CONSTITUTIONAL ADMINISTRATION IN INDIA

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Reviewer

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Constitutional Administration in India

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INTRODUCTION

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India, also known as *Bharat*, is a Union of States. It is a Sovereign Socialist Secular Democratic Republic with a parliamentary system of government. The Republic is governed in terms of the Constitution of India, which was adopted by the Constituent Assembly on 26 November 1949, and came into force on 26 January 1950. The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advice the President, who shall exercise his/her functions in accordance to the advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Indian Constitution is the document that was created after the long struggle of India's independence. It embodies the ethos of the Indian freedom struggle and the dreams of the Indian people. The Constitution of India envisions India to be a 'democratic, secular, socialist, republic'. It lays down the laws of the land, provides the framework for administration of governance and also gives direction to policies to be undertaken by the governments at the state and the Central level. The country has a federal form of government. The Union government is divided into three separate but interrelated branches, namely legislative, executive and judiciary. Like the British parliamentary model, the leadership of the executive is drawn from and responsible to the legislative body, i.e., Indian Parliament. Article 50 of the Constitution stipulates the separation of the judiciary from the executive. However, the executive controls judicial appointments and many of the conditions of work.

Over 65 years after independence, political activities impact the everyday life of Indian citizens. In fact there is no area in the personal or professional life of citizens that remains untouched or uninfluenced by the political conditions of the country. There are a wide variety of political issues in India; some of them are national while others are regional. These issues threaten the unity and the integrity of the nation. Some of these issues have been discussed in detail in this book.

This book, *Constitutional Administration in India*, is written in a self-instructional format and is divided into four units. Each unit begins with an Introduction to the topic followed by an outline of the Unit objectives. The content is then presented in a simple and easy-to-understand manner, and is interspersed with Check Your Progress questions to test the reader's understanding of the topic. A list of Questions and Exercises is provided at the end of each unit, and includes short-answer as well as long-answer questions. The Summary and Key Terms section are useful tools for students and are meant for effective recapitulation of the text.

UNIT 1 FRAMING OF THE INDIAN CONSTITUTION

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Structure

1.0 INTRODUCTION

Most countries in the world have a Constitution. The Constitution serves several purposes. First, it lays out certain ideals that form the basis of the kind of country that we as citizens aspire to live in. A Constitution tells us what the fundamental nature of our society is. A Constitution helps serve as a set of rules and principles that all persons in a country can agree upon as the basis of the way in which they want the country to be governed.

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Making of Indian Constitution was in progress even before the country attained independence in 1947. Indian nationalism took birth in the nineteenth century as a result of the conditions created by British rule. Nationalist leaders of India demanded many reforms in constitutional arrangements during the colonial rule. To meet some of their demands, the British enacted some legislations, such as the Government of India, Act 1858; the Indian Council Act, 1861; the Indian Council Act, 1892; the Indian Council Act, 1909; the Government of India Act, 1919; and the Government of India Act, 1935. The Constituent Assembly of India was elected in 1946 to write the Constitution of India. Following India's independence from Great Britain, its members served as the nation's first Parliament.

The first historical session of Indian Constituent Assembly held its meeting on 9 December 1946 under the chairmanship of Dr. Sachidananda Sinha. On 11 December, it elected Dr. Rajendra Prasad as its permanent president. The membership of the Constituent Assembly included all eminent Indian leaders. Pt. Jawaharlal Nehru introduced the objectives Resolution on 13 December 1946. After a full discussion and debate, the Constituent Assembly passed the objectives Resolution on 22 January 1947. It clearly laid down the ideological foundations and values of the Indian Constitution and it guided the work of the Constituent Assembly. When on 15 August 1947, India became independent, the Constituent Assembly became a fully sovereign body and remained so till the inauguration of the Constitution of India. During this period, it acted in a dual capacity: first as the Constituent Assembly engaged in the making of the Indian Constitution, and secondly as the Parliament of India, it remained involved in legislating for the whole of India. For conducting its work in a systematic and efficient manner, the Constituent Assembly constituted several committees which were to report on the subjects assigned to them. Some of these committees were committees on procedural matters while others were committees on substantive matters. The reports of these committees provided the bricks and mortar for the formulation of the Constitution of India.

In the making of the Constitution, a very valuable role was played by the Drafting Committee. The Committee was constituted on 29 August 1947 with Dr. B. R. Ambedkar as its chairman. The Drafting Committee submitted its report (draft) to the Constituent Assembly on 21 February 1948 and the Constituent Assembly held debates on it. On the basis of these discussions, a new draft was prepared by the Drafting Committee and submitted to the Assembly on 4 November 1948. From 14 November 1949 to 26 November 1949 the final debate was held on the draft. 26 November was observed as the Independence Day every year as long as the British Rule in India. Later, in order to perpetuate the memory of the great pledge of the 'Purna Swaraj Day' 26 January 1950 was chosen to be the day of the commencement of our Constitution and was declared as Republic with Dr. Rajendra Prasad as its first president.

On completion of the constitution-making task of the Constituent Assembly, Dr. Rajendra Prasad said: 'I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits and demerits of the Constitution

which it has framed, I am content to leave that to others and posterity.' This unit deals with the framing of the Indian Constitution.

1.1 UNIT OBJECTIVES

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After going through this unit, you will be able to:

- Trace the history of the Constitution of India
- Discuss the composition and role of the Constituent Assembly
- Describe the philosophy of the Constitution and the Preamble
- Evaluate the fundamental right and duties incorporated in the Constitution
- Assess the directive principles of state policy

1.2 HISTORY OF THE INDIAN CONSTITUTION

The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework as well as the primary objectives for the various organs of the government. The Constitution of a country is the basic structure of the political system that governs people. It establishes a governmental structure that exercises power, and at the same time ensures individual freedom and liberty. Further, it recommends a method for the settlement of the power of the state through the principles of state organization. Besides, the Constitution is also responsible for defining the powers of the main elements of the states, segregating their responsibilities as well as regulating their relationships amongst each other and with the people. In a nutshell, the Constitution serves as the 'Fundamental Law' of a country. Any other laws made in the country must be in conformity with the Constitution in order to be legal.

The Constitutions of a majority of countries were a result of a deliberate decision due to the necessity to have relevant documents, as stated above. Similarly, the Constitution of the Indian republic is the result of the research and deliberations of a body of eminent representatives of the people who sought to improve the system of administration.

The structure of Indian administration shows the effects of the British rule. Several functional aspects including the education system, public services, political set-up, training, recruitment, official procedure, police system, district administration, revenue administration, budgeting, and auditing began at the time of the British rule. The British rule in India can be categorized into two phases:

(i) The Company Rule until 1858

(ii) The Crown Rule during 1858 –1947

The latter period saw the gradual rise of the Indian constitutional structure in different phases, which are elaborated in the following sections.

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1.2.1 Government of India Act, 1858

The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown. The Company's rule was, thus, terminated and the administration was carried out in the name of the Crown through the Secretary of the State. The Secretary assumed the powers of the Company's Board of Directors as well as the Board of Control. The Secretary of State, accountable to the British Parliament, needed to be supported by the Council of India consisting of 15 members. The Crown was required to appoint eight members for the Council, while the Board of Directors was to elect the remaining seven. The main features of this Act were as follows:

- It made the administration of the country unitary as well as rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant Governor headed by his executive council, yet the provincial governments were mere agents of the Government of India. They had to function under the superintendence, direction and control of the Governor-General in all matters related to the governance of the province.
- It made no provision for separation of functions. The entire authority for the governance of India—civil, military, executive and legislative was handed over to the Governor-General of the Council, who was accountable to the Secretary of the State.
- The Secretary of the State had absolute control over the Indian administration.
- The entire machinery of administration was made bureaucratic.

The Act of 1858 was initiated for 'the better Government of India'. Thus, it introduced many significant changes in the home government. However, these changes were not related to the administrative set-up of India. Major changes were made in the Constitution of India after the severe crisis of 1857–58. There were many reasons behind the introduction of these changes. All legislative procedures were centralized by the Charter Act of 1833. The sole authority for legislating and passing decrees, while implementing them for the economy, rested with the Legislative Council (Centre). Though the functioning of the Legislative Council was set up by the Charter Acts of 1833, the Act was not followed properly. The Council resulted into a debating society or a Parliament on a smaller scale, claiming all privileges and functions of the representative body. While acting as an independent legislature, the Council did not function well with the home government. As a result, the first Council Act was passed in 1861 after holding discussions between the home government and the Government of India.

1.2.2 Indian Council Act, 1861

The Indian Council Act, 1861 introduced a representative institution in India for the first time. As per this Act, the Executive Council of the Governor-General was to comprise some Indians as non-official members for transactions of legislative business. It initiated the process of decentralization by restoring the legislative powers

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to the Bombay and the Madras Presidencies. Another feature of the Act was its statutory recognition of the portfolio system.

If we see in depth, the Indian Council Act was a part of a legislation that was passed by the Parliament of Great Britain in 1861, which converted the Executive Council of the Viceroy of India into a Cabinet on the portfolio system. This cabinet had six ordinary members, each of whom was in charge of an independent department in the Calcutta Government comprising home, government, revenue, law and finance, and public works (post 1874). The Military Commander in Chief worked with the Council as a special member. Under the provisions of the Act, the Viceroy was allowed to overrule the Council when he deemed it necessary.

The Act offered many advantages to the members of the legislative council. They could discuss legislation and give their inputs or suggestions. The legislative power that was taken away by the Charter of 1833 was restored through this Act. On the other hand, there were some drawbacks of the Act as well. The members of the council were not allowed to implement any legislation on their own.

The Act added a fifth member to the executive council of the Viceroy. The member was assumed to be a gentleman of legal professional service and a jurist. The Act further gave powers to the Governor-General to enact rules for convenient business transactions in the Council. Lord Canning used the power to pioneer the portfolio system in the Government of India. Until then, the Government's rules administered the executive council as a whole due to which all official documents were brought under the notice of the council members.

As per the provisos of the Act, Canning divided the government amongst the council members. With this, the foundation of the Cabinet government was formed in India. The Act further declared that each administrative branch would have its own spokesman and head in the government, who would be responsible for the entire administration and defence. The new system witnessed the daily administrative matters taken care by the member-in-charge. In important cases, the concerned member used to present the matters before the Governor-General and consult him before taking any decision. The decentralization of business brought in some efficiency in the system, however, it could not be accomplished thoroughly.

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

The Act reinstated the legislative powers of implementing and amending laws to the provinces of Madras and Bombay. Nevertheless, the provincial councils could not pass any laws until they had the consent of the Governor-General. Besides, in

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few matters, the prior approval of the Governor-General was made compulsory. After the Act, the legislative councils were formed in Bengal, Punjab and the north-western provinces during 1862, 1886, 1889, and so forth.

The Act significantly laid down the mechanical set-up of the government. There were three independent presidencies formed into a common system. The legislative and the administrative authority of the Governor-General-in-Council was established over different provinces. Further, the Act also gave legislative authority to the governments of Bombay and Madras. It laid many provisos for creating identical legislative councils in other provinces. This led to the decentralization of legislative powers which culminated in autonomy grants to the provinces under the Government of India Act, 1935.

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

1.2.3 Indian Council Act, 1892

It is important to understand the evolution of this Act. The Indian Constitution was incepted after the Act of 1861. The legislative reforms created under the Acts of 1861 failed miserably in meeting the demands and aspirations of the people of India. The small elements of non-officials, which mainly comprised big *Zamindars*, Indian princes or retired officials, were entirely unaware of the problems of the common man. Thus, the commoners of India were not happy.

The nationalist spirit began to emerge in the late 19th century. The establishment of universities in the presidencies led to educational developments in the country. The gulf between the British and the Indians in the field of Civil Services was not liked by the Indians. The Acts enacted by Lord Rippon, that is, the Vernacular Press Act and the Indian Arms Act of 1878, infuriated Indians to a great extent.

The controversy between the two governments over the banishment of 5 per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885. The main aim of the Congress was to organize public opinions in India, make the grievances public and demand reforms from the British Government.

Initially, the attitude of the British Government towards the Indian National Congress was good but it changed when Lord Dufferin attacked the Congress from the front. He tried to belittle the significance of the Congress leaders and ignored the importance of the movement launched by the Congress. He secretly sent proposals to England to liberalize the councils and appoint a committee which would plan the enlargement of the provincial councils.

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As a result, a Committee Report was sent to the home authorities in England to make changes in the Councils' composition and functions. The Report was aimed at giving Indians a wider share in the administration. In 1890, the Conservative Ministry introduced a bill in the House of Lords in England based on these proposals. The House of Lord took two years to adopt measures in the form of the Indian Council Act of 1892.

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

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

The Indian Council Act of 1892 also brought in many new rules and regulations. However, the only significant feature of the Act was the introduction of election procedure. The term 'election' was carefully used in the Act. In addition to the elected official members, the Act pronounced that there should be five non-official members. It further said that these members should be elected by the official members of the provincial legislatures of Bombay, Madras, Calcutta, the north-western province and the Calcutta Chamber of Commerce. The Governor-General had the authority to nominate the five non-official members.

The bodies were allowed to elect the members of District Boards, Municipalities, Universities and the Chamber of Commerce but the election methods were not clearly mentioned. The elected members were officially regarded as 'nominated' in spite of the fact that the recommendations of each legislative body was taken into consideration for the selection of these members. Often the person favoured by majority was not considered 'elected', but was directly recommended for nomination. According to this Act, the members were allowed to make observations on the budget and give their suggestions on how revenue can be increased and expenditure can be reduced. The principle of election, as introduced by the Acts of 1892, was used in the formation of the Constitution as well.

Nevertheless, there were numerous faults and drawbacks in the Acts of 1892 because of which the Act could not satisfy the needs of the Indian nationalists. It was criticized in various sessions of the Indian National Congress. The critics did not like the election procedure mentioned in the Act. They also felt that the functions of the legislative councils were rigorously confined.

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1.2.4 Indian Council Act, 1909

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

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

The Act of 1909 was significant due to the following reasons:

- It facilitated elections of Indians in Legislative Councils. Prior to this, some Indians were appointed at Legislative Councils, majority of which remained under the appointments of the British Government.
- The electoral principle introduced under the Act laid down the framework for a parliamentary system.
- Muslims had expressed serious concern that a 'first past the post' British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 as demanded by the Muslim leadership stipulated:
  - o That Indian Muslims should be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils, and in the Imperial Legislature
  - o That the number of reserved seats be in excess of their relative population (25 per cent of the Indian population)
  - o That only Muslims should vote for candidates for Muslim seats ('separate electorates')

Following were the salient features of the Act of 1909:

- The number of members of the Legislative Council at the Centre was increased from sixteen to sixty.
- The number of members of the Provincial Legislatives was also increased. It was made fifty in the provinces of Bengal, Bombay and Madras. For the rest of the provinces, the number was thirty.
- The members of the Legislative Councils were divided into four categories both at the Centre and within the provinces. These categories were ex-officio members (Governor-General and the members of their Executive Councils), nominated government official members by the Governor-General, nominated non-governmental and non-official members by the Governor-General, and members elected by different categories of Indians.
- Muslims were granted the right of a separate electorate.

- Official members were needed to be in majority. However, in provinces, non-official members formed the majority.
- The Legislative Council members were allowed to discuss budgets, recommend amendments, and vote in some matters excluding some matters which were categorized under 'non-voted items'. The members were also entitled to seek answers to their concerns during the legislative proceedings.
- India's Secretary of State was empowered to increase the number of executive councils from two to four in Madras as well as Bombay.
- Two Indians were to be nominated in the Council of the Secretary of State for Indian affairs.
- The power for nominating one Indian member to the executive council was with the Governor-General.

The provision for concessions under the Act was a constant source of strife between the Hindu and Muslim population from 1909 to 1947. British statesmen generally considered reserved seats as regrettable as it encouraged communal extremism. The Hindu politicians tried to eliminate reserved seats as they considered them to be undemocratic. They also believed that the reserved seats would hinder the development of a shared Indian national feeling among Hindus and Muslims.

1.2.5 Government of India Act, 1919

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

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

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

The Council of States constituted 34 elected members and 26 nominated members. The Princely States were responsible for keeping control over political parties. The Indian National Congress was not satisfied with this law, and regarded it as 'disappointing'. There was a special session held in Bombay under Hasan Imama, wherein reforms were degenerated. Nevertheless, leaders, such as Surendranath Banerjee, appreciated these reforms.

This Act introduced important changes in the home government, at the Centre, as well as at the Provinces. The changes introduced by the Act were as follows:

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1. **System of diarchy in the provinces**: According to this system, the subjects of administration were to be divided into two categories: central and provincial. The central subjects were exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
2. **Central control over the provinces was relaxed**: Under this provision, subjects of all-India importance were brought under the category 'central', while matters primarily relating to the administration of the provinces were put under 'provincial' subjects. This meant a relaxation of the previous central control over the provinces not only in administrative but also in legislative and financial matters. The previous provincial budgets were removed by the Government of India and the provincial legislatures were empowered to present their own budgets and levy taxes according to the provincial sources of revenue.
3. **Indian legislature was made more representative**: The Indian legislature was made bi-cameral. It consisted of the upper house named the Council of States and the lower house named the Legislative Assembly. The Council of States had 60 members out of which 34 were elected. The Legislative Assembly had 144 members out of which 104 were elected. Nevertheless, the Centre did not introduce any responsibility and the Governor-General in Council remained accountable to the British Parliament. The Governor-General's overriding powers in respect of the central legislation were retained in many forms.

The British Government in 1927 appointed a Statutory Commission, as envisaged by the Government of Act of 1919, to make an enquiry in the functioning of the Act and to announce that the domination status was the goal of Indian political developments. Sir John Simon was the Chairman of the Commission which gave its final report in 1930. This report was given consideration at a Round Table Conference that created a White Paper.

The White Paper was examined by Joint Select Committee of the British Parliament. Lord Linlithgow was appointed the President of the Joint Select Committee. The Committee presented a draft Bill on 5 February 1935. The Bill was discussed for forty-three days in the House of Commons and for thirteen days in the House of Lords. After the signatures of the King, the Bill was enforced in July 1935 as the Government of India Act, 1935.

1.2.6 Government of India Act, 1935

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

Federal features with provincial autonomy: The Act established an all-India Federation comprising the provinces and princely states as units. It segregated powers between the Centre and the units into three lists, i.e., the Federal List, the Provincial List and the Concurrent List. Though the Act advocated the use of the provinces and the Indian states as units in a federation, it was optional for the Indian states to

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join the federation. No Indian state accepted this provision and hence the federation envisaged by the Act was not operational.

The provincial autonomy was initiated in April 1937. Within its defined sphere, the provinces were no longer delegates of the central government but were autonomous units of the administration. The executive authority of a province was to be exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor acted in consultation with the ministers who were accountable to the legislature. However, the Governor was given some additional powers which could be exercised by him at his 'discretion' or in the exercise of his 'individual judgement' in certain matters without ministerial advice.

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

Bi-cameral legislature: The Central Legislature was made bi-cameral which consisted of the federal assembly and Council of States. It also introduced bi-cameralism in six out of eleven provinces, such as Assam, Bombay, Bengal, Madras, Bihar, and the United Province. However, the legislative powers of the central and provincial legislatures had various limitations and neither of them had the features of a sovereign legislature.

Federal Legislature needed to comprise two houses: The Council of State (Upper House) and the Federal Assembly (Lower House). The Council of State was required to have 260 members, out of which 156 needed to be elected from British India and 104 to be nominated by the rulers of princely states. The Federal Assembly was required to include 375 members, out of which 250 members were required to be elected by the Legislative Assemblies of the British Indian provinces and 125 to be nominated by the rulers of princely states.

Division of powers between Centre and provinces: The legislative powers were divided between the provinces and the centre into three lists—the Federal, List, the Provincial List, and the Concurrent List. There was a provision for Residuary Subjects also. The Federal List for the Centre consisted of fifty-nine items such as External Affairs; Currency and Coinage; Naval, Military and Air forces; and Census. The Provincial List consisted of fifty-four items which dealt with subjects such as Police, Provincial Public Services and Education. The Concurrent List comprised thirty-six items dealing with subjects like Criminal Law and Procedure, Civil Procedure, Marriage and Divorces, and Abortion. The Residuary powers were given to the Governor-General. He was empowered to authorize the Federal or the Provincial Legislature to ratify a law for any matter if not listed in any of the

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Legislative Lists. The provinces were, however, given autonomy with respect to subjects delegated to them.

Other salient features of the Government of India Act, 1935 were:

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

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

1.2.7 Government of India Act, 1947

The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India. The legislation of the Indian Independence Act was designed by Clement Attlee. The Indian political parties, the Indian National Congress, the Muslim League and the Sikh community came to an agreement on the transfer of power from the British Government to the independent Indian Government, and the Partition of India. The Agreement was made with Lord Mountbatten, which was known as the 3 June Plan or Mountbatten Plan.

The Indian Independence Act, 1947 can be regarded as the statute ratified by the Parliament of the United Kingdom propagating the separation of India along with the independence of the dominions of Pakistan and India.

Events Leading to the Indian Independence Act

(a) **3 June Plan**: On 3rd June 1947, a plan was proposed by the British Government that outlined the following principles:

- The principle of Partition of India was agreed upon by the British Government.
- The successive governments were allotted dominion status.

(b) Attlee's Announcement: On 20th February 1947, the Prime Minister of UK, Clement Attlee announced:

(i) Latest by June 1948, the British Government would endow absolute self-government to British India.

(ii) After deciding the final transfer date, the future of princely states would be decided.

The Indian Independence Act, 1947 came into inception from the 3rd June Plan.

Structure of the Act

- 20 sections
- 3 schedules

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

CHECK YOUR PROGRESS

1. How can the British rule in India be categorized?
2. What provision did the Government of India Act, 1858 make?
3. What led to the formation of the Indian National Congress in 1885?

1.3 COMPOSITION AND ROLE OF THE CONSTITUENT ASSEMBLY

The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen from the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on national demand, was a historic event. It is because the central legislature had, for the first time, lent its support to the growing demand of the future Constitution of India. It also agreed to the opinion that the Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad, voiced the demand for the right to participate in the making of the Constitution of their country.

Earlier on 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution. The resolution called upon the Congress Working Committee to frame the Constitution for India in consultation with the elected members of the central and provincial legislatures, and the leaders of political parties. Adopted by an overwhelming majority with amendments, it was this resolution on the Swaraj

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Constitution which was later restated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927.

In all-party conference in Bombay on 19 May 1929, a committee was appointed under the chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India. The Report of the Committee, which was submitted on 10 August 1928, later became famous as the Nehru Report. It was the first attempt by Indians to frame the Constitution for their country.

The Report depicted the perception of the modern nationalists. It also provided an outline of the Constitution of India. The outline was based on the principles of dominion status and it suggested that the government should be made on the parliamentary pattern. The Report asserted the principle that sovereignty belongs to Indians. It laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units. The residuary powers were given to the central government.

A broad parliamentary system with government responsible to the parliament, a chapter on justifiable Fundamental Rights and Rights of Minorities envisaged in the Nehru Report in 1928 largely embodied the Constitution of the independent India.

The Third Round Table Conference issued a White Paper outlining the British Government's proposal for Constitutional reforms in India. However, the joint parliamentary committees, which examined this proposal, observed that 'a specific grant of constituent power to authorities in India is not at the moment a practicable proposition'. In its response, the Congress Working Committee in June 1934 declared that the only satisfactory alternative to the White Paper was that the Constitution be drawn out by the Constituent Assembly. They demanded that the members of the Constituent Assembly be elected on the basis of adult suffrage. Significantly, this was the first time that a definite demand for a Constituent Assembly was formally put forward.

The failure of the Simon Commission and the Round Table conference gave rise to the ratification of the Government of India Act, 1935. The Congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no Constitution imposed by an outside authority shall be acceptable to India. The resolution asserted that it has to be framed by an Indian Constituent Assembly elected by the people of India on the basis of adult franchise. On 18 March 1937, the Congress adopted another resolution in Delhi which asserted these demands.

After the outbreak of the Second World War in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939. Gandhi wrote an article in the *Harijan* on 19 November 1939, in which he expressed the view that the Constituent Assembly alone can produce a Constitution for the country which truly and completely represents the will of Indians. It declared that the Constituent Assembly was the only way out to arrive at the solution of communal and other problems of the country. The demand was partially considered by the British Government in the 'August Offer of 1940'.

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In March 1942, the British Government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War. The main proposals of the Mission were: (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give dominion status to India, i.e., equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the provinces and Indian states; and (iv) any province or Indian state, which was not prepared to accept the Constitution would be free to retain its Constitutional position existing at that time. With such provinces, the British Government could enter into separate Constitutional arrangements.

However, the Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945. In July, when the new labour government came to power in England, Lord Wavell affirmed that His Majesty's intention was to convene a Constitutional making body as soon as possible.

In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem. However, the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims. It forwarded the following proposals:

(i) There would be a Union of India, comprising both British India and states, and having jurisdiction over the subjects of foreign affairs, defence and communications. All residuary powers would belong to the provinces and the states.

(ii) The Union should comprise an executive and a legislature having representatives from the provinces and states.

To explain the actual meaning of the clauses of the proposals of the Cabinet Mission, the British Government published the following statement: On 6 December 1946 'Should a Constitution come to be framed by the Constituent Assembly in which large section of the Indian population had not been represented? His Majesty's government would not consider imposing such a Constitution upon any restrictive part of the country.'

The British Government for the first time pondered over the likelihood of forming two constituent assemblies and two states. The Cabinet Mission recommended a basic framework for the Constitution and laid down a detailed procedure to be followed by the Constitution making body. In the election for the 296 seats, the Congress won 208 seats including all the General seats except nine. The Muslim League won 73 seats.

With the Partition and independence of the country on 14 and 15 August 1947, the Constituent Assembly of India was said to have become free from the fetters of the Cabinet Mission Plan. Following the acceptance of the plan of 3 June, the members of the Muslim League from the Indian dominion also took their seats in the Assembly. The representatives of some of the Indian states had already entered the Assembly on 28 April 1947. By 15 August 1947, most of the states were

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represented in the Assembly and the remaining states also sent their representatives in due course. The Constituent Assembly, thus, became a body fully representative of the states and provinces in India, free from external authority. It could change any law made by the British Parliament.

1.3.1 Composition of the Constituent Assembly

The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi. After India became independent, the Constituent Assembly became the Parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme of the Cabinet Delegations. The prime features of the scheme were:

- Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively. Due to this, the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of 93 seats.
- Each provincial seat was distributed amongst three major communities—Muslim, Sikh and General proportional to their respective populations.
- Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- The selection method for Indian representatives had to be determined through consultation.

In all, the Constituent Assembly was to have 389 members but Muslim League boycotted the Assembly. Only 211 members attended its first meeting on 9 December 1946. Apart from that, the Partition Plan of 3 June 1947 gave rise to the setting up of a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North Western Frontier Province, Baluchistan, and the Sylhet district of Assam had to join Pakistan. Due to this, on 31 October 1947, when the Constituent Assembly reassembled, the House membership was lessened to 299. Out of these, 284 members were actually present on 26 November 1949 and signed the Constitution to regard it as finally passed.

1.3.2 Committees to Draft a Constitution

The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution. Out of these, ten focused on procedural affairs and twelve on substantive affairs. The reports of these committees created the basis for the first draft of the Constitution.

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Committees on Procedural Affairs

The committees on procedure affairs were:

(i) The Steering Committee (Chairman: Dr K.M. Munshi)

(ii) The Rules of Procedure Committee (Chairman: Dr Rajendra Prasad)

(iii) The House Committee

(iv) The Hindi-translation Committee

(v) The Urdu-translation Committee

(vi) The Finance and Staff Committee

(vii) The Press Gallery Committee

(viii) The Committee based on the Indian Independence Act of 1947

(ix) The Order of Business Committee

(x) The Credential Committee

Committees on Substantial Affairs

The committees on Substantial affairs were:

(i) The Drafting Committee (Chairman: B. R. Ambedkar)

(ii) The Committee for negotiating with States (Chairman: Dr Rajendra Prasad)

(iii) The Union Constitution Committee (Chairman: Jawaharlal Nehru)

(iv) The Provincial Constitution Committee (Chairman: Sardar Patel)

(v) A Special Committee to examine the Draft Constitution (Chairman: Sir Alladi Krishnaswami Iyer)

(vi) The Union Powers Committee (Chairman: Pandit Jawaharlal Nehru)

(vii) The Committee on Fundamental Rights and Minorities (Chairman: Sardar Patel)

(viii) The Committee on Chief Commissioners Provinces

(ix) The Commission of Linguistic Provinces

(x) An Expert Committee on Financial Provisions

(xi) Ad-hoc Committee on National Flag

(xii) Ad-hoc Committee on the Supreme Court

During its entire sitting, the Constituent Assembly had 11 sessions and 165 days of actual work. After three years of efforts, the historic document, i.e., the Constitution of the free India was adopted by the Assembly on 26 November 1949. It came into force on 26 January 1950.

The draft Constitution had 315 Articles and 13 Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules. This shows that the original draft had undergone considerable changes. In fact, there were over 7000 amendments which were proposed to be made in the Draft Constitution. Of these 2473 were actually moved, debated and disposed of. It

was indeed a great democratic exercise as discussion, debates and deliberation were encouraged. There was also a great tolerance of criticism. It was truly a full-fledged democratic procedure which helped in the making of the Constitution.

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CHECK YOUR PROGRESS

4. Fill in the blanks with appropriate words
   (a) The Constituent Assembly was first held on _____.
   (b) _____ was the Chairman of the Provincial Constitution Committee.
5. State whether the following statements are true or false.
   (a) The Constitution of free India was adopted by the Constituent Assembly on 26 November 1949.
   (b) Dr Rajendra Prasad was the Chairman of the Rules of Procedure Committee.

1.4 PHILOSOPHY OF THE CONSTITUTION

The Constitution of a country depicts the basic structure of its political setup. A Constitution generally provides for a Preamble which deals with the purpose and objectives of the framers of the Constitution. The spirit/philosophy of the Indian Constitution is clearly reflected in the Preamble of the Constitution.

1.4.1 Constitution of India

The Constitution of India was made by the Constituent Assembly which represented nearly all shades of opinions existing at that time in the country. The first session of the Constituent Assembly was held on 9 December 1946 and the assembly finally passed the Constitution on 26 November 1949. However, the Constitution was inaugurated only on 26 January 1950, which was the twentieth anniversary of the day on which the Indian National Congress adopted the Resolution on *Purna Swaraj* and had ever since become the Republic Day of India.

Most members of the Constituent Assembly (e.g. Jawaharlal Nehru, Patel, Azad, Ambedkar, Sitaramayya, Ayyar, N. G. Ayyangar, etc.) belonged to an extremely small, westernized professional middle-class, moulded by the 19th century English education system and sustained a radical social perspective based largely on the European experience in the 20th century. This was particularly true of those 20 member core group that comprised the most influential members of the Constituent Assembly. The ideology of the members of the Assembly clearly reflected on the Constitution of India. A study of the Constitution shows that it embodies the liberal-democratic ideology to a very large extent. However, the Constitution also depicts slight socialist and Gandhian leanings.

The members of the Assembly drafted the Constitution that expressed the aspirations of the nation. They skillfully selected and modified the provisions that

they borrowed from other Constitutions, helped by the experts. The Assembly members also applied to their task with great effectiveness two wholly Indian concepts, consensus and accommodation. Accommodation was applied to the principles to be embodied in the Constitution. For example, India's membership in the Commonwealth reconciled the incompatibles of republicanism and monarchy. The solution of the *panchayat* question was also based on accommodation. Consensus was the aim of the decision-making process, the single most important source of the Assembly's effectiveness.

1.4.2 Important Features of the Constitution of India

Some important features of the Indian Constitution are mentioned below:

1. **Provision of adult franchise:** The Constituent Assembly adopted the principle of adult franchise with the full belief that the introduction of a democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being of the common man.
2. **Fundamental Rights and Directive Principles:** As Granville Austin observes, the fundamental rights and directive principles of state policy are the 'conscience of the Constitution' of India. Fundamental rights recognize the importance of the individual. They are basically political and civil liberties of the citizens of India against the encroachment by the state. These are justiciable rights, for if any of these rights are violated, the affected individual is entitled to move to the Supreme Court or the High Court for the protection and enforcement of his rights. The directive principles of state policy are basically economic rights and represent socialist objectives. They inscribe the objectives of a modern welfare state as distinguished from a merely regulatory or negative state. It is the duty of the state to follow these principles both in the matter of administration as well as in the making of laws.
3. **Secular state:** By adding the word 'secular' to the existing description of the country as a 'Sovereign Democratic Republic', in the Preamble, the commitment to the goal of secularism has been spelled out in clear terms.
4. **Cabinet government:** The Constitution establishes cabinet type of government both at the centre and in the states.
5. **Federal form of government:** The Constitution establishes a federal form of government in India but with a strong unitary bias. Though normally the system of government is federal, the Constitution enables the federation to transform into a unitary state.
6. **Single citizenship:** All the Indians irrespective of their domicile enjoy a single citizenship of India. The principle of single citizenship was provided for in order to foster strong bond of social and political unity among the people of India.
7. **Independent judiciary:** The Supreme Court and the High Courts of India were made independent of the influence of the executive.

8. **Protection of minorities and provision of reservation:** By providing protection to the minority groups in India and by providing reservation to the SC/STs, the Constitution made the Indian state a welfare state.

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Philosophy of the Constitution

The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution' which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947. Also, the drafting committee of the Constituent Assembly, after a lot of deliberations, decided that the 'Preamble stands part of the Constitution'.

1.4.3 Preamble of the Constitution

The Preamble to the Constitution of India reads:

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

JUSTICE, social, economic and political;

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

EQUALITY of status and opportunity; and to promote them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of NOVEMBER, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The wordings of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity. These objectives help us to decode the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

Amendment to the Preamble

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

(a) Instead of 'Sovereign Democratic Republic' India was declared 'Sovereign Socialist Secular Democratic Republic.'

(b) For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.

Explanation of the Preamble

A careful study of the Preamble reveals the following points:

(a) Source of the Constitution: The first and the last words of the Preamble, i.e., 'We, the people of India'…….. 'adopt, enact and give to ourselves

this Constitution' convey that the source of the Constitution is the people of India. The people have formulated their Constitution through the Constituent Assembly which represented them.

(b) Nature of the Indian political system: The Preamble also discusses the nature of Indian political system. The Indian polity is sovereign, socialist, secular, democratic republic.

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

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

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

(iv) **Democracy:** The Preamble declares India to be a democratic country. The term 'democratic' is comprehensive. In its broader sense, it comprises political, social and economic democracy. The term 'democratic' is used in this sense in the Preamble and calls upon the establishment of equality of status and opportunity.

In a narrow political sense, it refers to the form of government, a representative and responsible system under which those who administer the affairs of the state are chosen by the electorate and are accountable to them.

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

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

- **Justice:** The term implies a harmonious reconciliation of individual conduct with the general welfare of the society. In the light of 'Objectives Resolution' and the Preamble, the idea of socio-economic justice signifies three things:

  (i) The essence of socio-economic justice in a country can be valued only in terms of positive, material and substantive benefits to the

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working class, in the form of services rendered by the state. Socio-economic justice, in the negative sense, means curtailment of the privileges of the fortunate few in the society, while positively, it suggests that the poor and the exploited should have the full right and opportunity to rise to the highest station in life.

(ii) Socio-economic justice is qualitatively higher than political justice.

(iii) The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the common man. On an empty stomach, adult franchise would soon become a mockery. Political justice too, would soon lose its significance if socio-economic justice is not forthcoming.

The objectives to secure justice for the citizens got concrete reflection in the provisions of Chapters III and IV, namely, the Fundamental Rights and Directive Principles.

- **Liberty:** The term 'liberty' is used in the Preamble both in the positive and negative sense. In the positive sense, it means the creation of conditions that provide the essential ingredients necessary for the fullest development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. In the negative sense, it means absence of any arbitrary restraint on the freedom of individual action.
- **Equality:** Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality signifies equality of status, the status of free individuals and equality of opportunity.
- **Fraternity:** Finally, the Preamble emphasizes the objective of fraternity in order to ensure both the dignity of the individual and the unity of the nation. 'Fraternity' means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions.
- **Dignity:** It is a word of moral and spiritual import and imposes a moral obligation on the part of the Union to respect the personality of the citizen and to create conditions of work which will ensure self-respect.

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

CHECK YOUR PROGRESS

6. The Constituent Assembly passed the Constitution of India on 26 November 1949. Then why was the Constitution inaugurated on 26 January 1950?
7. What are the two amendments made to the Preamble to the Constitution?

1.5 FUNDAMENTAL RIGHTS AND DUTIES

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Laski had rightly remarked that every state is known by the rights that it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate 'fundamental rights'. As Granville Austin observed:

> The fundamental rights, therefore, were to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the state or by society privately. Liberty was no longer to be privilege of the few.

The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state. The demand for a Charter of Rights in the Indian Constitution had its deep-seated roots in the Indian National Movement. It was most implicit in the formation of the Indian National Congress in 1885 that aimed at ensuring the same rights and privileges for the Indians that the British enjoyed in their own country. However, the first explicitly and systematic demand for fundamental rights appeared in the Constitution of India Bill, 1895. This bill was also known as Swaraj Bill of 1895. A series of Congress resolutions that were adopted between 1917 and 1919 repeated the demands and claims for civil rights and equity of status. Following this, drafting of seven fundamental rights under the Commonwealth of India Bill, 1925 took place.

The Congress also passed a resolution in Madras in 1927 that declared that the basis of the future Constitution of India must be a declaration of fundamental rights. This demand was further reiterated in the Nehru Report of 1928. In March 1931, the Congress once again adopted a resolution on fundamental rights and economic and social changes. However, the Simon Commission had considered the question but rejected it. The Government of India Act, 1935 did not contain any document pertaining to the declaration of rights. The next major document on rights was the Sapru Report of 1945. On the side of the British, the various British Constitutional experts like Wheare, Dicey, Jennings and even Laski did not favour the idea. It was only the Cabinet Mission Plan that conceded to the Indian demand for a Bill of Rights for the first time. The inclusion of rights in the Constitution vested on three major reasons:

(a) To keep a check on the arbitrary action of the executive

(b) To reach to the desired goal of socio-economic justice

(c) To ensure security to minority groups in India

The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas, under the chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make it Part III of the Constitution.

The pertinent question that arises here is as to why the rights in Part III alone are considered fundamental? There are other rights as well that are important and

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even justifiable, for example, the right to vote under Article 325. The justification goes that the rights in Part III are:

(a) More in consonance with the natural rights

(b) Gifts of the state

(c) Gifts of the Constituent Assembly

The Constitution of India contained seven fundamental rights originally. But the Right to Property was repealed in 1978 by the Forty-Fourth Constitutional Amendment bill during the rule of the Janata Government. These fundamental rights constitute the soul of the Constitution and thereby provide it a dimension of permanence. These rights enjoy an esteemed position as all legislations have to conform to the provisions of Part III of the Constitution. Not only this, its remarkable feature is these rights encompass all those rights which human ingenuity has found to be essential for the development and growth of human beings.

The salient features of the fundamental rights are:

- Fundamental rights are an integral part of the Constitution and hence cannot be altered or taken away by ordinary legislation. Any law passed by any legislature in the country would be declared null and void to the extent it is derogatory to the rights guaranteed by the Constitution.
- The chapter on fundamental rights in the Constitution is the most comprehensive and detailed one. It not only enumerates the fundamental rights guaranteed to the Indian citizens, but also provides comprehensive details of each right.
- Fundamental rights as embodied in our Constitution can be divided into two broad categories, namely, those which impose restrictions of negative character on the state without conferring special titles on the citizens. There are positive rights, which confer privileges on the people, e.g. Article 18 desires the State not to confer any special titles on the citizens. Similarly, Article 17 abolishes untouchability. These can be easily categorized in the former category. Right to liberty, equality or freedom to express or worship come under the second category.
- As being justifiable, if any of these rights are violated, the affected individual is entitled to move the court for the protection and enforcement of his rights. The Supreme Court may declare a law passed by the Parliament or a State Legislature in India or the orders issued by any executive authority as null and void, if these are found to be inconsistent with the rights.
- The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations; and reasonable restrictions can be imposed at any time in the larger interests of the community. In some cases, restrictions have been imposed by the Constitution itself. Article 19, for example, guarantees to all citizens, freedom of speech and expression.
- During the operation of an Emergency, the President may suspend all or any of the fundamental rights and may also suspend the right of the people to move the High Courts and the Supreme Court for the enforcement of the fundamental rights. When a National Emergency is declared under Article

352 on account of war or external aggression, fundamental right to freedom guaranteed under Article 19 stands automatically suspended under Article 358. The President is also empowered under Article 359 to suspend, by order, the enforcement of other fundamental rights also, during the period of Emergency.

- Some of these fundamental rights are only guaranteed to the citizens of India, while the rights relating to protection of life, freedom or religion, right against exploitation are guaranteed to every person whether he/she is a citizen or an alien to the country. This means that our Constitution draws a distinction between citizens and aliens in the matter of enjoyment of fundamental rights.
- The chapter on fundamental rights is not based on the theory of natural or unremunerated rights. The Indian Courts cannot enquire into any fundamental right that is not enumerated in the Constitution.
- The fundamental rights can be amended but they cannot be abrogated because that will violate the basic structure of the Constitution.
- They expressly seek to strike a balance between written guarantee of individual rights and the collective interests of the community.

The Constitution classifies fundamental rights into six categories:

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 25–28)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to Constitutional remedies (Article 32)

1.5.1 Right to Equality

Article 14 declares that the state shall not deny any person the equality before the law or the equal protection of laws within the territory of India. As interpreted by the courts, it means that though the state shall not deny to any person equality before law or the equal protection of law, it shall have the right to classify citizens, provided that such a classification is rational and is related to the object sought to be achieved by the law.

Equality before law: Equality before law does not mean an absolute equality of men which is physically impossible. It means the absence of special privileges on grounds of birth, creed or the like in favour of any individual. It also states that individuals are equally subjected to the ordinary laws of the land.

Equal protection of laws: This clause has been taken verbatim from the XIV amendment to the American Constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not mean that every law must have a universal

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application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money) in the same position as others. Varying needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be violative of equal protection. The Constitution, however, does not stand for absolute equality. The state may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have same nature, attainments, qualifications or circumstances. It means that the state is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

Prohibition of Discrimination (Article 15)

Article 15(1) prohibits discrimination on certain grounds. It declares, 'The state shall not discriminate against any citizen on ground of religion, race, caste, sex, place of birth or any of them.' This discrimination is prohibited with regard to '(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public'. Article 15 has, however, to notable exceptions in its application. The first of these permits the state to make special provision for the benefit of women and children. The second allows the state to make any special provision for the advancement of any socially and educationally backward class of citizens or for scheduled castes and scheduled tribes. The special treatment meted out to women and children is in the larger and long-term interest of the community itself. The second exception was not in the original Constitution, but was later on added to it as a result of the First Amendment of the Constitution in 1951. While freedom contained in Article 14 is available to all persons, that in Article15 is available only to the citizens and, therefore, it cannot be invoked by non-citizens.

Article 15(2) proclaims that no citizen shall, on grounds only of religion, race, caste, sex and place of birth be subject to any disability, liability, restriction or condition with regard to:

- Access to shops, public restaurants, hotels and places of public entertainment
- The use of wells, tanks, bathing-ghats, roads and places of public resort, maintained wholly or partly out of state funds or dedicated to the use of the general public

The prohibition in this clause is levelled not only against the state but also against private persons.

Article 15(3) provides that the state shall be free to make any special provision for women and children. This sub-article is in the nature of an exception in favour of women and children. Thus, the provision of free education for children up to a certain age or the provision of special maternity leave for women workers is not discrimination. However, discrimination in favour of women in respect of political

rights is not justified, as women are not regarded as a backward class in comparison to men for special political representation.

Article 15(4) allows the state to make special provision for the advancement of any socially and educationally backward classes of citizens, including the scheduled castes and the scheduled tribes. The state is, therefore, free to reserve seats for them in the legislature and the services. This Article only allows the state to make special provisions for these classes. Inserted under Ninety-Third Constitutional Amendment Act, this clause conferred on the state the power to make any special provision by law for the advancement of any socially and educationally backward class or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions.

Equality of Opportunity (Article 16)

Article 16(1) reads: 'There shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.' It confers on every citizen, a right to equality of economic opportunity, and subsequently provides that no citizen shall be discriminated against in this respect on grounds only of religion, race, caste, descent, place of birth or any of them. However, an equality of opportunity is only between equals, i.e. between persons who are either seeking the same employment or have obtained the same employment. In other words, equality means equality between members of the same class or employees, and not between members of different classes.

Article 16 (2) reads: 'No citizen shall, on grounds only of religion, race, caste, sex, descent, place or birth, residence or any one of them be ineligible for or discriminated against in respect of any employment or office under the state.'

Article 16 (3) says that the President is competent to allow states to make residency as a necessary qualification in certain services for ensuring efficiently of work.

Article 16 (4) allows the state to reserve appointments in favour of a backward class of citizens which in its opinion is not adequately represented in the services under the state. The Supreme Court had held that such reservation should generally be less then 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats members of backward classes are free to compete with others and be appointed to non-reserved seats, if otherwise, they are eligible on merit.

Article 16 (5) allows the state to provide that in case of appointment to religious offices, or offices in religious institutions, the candidates shall possess such additional qualifications or be members of that religious institution. This is an exception to the general rule that the state shall not discriminate on ground of religion in providing equal economic opportunities to the citizens.

Although Article 16 guarantees equality of opportunity in matters of public employment for all citizens and is expected to provide a bulwark against considerations

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of caste, community and religion, the result so far has been far from satisfactory.

Social Equality by Abolition of Untouchability (Article 17)

Complete abolition of untouchability was one of the items in Mahatma Gandhi's programme for social reform. The present Article adopts the Gandhian ideal without any qualification in abolishing untouchability and in forbidding its practice. It also declares that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament has enacted the Untouchability Offences Act, 1955, which was later amended in 1976. It prescribes punishment for the practice of untouchability, in any form, up to a fine of ₹ 500 or an imprisonment of 6 months or both, depending upon the seriousness of the crime.

Social Equality by Abolition of Titles (Article 18)

Article 18 is a radical application of the principle of equality it seeks to prevent the power of the state to confer titles from being abused or misused for corrupting the public life, by creating unnecessary class divisions in the society. The object of the Article is to prevent the growth of any nobility in India. Creation of privileged classes is contrary to the equality of status promised to all citizens by the Preamble to the Constitution.

Article 18(1) declares: 'No title, not being a military or academic distinction shall be conferred by the state'. It means that no authority in India is competent to confer any title on any person, excepting the academic title, or military titles of general, Major or Captain. Article 18(2) prohibits the citizens of India from receiving any title from any foreign state. This is an absolute bar. One the other hand, Article 18(3) prohibits the citizens from accepting any title from any foreign state without the consent of the President of India, if and so long they are holding any office of profit or trust under the state. And, Article 18(4) prohibits both the citizens and aliens, who are holding any office of profit or trust under the state from accepting any present, emolument or office of any kind, from or under any foreign State.

Article 18, however, does not prohibit the institutions other than the state from conferring titles of honours by way of honouring their leaders or men of merit.

1.5.2 Right to Freedom (Articles 19, 20, 21 and 22)

Article 19 of the Constitution guarantees seven civil freedoms to the citizens as a matter of their right. Included in Clause 1 of Article 19, these freedoms are:

- Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India

- Right to practice any profession, or to carry on any occupation, trade or business

Freedom of Speech and Expression

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The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose falsehood. Freedoms of speech and expression lie at the foundation of all democratic organizations, for without political discussion, no political education is possible.

Freedom of expression in this clause means right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. It, thus, includes not only the freedom of press but also the expression of one's ideas in any other form.

Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to Constitutional and statutory provisions.

As amended by the First and the Sixteenth Amendment Acts, Clause 2 of Article 19(1)(a) entitles the state to impose restrictions on any one or more of the following grounds:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

Right of Peaceful Unarmed Assembly

Article 19 (1)(b) guarantees to every citizen the right to assemble peaceably and without arms. This right is subject to the following limitations:

- Assembly must be peaceful
- Assembly must be unarmed
- Must not be in violation of public order

Freedom of Association and Unions [Articles 19 (1) and (4)]

Article 19(1)(c) guarantees to all citizens the right to form associations and unions, the formation of which is vital to democracy. If free discussion is essential to democracy, no less essential is the freedom to form political parties to discuss questions of public importance. They are essential as much as they present to the government alternative solutions to political problems. Freedom of association is necessary not only for political purpose but also for the maintenance and enjoyment of the other rights conferred by the Constitution.

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In short, the freedom of association includes the right to form an association for any lawful purpose. It also includes the right to form trade union with the object of negotiating better conditions of service for the employees.

Clause 4 of the Article 19 empowers the state to make reasonable restrictions upon this right on grounds only of:

- Sovereignty and integrity of India
- Public order
- Morality

Freedom of Movement and Residence

Articles 19(1)(D) and (E) guarantee to all citizens the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. These freedoms are aimed at the removal of all hindrances in the enjoyment of these rights.

The freedom of movement of a citizen has three aspects:

- Freedom to move from any part of his country to any other part
- Freedom to move out of his country
- Freedom to return to his country from abroad

The second of these provisions is not guaranteed by our Constitution as a fundamental right and has been left to be determined by Parliament by law.

Freedom of movement and residence is subject to restrictions only on the following grounds:

- In the interest of any scheduled tribes
- In the interest of the general public, i.e. public order morality and health

Freedom of Profession

Article 19(1)(f) guarantees to all citizens right to practice any profession or to carry on any occupation, trade or business. The freedom of profession, trade or business means that every citizen has the right to choose his own employment, or take up any trade, subject only to the limitations mentioned in Clause (6).

The right is subject to reasonable restrictions, which may be imposed by the state in the interest of general public. The state may prescribe professional or technical qualifications necessary for carrying on any business, trade or occupation. It also has the right itself, or through a corporation, to carry on any occupation, trade or business to the complete or partial exclusion or private citizens.

Protection in Criminal Convictions (Article 20)

Article 20 (1) declares that 'a person cannot be convicted for an offence that was not a violation of law in force at the time of the commission of the act., nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.' Clause 2 declares: 'No person shall be prosecuted and punished for the same offence more than once.' And, Clause 3 says that 'no person accused of any offence shall be compelled to be a witness against himself.'

Right to Life and Personal Liberty (Article 21)

Article 21 says that no person shall be deprived of his life or personal liberty, except according to procedure established by law. The object of this Article is to serve as a restraint upon the executive, so that it may not proceed against the life or personal liberty of the individual, except under the authority of some law and in conformity with the procedure laid down therein. This Article can be invoked only if a person is detained by or under the authority of the state. Violation of the right to personal liberty is not enforceable when it is violated by a private individual, and then the remedy lies in the Constitutional law.

Furthermore, the Supreme Court on various occasions ruled that the expression 'life' in Article 21 does not connote merely physical or animal existence, but includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life.

Right to Information

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. Concerned Bill, however, was introduced in the Parliament as Freedom on Information Bill, 2002 which along with certain restrictions made it mandatory for the government to provide information pertaining to public sphere. This right of information was further illustrated by the Supreme Court, which held that 'a voter has a fundamental right to know the antecedents of a candidate'. Accordingly, Supreme Court struck down some parts of Representation of People (Amendment) Act, 2002 by making a clear distinction between the Constitutional right of a voter and his rights under general laws. The Court declared that voter's fundamental right to know the antecedents of a candidate is independent of statutory right under election law.

Right to Education (Article 21(a))

Under Eighty-Sixth Amendment Act 2002, right to education was provided. For this purpose a new Article in Part III was inserted and two Articles in Part IV were amended. The newly inserted Article 21(a) declared that 'The state shall provide free compulsory education to all children of the age of 6–14 years in such manner as the state may, by law, determine.'

Protection against Arrest and Detention (Article 22)

Article 22 has two parts: Part I consists of Clauses 1 and 2, and deals with the rights of persons arrested under the ordinary criminal law. Part II consists of Clauses 3–7 and deals with the right of persons who are detained under the law of preventive detention.

Clauses 1 and 2 of this Article recognize the following rights of the persons arrested under ordinary criminal law:

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move to the High Court, for the grant of the writ of habeas corpus.

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- The second protection granted by Clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge, nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the time necessary for journey from the place of arrest to the court of the magistrate.

Preventive Detention

Clause 3 of Article 22 constitutes an exception to Clauses 1 and 2. The result is that enemy-aliens (i.e. foreigners belonging to the courtiers which are the enemies of the state) and other persons who are detained under the law of preventive detention have neither the right to consult nor to be defended by a legal practitioner.

Clause 4 requires that a person may be detained under the Preventive Detention Act for 3 months. If a person is to be detained for more than 3 months, it can be only in the following cases:

- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within 10 weeks from the date of detention
- Where the person is detained under law made by the Parliament for this Clause 5 considers two things, namely:
  - o That the detainee should be supplied with the grounds of the order of detention
  - o That he should be provided with the opportunity of making representation against that order to the detaining authority for the consideration of the Advisory Board.

Clause 6 declares that the detainee cannot insist for the supply of all the facts, which means evidence and which the government may not consider in public interest. In this context, the Supreme Court has held that an order of detention is malafide, if it is made for a purpose other than what has been permitted by the legislature.

Clause 7 of this Article gives exclusive power to the Parliament to:

- Prescribe the circumstances under which and the cases in which a person may be detained for more than 3 months without obtaining the opinion of the an Advisory Board
- The period of such detention (which it has determined to be not more than twelve months); and
- The procedure to be followed by an Advisory Board

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended 7 times, each for a period of 3 years. The revival of anarchist forces obliged Parliament to enact a new Act, named The Maintenance of Internal Security Act (MISA) in

1971, having provision broadly similar to those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPOSA still remains in force. Further, in 1980, National Security Act (NSA) was enacted. According to the NSA, the Maximum period for which a person may be detained shall be 6 months from the date of detention. Next in the series was Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, try them summarily, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the government to enact The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, which, in fact, empowered the executive for suppression of all kind of dissent and was widely criticized for being undemocratic. In the wake of intensified terrorist activities in many parts of the country, Vajpayee government was compelled with yet another enactment in 2002, named as Prevention of Terrorism Act (POTA), which has been criticized for its probable misuse.

1.5.3 Right against Exploitation (Articles 23 and 24)

Clause 1 of Article 23 prohibits traffic of human beings, begars and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law. In this context, 'traffic in human beings,' includes the institutions of slavery and prostitution. 'Begar' means involuntary or forced work without payment, e.g. tenants being required to render certain free services to their landlords.

Under Clause 2 of this Article, the state has been allowed to require compulsory service for public purposes, viz. national defiance, removal of illiteracy or the smooth running of public utility services like water, electricity, postage, rail and air services. In matters like this, the interests of the community are directly and vitally concerned and if the government did not have this power, the entire life would come to a standstill. In making any service compulsory for public purposes, the state has, however, been debarred from making discrimination on grounds only of religion, race, caste, class or any of them.

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. Our Constitution goes in advance of the American Constitution in laying down a Constitutional prohibition against employment of children below the age of 14 in factories, mines or other difficult employments, e.g. railways or transport services. Our Parliament has passed necessary legislation and made it a punishable offence.

1.5.4 Right to Freedom of Religion (Articles 25–28)

In pursuance of the goal of liberty of belief, faith and worship enshrined in the Preamble to the Constitution, Articles 25–28 underline the secular aspects of the Indian state.

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Article 25(1) grants to all persons the freedom of conscience, and the right to freely profess, practice and propagate religion. This Article secures to every person, a freedom not only to subscribe to the religion of his choice, but also to execute his belief in such outward acts as he thinks proper. He is also free to propagate his ideas to others.

Clause 2 of this Article allows the state to make law for the purpose of regulating economic, financial or other activities of the religious institutions. At the same time, it allows the state to provide from, and carry on social welfare programmes, especially by throwing open the Hindu religious institutions of a public character to all classes and sections of Hindus, including the Sikhs, the Jains and the Buddhists.

The Parliament enacted the Untouchability Offences Act, 1955, which prescribes punishment for enforcing religious disabilities on any Hindu simply because he belongs to a low caste. The purpose of this reform is to overcome the evils of Hindu religion.

Explanation 1 to Article 25 declares that the warring or carrying of *kirpan* (sword) by the Sikhs shall be deemed to be included in the profession of Sikh religion. Basu points out that this right is granted subject to the condition that no Sikh will carry more than one sword without obtaining licence.

Article 26 guarantees to every religious denomination the following rights:

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

While rights guaranteed by Article 25 are available only to the individuals and not to their groups, those under Article 26 are conferred on religious institutions and not on individuals. In this Article, religious denomination means a religious sect or body having a common faith and organization and designated by a distinctive name. This was the definition accepted by the Supreme Court. This Article grants to a religious denomination complete autonomy in deciding what rites and ceremonies were essential according to the tenets of a religion. No outside authority has any jurisdiction to interfere in its decisions in such matters.

Article 27 declares that 'No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination'.

This Article secures that the public funds raised by taxes shall not be utilized for the benefit of any particular religion or religious denomination. Thus, a local authority which raises taxes from persons of all communities who reside within its jurisdiction would not be entitled to give aid to those educational institutions which provide instructions relating to any particular religion. In other words, an educational institution, which provides compulsory instructions relating to a particular religion is not entitled to any financial aid from the state.

Article 28 is confined to educational institutions, maintained, aided or recognized by the state. Clause 1 of this Article relates to educational institutions wholly

maintained out of the state funds. It completely bans imparting of religious instructions in such institutions. Clause 2 relates to educational institutions which are administered by the state under some endowment or trust, like the Banaras Hindu University. In such institutions religious instructions may be given.

1.5.5 Cultural and Educational Rights (Articles 29–30)

The object of Article 29 is to give protection to the religious and linguistic minorities. Clause 1 of Article 29 declares that any section of the Indian citizens, having a distinct language, script or culture of its own, shall have the right to conserve the same. The right to conserve or protect a language includes the right to agitate for the protection of that language. It also means that every minority group shall have the right to impart instructions to the children of their own community in their own languages.

Clause 2 of Article 29 is a counterpart of Article 15. It says that there should be no discrimination against children on grounds only of religions, race, caste or language, in the matters of admission into any educational institution maintained or aided by the state. Thus, this clause gives to an aggrieved minority of citizens the protection in matters of admission to educational institutions against discrimination on any of these grounds. The persons belonging to Scheduled Castes or Tribes are in any case to be given special protection in matters of admission to educational institutions.

The Supreme Court observed that preference in admission given by institutions, established and administered by minority community, to candidates belonging to their own community in their institutions on grounds of religion alone is violation of Article 29(2). Minorities are not entitled to establish and administer educational institutions for their exclusive benefit.

Clause 1 of Article 30 is a counterpart of Article 26, and guarantees the right to all linguistic or religious minorities to establish and administer educational institutions of their choice. It entitles the minority community to impart instructions to the children of their community in their own language.

The right to establish educational institutions of their choice amounts to the establishment of the institutions which will serve the needs of the minority community, whether linguistic or religious. When such institutions are established and seek aid from the state, it cannot be denied to them simply on the ground that they are under the management of a linguistic or religious minority.

1.5.6 Right to Constitutional Remedies (Articles 32, 33, 34 and 35)

A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state High Courts under Article 226. An individual who complaints the violation of his fundamental rights can move the Supreme Court or the state High Court for the restoration of his fundamental rights.

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Article 32(1) declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights included in Part III of the Constitution is guaranteed. Clause 1, thus, guarantees the right to move the Supreme Court for the enforcement of fundamental rights. In other words, the right to move the Supreme Court for the violation of fundamental rights is itself a fundamental right.

Article 32(2) empowers the Supreme Court to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto or certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights.

Habeas corpus: The writ of habeas corpus literally means 'have the body'. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention. Thus, habeas corpus is the citizen's guarantee against arbitrary arrest or detention. By virtue of this writ, the Supreme Court or the High Court can have any detained person produced before it for examining whether he has been lawfully detained or not, and for dealing with the case in accordance with the Constitution and the laws in force at that time.

Mandamus: The writ of mandamus means 'we command'. It is an order directing person, or body, to do his legal duty. It lies against a person, holding a public office or a corporation or an inferior court, for it is to ask them to perform their legal duties. They are under legal obligation not to act contrary to law, without the authority of law, or in excess of authority conferred by law. As such, mandamus is available in the following cases:

- To compel the performance of obligatory duties imposed by law
- To restrain action which is taken without the authority of law, contrary to law, in excess of law

Certiorari: The writ of certiorari means 'to be more fully informed of'. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it. It lies not only against the inferior courts but also to any person, body or authority, having the duty to act judicially. It may be issued to the Union government, the state governments, municipalities or other local bodies, universities, statutory bodies, the individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights, because these rights are available only against the state.

Prohibition: The writ of prohibition is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. It is generally issued to transfer a case from a lower to a higher court. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom proceedings have been taken can move the superior court for the writ of prohibition. If the request is guaranteed by the superior court, the inferior court is stopped from continuing the proceedings in that case, and the case is transferred to another court to secure justice.

Quo warranto: The writ of quo warranto is issued to stop the irregular and unlawful assumption of any public position by any person. Through this writ, the

courts may grant an injunction to restrain a person from acting in any office to which he is not entitled, and may also declare the office vacant.

Article 32(3) provides that, without prejudice to the powers conferred on the Supreme Court by Articles 32(1) and (2), the Parliament may by law empower any court to issue these writs for the purpose of the enforcement of the fundamental rights.

Article 32(4) provides that fundamental rights guaranteed by Article 32(1) shall not be suspended except as otherwise provided by this Constitution.

1.5.7 Fundamental Duties (Article 51(a))

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

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

- To abide by the Constitution and respect the national flag and national anthem
- To cherish and follow the noble ideas, which inspired our national freedom struggle
- To protect the sovereignty, unity and integrity of India
- To defend the country
- To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional or sectional diversities and laws to renounce practices derogatory to women
- To preserve the rich heritage of our composite culture
- To protect and improve the natural environment
- To develop the scientific temper and spirit of enquiry
- To safeguard public policy
- To strive towards excellence in all spheres of individual and collective activity
- As a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years (this clause was inserted through Eighty-Sixth Amendment Act 2002)

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Insertion of these Fundamental Duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, the Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their violation. According to D. D. Basu, the legal utility of these duties is similar to that of the directives as they stood in 1949, while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

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

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

CHECK YOUR PROGRESS

8. Are rights essential?
9. What is the importance of Part III of the Indian Constitution?
10. Why are fundamental duties important?

1.6 DIRECTIVE PRINCIPLES OF STATE POLICY

Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realize the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution. These principles reflect Gandhi's constructive programme for socio-economic welfare of the people of India. These constitute an instrument of instructions to the legislatures and the executives at all levels as to how they should exercise their respective powers and aim at attaining the economic, educational and social welfare of the people. Behind them is the sanction of public opinion which is stronger, and more effective than even the sanction of the courts.

Incorporating most of these principles, the framers of the Constitution were primarily influenced by the identical provisions in the Irish Constitution which, in

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turn, had drawn inspiration from the Spanish Constitution. They were also, to a great extent, influenced by the Charter of the United Nations and the Charter of Human Rights. No less was the inspiration drawn by them from the Constitutions of socialist democracies, particularly that of the USSR.

These directives relate to specific socio-economic objectives, calling upon the state to strive to promote the welfare of the people in all fields, especially in social, economic and political. These directives lay down the lines on which the machinery of the government should function under this Constitution.

These directives fall into three main categories:

- The ideals, especially economic, which the framers of the Constitution directed the state to strive for
- The instructions and directions to the future legislatures and executives as to the manner in which they should exercise their respective powers
- The economic and educational rights which the citizens are authorized to expect from their duly constituted legislatures and executives

The Directive Principles of State Policy, as included in Part IV of the Constitution, have been enumerated under Articles 36 to 51.

These principles aim at the establishment of a welfare state in India committed to the realization of the ideals proclaimed in the Preamble to the Constitution.

Article 36 defines the term state and declares that it has the same meaning in Part IV as it has in Part III. This means that the Constitution directs not only the legislatures and executives of the Union and the states but also the local authorities, like district boards and village panchayats, to implement these principles through their laws, policies and programmes.

Article 37 describes the nature of these principles as follows:

- That these principles shall not be enforceable by any law
- That these principles shall be fundamental in the governance of the country
- That it shall be the duty of the state to apply these principles in making laws

Article 38 declares 'The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life'.

It declares that the social order envisaged for Indian people would be assured not only in the political field, but also in the social and economic fields. As a matter of fact, the state is charged to frame its policies in such a way as to provide necessary elements of growth and adjustment which are essential for a progressive society.

Article 39 descries that the state is directed to ensure various economic rights to the citizens. In the first place, it is to ensure that the citizens, both men and women, should have the right to an adequate means of livelihood.

Secondly, the state is required to so distribute the ownership and control of the material resources of the community as to sub-serve the common good. It is to ensure the operation of economic system that does not result in the concentration of

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wealth and means of production in the hands of a few. The objective is to prevent the growth of an economic system which may be detrimental to the interest of the community as a whole.

The state is also to secure 'equal pay for both men and women'. The inclusion of this provision was inspired by a similar provision contained in Article 41 of the International Labour Organization and the Seventh Principle of the Universal Declaration of Human Rights Article 122. The purpose of this clause is to ensure economic equality with regard to the equal proportion of waves with the work.

The state should ensure that the health and strength of workers, men and women, and the tender-aged children are not abused. The state is to ensure that the citizens are not forced by economic necessity to take up jobs which are unsuited to their age and strength. The state is also to protect childhood and youth against exploitation and against moral and material abandonment.

Article 39(A) has been inserted to enjoin the state to provide 'free' aid to the poor and to take other steps to ensure equal justice to all, which is offered by the Preamble.

Article 40 directs the state to organize village panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-government. For the implementation of the provisions of this Article, Seventy-Third Amendment Act was passed vesting various degrees of power of self-government and civil and criminal justice in the hands of the panchayats. Owing to the lack of proper education, narrow-mindedness and local politics, the system of panchayat administration has not been a big success.

Article 41 deals with the economic and educational rights of the citizen. It directs the state to ensure them the right to work, the right to education and the right to public assistance in case of unemployment, old-age, sickness or disablement.

Article 42 directs the state to make provisions for securing just and human conditions of work, and for maternity relief. Adequate provisions have been made by the state through Labour Laws and Factories Acts and the rules of service for the employees of the Union and the states.

Article 43 also deals with the rights of the citizens. It directs the state to ensure all workers, agricultural, industrial or otherwise the following rights:

- Right to work
- Right to a living wage
- Right to such conditions of work ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities

Through Forty-Second Amendment Article 43(a**)** has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertaking. This is a positive step in advancement of socialism in the sense of economic justice.

Article 44 directs the state to endeavour to secure for the citizens a uniform code throughout the territory of India. The purpose of this Article is to enable the legislature to make an attempt to unify the 'personal law' of the country.

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Under Eighty-Sixth Amendment Act 2002, Article 45 was amended to provide early childhood care and education to children below the age of 6 years.

Article 46 directs the state to promote the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections. It also directs the state to protect these people from social injustice and from all forms of exploitation. For this purpose, seats have been reserved for them in all educational institutions, and a fairly wide range of scholarships have also been provided for them.

Article 47 can be split into two parts:

- The direction to the state to raise the level of nutrition and the standard of living of its people and the improvement of their health
- Direction to the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health, except for medical purposes

The subject matter of Article 48 centres round the preservation and improvement of cattle and the prohibition of cow slaughter. The protection conferred by this Article extends only to cows, calves and the other animals which are capable of yielding milk or being used for some work.

Article 48(a) has been inserted, through Forty-Second Amendment, in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 49 directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The state is to ensure that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported. The aim of this Article is to preserve the nation's cultural heritage.

Article 50 directs the state to take steps to separate the judiciary from the executive in public services of the state. The separation of judiciary from the executive would eliminate many evils, which follow from the combination of two positions in the same person.

Article 51 directs the state to so shape its foreign policy as to attain the following objectives:

- Promotions of international peace and security
- Maintenance of just and honourable relations between nations
- Respect for international law and treaty obligations in the dealings of organized people with one another
- Settlement of international disputes by arbitration

India's foreign policy is essentially based on these principles. Nehru's famous formulation of 'Panchsheel', the five principles of peaceful co-existence, have been accepted by most of the civilized nations. Based on Constitutional provisions, these principles are:

- Mutual respect for each other's territorial integrity and sovereignty
- Non-aggression
- Non-interference in each other's internal affairs

- Equality and mutual benefit
- Peaceful co-existence

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1.6.1 Relationship between Fundamental Rights and Directive Principles

Fundamental rights incorporated in Part III and the directive principles in Part IV form an organic unit.

Article 13 provides that any law passed in violation of Part III of the Constitution dealing with fundamental rights is void to the extent of such violation. Initially the Supreme Court, however, adopted a legal attitude by declaring that the directive principles cannot abridge, curtail or stand in the way of the fundamental rights. The court, thus, held that the former are subordinated to the latter. But later on the judiciary has substantially modified its attitude towards directive principles. It started taking note of directive principles in determining the scope of fundamental rights. The directives now command more respect from the judiciary than they initially did.

Article 37 makes the Directive Principles of the State Policy non-justifiable. In case of the state of Madras vs. Champakam Dorairajan, 1951, the Court laid down the following principles in describing the relationship of the directive principles with fundamental rights:

- The 'Directive Principles of State Policy' cannot override fundamental rights, because the former are unenforceable under Article 37 while the latter are enforceable under Article 32.
- Directive principles cannot abridge, curtail or stand in the way of fundamental rights, because they are sacrosanct and supreme.
- Directive principles have to conform to, and run as subsidiary to fundamental rights.
- The state action under directive principles is subject to legislative and executive powers, i.e. a directive principle can be implemented only by the agency which is authorized to make law on that subject.
- If the power of the state with respect to the subject relating to directive principles is limited by the Constitution, the state cannot exceed it.

Later, the Court accepted that fundamental rights could be amended by the prescribed procedure and thereby directive principles can be implemented. In this period, the court evolves 'the Principles of Harmonious construction'. This meant that ordinarily the directive principles were subordinate to the fundamental rights and the state could not infringe on fundamental rights of any individual even on the plea of protecting the weaker sections of society as mentioned in the chapter on directive principles. The state, however, could put restrictions on fundamental rights in order to implement directive principles or otherwise by making amendments in the Constitution. This attitude was reflected through Sajjan Singh vs. State of Rajasthan, 1967, when the court held that directive principles are also fundamental in the government of the country and provisions of Part III must be interpreted harmoniously with these principles.

CHECK YOUR PROGRESS

11. What is the importance of Directive Principles of State Policy?
12. Do you agree that the Directive Principles of State Policy relate to specific socio-economic objectives?
13. Under which directive principle is the organization of village panchayats incorporated?

1.7 SUMMARY

- The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework as well as the primary objectives for the various organs of the government.
- The British rule in India can be categorized into two phases:
  - The Company Rule until 1858
  - The Crown Rule during 1858 –1947
- The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown. The Company's rule was, thus, terminated and the administration was carried out in the name of the Crown through the secretary of the state.
- The Indian Council Act, 1861 introduced a representative institution in India for the first time. As per this Act, the Executive Council of the Governor-General was to comprise some Indians as non-official members for transactions of legislative business.
- The controversy between the two governments over the banishment of 5 per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885.
- Indian Council Act, 1909 changed the name of the Central Legislative Council to the Imperial Legislative Council.
- The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand participation of the natives in the Government of India. The Act embodied the reforms recommended in the joint report of Sir Edwin Montagu and Lord Chelmsford.
- The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India.
- The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen in the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on the national demand, was a historic event.

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- The Central Legislature agreed to the opinion that the Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad, voiced the demand for the right to participate in the making of the Constitution of their country.
- The Third Round Table Conference issued a White Paper outlining the British Government's proposal for constitutional reforms in India. However, the joint parliamentary committees, which examined this proposal, observed that 'a specific grant of constituent power to authorities in India is not at the moment a practicable proposition'.
- The Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945.
- In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem. However, the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims.
- The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well.
- The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution.
- The Constitution of a country depicts the basic structure of its political setup. A Constitution generally provides for a Preamble which deals with the purpose and objectives of the framers of the Constitution. The spirit/philosophy of the Indian Constitution is clearly reflected in the Preamble of the Constitution.
- All the Indians irrespective of their domicile enjoy a single citizenship of India. The principle of single citizenship was provided for in order to foster strong bond of social and political unity among the people of India.
- The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution' which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947.
- The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state.
- Fundamental rights are an integral part of the Constitution and hence cannot be altered or taken away by ordinary legislation. Any law passed by any legislature in the country would be declared null and void to the extent it is derogatory to the rights guaranteed by the Constitution.
- The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose

falsehood. Freedoms of speech and expression lie at the foundation of all democratic organizations, for without political discussion, no political education is possible.

- The writ of habeas corpus literally means 'have the body'. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention.
- The writ of certiorari means 'to be more fully informed of'. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it.
- The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties. It was during the 'Internal Emergency', declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties.
- Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realize the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution.

1.8 KEY TERMS

- **Sovereignty:** It means the absence of external and internal limitations on the state.
- **Justice:** The term implies a harmonious reconciliation of individual conduct with the general welfare of the society.
- **Fraternity:** It means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions.
- **Begar:** It means involuntary or forced work without payment, e.g. tenants being required to render certain free services to their landlords.
- **Habeas corpus**: The writ of habeas corpus literally means 'have the body'; it is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention.
- **Mandamus**: The writ of mandamus means 'we command'; it is an order directing person, or body, to do his legal duty.
- **Certiorari**: The writ of certiorari means 'to be more fully informed of'; it is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it.

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1.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The British rule in India can be categorized into two phases:
   (i) The Company Rule until 1858
   (ii) The Crown Rule during 1858 –1947
2. The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown.
3. The controversy between the two governments over the banishment of 5 per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885.
4. (a) 9 December 1946;

   (b) Sardar Patel
5. (a) True;

   (b) True
6. The Constituent Assembly passed the Constitution of India on 26 November 1949, but the Constitution inaugurated on 26 January 1950, because the latter date was the twentieth anniversary of the day on which the Indian National Congress adopted the Resolution on *Purna Swaraj*.
7. By Section 2 of the Constitution (forty-second Amendment Act, 1976), two amendments were made in the Preamble. (a) Instead of 'Sovereign Democratic Republic' India was declared 'Sovereign Socialist Secular Democratic Republic.' (b) For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.
8. The fundamental rights are supposed to foster the social revolution by creating a egalitarian society all citizens were to be equally free from coercion or restriction by the state or by society privately. Liberty was no longer to be privilege of the few.
9. Part III is important because it contains the fundamental rights.
10. If there are rights with no responsibilities, it becomes one sided. That is the reason fundamental duties are introduced so that there will be a balance between rights and duties.
11. Directive Principles of State Policy constitute an instrument of instructions to the legislatures and the executives at all levels as to how they should exercise their respective powers and aim at attaining the economic, educational and social welfare of the people.
12. Yes. Directives relate to specific socio-economic objectives, calling upon the State to strive to promote the welfare of the people in all fields, especially in social, economic and political.

13. Article 40 directs the State to organize village panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-government.

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1.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. State the provisions of the Indian Council Act, 1861.
2. Name the committee which was appointed under the chairmanship of Motilal Nehru.
3. State the main proposals of the Cripps Mission.
4. List the important features of the Constitution of India.
5. Provide the explanation of the Preamble of the Indian Constitution.
6. Trace the growth of the notion of fundamental rights during the Indian independence movement.
7. How would you interpret 'Right to Equality'?
8. What is the 'Right to Freedom'?
9. What are fundamental duties? What is the significance of fundamental duties?
10. Are directive principles of state policy and fundamental rights interconnected? How?

Long-Answer Questions

1. Trace the history of the Indian Constitution.
2. Describe the composition and role of the Constituent Assembly.
3. Discuss the philosophy of Indian Constitution.
4. Describe the aspects of the Preamble of the Constitution.
5. What are the salient features of the fundamental rights?
6. How are fundamental rights classified in the Indian Constitution?
7. How are fundamental rights and fundamental duties interconnected?
8. 'Directive principles of state policy aim at establishing a welfare state.' Explain.

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UNIT 2 FEDERALISM AND GOVERNANCE

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Structure

2.0 INTRODUCTION

The Constitution describes India as a Union of States. It provides for the distribution of powers between the Union and the States. Our Constitution has a scheme of distribution of legislative, executive and financial powers. A unique aspect of Indian federalism is that it is asymmetric. This means that as we progress as a nation, we will inspect the centre-state relations at various levels, viz., legislative, administrative, financial and political.

The Constitution of India declares that there should be the offices of the President and Vice-President of the country. These are the most significant offices in the country. It also elaborates the functions of the Prime Minister and the Council of Ministers, which are selected from among the members of Parliament. Thus, the Parliament is the fountain of power in this country.

In India, every state has a government to run its own administration. The states have their own executive and legislature. The state executive consists of the Governor and the Council of Ministers headed by the Chief Minister. The Constitution provides for the post of the Governor as the Head of a state in India. He is appointed

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by the President of India. He is both the Constitutional head of a state and an agent of the Central Government in a state. The Governor is appointed for a term of five years. But before the expiry of his full term, the President can dismiss him from office. The Governor may also resign on his own. His term of office may be extended and he may be transferred to another state. However, the state government cannot remove the Governor from his post. To be the Governor, a person must be a citizen of India and should complete 35 years of age. And he cannot be a member of the Parliament or the state legislature. He should not hold any office of profit. The Governor appoints the state Council of Ministers. He appoints the leader of the majority party in the Legislative Assembly as the Chief Minister. On the advice of the Chief Minister, he appoints the other Ministers of the Council of Ministers.

In the previous unit, you studied about the evolution of the Indian Constitution. In this unit, you will learn how federalism, i.e., the division of powers between the Centre and the states, works in India. The unit will also discuss the problems that arise in Centre-State relations, the solutions that can mitigate these issues, the power and position of the union executive, state executive and state legislatures.

2.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss the key features of Indian federalism
- Explain the various dimensions of the Centre-State relations
- Discuss the working and structure of the union executive comprising the President, Vice-President, Prime Minister and the Council of Ministers
- Assess the structure and working of the state executive comprising the Governor, Chief Minister and the Council of Ministers
- Evaluate the functions and working of the state legislature comprising the State Legislative Council and State Legislative Assembly

2.2 FEDERALISM

The Constitution in its very first article describes India as a Union of States. It provides for distribution of powers between the Union and the states. It enumerates the powers of the Parliament and State Legislatures in three lists, namely Union List, State List and Concurrent List. Subjects like national defence, foreign policy, issuance of currency are reserved to the Union list. Public order, local governments, certain taxes are the examples of subjects of the State List. Education, transportation, criminal law are a few subjects of the Concurrent List, where both the State Legislature and the Parliament have powers to enact laws. The residuary powers are vested with the Union. Thus, our Constitution, based on the principle of federalism with a strong and indestructible Union, has a scheme of distribution of legislative, executive and financial powers.

As stated above, a distinguishing aspect of Indian federalism is that unlike many other forms of federalism, it is asymmetric. Article 370 makes special provisions for the state of Jammu and Kashmir as per its Instrument of Accession. Article 371 makes special provisions for the states of Andhra Pradesh, Arunachal Pradesh, Assam, Goa, Mizoram, Manipur, Nagaland and Sikkim as per their accession or state-hood deals. Also one more aspect of Indian federalism is system of President's Rule in which the Central government (through its appointed Governor) takes control of state's administration for certain months when no party can form a government in the state or there is violent disturbance in the state.

Features of Indian Federalism

India is a big country characterized by cultural, regional, linguistic and geographical diversities. Such a diverse and vast country cannot be administered and ruled from a single centre. Historically, though India was not a federal state, its various regions enjoyed adequate autonomy from central rule. Keeping in view these factors in mind, the Constitution makers of India opted for the federal form of government.

The Constitution of India displays the following federal features:

- The Constitution of India makes the provision for the organization of two types of governments—the Union Government and the State Governments. The governments at both levels are organized on the basis of Parliamentary System as per the provisions of the Constitution.
- The Seventh Schedule of the Constitution makes provision for the division of powers between the Union and the states. It contains three lists;
    - o The Union List, which has 97 subjects of national importance and the Union Parliament has the power to enact laws with respect to these subjects.
    - o The State List, which contains 66 subjects of local importance and the State Legislatures have the power to enact laws with respect to these subjects.
    - o The Concurrent List, which contains 47 subjects and both the Parliament and State Legislatures can legislate on them. The idea of Concurrent List is inspired by the Constitution of Australia.
- As per the requirement of federal system, the Indian Constitution is a written document. It is a rigid Constitution as far as the amendment of federal provisions is concerned.
- The Indian Constitution makes provision for an independent and federal judiciary. The Supreme Court of India acts as a federal court. It has the power to decide the disputes arising either between the Union and the states or between the two or more states under its Original Jurisdiction as mentioned in Article 131 of the Constitution. The Constitution makes various provisions to ensure the independence of judiciary from the Executive and the Legislature both.

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2.2.1 Union-State Relations

As per the Constitution, India has dual polity: the Union at the Centre and the states at the periphery. The Union as well as the states have some powers, as mentioned in the Constitution, which they can exercise in the area assigned to them. The clear-cut division of powers between the Union and the states is one of the salient features of our Constitution. The basic principle of the federation is that the legislative executive and financial authority is divided between the Centre and the states not by any law passed by the Centre, but by the Constitution itself. Part XI and Part XII of the Constitution (Article 245 to 263) explain the relation between the Union and the states. Part XI discusses the legislative and administrative relations between the Union and the states, while Part XII explains the financial relations between them.

Let us now discuss the legislative, executive, financial and political relations between the Centre and the states in detail.

(I) Legislative Relations

Chapter I of Part XI of the Constitution deals with legislative relations (distribution of legislative powers between the Union and the states). The Constitution of India follows the Canadian model, which divides various subjects into three lists—the Dominion List, the Provincial List and the Concurrent List. Further, it vests the residuary powers with the Centre. The Indian Constitution also divides various subjects into three lists—the Union List, the State List and the Concurrent List.

As already mentioned, the Union List consists of subjects on which the Union Parliament can pass laws. Some of the subjects of the Union Lists are defence, foreign affairs, banking, currency, coinage, citizenship, post and telegraph. The State List enumerates the subjects on which each State Legislature can legislate, and such laws operate within the territory of the concerned state. It includes subjects like public order and police, local government, public health and sanitation, agriculture, justice, and irrigation. The Union Parliament as well as the State Legislature have the power to legislate over the subjects listed in the Concurrent List. The main subjects in the list include criminal law, criminal procedure, preventive detention, marriage and divorce, and administration of justice.

The residuary power is mentioned in Article 248 of the Constitution, which is given to the Union Legislature. The Parliament has the power to make laws with respect to matters which are not enumerated in the Concurrent List or the State List.

The Constitution seems to favour the Union in many ways. It is evident from some provisions, such as:

(i) The Union List consists of subjects which are of national and paramount importance.

(ii) The Union Laws have primacy over the State Laws with respect to the concurrent subjects.

(iii) The residuary powers are with the Union Parliament.

(iv) In certain circumstances, the Union Parliament has the rights to make laws related to the subjects which are given in the State List like:
   (a) If Rajya Sabha takes a decision on issues related to national interest
   (b) During national emergency
   (c) In case of treaties and international agreements
   (d) In case of failure of the Constitutional machinery in a state
   (e) For introduction of some state bills with Presidential permission and reservation of certain state bills for Presidential assent

(v) Superior status is given to the Union Laws in case of conflict between the Union Law and the State Law.

(vi) The Parliament has the power to establish or abolish the State Legislative Councils.

(vii) The Parliament has the power to determine or change the boundaries of the state.

(viii) The Parliament has the power to legislate for the Union Territories.

(II) Administrative (Executive) Relations

Chapter II of Part XI of the Constitution lays down the administrative relations between the Union and the states. In the sphere of administrative relations as well, the Constitution shows a distinct leaning in favour of the Union. The principal features of administrative relations between the Centre and the states are as follows:

- According to Article 256 of the Constitution, the executive powers of the state should be exercised in such a manner that it does not impede the executive power of the Union.
- If the state does not comply with the directives of the Centre, the latter may, under Article 356, take over the administration of the state (President Rule).
- Under Article 258 (2), the Parliament is given the power to use the state machinery to enforce the Union laws.
- The Centre can deploy military and para-military forces in a state even against the wishes of the government of that state.
- In case of disputes related to the waters of the inter-state rivers or river valleys, the Parliament has power to pass judgement (Article 262).
- For coordination between the states, the President is empowered, under Article 263, to constitute a council to resolve disputes and/or to discuss subjects of common interests between the states inter se, and between the states and the Union.

(III) Financial Relations

The Constitution of India in its Part XII, Chapter I explains the financial relations between the Union and the states. Some of its salient features are as follows:

- The Constitution exclusively assigns certain items of revenues to the Union. Taxes on any item covered in the Union List such as customs and export

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duties, income tax, excise duties on tobacco and jute are assigned to the Union.

- There are certain items of revenue which fall under the exclusive jurisdiction of the state. These are land revenue, stamp duty except on documents included in the Union List, succession duty, and estate duty in respect of agricultural land and others.
- The revenues from the following items are collected and used by the states:
  (i) Stamp duties on bills of exchange, cheques, promissory notes, etc.
  (ii) Excise duties on medicinal and toilet preparations which contain alcohol and opium
- Taxes on railway frights and fares, terminal taxes, and estate duty in respect of property other than agricultural land are collected by the Union but are given to the states.
- Some taxes are levied and collected by the Union but are distributed between the Union and the states. These include items like tax on income other than agricultural income, and excise duties on items other than medicinal and toilet preparation.
- Under Article 275, the Centre needs to provide grants-in-aid to the states.
- The states of the Union cannot raise foreign loan without the consent of the Union.
- Under Article 360, the Centre can declare financial emergency. After this, the President can suspend the provisions which are related to the division of revenue between the Union and the states. He/She can also suspend grant-in-aid to the states.
- Under Article 280, the President can appoint a Finance Commission which makes recommendations for the distribution of income (from taxes) between the Union and the states.
- The Centre has control over the states due to the system of centralized planning mentioned in the Constitution.

In all the three dimensions—Legislative, Administrative and Financial—the Union-State relations reflect **Unitarianism** as a key component of the Indian federal system. The working of the federal system during the past shows tendency towards centralism. This has given rise to a number of conflicts. Thus, it is important to make our system a cooperative federalism.

(IV) Political Relations

Despite the fact that there is division of powers between the Centre and the states, the states are dissatisfied because they feel that the balance of powers is heavily in favour of the Centre. They also feel that the Centre uses its powers in such a way that there is no autonomy left to them even in matters mentioned in the State List.

The Union–State relations in India took a new turn after the Fourth General Elections (1967). Until 1967, the Congress party dominated the Centre and the state

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governments. During this phase, the Union–State conflicts were internal problems of the Congress party and were resolved at the party-level only. The post-1967 political scenario saw the emergence of non-Congress governments in the states as well as in the Centre. Now, the internal mechanism of the Congress Party could not resolve the conflicts, which not only came to the surface but also became increasingly intensive.

The major conflict areas between the Union and the states can be broadly classified into three categories of issues:

(i) Political dimension

(ii) Administrative dimension

(iii) Economic and financial dimension

(a) Political Dimension

There is a tendency in our country to view politics through the legal mechanism of the Constitution. Thus, political parties are free to suggest amendments to resolve political problems. The Constitutional framework is stable while the political context keeps changing. The four aspects of political dimensions of Centre-State relations are as follows:

1. **Dynamics of political parties:** As long as the same political party was ruling over the Centre and the states, only intra-party factors were important in determining the Centre-State relations. However, in an emerging multi-party system, at least a few of the state governments are under parties which are different from the party ruling at the Centre. Thus, inter-party factors determine the Centre-State relations. In such a case, the state governments can be divided into three types, from the viewpoint of the Central government:
   - Identical, i.e., of the same party
   - Congenial, i.e., where ideological and/or interest gap is low
   - Hostile, i.e. where the party in power at the state level is radically different in its ideological and political orientation, e.g., Congress and BJP

   In cases when the state government is identical or congenial, the conflicts can be resolved with the help of some discussions. However, if the state government is hostile, it becomes extremely difficult to resolve issues.

2. **Politics of coalition:** The Indian party system has had a considerable experience of coalition governments. If the ruling party at the state level and central level is same, the relations between state and Central governments are friendly. The Central government may even tolerate the decisions taken by the state government. For instance, the NDA (National Democratic Alliance) government did not make any move to impose President's Rule in Gujarat at the time of 2001 Gujarat riots, when the Modi led government allegedly showed a complete lack of interest in curbing the riots.

   On the other hand, if the ruling party at the state is different from the party ruling at the Centre, the state government may be considered hostile. In

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this situation, the Central government would like to use its power to undermine the state government. For instance, the BJP-led coalition (NDA) government dismissed Rashtriya Janata Dal (RJD) government in Bihar led by Rabri Devi in 1999 in the wake of the caste-class violence but did not take any strong action during the Gujarat riots.

3. **President's Rule (Article 356):** One of the widely used instruments used by the Centre over the states is the provision for President's Rule under Article 356. This was meant as a 'safety valve' in the political system to prevent an authority vacuum in case of a breakdown of the Constitutional machinery in a particular state. However, in practice, this article has been used so frequently that it has become a poison for our political system.

   President's Rule can be imposed either on the recommendation of the Governor or if the President deems it necessary. From 1950 to 1989, there were seventy-nine Presidential/Central interventions in the state. Most of these emergencies were declared during the Congress rule under Indira Gandhi and during the reign of the Janata Party. The dissolution of nine State Assemblies and proclamation of President's Rule in 1977 and 1980 was a blow to the federal democratic structure of the country.

   The use of Article 356 declined in the 1990s. It was in 1997 that for the first time, the President openly asked the Prime Minister and his cabinet to reconsider the proposal for the dismissal of UP (Uttar Pradesh) state government before signing the proclamation.

4. **Integrity of the states:** One of the first tests of a federal system is that the federating units have distinct territorial identity and their integrity is maintained. In this respect, the states in the Indian political system are severely handicapped because the Constitution does not protect their identity and integrity.

Thus, there have been persistent demands for statehood by the Union Territories and sub-regional groups, e.g., Telangana, Vidarbha, Bodoland, etc. Since the Centre alone has the power to create new states, it becomes difficult to maintain good Centre-State relations if the Centre refuses to comply with the demand for statehood.

(b) Administrative Dimensions

Though the relations between the Centre and the states are essentially political, yet its operational aspects can be studied separately under the administrative dimension:

1. **The partisan role of the Governor:** The Governor of a state is appointed by the President on the advice of the Central government for a five-year term but holds his/her office until the pleasure of the President (Article 156).

   The role of the Governor has become one of the controversial issues. The main issues of controversy relate to the appointment of the Governor by the Centre, and his/her partisan role in the formation and dismissal of state government at the will of the Centre. The Governorship is now treated as a

reward for political loyalists who could not be accommodated in the cabinet. This has reduced the Governor to the level of a mere rubber-stamp or an agent of the Centre.

On many occasions, the Governors have dismissed the Chief Ministers when the matter should have been decided by the State Legislature. The dismissal of the Janata Dal government in Karnataka (April 1989), Kalyan Singh government in UP (1998) and Rabri Devi government in Bihar (1999) are some of the instances of violations of the Constitutional propriety by the Governors of the states.

Apart from this, the Governors have also been interfering in the daily affairs of the states in the name of discretionary powers. Such interference by the Governors in state governments' affairs and abuse of their powers for partisan reasons has been giving rise to a feeling of insecurity among the states.

2. **Bureaucracy**: Bureaucracy is another area of friction between the Central government and the state. The points of issue are impartiality in services and formation of new All India Services. The states criticize the Centre for its discriminatory use of All India Services. The state governments do not have adequate control over these services as far as their developmental responsibilities are concerned. It is being alleged by many state governments that the bureaucrats, appointed by the Centre, do not show loyalty towards the implementation of state government's policies, if the political party at the Centre and the state are hostile to each other.

   Another issue is the formation of All India Services and the opposition to such formation on part of the states. The state opposes this formation because All India Services encroach upon the autonomy of the states and involve a lot of expenditure because of high salaries of these bureaucrats.

3. **Misuse of mass-media by the Centre**: The misuse of mass-media for political purposes has also been a source of tension between the Centre and the states. It has been alleged that the media are the 'mouth-piece' of the Union government. However, with the establishment of the Prasar Bharti and the establishment of numerous satellite channels, the scenario has changed to a great extent.

4. **Law and order problem in the states and the role of the Centre:** Maintenance of law and order is primarily a responsibility of the states. They have their own agencies and organizations to achieve this goal. Besides this, there are agencies of the Central government to ensure law and order, such as Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), etc. The maintenance of 'parallel' agencies by the Central government is an 'unusual' feature of the Indian federal system. The states argue that since public order is the responsibility of the state, thus, setting up of Central police forces is an encroachment on their jurisdiction.

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In recent years, in view of increase in violence, the states themselves have become dependent on the Central forces as they cannot deal with the problems solely with their own resources. Now, the issue of controversy is the deployment of fewer Central forces.

However, the issue of the deployment of armed forces and the repeal of Armed Forces Special Powers Act became the core of confrontation between the State of Manipur and the Centre in August 2004. It was followed by mass agitation and shifting of Assam Rifles from the state.

5. **Inter-State disputes:** In India, there are two types of inter-state disputes, viz., inter-state water disputes and inter-state boundary disputes. Examples of inter-state water dispute are Cauvery water dispute among Karnataka, Kerala and Tamil Nadu; and Narmada water dispute among Gujarat, Madhya Pradesh, Maharashtra and Rajasthan.

   Inter-state boundary disputes represent the unsettled issues of reorganization of the states. Such disputes still exist between Karnataka and Maharashtra, Punjab and Haryana, and Assam and Nagaland.

   The Centre's involvement in such disputes is like that of an intermediary; thus, it gets caught in inter-state cross fires.

(c) Economic and Financial Dimensions

The financial weakness of the states has been a major area of tension between the Centre and the states. From the state's point of view, the allocation of financial resources between the Centre and the states is faulty. The state's resources in raising the finances are meagre but they have been assigned a wide range of responsibilities of social welfare, education, rural development, etc. However, with the advent of the process of globalization, the states are now able to attract MNCs (Multi-National Companies) and private investors, and are able to generate funds for themselves. Earlier, the states could not take up any major project on their own. Also, the Centre used to adopt discriminatory attitude, based on political reasons, in the allocation of grants-in-aid to the states.

The role of Planning Commission is another controversial issue. The Planning Commission has been accused of political considerations in allocating developmental projects to the state. The poorer states like Bihar complain that they were not being given enough funds.

Demand for State Autonomy

From the above analysis, it becomes clear that consensus and cooperation which are pre-requisites for the smooth functioning of the Union-State relations have been replaced by a growing politics of confrontation. The states have been developing a feeling of deprivation on the ground that the Centre has denied them the due autonomy. Autonomy does not mean independence or sovereignty of the states. It indicates non-interference of the Centre in the prescribed domain of the states.

From time to time, a number of Commissions have been appointed to look into Centre-State relations and to suggest reforms like the Administrative Reforms Commission (1967) and the Sarkaria Commission, which submitted its report in 1988.

Suggestions of the Sarkaria Commission

The Commission did not call for drastic changes in the basic character of the Constitution and in its opinion the existing arrangements and principles were basically sound. It out rightly rejected the demands for curtailing the powers of the Centre and favoured a strong Centre to tide over the various challenges to the country's integrity and unity. But it emphasized the need for changes in the functional or operational aspects. Some of its important recommendations of the Sarkaria Commission are given below:

- It called for Constitution of a permanent Inter-State Council under Article 263.
- All-India services should be further strengthened and some more such services should be created.
- The residuary powers of taxation should remain with the Parliament while the other residuary powers should be placed in the Concurrent list.
- The present division of functions between the Planning Commission and the Finance Commission should continue.
- The Centre should have powers to deploy its armed forces even without the consent of the states. However, consultation with the states is desirable.
- The award of the Inter-State River Water Tribunal should be made binding automatically and not after notification by the Centre.

Issue of Appointment of the Governors

On the issue of appointment of the Governors, it made some important recommendations as given in the following:

- The Governor should be eminent in some walk of life and from outside the state. He should be a detached figure without intense political links or should not have taken part in politics in recent past. Besides, he should not be a member of the ruling party.
- He should be appointed after effective consultations with the state Chief Minister and Vice-President and Speaker of the Lok Sabha should be consulted by the PM before his selection.
- As far as possible, the governor should enjoy the term of five years.
- He should be removed before his tenure only on the grounds as mentioned in the Constitution or if aspersions are cast on his morality, dignity, Constitutional propriety, etc. In the process of removal, state government may be informed and consulted.

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Regarding use of Article 356, the Sarkaria Commission made the following recommendations:

- This article should be used very sparingly and as a matter of last resort. It can be invoked only in the event of political crisis, internal subversion, physical breakdown and non-compliance with the Constitutional directives of the Centre.
- Before that, a warning should be issued to the errant state in specific terms and alternate course of action must be explored before invoking it.
- The material fact and grounds on the basis of which this article is invoked should be made an integral part of the Proclamation; it will ensure effective Parliamentary control over the invocation of the President Rule.
- The Governor's report must be a 'speaking document' and it should be given wide publicity.

Thus, the Sarkaria Commission was an important attempt to streamline the Centre-State relations**.** It has become a reference point for any discussion on Centre-State relations and it has been frequently referred to even by the judiciary. On its recommendation, the Inter-State council was established in 1990 and it has considered its recommendations. However, many of its important recommendations have not been implemented and tensions in federal relations are a recurrent feature. Therefore, the demand for more autonomy from the Centre has taken different forms like demand of the people of certain areas for secession from the Indian Union (Kashmir), demand of people of certain states for more powers, demand of people of certain areas for separate statehood (Bodoland, Vidarbha, etc.), and demand of people of certain Union Territories for full-fledged statehood.

In conclusion, one can deduce that the tensions in the Centre-State relations are politically motivated. It is possible to end the Centre-State conflict if the Centre shows understanding towards the needs of the states. It should grant adequate finance to the states without discrimination.

2.2.2 Recent Trends in Indian Federalism

Role of Regional Politics in Shaping Federalism

In a federal polity which necessarily presumes division of powers and resources between the Centre and the states, conflicts and tension between the two are inevitable. No federation can claim immunity from differences between the Union and the states. In fact, a federal polity based upon shared power can be said to have institutionalized tension.

With the dawn of coalition politics and increasing importance of regional parties, states where regional parties rule find the balance of power heavily tilted in favour of the Centre. In their opinion, the exploitation of the Constitutional provisions by the Union government in order to secure partisan interests has created a number of conflicts between them and the Centre. Thus, there has been an increasing demand for greater autonomy of states. Some regional political parties like Siromani Akali Dal in Punjab, DMK (Dravida Munnetra Kazhagam) in Tamil Nadu, National Conference in J&K (Jammu & Kashmir), AGP (Asom Gana Parishad) in Assam

have gone to the extent of demanding the limiting of the powers of the Union to four key subjects including defence, foreign affairs, currency and coinage. They want that all the other powers should be transferred to the states.

The Partition of the country in 1947 compelled the adoption of a strong Centre in a federal structure. Now, when the times have changed, there is a need to revise the model. The Rajamannar Committee Report 1972; the Anandpur Sahib Resolution of the Akali Dal; the West Bengal Government Memoranda of 1980, 1981, 1983 and 1988; and the leaders of regional political parties and several state Chief Ministers have advocated a case for more autonomy to the states. With the rise of regional parties and the decreasing strength of national parties, the need to have strong states as part of the Indian Union is now advocated by many analysts as the necessity of contemporary times.

Solutions to Improve Centre-State Relations

There are various challenges in achieving a balance between the Centre and the state. However, these challenges are not unmanageable.

One main problem between the Centre and the state is an imbalance between revenue and expenditure in regional states. The states implement programmes related to health, education and other public services, but are unable to collect their own revenue for these public services. A solution to this problem would be for the Central government to allocate more revenues to the states and also allow states to collect more revenue. For example, states cannot collect service tax. More revenue should be internally generated within the states, and the Centre must transfer more money to the states.

Evidence has shown that states are important repositories of innovation and change. For example, under the digital service reform, state governments initiate public service delivery through electronic means. Today, for instance, a person can get a birth certificate quickly because of computerization. For example, Chhattisgarh has a very strong e-governance system. Thus another solution would be to encourage states to introduce such innovation and incentivize such knowledge about new initiatives to diffuse across states. The National Development Council could be used to create some mechanism for diffusing innovation. A third solution would be to develop more productive Centre-State relations by creating linkage institutions. There are forums where state-level and Central-level officials can talk to each other and work together by sharing information. Though some institutions like the Inter-State Council and the National Development Council have become quite active of late, they lack enforcement power. But their recommendations must be respected.

These three solutions to improve Centre-State relations can be considered critical in achieving India's development goals. But at the same time, it must be stated that India, despite hiccups, has a very good model for Centre-State relations, a model that has ensured democratic stability and has the potential to become a model for other countries. The most positive aspect of this relationship is the multi-party system, which has allowed different parties to be represented at the Centre. In fact, coalition governments have created stability for Centre-State relations. All

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conflict is mediated by political representation at the Central level. This is perhaps why most movements for secession have become muted.

At the same time, as a result of this political representation, every small party has veto power, which slows down the policy process. There is a 'one step forward and two steps backward' kind of feel to India's polity. While there's a lot of flexibility in the system, it comes at the cost of policy consistency. Another problem is that extreme flexibility in a coalition government has had a negative impact. This leads to a trade-off between flexibility and consistency in policy, that is, flexibility and autonomy of all voices can be at the cost of policy consistency, a virtue necessary for good developmental outcomes.

Source: Adapted from http://www.moneycontrol.com/news/features/solutions-to-improve-centre-state-relations_661351.html and Assema Sinha, the Associate Professor, Claremont McKenna College.

CHECK YOUR PROGRESS

1. Fill in the blanks with appropriate words.
   (i) The Indian Constitution describes India as a Union of States in its _____ article.
   (ii) As per the Constitution, India has _____ polity.
   (iii) _____ between revenue and expenditure is a major threat to the Centre-State relation.
   (iv) The _____ in 1972 advocated a case for more autonomy to the states.

2.3 UNION EXECUTIVE

The Constitution talks about the positions of the President of India, the Vice-President of India, the Prime Minister and the Council of Ministers. Why is there a provision for these posts in our Constitution? Let us discuss.

2.3.1 Power and Position of President

Under the Constitution of India, the office of the President of India is virtually analogous to that of the British monarch in keeping with the spirit of the parliamentary executive. Being the ceremonial head of state, the office of the President is an exalted one, with enormous prestige, authority, grace, dignity, respect and adoration, but very less activism. The executive power of the union is based on the assumption of the President being a rubber stamp of the government in order to authenticate the decisions taken by the Council of Ministers, barring a few cases ordained by circumstances. The President and the Vice-President are the formal executive heads of the Union, while the actual executive is the Union Council of Ministers, with Prime Minister as its Chairman.

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The Constitution of India provides for various conditions of his office. Though any Indian with thirty-five years of age, and is eligible to be elected to the Lok Sabha, is entitled to contest for the office of the President; in reality, only persons with either exceptional qualities and stature or having the blessings of the leader of majority party in parliament have been elected to the President's office. The elections to the office of the President are indirect through an electoral college consisting of the elected members of both the houses of parliament and the elected members of the state legislature assemblies. The President is elected for a term of 5 years with an entitlement for re-election. However, with the exception of Dr Rajendra Prasad, no President has been re-elected to office. The President may be removed from the office by the process of impeachment, which is a cumbersome process, on the charges of violation of the Constitution. Though the various aspects of the office of the President have contributed to his figurehead and ceremonial position, the Constitution has also ensured him a stable tenure so that he can function without fear or favour in the exceptional cases when he may be required to take a position that is unpleasant to the party in power.

Powers

Being the chief executive of the Indian union, the executive powers of the central government have been vested in the President, to be exercised by him either directly or through officer's sub-ordinate to him, in accordance with the Constitution (Article 53). His position is such that every significant institution and functionary is either directly or indirectly attached to him.

Executive Powers

- The President has vast power of making and unmaking executive appointments. In the first place, he appoints the Prime Minister and on the latter's advice, the other members of the Union Council of Ministers, to aid and advise him in the exercise of his functions. The President is also authorized to receive and accept their resignations also to dismiss them individually or collectively as they all hold office during his pleasure.
- The President also appoints the Attorney-General of India. He can appoint any person as the Attorney-General who is qualified to be appointed as a judge of the Supreme Court.
- The President also appoints the Comptroller and Auditor-General of India, provided the person to be appointed is qualified to be a judge of the Supreme Court.
- The President appoints the Governors of states. These appointments are done in consultation with the Prime Minister.
- The President alone can receive the Governor's resignation or dismiss him, as the Governor holds his office during the pleasure of the President.
- The President also appoints the administrators of Union-Territories and determines the designations to be held by them. They are variously known as Lt. Governors, chief-commissioners or administrators.

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- The President is also competent to appoint an inter-state council to exercise the following functions: (a) advising upon the disputes between the states; (b) investigate and discuss matters of common interest between the Union and the state or amongst the states themselves.
- The President appoints chairmen and members of the Union Public Service Commission and the Joint Public Service Commissions.
- The President appoints the Chief Election Commissioner and the Deputy Chief Election Commissioners.
- The President appoints a commissioner to report to him on the administration of the 'scheduled areas' and the welfare of scheduled tribes. He also appoints another commissioner to investigate the conditions of the backward classes in the states.
- The President appoints an Official Language Commission to recommend to him the ways through which Hindi can be progressively used in place of English for the official purposes of the Union. He also appoints a special officer for all matters relating to the safeguards provided for linguistic minorities under the Constitution.
- The President has also been empowered to entrust to the states, or to its officer with the exercise of executive power of the Union, provided that the state or the officers concerned, consent to do so.
- The President also has the power to administer Union Territories either directly or through officers or administrators of his choice. The executive power or the Union with respect to the Union Territories extends to all subjects.
- The President has the power to receive reports of the Comptroller and Auditor-General of India, the Union Public Service Commission, the Election Commissioners, the Official Language Commission, the commissioners for scheduled areas and backward classes, and the special officers for scheduled castes and tribes, and for the linguistic minorities.

Legislative Powers

- The President is an integral part of the parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as the Rajya Sabha and the Lok Sabha. Since he is an integral part of the Parliament, a bill before becoming an Act must not only be approved by the two houses of Parliament but must also be assented to by the President.
- The President has the power to nominate not more than 12 members to the Rajya Sabha on the ground that they possess special knowledge or practical experience in the fields of art, science, literature and social service. Article 331 empowers him to nominate not more than 2 persons belonging to the Anglo-Indian community to Lok Sabha, if he thinks that this community is not adequately represented in the House. The President appoints acting Speaker of the Lok Sabha in case both the Speaker and Deputy Speaker are not available. Similarly, he appoints the acting-Chairman of the Rajya Sabha in case both the Chairman and Deputy Chairman are not available.

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- The President administers the oath of office to the members of both the Houses of Parliament.
- The President decides with final authority, after consultations with the Election Commission, as to whether any MP has become ineligible to hold his office as an MP.
- The President has the power to specify the period within which a person who has been elected a member both to parliament and to a state legislature must resign either one of his seats.
- The President has the power to summon, from time to time, each house of the Parliament in such a manner that 6 months do not intervene in between the sessions. He has the power to prorogue either or both the houses. He is also empowered to summon the joint sitting of the two houses of parliament in case of deadlocks over non-money bills passed by one house and either rejected or delayed for more than 6 months by the other house.
- The President inaugurates the first session of parliament after each general election to the Lok Sabha, and delivers his inaugural address to the two houses sitting together in a joint session.
- Article 123 authorizes the President to promulgate ordinances during the recess of parliament.
- All bills passed by the Parliament are sent to him for his consideration. He may assent to the bill. And only upon his assent, a bill becomes the law. If, however, he wants the Parliament to modify or amend the bill, he is free to return it for their reconsideration, with or without his recommendations.
- He also has the power to recommend to the parliament to make law to form new states or to alter areas, boundaries, or names of the existing states.
- The President has been authorized by Article 370 to extend the various provisions of the Constitution to the states of Jammu and Kashmir, with the concurrence of its government.
- The President has also been authorized to consider and approve state laws and ordinances which under various provisions of this Constitution are reserved by state Governors for his assent. Finally, he has the power to make regulations for the peace, progress, and good government of all the Union Territories, excepting Chandigarh and Delhi.

Judicial Powers

- The President appoints the Chief Justice and other judges of the Supreme Court of India in consultation with such other judges of the Supreme Court and state high courts as he may deem necessary.
- He appoints the Chief Justice and other judges of the state high courts, in consultation with the Chief Justice of India, Governor of the concerned state and the Chief Justice and such other judges of the state high court whom the President may deem necessary to consult.

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- The President can transfer judges from one high court to another in consultation with the Chief Justice of India.
- Article 143 empowers the President to consult the Supreme Court.
- The President also exercises the power of pardon. He may grant pardon, suspend or commute the sentence of any person.
- The President has the right to be represented and appear at the investigation of charges against him by either house of Parliament on a resolution of impeachment. The President is, however, not answerable to any court for the exercise or performance of powers and duties of office or for any act done by him in the exercise of his official duties. Neither any criminal proceedings can be instituted against him in any court, nor can any court order his arrest or imprisonment during his term of office. Civil suits can be instituted against him by giving him a written notice of at least 2 months.

Financial Powers

- The President has control over the purse of the nation. It is the President who causes the national budget to be laid before each House of Parliament.
- The President has been authorized by Article 280 to appoint a Finance Commission consisting of a chairman and other members every fifth year, or earlier if necessary.
- The President has also been given control over the Contingency Fund of India. He can advance money from this fund to the Government of India for meeting unexpected expenditures.
- Certain money bills (Article 110) and bills affecting the taxation in which states are interested (Article 274) are to be reserved by the state Governors for the approval by the President.

Military Powers

- Article 53 makes the President the Supreme Commander of the defence forces of the Union. The exercise of the military power by him is not discretionary. It is regulated according to the law passed by Parliament. In the exercise of his military powers, the President nominates and appoints the Chiefs of the Staff of Army, Navy and Air Force. He is the Chairman of the Defence Council which consists, besides him, of the Prime Minister, the Defence Minister, and the three Chiefs of Staff.
- With the concurrence of the Parliament, the President can declare war and conclude treaties of peace with foreign states.

Diplomatic Powers

- The President represents India in international affairs. He appoints and recalls India's Ambassadors, High Commissioners and other diplomatic envoys to the foreign states, the United Nations and its specialist agencies. He receives the credentials of the Ambassadors, High Commissioners, and other diplomatic envoys accredited to India by the United Nations and the foreign states.

- All international treaties and agreements to which India is a party are concluded on his behalf and are finally signed by him.

Emergency Powers

- Part XVIII of the Constitution is entitled 'Emergency Provisions'. It deals with the circumstances in which a state of emergency can be proclaimed by the President and the steps he may take to cope with it. The purpose is to restore the normal functions of the government at the earliest opportunity. The framers of the Constitution have provided for three types of emergencies, namely:
  - o Emergency caused by war, external aggression or internal revolt
  - o Emergency caused by the breakdown of the Constitutional machinery in the states
  - o Emergency caused by the threat to financial stability or credit of India, or of any part of the territory thereof

Position of the President

The President of India is vested with the role 'to advise, to encourage and to warn', which lends the office of the President much authority and influence. In spite of the finality of the issue that the President in India is merely a figurehead without any real powers, circumstantial dynamics may probably afford him few, if not many occasions to use his discretion in taking decisions. Three such circumstances are:

- First, when after a fresh general elections, no party is able to command a majority in the Lok Sabha; the President is inadvertently put in a situation to apply his wisdom, without any aid and advice from a Council of Ministers.
- Second, if an incumbent government loses its majority in the Lok Sabha and the Council of Ministers recommends the dissolution of the House, the President might be in a position to use his mind to find out whether a reasonably stable government can be formed and the country saved from another general election, thereby acquiring a discretionary power to accept or reject the recommendation of the Council of Ministers.
- Last, due to the lack of time-frame within the President must assent to a bill, he may, in his discretion, use the pocket veto to kill a bill.

Does the President have the power to dismiss the Prime Minister on the charges of corruption? These issues have arisen out of the functioning of the Indian Constitution during the last 60 years in the circumstances which either the fathers of the Constitution could not visualize or neglected to provide for the evolution of suitable conventions on the issue. The solution, lies not only in evolving healthy conventions on many of the contentions but also in impressing upon the incumbents of the two August Constitutional offices, through the people in general and the legal fraternity in particular, to develop and sustain cordial ties between them, for, as Paul R. Brass suggests wisely the President can function effectively only if he has the confidence of the Prime Minister and not vice versa as the President is by convention reduced to a mere figurehead while the ministry is the real executive.

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Vice-President

The Constitution of India specifies that there shall be a Vice-President, who shall also be the Ex-office Chairman of the Council of State and that he shall not hold any other office of profit. However, the Constitution also states that whenever there occurs any vacancy in the office of the President by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President until a new President is elected. The Vice-President may be also called upon to discharge the functions of the President when he, owing to absence, illness or any other cause, is unable to perform the functions of his office. The Vice-President, when he acts as President or discharges his functions, shall be entitled to such emoluments, allowances and privileges as may be determined by law. But during any period when the Vice-President acts as President or discharges the function of the President he shall not perform the duties of the office of the Chairman of the Council of States, nor shall he be entitled to any salary or allowance payable to the Chairman of the Council of States.

The method of the election of the Vice-President is different from that of the President. He is elected by the members of both Houses of Parliament assembled at a joint meeting. The election is done by the method of proportional representation with single transferable vote. The normal tenure of office of the Vice-President is 5 years from the date he enters upon his office. He may, however, resign his office before the expiry of the term by writing to the President. He may also be removed from the office by a resolution of the House and agreed to by the House of the People. There is no provision for the impeachment of the Vice-President. The Vice-President continues to hold office even though his term has expired until his successor enters upon his office.

2.3.2 Power and Position of Prime Minister

In the parliamentary system of government in India, the Prime Minister (PM) is the real executive in contrast to the ceremonial position of the President of India. The office of the PM is a prominent one as it has attained immense power and authority in the Indian political system. But the executive system is not a one-man show. Emphasizing the collective nature of responsibility, true to the essence of a parliamentary democracy, the Constitution of India has also accorded a position of prime importance to the Council of Ministers under the leadership of the PM. The Indian system is symbolic in ensuring a leading position to the PM with the collective responsibility of the cabinet. The PM is the pivot, the guiding star that perceives and responds to the situation much ahead of others. Under Article 75 of the Indian Constitution, the appointment of the PM is ordained by the President who conventionally invites the leader of the majority party in the Lok Sabha to form the government sans any discretion of the President. However, the President may afford his discretion if the multi-party system fails to throw up an obvious choice.

After assuming office at the prestigious South Block, the ministers are appointed on his choice. It must be noted here that the PM has a prerogative which needs to be twisted at times to suit to the compulsions of running a coalition government.

A convention has always been followed in India that the PM needs to be a member of the Lok Sabha. However, Dr Manmohan Singh remains an exception, when as a member of the Rajya Sabha, he was elected as the Prime Minister in the UPA government. Noteworthy is the fact that the President is free to appoint any person as PM if he is of the opinion that the person to be appointed is likely to enjoy the confidence of the Lok Sabha. He may appoint the PM from amongst the members of either House of the Parliament or even from amongst the outsiders. In case an outsider is appointed as the PM or as a minister, he must become a member of either House of Parliament within 6 months of his appointment. The continuation of the PM in office depends upon his majority support in the Lok Sabha, though the Constitution provides that the Ministers hold office during the pleasure of the President. However, the pleasure of the President is, in fact, the pleasure of the majority support of the Lok Sabha, to whom the government is collectively responsible and whose vote of no-confidence leads to the withdrawal of the pleasure of the President, resulting in the removal of the government.

Role, Power and Functions of the PM

The Constitution of India vests executive powers of the Union in the hands of the Prime Minister and his team. But the propensity of the post and the role of the PM in the Indian polity is much more widespread and demanding, than what has been defined in the Constitution. The group is, at least, dominant, if not absolute. Not only this, assertive personalities at times have added more power to the position. Recall the days of the regime of Indira Gandhi and even her father Jawaharlal Nehru.

The PM's role spans many diverse areas. This includes:

- The PM is empowered to advise the President about the appointment of other ministers to constitute the Union Council of Ministers. He has a free choice in selecting his colleagues. The only thing which he has to keep in mind, while preparing the list of ministers, is that he has given representation to various groups in his party and that ministers are drawn from different states.
- The political life and death of ministers also depends upon the PM. He assigns to them various ministries and departments. He may change their portfolios or may even advise the President to dismiss them.
- The PM influences to a great extent every other appointment made by the President. The President appoints Chief Justices and Judges of the Supreme Court and the High Courts, Comptroller and Auditor-General, Attorney General, Election Commissioners, Chief of Staff of Army, Navy and Air Force, State Governors, Ambassadors and High Commissioners and many other State officers. All these appointments are formally made by the President but they are essentially the choice of the PM.
- The Parliament is summoned and prorogued by the President on the advice of the PM. The PM also advises the President about the dissolution of the Lok Sabha.
- The Prime Minister is the channel of communication between the President and the Council of Ministers.

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- As Chairman of the Union Council of Ministers, the Prime Minister summons meetings of the Council of Ministers and presides over them.
- The Prime Minister, being the Chairman of the Council of Ministers, not only supervises the departments under his personal charge but also co-ordinates and supervises the work of all other departments and ministers.
- The Council of Ministers is collectively responsible to the Lok Sabha. As such, the ministers sink and swim together. This they can do only if their leader shields and defends them and their actions both in and out of the Parliament. They must speak with one voice.
- Important policy matters are initiated by the PM in both the Houses of Parliament. It is he who gives his opening speech on important policy matters and informs the Houses of the purpose the government wants to achieve.
- It has been the prerogative of the PM to take a direct and keen interest in India's international relations.
- The PM, being the leader of the majority party, has to take the whole party into confidence, so that he continues to command the backing and support of his party.

  The office of the PM in the Indian political system has exhibited varied leadership styles and performances due to various factors whether personal or circumstantial. From Nehru to Narendra Modi, there have been distinct modes of perceptions and achievement orientations. However, in the era of coalition governments, the role and outlook of the PMs have become more cautions, cooperative, controlled but constrained in order to fix support of the participating parties of the government. The cabinet, at times, may also become problematic that would compel the PM to take a back seat. Thereby, the question of PM's autonomy becomes really crucial in such situations. For PM it is not just an issue of the survival of his party, but also of the people and the nation.

2.3.3 Power and Position of Council of Ministers

The essence of the parliamentary form of government lies in having a collective body of executive in the form of the Council of Ministers, headed by the PM and bearing their collective responsibility to the Parliament. In fact, these small islands of power handle the complex responsibilities of the government efficiently and effectively. The speed and expertise that they offer to the PM are commendable. In India, the Council of Ministers consists of three types of ministers:

- Cabinet Ministers
- Ministers of States
- Deputy Ministers

The ministers who hold the rank of the Cabinet Ministers form the Cabinet. The Cabinet has gradually come to acquire a very powerful position with the responsibility of taking all important decisions. But with coalitions, the PM may

create a coterie of three or four ministers to replace the cabinet; a new phenomenon called 'Inner Cabinet' or 'Kitchen Cabinet' comes into force. Sometimes, even cabinet committees and groups are created to smoothen the functioning of the government.

Functions

- The most important function of the Council of Ministers is the formulation of the executive policy in terms of which the administration of the country is to be carried out.
- The Council of Ministers, also co-ordinates the policies, programmes and activities of various ministries and departments. It also supervises the work of various ministries through the Cabinet Secretariat.
- The Council of Ministers is also called up to make or approve nominations for various political, ambassadorial or judicial appointments.
- It also approves the national awards, which the President confers for meritorious service in different fields of social activity.
- It examines the reports of various ministries and departments, commissions and committees before they are presented to the Parliament for consideration and approval.
- The Council of Ministers also determines legislative and financial policies.
- In the field of international relations also, the Council of Ministers plays an important role. It considers and approves the drafts of India's international treaties and agreements, the questions of ambassadorial appointments and those of the recognition of foreign states and foreign governments.

Council of Ministers and Parliament

The Constitution of India makes the Council of Ministers collectively responsible to the Lok Sabha. Accordingly, the Council of Ministers can remain in office till it has the confidence of Lok Sabha, or else it can be voted out, by a vote of no-confidence rejection of budgetary demands or defeat on any major matter. Clear majority of one political party and discipline ensures that the government shall always be able to exercise control over the Parliament. Thus, the Council of Ministers consisting the top leadership of the party and assured support of the majority in the Parliament becomes the seat of authority and source of all decisions. The Cabinet has to work within the framework of public opinion, pressure of interest groups, limitations of party programme and promises, media coverage, pressures of opposition, nursing of majority in the House, and also the commitment to its own deeds, misdeeds, errors or omissions. As Subhash C. Kashyap points out, the Indian political system represents a real fusion of the highest executive and legislative authorities. The relationship between the Executive and the Parliament is the most intimate and ideally does not admit any antagonism or dichotomy. The two are not visualized as competing centres of power, but as inseparable partners or co-partners in the business of government and the service of people. Still there is clear distinction between the functions of the

Executive and the functions of the Parliament. Latter is to legislate, advice, criticize and ventilate public grievances. The Executive is to govern, albeit on behalf of the Parliament.

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CHECK YOUR PROGRESS

2. What are the diplomatic powers of the President?
3. Where is the office of the Prime Minister located?

2.4 GOVERNMENT OF THE STATES

In accordance with the federal characteristics, the Constitution of India envisages two tiers of government—one at the level of the Union and the other at the level of the states. Part IV of the Constitution of India lays down the structure of the state governments and stipulates a parliamentary form of government like that of the Centre.

In accordance with the parliamentary framework, like the Union government, the state governments also have two forms of Executive—the Constitutional head and the real executive. The Governor is the Constitutional head of the state and the Chief Minister is the real executive of the state.

The ambiguity about the dual role of the Governor, his powers and functions has provoked sharp debates and controversies both in terms of nature of the federation and Union–State relations.

Meaning of Constitutional Head and Real Executive

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. Though the Constitution has given many legislative, executive and judicial powers to the Governor of a state, the latter cannot exercise these powers independently; he/she always has to act on the advice of the Chief Minister's Council of Ministers. This is why the Governor is merely the Constitutional head and the Council of Ministers headed by the Chief Minister is the real executive.

2.4.1 Power and Position of Governor

Appointment: According to Article 153 of the Constitution, each state in India has a Governor and the executive power of the state is vested in him. He is appointed by the President of India for a term of five years and holds office during the pleasure of the President (Article 156). This means that a Governor can be removed by the President at any time even before the expiry of the term.

Regarding the appointment of the Governor, there have been two conventions in India:

(i) The Governor is appointed from outside the state concerned. This convention is there to ensure impartiality of the Governor in state politics.

However, there have been instances when this convention was not followed.

(ii) The states are consulted by the Centre in the appointment of the Governor. However, this practice is also not always followed in every appointment.

A study of the persons appointed as Governors clearly reveals that a considerable number of retired politicians have been appointed as Governors. Besides, retired bureaucrats, judges and retired army officials have also been appointed as Governors. Thus, frequently, the Governors have been accused of playing in favour of the party-in-power at the Centre.

Qualification: The Constitution prescribes the following qualifications for a person to become a Governor:

- He must be a citizen of India
- He must have completed the age of thirty-five
- He should not be a Member of Parliament or State Legislature
- He shall not hold any office of profit

Powers and Functions of the Governor

The powers and functions of the Governor can be categorized as follows:

(a) **Executive powers:** The Governor appoints the Chief Minister and his Council of Ministers. However, following the Parliamentary form of government norms, they are responsible to the State Assembly and remain in power till they enjoy the confidence of the State Assembly. The Governor also appoints the Advocate General and the members of the State Police Service Commission.

All the executive actions of the state are carried out in the name of the Governor. It is the duty of the Chief Minister to communicate to the Governor all the decisions of the Council of Ministers relating to the administration of the state and proposals for legislation.

(b) **Legislative powers:** The State Legislature consists of the Governor and the State Legislative Assembly. Thus, the Governor is an integral part of the legislature and enjoys a variety of powers. Governor may summon, address, prorogue and dissolve the legislature. When a bill is passed by the legislature, it has to be presented to the Governor and the Governor shall declare either that he assents to the bill or that he withholds assent or that he reserves the bill for the consideration of the President. Article 213 empowers the Governor to promulgate ordinances during the recess of the legislature. He also has the power of causing to be laid before the state legislature the annual financial statement and recommending money bills.

(c) **Judicial powers:** The Governor of a state has the power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

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(d) **Discretionary powers:** Apart from the normal functions which the Governor exercises as a Constitutional head, he exercises certain discretionary powers. Some of them have been expressly conferred on him, while some others flow by necessary implication.

Article 163 (1) states the Governor should act according to the advice of the Cabinet except when he is required by the Constitution to act in his discretion. Article 163 (2) confers the Governor with the blanket discretion to decide when he is required to act in their discretion. The Governor's satisfaction, as well as certain responsibilities, therefore, becomes vulnerable to the discretionary power.

With regard to the discretionary power by implication, they are significant in two matters. One is with regard to the appointment of Chief Minister when neither a single party nor a combination of parties emerges from the election with a clear majority. Related to this is also the question of dismissal on the loss of majority support. The second matter is with regard to making a report to the President under Article 356 about his satisfaction that a situation has arisen in which the government of state cannot be carried on in accordance with the provisions of the Constitution, thereby recommending the imposition of the President's rule.

The above mentioned powers were meant by the Constitution-makers to be used for extraordinary and emergency situations. But in practice, not only these but also some normal powers, like that of reservation of bills for the consideration of President, have been used in quite controversial manners which suggests partisan motives, thereby creating tensions between Union–State relations.

Position and Role of the Governor

From the above description, some very significant characteristics come into view about the office of the Governor, which have important bearings on state politics. To begin with, the Constitution intended that the Governor should be the instrument to maintain the fundamental equilibrium between the government and the people of the state, and to ensure that the mandates of the Constitution are respected in the state. That is, with regard to the office of the Governor, Article 159 says that the Governor shall, to the best of his ability, 'preserve, protect and defend the Constitution and the law' and will devote himself 'to the service and well-being of the people' of the state.

Thus, the Constitution of India envisages a dual role for the Governor of a state:

- As the Constitutional head of the state
- As the agent of the Centre

Governor as the Head of the State

The Governor as the head of the state works under the parameters of parliamentary democracy. Thus, he acts as a nominal head and exercises his functions strictly according to the 'aid and advice' of the Council of Ministers. Though the administration is carried out in the name of the Governor, the real authority is exercised by the Chief Minister and his Council of Ministers, who are collectively responsible to the

Legislative Assembly. After the fourth General Elections in 1967, the monopoly of political power by the Congress party was broken and the non-Congress governments were formed in seven states. This phenomenon continues even today where no one party is capable of forming governments in both the Union and in many of the States. This changed scenario redrafted and redefined the position and role of the Governor in state politics. The Governors became actively involved in state politics and invariably acted in the interests of the party-in-power at the Centre. They also used their discretionary powers for their party purposes, and thus made the office of the Governor highly controversial, with the result that there was a demand to abolish the office of the Governor.

Governor as an Agent of the Centre

According to K. M. Munshi, 'Governor is the watch-dog of Constitutional propriety and the link which binds the State to the Centre, thus securing the Constitutional unity of India'. The Governor performs the following functions as the agent of the Centre in the states:

(a) The Union government is responsible for good governance in all the states. In case of the Constitutional breakdown of state machinery, the Governor may recommend President's rule or Emergency in the state under Article 356.

(b) The Governor sends his report regarding the affairs of the state to the President, periodically.

(c) The Centre has the power to issue directives to the states and it is the duty of the Governor to see that such directives are followed by the state government.

(d) The Governor of a state can reserve a bill passed by the State Legislature for the consideration of the President. Moreover, certain types of bills must be reserved by the Governor for the President's consideration.

2.4.2 Power and Position of Chief Minister

Taking the analogy of the parliamentary system of governance at the state level, the Constitution provides for the office of the Chief Minister to be the real executive of the state. He symbolizes ruling power structure and wields more authority than anybody else in the state.

However, the philosophy underlying the creation of a democratic setup in the state under the Indian Constitution appears to be guided by the compulsions of unity and consistency in the governance of the country as a whole. It does not ensure to each state a fair degree of functional autonomy in the true spirit of the federal structure of the Indian polity. Consequently, the position of the Chief Minister is not of a democratic ruler with wide-ranging powers and functions. Rather, it appears to be that of a local ruler with many fetters put on his functional autonomy. These fetters are in the form of the vast discretionary powers afforded to the centrally nominated Governor, by using which he can impair the effectiveness of the Chief Minister as the real ruler of the state elected by the people.

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Appointment of the Chief Minister

The Chief Minister is appointed by the Governor, the executive head of the state, who invites the leader of the majority party in the Legislative Assembly to form the government.

However, in practice, the appointment of the Chief Ministers in the states has become more of a game to be played by the Central government through the office of the Governor and other political manoeuvring than the simple Constitutional proposition that the Chief Minister shall be appointed by state governments. This is more prominent in the states where none of the parties are able to secure a majority support in the Legislative Assembly. Such situations are exploited by the Centre in order to either keep the functioning of the state government in accordance with its needs and aspirations, or to destabilize the government to install a new puppet government in the state.

The Constitution mentions nothing about the qualification of the Chief Minister. Under the Constitution, all that is required is that such a person is a citizen of India and possesses such qualifications, as are required for becoming a member of the Legislative Assembly (MLA). Such a person could be a member of either house of the legislature or even an outsider. Although constitutionally, a non-legislator does not stand barred from becoming a minister or a Chief Minister, he must, however, become a member of the legislature within six months, failing which he is liable to forfeit his office.

What holds good in the appointment of the Chief Minister also holds true in regard to his removal from office. The Constitution provides that the Chief Minister holds office during the pleasure of the Governor. In practice, the pleasure of the Governor becomes the majority support in the Legislative Assembly under Article 164 (2) of the Constitution. However, what happens in practice is that the removal of the Chief Minister is rarely the decision of the Governor. Acting as an agent of the Centre, the Governor 'removes' the Chief Minister at the behest of the Central government.

Consequently, Article 356 of the Constitution (President's rule in the states), provides the instrumentality through which the duly elected governments in the states are generally ousted, and has become one of the most abhorred articles of the Constitution by the protagonists of the state autonomy in the country.

Powers and Functions of the Chief Minister

The Chief Minister, being the real executive head of the state, enjoys several powers and functions. They are:

- He is the working head of the state government, and as such, he advises the Governor in matters relating to the selection of his ministers, change in their portfolios and their removal from his government.
- He presides over the meetings of his Council of Ministers and sees to it that the principle of collective responsibility is maintained. He may, thus, advice a minister to resign from his post or may advice the Governor to dismiss a minister, in case he differs from the policy of the Cabinet.

- He communicates to the Governor such information relating to the administration of the state of affairs and proposals of legislation as he may call for.
- He furnishes to the Governor such information relating to the administration of the state.
- He places a matter for the consideration of the Council of Ministers where the Governor requires him to have the decision of the government. He, thus, acts as the sole channel of communication between his ministers and the Governor.
- Likewise, the Chief Minister is the sole channel of communication between his ministers and the legislature. All bills and resolutions that are moved in the legislature must have his prior approval. Criticism of his government is answered by him.
- He may resign any time and then advise the Governor to summon such and such person for the installation of another ministry or to dissolve the House, and thereby place the state under President's rule.
- Though in theory, all appointments are made by the Governor, in practice, the power of patronage vests with the Chief Minister. He is consulted about the appointment of judges of the state high court. No posting and transfer can take place in the state without his approval. He is consulted in the appointment of State Advocate General and the members of State Public Service Commission.

The Chief Minister and the Legislature

In a parliamentary form of government, the executive headed by Chief Minister, and the legislature are supposed to work in close cooperation with one another. He defines government policies and programmes in the House and faces the opposition. For all practical purposes, the agenda of the House is decided by him. But with respect to the legislature, his most important power is that of the dissolution of the House. At any time, the Chief Minister can advise the Governor that the Vidhan Sabha be dissolved, though the latter is not bound by that. But usually, such an advice is accepted.

The Chief Minister and the Governor

The founding fathers of the Constitution had laid great stress on the need for a harmonious relationship between the Governor and his Council of Ministers headed by the Chief Minister. This was the idea behind abandoning the proposal for elected Governors and providing for their nomination by the President.

Thus, the Chief Minister has the obligation to facilitate the exercise of the Governor's right to be consulted for necessary information about the affairs of the administration of the state. The Governor cannot effectively discharge his multi-faceted role as a friend, philosopher and guide to the Council of Ministers, as a sentinel of the Constitution and as a live link with the Union.

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However, there have been times when the Governor and the Chief Minister had tensions between them. A few years ago, when Digvijay Singh was the Chief Minister of Madhya Pradesh, Bhai Mahavir was the Governor of the State. The state witnessed cold war between the Governor and the Chief Minister. The Governor used to directly summon senior government officials to the Raj Bhawan and issued verbal orders. Digvijay Singh viewed this as an affront to his authority and believed that requests from the Governor should be routed through the state government.

Position of the Chief Minister

The position of a Chief Minister in the state is akin to that of the Prime Minister at the central level, at least in terms of the broad scheme of parliamentary system of governance if not in terms of the substantive holding of the power in ultimate analysis.

To begin with, the Chief Minister has a relatively free hand in deciding the shape and size of his government. However, if the Chief Minister belongs to a national party or heads a coalition, his hands become tied even in using his prerogative of selecting his own ministers and allocating portfolios to them as he has to either consult the party high command or take the prior approval of the coalition partners before announcing the names and ministries of various ministers. Chief Ministers having a regional base and comfortable majority in the State Legislatures are in a better and safer position. Still all Chief Ministers have to ensure that all social segments of society are represented in the ministries; also, there has to be regionally balanced distribution of the ministries, in addition to having capable people running the vital departments like Home, Finance, Education and Defence.

The position of the Chief Minister is pivotal as he has unhindered power to reshuffle his Council of Ministers.

The relationship of the Chief Minister with the MLAs of the Legislative Assembly depends on two factors: the standing of the Chief Minister in front of the MLAs and the attitude of the former towards the latter. If the Chief Minister does not command a comfortable majority in the Assembly, his position becomes quite precarious in front of the MLAs and he is in a vulnerable position. In substance, a democratic rather than an authoritarian attitude of the Chief Minister towards the MLAs and the legislature itself needs to be the norm of the effective and all-embracing functioning of the Chief Minister.

Since the Prime Minister is the real custodian of the executive power of the Central Government, a regular and harmonious contact between him and the Chief Minister goes a long way in ensuring the trouble-free conduct of relations between the state and Central governments.

The fundamental source of the Chief Minister's prime position in the planning process emanates from his association with the Planning Commission and the National Development Council (NDC), the apex bodies of the planning system in India. Strictly, though the Chief Ministers are not a part of the Planning Commission, their participation in the formulation of the Five Year Plans is ensured through the mechanism of the NDC. The NDC consists of the Prime Minister, some key Union ministers and Chief Ministers of all states, and executive heads of the Union Territories. The Chief Ministers also remain in touch with the Planning Commission

in order to ensure smooth flow of funds for the implementation of several centrally sponsored developmental schemes in the state.

From the above discussion, it is clear that the Chief Minister of a state is vested with many powers, but his real position depends on his personality, political experience, administrative capability, position in the party organization at the state level, backing and equation with the Central leadership, and when he enjoys the support of a single majority party or of a coalition government.

2.4.3 Power and Position of Council of Ministers

Following the model of the parliamentary government, the real government of the state consists of the Council of Ministers headed by the Chief Minister. In theory, the Council of Ministers and the Chief Minister exist to aid and advise the Governor. However, in practice, the Governor has to act on the advice of the Council of Ministers.

The Council of Ministers is the chief executive body. The quality of the state administration is largely conditioned by the leadership and the direction is provided by the ministers. In short, extraordinary political power is vested in this small group of persons.

Organization

The Governor appoints the Chief Minister and on the advice of the Chief Minister, he appoints the other ministers. However, as mentioned previously, the Chief Minister is not as free to select his team as the convention would have us believe.

The size of the state Council of Ministers was not previously specified in the Constitution. Thus, the Chief Ministers were prone to have an unwieldy Council of Ministers in order to satisfy all the factions contending for power in the state government. But with the passage of the Ninety-First Constitution Amendment Act, 2003, the size of the ministries is limited to only 15 per cent of the total membership of the State Legislative Assembly. Remarkable improvement has been brought about with regard to the frivolous elements finding place among the Council of Ministers.

Working of the Council of Ministers

The Council of Ministers is collectively responsible to the Legislative Assembly. This means that every member of the Council of Ministers accepts responsibility for every decision of the Cabinet. If a minister is unable to accept responsibility, the only alternative left for him is to resign, as there is collective responsibility.

The minister is the political head of the department, whose administrative head is a secretary, who is a career civil servant. Ordinarily, matters pertaining to a department are dealt with by the minister-in-charge. But all important cases are required to be brought before the Cabinet for direct discussion.

Political Trends

Since 1967, the deterioration in political standards and practices in the wake of multi-party ministries, inter-party rivalries and political defections has made the Governor 'a political head' rather than a 'Constitutional Guardian'.

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One of the reasons for the attack or the criticism of the Governor's role in state politics is the way the Governors have been appointed in the past. In January 1990, eighteen Governors were asked to resign by the President to facilitate a reshuffle by the Union government led by V. P. Singh, which in turn, made the office of the Governor at the mercy of the Centre. As mentioned earlier, the Centre has generally followed the policy of appointing people as Governors who have either failed to win any seat in the elections, or they are ex-bureaucrats or ex-judges (as a reward to their loyalty). Thus, such Governors owe their loyalty more towards the Centre and less towards the state. Moreover, during their appointment, the Centre sometimes does not consult the Chief Minister and his Council of Ministers. Thus, the state Chief Ministers complain that the selection of the Governors is imposed on them.

The Governor's role has been controversial in various respects:

(i) **Appointing a Chief Minister in case no party gets a clear majority:** Though the appointment of the Chief Minister, in general, is decided by the party in majority in the Assembly, in certain cases it had become controversial. In March 1982, Haryana Governor, G. D. Tapase, asked Devi Lal, leader of the BJP-Lok Dal, to present before him all the legislators who stood for the alliance. However, the Governor invited Bhajan Lal, leader of the Congress (I) Legislature Party, to form the government. Although Bhajan Lal was sworn in as the Chief Minister of Haryana, he did not claim a majority support in the House at the time of swearing-in, and was therefore given a month's time to prove majority in the assembly, which he did prove. Appointments of Jayalalithaa as the Chief Minister of Tamil Nadu by Fatima Bibi in 2001 (despite the former's involvement in various corruption cases) and Nitish Kumar as the Chief Minister of Bihar by Sunder Singh Bhandari in 2000 are some such examples.

In the Assembly election held in Bihar in February 2000, the Rashtriya Janata Dal (RJD), headed by former Chief Minister Lalu Prasad Yadav, emerged as the single largest party, with 123 seats. However, the elections led to a hung Assembly. Being the largest party, it was widely expected that RJD would be invited first to form the government. Curiously, and without proffering any reasons for his decision, the Governor, Sunder Singh Bhandari, invited Nitish Kumar, who represented NDA, to form a government and prove majority in the assembly within ten days. The Governor's action came in for strident criticism because it was very clear that the alliance did not have the required numbers in the Assembly. It was only at the behest of NDA (which was in power at the Centre), the Governor acted as the agent of the Centre.

(ii) **Deciding the fate of Chief Minister in case of intra-party defections:** On many occasions, Governors have dismissed Chief Ministers when the State Legislature should have decided the matter. Many a times, the state governments were dismissed when several intra-party defections had taken place and the ruling party was prepared

to prove its majority on the floor of the House. But before it could do so, the Governor had given the orders for the dissolution of the State Legislature.

In 1997, Romesh Bhandari, the Governor of Uttar Pradesh, dismissed the Kalyan Singh led BJP (Bharatiya Janata Party) government when the Uttar Pradesh Loktantrik Congress (UPLC) withdrew support to the government. Immediately after the dismissal, Bhandari, instead of leaving the fate of the government to the Legislature, swore UPLC leader, Jagadambika Pal, as the new Chief Minister of the state. The Allahabad High Court held the Governor's actions as wrong, as Kalyan Singh should have been given the chance to prove his majority on the floor of the House and not accepted UPLC's claim at face value.

(iii) **Advising the President for proclamation of emergency under Article 356:** The Governor can advise the President to impose emergency (under Article 356) in case there is a breakdown of the state Constitutional machinery in the state. In the past, the Governors of different states dismissed the state governments and imposed emergency due to partisan reasons. This discretionary role of the Governor in dismissing the governments and that of imposition of President's rule became very controversial. The Supreme Court, which till 1993 considered it purely a political matter, in its verdict in March 1994, held the dismissal of governments and imposition of President's rule in Nagaland (1988), Karnataka (1989) and Meghalaya (1991) as unconstitutional. In S. A. Bommai and others vs. the Union of India, the Supreme Court tried to give some guidelines so that the Governor's discretionary power of imposing emergency under Article 356 is not misused.

However, in 2005, the use of Article 356 became a centre of debate. During February 2005 elections, no party could get majority in the Bihar Assembly. In such a situation, Governor Buta Singh recommended President's rule to the Central government. His recommendation was accepted by the UPA (United Progressive Alliance) government and was further approved by the President. However, instead of being dissolved, the Assembly was kept under suspended animation, obviously hoping that some leader could be in a position to stake claim to form a government. Thus, the possibility of change in the loyalties of members was accepted as legitimate. Later, when challenged, the Supreme Court invalidated the imposition of President's rule and ordered for fresh elections that were held in October–November 2005.

(iv) **Using discretionary powers in day-to-day affairs:** Apart from appointing, toppling or dismissing ministries, the Governor has also been interfering in the state government's affairs in the name of discretionary powers.

(v) **Sending reports to the Central government:** Even the role of the Governors while sending reports to the Central government had also,

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sometimes, invoked controversy. Governor B.N. Nehru's transfer from Jammu and Kashmir to Gujarat and S. S. Barnala's transfer from Tamil Nadu to Bihar, because of refusal to cooperate with the Centre to topple Farooq Abdullah's government and Karunanidhi's government, respectively, were examples of such controversies.

(vi) **Reserving a bill for the President's assent:** The power of the Governor to reserve a bill, passed by the State Legislature and against the advice of the state ministry, for the President's assent is yet another issue of contention between the Centre and the states. The Sarkaria Commission found that during the period from 1977 to November 1985, 1130 state bills were reserved for the consideration of the President. Out of these, the President had given assent to 1039 bills. Opposition–ruled states have raised their complaints against the misuse of Articles 200 and 201, which empowers the Governor to reserve the bill for Presidential assent. As part of their reactions in front of the Sarkaria Commission, states like West Bengal had even asked for these articles to be deleted from the Constitution.

Thus, the Governors, while working as agents of the Centre, no doubt tarnish the image of the federal principle and convert the office into that of a party functionary to destroy not only the federal structure but also the Constitutional intent. Unfortunately, this trend continues and consequently remains a major irritant in the Union–State relations.

CHECK YOUR PROGRESS

4. What are the two tiers of government in India?
5. What are the two forms of executives of the state governments?
6. Who is the nominal head of state governments?

2.5 STATE LEGISLATURE

The state legislature in India consists of the Governor and one or two houses. The Constitution provides that in each state there shall be a Legislative Assembly. At present, under Article 168 of the Constitution five states—Andhra Pradesh, Bihar, Maharashtra, Karnataka and Uttar Pradesh have bicameral legislatures, i.e. they have Legislative Council (Vidhan Parishad) and Legislative Assembly (Vidhan Sabha). The State of Jammu and Kashmir also has an upper house or the Legislative Council under its own Constitution. The rest of the states have preferred to have only a popularly elected assembly, i.e. Vidhan Sabha.

2.5.1 State Legislative Council

Composition: The total number of members in the Legislative Council of a state having such a council shall not exceed one-third of the total number of members in

the Legislative Assembly of that state. The total number of members in the Legislative Council shall in no case be less than 40, unless Parliament by law otherwise provides.

The members of the Legislative Assembly are indirectly elected in territorial constituencies formed on functional lines and are elected by the system of proportional representation by means of the single transferable vote. The Constitution requires the members of the Council to be elected or nominated as follows:

(a) One-third of the members of municipalities, district boards and other local authorities in the state

(b) One-twelfth to be elected by an electoral college consisting of university graduates

(c) One-twelfth to be elected by an electoral college consisting of teachers in universities, colleges and secondary schools

(d) One-third to be elected by members of the Legislative Assembly from amongst persons who are not members of the Assembly

(e) The remainder are to be nominated by the Governor from amongst people having 'special knowledge or practical experience' in the fields of 'literature, science, art, cooperative movement and social service'

All the nominations to be made by the Governor are made on the advice of the Chief Minister of the state.

Qualification and term: A person seeking election to the Legislative Council must possess the following qualifications:

(i) He should be a citizen of India.

(ii) He must have completed the age of 30 years.

(iii) He must possess such other qualifications as may be prescribed by the Parliament from time to time.

(iv) He should not hold any office of profit under the Union or the State government. Also, he should not have been convicted by the court for election malpractices or other crimes.

The Legislative Council is a permanent body, not subject to dissolution. One-third of its members retire every 2 years, after completing the term of 6 years. The quorum of the Council is one-tenth of the total strength or 10 members, whichever is greater.

Presiding officer: The presiding officer of the Legislative Council is the Chairman, who is elected by the members from amongst themselves. In addition, they also elect a Deputy Chairman, who presides over the meetings of the Council in the absence of the Chairman.

Powers of the Legislative Council: The Legislative Council plays more of an advisory role. A bill, other than a money bill, may originate in either House of the Legislature. Over legislative matters, it has only a suspensive veto for a maximum period of 4 months. Over financial matters, its powers are not absolute. A money bill originates only in the Assembly and the Council may detain it only for a period of 14 days. There is no provision for a joint sitting of both the Houses of the State Legislature

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to resolve a deadlock between them over legislative matters. Thus, the Legislative Council is only a subordinate component of the Legislature.

Criticism: The Legislative Council has been criticized by many scholars:

(a) Critics feel that the representation of various categories in the Council is not satisfactory. Functional representation should be broad-based. Thus, representation may be extended to such other functional categories as medicine, engineering, trade union, business, civil service, etc.

(b) The critics also feel that the Legislative Council does not serve any useful purpose. There is no reason to believe that the elected representatives of these five states are more irresponsible than the elected representatives in other states, so that the legislation passed by them requires reviewing or delaying by the members of the Council. If the majority of the states in India do not have upper houses or Legislative Councils, there is no reason why only a few states should bear the burden of having them.

(c) Also, the Legislative Councils are more of a financial burden on the limited resources of the poor people of the states concerned.

(d) The Legislative Councils have been misused by the political parties in power and in opposition in the respective states. The candidates defeated in the general elections have been either elected by the Councils or nominated by the Governor on the advice of the Council of Ministers. Such persons also hold ministerial posts.

2.5.2 State Legislative Assembly

Composition: The Constitution of India provides that in each state there shall be a Legislative Assembly. The Assembly consists of not more than 500 and not less than 60 members chosen by direct elections from territorial constituencies in the state. For the purpose of elections, each state shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it, as far as practicable, be the same throughout the state.

Thus, the members of the Legislative Assembly are elected on the basis of universal adult franchise without any distinction on the basis of caste, creed or religion. However, certain seats are reserved for SCs and STs. The Governor can nominate a few Anglo-Indians if he feels that the Anglo-Indian community has not been given proper representation in the Legislative Assembly.

Qualification and term: A person should have the following qualifications in order to stand in the elections of the Legislative Assembly:

(a) He should be a citizen of India.

(b) He should be more than 25 years of age.

(c) He should possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Every Legislative Assembly has a 5-year term from the date appointed for its first meeting, unless dissolved earlier. The Assembly stands automatically dissolved

after 5 years. The period of 5 years, may, while a proclamation of emergency is in operation, be extended by Parliament by law for a period not exceeding 1 year at a time, and not extending, in any case, beyond a period of six months after the proclamation has ceased to operate.

As per the Constitution, the Assembly must have two sessions per year. Also, the interval between the two sessions of the Assembly must not be more than 6 months. The quorum of the Assembly should be one-tenth of the total membership of the House.

Powers and functions: In all practicality, Legislature of a state means its Legislative Assembly. The Assembly has the following powers and functions to perform:

(i) It can make laws on any subject provided in the State List or on a subject provided under the Concurrent List, provided it does not conflict with a law already made by the Parliament.

(ii) It has control over the Council of Ministers. It has the right to ask questions from the ministers and it is the duty of the ministers to satisfy the members of the Assembly. The members of the Council can also pass a no-confidence motion against the government. The state government has to resign if it loses in the no-confidence motion.

(iii) It also controls the finances of the state. A money bill can originate only in the Legislative Assembly. The Legislative Council can only keep the money bill only for 14 days, after which it is considered passed if it has been passed by the Legislative Assembly. It may pass, reject the demands or reduce the amount in the budget. Thus, no tax can be imposed or withdrawn without the approval of the Legislative Assembly.

(iv) The Legislative Assembly also has constituent powers. According to Article 368, a bill of Constitutional amendment, first passed by the Parliament, shall be referred to the states for ratification. The Assembly has to give its verdict by passing a resolution by its simple majority showing approval or disapproval of the said bill. Also, the President of India may send a bill to the House regarding change of boundary lines of the state or its reorganization to elicit its views on the subject before he recommends that such a bill be introduced in the Parliament.

(v) The Assembly also elects its own Speaker and Deputy Speaker and may remove them by a vote of no-confidence motion. It also takes part in the election of the President of India by being a part of the electoral college. It considers the reports submitted by various independent state agencies like the State Public Service Commission, Auditor-General, etc.

2.5.3 Comparison between the Legislative Assembly and Legislative Council

At the Centre, the Rajya Sabha has, except in the field of money bills, co-equal powers with the Lok Sabha in all legislative matters. In the State Legislature, on the

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contrary, the Council is designed to play a definitely inferior role. Its functions are of an advisory nature only.

The Legislative Council has no power regarding the money bill. A money bill cannot originate in the Council. It cannot, also delay a Money Bill or make recommendations in the bill if they are not acceptable to the Legislative Assembly. In case of a non-money bill, the bill travels from the Assembly to the Council only twice. The Council only has the power of a suspensive veto, for the first time for a period of 3 months and the second time for a month. The Council also does not have the power to pass a no-confidence motion against the government. Only a no-confidence motion passed by the Legislative Assembly can result in the change of the government. Thus, the Legislative Council does not have control over the state executive. These provisions clearly establish the absolute superiority of the Assembly over the Council.

2.5.4 Criticism of the State Legislature

Though the State Legislatures have an admirable record of achievements to their credit, their functional working has been quite defective. Some of the drawbacks pointed out by the critics are as follows:

(a) In states, which have bicameral legislature, the power of the Legislative Council is highly restricted. In fact, in the Legislative sphere, it has no effective voice.

(b) From the point of view of the state autonomy, the powers of the State Legislatures are very restricted. The Sarkaria Commission has pointed out that in several cases, bills were sent to the President for his consideration by the Governor. A President can take any number of days to send back the bill accepting or rejecting it. This leads to a severe erosion of state autonomy.

(c) The members of the majority party in the Legislative Assemblies have shown scant regard for the sentiments and views of the opposition parties while framing their policy.

(d) Defections have been a major drawback in the working of the State Legislatures.

(e) Many a time, members had been absent from the Legislatures in large numbers, resulting in lack of quorum. Consequently, the functioning of the State Legislatures had been hampered.

(f) Over the years, the composition of the State Legislatures has changed, with more and more groups, castes, religions, and professions being represented in them. On one hand, it is a positive feature since the Legislature is becoming truly representative. On the other hand, men and women of rural background, especially farmers and cultivators are steadily increasing their number in the Legislative Assemblies. These people cannot be expected to take a sustained interest in the highly complicated and demanding business of Legislation. Thus, over the years, State Legislatures in India have tended to become mere forums of declamatory politics than of serious engagement in the overview of the government's policies, activities and expenditure of public money.

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CHECK YOUR PROGRESS

7. How are the members of the Legislative Assembly elected?
8. Who is the presiding officer of the Legislative Council?
9. What power does the legislative council have with regard to money bill?

2.6 SUMMARY

- The Constitution has divided the legislative, administrative, political and financial powers between the Centre and the states.
- Some of the provisions and Articles of the Constitution show that it favours the Union over the states.
- If the state does not comply with the directives of the Centre, the Union has the authority to take over the administration of the state under President's Rule.
- The states are dissatisfied as they feel that the powers are heavily in favour of the Centre.
- The working of the Indian federation shows that the Central government has, at times, misused its strong position for bringing some states under its influence.
- There have been many instances which reflect that the Union has used its strong position for furthering the political ends of the ruling party at the Centre.
- With the rise of regional parties and the decreasing strength of national parties, the need to have strong states as part of the Indian Union is now advocated by many analysts as the necessity of contemporary times.
- Despite hiccups, India has a very good model for Centre-State relations, a model that has ensured democratic stability and has the potential to become a model for other countries.
- The most positive aspect of Centre-State relationship is the multi-party system, which has allowed different parties to be represented at the Centre. In fact, coalition governments have created stability for Centre-State relations. All conflict is mediated by political representation at the Central level. This is perhaps why most movements for secession have become muted.
- The Constitution of India declares that there should be the offices of the President and Vice-President of the country. These are the most significant offices in the country. It also elaborates the functions of the Prime Minister and the Council of Ministers, which are selected from among the members of parliament.
- Under the Constitution of India, the office of the President of India is virtually analogous to that of the British monarch in keeping with the spirit of the parliamentary executive. Being the ceremonial head of state, the office of

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the President is an exalted one, with enormous prestige, authority, grace, dignity, respect and adoration, but very less activism.

- The President has vast power of making and unmaking executive appointments. In the first place, he appoints the Prime Minister and on the latter's advice, the other members of the Union Council of Ministers, to aid and advise him in the exercise of his functions.
- The President appoints the Chief Justice and other judges of the Supreme Court of India in consultation with such other judges of the Supreme Court and state high courts as he may deem necessary.
- The President of India is vested with the role 'to advise, to encourage and to warn', which lends the office of the President much authority and influence.
- The Constitution of India specifies that there shall be a Vice-President, who shall also be the Ex-office Chairman of the Council of State and that he shall not hold any other office of profit.
- In the parliamentary system of government in India, the Prime Minister (PM) is the real executive in contrast to the ceremonial position of the President of India.
- The PM is empowered to advise the President about the appointment of other ministers to constitute the Union Council of Ministers.
- The essence of the parliamentary form of government lies in having a collective body of executive in the form of the Council of Ministers, headed by the PM and bearing their collective responsibility to the Parliament.
- The most important function of the Council of Ministers is the formulation of the executive policy in terms of which the administration of the country is to be carried out.
- In accordance with the federal characteristics, the Constitution of India envisages two tiers of government—one at the level of the Union and the other at the level of the states.
- 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 Governor as the head of the state works under the parameters of parliamentary democracy. Thus, he acts as a nominal head and exercises his functions strictly according to the 'aid and advise' of the Council of Ministers.
- Taking the analogy of the parliamentary system of governance at the state level, the Constitution provides for the office of the Chief Minister to be the real executive of the state.
- The Council of Ministers is the chief executive body. The quality of the state administration is largely conditioned by the leadership and the direction is provided by the ministers.

- The state legislature in India consists of the Governor and one or two Houses. The Constitution provides that in each state there shall be a Legislative Assembly.
- The presiding officer of the Legislative Council is the Chairman, who is elected by the members from amongst themselves.

2.7 KEY TERMS

- **Federalism:** It is a form of government in which sovereignty is constitutionally divided between the Central government and constituent political units.
- **Union List:** They are the subjects defined and enlisted under the List - I of the Seventh Schedule of the Constitution of India, which form the exclusive domain of the Central Government of the Union of India.
- **State List:** They are the subjects defined and enlisted under the List - II of the Seventh Schedule of the Constitution of India, which form the exclusive domain of the State Governments of the Union of India.
- **Concurrent List:** They are the subjects defined and enlisted under the List -III of the Seventh Schedule of the Constitution of India, which form the domains of both the Central Government and State Governments of the Union of India.
- **Asymmetric:** Asymmetric means something that lacks balance between both sides of a central line or a spatial arrangement
- **Residuary powers:** They are the powers given to Parliament to make any law with respect to any matter not enumerated in the Concurrent List or State List.
- **Friction:** It refers to conflict between persons or states having dissimilar ideas or interests.
- **Ideological:** Ideological means pertaining to or characteristic of an orientation that characterizes the thinking of a group or nation.
- **Diffusing:** It means the spreading of something more widely.
- **Executive:** It is a body having the power to put plans, actions, or laws into effect.

2.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. (i) first

   (ii) dual

   (iii) Imbalance

   (iv) Rajamannar Committee Report

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2. The President represents India in international affairs. He appoints and recalls India's Ambassadors, High Commissioners and other envoys to the foreign states, the United Nations and its specialist agencies. He receives the credentials of the Ambassadors, High Commissioners and other diplomatic envoys accredited to India by the United Nations and the foreign states.
3. The office of the Prime Minister is located in the prestigious South Block, New Delhi.
4. The two tiers of government in India are: the Union government and the State government.
5. The two forms of executives of the state governments are the Constitutional Head and the Real Executive.
6. The Governor is the nominal head of state governments.
7. The members of the Legislative Assembly are indirectly elected in territorial constituencies formed on functional lines and are elected by the system of proportional representation by means of the single transferable vote.
8. The presiding officer of the Legislative Council is the Chairman, who is elected by the members from amongst themselves.
9. The Legislative Council has no power regarding the money bill. A money bill cannot originate in the Council. It cannot, also delay a Money Bill or make recommendations in the bill if they are not acceptable to the Legislative Assembly.

2.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the features of Indian federalism.
2. State the financial relations between the Centre and the states.
3. Write a note on the role of regional politics in shaping federalism.
4. What are the military powers of the President of India?
5. List the functions of the Council of Ministers.
6. What are the judicial powers of the Governor?
7. State the executive functions of the Chief Minister of a state.
8. List the qualifications required from a person seeking election to the State Legislative Council.
9. State the powers and functions of the State Legislative Assembly.

Long-Answer Questions

1. Discuss the legislative and administrative relations between the Centre and the states.
2. Describe the political and economic dimensions that give rise to conflicts between the Union and the states.

3. Discuss some solutions to improving Centre-State relations.
4. Discuss the executive powers of the President of India.
5. Describe the role, power and functions of the Prime Minister.
6. Examine the powers and functions of the Governor.
7. Critically evaluate the powers and functions of the Chief Minister.
8. Assess the composition, qualification and powers of the State Legislative Council.
9. Examine the powers of the State Legislative Assembly. How is it different from the Legislative Council?

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2.10 FURTHER READING

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UNIT 3 UNION LEGISLATURE

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Structure

3.0 INTRODUCTION

Legislature of the Union, which is called Parliament, consists of the President and two Houses, known as Council of States (Rajya Sabha) and House of the People (Lok Sabha).

As in other parliamentary democracies, the Parliament in India has the cardinal functions of legislation, overseeing of administration, passing of the Budget, ventilation of public grievances and discussing various subjects like development plans, national policies and international relations. The distribution of powers between the Union and the states, followed in the Constitution, emphasizes in many ways the general predominance of Parliament in the legislative field. Apart from a wide-range of subjects, even in normal times, the Parliament can, under certain circumstances, assume legislative power with respect to a subject falling within the sphere exclusively reserved for the states. The Parliament is also vested with powers to impeach the President and to remove the Judges of Supreme Court and High Courts, the Chief Election Commissioner and the Comptroller and Auditor General in accordance with the procedure laid down in the Constitution.

All legislation require consent of both the Houses of Parliament. In the case of money bills, however, the will of the Lok Sabha prevails. Delegated legislation is also subject to review and control by Parliament. Besides the power to legislate, the Constitution vests in Parliament the power to initiate amendment of the Constitution. This unit deals with the Union Legislature, particularly the two Houses of the Parliament.

3.1 UNIT OBJECTIVES

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After going through this unit, you will be able to:

- Discuss the organization and functions of Lok Sabha and Rajya Sabha
- Describe the role of Speaker of Lok Sabha
- Assess the law-making procedure of the Parliament
- Evaluate the privileges and relationship of the two Houses of Parliament
- Explain the committee system prevalent in the Parliament
- List the various provisions of the Right To Information Act, 2005

3.2 LOK SABHA AND RAJYA SABHA: ORGANIZATION AND FUNCTIONS

Parliament is the supreme representative authority of the people. It is the highest legislative organ and the rational forum for the articulation of public opinion. The Parliament of India is the centre and focus of our political system. It is the federal legislature of the Indian Union with limited and specified powers. The Parliament has been entrusted with an exclusive jurisdiction in ninety-nine Union matters, a concurrent, yet a superior, jurisdiction in fifty-two (earlier it was forty-seven) matters included in the Concurrent List, an occasional and excessively restricted jurisdiction in sixty-six (now sixty-one) state matters, and a first and final say with respect to all matters not enumerated in any of the lists of the VII Schedule. The jurisdiction of the British Parliament, which is known as the mother of Parliaments, is absolutely unrestricted. It can make and unmake law on all matters, for all persons, and throughout the territory of Britain. The power of our Parliament is not unlimited and, hence, it cannot claim the same attributes of unlimited sovereignty which the British Parliament has claimed and exercised in the last seven-and-a-half centuries.

The Indian Parliament is a bi-cameral legislature in the setting of a Parliamentary executive. The formal executive head of the state, known as the President, is an integral part of the Parliament in as much as the Parliament consists of the President and the two Houses, known respectively as the Rajya Sabha and the Lok Sabha. The Rajya Sabha is the federal upper chamber, while the Lok Sabha is the popularly elected lower chamber. Not only the President is an integral part of the Parliament, the Vice-President, too, is made the Ex-officio Chairman of the Rajya Sabha and is its Chief Presiding Officer. The Council of Ministers headed by the Prime Minister is to consist of the members of Parliament, barring a few temporary exceptions and is made directly and collectively accountable to the Lok Sabha. Making the formal and actual executive a part of the Parliament, and also accountable to it, has immensely added to the prestige and power of the Parliament.

3.2.1 Composition

Under Article 79, the Union Parliament consists of the President, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha.)

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The maximum strength of the Rajya Sabha has been fixed at 250 members, of which not more than twelve are to be nominated by the President on the ground of such matters as art, literature, science and social service.

Not more than 238 members are to be elected by the state and Union Territories in accordance with the allocation of seats in the IV Schedule. This Schedule provides and allocates 229 seats to the states and four to Union Territories. The remaining five seats still are unallocated. The Rajya Sabha was duly constituted for the first time on 3 April 1952 and it then consisted of 204 elected and twelve nominated members. Since then, the IV Schedule has been amended a dozen times by various Acts of the Parliament, and the allocation of seats has varied from time to time in accordance with the reorganization of states, formation of new states and the addition of Union Territories.

The representatives of each state and Union Territory in the Rajya Sabha are elected by the elected members of the State Legislative Assemblies and by members of specially constituted Electoral Colleges for Union Territories. The elections are held in accordance with the system of proportional representation and the seats are, therefore, allocated to states and Union Territories in terms of the proportion of their population, as determined at the last census. The votes are cast on the basis of single transferable vote. The voters indicate their preferences in favour of three different persons (I, II and III) contesting the membership. The candidates who receive the requisite majority of votes are declared elected. Voting at these elections is secretly done, and the electors are not required to disclose their identity. The Rajya Sabha is not subject to dissolution; one-third of its members retire every second year.

The maximum sanctioned strength of the Lok Sabha is 552, of which 530 are to be elected by the state, 20 by the Union Territories and the remaining two to be nominated by the President from amongst the Anglo-Indian community. These 2 members are nominated and appointed by the President only if he is satisfied that this community has not been adequately represented in the House through the normal channels of election. The appointment of these 2 members was originally sanctioned by Article 331 only for 10 years. (Under 8th, 23rd, 45th, 62nd, 79th Amendment Acts, this provision has been extended until 2010). At present, the strength of Lok Sabha is 545.

The allocation of seats to the states and Union Territories is in proportion to their population as ascertained in the last census. In elections to the Lok Sabha, seats are reserved in various states and Union Territories for Scheduled Castes and Scheduled Tribes. Elections to the Lok Sabha are direct and are held on the basis of universal adult franchise. All citizens who have attained the age of 18 years on the date prescribed by the Election Commission become eligible as voters. On the basis of this universally recognized principle, fourteen General Elections have so far been held for the Lok Sabha.

When a General Election falls due, the President calls upon all parliamentary constituencies to elect members to Lok Sabha on such dates as recommended by the Election Commission. The elections are held in accordance with the provisions of the Representation of People's Act 1951, as amended up to date, and the rules

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are orders made thereunder. As soon as the notification is issued by the President, the Election Commission declares the date for filing nominations, for scrutiny and withdrawal of nominations and the actual dates of polling. A candidate for election is required to deposit a security of ₹10,000 to make his nomination valid. In case of the candidates belonging to scheduled castes and scheduled tribes, the security deposit is only ₹5,000. On the expiry of the date of withdrawals, the Returning Officer prepares and publishes a list of validly nominated candidates. Sufficient number of polling stations are set up in each constituency, keeping in view that the voters do not have to travel for more than two miles to cast their votes. The voters have to appear in person on the polling booths to cast their votes as no proxy is allowed. The candidate who receives the largest number of votes polled is declared elected by the Returning Officer, who issues to him the certificate of election. It is only when the newly elected member presents the certificate of election to the Secretary of Lok Sabha that the Presiding Officer can administer to him the oath of this office.

3.2.2 Qualifications

Articles 84 and 102 provide the following qualifications, which the persons desiring to become members of either House of Parliament must fulfill:

- He must be a citizen of India and must swear or affirm that he shall bear true faith and allegiance to the Constitution of India that he shall uphold the sovereignty and integrity of India
- In case of Rajya Sabha, he must be at least 30 years of age, and in case of Lok Sabha he must at least be 25 years
- He must not be holding any office of profit under the Government of India, except the office of Ministers of the Union and the states, and the Speaker of Lok Sabha
- He must not have been declared by a competent court as a person of unsound mind
- He must not be an undischarged bankrupt
- He must not owe allegiance or adherence to any foreign state
- In case of Rajya Sabha, he must be an elector in the state or the Union Territory from where he is seeking the election, this condition has, however, been waved by Union Government in March 2003

Term

Members of the Rajya Sabha are elected for a period of 6 years, one-third of them retiring every second year. This makes the Rajya Sabha a continuous and permanent chamber, never subject to dissolution. On the other hand, members of Lok Sabha are elected for a period of 5 years. Normally, the term of each member's office as well as the life of Lok Sabha is 5 years. If the Lok Sabha is dissolved earlier, the membership of its members automatically terminates. During the proclamation of Emergency, under Article 352, the Parliament may extend the life of Lok Sabha for not more than 1 year at a time, but not beyond a period of 6 months after the proclamation of Emergency has ceased to operate. In case of extension of Lok Sabha, the term of its members stands automatically extended.

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Presiding Officers of Two Houses

For the smooth, efficient and impartial conduct of its proceedings, each House of Parliament has been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer. The Chief Presiding Officer of the Lok Sabha is known as the Speaker and that of the Rajya Sabha is known as the Chairman. The Speaker is assisted by the Deputy Speaker; while the Chairman is assisted by the Deputy Chairman. Each House also has a chairman to preside over the House in the absence of the Chief Presiding Officers.

3.2.3 Role of Speaker of the Lok Sabha

The Speaker is the most important conventional and ceremonial head of Lok Sabha. Within the walls of the House, his authority is supreme. The most salient feature of his office is his impartiality. He is expected to wield his authority with the 'cold neutrality of the impartial judge'. His impartiality is ensured by the provision that he would remain above party considerations and that he would vote only in case of a tie.

In India, the Speaker does not sever his party affiliation after being elected to the office. The first speaker G. V. Mavalankar, a Congressman, is credited for establishing such tradition. Except for the two exceptions, Neelam Sanjeeva Reddy and G. S. Dhillon who resigned from their parties after becoming Speaker, the rest of the Speakers have followed the tradition set by Mavalankar. Further, in India (unlike the Speaker in the British Parliament), the office of the Speaker is not the end of political career to its incumbent. Speakers have become ministers, Governors, High Commissioners and even the President of India. Consequently, the office of the Speaker has not been untouched by controversies in India.

Election of the Speaker

The Speaker is to be elected by the members of Lok Sabha from amongst themselves. The election of the Speaker is to take place after each general election of Lok Sabha and as and when there is a vacancy in his office. The Constitution provides for his election by members of the Lok Sabha while the rules of the House provides for the procedure through which he is to be elected. Now, there is an established tradition that the Speaker should be the unanimous choice of the House. The party-in-power decides the Speaker after due consultation with the opposition.

Term

Once elected, the Speaker holds office from the date of his election until the first meeting of the Lok Sabha after the dissolution of the one to which he was elected. He is eligible for re-election. Bal Ram Jakhar (1980–85 and 1985–89) is the only Speaker who has so far been re-elected.

The Speaker ceases to hold his office if he ceases to be a member of the Lok Sabha. He may resign from his office by addressing his resignation to the Deputy Speaker, who informs the House of the Speaker's resignation, but while in office, he exercises the functions of his office throughout the term and cannot delegate them to anyone else.

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Removal

The Speaker may be removed from his office by a resolution passed by the majority of the total membership of the Lok Sabha. However, such a resolution can be moved only if at least 14 days' notice has been given by a member of his intention to move such a resolution. This resolution must clearly specify the charges against the Speaker. When such a resolution is under consideration of the House, then, the Speaker is debarred from presiding over the House. In that case, the Deputy Speaker, or if he too is not available, then any member of the panel of Chairman presides. The Speaker, however, has the right to be present during the course of debate on this resolution and to defend himself.

There have been resolutions of removal against the Speakers of Lok Sabha like Mavalankar, Sardar Hukum Singh, G. S. Dhillon and Balram Jakhar. However, no Speaker has been removed by such resolution till-to-date.

Powers of the Speaker

As the Chief Presiding Officer of the popularly elected Lok Sabha, the Speaker has been entrusted with many powers by the Constitution and the rules of the House. He is the spokesman of and to the House. He is the custodian of the privileges and immunities of the House and its members. He is the ex-officio President of the Indian Parliamentary Group and the head of the Lok Sabha Secretariat.

The following are the powers and functions of the Speaker of Lok Sabha:

- The basic function of the Speaker is to preside over the sessions of the House when he is present in the House. As the Chief Presiding Officer of the House, he fixes the hour of the commencement or termination of a sitting and determines the days on which the House will sit.
- His decision in all parliamentary matters is final. A request may be made to him for reconsideration but his decision cannot be challenged, criticized or questioned.
- No member can speak in the Lok Sabha without the Speaker's permission. He also decides in what order members will speak and how long a member should continue to speak. He may ask a member to finish his speech and in case the member does not listen, he may order that the member's speech should not go on record. He may also ask a member to withdraw unparliamentarily words.
- He permits a member to speak in his mother tongue if he does not know either English or Hindi.
- The members of the House can only address to the Speaker while speaking.
- All the bills, reports, motions and resolutions are introduced with the Speaker's permission.
- He puts the motion to vote in the Lok Sabha. In case there is a tie, he is empowered with a casting vote. However, he is expected to cast his vote so as to retain his impartiality and independence.
- Except making formal statements while performing his functions, the Speaker does not, ordinarily, participate in the discussion. He seldom addresses the House of his own accord and unless requested by the members, he refrains from expressing his personal opinion.

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- He determines a bill to be a money bill and his decision is final. He also certifies a money bill.

  He also determines whether a motion of no-confidence in the Council of Ministers is in order. He is also empowered to select amendment in relation to bills and motions and can refuse to allow a member to move an amendment, if he thinks it is unwarranted or unnecessary. Finally, his opinion and consent is final in determining whether a motion to adjourn the House or to postpone its regular business for discussing a matter of general public interest or urgent public importance.
- The Speaker has to conduct the meetings of the House in an orderly manner. Whenever there is conundrum or indiscipline in the House, he has sufficient disciplinary powers to handle such a situation. He derives his disciplinary powers from the Rules of Procedure of the House and his decisions in the matter of discipline cannot be normally challenged. In case of grave disorder, the Speaker may adjourn the House.
- The Speaker is the chief spokesman of the House. He represents its collective voice to the outside world. In the first place, all communications of the House to the President are made through the Speaker in the form of a formal address. On the other hand, all the communications from the President to the House are made through the Speaker. Similarly, all communications from the Lok Sabha addressed to the Rajya Sabha are sent through the Speaker. And, it is the Speaker who receives all communications addressed to the Lok Sabha by the Rajya Sabha.
- In the event of disagreement over a bill between the Lok Sabha and Rajya Sabha, the President calls a joint-sitting of both the Houses and the Speaker presides over the joint-sitting. In this case, his decisions, rulings and interpretations on matters before the Joint Session are final.
- The Speaker regulates the debates and proceedings of the House. Even at the secret sittings, which are held at the request of the leader of the House, the Speaker determines the manners of reporting, the proceedings and the procedure to be adopted on such occasions.
- The rules relating to asking and answering of the questions depend upon the interpretation of the Speaker. He has a very large discretion in this matter. He may cut short or increase the 'question hour'. He may ignore the condition of the notice period for the question and may permit a question to be asked at short notice.
- The Speaker is the supreme head of all the Parliamentary committees whether nominated by him or chosen by the House. He appoints their chairman and issues such directions to them as he deems necessary. He holds consultations with them from time to time. The committee meetings cannot be held outside the Parliament House without his prior permission nor can officials of state government be summoned by the committee without his consent. The Speaker can remove a member of the committee on the recommendation of its chairman, if the member is absent from two or more consecutive sittings of the committee. Finally, the Speaker himself is the chairman of certain committees of the House, including the Business

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Advisory Committee, the General Purposes Committee and the Rules Committee.

- The Speaker appoints a committee consisting of three persons for investigating the charges for the removal of Chief Justice and other judges of the Supreme Court and High Courts.
- He disqualifies a member if he defects under the anti-defection act. But his decision is subject to judicial review.
- The Speaker is the custodian of the rights and privileges of the members of the Lok Sabha. Without his permission, no member can be arrested in the Parliament. He also accepts the resignation of the members of Lok Sabha.
- He authenticates all the bills passed by the Lok Sabha and sends them to Rajya Sabha or the President, as the case may be.
- The Speaker is also the head of the Lok Sabha Secretariat which functions under his control and direction. The Secretary-General is appointed by the Speaker from amongst those who have made their mark in the service of Parliament in various capacities. The Secretary-General is always present in the House during its sittings and advices the Speaker. But the Speaker is not bound by his advice.
- The Speaker is the Ex-officio President of the Indian Parliamentary Group, which is the Indian branch of the Inter-Parliamentary Union and the Commonwealth Parliamentary Association. He nominates the personnel for various parliamentary delegations to foreign countries.

The Speaker is also the Ex-officio Chairman of the conference of presiding officers of legislative bodies in India. This body consists of the Chairman and Deputy Chairman of the upper chambers, and the Speakers and Deputy Speaker of the lower chambers of Parliament and Legislatures of states and Union Territories. This body evolves uniform rules for the conduct of proceedings in Indian Legislatures.

Thus, the Speaker enjoys a very formidable position in the Lok Sabha. Not only the framers of the Constitution, but also the leaders of the House, have from time to time, recognized that our Speaker should enjoy the same status and privileges which the Speaker of British House of Commons enjoys. Acharya Kripalani rightly pointed out that the Speaker was not only to guide and regulate the proceedings of the House, he was also 'the guardian of the liberties of the House and through the House, of the liberties of the people'.

CHECK YOUR PROGRESS

1. What is the strength of Lok Sabha (the Lower House) at present?
2. Who is the Ex-officio Chairman of the conference of presiding officers of legislative bodies in India?

3.3 LAW-MAKING PROCEDURE

The primary function of Parliament is law-making. The law proposal originates in the Parliament in the form of a bill. There are three types of bills and budget that come up before the Parliament.

- Ordinary or non-money bill
- Money bill
- Constitution amendment bill
- Budget

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The legislative process of these bills is as follows.

3.3.1 Ordinary Bill

Every member of the Parliament has a right to introduce an ordinary bill and from this point of view, there are two kinds of ordinary bills: (i) Government bill, and (ii) Private Member's bill.

A Government bill is a bill moved by a minister and any bill not moved by a minister is a Private Member's bill, which means that the bill has been moved by a private member. A major part of the Parliament's time is consumed by the Government bill, while Private Member's bill has a little possibility of being passed. Only on Fridays, the Parliament devotes time on Private Member's bills. A bill which is a government's bill is passed in the following manner:

(a) When the government decides that a particular bill is to be brought before the Parliament, its initiation takes place in the ministry dealing with its subject-matter. At this stage, it is a mere proposal for passing a law to implement a policy. The sponsoring ministry must, however, consult the Ministry of Law, whose function is to give advice on the proposed legislation and its constitutional implications, if any. The final proposals are then prepared and a summary of the proposals is submitted to the cabinet for approval.

When the Cabinet's approval has been obtained, the proposals are referred to the Ministry of Law with a statement of the exact purpose and form of the legislation. The Ministry of Law is requested to draft a bill. During the process of drafting, there are regular consultations between the Ministry of Law and the ministry initiating the proposal. The final draft is then printed. It cannot, however, be introduced in the Parliament unless it is accompanied by a 'Statement of Objects and Reasons' signed by the minister concerned and accompanied by the President's sanction or recommendation in cases where this is required by the Constitution. A financial memorandum is also necessary where expenditure is involved. Finally, if the bill proposes delegation of legislative power, a memorandum explaining the scope of the delegation is also essential.

After all this process, the bill is introduced in one of the two Houses. With the introduction of the bill, the first reading of the bill starts.

(i) **First reading**: In the first reading, the minister who moves the bill asks for the permission to do so from the Speaker. After its introduction, the bill is published in the Gazette of India. The Speaker may allow the publication of the bill in the Gazette without it being introduced in the House.

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(ii) Second reading: The second reading of the bill is the most vital stage. In this stage, the bill is discussed in detail. The second reading consists of two stages. In the first stage, the bill in general is discussed and not the details. The House may decide to: (i) refer it to a Select Committee of the House or to the Joint Committee of both the Houses, (ii) to circulate it to elicit public opinion.

If the bill is referred to a Select Committee of the House or the Joint Committee of both the Houses, the concerned committee considers the Bill clause by clause. Amendment can also be moved by the members of the committee. The committee can also consult experts and public bodies who may be interested in the measure. After due consideration, the committee submits its report to the House. If the bill has been circulated to elicit public opinion the same is done through the agencies of the states and Union Territories. After the opinions are elicited, the bill is ordinarily referred to a Select Committee or Joint Select Committee for considerations. The Committee considers the bill in the light of opinion elicited and submits its report to the House.

The second stage of the second reading starts when the House considers the report of Select Committee or Joint Select Committee. In this stage, a detailed discussion of the bill, clause by clause, is done in the House. The amendments may also be moved. The bill is passed if the majority of the members present and voting favour its passage in the voting. Amendments, if accepted by the same majority, also become part of bill.

(iii) Third reading: After the completion of the second reading, the minister may move the bill to be passed. At this stage, not much discussion takes place. It is confined to arguments either in support of the bill or for its rejection, without referring to the details than is absolutely necessary. Only verbal, formal and consequential amendments are allowed to be moved at this stage. After the bill is put to vote, it has to be passed by the simple majority of members, present and voting.

(b) Bill in the other House: After the bill is passed by one of the two Houses, it goes to the other House for consideration. Here again, it has to undergo three readings. The other House may take either of the following courses:

(i) It may pass it. In that case, the bill is sent for President's assent.

(ii) It may reject it, leading to a deadlock between the two Houses.

(iii) It may pass it with amendments. In such a case, the bill is referred back to the first House. The first House may accept the amendments and they are incorporated in the bill and the bill is referred to the President for his assent. The Bill will not go back to the other House. However, if the first House refuses to accept the amendments, the Bill is sent back to the other House. If the other House still insists on its amendments, this means there is a deadlock.

(iv) It may take no action on the bill and if more than 6 months have elapsed and the House takes no action at all for its consideration, again this means there is a deadlock between the two Houses.

(c) Joint sitting of the Parliament: As per Article 108, a joint sitting can be called by the President if:

(i) One House passes a bill but the other House rejects, it or

(ii) The two Houses disagree on the amendment to be made to a Bill, or

(iii) A House does not consider the bill even after 6 months since its receipt

(iv) The concerned bill is not a money bill

In case the President has called for the joint sitting of the Parliament and in between, the Lok Sabha is dissolved, the joint sitting will still take place, since the President notified his intention to summon the House to meet therein. The president of the joint sitting is the Speaker of the Lok Sabha. In such a joint-sitting, the bill is passed by the majority of the total members of both the Houses present and voting.

Such sessions are rare in the history of the Parliament of India.

(d) President's assent to the bill: After being passed by both the Houses, separately, or in a joint-sitting, the bill is sent to the President for his assent. The President takes one of the following courses upon receiving the bill:

(i) He may give his assent. In such a case, the bill becomes the law.

(ii) He may withhold his assent and in such a case the Parliament has no power to over-rule him. This means the death of the bill.

(iii) He may suggest his recommendations to the bill. In such a case, the bill is referred back to its originating House. However, if both the Houses pass the Bill again, with or without the recommendations of the President, the President will have to give his assent.

(iv) In 1986, President Giani Zail Singh took a new course when he, instead of giving or withholding assent or returning it to the Parliament for reconsideration, did not take any action. The Bill was the Post Office (Amendment Bill), 1986. His successors also did not take any action.

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3.3.2 Money Bill

Article 110 clearly defines what constitutes a 'money bill'. The Speaker of Lok Sabha certifies whether a bill is a money bill or a non-money bill.

The money bill is also passed by the Parliament by the different phases of three readings. However, there are substantial differences in the legislative process in relation to an ordinary bill. They are as follows:

(a) Money bill can be introduced, only along with the prior recommendation of the President, in Lok Sabha and not in Rajya Sabha.

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(b) After being passed by the Lok Sabha, the bill is sent to Rajya Sabha for its recommendation. Rajya Sabha has 14 days from the receipt of the money bill for its consideration.

(c) Rajya Sabha cannot reject the money bill. It can only make recommendations.

(d) In case the Rajya Sabha makes recommendations, the Lok Sabha may accept or reject those recommendations. Thereafter, the bill will be directly sent to the President for his assent.

(e) If the Rajya Sabha does not return the money bill within 14 days, the bill will be deemed to have passed by both the Houses after the lapse of 14 days and sent to the President for his assent. There can be no joint-sitting of both Houses on a money bill.

(f) The President cannot withhold his assent to a money bill passed by the Parliament.

3.3.3 Constitutional Amendments

With regard to the amendment of the Constitution, both Rajya Sabha and Lok Sabha have been placed at par. Though it is true that most of the bills to amend the Constitution had been introduced in the Lok Sabha, both the Houses have got equal powers with regard to the amending process. In order to amend the Constitution, a bill must be passed by both the Houses of the Parliament. It may be mentioned in this connection that the Constitution (Twenty-Fourth Amendment) Bill, 1970, which was passed by an overwhelming majority in the Lok Sabha, was defeated in the Rajya Sabha by only a fraction of a vote and consequently the measure fell through. On 13 October, 1989, Rajiv Gandhi's government suffered an unprecedented defeat in the Rajya Sabha. The Rajya Sabha refused to pass two major Constitutional amendment bills. These bills were for streamlining the Panchayati Raj and reorienting the municipalities and corporations.

3.3.4 Budget in Parliament

Every year, the budget is presented before the Lok Sabha. The Finance Ministry prepares the budget. The budget is presented in two parts: (a) Railway Budget and (b) General Budget. Railway budget is presented by the Railway Minister while the general budget is presented by the Finance Minister. The budget passes through various stages which are as follows:

(i) Presentation of the budget: The railway budget is generally presented in the third week of February while the general budget normally on the last working day of February. The general budget is presented along with the budget speech of the Finance Minister, which is divided in two parts A and B. Part A contains 'a general economic survey' of the country and part B deals with 'the taxation proposal' for the ensuing financial year. The budget remains a closely guarded secret till its presentation. After the budget speech, the Finance Minister introduces the finance bill which contains the taxation proposal made by the government. There is no discussion by the members of the House on the day of the presentation of the budget.

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(ii) Discussion on budget: The discussion on budget is done through two stages: (a) General discussion and (b) demands for grants for each ministry. In the 'general discussion', the general economic policy is discussed and there is no detailed discussion on taxation and expenditures in both the Houses of the Parliament. In these discussions, both Houses express their opinion regarding the economic policy of the government and a general appraisal of the economic policy is made. Here, it should be noted that Rajya Sabha also discusses, however, it cannot go beyond general discussion.

The 'general discussion' is followed by the discussion and voting for demands for grants. Demands for grants for each ministry are discussed in detail. The demands are expenditures to be incurred by the ministry and they are in the nature of request made by the Executive to Lok Sabha for the grant of authority to spend the amount asked for.

At this stage, the various ministries come under a close scrutiny by the Lok Sabha. During this stage, cut motions can be proposed. A 'cut motion' is a device which members can employ to draw attention to specific grievances or criticize particular policies of the government. The cut motions, if passed, may lead to the resignation of the government as it amounts to a vote of censure of the government. The discussion on demand for grants is held along with the motion of Guillotine, which means that a time limit is set for various demands and as the time is over, the demand is put to vote irrespective of whether enough and satisfactory discussion has taken place or not. On the last day of the discussion allotted to demands for grants, all the remaining demands, even on which no discussion has taken place, are put to vote. With this, the discussion on demands for grants is concluded.

(iii) Appropriation Bill: The next stage is the appropriation bill which incorporates all the demands for grants voted by Lok Sabha and the expenditures charged on the Consolidated Fund of India. The bill seeks the legal authority to be given to government to appropriate expenditure from and out of the Consolidated Fund of India.

The appropriation bill is introduced, considered and passed in the same manner as any other bill. However, the discussion is restricted to those matters which were not covered in the debate on demands and no amendments are allowed. After the appropriation bill is passed by the Lok Sabha, the Speaker certifies it to be a money bill and sends it to the Rajya Sabha. After Rajya Sabha's approval, as per the procedure laid down by the Constitution, the bill is sent to the President for his assent.

(iv) Finance bill: It contains government proposals for raising revenues. The move for leave to introduce finance bill cannot be opposed and it is forthwith put to vote. This bill has to be considered and passed by the Parliament and assented to by the President within 75 days after it is introduced. Passing of the finance bill is the final act of Parliament's financial procedure.

(v) Vote on account: Sometimes, the Lok Sabha passes the Vote on Account. Vote on Account is passed normally for 2 months, when the passage of budget is delayed for some reason. During an election year, it may be passed for 3–

4 months. As a convention, vote on account is treated as a formal matter and passed by Lok Sabha without discussion. Thus, the House is able to consider the Budget at a convenient time.

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CHECK YOUR PROGRESS

3. Fill in the blanks with appropriate terms.
   (i) The law proposal originates in the _____ in the form of a bill.
   (ii) In the first reading of the bill, the minister who moves the bill asks for the permission to do so from the _____.
   (iii) The budget is presented in two parts: (a) _____ and (b) General Budget.

3.4 PRIVILEGES AND RELATIONSHIP OF THE TWO HOUSES

According to Erskine May, 'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.' Thus, privilege, though part of the law of the land, is to certain extent an exemption from the general law. Certain rights and immunities, such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own Constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.

When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its members or its officers.

Constitutional Provisions

The Constitution specifies some of the privileges. They are freedom of speech in Parliament; immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof; immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. Courts are prohibited from inquiring into the validity of any proceedings

in Parliament on the ground of an alleged irregularity of procedure. No officer or Member of Parliament empowered to regulate procedure or conduct of business or to maintain order in Parliament can be subject to a court's jurisdiction in respect of exercise by him of those powers. No person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available for reports or matters broadcast by means of wireless telegraphy. This immunity, however, is not available to publication of proceedings of a secret sitting of the House.

In other respects, the powers, privileges and immunities of each House of Parliament and of the members and committees thereof shall be such as may from time to time be defined by Parliament by law and until so defined, shall be those of that House, its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

The framers of the Constitution had provided for the same powers and privileges for members, etc. as were possessed and enjoyed by the House of Commons at the commencement of the Constitution. The reference to the House of Commons in clause (3) of article 105 was omitted by the Constitution (Forty-fourth Amendment) Act, 1978. Since, however, no law defining the privileges has been made by Parliament so far, in actual practice, the position in this regard remains the same as it existed at the commencement of the Constitution.

Statutory Provision

Apart from the privileges specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

Privileges based on Rules of Procedure and Precedents

The House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House.

Members or officers of the House cannot be compelled to attend as witnesses before the other House or a House of a State Legislature or a committee thereof without the permission of the House and without the consent of the member whose attendance is required.

Consequential Powers of the House

In addition to the above mentioned privileges and immunities, each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are: to commit persons, whether they are members or not, for breach of privilege or contempt of the House; to compel the attendance of

witnesses and to send for persons, papers and records; to regulate its procedure and the conduct of its business; to prohibit the publication of its debates and proceedings and to exclude strangers.

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Penal Powers of the House

If any individual or authority violates or disregards any of the privileges, powers and immunities of the House or members or committees thereof, he may be punished for 'breach of privilege' or 'contempt of the House'. The House has the power to determine as to what constitutes breach of privilege and contempt. The penal jurisdiction of the House in this regard covers its members as well as strangers and every act of violation of privileges, whether committed in the immediate presence of the House or outside of it.

A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment, or by admonition (warning) or reprimand. Two other punishments may also be awarded to the members for contempt, namely, 'suspension' and 'expulsion' from the House.

Freedom of Speech and Immunity from Court Proceedings

Members have freedom of speech in the House and enjoy immunity from proceedings in any court in respect of anything said or any vote given by them in Parliament or in any committee thereof. The freedom of speech of members in the House, in fact, is the essential pre-requisite for the efficient discharge of their parliamentary duties, in the absence of which, they may not be able to speak out their mind and express their views in the House without any fear. Importance of this right for the Members of Parliament is underlined by the immunity accorded to them from civil or criminal proceedings in a court of law for having made any speech/ disclosure or any vote cast inside the House or a committee thereof. Any investigation outside Parliament, of anything that a member says or does in the discharge of his parliamentary duties amounts to a serious interference with the member's freedom of speech in the House. Therefore, to attack a member or to take or even threaten to take any action against him including institution of legal proceedings on account of anything said or any vote given by him on the floor of the House would amount to a gross violation of the privilege of a member.

The immunity granted to members under article 105(2), covers anything said in Parliament even though it does not strictly pertain to the business before the House. As stated by the Supreme Court:

The article confers immunity, inter alia, in respect of 'anything said... in Parliament'. The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament... Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business would be immune from proceedings in any court. This immunity is not only complete but is as it should be... The courts have no say in the matter and should really have none.

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The freedom of speech available to the members on the floor of the House is different from that available to the citizens under article 19(2). A law made under this article providing for reasonable restrictions on the freedom of speech of the citizens would not circumscribe the freedom of speech of the members within the walls of the House. Members enjoy complete protection even though the words uttered by them in the House are malicious and false to their knowledge. Courts have no jurisdiction to take action against a member for his speech made in the House even if it amounts to contempt of the court.

The express constitutional provisions contained in clauses (1) and (2) of Article 105 are thus a complete and conclusive code in respect of the privilege of freedom of speech and immunity from legal liability for anything said in the House or for publication of its reports. Anything which falls outside the ambit of these provisions is, therefore, liable to be dealt with by the courts in accordance with law. Thus, if a member publishes questions which have been disallowed by the Chairman and which are defamatory, he will be liable to be dealt with in a court under the law of defamation.

The right of freedom of speech in the House is, however, circumscribed by the constitutional provisions and the rules of procedure. When a member violates any of the rules, the Chairman has ample powers conferred by the rules to deal with the situation.

In view of the immunity conferred on the member's right to speech and action in the House, its misuse can have serious effects on the rights and freedom of the people who could otherwise seek the protection of the courts of law. Members, therefore, as people's representatives, are under greater obligation to exercise this right with utmost care and without any prejudice to the law of the land. The Committee of Privileges, has emphasised that a Member of Parliament does not enjoy unrestricted licence of speech within the walls of the House. The Committee has observed:

It is against the rules of parliamentary debate and decorum to make defamatory statements or allegations of incriminatory nature against any person and the position is all the worse if such allegations are made against persons who are not in a position to defend themselves on the floor of the House. The privilege of freedom of speech can only be secured, if members do not abuse it.

While doing so, the Committee has approvingly referred to the following observations contained in the Second Report of the Committee of Privileges, House of Commons (Section 1978-79) HC 222, p.v., para. 10):

...The privilege of freedom of speech is an important and necessary element in the work of Parliament. However, because of the immunity it confers, its misuse can have serious effects. Your Committee are well aware that from time to time members, in their anxiety to make their point, may use their privilege of freedom of speech in a way which because of the harm which it may do to other important rights or freedoms and the disproportionate damage which may result to individuals who could otherwise seek the protection of the courts of law, would be regarded by other members as quite unjustifiable... Your Committee, therefore, consider it right to emphasise the obligation upon all members to have regard, in any decision to make statements in the House which, if made outside the House, would be defamatory

or even criminal, to the widespread effect of such statements when reported through newspaper reports and broadcasts of proceedings, and to the prejudice and possibility undeserved injury which may result to individual citizens who have neither remedy nor right of reply.

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The provisions of article 105(2) also apply in relation to persons who by virtue of the Constitution have the right to speak in, and otherwise to take part in the proceedings of either House or any committee thereof as they apply in relation to Members of Parliament.

Questioning a Member for His Disclosure in the House

Members cannot be held accountable/questioned by an outside body for any speech/ disclosure made or a vote given inside the House. This is essential for giving effect to their freedom of speech in the House. It is also a settled procedure that no member or officer of the House should give evidence in respect of any proceedings of the House or any committee thereof or any document relating to or connected with any such proceedings or in the custody of the officer of the House or produce any such document in a court of law without the leave of the House being first obtained.

As regards disclosure that may be made by a member on the floor of the House and his accountability to any outside body, the Committee of Privileges has, inter alia, observed:

...it would be impeding a Member of Parliament in the discharge of his duties as such member if he is to be questioned in any place outside Parliament for a disclosure that he may make in Parliament. The right of a Member of Parliament to function freely and without fear or favour is in India, as in the U.K., a constitutional guarantee. This guarantee is subject only to the rules of the House and ultimately to the disciplinary jurisdiction of the House itself... any investigation outside Parliament of anything that a member says or does in the discharge of his duties as a Member of Parliament would amount to a serious interference with the member's right to carry out his duties as such member.

If in a case a member states something on the floor of the House which may be directly relevant to a criminal investigation and is, in the opinion of the investigating authorities, of vital importance to them as positive evidence, following procedure has been prescribed by the Committee:

... the investigating authority may make a report to the Minister of Home Affairs accordingly. If the Minister is satisfied that the matter requires seeking the assistance of the member concerned, he would request the member through the Chairman to meet him. If the member agrees to meet the Home Minister and also agrees to give the required information, the Home Minister will use it in a manner which will not conflict with any parliamentary right of the member. If, however, the member refuses to respond to the Home Minister's request, the matter should be allowed to rest there.

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Right to Exclude Strangers

The right of the House to exclude strangers from the House is a necessary concomitant of the privilege of freedom of speech on the floor of the House. In a deliberative body like Parliament, privacy of debate is no less important for free and fair discussion than is the immunity from legal proceedings. As observed by the Supreme Court:

> ...the freedom of speech claimed by the House (of Commons) and granted by the Crown is, when necessary, ensured by the secrecy of the debate which in turn is protected by prohibiting publication of the debates and proceedings as well as by excluding strangers from the House. This right was exercised in 1923 and again as late as on 18 November 1958. This shows that there has been no diminution in the eagerness of the House of Commons to protect itself by secrecy of debate by excluding strangers from the House when any occasion arises.

Rules of Procedure empower the Chairman to regulate the admission of strangers and order their withdrawal from any part of the House.

Right to Control Publication of Proceedings

Closely allied to the power to exclude strangers is the power of the House to prohibit publication of its debates and proceedings. Under the Constitution, absolute immunity from proceedings in any court of law has been conferred on all persons connected with the publication of proceedings of either House of Parliament, if such publication is made by or under the authority of the House. The publication of proceedings of Parliament is subject to the control of the respective Houses.

The Secretary-General is authorised to prepare and publish a full report of the proceedings of the House in such form and manner as the Chairman from time to time directs.

Publication by any person in a newspaper of a substantially true report of any proceedings of either House of Parliament is protected under the Constitution from civil or criminal proceedings in court unless the publication is proved to have been made with malice. Statutory protection has also been given to such publication.

But when debates or proceedings of the House or its Committees are reported mala fide, i.e., there is either wilful misrepresentation or suppression of speeches of particular members or a garbled, distorted and perverted accounts of debates, it is a breach of privilege and contempt of the House. The Supreme Court has held:

> ...the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of debates or proceedings that take place within the House.
>
> A *fortiori* the House had...the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. Nor do we share the view that it will not be right to entrust our Houses with those powers, privileges and immunities, for we are well persuaded that our Houses... will appreciate

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the benefit of publicity and will not exercise the powers, privileges and immunities, except in gross cases.

As observed by the Chairman in a case:

> The newspapers are eyes and ears of the public not present in the House. Unless the House puts a ban, the newspapers must be held to have the rights to reproduce fairly and faithfully and accurately the proceedings or any part thereof without let or hindrance from any person not authorised by the House or by any law. The newspaper may not misrepresent by editing, adding or unfairly omitting to give a totally wrong impression.
>
> If a member publishes separately from the rest of the debate a speech made by him in the House, it becomes a separate publication unconnected with any proceedings in Parliament. He, therefore, cannot claim this privilege and he would be held responsible under the law for any libellous matter it might contain.

Premature Publication of Proceedings

Premature publication of proceedings, particularly those of the Committees has been held to be a violation of the privilege and contempt of the House. In a case, contents of the evidence tendered by a witness before the Committee of Privileges, Rajya Sabha, were published in newspapers before the report of the Committee was presented to the House. The Committee held that the act of premature publication of proceedings of the Committee constituted breach of privilege and contempt of the House. Having regard to the regret expressed and apology offered by the newspapers, the Committee, however, did not recommend any punishment in this case. While cautioning all concerned that in future any premature publication or disclosure of proceedings of the Committees would be dealt with seriously, the Committee observed:

> It is well established that the proceedings of a Parliamentary Committee are confidential and what transpired in the meetings of the Committee should not be disclosed or given any publicity, unless the same is presented to the House or is otherwise treated as not confidential.

Publication of Expunged Proceedings

Similarly, it is a breach of privilege and contempt of the House to publish expunged proceedings of the House. In this regard the Supreme Court has held:

> The effect in law of the order of the Speaker to expunge a portion of the speech of a member may be as if that portion had not been spoken. A report of the whole speech in such circumstances though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of a speech, i.e., including the expunged portion in derogation to the orders of the Speaker passed in the House may, prima facie, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news-item.

Shri Kuldip Nayyar, gave a notice of breach of privilege against Shri Chandan Mitra, Editor of The Pioneer for reproducing in an editorial of the paper certain

remarks made by him in the House, which were expunged by the Chairman. The matter was referred to the Committee of Privileges for examination and report. In view of the apology tendered by Shri Mitra and taking into account the fact that the impugned article was not mala fide, the Committee decided to drop the matter and accordingly reported to the House.

NOTES

Right of the House to Regulate its Proceedings

Each House of Parliament enjoys an inherent and exclusive authority to conduct and regulate its proceedings in the manner it deems proper. This right is the natural corollary of the immunity from proceedings in a court of law in respect of anything said or done inside the House. It is well settled now that each House has the exclusive jurisdiction over its internal proceedings. No authority other than the House and its Presiding Officer has any say in the matter relating to conduct of its proceedings. Accordingly, each House of Parliament has been empowered under article 118 of the Constitution to make rules for regulating its procedure and conduct of its business. Article 122 of the Constitution guarantees that the validity of proceedings of Parliament cannot be questioned in any court of law for any 'alleged irregularity of procedure'. The Supreme Court held:

Article 118 is a general provision conferring on each House of Parliament the power to make its own rules of procedure. These rules are not binding on the House and can be altered by the House at any time. A breach of such rule is not subject to judicial review in view of article 122.

The proceedings of the Houses cannot be challenged in a court on the ground that they have not been carried on in accordance with the rules of procedure or that the House deviated from the rules duly made under article 118. Interpretation of the rules also is the exclusive preserve of the Presiding Officer and ultimately of the House itself. But immunity from judicial interference is confined only to the matters of 'alleged irregularity of procedure' as distinguished from 'illegality of procedure'. Clause (2) of article 122 provides that the Presiding Officer of each House or any other officer or the Member of Parliament, who for the time being, is vested with the power to regulate the proceedings, conduct of business or maintenance of order in the House of Parliament, shall not be subject to jurisdiction of the courts in the exercise of those powers.

The Allahabad High Court in this regard held:

...this Court is not, in any sense whatever a court of appeal or revision against the legislature or against the rulings of the Speaker who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House.

...this Court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House.

In other words, the House has collective privilege to decide what it will discuss and in what order, without interference from a court of law. No writ, etc. can be issued by a court restraining the Presiding Officer 'from allowing a particular question to be discussed, or interfering with the legislative processes of either House of the

Legislature or interfering with the freedom of discussion or expression of opinion in either House'.

Freedom from Arrest

NOTES

A Member of Parliament is not liable to arrest or detention in prison, under a civil process, during the continuance of a session of the House or meetings of any committees, of which he may be a member, and during forty days before and after such session/meeting.

The need for freedom from arrest of the Members of Parliament lies in the fact that every Legislature is entitled to have the first claim upon the services of its members and that any person or authority who prevents or obstructs a member from attending to his parliamentary duty is guilty of breach of privilege and the contempt of the House.

Arrest for Criminal Offences or Under Preventive Detention Laws

The privilege of freedom from arrest, however, is not intended to interfere with the administration of criminal justice or laws relating to emergency legislation such as preventive detention. The immunity, therefore, has been limited only to civil cases. The Madras High Court has held that the privilege of freedom from arrest 'cannot extend or be contended to operate, where a Member of Parliament is charged with an indictable offence'. The privilege of freedom from arrest thus ceases to operate where a Member of Parliament has been charged with a criminal or indictable offence, primarily on the ground that the House should not protect a member from the process of criminal law. He cannot, therefore, pray for a writ of mandamus directing the state to enable him to attend the session of the legislature. In fact, there is no statutory provision granting such privilege or immunity.

According to the Calcutta High Court, preventive detention partakes more of a criminal than of a civil character. It only allows persons to be detained who are dangerous or are likely to be dangerous to the state. It is true that such orders are made when criminal charges possibly would not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.

3.4.1 Relationship of the Two Houses

The Constitution envisages that both Houses have equal status and position. The two Houses have to function within the areas allotted to them under the Constitution. While the Lok Sabha has been given certain special powers in certain matters, the Rajya Sabha too has been invested with some other special powers. The Lok Sabha has three special or exclusive powers, namely, that the Council of Ministers is collectively responsible to that House, the demands for grants are submitted to the Lok Sabha and it has the power to assent, or to refuse to assent, to any demand or to assent to any demand subject to a reduction of the amount specified therein and a Money Bill or a Financial Bill containing money-clauses cannot be introduced in the Rajya Sabha or in other words such a Bill can be introduced only in the Lok Sabha.

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The Rajya Sabha also has three special or exclusive powers which are contained in Articles 249, 312, 352, 356, and 360. Under Article 249, the Rajya Sabha can declare by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution. A similar resolution can be passed by the Rajya Sabha under Article 312 for the creation of one or more all-India services. Under Articles 352, 356, and 360, the Rajya Sabha can approve the Proclamations initially or extend them subsequently while the Lok Sabha is under dissolution.

Barring these matters, there exists a perfect equality between the two Houses. The Constitution requires the laying of a number of papers on the Table in both the Houses, notably amongst them are the Budget, supplementary demands for grants, Ordinances and Proclamations issued by the President, reports of Constitutional functionaries such as the Comptroller and Auditor General, the Finance Commission, the Commissioner for the Scheduled Castes and Scheduled Tribes, the Backward Classes Commission, the Commissioner for Linguistic Minorities. Both Houses also participate in matters of elections of the President and the Vice-President, impeachment of the President, removal of the Vice-President, a Judge of the Supreme Court or of a High Court.

The relationship between the Houses is further laid down in the rules made by the President, after consultation with the Chairman, Rajya Sabha and the Speaker, Lok Sabha, in pursuance of Article 118(3) of the Constitution, with respect to joint sittings of, and communications between, the two Houses.

Communications between the Houses

Communication between the Houses is by means of a written message from one House to another, signed by its Secretary-General. The message is reported to the House by the Secretary-General concerned, at the first convenient opportunity after its receipt, if the House is in session. If the House is not in session, members are informed of the message through a paragraph in the Bulletin of the House. The subject matter of the message is dealt with according to the Rules of Procedure and Conduct of Business.

The occasions for communication of messages arise in cases of Bills, motions and resolutions. In respect of Bills, messages are sent by the Rajya Sabha to the Lok Sabha in the following eventualities:

- A Bill introduced in and passed by the Rajya Sabha is transmitted to the Lok Sabha for concurrence.
- A Bill transmitted to the Lok Sabha for concurrence is returned to the Rajya Sabha with amendment and the Rajya Sabha agrees or does not agree to the amendment or proposes further or alternative amendment.
- A Bill originating in and passed by the Lok Sabha and transmitted to the Rajya Sabha for concurrence is passed by the Rajya Sabha without or with amendment.

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- A Bill passed by the Lok Sabha is returned to that House with amendment by the Rajya Sabha and the Lok Sabha does not agree with the amendment made by the Rajya Sabha or proposes further amendments and the Rajya Sabha agrees to the Bill as originally passed in the Lok Sabha or as further amended by it or insists on an amendment or amendments to which the Lok Sabha has disagreed.
- A Money Bill passed by the Lok Sabha is returned to that House without making any recommendations or with amendments recommended.

Messages are also sent to other House in respect of motions and resolutions:

- Motion seeking to withdraw a Bill passed by the Lok Sabha and pending in the Rajya Sabha.
- Motion referring a Bill to a Joint Committee of Houses for concurrence and communication of names of members of the Lok Sabha to serve on the Committee.
- Motion communicating the extension of time for the presentation of a report of the Joint Committee.
- Motion requesting the Lok Sabha to appoint members to fill the vacancies occurring in the Joint Committee either by death, resignation, or otherwise of members of that House serving on the Joint Committee.
- Communication of names of members of the Rajya Sabha to serve on the Committees on Public Accounts, Public Undertakings, Railway Convention and other Joint Parliamentary Committees.
- Amendments made in any rule, regulation, etc. (statutory instrument) for concurrence of the Lok Sabha.
- Resolution amending a 'President's Act' made under a State Legislature (Delegation of Powers), Act in respect of a State under President's Rule, for concurrence of the Lok Sabha.

Differences between Lok Sabha and Rajya Sabha

The differences between the two Houses are as follows:

- Members of Lok Sabha are directly elected by the eligible voters. Members of Rajya Sabha are elected by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote.
- The normal life of every Lok Sabha is 5 years only while Rajya Sabha is a permanent body.
- Lok Sabha is the House to which the Council of Ministers is responsible under the Constitution. Money Bills can only be introduced in Lok Sabha. Also it is Lok Sabha, which grants the money for running the administration of the country.
- Rajya Sabha has special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a

matter in the State List or to create by law one or more all-India services common to the Union and the States.

CHECK YOUR PROGRESS

4. What is Parliamentary privilege according to Erskine May?
5. Name the consequential powers given to the members of the Parliament.
6. How is a message communicated to the members of the House?

NOTES

3.5 COMMITTEE SYSTEM

The diverse nature of the vast functions of the Parliament make it impossible to make an exhaustive examination of all legislative and other matters that come up before it. It is for this reason that a substantial amount of Parliamentary business is executed in the committees. The committee structure of both the Houses of Parliament are alike barring a few exceptions. Article 118(1) of the Constitution deals with their appointment, terms of office, functions and procedure of conducting business which are also more or less similar and are regulated as per rules made by the two Houses.

A significant amount of its business is, therefore, transacted by what are called the Parliamentary Committees.

Parliamentary committees are of two kinds:

- Ad hoc committees
- Standing committees

Ad hoc committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal ad hoc committees are the Select and Joint Committees on Bills. Others like the Railway Convention Committee, the Committees on the Five Year Plans and the Hindi Equivalents Committee were appointed for specific purposes. Apart from the ad hoc committees, each House of Parliament has standing committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee.

Public Accounts Committee

The Parliamentary power by which it can vote money for specific purposes is meaningless unless it has the power to find out that whether the money has been utilized for the correct purposes or not? This is secured by subjecting the public accounts to an audit by an independent authority—the Comptroller and Auditor General—and, further, the examination of his report by a special committee of Parliament, called the 'Public Accounts Committee'. A committee of Parliament is preferred because, first, that august body has not the time to undertake the detailed examination of the report; secondly, the scrutiny being essentially technical, can best be done in a committee and lastly, the non-party character of the examination can be possible only in a committee and not in the House.

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Functions of Public Accounts Committee

The function of the committee is to satisfy itself about the following:

- The money shown in the accounts as having been disbursed was legally available or applicable to the service or purpose to which it has been applied or charged
- The expenditure conforms to the authority that governs it
- Every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority

It shall also be the duty of the Public Accounts Committee to do the following:

- To examine, in the light of the report of the Comptroller and the Auditor General, the statement of accounts showing the income and expenditure of state corporations, trading and manufacturing schemes and projects, together with the balance sheets and statements of profit and loss accounts, which the President may have required to be prepared, or are prepared under the provisions of the statutory rules regulating the financing of a particular corporation, trading concern or a project.
- To examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Comptroller and Auditor General of India either under the directions of the President or by a statute of Parliament
- To consider the report of the Comptroller and Auditor General in cases where the President may have required him to conduct an audit of any of the receipts or to examine the accounts of stores and stocks

Estimates Committee

In this section, you will study the various aspects of the Estimates committee.

Constitution of the Estimates Committee

The constitution of the Estimates Committee was urged as early as 1937, but the proposal could not materialize. There had been, of course, the Standing Finance Committee, first created in 1921, and attached to the Finance Department of the Government of India. This committee, however, functioned under severe limitations and there was no justification for not constituting the Estimates Committee. The Estimates Committee was first created in April 1950, and its functions were enlarged in 1953.

The Estimates Committee is a standing committee, and is set up every year. Its functions, method of appointments and other relevant matters are laid down in the Rules of Procedure and Conduct of Business in the Lok Sabha. It consists of thirty members, all belonging to the Lok Sabha, elected according to the system of proportional representation by single transferable vote. It does not contain any member from the Rajya Sabha. The Chairman of the Committee is nominated by the Speaker. If, however, the Deputy Speaker is a member of the Committee, he

automatically becomes the Chairman. The ministers cannot be appointed on the Estimates Committee.

Functions of the Estimates Committee

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The Estimates Committee has been entrusted with the following functions:

- To report what economies, improvements in organization, efficiency and administrative reforms, consistent with the policy underlying the estimates, may be affected
- To suggest alternative policies in order to bring out the efficiency and economy in the administration
- To examine whether the money is well laid out within the limits of the policy implied in the estimates
- To suggest the form in which the estimates shall be presented to the Parliament

3.5.1 RTI Act, 2005

In the broader context, it is realized that accountability should go hand in hand with necessary authority and responsibility, appropriate delegation of powers, and making every unit of government a discrete entity for the performance of its assigned tasks. At the national level, the agenda in this regard includes enactment of Right to Information Act. Every citizen has a right to know how the government is functioning. Right to Information empowers every citizen to seek any information from the Government, inspect any government document and seek certified photocopies thereof. Some laws of Right to Information also empower citizens to officially inspect any government work or to take sample of material used in any work.

Right to Information includes the right to:

- Inspect works, documents, and records
- Take notes, extracts or certified copies of documents or records
- Ask any questions from the government or seek any information
- Take samples of materials of any governmental work
- Obtain information in form of printouts, diskettes, floppies, tapes, video, and cassettes or in any other electronic mode or through printouts

Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. Record includes any document, manuscript and file, any microfilm, microfiche, and facsimile copy of a document, any reproduction of image or images embodied in such microfilm (whether enlarged or not); and any other material produced by a computer or any other device.

As per the provisions of RTI Act, 2005, an applicant cannot ask for opinions/ advice/views under the RTI Act, unless the opinion/advice/view is already on 'record'.

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RTI is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

The Act applies to all states and Union Territories of India except the state of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009.

Under the provisions of the Act, any citizen may request information from a 'public authority' (a body of government or 'instrumentality of state') which is required to reply expeditiously or within 30 days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act, 1923, and various other special laws, which the new RTI Act now relaxes. The formal recognition of a legal right to information in India occurred more than two decades before legislation was finally enacted, when the Supreme Court of India ruled in State of Uttar Pradesh *vs* Raj Narain that the right to information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution.

The Act is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an Act of Parliament or a State Legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies 'owned, controlled or substantially financed' by government, or non-governmental organizations 'substantially financed, directly or indirectly by funds' provided by the government are also covered in it.

Private bodies are not within the Act's ambit directly. However, information that can be accessed under any other law in force by a public authority can also be requested. In a landmark decision of 30 November 2006 ('Sarbajit Roy *vs* DERC') the Central Information Commission also reaffirmed that privatized public utility companies continue to be within the RTI Act, their privatization notwithstanding.

Process of RTI

Under the Act, all authorities covered must appoint their Public Information Officer (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority in whole or a part, it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within five working days. In addition, every public authority is required to designate Assistant Public Information Officers

(APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is not required to disclose any information or reasons other than his name and contact particulars to seek the information. 'Apply RTI' is the online system which facilitates the filing of RTI Act (India) applications online. It aims primarily at minimizing the time taken and effort required in filing an application. The Act specifies time limits for replying to the request as follows:

- If the request has been made to the PIO, the reply is to be given within 30 days of receipt.
- If the request has been made to an APIO, the reply is to be given within 35 days of receipt.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is 30 days but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the PIO is expected to reply within 48 hours.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request in whole or part and/or providing a computation of 'further fees'. The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is deemed a refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the time prescribed is to be provided free of charge. For Central Departments, as of 2006, there is a fee of ₹ 10 for filing the request, ₹ 2 per page of information and ₹ 5 for each hour of inspection after the first hour. If the applicant is a Below Poverty Level (BPL) cardholder, then no fee shall apply. Such BPL cardholders have to provide a copy of their BPL card along with their application to the Public Authority. States Government and High Courts fix their own rules. The Act allows those part(s) of the record which are not exempt from disclosure, and which can reasonably be severed from parts containing exempt information to be provided.

Exclusion from RTI

Central Intelligence and Security agencies specified in the Second Schedule like IB, Directorate General of Income tax (Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, the

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Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police are excluded from RTI. Agencies specified by the state governments through a notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

The following information is exempt from disclosure:

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, 'strategic, scientific or economic' interests of the state, relation with foreign state or lead to incitement of an offence.
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
- Information received in confidence from a foreign government.
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.
- Information which would impede the process of investigation or apprehension or prosecution of offenders.
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to Parliament or a State Legislature shall not be denied by this exemption.
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests [This provision is qualified by the proviso to Sub-section 11(1) of the Act which exempts disclosure of 'trade or commercial secrets protected by law' under this clause when read along with Section 8(1)(d)].

Role of the Government

Section 26 of the Act enjoins the Central Government, as also the state governments of the Union of India (excluding J&K), to initiate necessary steps to:

- Develop educational programmes for the public especially disadvantaged communities on RTI
- Encourage public authorities to participate in the development and organization of such programmes
- Promote timely dissemination of accurate information to the public
- Train officers and develop training materials
- Compile and disseminate a user guide for the public in the respective official language
- Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected, etc.
- The Central Government, state governments and the competent authorities as defined in Section 2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005 (Section 27 and Section 28)
- If any difficulty arises in giving effect to the provisions in the Act, the Central Government may, by order published in the Official Gazette, make provisions necessary/expedient for removing the difficulty (Section 30)

NOTES

CHECK YOUR PROGRESS

7. Why is a substantial amount of Parliamentary business executed in the committees?
8. List any two functions entrusted upon the Estimates Committee.
9. Cite the main provisions listed under the Right to Information Act, 2005.

3.6 SUMMARY

- Parliament is the supreme representative authority of the people. It is the highest legislative organ and the rational forum for the articulation of public opinion. The Parliament of India is the centre and focus of our political system.
- The Indian Parliament is a bi-cameral legislature in the setting of a Parliamentary executive. The formal executive head of the state, known as the President, is an integral part of the Parliament in as much as the Parliament consists of the President and the two Houses, known respectively as the Rajya Sabha and the Lok Sabha.

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- The maximum strength of the Rajya Sabha has been fixed at 250 members, of which not more than twelve are to be nominated by the President on the ground of such matters as art, literature, science and social service.
- Members of the Rajya Sabha are elected for a period of 6 years, one-third of them retiring every second year. This makes the Rajya Sabha a continuous and permanent chamber, never subject to dissolution.
- For the smooth, efficient and impartial conduct of its proceedings, each House of Parliament has been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer.
- The Speaker is the most important conventional and ceremonial head of Lok Sabha. Within the walls of the House, his authority is supreme. The most salient feature of his office is his impartiality.
- The Speaker is to be elected by the members of Lok Sabha from amongst themselves. The election of the Speaker is to take place after each general election of Lok Sabha and as and when there is a vacancy in his office.
- The basic function of the Speaker is to preside over the sessions of the House when he is present in the House. As the Chief Presiding Officer of the House, he fixes the hour of the commencement or termination of a sitting and determines the days on which the House will sit.
- The Speaker is also the Ex-officio Chairman of the conference of presiding officers of legislative bodies in India. This body consists of the Chairman and Deputy Chairman of the upper chambers, and the Speakers and Deputy Speaker of the lower chambers of Parliament and Legislatures of States and Union Territories.
- The primary function of Parliament is law-making. The law proposal originates in the Parliament in the form of a bill.
- Every member of the Parliament has a right to introduce an ordinary bill and from this point of view, there are two kinds of ordinary bills: (i) Government bill, and (ii) Private Member's bill.
- In the first reading of the bill, the minister who moves the bill asks for the permission to do so from the Speaker.
- Article 110 clearly defines what constitutes a 'money bill'. The Speaker of Lok Sabha certifies whether a bill is a money bill or a non-money bill.
- Every year, the budget is presented before the Lok Sabha. The Finance Ministry prepares the budget. The budget is presented in two parts: (a) Railway Budget and (b) General Budget.
- According to Erskine May, 'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.'
- Apart from the privileges specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members

under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

- Members have freedom of speech in the House and enjoy immunity from proceedings in any court in respect of anything said or any vote given by them in Parliament or in any committee thereof.
- A Member of Parliament is not liable to arrest or detention in prison, under a civil process, during the continuance of a session of the House or meetings of any committees, of which he may be a member, and during forty days before and after such session/meeting.
- The Constitution envisages that both Houses have equal status and position. The two Houses have to function within the areas allotted to them under the Constitution. While the Lok Sabha has been given certain special powers in certain matters, the Rajya Sabha too has been invested with some other special powers.
- Both Houses also participate in matters of elections of the President and the Vice-President, impeachment of the President, removal of the Vice-President, a Judge of the Supreme Court or of a High Court.
- Members of Lok Sabha are directly elected by the eligible voters. Members of Rajya Sabha are elected by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote.
- The diverse nature of the vast functions of the Parliament make it impossible to make an exhaustive examination of all legislative and other matters that come up before it. It is for this reason that a substantial amount of Parliamentary business is executed in the committees.
- Parliamentary committees are of two kinds:

  o Ad hoc committees

  o The standing committees
- Right to Information empowers every citizen to seek any information from the Government, inspect any government document and seek certified photocopies thereof. Some laws of Right to Information also empower citizens to officially inspect any government work or to take sample of material used in any work.
- The RTI Act is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an Act of Parliament or a State Legislature.

3.7 KEY TERMS

- **Bi-cameral legislature:** It is one in which the legislators are divided into two separate assemblies, chambers or houses.

- **Cut motion:** It is a device which members can employ to draw attention to specific grievances or criticize particular policies of the government.

NOTES

3.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. At present, the strength of the Lok Sabha (the Lower House) is 545.
2. The Speaker is the Ex-officio Chairman of the conference of presiding officers of legislative bodies in India.
3. (i) Parliament
   (ii) Speaker
   (iii) Railway Budget
4. According to Erskine May, 'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.'
5. The consequential powers are: to commit persons, whether they are members or not, for breach of privilege or contempt of the House; to compel the attendance of witnesses and to send for persons, papers and records; to regulate its procedure and the conduct of its business; to prohibit the publication of its debates and proceedings and to exclude strangers.
6. The message is reported to the House by the Secretary-General concerned, at the first convenient opportunity after its receipt, if the House is in session. If the House is not in session, members are informed of the message through a paragraph in the Bulletin of the House.
7. The diverse nature of the vast functions of the Parliament make it impossible to make an exhaustive examination of all legislative and other matters that come up before it. It is for this reason that a substantial amount of Parliamentary business is executed in the committees.
8. The Estimates Committee has been entrusted with the following functions:
   - To report what economies, improvements in organization, efficiency and administrative reforms, consistent with the policy underlying the estimates, may be affected
   - To suggest alternative policies in order to bring out the efficiency and economy in the administration
9. Under the provisions of the RTI Act, 2005, any citizen may request information from a 'public authority' (a body of Government or 'instrumentality of State') which is required to reply expeditiously or within 30 days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally.

3.9 QUESTIONS AND EXERCISES

Short-Answer Questions

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1. State the composition of the Lok Sabha and Rajya Sabha.
2. What are the qualifications that a person must fulfill who wishes to become a member of either House of the Parliament?
3. How is the Speaker of the Lok Sabha elected?
4. State the differences between a Government bill and a Private Member's bill.
5. What are the constitutional privileges provided by the Constitution to the members of Parliament?
6. What freedom do the members of Parliament have with regard to speech and immunity from court proceedings?
7. List the differences between the Lok Sabha and Rajya Sabha.
8. What are the functions of Public Accounts Committee?
9. Write a note on the process of RTI.

Long-Answer Questions

1. Discuss the composition, term and qualifications of the members of the two Houses of the Parliament.
2. Explain the role of the Speaker of the Lok Sabha.
3. Evaluate the law-making procedure of the Parliament.
4. Discuss the privileges provided to the members of the Parliament.
5. Assess the relationship of the two House of Parliament.
6. Critically evaluate the committee system prevalent in the Parliament.
7. Discuss the provisions of the Right to Information Act, 2005.

3.10 FURTHER READING

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UNIT 4 THE JUDICIARY

Structure

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4.0 INTRODUCTION

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back to the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with Parliamentary form of government in the Union and the states, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

The fountain source of law in India is the Constitution which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Statutes are enacted by Parliament, State Legislatures and Union Territory Legislatures. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or state or Union Territory Legislature concerned. The decisions of the Supreme Court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions which are not against statute, morality, etc. are to a limited extent also

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recognized and taken into account by Courts while administering justice in certain spheres.

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and state Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and state laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each state or group of states. Below the High Court lies a hierarchy of subordinate courts. Panchayat courts also function in some states under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different state laws provide for different kinds of jurisdiction of courts.

Each state is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different states as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

This unit deals with the working, composition and role of the judiciary as provided by the Constitution of India.

4.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Describe the composition and functions of the Supreme Court and High Court
- Explain the doctrine of judicial activism
- Discuss the importance of Constitutional Amendment and its procedure
- Evaluate the 73rd and 74th Amendment Acts of the Constitution
- Assess the 6th and 7th Schedule of the Constitution

4.2 SUPREME COURT

The members of the Constituent Assembly aspired to idealize the courts for two basic reasons:

(a) For strengthening the fundamental rights

(b) For acting as guardians of the Constitution itself

This vision guided the framers to design an independent judiciary, and vested it with powers to make the judicial provision of the Constitution congruent with the broad contours of the parliamentary democracy in the country.

During the British rule, the civil and criminal laws were administered by judges-cum-magistrates, with the Judicial Committee of the Privy Council (JCPC) in England

acting as the final court of appeal. The separation between the executive and the judiciary was made gradually, and by the Government of India Act of 1935, the highest court in India was established in the form of the Federal Court which, however, was subordinate only to the JCPC. The British colonial period also witnessed the emergence of a corporate legal profession that provided pleaders and advocates for presenting the cases of clients to the judges or magistrates.

The Supreme Court of India, the first fully independent court for the country, was first set up under the 1950 Constitution. The Constitution also set up an integrated hierarchy of courts for a more parliamentary federal system compared to the Government of India Act, 1935.

4.2.1 Composition of Supreme Court

Article 124 of the Constitution establishes the Supreme Court of India as the Highest Court of the Indian Republic. It provides that the Supreme Court shall consist of the Chief Justice and twenty-five other judges (the Constitution originally specified a total of eight judges, but this was increased in 1956, 1960, 1977 and 1986 bringing it to twenty-five). Each judge is appointed by the President after consultations with such judges of the Supreme Court and the state High Courts, as deemed necessary. However, the President is bound to consult the Chief Justice of India, before appointing an ordinary judge of the Supreme Court. Although not Constitutionally binding, the appointment of the Chief Justice had come to be automatic, with the elevation of the senior-most judge to that office on the retirement of the incumbent. This procedure was broken in 1973 when the President, acting on the advice of the Prime Minister, appointed Justice A. N. Ray as the Chief Justice, superseding three senior judges, namely Justice J. M. Shelat, Justice K. S. Hegde and Justice A. N. Grover. This was done while ignoring the recommendation of Justice S. M. Sikari, the outgoing Chief Justice of India. Three superseded judges resigned in protest. Subsequently in 1977, Justice H. R. Khanna was superseded and his junior Justice Mirza Hamidullah Beg, was appointed as Chief Justice. Justice Khanna also resigned. Many eminent jurists had criticized this policy of suppression as an attempt to demoralize the Supreme Court. The government, however, justified the deviation from the seniority rule of the basis of the recommendation made by the Law Commission in 1958 and repeated in 1972, which calls for consideration of administrative capability and other things. But so far, it seems that the judges have been superseded because of their decisions and not for their administrative abilities.

When the office of the Chief Justice of India is vacant or when he is unable to perform the duties of his office due to absence or otherwise, the duties of his office are performed by such other judge of the Supreme Court, as the President may appoint. The acting Chief Justice is entitled to the same, rights, privileges, emoluments and other facilities, which are available to the Chief Justice.

A person is qualified for the appointment as the judge of the Supreme Court, if: (i) he is the citizen of India; (ii) he must have been a High Court judge for at least 5 years, or a High Court advocate for at least 10 years; and (iii) one must be a distinguished jurist in the opinion of the President.

The judges hold office until retirement at the age of 65 years and may be removed earlier only by a process of impeachment.

Independence of the Supreme Court

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The framers of the Indian Constitution were concerned with the independence of judiciary.

- Appointing authority, the President, has to consult the members of the judiciary.
- The Constitution provides for a fixed tenure for the judges and they cannot be removed from the office at the pleasure of the government.
- The Second Schedule to the Constitution provides for the salaries of the judges whereas the terms and conditions of their services are regulated by the Acts of Parliament.
- The terms and conditions of services of a judge cannot be varied to his disadvantage after his appointment (Article 125).
- The administrative expenses of the Supreme Court, the salaries and allowances of the Judges as well as of the staff shall be charged on Consolidated Fund of India and shall not be voted in Parliament (Article 146 (3)).
- No discussion should take place in Parliament regarding the conduct of any judge in the discharge of his duties, except when an impeachment resolution is under consideration (Article 121).
- A retired judge of the Supreme Court shall not plead or act in any court or before the authority within the territory of India.

Political Interference

Contrary to the spirit of the Constitution, political interference to influence judicial functioning could be realized at many times.

The Supreme Court itself, while hearing the *Transfer of Judges Case of 1995,* observed that the Union Government has *prima facie* resorted to 'picking or choosing' of High Court Chief Justices and this could attract the charge of 'favouritism'.

Since the decision of the Supreme Court in Golak Nath, there has been increasing politicization of the judicial process. Golak Nath decision was based on a distrust of Parliament and soon after it was delivered, its author, the Chief Justice of India Subba Rao became a candidate for the Presidentship of the country. The decision in the Keshwanand Bharti Case followed by the supersession of three judges, namely, justices Shelat, Hegde and Grover, which sparked off the controversy regarding the social philosophy of the judges. The decision in habeas corpus case of 1976, sparked off another controversy regarding the appointment of Justice M. H. Beg as Chief Justice superseding Justice H. R. Khanna, who alone had dissented in the case. The appointment of various judges as the chairmen of different committees had also been a matter of concern and controversy at many times.

4.2.2 Jurisdiction of the Supreme Court

The Supreme Court has original, appellate and advisory jurisdiction, besides a right to grant special leave for appeal.

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Original Jurisdiction

Original jurisdiction of the Supreme Court is of two types, namely, exclusive and concurrent, Article 131 ensures its exclusive original jurisdiction in all disputes between: (i) the Government of India and one or more states; or (ii) the Government of India and any state or states on one side and one or more states on the other, or (iii) between two or more states.

Secondly, under Articles 32 and 226, the Supreme Court has a concurrent, original as well as appellate; jurisdiction in all cases and disputes involving fundamental rights. Any case or dispute involving violation of fundamental rights by the government may be brought before the Supreme Court initially or in appeal against the decision of a High Court.

Furthermore, under Articles 13 and 32, the Supreme Court of India is empowered to exercise the power of judicial review. It can consider any civil, criminal, or any other case directly, if it involves the interpretation of the Constitution, or of any law.

Finally, Article 71 of the Constitution exclusively empowers the Supreme Court to decide, with first and final authority, all doubts and disputes arising out of, or in connection with, the election of the President or Vice-President of India.

Appellate Jurisdiction

The Supreme Court has appellate jurisdiction in Constitutional, civil and criminal cases. It has appellate jurisdiction in all cases involving a substantial question of law as to interpretation of the Constitution. Such cases and disputes may be brought before it against the decision of a High Court, if the High Court gives such a certificate, or if the Supreme Court itself grants 'special leave to appeal'. The Supreme Court is not only competent to interpret the Constitution of India, Article 147 also empowers it to decide any question of law involving interpretation of the Government of India Act of 1935 and the Indian Independence Act of 1947.

Advisory Jurisdiction

Under Article 143 of the Constitution, the Supreme Court has the Constitutional obligation to advice the President. The President is free to refer any question of law or fact to the Supreme Court for its opinion, if he is satisfied that the question is of such a nature and of public importance that it is expedient to obtain the opinion of the Supreme Court.

Special Leave for Appeal

The Supreme Court is empowered by Article 136 to grant Special Leave to Appeal against the judgment, decree, sentence or order in any case by any Tribunal in India,

except those of courts or tribunals especially constituted for the armed forces. This extraordinary power has been given to the Supreme Court to ensure justice and fairness to all parties in all civil, criminal and Constitutional cases.

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Review Power

Article 137 empowers the Supreme Court to review any of its earlier judgment or orders. The Supreme Court would ordinarily adhere to its previous judgment. If, however, an error is detected in a subsequent case, the court should be able to rectify it rather than adhere to an earlier decision, which is found inapplicable to changed conditions and circumstances, e.g. in the Golak Nath Case, the Supreme Court reviewed its earlier judgment by declaring that it was wrong in allowing the Parliament to curtail fundamental rights and that, therefore, Parliament should have no such right.

Miscellaneous Powers

Article 129 makes the Supreme Court a court of record. And Article 141 makes its decisions binding on all courts within the territory of India. No court can give a verdict to the one given by the Supreme Court.

The Supreme Court has the power to punish persons guilty of contempt of itself. The Supreme Court is also empowered to make rules and regulations for regulating the practices and procedures of the Court. The Supreme Court also enjoys complete control over its own establishment. Under Article 146, the Chief Justice of India is empowered to appoint officers and servants of the Supreme Court after consultations with the UPSC. The rule relating to the salaries, allowances, leave or pensions payable to the officers and servants of the Court, are also charged upon the Consolidated Fund of India and, therefore, do not form a votable item of the Union Budget.

Under Articles 257 and 258, the Chief Justice of India has been empowered to appoint arbitrator to decide cases and disputes relating to extra-costs incurred by a state government in carrying out the directions of the Union Government in the following matters: (i) Construction and maintenance of the means of communications; (ii) Protection of railways within the state; and (iii) Powers and duties conferred upon the state government or its officers with their consent.

4.2.3 Power of Judicial Review

Judicial review means review by the courts to investigate the Constitutional validity of the legislative enactments or executive actions. The power of judicial review in India stands between the American and British practices.

The Constitution of India, in this respect, is more akin to the American Constitution than to British or any other Constitution. Being the guardian of fundamental rights and the arbitrator of Constitutional conflicts between the Union and the states with respect to the division of powers between them, the Supreme Court holds a unique position, wherefrom it is competent to exercise the power of reviewing the legislative enactments both of the Parliament and the State Legislatures. The Supreme Court in India, however, can interpret the laws and invalidate them, if

they are contrary to the letter of the Constitution, but not if they are contrary to its 'spirit'. Accordingly our courts have to interpret the law as written and cannot declare a law as invalid on the ground that it is unjust. Similarly, the Indian Constitution distributes the legislative powers between the Union and the states so precisely, with residuary powers vesting in the Union, that disputes over legislative jurisdiction do not pose any serious problem. Finally, our Constitution is not as rigid as the American Constitution and it is possible to override adverse judicial decisions by suitable amendments of the Constitution.

There are several specific provisions in the Indian Constitution, which imbibe the power of judicial review:

- Article 13(2) specifically declares that every law in force at the commencement of this Constitution, and every subsequent law, which is inconsistent with the fundamental rights shall be void.
- Article 32 empowers the Supreme Court to invalidate all such laws to extent they violate fundamental rights.
- Under Articles 131–136, the basic function of the courts is to adjudicate disputes between individuals, between individuals and the states, between the states and the Union, and while so adjudicating, the courts may be required to interpret the provisions of the Constitution and the laws. And, the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.
- Article 226 constitutes the High Courts as the protector and guarantor of fundamental rights.
- Article 245 provides the powers of both the Parliament and the State Legislatures subject to the provision of the Constitution. Article 246 (3) expressly provides that in the State List, the State Legislatures have exclusive powers. In context of Concurrent List or of those entries in the State List for which one or more states would have requested the Parliament to make laws; Articles 251 and 254 declare that in case of inconsistency between Union and state laws, the state law shall be void. The Constitutional validity of a law can be challenged in India on the ground that the subject matter of the legislation: (a) is not within the competence of the legislature which has passed it; (b) is repugnant to the provisions of the Constitution; or (c) it infringes one of the fundamental rights.
- In view of Article 372 (1), no pre-Constitutional law, which is inconsistent with it can continue to be valid after the commencement of the Constitution.

The power of judicial review, in general, flows from the powers of the Courts to interpret the Constitution. Since the judiciary is the final interpreter of the Constitution and the Constitution regulates the exercise of political power, which, in general, is considered to be the main domain of legislature and executive. Moreover, the judicial process determines the jurisdictional frontiers of the other branches of government. With the result, it comes in constant interaction with the legislature, executive and other institutions of government, which are vested with political power.

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CHECK YOUR PROGRESS

1. Why did the members of the Constituent Assembly aspire to idealize the courts?
2. When was the Supreme Court first set up?
3. Name the Article of the Constitution that establishes the Supreme Court of India as the Highest Court of the Indian Republic.

4.3 HIGH COURTS: COMPOSITION AND FUNCTIONS

The Indian Constitution provides for an integrated judicial system. At the apex of the judiciary is the Supreme Court of India whose decisions are applicable all over the country. Thus it is the highest court of appeal in India. According to Article 125 of the Constitution, each state should have a High Court. A High Court exercises powers within the territorial jurisdiction of the state concerned. The total number of High Courts in the country are 24.

The position of the High Courts under a federal Constitution, like that of India is substantially different from that of USA (a federal country). In USA, every state has its own Constitution and the High Courts in the constituent states are constituted under the state Constitution. The structural features of the judicial courts (e.g. method of appointment of the judges, their salary structure, service conditions as well as their jurisdiction, etc.) differ from state to state. On the contrary, in India, all the High Courts are constituted either under the authority of the Indian Constitution or by the Indian Parliament, with the state governments having no substantive say in the creation of a High Court. Being part of an integrated and unified judicial system, the High Courts stand in the hierarchical order below the Supreme Court with an organic relationship between the two. Following the principle of separation of powers, it is provided in the Constitution that neither the State Executive nor the State Legislature has any power to control the High Court or to alter the Constitution or organization of the High Court.

4.3.1 Composition of a High Court

A High Court stands at the apex of judicial system of a state. A High Court consists of a Chief Justice and such other judges as the President may, from time to time, determine. The number of judges of the state High Courts has not been fixed by the Constitution. Therefore, it varies from court to court.

The Chief Justice of a High Court is appointed by the President by warrant under his hand and seal, after due consultation with the Chief Justice of India and the Governor of the state. In case of appointing the other judges of the High Court, the President is required to consult, in addition to the Chief Justice of India, and the Governor of the state, the Chief Justice of the High Court where the appointment of

the judges is to be made. The practice has also been evolved to appoint at least one-third of the judges of a High Court from outside the state in order to maintain impartiality in the functioning of the High Court.

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Qualification of High Court Judges

An Indian citizen can be qualified as a High Court judge when:

(a) He has either held for at least 10 years a judicial office in the territory of India or

(b) Has been, at least, 10 years, an advocate of a High Court in any state

In computing the 10-year period for the purpose of appointment, experience as an advocate can be combined with that of a judicial officer.

Tenure of High Court Judges

A judge shall hold office till he attains the age of 62-years. He may resign from his office by writing to the President. A judge can be removed by the President from his office before the expiry of his term on grounds of proven misbehaviour or incapacity. However, such an action can be taken by the President only if both the Houses of Parliament pass a resolution by a two-thirds majority of the members present in each house, which should also be the majority of the total membership of the House, accusing the judge with proven misbehaviour or incapacity. After retirement, a person who has held office as a permanent judge of the High Court shall not plead or act in any court or before any authority in India except the Supreme Court and other High Courts (Article 220).

4.3.2 Jurisdiction of High Court

Since the High Courts had been functioning in the country with a fairly satisfactory level of independence and impartiality for many years by the time India became independent, the Constitution-makers did not think it fit to detail the jurisdiction of the High Courts. On the other hand, the Supreme Court of India was a newly created institution necessitating a clear definition of its powers and functions. Thus, the Constitution of India has not made any special provision relating to the general jurisdiction of the High Court.

The civil and criminal jurisdictions of the High Courts are primarily governed by two codes of civil and criminal procedures. At present, the High Court of a state enjoys the following powers:

1. **Original:** The original criminal jurisdiction of the High Court has been completely taken away by the Criminal Procedure Code, 1973. The original civil jurisdiction of the High Courts has been confined in the matters of admiralty, probate, matrimonials, contempt of court and enforcement of the fundamental rights.
2. **Appellate:** The appellate jurisdiction of the High Court is both civil and criminal.

   On the civil side, an appeal to the High Court is either a first appeal or a second appeal. Appeals from the decisions of the district judges and

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from those of subordinate judges in case of a higher value are made directly to the High Court. The criminal appellate jurisdictions of the High Court extends to appeals from the decisions of a Sessions Judge or an Additional Sessions Judge, where the sentence of imprisonment exceeds 7 years and from the decisions of an Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'petty' cases.

3. **Power of superintendence:** According to Article 277, every High Court has the power of superintendence over all courts and tribunals, except those dealing with the armed forces functioning with its territorial jurisdiction. Interpreting the scope of this power, the Supreme Court said that all types of tribunals including the election tribunals operating within a state are subject to the superintendence of the High Courts and also that the 'superintendence is both judicial and administrative'.
4. **Control over subordinate courts:** Article 228 empowers the High Courts to transfer Constitutional cases from lower courts to High Courts. Thus, if the court is satisfied that a case pending in one of its subordinate courts involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, it shall then withdraw the case and may either dispose off the case itself or determine the Constitutional question and then send the case back to the court wherefrom it was withdrawn.
5. **The writ jurisdiction of the High Court**: Every High Court shall have the power to issue to any person or authority including the government (within the territories in which it exercises jurisdiction) orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of the fundamental rights guaranteed by the Constitution, and for any other purposes (Article 226).
6. **Power of appointment:** According to Article 229, the Chief Justice of the High Court is empowered to appoint officers and servants of the court. The Governor may, in this respect, require the Court to consult the Public Service Commission in appointing person to the judicial service of the state. The powers of posting and promotions and grant of leave to persons belonging to the judicial service is also vested in the High Court.

4.3.3 Position of High Courts

High courts in India have been given full freedom and independence in imparting justice to the people and ensure that executive and legislature shall in no way interfere in the day-to-day life of the people. As a court of record, the High Court has the power to punish those who are adjudged as guilty of contempt of court. All its decisions are binding and cannot be questioned in any lower court. The independence of the judiciary in India is ensured by permanence of tenure and the conditions of service of the judges.

Observers have cited certain inherent defects in the working of the state High Courts:

(a) The Constitution of India has clearly stated that the appointment of the judges to the High Court should be on merit basis. However in practice, the appointments are not always made on merit. This is because the state ministry continues to have a powerful voice in the matter, which has eroded the whole concept of independence of judiciary.

(b) Also, the Constitution prohibits judges of the High Court to hold office under the government after their retirement and there have been a number of instances where the High Court judges have been appointed as Governors, ministers, ambassadors and vice-chancellors.

(c) The idea of independence of judiciary is eroded when the judges who stand up against the executive are sought to be transferred to other states with the ostensible purpose of furthering 'national integration'.

4.3.4 Doctrine of Judicial Activism

The term judicial activism is explained in Black's Law Dictionary, Sixtieth Edition, [Centennial Edition (1891–1991)] thus, 'judicial philosophy which motivates judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters'.

No one will dispute that judiciary has to perform an important role in the interpretation and enforcement of human rights inscribed in the fundamental law of the country. Therefore, it is necessary to consider what should be the approach of the judiciary in the matter of Constitutional interpretation. An approach must be a creative and purposive approach in the interpretation of various rights embodied in the Constitution, with a view to advancing human rights jurisprudence and social justice.

Honourable Chief Justice Dr A. S. Anand while delivering the Justice Krishna Rao memorial lecture at the National Law School at Bangalore has said, 'The courts must not shy away from discharging their Constitutional obligations to protect and enforce human rights.' He further added, 'While acting within the bounds of law, they must always rise to the occasion as guardians of the Constitution, criticism of judicial activism notwithstanding.'

Judicial activism has emerged as the thematic thread running through the diverse areas of law that are represented in this comprehensive review of Indian Supreme Court jurisprudence. Subjects (to name just a few) ranging across areas as distinctive as fundamental rights, matrimonial adjudication, mercantile law, environmental justice, agrarian reforms, industrial jurisprudence, and election laws, are all viewed through the approving lens of 'proactive adjudication'.

During the last five decades, the judiciary has emerged as the most powerful institution of the state. It has assumed the power to strike down amendments to the

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Constitution on the anvil of the innovative theory of 'Basic Structure'. The area of judicial intervention has been steadily expanding through the device of Public Interest Litigation (PIL) and enforcement of human rights. Problems relating to environment pollution and natural resources of the nation, which ought to have been tackled on a priority by the executive and the legislature are brought up through PIL to be handled by the Supreme Court and the High Courts. Lack of proper governance, non-governance and mis-governance are, probably, more responsible for increasing judicial activism. Delivering Dr Zakir Hussain Memorial Lecture in 1997, A. M. Ahmedi (former Chief Justice) asserted that judicial activism might be seen as a transient phase responding to the peculiar needs of the nation. Shedding its pro-status-quo approach; judiciary has taken upon itself the duty to enforce the basic rights of the poor and vulnerable sections of society. Apart from its traditional limited role of administration of justice, it has also vowed to actively participate in the socio-economic reconstruction of society, by 'progressive interpretation' and 'affirmative action'.

CHECK YOUR PROGRESS

4. How is a High Court constituted in India?
5. How is the Chief Justice of a High Court appointed?
6. How is the term judicial activism explained in Black's Law Dictionary?

4.4 CONSTITUTIONAL AMENDMENT AND ITS PROCEDURE

A Constitution, to be living, must evolve. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of government and the public for some years now.

The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denying that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good.

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities, whether by individuals or associations.

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Parliament and the State Legislatures embody the will of the people and the essence of democracy is that the will of the people should prevail. Even though Article 368 of the Constitution is clear and categoric with regard to the all-inclusive nature of the amending power, it is considered necessary to put the matter beyond doubt. It is proposed to strengthen the presumption in favour of the constitutionality of legislation enacted by Parliament and State Legislatures by providing for requirements as to the minimum number of Judges for determining questions as to the constitutionality of laws and for a special majority of not less than two-thirds for declaring any law to be constitutionally invalid. It is also proposed to take away the jurisdiction of High Courts with regard to determination of Constitutional validity of Central laws and confer exclusive jurisdiction in this behalf on the Supreme Court so as to avoid multiplicity of proceedings with regard to validity of the same Central law in different High Courts and the consequent possibility of the Central law being valid in one state and invalid in another state.

To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution. It is also necessary to make certain modifications in the writ jurisdiction of the High Courts under Article 226.

It is proposed to avail of the present opportunity to make certain other amendments which have become necessary in the light of the working of the Constitution.

The various amendments proposed in the Bill have been explained in the notes on clauses. The Bill seeks to achieve the above objects.

4.4.1 Procedure of Constitutional Amendment

Article 368 of the Constitution confers power on Parliament to amend the Constitution and provides the procedure for it. A Bill seeking to amend the Constitution can be introduced in either House of Parliament by a Minister or a private member. Motion for leave to introduce the Bill can be adopted by a simple majority of members present and voting. The Constitution provides for the following three types of constitutional amendments.

(1) Amendment by Simple Majority

Bills regarding formation of new states or alteration of areas of existing states, or creation or abolition of Legislative Councils in the states, etc. are treated as ordinary Bills and passed by a simple majority of the House. They are not regarded as Constitution (Amendment) Bills although they have the effect of amending some provisions of the Constitution.

(2) Amendment by Special Majority

A Bill seeking to amend any other part of the Constitution has to be passed in each House of Parliament by a special majority i.e., by a majority of the total membership

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of the House and by a majority of not less than two-thirds of the members of the House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the vacancies or absentees. The expression 'present and voting' means members who vote for 'ayes' or for 'noes'. Members who vote as 'abstention' are not treated as 'present and voting'.

According to the established procedure, the two-thirds majority is required at all the effective stages of the Bill and not merely at the Third Reading (passing) stage of the Bill. As such motion that the Bill be taken into consideration; motion that the Bill as reported by the Select/Joint Committee be taken into consideration; motion that the Bill, as passed by Lok Sabha, be taken into consideration; motion for adoption of clauses and schedules to the Bill, and final motion that the Bill be passed are all required to be passed by a special majority. Motion that the Bill be circulated for eliciting public opinion thereon or that the Bill be referred to a Select/Joint Committee can be passed by simple majority. In case of special majority, voting is always by Divisions and the Chair, while announcing the result of the voting, specifically mentions that a particular motion or clause has been carried by a special majority.

The Constitution (Twenty-fourth Amendment) Bill, 1970, regarding the abolition of privy purses and privileges of the rulers of former Indian States, the Constitution (Sixty-fourth Amendment) Bill, 1989 and the Constitution (Sixty-fifth Amendment) Bill, 1989, regarding establishment of the Panchayati Raj bodies and the Municipalities in rural and urban areas, respectively could not be passed as these Bills did not get the requisite majority in Rajya Sabha.

(3) Amendment and its Ratification by States

An amendment to the Constitution which seeks to make any change in articles relating to the election of the President, the extent of the executive power of the Union and the states, the Supreme Court and the High Courts, any of the lists in the Seventh Schedule, representation of States in Parliament or article 368 of the Constitution itself, after it is passed by the Houses of Parliament by the special majority, has also to be ratified by legislatures of not less than one-half of the states by resolutions to that effect before the Bill making provision for such an amendment is presented to the President for assent, which is done after receipt of authenticated copies of resolutions from the State Legislatures. When a Bill duly passed by the Special majority or where necessary, ratified by states, is presented to the President, he is obligated to give his assent to the Bill and thereupon the Constitution stands amended in accordance with the Bill.

Power of Parliament to Amend the Constitution and Procedure Therefor

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House

and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in:

- Article 54, article 55, article 73, article 162 or article 241, or
- Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- Any of the Lists in the Seventh Schedule, or
- The representation of States in Parliament, or
- The provisions of this article

The amendment shall also require to be ratified by the Legislatures of not less than one-half of the states by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to any amendment made under this article.

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

4.4.2 73rd and 74th Amendment

The Constitution (73rd Amendment) Act, 1992 added a new Part IX consisting of 16 Articles and the Eleventh Schedule to the Constitution. The 73rd Amendment Act envisages the Gram Sabha as the foundation of the Panchayat Raj System (PRS) to perform functions and powers entrusted to it by the state legislatures. The amendment provides for a three-tier PRS at the village, intermediate and district levels. Small states with population below twenty lakh have been given the opinion not to constitute the Panchayats at the intermediate level.

The Act provides that the Panchayat bodies will have an assured duration of five years, with elections mandatory after this period. However, one thing is to be noted that under the Amendment Act, the establishment of Panchayats and the devolution of necessary powers and authority on the PRI are vested in the hands of the state governments. In view of this, it may be said that the success of the PRI as a unit of democracy and thereby ushering an all round development of rural areas will much depend on the intention of support of the state governments. These institutions would be misused by rural rich and the poor and illiterate masses will remain mute supporters as it is happening in Parliamentary and State Assembly elections in the country. Criminalization of politics is threatening the very foundation of democracy. The government should ensure that these evils should not affect the functioning of PRI.

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Gram Sabha: Article, 243A provides that the Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a state may by law provide. The 73rd Amendment thus envisages the Gram Sabha as the foundation of PRS. 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.

Constitution of Panchayats: Article 243B visualises a three-tier PRS. It provides that in every state, there shall be constituted Panchayats at the village, intermediate and district levels. Small states having a population not exceeding twenty lakh have been given an option not to constitute the Panchayats at the intermediate level.

Composition of Panchayats: Article 243C provides that, subject to the provisions of this part, the legislature of a state may by law make provisions with respect to the composition of Panchayats. However, the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayats to be filled by election shall, so far as practicable, be the same throughout the state.

All the seats in a Panchayat shall be filled by the persons chosen by direct election from territorial constituencies in the Panchayat area. For this purpose, each Panchayat's area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituencies and the number of seats allotted to it, so far as practicable, be the same throughout the Panchayat area.

The legislature of a state may by law provide for representation of following persons in Panchayats:

(a) The Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or in the case of a state not having Panchayats at the intermediate level and in the Panchayats at the district level

(b) The Chairpersons of the Panchayats at the intermediate level and in the Panchayats at the district level

(c) The members of the Lok Sabha and the Legislative Assembly of the state representing constituencies which comprise wholly or partly a Panchayat area at the level other than the village level, in such Panchayats

(d) The members of the Rajya Sabha and Legislative Council of the state where they are registered as electors;

  (i) A Panchayat area at the intermediate level

  (ii) A Panchayat area at the district level

The Chairpersons of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of Panchayat.

The Chairperson of a Panchayat at the village level shall be elected in such a manner as the legislature of a state may by law, provide. The Chairpersons of a Panchayat at the intermediate level or district level shall be elected by, and amongst, elected men.

Disqualification for membership: A person shall be disqualified for being a member of Panchayats:

(a) If he is so disqualified by or under any law for the time being for the purpose of elections to the legislature of the state concerned.

(b) If he is so disqualified by or under any law made by the legislature of the state.

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If any question arises as to whether a member of a Panchayat has become subject to any of the qualifications mentioned in clause (1) the questions shall be referred for the decision of such authority and in such manner as the legislature of a state may, by law, provide in clause (2).

Reservation of seats in Panchayats: Article 243D provides that in every Panchayat seats shall be reserved for the SC and STs in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

Out of the total number of seats reserved under clause (1), not less than 1/3 seats shall be reserved for women belonging to the SC and ST (2). Out of the total number of seats to be filled by direct election in every Panchayat, not less than 1/3 (including the number of seats reserved for SC and ST women) seats shall be served for women.

Reservation for backward classes: The legislature of a state is empowered under clause (6) to make provision or reservation of seats in any Panchayat or office of chairperson in the Panchayat at any level in favour of backward classes of citizens.

Duration of Panchayats: According to Article 243E every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting.

An election to constitute a Panchayat must be completed:

(i) Before the expiry of duration

(ii) Before the expiration of a period of six months from the date of its dissolution (clause 3)

Powers, authority and responsibility of Panchayats: Article 243G provides that subject to the provisions of this Constitution, the legislature of a state may, by laws, endow the Panchayats with such powers and authority as may be necessary to enable them to function as an institution of self-government. Such conditions as may be specified therein with respect to:

(a) The preparation of plans for economic development and social justice

(b) The implementation of schemes for social development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

The matters listed in the Eleventh Schedule are as follows:

(1) Agriculture, including agricultural extension, (2) Land improvement, implementation of land reforms, land consolidation and soil conservation, (3) Minor irrigation, water management and watershed development, (4) Animal husbandry, dairying and poultry, (5) Fisheries, (6) Social forestry and farm forestry, (7) Minor

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forest produce, (8) Khadi, (9) village and cottage industries, (10) Rural housing, (11) Drinking water, (12) Fuel and fodder, (13) Roads, culverts, bridges, ferries, waterways and other means of communication, (14) Rural electrification including distribution of electricity, (15) Non-conventional energy sources, (16) Poverty alleviation programme, (17) Education, including primary and secondary schools, (18) Technical training and vocational education, (19) Adult and non-formal education, (20) Libraries, (21) Cultural activities, (22) Markets and fairs, (23) Health and sanitation including hospitals, primary health centres and dispensaries, (24) Family welfare, (25) Women and child development, (26) Social welfare, including welfare of the handicapped and mentally retarded, (27) Welfare of the sections, and in particular, of the scheduled Castes and the ST, (28) Public distribution system and (29) Maintenance of community assets.

Power to improve taxes and funds of Panchayats: Article 243H empowers a State Legislature to make-by-law provision for imposing taxes etc. by the Panchayats. Such a law:

(a) Authorizes a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits

(b) Assigns to Panchayat such taxes, duties, tolls and fees levied and collected by the state government for such proposed and subject to such conditions and limits

(c) Provides for making such grants-in-aid to the Panchayats from the consolidated fund for the state

(d) Provides for Constitution of such funds for crediting all moneys received, by or behalf of the Panchayats and also for the withdrawal of much money therefrom.

Finance commission: Article 243 I provides for the establishment of a finance commission for reviewing financial position of the Panchayats. The Governor of a state shall within a year form the commencement of the Constitution (73rd Amendment) Act, 1992 and thereafter at the expiration of every fifth year, constitute a finance commission. To make recommendations to the Governor as to:

(a) The principles which should govern:
  (i) The distribution between the state and Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the state, which may be divided between them under this part and the allocation between the Panchayats at all levels of their respective shares of such proceeds
  (ii) The determination of the taxes, duties, tolls and fees may be assigned to, or appropriated by, the Panchayats;
  (iii) The grant-in-aid to the Panchayats form the consolidated fund of the state

(b) The measures needed to improve the financial position of the Panchayats

(c) Any other matter referred to the finance commission by the Governor in the interests of sound finance of the Panchayats

Audit of accounts of Panchayats: The legislature of a state may, by law, make provision with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts (Article 243J).

Elections to the Panchayats: Under Article 243K the superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of the State Election Commissioner to be appointed by the Governor. Subject to the provisions of any law made by the State Legislature, the conditions of service and tenure of office of the State Election Commissioner shall be such as the government may law rule determine. The State Election Commissioner shall not be removed from his office except in like manner and on like grounds as a judge of a High Court. The conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment (clause 2 proviso).

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The Governor of state shall when so requested by the State Election Commissioner, make available to commission such staff as may be necessary for the discharge of its duties.

Evaluation of 73rd and 74th Amendments

In 1988, Sarkaria Commission was set up to look into the working of Panchayati Raj Institutions and the basic question of Centre-State relations. The committee recommended that the local self-institutions like Zila Parishad and Municipal Corporation should be significantly strengthened both financially and functionally. The committee also suggested that the similar provisions should include Panchayati Raj Institutions as are found in Articles 172 and 174, which made it compulsory for National Parliament or State Legislative Assembly to fix the duration for five years.

There was an imperative need to enshrine the basic features of Panchayati Raj Institutions in the Constitution itself to provide them certainty, continuity and strength. Accordingly, the 73rd Amendment Act 1992 came into force with effect from 24 April 1993. It lays the foundation of a strong vibrant Panchayati Raj Institutions in the democratic decentralized institutions, provides number of rural people to take genuine and effective participation in the development and democratic decision-making process and to infuse in the minds of the rural people a spirit of self-help, self-dependence and self-reliance and to obtain their goals. The experience in the part of the local self-government, the concept of Panchayati Raj, since its inception, faced various interpretations both from its protagonists and antagonists. On the one hand, the emphasis was on maximum local autonomy and minimization of supervision and control by the higher authorities especially that of state government and, on the other hand, some consider it to be ruination for the country.

Another controversy is there that relates to the role of political parties in the Panchayati Raj Institution. The term Panchayati Raj came into usage after the acceptance of recommendations on democratic decentralization of the Balwant Rai Mehta study team. Previously, the terms used were village Panchayat, which was the self-governing body at the village level. Panchayati Raj implies the creation of local government institution at the village, block and district levels. These bodies

play a vital role in rural administration in the present age when more and more governments are working for the establishment of a welfare state. In fact, the powers entrusted to these bodies really make a state democratic.

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India has many states and Union Territories. These states are divided into districts and in turn subdivided into tehsils for administrative convenience. The units of local self-government in rural areas are village Panchayat, Panchayat Samities and Zila Parishad. The village Panchayat have been linked to the Panchayat Samities at the block level and to the Zila Parishad at the district level.

Present Panchayat system is a channel for popular participation in the process of development. Panchayat system is a politico-administrative arrangement. The system of Panchayati Raj is expected to work in a democratic setup when once it is established on the lines expected by its promoters. Panchayati Raj has brought about some degree of social change. An increasing interest is seen in activities like agriculture production, education and social cooperation. In this, Panchayati Raj is (1) a unit of local government (2) an extension of the community development programme and (3) an agency of the state government. The introduction of Panchayati Raj is the most important political innovation of present rural community. Due to effect of 73rd. Amendment Act, village women's problems have been taken care of. Due to the implementation of these programmes, agricultural development in rural Uttar Pradesh has taken place very sharply. Latest and modernized agricultural inputs and implements have been used by the farmers to increase production and productivity in agricultures sectors. Poverty alleviation programmes have been successful in eliminating poverty in rural areas. Rural people get ample employment opportunities with the help of these rural development programmes. Further, infrastructure facilities such as road, rail, banking, post office, electricity, drinking water, sanitation, drainage, etc. have increased very vastly due to the implementation of rural development programmes.

These institutions have been helpful in identifying beneficiaries in order to get maximum benefits of these schemes. Under these schemes, priorities have been given to SC ST weaker sections, women and upliftment of backward areas. These schemes have been helpful in eliminating poverty, inequality, unemployment, raising educational facilities, agricultural development, development in small-scale and cottage industries, etc. The emerging scenario of the dynamics of development and thrust on decentralized planning opened a new vista of development. Thus, the institutional, structural and functional counters of Panchayati Raj institution, which flourished in many parts of India in the past, are now being revived as the basic administrative units of government.

Thus, the concept of Panchayati Raj involves the existence of democratically constituted elected authorities at various levels, 'each classes to the ultimate sovereign, the people' with fixed allocations of power, duties, responsibilities to each such authority, all working democratically, the autonomy of the authorities being subject to supervision, guidance and control by higher authorities. The Balwant Rai Mehta Committee which reviewed the working of the community development programme, recommended this institutional framework of the Panchayati Raj system, which the

committee said 'establishes leadership enjoying the confidence of the local people and the government,' translating the policies into action. The policy planners viewed the Panchayati Raj as a unit of administration and planning and the government sought support from these units to help improve the implementation of national plans for development. Local participation was seen as an instrument for better implementation of policies. The five-year plans offered the Panchayati Raj Institution a role in performing functions for development and the view that Panchayats were units of folded democracy.

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This is a fact that the Panchayati Raj Institutions are considered grass-root level bodies serving various civic and developmental activities for the rural people. They are basically grass-roots political institutions involved in the upliftment of rural masses in various dimensions. Most of the rural populations are under the grip of poverty, malnutrition, illiteracy and degradation. The enlistment of such destitute rural masses is the main goal of these local bodies.

Number of factors are influencing India's grass-root politics. These factors are: democratic consciousness, welfare of masses, participation in elections, effect of education, linkages between Panchayat members with police and bureaucrats, caste domination, land holding, loan, property and wealth, groupism, regionalism, nepotism, favouritism, factionalism, affiliation of political leaders with different parties, socialization and politicization of rural masses.

It is interesting to observe that these factors are playing an important role in determining the level of grass-root politics, functions and responsibilities of Panchayati leaders and Panchayat system in rural society.

4.4.3 Sixth Schedule

There was a general consensus in the committee meetings that advantages should be taken of the both the Fifth and Sixth Schedules in drafting the law under Articles 243 (40[b]). We should interpret the provisions of the two Amendment Acts as inter-linked with and reinforcing the Fifth and Sixth Schedules, since there is nothing to indicate that they are inconsistent with each other. The Fifth Schedule is to be deemed as a broad and powerful over-arching frame, serving as the fountain-head of essential and beneficial legislation.

Flowing from the rationale of the two Constitutional Amendments and drawing sustenance from the Fifth Schedule, a general view has emerged among tribal leaders, representatives and experts that even for the vast Central Indian tribal heartland, with certain changes, the overall design of the Sixth Schedule could serve as a relevant reference frame for a district within the broader canvas of the Fifth Schedule. This view found articulation in the meetings as also in other fora. We understand that in the state of Madhya Pradesh which has already legislated as per directive in the two Acts, a move has been afoot for constituting autonomous district councils in tribal areas as prescribed in the Sixth Schedule of the Constitution. We are aware that in the Central Indian territory, we are dealing with a situation which is qualitatively different from that of the North-East and sub-Himalayan regions. Though in many districts in Scheduled Areas and North-Eastern tribal areas, the tribal population is in

majority, non-tribal segments may form a sizeable minority. As such, the functioning of autonomous district councils in Central India may be of a different order and kind as compared to what obtains in the North-East. In fact, the district councils may have to be given a deliberate appropriate orientation.

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This impels us to scan the Sixth Schedule closely, particularly in the light of the fact that sometimes, diametrically opposite views have been expressed in regard to its utility. In the first instance, we refer here to some lacunae we have come across in the Sixth Schedule, those that have marred its working over the years:

- The Sixth Schedule focuses itself entirely on the district tier and does not concern itself with tiers under-pinning it. The result is that in some Sixth Schedule areas of the North-East, no democratic of even sometimes traditional institutionalized tiers are found below it, i.e., at the sub-district level.
- As per para 16(2), the power of dissolution of an autonomous district council has not been accompanied by a mandate for reconstitution and hence, is liable to misuse.
- There is no express provision that election has to be held within six months of the date of the dissolution of an autonomous district council as provided for in the two Amendment Acts.
- According to para 13, the estimated receipts and expenditure pertaining to an autonomous district council are first to be placed before the district council for discussion and thereafter be shown separately in the annual financial statement of the state to be laid before the legislature of a state under Article 202. It has been reported that the discussion in an ADC is treated by state authorities as a mere formality leading to the complaint that no real autonomy has been conferred.

These are some outstanding examples of shortcomings in the Sixth Schedule noticed during implementation and they need to be remedied. But that does not detract from the utility of the Sixth Schedule as a broad charter of autonomy.

In so far as the present matter is concerned, the committee felt that the aid of the Fifth Schedule should be sought for framing regulations or for any other legislation as may be necessary. The Sixth Schedule is useful for designing an instrument of self-administration at district level for Scheduled Areas.

When the committee considered the Fifth Schedule, it cannot ignore the institution of Tribes Advisory Council prescribed in para 4 thereof. Such a Council consists of about three-fourth members who are Scheduled Tribe MLAs in the state. The feeling in our meetings was that the record of TACs in the states showed that they have been dysfunctional, by and large. Many of them have not held their meetings regularly. The major problem has been that their contribution to policy-making or monitoring implementation of tribal programmes has not been significant. One view was that with such a record, it is possible that the TAC becomes an obstacle in the Panchayati Raj structure. However, the other view which prevailed, was that since the TAC is a constitutional body, being a part of the Fifth Schedule, it should not be abolished.

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On the other hand, action should be taken to reform it and make it functional and workable. For the purpose, it should be able to deal with matters which it thinks are important, in addition to those on which its advice has been sought on reference by the Governor, as indicated in the Fifth Schedule. For instance, currently land alienation, deprivation of tribals of their natural resources, displacement on account of establishment of industrial, mining and hydro projects, are the burning problems, of tribals and a TAC should concern itself with these. It should be consulted on legislation to be passed by the State Legislature covering Scheduled Areas and Tribal Areas. When called upon to do so, it may express its view on legislation passed by an autonomous district council within its legislative competence. It should play a more constructive and purposeful part in the over-all frame. The Chief Minister should be its Chairman and its meetings should be held quarterly. We suggest that the Fifth Schedule may be amended in the light of these observation to make its role functional.

We are aware that there used to be, some time ago, a Central Advisory Council to aid and advice the Government of India in policies, plans and programmes of tribal development and their implementation, monitoring and evaluation. This body has been defunct since a long time. The Government of India is deprived of the experience and counsel of a number of important tribal representatives, social scientists, experts, retired administrators, activists etc. We recommend the revival of such a body at the apex of TACs so that the Central Government is enabled to profit from its rich input. In fact, the proposed Central Advisory Council should advise on reference by the Governor in case of difference between the state government and Tribes Advisory Council or between a District Council and Tribes Advisory Council. In deliberating tribal issues, the Central Advisory Council should keep in view the desideratum of preservation of traditional tribal religious beliefs and practices. Further, its advice should normally be binding. It should be chaired by the Prime Minister and its members may be Welfare Minister, Home Minister, Rural Development Minister of Deputy Chairman, Planning Commission, etc.

We attempt hereunder to delineate broadly our recommendations for a legal frame which could be passed by Parliament. It should be well understood that the law passed by the Parliament will automatically extend to Scheduled Areas and suitable details may be filled in through regulations under the Fifth Schedule.

Salient Features of Proposals

Before we enunciate the legal frame, we would like to spell out a few basic premises we regard as important:

(i) The scheme should pre-eminently be related to participative democracy, particularly at the grassroot and district levels which should bear a living relationship with the self-management practices which have been in vogue in tribal areas. The autonomy should be non-manipulative.

(ii) The Gaon Sabha or the Gram Sabha at the hamlet/village level should exercise the different functions as traditionally prescribed. More specifically, management of Land, Forest, Water, Air etc. resources should be vested in it. This right should be deemed as axiomatic in the functioning of Gram

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Panchayat, the intermediate Panchayat and the district councils, and also where necessary to be woven into dejure dicta, regulations, laws etc. We would like to emphasize the harmonious inter-play of forces at the different tiers.

(iii) Many of the present-day administrative boundaries were determined during colonial times, based on colonial compulsions. There have been some changes thereafter. But, by and large, the earlier boundaries have stayed with the resulting situation that tribal people are located on borders, be it state, district or block, marginalizing them in every way and fragmenting larger communities and areas. States should consider, say within a period of two years, reorganization of the boundaries based on ethnic, demographic and geographic considerations. We feel that these parameters will lead to more rational delimitation.

(iv) In the context to tribal grievances and aspirations, there have been insurgencies, agitations, movements as in North-East, Jharkhand region, Bodoland. We have been a witness to the agitation in Uttarakhand. We feel that tribal aspirations can be satisfied if tribal regions are conferred the sub-state status. It may be recalled that Meghalaya had received a sub-state status in 1971. Further, we regard the autonomous district council status for districts in Central Indian tribal tracts as in the nature of sub-federalism.

(v) The Land Acquisition Act which enables the state to take over any land for 'a public purpose', being based on the principle of individual land ownership, does not take cognizance of the customary regulation of common property resources in tribal areas. Among many tribal communities, land and such other natural resources are owned jointly by the community and its use by individuals is sanctioned by the community. In not recognizing this basic principle in tribal areas, the Land Acquisition Act is premised on unrealistic grounds. The basic lacunae in the Act have to be removed. The consent of the local village community should be obligatory. The rehabilitation package should be operated with the consent of the local village community. Viable and acceptable package of livelihood should be offered as a means of rehabilitation to the affected families. In other words, land should be acquired with the consent of the Gram Sabha, making provision for alternative livelihood for the concerned families acceptable to them.

(vi) It has been observed that the lower functionaries of departments like police, excise, forest, revenue have generally, been acting against tribal interests and have even become repressive and exploitative. The Committee felt that in the tribal areas, the role of these functionaries is minimal, whereas, they tend to over-bear on the tribal and village communities. To eliminate undue interference, the role of police should be minimal and confined to law and order and heinous crimes. The view was expressed that the police should function under the control of ADCs. However, the Home Ministry was of the view that this was not in keeping with the arrangement prevailing in the country. Government servants posted in the autonomous districts should be under the control of the district councils.

(vii) Tribal areas are rich in mineral, forest, hydel, water etc. resources, as a result of which they have been becoming the hub of growth of industries. However, the tribal people have been marginalized in the process of industrialization and urbanization, leading to strong resentment among them. It has been our stand that the tribal community should be regarded as in command of the economic resources. In this view of the matter, in a resource-based industry, the partnership of the village community and the outside capitalist-financiers should be recognized. The district and other councils charged with the responsibility will, no doubt, make appropriate laws for the regulation of land and other resources for industries.

Hamlet/Village Tier and Gram Sabha

The primary unit we contemplate may be a Gram Sabha for a hamlet, or a group of hamlets or a village, as the case may be, in a tribal area. It comprises a face-to-face community managing its affairs in accordance with well-established traditions and customs. The customary codes and procedures should not be disturbed. A hamlet/village comprising a community in a tribal area must be distinguished from a revenue village which is more of an administrative entity. It should be clearly understood that in tribal areas, hamlets are more common than big villages. The next level of traditional institutions usually comprises a group of hamlets/villages, variously called Parha or Pargna. In some tribal areas, traditionally, village council has been constituted and at the inter-village level, regional councils have been constituted. Both at the village and at the regional level, traditional organizations have been conducting socio-political, economic and judicial affairs. The Gram Sabha may nominate its executive council, which may be a traditional body. In any event, the wholesome influence, wisdom and experience of the older generation should not be discounted, particularly since the reins of affairs have been for aeons, in their hands.

Gram Panchayat

For a group of hamlets/villages i.e. for an Anchal or Parha or Pargana, it should be a Gram/Anchal/Parha Panchayat, composed of elected representatives.

The foregoing formulation would lead to a participative hamlet/village tier and a formal Gram Panchayat tier. This is necessitated by the topographical and demographic conditions in the tribal areas, as already explained. It should, however, be understood that there cannot be any hard-and-fast rule prescribing the number of tiers in all in the district. The physiographic, topographic, demographic etc. conditions vary from state to state.

Intermediate Panchayat

The next i.e. intermediate tier Panchayat in tribal areas may be the same as elsewhere in the country, variously called Panchayat Samiti, Janpada Sabha, Taluka Panchayat etc. co-terminus with a development block area.

Autonomous District Council

The next level i.e. the district requires close examination. Presently, as a part of the three-tier structure, Zila Parishads exist in many states of the country. We have also

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the examples of several North-Eastern states which, with entrenched democratic structures and practices, have been able to do well with traditional village and district-level formations, as in Nagaland, Mizoram. But in so far as the generality of tribal areas in the other parts of the country is concerned, it would appear that the dominant bureaucratic apparatus at the district-level has hardly touched any tribal chord. It is in this context that we hark to the structure of autonomous district councils contained in the Sixth Schedule of the Constitution in force in the states of Assam, Meghalaya, Mizoram and Tripura. The Sixth Schedule was conceived by the framers of the Constitution to be an instrument of socio-economic development and self-management of hill tribal communities inhabiting the districts. The self-managements was expected to satisfy ethnic aspirations of the tribal communities. It cannot be gain-said that it has fulfilled that goal to a larger or smaller extent. While we wish that the self-management concept be adopted for the Central Indian tribal areas, we feel that the seats in the district council may be filled up by election, carving out constituencies appropriately in the district. However, some scope could be retained for nomination in the district council or representatives of certain minority tribal communities who cannot come through the election process, through setting apart seats not exceeding five in number for representation of such minority communities, to be filled up in consultation with the Governor.

We know of certain districts which are not tribal-majority districts, in the sense that Scheduled Tribe people do not constitute more than 50 per cent of the total population of the district. But the STs are concentrated in a part of parts of the district, say in some blocks or a sub-division or sub-divisions. If the tribal population in these units is substantial in absolute terms, there is no reason why analogous arrangements should not be ushered in such areas. Councils to be formed for such areas could be termed as Autonomous Sub-District Councils (ASDCs). ASDCs should be conferred powers and functions at part with those of ADCs. However, this may be regarded as an interim arrangement, pending reorganization of administrative boundaries, which we have recommended elsewhere in this report. As we have mentioned there, the reorganization should be completed within a couple of years.

We have envisaged a village council/Gram Sabha, Anchal council, intermediate council and district council. But there could be in addition to these, area councils. For instance, in the state of Bihar there had been Chotanagpur and Santhal Parganas. Authority now trifurcated into three authorities. Under contemplation in the Jharkhand region, is the area council.

The group considered the question of association of MLAs and MPs with the intermediate (block) Panchayats and district councils. The 1992 Constitution Amendment Act provides for representation of the members of the House of the People and members of the Legislative Assembly of the state representing constituencies which comprise wholly or partly a Panchayat area, at a level other than the village level. The consensus which emerged was that it is desirable to associate Scheduled Tribe MLAs and MPs for many reasons in the district and intermediate Panchayats. Though the two function at state and national levels respectively, they remain in touch with the grass-root level. Their presence in the

councils of the two upper tiers would, as a result, be doubly advantageous i.e. for the grass-root views to be reflected at the state and national levels and for the national and state level policies to be transmitted to the district and sub-district levels. It was, however, felt that, from the national level, the representation should be limited to Scheduled Tribe Lok Sabha members. From the state level, this restriction may not be applied and MLAs whose constituencies fall within the jurisdiction of the intermediate and district councils may find place in the two tiers.

The group was further of the view that notwithstanding the fact that the areas under consideration i.e. Scheduled Areas are expected to have majority of tribal population, it is necessary to stipulate that the Panchayats therein will have a majority of Scheduled Tribe members. The reason is that the Scheduled Areas were notified as such on account of majority of Scheduled Tribe population, contiguity etc. In course of time, on account of influx of non-ST population, in a few Scheduled Areas, the status of the ST population might have been reduced to a minority. That should not be regarded to have been reduced to minority. That should not be regarded to have altered over-all the character of the Scheduled Areas. The chairmen and vice-chairmen should belong to Scheduled Tribes. One-third of the seats should be reserved for women.

At this juncture, we wish to reiterate that an elected Panchayat should be reconstituted within six months of the dissolution of an existing one. Further, that the act of dissolution should not be taken lightly, it should be based on substantial, serious and convincing evidence like malfeasance or anti-national, anti-constitutional nature. Moreover, it should be ordered by the Governor. We presume that the question of dissolution is and will remain justiciable.

Assignment of Subjects to Panchayats

To the Constitution, the 73rd (Amendment) Act, 1992 on the Panchayats has been appended the Eleventh Schedule which contains subjects assigned by the two Acts respectively to the Panchayats and the municipalities. Further, Article 243G of the former Act and 243W of the latter confer on the legislature of a state the authority to endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and for the preparation and implementation of plans for economic development and social justice. It is seen that the items contained in the Schedule are of wide-ranging nature.

The Sixth Schedule of the Constitution which is a charter for autonomy for some tribal areas of the North-East, assigns a number of functions for the district councils of those tribal areas. We have given careful thought to the questions as to the most suitable pattern for the councils at the district level. As we have mentioned earlier, the Sixth Schedule confers powers of legislation and administration of justice on the district councils apart from the executive, developmental and financial responsibilities. We note that the Panchayats and municipalities of the 73rd and 74th Amendment Acts, have been entrusted with such wide-ranging responsibilities. We are of the view that we should adopt for districts in Scheduled Areas and Tribal Areas the Sixth Schedule format but expand it to include subjects that are indicated in the two Acts. Further, the village community, which is at the level of Gram Sabha,

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should have the responsibility of safeguarding the rights of tribals in matters relating to land, water, forest, minor forest produce etc. They should be vested with the power to regulate and use community land, forest (other than reserve forest), water, air and other natural resources, local schools, dispensaries, roads, ferries, markets etc. Government servants serving in the respective Panchayats should be under their control. The right to mineral leases should be pre-empted in favour of the community.

A communitarian and cooperative spirit among the tribals and tribal communities has been a conspicuous feature. When modern societies have been shedding such a spirit in favour of individualism, many tribal societies have been able to retain it. It is manifest in a number of their undertakings like shifting cultivation, house construction. Not usually accustomed to joint working, members of the formal administration have been oblivious of the advantages of cooperative endeavours. There is need to pay attention to this attribute ingrained among tribal individuals and collectivities. We suggest that the Panchayats which will come into being as a result of the law of Parliament to be enacted in accordance with Article 243(4) (b), should pay adequate attention to this aspect. We are aware that cooperatives have been created in tribal areas by the administration, including, LAMPS. But we are of the view that these cooperatives did not have much chance of success due to their formal structure, rigid procedures and certain underlying assumptions. The tribal societies have been run on oral traditions and a general presumption of trust in each other. We hope that the Panchayats will be enabled to establish cooperative organizations suitable to the tribal milieu, capturing the innate tribal sensibilities.

Legislative

The legislative powers of an Autonomous District Panchayat should extend to the following:

- The allotment, occupation or use, the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interest for the inhabitants of any village or town:

  Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for purposes of defence, railways, roads, educational and health institutions by the government of the state concerned in accordance with the law for the time being in force authorizing such acquisition.
- Management of forest
- Management of minor forest produce
- Management of water resources
- Regulation of practice of shifting cultivation
- Establishment of town committees or councils and their powers
- Matters relating to village or town administration including village or town police

- Appointment or succession of chiefs or heads
- Customary law including inheritance, marriage, divorce etc.
- Local customs
- Control of money-lending, and trading by non-tribals
- Excise
- Laws regarding partnership of local communities in enterprises based on local resources

As provided for in the Sixth Schedule, laws made relevant to the above subjects will have to be approved by the Governor of the state.

The Committee were emphatic that such laws should be enforced as would prevent further alienation of the tribal land. The principle of evidence should be that the onus of proof of the member of a non-ST community having acquired the land legitimately should lie on that member and not on the ST transferor. There should also be an embargo on sale of tribal land by authorities, since oftentimes STs are trapped into situations due to their ignorance of law and realities. In Scheduled Areas and Tribal Areas, land should be transferable only to members of Scheduled Tribes, irrespective of whether the transferor is a member of Scheduled Tribe or not.

Administration of Justice

It has been observed that modern legal system creates a wedge between people and parties, while traditional systems bind the people in societal and fraternal ties. In fact, the legal and conventional jury-based systems evolved by the tribal (and sometimes other rural) communities have kept these communities going for ages. Their virtues should be squarely conceded and the traditional legal bodies should be recognized to enable them to continue to function. There should be no police interference in cases under adjudication by traditional bodies. In other words, in so far as administration of justice is concerned, in all matters other than those for which the Governor may confer powers on a court, it should continue to be dispensed with, as at present, by the traditional bodies which exist mostly at the village and inter-village levels. The police should take cognizance or entertain complaints in respect of matters within the jurisdiction of the Gram Sabha only when the Gram Sabha so directs for reasons adopted in a resolution. Law officers should be trained in tribal customary law and, if found fit, they should be posted to assist tribal juries.

Executive

In para 6 of the Sixth Schedule, executive, regulatory and developmental functions have been indicated for the district council. It is pertinent to compare them with 29 items mentioned in the Eleventh Schedule. It will be advantageous to include all the items mentioned in para 6(1) of the Sixth Schedule and the Eleventh Schedules.

Paras 8 and 9 of the Sixth Schedule are regulatory in character, the former dealing with the power to assess and collect land revenue and to impose taxes and the latter dealing with share of royalties accruing from licenses or leases for the

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purpose of prospecting for or extraction of minerals. This provision should be kept for the ADCs.

In tribal areas the occurrence of urban conglomerates is not as common as in non-tribal areas. Nevertheless, wherever they occur, it is found that tribal pockets within such a conglomerate are more or less administratively autonomous. This needs to be given due recognition. Further, municipalities and notified area councils and other such bodies should function under the overall control of district autonomous councils. However, this will need examination in the light of the 74th Constitution Amendment Act.

Financial

The Panchayat and Municipalities Acts provide for the following sources of finances:

(a) Through levy of collection of taxes, duties, tolls and fees (Article 243 H[a])

(b) Assignment by the state government of such taxes, duties, tolls and fees as are levied and collected by the state governments

(c) Grants-in-aid to the Panchayats from the consolidated fund or the state

(d) Devolution of financial awards by a State Finance Commission (Article 243I)

Compared thereto, the provision in the Sixth Schedule is simpler. The only source of finance it contemplates is from the consolidated fund of the state. As indicated earlier, this provision has not been adequate and is not working satisfactorily.

It needs to be recalled that the Constitution has, in the first proviso to Article 275(1), a specific provision for promotion of welfare of Scheduled Tribes or raising the level of administration of Scheduled Areas with the help of funds to be paid out of the Consolidated Fund of India as grants-in-aid to the states. This provision has been sparingly used. Now that Panchayats in tribal areas are being conceived do novo, there is no reason why this provision should not be used for allocating to them finances for schemes of tribal development and administration of Scheduled Areas, both for plan and non-plan purposes. It should be understood clearly, however, that recourse to this provision should not debar Scheduled Areas and Tribal Areas from receiving other funds like under Articles 243H and 243I. Further, the management and utilization of financial resources assigned to the Panchayats should be within the competence of these bodies. Funds may be received by the district councils directly from the central and state governments and distributed among the lower-tier Panchayats.

We have indicated above the source funds and financial mechanisms. We recommend that for the purposes of tribal development, welfare, administration etc., the funds from whatever source derived and linked to whatever mechanisms, should be placed in 'charged' category as opposed to 'voted' category. We understand that placement of funds in 'charged' category enables certain advantages. For instance, it does not permit of diversion or use elsewhere, nor of reduction in quantum. Once the funds are placed in 'charged' category in the budget, they remain intact and are available for only the purpose for which they were included in the budget. We make this suggestion as we have heard of a large number of examples which indicate that

funds for tribal development even in the tribal sub-plan were diverted or misused. We hope that by keeping the earmarked funds in 'charged' class of budget, they will be used in a sacrosanct manner.

Further, in order to prevent wrong financial practices occurring in the tribal sub-plan field, tribal sub-plan funds (whether relating to state plan or special central assistance or any other) pertaining to different sectors of development should be quantified and placed at the disposal of the autonomous district councils for distribution among the Panchayats in the districts. Moreover, to the extent possible, the central and state governments should devise procedures for direct allotment of funds to the district autonomous councils.

Education and health have been regarded as very important sectors for Scheduled tribes. In fact, some tribal leaders and expert hold the view that education should be accorded primacy in prioritization of different sectors in the development spectrum. Nevertheless, in actual practice, the two sectors have not been given their due. We feel that, in keeping with the felt needs, education and health sectors should be the first charge on the part of the Panchayats.

Appointment of Commission

Para 14 of the Sixth Schedule is to the effect that the Governor may, at any time appoint a commission to examine and report on any matter relating to the administration of autonomous district councils. The retention of such a provision for Scheduled Areas of the country will be useful. However, the chairman and members should be chosen carefully and representation should be given to Scheduled Tribes.

It should be provided that the autonomous district councils (Panchayats) being contemplated should review the existing laws for their relevance and applicability and take such action as is necessary for exclusion of those that are irrelevant and inclusion of those that are useful. The Governor of the state may issue a notification for the purpose to ensure that such review and action is completed within a stipulated period, say two years.

We find that the states have already passed legislations in pursuance of the 73rd Constitution Amendment Act. We understand that the provisions of those legislations apply to scheduled areas and tribal areas also. We have in this report made recommendations for scheduled areas for consideration by the Parliament. The law as passed by the Parliament will be applicable to scheduled areas. Regulations could be framed under the Fifth Schedule by the Governor as and when necessary. Further, representatives may be chosen/elected to the Panchayat bodies on the basis contained in Parliament's law to be enacted. The existing administrative boundaries of blocks and districts should be readjusted to conform to the requirements of geographic, ethnic and tribal areas.

We understand that some reservations have been expressed by certain ministries in regard to certain provisions which we have suggested in this report, which may appear unconventional. They may be due to inadequate appreciation of the tribal situation and the constitutional scheme for creating a system which accords well with the tribal milieu. It may also be recalled that the Constitution envisages a

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structure for tribal areas (which includes scheduled areas) 'notwithstanding anything in the Constitution.'

We have dealt in this report with proposals and provisions that we think should apply to the Fifth Schedule areas in the country as declared by the President under para 6 of that Schedule. Article 243M introduced by the Constitution 73rd Amendment Act 1992 covers also 'tribal areas referred to in clause (2) of Article 244'. These areas have been specified in the Sixth Schedule of the Constitution as follows:

PART — I

(1) The North Cachar Hills District

(2) The Karbi Anglong District

PART — II

(1) Khasi Hills District

(2) Jaintia Hills District

(3) The Garo Hills District

PART — II (A)

(1) Tripura Tribal Areas District

PART — III

(1) The Chakma District

(2) The Mara District

(3) The Lai District

We feel that the benefit of self-government at different tiers should be made available to these areas. In this report, we are not making any recommendations in detail in regard to the sub-district Panchayat organizations for these areas. We feel that this matter is better left to be considered separately.

Summary of Recommendations

1. The Committee has been called upon to suggest:
   (a) Steps for harmonization of Fifth, Sixth, Eleventh and Twelfth Schedules of the Constitution as they impinge upon the Panchayati Raj Institutions.
   (b) Salient features of the law that may be taken up or enactment by Parliament for extending the provisions of the Par IX of the Constitution to the scheduled areas referred to in clause (1) of Article 244 of the Constitution subject to such exemptions and modifications as may be necessary under Article 243 M(4) (b).
   (c) Variations and modifications in other articles relevant to the Fifth schedule areas in order to strengthen institutions of local government in Fifth Schedule areas.
2. The Committee felt that while certain provisions of 'The Constitution Seventy-Third Amendment Act, 1992 on the Panchayats' were wholesome and should be incorporated in the law to be passed by Parliament under Article 243M (4)(b), certain unique characteristics of tribal societies and tribal areas need

to be kept in view. Important among them are that many tribal societies have had their own customary laws, traditional practices, community ethos, political and administrative systems etc. In considering the aforesaid law, their mode of living, organization, cultural deprivation, marginalization etc. would have to be kept in focus. Since many tribal communities have been living autonomously cut off from the rest of the society, they have exercised control over and had access to natural resources moulding their institutions. Their Gram Sabhas and village councils have been vibrant institutions in the administrative, religious, political, economic and justice fields. The Committee felt that while shaping the new Panchayati Raj structure in tribal areas, it is desirable to blend the traditional with the modern by treating the traditional institutions as the foundation on which the modern supra-structure should be built.

3. As per Article 243M (4)(b) Parliament may, by law, extend the provisions of Para IX to scheduled areas and tribal areas covered by clause (1) and clause (2) respectively of Article 244 subject to such exemptions and modifications as may be specified in such law. Parliament may consider our recommendations for such legislation. The law passed by Parliament will be applicable to scheduled areas and tribal areas to the supersession of corresponding provisions of any state law.

In drafting the law under Article 243M(4)(b), advantage should be taken of both Fifth and Sixth Schedule. The Fifth Schedule should be deemed as a board and powerful over-arching frame, serving as the fountain head of essential and beneficial legislation. The design and the content of the Sixth Schedule could serve as the relevant reference frame for a district within the broader canvas of the Fifth Schedule. However, ethnic regional and other related variation should be given due consideration. The Sixth Schedule should be regarded with such reformation and changes as are necessary, as a broad charter of autonomy at the district level and be adopted.

The tribal advisory council, envisaged by the Fifth Schedule as a consultative body at the state level, needs to be reformed to make it an effective and functional organization. The Chief Minister of the state should be its chairman and its meeting should be held once every three months.

At the Centre, the Centre Advisory Council should be revived, serving the purpose of: (a) a sounding board for tribal policies and programmes and (b) advice in disputes between a state government and the Tribal Advisory Council or between a District Council and the Tribal Advisory Council. Its advice should normally be binding the Welfare Minister, Home Minister, Rural Development Minister, Deputy Chairman, of Planning Commission etc.

Many of the present-day administrative boundaries were determined during colonial times. Notwithstanding changes, by and large, the earlier boundaries have stayed. Reorganization of boundaries based on geographic, ethnic and demographic considerations may be considered and finalized within a couple of years.

The tribal societies are characterized by a communitarian and a cooperative spirit, visible in many undertakings like shifting cultivation, house construction. The potential of this ingrained attribute has not been taken advantage of so far.

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Cooperative organizations among tribals should be constituted suitable to their oral traditions and milieu.

It has been observed that in tribal areas, the lower functionaries of departments like police, excise, forest, revenue have generally been acting against tribal interests and not often have even become repressive and exploitative. While their role in tribal areas is minimal, they tend to over-bear on the tribal and village communities. Hence, they should be assigned minimal role and should work under the control of concerned Panchayats.

The 1992 Act envisages a Panchayat at village level in addition to Panchayats at intermediate and district levels, as per Article 243B. The concept of a Panchayat at village level may fit in well for non-tribal areas, since villages there are generally large. But in tribal areas, with mostly hilly topography, the villages are usually scattered and population-wise small. These small villages or hamlets, are known as 'Tolas' in some areas. But a small village or group of hamlets or habitations may have its own Gram Sabha. The Gram Sabhas should be allowed to exercise their customary traditional role unhindered. Further, a Gram Sabha may have a traditional village council which performs varied functions—religious, political, economic, judicial—on its behalf. The Gram Sabha may nominate body and may delegate to it functions like execution of development works.

A number of hamlets aggregated may constitute a village Panchayat, called variously a Gram Panchayat or Anchal or Parha or Pargana Panchayat. This tier corresponds to the lowest tier envisaged in the 1992 Act. Its members may be elected.

Constituencies may be delimited for election of members to the intermediate and district tier Panchayats. The District level Panchayat may be called Autonomous District Council (ADC).

In certain districts, Scheduled Tribe population may be less than 50 per cent of a district's total population, but it may be concentrated in a part or part of the district, say in some block or a sub-division or sub-divisions. We have recommended the sub-district councils may be constituted for such areas and designated as Autonomous Sub-District Councils (ASDCs), ASDCs should be at par with ADCs. However, this may be regarded as an interim arrangement, pending reorganization of administrative boundaries which we have recommended elsewhere.

So far as the organizational structure of an ADC is concerned, we recommend adoption of the broad frame-design of autonomous district councils contained in the Sixth Schedule of the Constitution in force in the state of Assam, Meghalaya, Mizoram and Tripura. The Sixth Schedule has been conceived to be an instrument of self-management and socio-economic development. It may not be too far wrong to say that, to an extent, it has fulfilled the ethnic aspirations of tribal communities. In addition, we feel that some scope should be opened up through setting apart seats (may be not exceeding 5 in number) for nomination in the district council of minority tribal communities, who cannot find place through election process. The nominations may be made in consultation with the Governor.

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The 1992 Constitution Amendment Act provides for representation of Members of the House of People and Members of the Legislative Assembly of the state, representing constituencies which comprise wholly or partly a Panchayat area, at a level other than the village level. We recommended that the Lok Sabha Scheduled Tribe MPs should be associated at the intermediate (Block) Panchayat and the District Council. But the representation should not be restricted to Scheduled Tribe MLAs and even non-ST MLAs should be associated in the two tiers.

Since the scheduled areas and tribal areas are expected to have majority of tribal population, the different tier Panchayats therein should have a majority of Scheduled Tribe members. Further, both the chairman and vice-chairman should belong to STs.

The Sixth Schedule confers power of legislation and administration of justice on the district council apart from the executive, developmental and financial responsibilities. We should adopt for districts in scheduled areas the Sixth Schedule format, but expand it to include subjects that are indicated in the Eleventh Schedule of the Constitution.

The legislative power of the autonomous district councils in the Fifth Schedule areas have been proposed more or less on the same lines as in the Sixth Schedule, with some amendments. In so far as administration of justice is concerted, the Committee has been emphatic that a traditional jury-based legal system evolved by tribal societies should be recognized and should be enabled to continue to function. There should be no police interference in case not involving non-heinous offences. Such case should be under the domain of the Gram Sabha. In so far as development functions are concerned, this also is a vital area, our proposal is that the functions enumerated in the Sixth Schedule as well as in the Eleventh Schedule should be discharged by the ADCs.

In Article 243H, the sources of funds for Panchayats have been detailed. These should be applicable to Panchayats in scheduled areas. While the Panchayat in these areas may receive funds as per articles 243H and 243I, funds as per the first proviso to Article 275(1), should continue to be available normally.

For the purposes mentioned in the first proviso to Article 275 (1), funds received from sources other than the Panchayats own, should be placed in 'charged' category in the respective governments' budgets as opposed to 'voted' category. This will enable funds to remain fully available for purposes related to tribal interest, without fear of misutilization or division.

In order to prevent wrong financial practices occurring in the tribal sub-plan field, the tribal sub-plan funds (whether relating to state plan or special central assistance or any other) pertaining to different sectors of development should be quantified and placed at the disposal of the Autonomous District Councils for distribution among the Panchayats in the district. Moreover, to the extent possible, the Central and State Government should devise procedures for direct allotment of funds to the Autonomous District Councils.

Education and health sectors should be the first charge on the funds received by a Panchayat in scheduled areas and, notwithstanding any other provision, the

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Panchayat will have power to appropriate funds from any other head for meeting this obligation.

All government servants and functionaries of institutions concerned with the functions of a Panchayat in a scheduled area and located within its jurisdiction will be under its control.

As per the provision in the Sixth Schedule, the Governor may appoint a commission to examine and report on all matters relating to the administration of autonomous district councils. Representation should be given to Scheduled Tribes in the membership of the Commission.

The Tribal Advisory Councils and Autonomous District Councils in the scheduled areas should review necessary for exclusion of those that are relevant and inclusion of those that are useful. Such action should be completed within a stipulated period of about two years.

We understand that states have already passed legislation in pursuance of the 73rd and 74th Constitution Amendment Acts and that the provisions of those laws apply to scheduled areas also. The law passed by the Parliament will supersede such and any other related law.

The process of scheduling of tribal areas in the country commenced earlier has remained incomplete. It is necessary that the remaining tribal sub-plan and MADA areas as well as similar other pockets should be included in the schedule areas.

4.4.4 Seventh Schedule

Article 246 (Seventh Schedule) of the Indian Constitution, distributes legislative powers including taxation, between the Parliament and the State Legislature. Schedule VII enumerates these subject matters with the use of three lists:

- List - I entailing the areas on which only the parliament is competent to make laws
- List - II entailing the areas on which only the state legislature can make laws
- List - III listing the areas on which both the Parliament and the State Legislature can make laws upon concurrently

Separate heads of taxation are provided under lists I and II of Seventh Schedule of Indian Constitution. There is no head of taxation in the Concurrent List (Union and the states have no concurrent power of taxation). Any tax levied by the government which is not backed by law or is beyond the powers of the legislating authority may be struck down as unconstitutional. The thirteen heads List-I of Seventh Schedule of Constitution of India covered under Union taxation, on which Parliament enacts the taxation law, are as under:

- Taxes on income other than agricultural income
- Duties of customs including export duties
- Duties of excise on tobacco and other goods manufactured or produced in India except: (i) alcoholic liquor for human consumption, and (ii) opium,

Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in (ii).

- Corporation tax
- Taxes on capital value of assets, exclusive of agricultural land, of individuals and companies, taxes on capital of companies
- Estate duty in respect of property other than agricultural land
- Duties in respect of succession to property other than agricultural land
- Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freight
- Taxes other than stamp duties on transactions in stock exchanges and futures markets
- Taxes on the sale or purchase of newspapers and on advertisements published therein
- Taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce
- Taxes on the consignment of goods in the course of inter-state trade or commerce
- All residuary types of taxes not listed in any of the three lists of Seventh Schedule of Indian Constitution

The nineteen heads List-II of Seventh Schedule of the Indian Constitution covered under state taxation, on which State Legislative enacts the taxation law, are as under:

- Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues
- Taxes on agricultural income
- Duties in respect of succession to agricultural income
- Estate Duty in respect of agricultural income
- Taxes on lands and buildings
- Taxes on mineral rights
- Duties of excise for following goods manufactured or produced within the state (i) alcoholic liquors for human consumption, and (ii) opium, Indian hemp and other narcotic drugs and narcotics
- Taxes on entry of goods into a local area for consumption, use or sale therein
- Taxes on the consumption or sale of electricity
- Taxes on the sale or purchase of goods other than newspapers
- Taxes on advertisements other than advertisements published in newspapers and advertisements broadcast by radio or television
- Taxes on goods and passengers carried by roads or on inland waterways
- Taxes on vehicles suitable for use on roads
- Taxes on animals and boats

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- Tolls
- Taxes on profession, trades, callings and employments
- Capitation taxes
- Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling
- Stamp duty

Provisions have been made by 73rd Constitutional Amendment, enforced from 24 April 1993, to levy taxes by the Panchayat. A state may by law authorize a Panchayat to levy, collect and appropriate taxes, duties, tolls etc. Similarly, the provisions have been made by 74th Constitutional Amendment, enforced from 1 June 1993, to levy the taxes by the Municipalities. A state Legislature may by law authorize a municipality to levy, collect and appropriate taxes, duties, tolls etc.

Following are some of the provisions provided in the Seventh Schedule of the Constitution.

List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
2. Naval, military and air forces; any other armed forces of the Union.

   2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any state in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.
3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Central Bureau of Intelligence and Investigation.
9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation.
12. United Nations Organization.

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13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.
15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, naturalisation and aliens.
18. Extradition.
19. Admission into, and emigration and expulsion from, India; passports and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
22. Railways.
23. Highways declared by or under law made by Parliament to be national highways.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.
25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by states and other agencies.
30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

List II—State List

1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

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2. Police (including railway and village police) subject to the provisions of entry 2A of List I.
3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
6. Public health and sanitation; hospitals and dispensaries.
7. Pilgrimages, other than pilgrimages to places outside India.
8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
9. Relief of the disabled and unemployable.
10. Burials and burial grounds; cremations and cremation grounds.
11. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.
12. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
13. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
14. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
15. Pounds and the prevention of cattle trespass.
16. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
17. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
18. Fisheries.
19. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.

20. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
21. Industries subject to the provisions of entries 7 and 52 of List I.
22. Gas and gas-works.
23. Trade and commerce within the State subject to the provisions of entry 33 of List III.
24. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
25. Markets and fairs.
26. Money-lending and money-lenders; relief of agricultural indebtedness.
27. Inns and inn-keepers.
28. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
29. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.
30. Betting and gambling.

List III—Concurrent

List 1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.
5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
6. Transfer of property other than agricultural land; registration of deeds and documents.
7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

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8. Actionable wrongs.
9. Bankruptcy and insolvency.
10. Trust and Trustees.
11. Administrators-general and official trustees.

11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.

12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of court, but not including contempt of the Supreme Court.
15. Vagrancy; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
17. Prevention of cruelty to animals.

17A. Forests.

17B. Protection of wild animals and birds.

18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
20. Economic and social planning.

20A. Population control and family planning.

21. Commercial and industrial monopolies, combines and trusts.
22. Trade unions; industrial and labour disputes.
23. Social security and social insurance; employment and unemployment.
24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.
26. Legal, medical and other professions.
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
28. Charities and charitable institutions, charitable and religious endowments and religious institutions.
29. Prevention of the extension from one state to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Vital statistics including registration of births and deaths.

CHECK YOUR PROGRESS

7. Why is it proposed to amend the Constitution?
8. Name the Article of the Constitution that confers power on Parliament to amend the Constitution.
9. What changes took place in the Indian Constitution after the 73rd Amendment Act of 1992?
10. Who gets the benefit of the schemes launched under the Panchayati Raj?
11. Who appointed the committee to make recommendations on the salient features of the law for extending provisions of Part XI of the Constitution to the scheduled areas?

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4.5 SUMMARY

- The Constitution of India also has the provision of a Supreme Court, the caretaker of the judicial system of the country. This court has the special power of the judicial review i.e. the power to reconsider any of the decisions taken by the lower courts and the bench of the Supreme Court.
- The members of the Constituent Assembly aspired to idealize the courts for two basic reasons:
  - o For strengthening the fundamental rights
  - o For acting as guardians of the Constitution itself
- The separation between the executive and the judiciary was made gradually, and by the Government of India Act of 1935, the highest court in India was established in the form of the Federal Court which, however, was subordinate only to the JCPC.
- The Supreme Court of India, the first fully independent court for the country, was first set up under the 1950 Constitution. The Constitution also set up an integrated hierarchy of courts for a more parliamentary federal system compared to the Government of India Act, 1935.
- Article 124 of the Constitution establishes the Supreme Court of India as the Highest Court of the Indian Republic. It provides that the Supreme Court shall consist of the Chief Justice and twenty-five other judges.
- The Supreme Court has original, appellate and advisory jurisdiction, besides a right to grant special leave for appeal. Original jurisdiction of the Supreme Court is of two types, namely, exclusive and concurrent.
- Judicial review means review by the courts to investigate the constitutional validity of the legislative enactments or executive actions. The power of judicial review in India stands between the American and British practices.

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- According to Article 125 of the Constitution, each state should have a High Court. A High Court exercises powers within the territorial jurisdiction of the state concerned. The total number of High Courts in the country are 24.
- In India, all the High Courts are constituted either under the authority of the Indian Constitution or by the Indian Parliament, with the state governments having no substantive say in the creation of a High Court.
- A High Court stands at the apex of judicial system of a state. A High Court consists of a Chief Justice and such other judges as the President may, from time to time, determine. The number of judges of the state High Courts has not been fixed by the Constitution.
- High Courts in India have been given full freedom and independence in imparting justice to the people and ensure that executive and legislature shall in no way interfere in the day-to-day life of the people.
- The term judicial activism is explained in Black's Law Dictionary, Sixtieth Edition, [Centennial Edition (1891–1991)] thus, 'judicial philosophy which motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters'.
- A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy.
- It is proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles.
- Article 368 of the Constitution confers power on Parliament to amend the Constitution and provides the procedure for it.
- A Bill seeking to amend any other part of the Constitution has to be passed in each House of Parliament by a special majority i.e., by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting.
- The Constitution (73rd Amendment) Act, 1992 added a new Part IX consisting of 16 Articles and the Eleventh Schedule to the Constitution.
- Article, 243A provides that the Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a state may by law provide.
- Article 243 I provides for the establishment of a finance commission for reviewing financial position of the Panchayats.
- In 1988, Sarkaria Commission was set up to look into the working of Panchayati Raj Institutions and the basic question of Centre-State relations.

- A number of factors are influencing India's grass-root politics. These factors are: democratic consciousness, welfare of masses, participation in elections, effect of education, linkages between panchayat members with police and bureaucrats, caste domination, land holding, loan, property and wealth, groupism, regionalism, nepotism, favouritism, factionalism, affiliation of political leaders with different parties, socialization and politicization of rural masses.
- Flowing from the rationale of the two Constitutional Amendments and drawing sustenance from the Fifth Schedule, a general view has emerged among tribal leaders, representatives and experts that even for the vast Central Indian tribal heartland, with certain changes, the overall design of the Sixth Schedule could serve as a relevant reference frame for a district within the broader canvas of the Fifth Schedule.
- The Sixth Schedule of the Constitution which is a charter for autonomy for some tribal areas of the North-East, assigns a number of functions for the district councils of those tribal areas.
- As per the provision in the Sixth Schedule, the Governor may appoint a commission to examine and report on all matters relating to the administration of autonomous district councils.
- Article 246 (Seventh Schedule) of the Indian Constitution, distributes legislative powers including taxation, between the Parliament and the State Legislature.
- Separate heads of taxation are provided under lists I and II of Seventh Schedule of Indian Constitution. There is no head of taxation in the Concurrent List (Union and the states have no concurrent power of taxation).

4.6 KEY TERMS

- **Judicial review:** It means review by the courts to investigate the Constitutional validity of the legislative enactments or executive actions.
- **Judicial activism:** It is judicial philosophy which motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges.
- **Gram sabha:** It means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.

4.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The members of the Constituent Assembly aspired to idealize the courts for two basic reasons:
   - For strengthening the fundamental rights
   - For acting as guardians of the Constitution itself

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2. The Supreme Court of India, the first fully independent court for the country, was first set up under the 1950 constitution. The Constitution also set up an integrated hierarchy of courts for a more parliamentary federal system compared to the Government of India Act, 1935.
3. Article 124 of the Constitution establishes the Supreme Court of India as the Highest Court of the Indian Republic.
4. In India, all the High Courts are constituted either under the authority of the Indian Constitution or by the Indian Parliament, with the state governments having no substantive say in the creation of a High Court.
5. The Chief Justice of a High Court is appointed by the President by warrant under his hand and seal, after due consultation with the Chief Justice of India and the Governor of the state.
6. The term judicial activism is explained in Black's Law Dictionary, Sixtieth Edition, (Centennial Edition [1891–1991]) thus, 'judicial philosophy which motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters'.
7. It is proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles.
8. Article 368 of the Constitution confers power on Parliament to amend the Constitution and provides the procedure for it.
9. The 73rd Constitutional Amendment Act of 1992 added a new Part IX consisting of 16 articles and Eleventh Schedule to the Constitution.
10. The schemes launched under the Panchayati Raj benefit the rural poor people, women, SCs and STs and farmers.
11. The Ministry of Rural Development, Government of India, appointed the committee to make recommendations on the salient features of the law for extending provisions of Part XI of the Constitution to the scheduled areas.

4.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. State the composition of the Supreme Court.
2. Write a note on independence of the Supreme Court.
3. State the miscellaneous powers entrusted upon the Supreme Court.
4. What is the tenure of High Court judges?
5. What is the power of superintendence given to High Court judges?

6. What is judicial activism?
7. Why is it necessary to amend the Constitution of a country?
8. What is the power of the Parliament with regard to the amendment of the Constitution?
9. List the various provisions of the State List provided in the Seventh Schedule of the Constitution.

Long-Answer Questions

1. Explain the jurisdiction of the Supreme Court.
2. Evaluate the power of judicial review in Indian context.
3. Assess the composition and functions of the High Court.
4. Discuss the doctrine of judicial activism.
5. Describe the procedure of Constitutional amendment in India.
6. Discuss the 73rd and 74th Constitutional Amendment Acts.
7. Evaluate in detail the provisions of the Sixth and Seventh Schedule.

4.9 FURTHER READING

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