Corporations, over 500 women Adhyakshas of Town Municipalities and nearly 650 Nagar Panchayats headed by women. Women have gained more power and confidence by asserting control over resources. Their presence in these institutions has given many women a greater understanding of the working of politics. In many cases, they have brought a new perspective and a greater sensitivity to discussions at local bodies. In many cases, women were unable to assert their presence or were

mere proxies for the male members of their family who sponsored their election. Such instances however are becoming fewer.

While reservations for Scheduled Castes and Tribes are mandated by the constitutional amendment, most States have also made a provision to reserve seats for Backward Castes. As the Indian population has 16.2 per cent Scheduled Castes and 8.2 per cent Scheduled Tribes, about 6.6 lakh elected members in the urban and local bodies hail from these two communities. This has READ AN IMAGE Look at this photograph. The local Sarkar is sitting out in the sun. Is there any other feature that strikes you? Rationalized 2023-24 1 significantly altered the social profile of local bodies. These bodies have thus become more representative of the social reality they operate within. Sometimes this leads to tensions. The dominant social groups which controlled the village earlier do not wish to give up their power. This leads to intensification of struggle for power. But tension and struggle is not always bad. Whenever there is an attempt to make democracy more meaningful and give power to those who did not enjoy it earlier, there is bound to be some conflict and tension in society. The Constitutional amendments assigned as many as 29 subjects to the local governments. All these subjects are related to functions linked to local welfare and development needs.

The experience with the functioning of local government in the past decade has shown that local governments in India enjoy limited autonomy to perform the functions assigned to them. Many States have not transferred most of the subjects to the local bodies. This means that the local bodies cannot really function in an effective manner. Therefore, the entire exercise of electing so many representatives becomes somewhat symbolic. Some people criticize the formation of the local bodies because this has not changed the way in which decisions are taken at the central and the State level. People at the local level do not enjoy much powers of choosing welfare programmes or allocation of resources.

Local bodies have very little funds of their own. The dependence of local bodies on the State and central governments for financial support has greatly eroded their capacity to operate effectively. While rural local bodies raise 0.24% of the total revenues collected, they account for 4% of the total expenditure made by the government. So they earn much less than they spend. That makes them dependent on those who give them grants.

Significance of Urban Local Governments

The rationale for having three-tier of government is to deal with regional variations in the political values, economic development, and societal values and citizens participation. For example, the context of Assam is different from Maharashtra or Gujarat. The needs of people living in Kerala may be different from those living in Uttar Pradesh and similarly, willingness of people to pay taxes or user charges may be different in Delhi to those living in Amritsar. Even within the state, the ULBs in a bigger town may be having greater sources of income as compared to the smaller towns and will be in a better position to offer or provide many more services. Thus, the local governments respond to the needs and aspirations of the inhabitants at the local level on matters, which concern them in their daily lives. It also implies that level of services differs from one town to the other within a state as well as within the country. Good urban governance demands that these institutions of self-governance be vibrant, especially in view of the increasing urbanization and the role of cities in the economy. As Indian cities grow in number and size, the pressure for better urban governance will also increase. The estimates indicate that by early 2030s, majority of the population would be living in urban areas. Its importance can also be understood from the observation of UN Habitat, which expressed, “India is at a critical moment where it can preserve and build on the reforms and economic gains, however, it requires substantial capacity and handholding support to strengthen institutional structures at the local level. Need to equip local governments/ utilities with necessary tools to successfully translate governance principles to a local level so as to leapfrog towards a sustainable and inclusive urbanization as well as positioning India at regional and global level”.

History of Urban Local Government in India

Issues at local level, both in rural and urban areas have been taken care of since ancient times in India. Improving the quality of life of citizens by providing them civic amenities like water supply and sanitation, local public works, horticulture, etc. have been the basic function of local governments ever since their inception. Talking about urban areas, Megasthenes mentioned that large cities used to have six bodies of five members each and each of these bodies had been entrusted with important subjects of human activities, which included the registration of births and deaths, care and entertainment of foreigners etc. During the Moghul Empire, in medieval times, Kotwals took care of many municipal functions besides their responsibilities of

magisterial, police and fiscal matters. It can be said that the local self- government in those times was not vested in a representative body of the people of the area/towns, but in the officials appointed by the rulers. Municipalities that exist today in India evolved from the Municipal Government of British pattern. Madras experienced the first intervention of this kind. Josiah Child, Governor of Madras, sought such structure to solve the problem of the conservancy of Madras. In 1687, James II, King of England, conferred on the East India Company, the power of establishing a Corporation and Mayor's Court in Madras, by Charter.

This Civil Government consisted of Mayor, aldermen and burgesses with the power of levying taxes for the building of guildhall, jail and a school, and for other works of public utility and ornament. The system was largely based on the London pattern. Subsequently, in 1726 Mayor's courts were established in three presidency towns of Calcutta, Madras and Bombay. However, the first statutory enactment of Municipal Administration was made in the Charter Act of 1793. Under this Act, the Governor-General of India was vested with the power to appoint Justices of the Peace for the Presidency towns. These Justices of the Peace had been given the power to raise funds by assessing the lands and houses in the towns for scavenging, watching and maintaining the streets. Since 1793, lotteries were used to raise money for municipal improvements. The money thus raised was used on works of utility and improvement, till public opinion in England condemned this method of providing funds for municipal purposes. This arrangement ceased to exist in 1836. It may be mentioned here that the famous Town Hall of Calcutta was built with money raised through lotteries.

The Councils Act in 1861 changed the system. Subsequently, Bombay in 1876, Calcutta in 1876 and Madras in 1878, through local legislation got the system of election of representatives by the ratepayers. However, the Government had stiff control over these Municipalities through official Chairmen and many conditions were imposed to deprive them of real popular control. Mallik (1929) analysed that they had some practical autonomy though to a somewhat lesser extent. However, no attempt was made to establish Municipalities outside the Presidency Towns till 1842, when Bengal promulgated an Act to provide for municipalities, if the towns so wished supported by two-thirds of the households and willing to pay taxes for the such Municipalities. This experiment did not prove successful. In 1850, an Act was promulgated for the whole of British India, which provided for taxation by indirect methods. It was largely applied in the North West Provinces and Bombay, but not much in Bengal and Madras.

This led to creation of large number of Municipalities. Mallik (1929) opined, “from the point of view of local self-government, these Acts did not go very far, yet they were certainly helpful in improving the sanitary conditions of many country towns”. Lord Mayo, thereafter, has initiated the development of self-government paving the way for the principle of election. But it was during the tenure of Lord Ripon that the development of local self-government took shape significantly. He believed, “...local self-government was a means of popular and political education”. He is also called as the father of local self- government in India. In this regard Acts were passed in 1883-84, which greatly altered the constitution of the municipal bodies and also added to their power and functions. Some towns could also have elected Chairmen in the place of Executive officials. The Municipalities were entrusted the responsibilities of education, medical aid and local public works. They were provided some funds from provincial revenues for discharging their responsibilities. Thus, the Municipal Government became a body corporate consisting of members elected from the ratepayers and some nominated by the Government. The Chairman of the Municipality was often an elected member of the body. Even the Municipal funds and properties were vested in these bodies. Generally, the tenure of elected members was for three years; and the rules for elections were framed by the provincial governments. Voters were required to have either property or some status qualification. The elections, in general, were held on wards or community basis or both. The functions of the Municipalities increased gradually and fell into the category of either obligatory or discretionary. In 1881, there were 722 Municipalities, which rose to 739 in 1891, 742 in 1901 and 749 in 1921. It is pertinent to mention here that these urban areas had only 15 percent of the population of India.

Lord Ripon’s resolution mainly aimed at greater uniformity and greater association of the people in the task of administration. But many powers of the Municipalities especially that of Calcutta Corporation were curtailed by Lord Curzon, to which R.C. Dutt remarked, popular government was at an end”. Lord Chelmsford accepted, “...local bodies must be as representative as possible” and that their control should be real and not nominal, but he kept the franchise sufficiently low to include only ratepayers. He agreed to increase the powers for local bodies. However, the control of the Municipalities over the funds including those rose through own efforts was reduced. His idea, “there can be no better school for training the political science than that of municipal administration” attracted many political leaders to enter different municipalities to obtain training for eventual self-government.

The Government of India Act, 1935 expanded the functions of the local bodies, but their budgetary sources were reduced. The United Province Government appointed a committee to review the working of the Municipal bodies, which submitted its report in 1939. It found that the existing management of the local bodies had given rise to very large dissatisfaction in the public mind because of the nature of their constitution under which they were forced to work due to which they could not attain the required standard of efficiency. They became synonymous with intrigue, incompetence and bankruptcy.† Between 1939 and 1945 the progress of local self-government reform was retarded due to war and it had piecemeal reconstruction. The democratization of these bodies by abolition of nominations or by extension of franchise, or by granting more powers in some provinces to elected presidents had a marked significance for these institutions. India gained independence in 1947 and had the opportunity to introduce the reforms felt by national leaders during the British rule.

Urban Local Government in Post independence Era

The Constitution of India had made detailed provisions for ensuring protection of democracy in Parliament and State Legislatures. However, the Constitution did not mention about Local Self-Government in urban areas as a clear-cut Constitutional obligation. While Village Panchayats had been included in the Directive Principles of State Policy, there was no specific reference to ULBs, except implicitly in Entry-5 of the State List‡ , which placed the subject of Local Self-Government as a responsibility of the State. So, the country continued to have the municipalities in the form that were inherited from the Britishers. Various states, which came into existence as a result of reorganisations enacted their laws for constituting municipalities. While structurally they were somewhat similar, there was vast difference in the scope of activities. First, we see the structures as they obtain even today.

Structure of the Urban Local Government In India

The statutes of respective States / UTs determine the constitution of the municipalities as earlier. There are two types of Acts namely Municipal Corporation Act and Municipal Act, which prescribe the ULB structure in respective State. In general, there is a deliberative wing and an executive wing. The deliberative wing consists of the elected body and is headed by the Mayor or a Chairman as the case may be. They have the power to extort, advise, warn and criticize, while the executive power is in the hands of Commissioners. The executive wing is headed by the Commissioner, normally an officer of the State Government. In bigger towns they

are officers of the Indian Administrative Service or Senior Provincial Service Officers depending on the importance of the town. In cities like Mumbai, they are one of the senior most civil servants of the State. A general framework can be seen in the following figure 9.1 depicting the organisational chart of South Delhi Municipal Corporation (SDMC).

The SDMC is serving the population of almost 56 Lakhs citizens in 104 wards with a responsibility of monitoring, upgrading and developing civic amenities efficiently. It has more than 40 departments to carry out its responsibilities.

On the other hand, a smaller municipality like Nagar Palika Parishad, Gonda (Uttar Pradesh) to cater to about 125 thousand has limited number of departments and limited roles and functions as well, which are as follows: To ensure running and maintenance of civic services and facilities such

- As water supply and sewage system. To issue license/permits for shops and business establishments.
- To regulate opening/closing shops and markets.
- To run public health services.
- To maintain record of land and properties owned by it.
- To discharge these functions, it has only seven departments: Public Works, Public Health, Water Supply, License, Town Planning, Street Light and Tax. Given the size of the cities across the country, there are bound to be variations. In fact, two prominent patterns have been observed.

Commissioner system

In such a system the Mayor in the Municipal Corporation is usually chosen through indirect election by the Councilors from among themselves for a term of one year, which is renewable. The Mayor generally lacks executive authority. The Councilors act by Committee, usually the Standing Committee with its role of the Steering Committee exercising executive, supervisory, financial and personnel powers. It is composed of elected members. The Municipal Commissioner, a state-appointed officer, is the head of the executive arm of the Municipality. All executive powers are vested in him/her. Although the Municipality is the legislative body that lays down policies for the governance of the city, it is the Commissioner who is responsible for the execution of the policies. The tenure of the Commissioner is dependent on the State

Government. The powers of the Commissioner are those provided by Statute and those delegated by the Corporation or the Standing Committee.

Mayor-in-Council system

This model was introduced in West Bengal in 1984. This system is composed of a Mayor and a Council of elected members with individual portfolios. The Municipal Commissioner serves as the Principal Executive Officer, subject to the control and supervision of the Mayor as the Chief Executive Officer in this model. The city is grouped into wards to form a Ward Committee, consisting of the Councillors elected from the respective Wards. The Ward Committees are subject to general supervision of the Mayor-in-Council, and look after Ward level functions such as water supply, drainage, collection and removal of solid waste, disinfection and health services, housing services, lighting, repairs of certain categories of roads, maintenance of parks, and drains.

There is normally a Directorate of the Municipal Administration, which looks after the matters concerning them, whereas the Corporations may deal with the State Government directly. Normally the Municipal Commissioner is a senior officer than Director Local Bodies, causing the placement of Commissioner directly under control of respective State Department. Maheshwari, (1971) evaluating the relationship between the ULBs and the state governments commented that the control of the State Government over Local Bodies degenerated into spasmodic, intermittent bouts and was often negative.

The Constitution (Seventy-fourth Amendment) Act, 1992

The Government stated that the objects and reasons behind the introduction of Seventy-third Amendment Bill, 1991 which was enacted as the Constitution (Seventy-fourth Amendment) Act, 1992 was that in many States Local Bodies had become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolution of powers and functions. As a result, Urban Local Bodies were not able to perform effectively as vibrant democratic units of self-government. The Act introduced political, functional and fiscal empowerment with reservation of seats to women and other weaker sections (243T), continuity in elected body city government (243U), creation of wards committees (243S), listing municipal functions with the Schedule XII in the constitution and creation of State

Finance Commission (243Y). Among these Schedule XII and 243Y are discretionary whereas other are mentioned as “shall”. Accordingly, states have not devolved the functions as per Schedule XII (Figure 9.1) in many cases, whereas others are implemented as expected.

The 2nd Administrative Reforms Commission stated that no major changes in the structure and functioning of the ULBs have been observed till the 74th CAA, despite rapid urbanisation and consequential increase in the complexities of problems in urban areas. The powers and functions of these bodies varied from state to state as the subject “Local Government” fell into the state List. States had the power to define the role of the ULBs. The 74th Amendment to the Constitution, bestowed upon these municipal bodies the Constitutional status. In terms of the Amendment, the responsibility for taking decisions regarding activities at the grassroots level, which affect people’s lives directly, would rest upon the elected members of the people themselves.

The Amendment conforms to the principal of subsidiary, which has been the determining factor for distribution of subjects between the Centre, States and the Local governments. The 2nd ARC recommended that the reform package for the ULBs must be informed by this principle. The constitutional status of the municipalities has ensured permanency to the entities of self-government with a specific role in planning for development and social justice for the local area.

Ward Committees

Article 243S provides for the constitution and composition of Wards Committees, etc.

1. There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.
2. The Legislature of a State may, by law, make provision with respect to
 - a. The composition and the territorial area of a Wards Committee;
 - b. The manner in which the seats in a Wards Committee shall be filled.
3. A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.
4. Where a Wards Committee consists of
 - a. One ward, the member representing that ward in the Municipality; or
 - b. Two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

5. Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees. The Ward committees have not been found to be very effective. Many political parties have now been talking about area sabhas, but there also not much has happened.

Urban Local Government

Due to inadequate constitutional provisions for the Local Self-Government for urban areas, municipal governance across the country in general was not stable (Vaidya, 2009). Prior to enactment of 74thCAA, quite often the ULBs were found suspended or superseded for indefinite periods of time. Even where they were functioning, their financial position was not satisfactory. The National Commission on Urbanisation, which was appointed in 1985 by the Central Government, gave its report in 1988 and advised for strengthening of the financial position of Urban Local Bodies, for which it suggested the measures as well:

- Develop a mechanism for devolution of funds to Local Bodies from State budgets,
- Allocate more finance in the Five-Year Plans, and
- Strengthen the taxation base. Article 243W of the Constitution states the powers, authority and responsibilities of Municipalities, etc. “Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow: a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-
 - The preparation of plans for economic development and social justice;
 - The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule; b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule”.

Over the years, there was a steady encroachment on the assigned functions and revenues of the Urban Local Bodies by specialised agencies of the State Government. Several states established Infrastructure Boards, which took several of the responsibilities of these municipalities. Many development authorities were established, which took control of the land

related issues. Functions like water supply and sewerage, which are responsibilities of the municipalities were handed over to the state level agencies. The 2nd ARC notes, “the growth of these specialised agencies has weakened the authority of municipal bodies and contributed to their atrophy”. Often these agencies work in isolation. Consequently, ULBs remain ill-equipped in terms of technical manpower.

The impact was most severe on the smaller municipalities and they could not perform effectively. These bodies were also viewed as a threat or as power centres by the state level and centre level politicians. It is equally important to remember that urban areas attracted less attention from politicians and policy-makers due to predominantly rural character of the society.

Responsibilities Multiplicity of Agencies

Multiple agencies are operating at city level, which quite often operate in the similar areas. These include a range of parastatal and para-municipal agencies. State Housing and/or Slum Clearance Board, State level agencies for water and sanitation, State Urban Development Authority (SUDA) for poverty related actions with the support of District Urban Development Authority, Public works Department (for water and roads) and State infrastructure Finance Corporations are operating as parastatal, whereas local level institutions for planning such as Development Authority or Improvement Trust, Local level Water and Sanitation Agency, etc. are operating as para-municipal agencies. Functions listed in the schedule XII are not transferred to ULBs in toto in most of the cases. At times, these agencies have overlapping of functions and do similar work such as housing and infrastructure development done by Housing Boards, Development Authorities and Slum Clearance Board (Tamil Nadu). These agencies accordingly are not accountable to local population. There is a need, therefore, to devise suitable mechanism for better coordination at the local level. The ULB should be treated as mother institution at local level for vertical and horizontal coordination as they represent local population and popular support. In this regard, Schedule XII needs to be reviewed at the national level to determine local accountability and transfer of functions to the ULBs.

Strengthening the Urban Local Bodies

The 2nd ARC noted the Chairperson/Mayor in the Urban Local Government in most states enjoys primarily a ceremonial status. In most cases, the Commissioner, appointed by the State Government, has all the powers^{***}. Often it has been noticed that the elected representative’s end up performing the role of the opposition, and where Municipal

Commissioners are headstrong, situations of gridlock are not infrequent (Jha, 2018). It recommended that the functions of chairing the Municipal Council and exercising executive authority should be combined in the same functionary, i.e., Chairman or Mayor, while the Commissioner should perform the functions delegated to him/her. It even recommended powers to the Local Bodies to select the Commissioner/Chief Officer on the ground that the elected Mayor or Chairperson is accountable to the electorate. At this stage, tenure is an important issue. The tenure of Mayor or Chairperson, unlike the current practice of one year in many states, should be uniformly five years across the country so that a continuity and accountability is established. Similarly, the tenure of Commissioner or Chief Executive Officers should also be fixed for a reasonably good period. A survey by Janagraha (2016) has found that average age of the Commissioner in the country is 11 months. These points need due consideration.

Role of the Urban Local Bodies in Flagship Programmes

Jawaharlal Nehru National Urban Renewal Mission and now the Smart Cities Mission and Atal Mission for Rejuvenation and Urban Transformation are important programmes of the government of India, which emphasized central role of the ULBs in planning for the vision of the cities with particular emphasis on citizens participation. However, Sama Khan et al (2018) feel that the proposals reveal an excessive reliance on consultants, lack of effective participation, and a common set of interventions that are accepted as “smart solutions” and a shift towards greater control of the ULBs by the State governments.

Rural Local Government

Introduction

The concept of local Government is based on the principle of subsidiary because it extends complements and discloses the principle of separation of powers. A common interpretation is that the decentralized Government is closer to the people and is better suited to respond to the preferences or needs of its citizens in certain subject matters. As the Local Government is a state subject, Article 243G of the Indian Constitution mandates that the Legislature of a State may by law endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of Local Self - Government. Accordingly,

following broad responsibilities have been entrusted to the Panchayats at the appropriate level for the subject matters specified in the 73rd Constitutional Amendment Act (CAA):

- The preparation of plans for economic development and social justice; and
- The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the XIth schedule.

Rural Local Government bodies in India, unlike in the urban areas, are organically linked at the village, block and district levels. Hence, the responsibilities are also distributed among them. The three-tier system owes its genesis to the Balwant Rai Mehta Committee, which was constituted in 1957 to strengthen the Panchayat system to take over the entire general administration and development of the district or the sub division, excluding functions such as law and order, administration of justice and selected functions pertaining to revenue administration. Thus, Panchayati Raj Institutions, i.e. Gram Panchayat (GP), Block Panchayat and District Panchayat, are envisaged to deliver governance. In this Unit, we will focus on the structure, role and responsibilities of the Rural Local Government.

Rural Local Government: Village Level

Democratic decentralization is manifested in the establishment of the Panchayats. Under the 73rd CAA, the GP has a primary role to play in the socio-economic development of the Panchayat area.

Structure GP is an elected body, which is responsible for making decisions such as approving plans and budgets, implementation of programmes and reviewing their progress. It consists of the Panchayat members (elected from each ward in the village) and the Sarpanch. It is accountable to the Gram Sabha, which is an assembly of all the registered voters of that GP. The Sarpanch / President of the GP is its executive head. He convenes and presides over the meetings of the Gram Panchayat. All the elected representatives of the GP with the help of functionaries of various line departments, and Panchayat functionaries collectively deal with the various aspects of the local development such as public health, livelihood generation, education, provision of drinking water, sanitation etc.

Standing Committees of the Panchayats

The states through statutory enactments or rules have provided for the constitution of various standing committees, which are depicted in table 8.1 (in Rajasthan) to enable them to pay focused attention to the specific subject matters. For example, Village Education Committee

looks into all education-related matters at the Panchayat level. The Standing committees may also be formed, if a programme of Union Government guides so. For example, Village Water and Sanitation Committee has been constituted in each Panchayat for the implementation of Swachh Bharat Mission.

Administration and Establishment

- Administrative action related to the sale and transfer of residential plots. Resolution of land boundary disputes.
- Removal of encroachment on public land like grazing land.
- Issue of land title for old buildings.
- Monitor the functioning of line department functionaries devolved to GPs.
- Recommend disciplinary action against deviant functionaries.

Finance and Taxation

- Mobilise financial resources for various development works of public interest.
- Issue administrative and financial sanction to use up to rupees 2 Lakhs. From own fund of the GP.
- Sanction up to a certain limit for the transport expenses for institutional delivery.
- Impose and collect taxes, penalties and fines.

Development and Production

- Take up activities like training of farmers for improved agriculture practices.
- Grant scholarships to girl students studying agriculture. Organise exposure visits of the farmers to other states to learn innovative farming practices.
- Organise an exhibition of agricultural implements and farming practices.
- Distribute improved seeds, etc.
- Promote dairy, fishery and other allied activities.

Education

- Ensure universal enrollment.
- Help to distribute free textbooks for students up to XIIth standard.
- Monitor attendance of teachers, distribution of scholarship to SC/ST students, quality of mid-day meal, facilities in school, etc.

Social Protection and Social Justice

- Provide support for effective implementation of programmes related to public health and child development like immunisation, institutional delivery and supplementary nutrition in anganwadis for children, adolescent girls and pregnant lactating mothers.
- Recommend social assistance like pensions and scholarships for the old, widows and persons with disability.
- Promote widow remarriage, and inter-caste marriage.
- Organise the de-addiction camps.

A Panchayat may constitute a sixth Standing Committee for any of the subjects as it deems fit, if it lies in its jurisdiction, in Rajasthan. The rules across the country stipulate that each member of the GP would be a member of at least one such Committee.

Functionaries

GPs are assisted by two types of employees & own employees and employees of various line departments. In some states, the State Government has provided them more employees whereas, in some, one finds only a skeleton staff. For example, in Karnataka, the GPs have one Panchayat Development Officer (PDO), one Secretary and one Accounts Assistant, whereas in Rajasthan there is only one Village Development Officer and one Assistant. The village-level Officer is supposed to keep records of the GP standing committees, other committees, Gram Sabha, and Ward Sabha. They are also supposed to coordinate the preparation of the Gram Panchayat Development Plan (GPDP). They submit monthly accounts to the GP. The Secretary normally assists the PDO in general administration. The GPs may also hire contractual staff as per requirement, depending on the resource availability.

Role and Responsibilities of the Gram Panchayat

The role and responsibilities of Panchayats have seen tremendous changes over the years. Village Panchayats were envisioned as units of self-Government when the Constitution was framed. In pursuance to that, they were given responsibility for the socio-economic transformation of village life through people's own democratic and cooperative organisations with the Government providing technical services, supply and credit under the Community Development Programme (CDP), which was launched on October 2, that is on birthday of Mahatma Gandhi. The programme was based on the experiences within the country

and abroad, the recommendations of the Fiscal Commission, and the Grow More Food Enquiry Committee, 1952. The CDP had laid emphasis on the all-around development of the whole community with special emphasis on weaker and underprivileged sections through the use of area development, selfhelp and integrated approaches. However, it could bring neither the expected changes in improving the conditions of rural masses nor much development in the area of agriculture. The reasons were attributed to it not becoming a people's programme. The people did not get a sense of ownership. Moreover, the untrained extension workers lacked coordination. Additionally, there was a lack of functional responsibility at the block level that led to a good deal of confusion and inter-departmental jealousy.

Subsequently, several committees had been appointed from time to time to make these bodies vibrant. Notable among them were committees headed by Balwant Rai Mehta, Asoka Mehta, C.H. Hanumantha Rao, G.V.K. Rao and L.M.Singhvi. The 73rd CAA gave them constitutional status. The Gram Panchayats have been mandated for the preparation of the Gram Panchayat Development Plan (GPDP) for economic development and social justice at the village level. The Gram Panchayats also have a significant role to play in the effective and efficient implementation of flagship schemes/ programmes on subjects of national 131 Rural Local Government: Structure, Role and Responsibilities importance for the transformation of rural India.

It was expected that there would be meaningful decentralization of powers. However, the apathy of states across the country meant that they still faced challenges in becoming true local self-government. There were delays and inadequacies in the preparation of village Panchayat plans. Often Panchayats could not spend the earmarked funds sufficiently, sometimes even to the extent of 10 per cent (Kannan, n.d.). While efforts are continuing, the People's Plan Campaign (PPC) is now attempting to give them a bigger role and greater responsibilities. A similar experience with the People's Plan in Kerala, which was launched in 1997, had attracted a lot of national and international attention and was hailed as a good example of strengthening the grassroots democracy. The present campaign is somewhat on similar lines with additional inputs like technology and scale.

People's Plan Campaign (PPC)

Launched in 2018, the Campaign was implemented in 28 States and 6 UTs and prepared the financial plan at the GP level. The PPC is a strategy adopted by the Union Government for

ensuring the preparation of plans in a campaign mode. It is comprehensive and based on a participatory process, which involves the full convergence with schemes of all related central ministries/line departments related to 29 subjects enlisted in the Eleventh Schedule of the Constitution. The main objectives of PPC are:

- Preparation of participatory, comprehensive GPDP, BPDP and DPDP in the Gram Panchayats, Block Panchayats and District Panchayats respectively in a time-bound manner across the Country.
- Evidence-based assessment of progress made during previous years, and consideration of proposals for next year for all 29 subjects of XIth Schedule.
- Organise structured Gram Panchayat meetings with active participation and presentations by frontline workers/ supervisors related to 29 subjects listed in XIth Schedule.
- Organise meetings of Bal Sabha and Mahila Sabha apart from Ward Sabha before organising Gram Panchayat meetings, which would facilitate enumeration and articulation of demands of children and women
- Integration of Sustainable Development Goals (SDGs) in the GPDP, the BPDP and DPDP.
- Strengthening the role of elected representatives and women in the Self-Help Groups (SHGs) under Deendayal Antyodaya Yojana-National Rural Livelihoods Mission (DAY-NRLM). Undertake Public Information Campaign with public disclosure on schemes, finances, etc. of all schemes & programmes in the GP Office and on Gram Samvaad Application.

To ensure that Gram Panchayats fulfill the objectives envisaged in the Constitution under Art. 243G, 13 core focal areas have been identified to guide the GPs to align their development activities accordingly. These areas are mentioned below:

- The PRIs are mandated as responsible for the delivery of critical public services including water supply, sanitation, roads, drainage, street lighting, health, education and nutrition etc. besides, the key local development challenges faced by the country viz. poverty, gender, livelihood generation etc. in sync with the SDGs.
- To develop and use locally relevant indicators on issues of development, including aligning actions with localising SDGs relating to economic development and poverty reduction. They should take up activities, that would increase local production and

productivity, increase employment and employability, improve market access and marketability of the local produce, promote value addition, and create productive infrastructure.

- The GPs should focus on improving the quality of the human development index through anganwadis, schools, hospitals and enhancing access to them.
- To ensure improving wellbeing of vulnerable and marginalised section & SCs, STs, OBCs, minorities, persons with disabilities, elderly people, women, children, bonded labourers, child labourers, distress migrants, manual scavengers, victims of trafficking, etc.
- The GPs could plan towards the conservation of biological resources.
- Services to be provided at the GP level, include issuances of certificates, compulsory registration and issuance of birth and death certificates, marriage certificates, migration certificates, issues of licenses/permits and social security pensions, which should be given special priority with an emphasis on electronic delivery of services.
- Emphasis on accountability, transparency and proactive disclosures and community-based monitoring of budget and expenditure.
- Play a major role in skill-building and ensure that the most vulnerable sections including women participate in the programme. They would have to generate awareness regarding skills related programmes, facilitate the mobilisation efforts, and create a database for skill demand and placement based on market assessment.
- Gender mainstreaming across all activities is an integral part of the preparation of GPDP. The GPs should plan activities for the empowerment of women.
- The GPs should adhere to the Rural Area Development Plan Formulation and Implementation (RADPFI) guidelines describing the process of spatial planning for sustainable development.
- Local Institutions can play a very important role in solving/mitigating the impact of disasters.
- To ensure e-enablement of Panchayat through the use of Panchayat Enterprise Suites (PES).

- The GPs should identify gaps and priorities needs relating to infrastructure development. This includes repairs, restoration, up gradation, maintenance of public assets and new construction of identified infrastructure.

The final GPDP in the form of a brief Presentation of the GPDP document with project-wise details and discussion on the prepared plan is to be placed before the Gram Panchayat Committee by the GP, in the presence of officials from all line departments and the community. It is only the third year of the approach, so results are yet to be seen. However, extensive use of technology has ensured that there is greater transparency in the activities. At the same time, it could still take some time for the process to be understood by all as it is highly technocratic and may be beyond the capacity of GP members and the GP level functionaries, despite extensive capacity building and training efforts.

Rural Local Government: Block Level

Balwant Rai Mehta Committee envisaged Panchayat Samitis (PSs) at the block level to look into the functions in an area that is “large enough for functions which the Gram Panchayat cannot perform and yet small enough to attract the interest and services of residents”. They are also known as Block Panchayats (BPs). The BP/PS is responsible for integrating and prioritizing the GPDP and helping in the implementation of those plans.

Structure

All the Panchayats in the block are represented in the PS. A PS, typically consists of (i) directly elected members from the territorial constituencies, (ii) all members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the BP area, and (iii) chairpersons of all the Panchayats falling within the PS. It functions as a link between the Gram Panchayat and Zilla Panchayat. The principal function of the Panchayat Samiti is to coordinate the activities of the various Panchayats within its jurisdiction. It may also advise the Panchayats on measures for improving functioning of the Panchayats. The President of the BP has prime responsibility for its effective functioning. For example, in West Bengal, it is the Sabhapati who shoulders all the administrative and financial responsibilities of the Panchayat Samiti. It is her/his duty to maintain and preserve all the important documents and necessary papers of the Samiti. The Sabhapati may have to discharge any other special duty as well that the State Government may entrust. The President also convenes and presides over the meetings of the PS.

Standing Committees of the Block Panchayats

The BP also functions through various standing committees. However, the number varies in states. For example, West Bengal has provided for 10 Standing Committees at the Samiti level:

- Economic Development and Planning
- Public Health and Environment
- Public Works and Transportation
- Agriculture, Irrigation and Cooperative
- Education, Culture, Information and Sports
- Women and Child Development, and Social Welfare
- Forest and Land Reforms
- Fisheries and Animal Husbandry
- Food and Public Distribution
- Cottage Industry, Electricity and Non-conventional Power.

Rajasthan has provided for 5 standing committees, with the option to the BP to constitute an additional one, if deemed necessary.

Functionaries

The Block Development Officer and the officers of various line departments at the block level provide the necessary support to the Panchayat Samiti in all matters relating to planning, execution and administration of development work.

Role and Responsibilities of Block Panchayats

Since their inception, they had limited powers and resources and the essential idea that all developmental activities should flow only through the BPs lost ground. Moreover, important schemes like Small Farmers Development Agency (SFDA), Drought Prone Areas Programme (DPAP) and Institute for Transportation and Development Policy (ITDP) were not brought within the purview of the elected institutions even in states like Maharashtra and Gujarat, where effective financial decentralisation had taken place. Centralising tendencies seen in due course resulted in existence of these bodies without adequate functions and authority. The position of these institutions was further weakened due to the creation of a large number of parastatals,

which were assigned many other functions legitimately envisaged in the domain of PRIs (Second ARC, 2007).

Block Panchayat Development Plan

In the latest scheme, the PSs are responsible for the preparation of the Block Panchayat Development Plan (BPDP) through a participatory, inclusive and transparent process with a modified bottom-up approach. The PSs need to assess the development needs by consolidating gaps ascertained in the GPDPs through the Mission Antyodaya data. The BPDP process, just like the GPDP, envisages need based planning, supplementing the GPDPs. Further, it would also strive to contribute to national commitments e.g. SDGs and national priorities. Those projects and activities, which are to be implemented in more than one GP area and which should be implemented at the BP level because of its higher institutional capacity and technical competence, are to be considered by the BP for the BPDP. The plan activities of the line departments operating at the BP level have also to be integrated into the BPDP, although the same may be implemented by the line departments themselves.

Focus Areas of Planning at the PS level are:

- Economic Development and Income Generation
- Agri-allied and Agri-processing Units
- Strengthening of Supply Chain Management
- Development of cold chain for perishable products]
- Initiatives for Rural Market Hub
- Developing Robust Panchayat-Private Partnership
- Waste to Wealth
- Promotion of Livelihood Opportunities in the Secondary and Tertiary Sectors
- Rural Industry Cluster
- Natural Resource Management
- Disaster Risk Management
- Ensuring Social Justice
- Education and Healthcare
- Basic Services
- Sanitation & Drinking Water.

Rural Local Government: District Level

Zilla Parishad is the third tier of the Panchayati Raj system, which functions at the district levels in all states.

Structure

A Zilla Parishad (ZP) or District Panchayat (DP) normally consists of - (i) directly elected members from as many territorial constituencies, (ii) all members of the Lok Sabha and of the State Legislative Assembly representing constituencies which comprise wholly or partly the Zilla Parishad area, (iii) all members of the Rajya Sabha registered as electors within the Zilla Parishad area, and (iv) chairpersons of all the PSs falling within the Zilla Parishad area.

Standing Committees of the District Panchayats

Just like the GPs and PSs, the ZPs also constitute the standing committees. In this regard, rules are provided by the respective State Government. The natures of the standing committees as well as their number differ from State to State. For example, Kolar Zilla Panchayat in Karnataka has the following Standing Committees:

General Standing Committee

It performs functions relating to the establishment matters; and communications, buildings, rural housing, village extensions, relief against the natural calamities and allied matters and all miscellaneous residuary matters.

Finance, Audit and Planning Committee

- finances of the Zilla Panchayat, framing of budgets, scrutinising proposals for an increase of revenue, examination of receipts and expenditure statements, consideration of all proposals affecting the finances of the Zilla Panchayat and general supervisions of the revenue and expenditure of the Zilla Panchayat; and
- The Plan priorities, allocation of outlays to developments, horizontal and vertical linkages, implementation of the guidelines issued by the State or Union Government, regular review of planned programmes, evaluation of important programmes and small saving schemes.

Social Justice Committee

It performs the functions relating to:

- Promotion of educational, economic, social, cultural and other interests of the Scheduled Castes and Schedule Tribes and Backward Classes;
- Protecting them from social injustice and all other forms of exploitation;

- Amelioration of the Scheduled Castes and Schedule Tribes and Backward Classes; and
- Securing social justice to the Scheduled Castes and Scheduled Tribes, women and other weaker sections of the society.

Educational and Health Committee

- The Committee is in-charge of all educational activities of the Zilla Panchayat;
- Undertakes the planning of education in the district within the framework of the National Policy, and the National and State plans;
- surveys and evaluates the educational activities of the Zilla Panchayat;
- Performs such other duties pertaining to education, adult literacy and cultural activities as the Zilla Panchayat may assign to it; and
- Looks into health services, hospitals, water supply, family welfare and other allied matters.

Agriculture and Industry Committee

It is responsible for:

- ❖ Agricultural production, animal husbandry, co-operation, contour bunding and reclamation;
- ❖ Village and cottage industries; and
- ❖ Promotion of industrial development of the district.

Similarly in Tamil Nadu, for the purpose of assisting the District Panchayat in exercising such of its powers, discharging such of its duties and performing such of its functions specified under The Tamil Nadu Panchayats Act, 1994 Act, a District Panchayat may constitute Standing Committees for dealing with:

- ❖ Food and agriculture;
- ❖ Industries and labour;
- ❖ Public works;
- ❖ Education; and
- ❖ Health and welfare, including prohibition.

Functionaries

Comparatively, ZPs have greater manpower at their disposal. An Officer of the rank of the Deputy Commissioner is normally the Chief Executive Officer of the ZP, who is appointed by the State Government. The Government may also appoint an Additional Chief Executive

Officer for the DP on such terms and conditions as may be prescribed. The ZPs are also provided with a Chief Accounts Officer and a Chief Planning Officer. The Government also deputes employees, from time to time, such number of officers of Group A, B and C services of the State as it deems necessary. However, the Government retains the power to affect the transfer of the officers and officials so posted from one district to another district.

Role and Responsibilities of the Zilla Parishad

The preparation of the District Panchayat Development Plan (DPDP) for rural areas is a time-bound process. It is an essential part of a chain of plans to be prepared in cascading mode. It is to be prepared after the completion of GPDPs by the GP and Block Panchayat Development Plan by the PS, in their respective area. As per the guidelines, it should provide building blocks to Draft the DPDP to be prepared by the District Planning Committee for the district as a whole. The DPDP should ideally match with people's needs, basic services and their aspirations, prioritised in accordance with the available resources. It should be prepared through a participatory, inclusive and transparent process (GoI, 2021). After the preparation and approval of GPDPs and BPDPs at GP and PS levels respectively, they are to be forwarded to the DP. Those projects and activities, which are to be implemented in more than one GP area but cannot be accommodated in the BPDP and also those projects and activities, which are to be implemented in more than one block area but cannot be included in the BPDP for want of technical competencies or lack of resources, are to be considered by the DP for inclusion in the DPDP. Besides, the Plan would include those activities, which the DP needs to implement following the principles of subsidiary

PRIs: Issues and Challenges

- ❖ The top-down approach, since the beginning has hampered the local Government institutions in effectively discharging their responsibilities. The approach never allowed these institutions to develop a sense of ownership. It remains to be seen as to how political compulsions of the political leaders at the state and central level would be managed to let the power and authority flow adequately to these levels.
- ❖ Capacity constraints at the local level have also affected the functioning of Panchayats significantly. While several efforts have been made in the past as well, the problem has continued. The Capacity Building programmes carried out by the various state institutes of rural development have not been felt adequate. An enabling environment needs to be

created, where nongovernmental organisations are also involved appropriately as they have demonstrated better capabilities in mobilizing people, and building capacity.

The problems of funds, functions and functionaries have plagued Panchayats in the past. Though the funds' position has to some extent been addressed by the 14th and 15th Finance Commissions, the Panchayats need to find own sources of revenue or alternative sources like Public-Private Partnership. However, the states are yet to fully transfer control over identified subjects. Even where the state Governments have devolved several subjects to different levels of the PRIs, they have not given appropriate functional responsibilities to newly established levels of rural local bodies where they did not exist before or not given appropriate guidelines to the existing ones for delivering their functions.

Similarly, in many cases, adequate manpower has not been devolved to enable them to play their role effectively. Even the employees that have been put at the disposal of the Panchayats, do not have administrative control over them. Hence, it is necessary to adequately deal with above mentioned issues to strengthen the rural local government for economic development and social justice.

Course Outcomes (COs) – 5

After completing this unit, students will be able to:

1. Explain the structure of rural and urban local governance.
2. Describe the functions of Panchayats and Municipalities.
3. Analyse the role of local bodies in development administration.
4. Evaluate the impact of decentralisation in India.
5. Interpret the challenges and prospects of local self-government.

Programme Outcome (PO) – Any One

PO1: Democratic Participation and Governance Awareness

Students will develop an understanding of grassroots democracy and the functioning of local governance institutions.

S.NO	QUESTIONS	LOCF		
FIVE MARKS QUESTIONS				
1	What is local self-government?	CO1	PO1	K1
2	Explain the features of rural local government.	CO2	PO1	K2
3	Write a note on Panchayati Raj system.	CO2	PO1	K2

4	Describe the three-tier structure of Panchayati Raj.	CO2	PO1	K2
5	Explain the functions of Gram Panchayat.	CO2	PO1	K2
6	Write a note on Zila Parishad.	CO2	PO1	K2
7	What is urban local government?	CO1	PO1	K1
8	Describe the types of urban local bodies.	CO2	PO1	K2
9	Explain the functions of Municipal Corporations.	CO2	PO1	K2
10	Write a note on Municipal Councils.	CO2	PO1	K2
EIGHTE MARKS QUESTIONS				
1	Analyse the structure and functions of Panchayati Raj Institutions.	CO4	PO1	K4
2	Discuss the significance of the 73rd Constitutional Amendment Act in rural governance.	CO4	PO1	K4
3	Examine the composition and functions of urban local bodies.	CO4	PO1	K4
4	Evaluate the importance of the 74th Constitutional Amendment Act.	CO4	PO1	K4
5	Analyse the role of local self-government in India.	CO4	PO1	K4
6	Discuss the functions of Gram Panchayat, Panchayat Samiti, and Zila Parishad.	CO2	PO1	K2
7	Examine the challenges faced by rural local bodies.	CO4	PO1	K4
8	Analyse the problems of urban local governance.	CO4	PO1	K4
9	Discuss the role of local bodies in socio-economic development.	CO4	PO1	K4
10	Evaluate the effectiveness of decentralisation in India.	CO4	PO1	K4

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