

# INDIAN POLITY

## LATEST DEVELOPMENTS AND RELATED BASICS

### REORGANISATION OF STATES

The Centre had planned recently to set up a second State Reorganisation Commission (SRC) to look into the demands for creating new states. It's a controversial subject, and under pressure from various quarters, the Government finally announced on January 20, 2008 its decision not to set up such a Commission for the time being.

At the time of Independence, India was divided into the British India provinces and Indian princely states. India Independence Act, 1947 provided the Dominion of India and Pakistan and ended the British paramountcy over the princely states and they were allowed to choose any one of the dominions. There were many princely states from which a few joined Pakistan and a large number of them joined the Dominion of India.

By 15 August 1947 as many as 136 jurisdictional states acceded to the Indian Union.

Sardar Vallabh Bhai Patel Home Minister in the National Provisional Government and V.K. Menon (Home Secretary) through their persuasive and punitive measures integrated a large number of states with the Indian Union.

The state of Kashmir signed the instrument of accession on 26 October 1947.

Junagarh and Hyderabad signed the instrument of accession in 1948.

The reorganisation of the provinces of India on linguistic lines had been one of the demands of the Indian National Congress during the freedom struggle.

After Independence its demand was raised in various parts of the country in which the fast and death of Sriramulu, who was demanding the creation of a Telugu state of Andhra Pradesh forced the government to the reorganisation of states early.

In 1953, Andhra Pradesh was created out of Telugu speaking areas of Madras, Bombay and Central Province. It was the first state to be formed on linguistic basis.

Dhar Commission, under Justice S.K. Dhar was appointed in 1948 by the Government of India to look into the question of linguistic reorganisation of India. In its report Dhar Commission rejected the idea of linguistic reorganisation of states.

In December 1948, the J.V.P. Commission (Jawaharlal Nehru, Sardar Patel, Pattabhi Sitaramayya) was appointed by the government to look into the question of states reorganisation on the basis of languages. It did not favour the idea of linguistic reorganisation of States.

In 1954, the Government of India appointed a commission to look into the whole question of state reorganisation. The three-member commission was headed by Justice Fazal Ali and Pandit Hidayanath Kunzru and Sardar K.M. Pannikar were its other members.

In September 1955, commission submitted its report in which it recommended the formation of 16 states and 3 centrally administered areas for the Indian Union.

Based on the recommendation of states reorganisation commission, the Union parliament passed the States Reorganisation Act, 1956, which provided for the setting up of 14 States and 6 Union Territories.

In 1953, Andhra Pradesh was created by taking the Telugu language speaking areas of Madras province, Bombay province and Central province.

In 1954 Pondicherry was handed over by French to India. It was included in Indian Union as a Union Territory.

Demand for the State of Gujarat out of Bombay province was raised in the decade of sixty which resulted into the bifurcation of Bombay province and the State of Maharashtra and Gujarat in 1961.

On December 11, 1961 Goa was freed from Portuguese occupation through an army operation, and was made a state in 1987, by the 56<sup>th</sup> Constitution Amendment.

In 1962 the state Nagaland was created.

In the Hindi speaking area of Punjab, demand was raised for the setting up of Hindi speaking state out of Punjab.

It resulted in the division of Punjab State into Punjabi speaking area of Punjab, Hindi speaking area of Haryana State and setting up of a Union Territory of Chandigarh in 1966 by the 18<sup>th</sup> Constitutional Amendment.

In 1975, Sikkim was made an associate state by 35<sup>th</sup> Constitutional Amendment, which later on by 36<sup>th</sup> Constitutional Amendment Act in 1975 was made a full fledged state.

Mizoram was made a State of Union of India in 1986, by the 53<sup>rd</sup> Constitution Amendment.

In 1987, State of Arunachal Pradesh was formed by the 55<sup>th</sup> Constitutional Amendment.

The State of Jharkhand was made out of Bihar in 2000.

Eastern region of Madhya Pradesh was popularly known as Chhattisgarh. Finally, Madhya Pradesh was bifurcated and the State of Chhattisgarh was formed in 2000.

In the Hilly area of the erstwhile State of Uttar Pradesh Uttarakhand was formed in 2000. On October 11, 2006 the name was changed to Uttarakhand.

At present there are demands for separate smaller states in different parts of the country.

In the North-eastern region Bodos are demanding a separate smaller state of Bodoland out of the State of Assam.

In the western portion of Uttar Pradesh demand for a separate State of Harit Pradesh, in the Eastern portion demand for Purvanchal Pradesh and in its southern portion demand for Bundelkhand state is being raised.

In Maharashtra demand for Vidharba as a separate small State is being raised.

Since demand for creation of smaller States is being raised in various parts of the country for a long time, it becomes important to argue whether it is advantageous or not.

There are some advantages and some disadvantages regarding the creation of smaller States.

## Advantages

- (1) Since the constitution of India recognised the principle of diversity which may be geographical, linguistic and cultural, smaller States can help to promote diversity and strengthen the federal principles.
- (2) Administratively smaller States can be better managed because of small area and people can also approach administration easily as compared to larger states.
- (3) Socio-economically, a particular area has its characteristic socio-economic problems. In smaller States, remedial measures can be introduced by way of Regional Planning in some particular areas which has already been accepted as an effective instrument in the planning process in India.
- (4) Healthy competition will develop among States for development if there are smaller States. States of Punjab and Haryana are its example.
- (5) In smaller States, regional equality can be maintained better than the larger States.

## ***Disadvantages***

- (1) Tendencies of separatism might adversely affect the unity and integrity of the country.
- (2) Creation of smaller States require setting up more infrastructure and more political and administrative staff which would cause excessive burden on public expenditure.
- (3) Centralised Economic planning for balanced regional development can be difficult in the area which is divided into various States.
- (4) More States might cause more inter-state disputes.

## **COMMISSIONS ON STATES REORGANISATION**

In 1948, Justice S.K. Dhar Commission.

In December 1948, J.V.P. (Jawaharlal Nehru, Sardar Patel, P. Sitaramyya) Commission was set up by GOI.

In 1954, GOI appointed first States Reorganisation Commission under the chairmanship of Justice Fazal Ali. Hidayanath Kunzru and Sardar K.M. Pannikar were its members.

It recommended for setting up 16 States and 3 UTs.

## **STATES REORGANISATION ACT, 1956**

- Provided for setting up 14 States and 6 Union Territories.
- Accepted the linguistic basis of states reorganisation.

## **SIXTH SCHEDULE**

The Government of India on November 30, 2007, approved the creation of a new autonomous self-governing council called Gorkha Hill Council, Darjeeling (GHC), in place of Darjeeling Gorkha Hill Council in West Bengal under the Sixth Schedule.

107<sup>th</sup> Constitutional Amendment Bill was to be introduced in the parliament to amend Articles, 244 and 332 and the Sixth Schedule of the Constitution of India.

The Constitution of India contains twelve schedules which provide details about various aspects on the contents of the Constitution. Sixth Schedule of the constitution contains provisions to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

Art. 244(1) also mentions these provisions.

There are nine Tribal Areas in four parts spread over the States of Assam, Meghalaya, Tripura and Mizoram which are to be administered in accordance to the Sixth Schedule of the Constitution.

Part-I: 1) The North Kachar Hills District.

2) The Karbi Anglong District.

Part-II: 3) The Khasi Hills District.

4) The Jaintia Hills District.

5) The Garo Hills District.

Part IIA: 6) Tripura Tribal areas District.

Part III: 7) The Chakma District.

8) The Mara District.

9) The Lai District.

These Tribal areas are to be administered as autonomous districts.

The autonomous districts are not to be outside the executive authority of the State concerned but there are provisions for the creation of District Councils and Regional Councils for the exercise of certain legislative and judicial functions.

These councils are primarily representative bodies and have the power of law-making in certain specified fields such as management of a forest other than a reserved forest, inheritance of property, marriage and social customs.

The Governor of concerned state may confer upon these councils the power to try certain suits or offences.

These councils have power to assess and collect land revenue and to impose certain specified taxes.

Laws made by District and regional tribal councils are to be effected only on the Governor's assent to them.

The State Legislature can not make law on the matter over which the District and Regional Councils are empowered to make laws in these tribal areas unless the relevant District Council so directs by public notification.

In matter of application of Central and State Acts, the President of India and the Governor of concerned State is empowered to direct that an Act of parliament or of the State Legislature shall not apply to on autonomous district or shall apply only subject to exceptions or modifications as he may specify in his notification.

The District and Regional Council in the States of Assam, Mizoram, Meghalaya and Tripura possess Judicial Power of both civil and criminal nature which is subject to the Jurisdiction of the High Court as the Governor may time to time specify.

Though the constitution of India recognises the set-ting up of Tribal autonomous councils under Sixth Schedule of the Constitution in the States of Meghalaya, Mizoram, Tripura and Assam, but later on autonomous tribal councils in other states were also set up through the parliamentary statutes.

Darjeeling Gorkha Hill Council was formed in 1988, in the State of West Bengal through an agreement between the Central Government of India, the West Bengal Government and the Gorkha National liberation front.

### **BODOLAND**

Bodoland is an area in the north bank of Brahmaputra river in the State of Assam in the north-east region of India, by the foothills of Bhutan and Arunachal Pradesh and inhabited predominantly by Bodo language speaking ethnic group.

Currently the map of Bodoland includes the Bodoland Territorial Areas District (BTAD) administered by an autonomous Bodoland Territorial Council (BTC) which was established on February 10, 2003.

Area of Bodoland overlaps with the districts of Kokrajhar, Baksa, Chirang and Udalguri in the State of Assam.

Kokrajhar town serves as the headquarter or Capital of Bodoland.

Since Independence, there have been regular demand for seperate Bodoland by several organisations in which some demanded seperate Statehood within the Indian Union while other demand sovereign Bodoland for the Bodo People in Assam. The National Democratic Front of Bodoland (NDFB) was one such organisation.

All Bodo Students Union (ABSU) un-der the leadership of Upendranath Brahma started a movement for an independent State of Bodoland in 1987.

Bodo Liberation Tiger Force (BLTF) was a militant organisation, founded under Hagrama Mohilary in the early years of 90's decade for the demand of a seperate State of Bodoland.

Bodoland Territorial Council under the Sixth Schedule of the constitution was established on February 10, 2003 after the conclusion of Memo-randum of Settlement with Bodo Liberation Tiger Force (BLTF), which laid down their weapons on December 6, 2003 and its chief Hagrama Mohilary was sworn in as the Chief Executive Member of the Interim BTC on December 7, 2003.

At present Bodoland Territorial Council (BTC) is a 46-member body. The area under the BTC Jurisdiction is called Bodo Territorial Autonomous District (BTAD), the council enjoys autonomy and control over certain specified matters.

The Bodo Territorial Autonomous District (BTAD) is spread over the area of 27,100 Km<sup>2</sup>, which is 35% of Assam.

Extension of Sixth Schedule provision to Bodoland was the first instance of covering non-hilly tribal area under it.

### **FIRST ADMINISTRATIVE REFORMS COMMISSION**

- Constituted in 1964.
- Morarji Desai, the former Prime Minister of India was its Chairman for its initial term.
- Kengal Huumanthaiya, the former chief minister of Karnataka was its chairman for a brief period in 1967 at the end of its term.
- **First Report** - Right to Information: Master Key to Good Governance - June 2006.
- **Second Report** - Unlocking Human Capital: Entitlements and Governance a case study - July

2006.

- **Third Report** - Crisis Management: From Despair to Hope - September 2006.
- **Fourth Report** - Ethics in Governance -12 February, 2007.

## **SECOND ARC**

Sensing the need for immediate and comprehensive evaluation of the administrative system, the Government of India appointed the second Administrative Reforms Commission on 31 August 2005, under the chairmanship of S. Veerappa Moily, member of Congress working committee and former Chief Minister of Karnataka. The Commission gave three reports in June 2006, July 2006 and September 2006. The fourth report released on 12 February, 2007. 'Ethics in Governance', has been the latest, recommending greater transparency, accountability and ethical behaviour in politics, judiciary and administration.

Corruption is an important manifestation of the failure of ethics. Consequently, the commission also suggested measures for reducing or eliminating corruption.

An empowered committee had already been set up to examine the recommendations of the commission and give its report.

The Commission was supposed to -

Suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government.  
submit its report to the government within one year.  
broadly give recommendations on the following -

- 1) Organisational structure of the Government of India.
- 2) Ethics in governance.
- 3) Refurbishing of Personnel Administration.
- 4) Strengthening of Financial Management Systems.
- 5) Steps to ensure effective administration at the state level.
- 6) Steps to ensure effective District Administration.
- 7) Local Self Government/Panchayat Raj Institutions.
- 8) Social capital, Trust and participative public service delivery.
- 9) Citizen-centric administration.
- 10) Promoting e-governance.
- 11) Issues of Federal Polity.
- 12) Crisis Management.
- 13) Public Order.

- Second SRC was appointed after a gap of 44 years after the first Administrative Reforms Commission, which was appointed during the time of Prime Minister Jawahar Lai Nehru in 1964.

## **COMPOSITION OF SECOND ADMINISTRATIVE REFORMS COMMISSION**

Chairperson - Shri M. Veerappa Moily.

Members - Shri V. Ramchandran,  
Dr. A.P. Mukherjee, Dr. A.H. Kalro,  
Dr. Jayaprakash Narayan.

Member Secretary - Smt. Vineeta Rai.

On July 17, 2006, Government of India extended the term of the Second Administrative Reforms Com-mission for one year.

## **Main Recommendations**

- **National Ombudsman:** Lokpal should be given a Constitutional status and renamed the 'Rashtriya Lokayukta'.
- Jurisdiction of Lokayukta should be extended to all Union Ministers except the Prime Minister, all Chief Ministers, all those holding public office equivalent to the ranks of a Union Minister and MPs.
- **Lokayukta:** The Constitution should be amended to incorporate a provision making it obligatory on the part of State Governments to establish the institution of Lokayukta.
- Lokayukta is to deal with corruption related cases only against ministers and MLAs.
- **Ombudsman at Local Level:** A Local Bodies' Ombudsman should be constituted for a group of districts to investigate cases of corruption or maladministration against the functionaries of the local bodies and submit reports to the competent authorities.
- **National Judicial Council:** It recommended for setting up a NJC by amending Art. 124 and 217 of the Constitution of India for the purpose of recommending appointments of Supreme Court and High Court Judges.
- The NJC should have the following composition: The Vice-President should be the Chairperson of the Council. The PM, the Speaker of the Lok Sabha, the Chief Justice of India, the Union Law Minister, the Leader of Opposition in the Lok Sabha, the Leader of Opposition in the Rajya Sabha should be its members.
- The Council should be authorised to lay down the code of conduct for judges, including the Subordinate Judiciary.
- NJC should be empowered to investigate to inquire into alleged misconduct and impose minor penalties.
- NJC should be empowered to recommend removal of a Judge, if so warranted, based on the recommendations of the NJC, the President should have the powers to remove a Judge of the Supreme Court or High Court.

**Corruption:** Citizens should be empowered to file cases to recover loss of public money due to corruptions.

- The Prevention of Corruption Act should be suitably amended to include in its purview private sector providers of public utility services.
- **Office of Profit:** It recommended that the law should be amended to define office of profit.
- All offices involving executive decision-making and control of public funds, including positions on the governing boards of public undertakings and



statutory and non-statutory authorities directly deciding policy or managing institutions or authorising or approving expenditure should be treated as” office of profit and no legislator shall hold such offices.

- **Election Commission:** A collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the leader of opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the president of the Chief Election Commissioner and the Election Commissioners.
- **Election Expenditure:** A system for partial state funding should be introduced in order to reduce the scope of illegitimate and unnecessary funding of expenditure for elections.
- **Anti-Defection Law:** There should be a constitutional amendment to bar mid-stream alignment of parties in a coalition.
- The constitutional amendment should ensure that a party which joins a coalition on the basis of a common minimum programme should be required to seek a fresh mandate if it attempts mid-term re-alignment.
- The Commission has recommended empowering the President and Governors in the States to take a call on allegations of defection.
- The President and Governors should disqualify MPs and MLAs respectively for defection, at the recommendation of the Election Commission.

**MPLADS and MLALADS:** SARC has recommended that schemes such as MPLADS (Member of Parliament Local Area Development Scheme) and the MLALADS (Member of the Legislative Assembly Local Area Development Scheme) should be abolished.

## MODE OF ACQUISITION OF CITIZENSHIP AFTER JAN. 26, 1950

- **Public Authorities:** MPs and MLAs should be declared Public Authorities under the Right to Information Act, except when they are discharging legislative functions.
- **Immunity enjoyed by Legislators:** Suitable amendments should be effected to article 105(2) of the Constitution to provide that the immunity enjoyed by MPs does not cover corrupt acts committed by them in connection with their duties in the House.
- Similar amendments should be made in Article 194(2) of the Constitution in respect of members of the State Legislatures.
- **Ethical Norms in Legislature:** An office of Ethics commissioner should be constituted by each House of Parliament, under the Speaker/Chairman to assist the Committee on Ethics.
- All State Legislatures may adopt a code of ethics and a code of conduct for their members.
- **Constitutional Protection to Civil Servants:** Article 310 and 311 should be done away with. These two Articles not only guarantee Constitutional protection to civil servants but also make it mandatory to seek prior sanction before prosecuting them.
- Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income.
- **Protection to whistle blowers:** Whistleblowers exposing false claims, fraud or corruption should be protected by ensuring confidentiality and anonymity, protection from victimization in career and other administrative measures to prevent bodily harm and harassment.
- **Serious Economic Offences:** Second ARC has suggested a new law to tackle serious economic offences involving Rs. 10 crore or more.



- A serious frauds office should be set up in Cabinet Secretariat with power to investigate and prosecute in order to discipline financial sector, capital, futures and commodity markets and IT sector.
- **False Claim Law:** The Second ARC has suggested a law on the lines of American False Claim Act, so that a citizen can seek legal relief against fraudulent claims against the government.

(1) **Citizenship by birth:** Every person born in India on or after January 26, 1950, shall be a citizen of India by birth.

(2) **Citizenship by descent:** A person born outside India on or after January 26, 1950, shall be a citizen of India by descent if either of his parents is a citizen of India at the time of the person's birth.

(3) **Citizenship by registration:** A person can acquire Indian citizenship by registering themselves before the prescribed authority, e.g. persons of Indian origin who are ordinarily resident in India and have been so resident for five years immediately before making the application for registration; persons who are married to citizens of India.

(4) **Citizenship by naturalisation:** A foreigner can acquire Indian citizenship, on application for naturalisation to the Government of India.

(5) **Citizenship by Incorporation of territory:** If any new territory becomes part of India, the Government of India shall specify the persons of that territory who shall be the citizens of India.

## Evaluation

Recommending is the easier part of reform, now the challenge is to show political will for implementation.

Some recommendations can be implemented immediately. However, some require debate and consultation and amendments to the Constitution. Building a national consensus or a consensus among political parties may be difficult or time consuming.

This is the Commission's fourth report. An official decision has yet to be taken on the last three. The Department of Administrative Reforms has sent the earlier three reports to the concerned ministries for comments. The fourth will go through the same procedure. The final decision may take time.

Prime Minister is kept out of the purview of Rashtriya Lokayukta. PM does not take all the decisions individually. If a personality like Super PM, hidden behind PM exists, then he/she and the PMO officials are saved by the report.

However, keeping the PM outside the purview of Rashtriya Lokayukta is politically correct as it reduces the risk of political uncertainty.

The setting up of an NJC may annoy judiciary, as it (the judiciary) may not be impressed by a suggestion of outsiders being asked to sit in judgement on their conduct. The government is already struggling to pass the Judges (Inquiry) Bill, which judiciary has not taken easily.

However, the peculiar practice of the judiciary playing a singularly important role in appointing Judges is against the democratic principle. There are three organs of government and the principle of checks and balance should be followed. So, the suggestion for NJC is a welcome step.

Also, a collegium of representatives from all the branches of the government should not be considered outsiders. In an era of judicial activism, judiciary is taking many decisions in the administrative, executive and legislative spheres. Judiciary, in turn, should not have a problem with democratic and transparent appointments and removals of judges, which is in the national interest.

## **RIGHTS GIVEN TO THE INDIAN CITIZENS BY THE INDIAN CONSTITUTION**

- (1) Some of the fundamental rights enumerated in Part-III of the Constitution, for example Article 15, 16, 29, 30.
- (2) Only citizens are eligible for certain offices such as offices of President, Vice-President, Judge of Supreme Court or High Court, Attorney General, Governor of a State.
- (3) Right of suffrage, the right to become a Member of Parliament and of the legislature of a State.

## **TERMINATION OF CITIZENSHIP**

- (1) Renunciation by Voluntary Act.
- (2) After acquiring the citizenship of another country.
- (3) Deprivation of citizenship by an order of the Government of India.

The Prevention of Corruption (Amendment) Act, 2006 already exists in Jammu and Kashmir that provides for seizure and forfeiture of properties of a public servant, which has been acquired by illegal means. The Commission also took note of it. A similar law for the whole nation is not only possible, it is urgently needed.

Finally, the recommendations are not outrageous. If implemented, they would help development of an honest polity, an accountable judiciary and a clean and transparent executive.

## CITIZENSHIP

Citizenship is legal relationship between the state and its population. It confers civil and political rights upon the people who compose the State.

The Constitution of India in part II, under Art. 5 to 11, deals with the provisions of citizenship. The Constitution of India provided for single Indian citizenship.

The Constitution of India did not lay down permanent or comprehensive law relating to citizenship in India. Instead, it simply described the classes of persons who would be deemed to be the citizens of India at the date of the commencement of the Constitution and left the entire laws of citizenship to be regulated by the Parliament.

Indian Citizenship Act, 1955 was passed by the union Parliament which contains elaborate provisions for the acquisition and termination of citizenship subsequent to the commencement of the Constitution.

On January 26, 1950, following classes of persons be-came citizens under Article 5 to 8.

- (1) Art. 5(a) - A person born, and domiciled in India.
- (2) Art. 5(b) - A person domiciled in the territory of India, either one of whose parents was born in the territory of India, irrespective of the nationality of his parents or the place of birth of such a person.
- (3) Art. 5© - A person who himself or whose father or mother was not born in India, but who had his domicile in the territory of India and had been ordinarily residing within the territory of India for not less than 5 years immediately preceding the commencement of the Constitution.
- (4) Art. 6 - A person who had migrated from Pakistan.
- (5) Art 7 - A person who migrated from India to Pakistan after 1<sup>st</sup> March, 1947, but had subsequently returned to India under a permit issued under the authority of the Government of India for resettlement or permanent return.
- (6) Art. 8 - A person who himself, or any of whose parents or grandparents was born in 'India' as defined in the Government of India Act, 1935, and who is ordinarily residing in any country outside India (whether before or after the commencement of this Constitution), on application in the prescribed form, to the Consular or Diplomatic representative of India in the country of his residence.
  - The Indian Citizenship Act, 1955 was amended in 1986 to check the clandestine influx of persons from Bangladesh, Sri Lanka and other African Countries.

Following changes were made -

- (i) Citizenship of India by birth can be acquired by a person only if either of his parents is a citizen of India at the time of his birth.
- (ii) Minimum time required for registration has been in-creased from six months to five years.
- (iii) Women marrying Indian citizens must have been resident of India for five years before making an application.

- (iv) A person from a non-commonwealth country should have lived for 10 years in India to apply for grant of a certificate of naturalisation.

## **PRAVASI BHARTIYA DIVAS**

**Sixth Pravasi Bharatiya Divas** was organised at Vigyan Bhavan in New Delhi from January 7 to 9, 2008.

- Navinchandra Ramgoolam, Prime Minister of Mauritius and a person of Indian origin was the Chief guest at the sixth Pravasi Bhartiya Divas.
- India Development Foundation was proposed to be established, which is to act as a platform to the Indian diaspora to contribute to social development causes, including empowerment of women and rural development.
- PIO University is proposed to be established.
- Based on the recommendations of L.M. Singhvi Committee on Indian Diaspora, the Government of India had founded a Ministry of Overseas Indian Affairs to manage the affair of overseas Indians.
- 9<sup>th</sup> January was recognised as the Pravasi Bhartiya Divas.
- 9<sup>th</sup> January was chosen as Pravasi Divas because on this day Mahatma Gandhi had returned to India from South Africa in 1915 to lead the freedom struggle.
- First Pravasi Bharatiya Divas was celebrated on 9<sup>th</sup> January, 2003.
- On Pravasi Bhartiya Divas special programmes are organised to recognise the contribution of NRIs/PIOs, who have excelled in their respective fields.
- NRI - An Indian citizen who is ordinarily residing outside India and holds an Indian Passport.
- PIO - A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship.
- PIO Card Holder - A person who is registered as PIO Card holder under Ministry of Home Affairs' (MHA's) scheme.
- OCI - A person registered as overseas Citizen of India (OCI) under Section 7A of the Citizenship Act, 1955.
- The event of Pravasi Bhartiya Divas is organised by the Ministry of Overseas Indian Affairs and the FICCI every year.
- So far, six Pravasi Bhartiya Divas have been organised since 2003, in which five were held at Delhi.
- The 2005 edition of Pravasi Bhartiya Divas was organised at Mumbai.

## **PIO CARD**

The Government of India launched a comprehensive scheme for the persons of Indian origin, called the PIO card scheme. Under this scheme, persons of Indian origin upto the fourth generation, settled throughout the world, are eligible.

- PIO Card scheme came into effect on September 17, 2007.
- PIO Card holders can visit India without any visa for life-long.
- PIO Card is to be valid for 15 years.
- PIO's of Pakistan and Bangladesh are not entitled to it. Fee for PIO Card is US \$365.00 for adults and US \$185.00 for children below 18 years of age.
- PIO Card holders to have similar benefits as NRIs in economic, financial and educational matters.
- PIO Card holders are not entitled to have political rights.

## Citizenship Amendment Act, 2005

- The Citizenship Amendment Act, 2005 was passed by the Parliament to make provisions for dual citizenship by amending the Citizenship Act, 1955.
- The Citizenship Amendment Act, 2005, is to bestow eligibility for registration as Overseas Citizens of India (OCI) on persons of Indian origin, who or whose parents/grandparents have migrated from India after January 26, 1950 or were eligible to become an Indian Citizen on January 26, 1950 or belonged to a territory that became part of India after August 15, 1947, and their minor child, who is a national of a country that allows dual citizenship in some form or other.
- The eligibility provision is being extended to such citizens of all countries other than those who had ever been a citizen of Pakistan and Bangladesh.

## OVERSEAS CITIZENSHIP OF INDIA (OCI)

The Government of India had appointed a High level Committee on Indian Diaspora under the Chairmanship of L.M. Singhvi which recommended in its report to grant overseas Indian citizenship to the people of Indian origin. Based on its recommendations, the Government of India made provisions for overseas citizenship of India (OCI) commonly known as dual citizenship to the people of Indian origin by amending the Part-II of the Indian Constitution, since the Constitution of India does not allow holding Indian Citizenship and Citizenship of Foreign country simultaneously.

### Eligibility for OCI

(1) Any person who at any time held an Indian Passport, or either he or one of his parents or grandparents was born in or was a permanent resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided he was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka or who is a spouse of a citizen of India or a person of Indian

(2) A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 16.08.1947 and his/her children and grandchildren, provided his/her country of citizenship allows dual citizenship in some form or other under the local laws, is eligible for registration as Overseas Citizen of India (OCI).

- Minor children of such a person are also eligible for OCI.
- If the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

### Procedure of acquiring OCI

- Eligible persons have to apply in the prescribed form along with enclosure form online.
- Applicant can apply to the Indian Mission/Post in the country where applicant is ordinarily residing.

- If applicant is in India on long term visa then to FRRO, Delhi, Mumbai, Kolkata, Amritsar, Chennai or to the Joint Secretary (Foreigners) MHA.
- Fee for getting OCI is Rs. 15,000 or equivalent in local currency for adults and for children upto 18 years is Rs. 7,500 or equivalent in local currency.

## **Benefits to OCI holders**

- A multi-entry, Multi-purpose life-long visa for visit-ing India.
- Exemption from the requirements of registration if they stay on any single visit in India which does not exceed 180 days.
- Parity with NRIs in respect of all facilities available to the latter in the economic, financial and educational fields except in matters relating to the acquisition of agricultural/plantation properties. No parity shall be allowed in the sphere of political rights.
- A person registered as OCI is eligible to apply for grant of Indian Citizenship under Section 5(l)(g) of the Citizenship Act, 1955. If he/she is registered as OCI for five years and has been residing in India for one year out of the five years making the application.
- OCI is not entitled to vote, be a member of Legislative Assembly or Legislative Council or Parliament and cannot hold constitutional posts such as President, Vice-President, Judge of the Supreme Court or High Courts and can not also normally hold employment in the Government.

## **RIGHT TO INFORMATION ACT, 2005**

Right to Information Act is a revolutionary step in the direction of making the system of governance and administration transparent and accountable to the people in India.

- RTI Act, 2005, was passed by the Parliament on 15<sup>th</sup> June 2005.
- The Parliament repealed the Freedom of Information Act, 2002.
- RTI Act, 2005, came into force on October 12, 2005.
- Right to Information Act 2005, is to extend to whole of India except the State of Jammu & Kashmir.

## **Composition of CIC**

- Central Chief Information Commissioner - Mr. Wajahat Habibullah.
- Central Information Commissioners - Prof. M.M. Ansari, AN. Tiwari, Mr. O.P. Kejriwal, Ms. Padma Balasubhramanian.

- Chief Information Commissioner.
- Central Information Commissioners as required, but, should not be more than 10.
- RTI, confers upon the citizens of India the legal right to seek any information regarding public work public record, documents, memos, contracts, reports, data and any other matter of public importance from the public authority within prescribed time limit through the stipulated procedure of depositing specified amount of fee and writing application to the appropriate authority.
- Public authority means any body or institution of self-government established or constituted by or under the Constitution, by any other law made by the Parliament, by any other law made by State Legislature, any body setup by the government by notification and any NGO substantially owned or financed by the government.
- The public authorities are required to appoint Public Information Officers to provide Information to the people within 30 days of submission of application.
- Information on certain matters and from certain agencies are being excluded from the purview of RTI, these are as follows -
  - (1) Information regarding 'File notings'.
  - (2) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the state, in relation with any foreign state.
  - (3) Information from Securities and Intelligence agencies, information regarding privilege of Parliament and Legislative Assemblies, 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.

### ***Central Information Commission***

- Right to Information Act, 2005, provides that the Central Government is to constitute a body to be known as the Central Information Commission to exercise the powers on it and to perform the function mentioned under this Act.
- The headquarters of the CIC, is to be at Delhi and CIC may, with the previous approval of the Central Government, establish offices at other places.

### **Appointment**

- The Chief Information Commissioner and Information Commissioners are to be appointed by the President of India on the recommendation of a committee consisting of -
  - (1) The Prime Minister, who is to be the Chairman of the Committee.
  - (2) The leader of opposition in Lok Sabha.
  - (3) A Union Cabinet Minister to be nominated by the Prime Minister.

### **Qualification, Term of Office and Condition of Service**

- The Chief Information Commissioner and Information Commissioners are to be persons of eminence in public life with wide knowledge and experience in Law, Science and Technology, Social Service, Management, Journalism, Mass Media or Administration and Governance.
- The CIC and ICs should not be a Member of Parliament or Member of the Legislative of any State or UT, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.



- The Chief Information Commissioner is to hold office for a term of five years or upto 65 years from the date on which he enters upon his office and is not to be eligible for reappointment.
- Every Information Commissioner is to hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier and not to be eligible for reappointment as such Information Commissioner though he could be Chief Information Commissioner.
- The CIC and ICs before entering upon their offices are to make and subscribe before the President an oath or affirmation according to the form set up in the Act.
- The Chief Information Commissioner and Information Commissioners may at any time, by writing under his hand addressed to the President, resign from his office. Besides, the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under the Act.
- The salaries and allowances payable to and other terms and conditions of service of –

(1) The Chief Information Commissioner is to be the same as that of the Chief Election Commissioner.

(2) The Information Commissioner is to be the same as that of an Election Commissioner.

## **STATE INFORMATION COMMISSIONS**

The Right to Information Act, 2005, mentions that every State Government is to constitute a body to be known as the Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under the RTI Act.

### **Appointment**

- The State Chief Information Commissioner and the State Information Commissioners are to be appointed by the Governor on the recommendation of a committee consisting of -

### **Composition**

- The State Chief Information Commissioner.
- The State Information Commissioners who should not be more than 10 number.
- Headquarter of State Information Commission is to be at such place in the State which the State Government may specify or the State Information Commission may with the previous approval of the State Government establish offices at other places in state

(1) The Chief Minister, who shall be the chairperson of the committee.

(2) The leader of Opposition in the Legislative Assembly.

(3) A Cabinet Minister to be nominated by the Chief Minister.

- The State Chief Information Commissioner is to supervise and manage the affairs of the State Information Commission and is to be assisted by the State Information Commissioners.

### **Qualification and Terms of office and Conditions of service**

- The State Chief Information Commissioner and the State Information Commissioners are to be persons of eminence in public life with wide knowledge and experience in Law, Science and Technology, Social Service, Management, Journalism, Mass Media or Administration and Governance.

- The State Chief Information Commissioner or a State Information Commissioner are not to be a member of Parliament or member of State Legislative Assembly of any State or UT of hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
- The State Chief Information Commissioner and Information Commissioners are to hold office for five years or upto 65 years of age.
- The State Chief Information Commissioner and State Information Commissioner are required to take oath before the Governor of the State.
- The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner is to be same as that of an Election Commissioner and of the State Information Commissioners same as that of the Chief Secretary to the State Government.
- The State Chief Information Commissioner or a State Information Commissioner may resign from his office by writing under his address to the Governor and can be removed from his office by the order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor has on inquiry, reported that the grounds are valid.

## **Powers and Functions of the Information Commissions**

- The Central Information Commission or State Information Commission are empowered to receive and inquire into a complaint from any person who could not get information from any public authority due to the reason of no appointment of PIO in that organisation.
- If the made request by any person for Information has been turned down by the public authority.
- If the information seeker could not get information within the time limit specified under RTI.
- If the demanded fee by the public authority for providing information is unreasonably high.
- If the information seeker thinks that he or she has been given incomplete, misleading or false information.
- In respect of any other matter relating to requesting or obtaining access to records under this Act.
- The Central Public Information Officer or the State Public Information Officer as the case may be is to be provided a reasonable opportunity of being heard before any penalty is imposed on him.
- Burden of proving shall be upon the Information Officers.
- No suit is to be laid against any person for anything done in good faith.
- The provision of this Act are to have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923.
- The Right to Information Act has been continuously used by the active and aware member of Civil Society to expose corrupt practices in the administration and misappropriation of funds sanctioned for the execution of public welfare schemes.
- Mrs. Aruna Roy, a social activist and winner of Magsaysay Award is actively associated with the task of popularising Right to Information Act among the common people of the country.

- Arvind Kejriwal, won the Magaseysay Award for popularising Right to Information Act among the masses.

## **DOMESTIC VIOLENCE ACT, 2005**

The Protection of Women from Domestic Violence Act, 2005 which is popularly known as Domestic Violence Act, 2005 was enacted by the Parliament on 13<sup>th</sup> September 2005 and came into effect on 26<sup>th</sup> October 2006. It is a comprehensive Act which is primarily meant to provide protection to the wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives.

### **DOMESTIC VIOLENCE ACT, 2005**

- The protection of women from Domestic Violence Act, 2005.
- Enacted by Parliament on 13<sup>th</sup> September, 2005.
- Come into effect on 26<sup>th</sup> October, 2006.
- It intends to provide protection to the wife or female live-in partner from violence at the hands of the husbands or male live-in partner or his relatives.
- It also extends its protection to women who are sisters, widows or mothers.
- Child abuse is also included in it.
- Harrassment by way of dowry demand is included under it as an offence.
- Act provides for the appointment of protection officers by the Government to help the victims.
- Puishment of one years maximum imprisonment and Twnety thousand rupees each or both to the offenders is mentioned
- The Domestic Violence Act, 2005 is to extend its protection to women who are sisters, widows or mothers.
- Domestic violence under the Domestic Violence Act 2005, includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economical.
- Harassment by way of unlawful dowry demands to the women or her relatives would also be covered under this act as an offence.

### **Main features of the Domestic Violence Act, 2005**

(1) Domestic Violence Act, 2005 widens the scope of the term women and also violence or abuse to them. The Act now covers women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguineous marriage or a relationship in the nature of marriage, or adoption in addition relation-ship with family members living together as a joint family are also included. Sisters, widows, mothers, single women or living with the abuser are entitled to get legal protection under this Act.

(2) The Definition of Domestic Violence has been modified under this Act and it includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic and further harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(3) Right to Secure Housing is one of the most important features of the Domestic Violence Act, 2005. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court.

(4) Under the Act, court can pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting

to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.

(5) Domestic Violence Act, 2005, provides for appointment of protection officers and NGOs to provide assistance to the woman for medical examination, legal aid and safe Shelter.

(6) Domestic Violence Act, 2005, provides for breach of protection order or interim protection order by the respondent as a cognisable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Non-compliance or discharge of duties by the protection officer is also sought to be made an offence under the Act with similar punishment.

(7) Domestic Violence Act, 2005 has covered the legal loophole in the Justice delivery system for women in India, presently, where a woman is subjected to cruelty by her husband or his relatives. It is an offence under Section 498A of the IPC. The civil law does not, however address this issue in its entirety. Therefore, it was necessary to enact a law, keeping in view the rights guaranteed under articles 14, 15 and 21 in the Constitution of India to provide for a remedy under the Civil Law, which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. This Act is an important step in that direction.

- Domestic Violence Act, 2005, has been hailed by a large section of society, including the Human right activists, feminists and other women organisations as an extremely progressive piece of legislation in the direction of providing equal socio-economic rights and empowerment to the women in the country.
- While there is a section which questions the effectiveness of the Act when there are already various penal laws for woman to seek remedy like, Sec. 498A (cruelty against women) 304/B (dowry death), 306 (abetment to suicide) of IPC and Sec. 125 of CrPC. Further, so far there are various instances of misuse of these Laws. So enacting another law would lead to more abuse of the Laws.
- The Government has passed the law, it now needs to put in place the mechanism of implementation. For this the government has to provide funding to encourage the registration of service providers who will need the protections of this new law.
- The Government will also have to initiate a wide-spread campaign for public awareness. It also needs to implement training programs to sensitise the police, media and judiciary to the dimensions, scope and functioning of this new law.

## Minority Educational Institutions

The status of Aligarh Muslim University, whether its a minority institute or not is historically a controversial issue, although in a recent decision. Supreme Court restored its minority character, and at present its a minority educational institute.

93<sup>rd</sup> Constitutional Amendment Act, 2006, provided for reservation to SCs, STs and OBCs in admission to the students belonging to these communities in unaided private educational institutions other than the Minority Educational Institutions established by virtue of Art 30(1) of the Constitution of India.

Minority Educational Institutions means those educational institutions which are established and administered by the Minority Communities for the purpose of their educational advancement and conserving, promoting their culture, language, religion and script, since the Constitution of India recognises only religious and linguistic minorities in India.

- On the basis of this constitutional provision various educational institutes were established by various groups belonging to different minority communities in different parts of the country.
- Minority Educational institutes include the Schools at Secondary and Senior Secondary level, Degree Colleges, professional colleges like Medical, Engineering and Management Colleges and Universities.
- Shiromani Gurudwara Prabandhak Committee runs various schools and colleges among the Sikhs. Christians

run various schools and colleges particularly in the State of Kerala and the reputed St. Stephens College of Delhi University is also a minority educational institute run by Christians.

- Exemption of reservation in the admission to the students belonging to SC, ST and OBC communities has arisen a long debated issue which divides the society, political class, intellectuals and legal fraternity into the supporters of exemption of Minority Educational Institutions from the provision of reservation to SCs, STs, OBCs and those who opposes this exemption to minority institutes.
- Those who argue exemption of Minority Educational Institution from reservation rely on the following points:

(1) The Constitution of India under Art. 30(1) in the Chapter of Fundamental Rights provided for the establishment and administration of Educational Institutions of their choice to the minority communities in India. Further, the minority educational institutions do not have to maintain reservation in employment or admission for SCs, STs and OBCs by virtue of the same Article, so asking for reservation in un-aided Minority Educational Institution to SCs, STs and OBCs would be violative of this fundamental right.

(2) The Supreme Court in many of its decisions upheld the right of minorities in the matter of management, control and admission policies and the autonomy of Minority Educational institutes provided they fulfill the criterion. The Supreme Court in St. Stephen's College vs. University of Delhi Case (1992), St. Xavier's College case (1974), TMA Pai Foundation vs. State of Karnataka (2002), Islamic Academy of Education vs. State of Karnataka (2003), and in the case of P.A. Inamdar vs. State of Maharashtra upheld it.

(3) Opponents of exemption of Minority Educational Institutions from providing reservation to SCs, STs and OBCs argue that combine education of all these students belonging to different castes, religion and linguistic cultural group would help to break various social barrier and to develop a composite all India Culture. But preserving and conserving distinct culture and language or religion is one of the ideals of the Constitution of India.

(4) Opponents of Exemption also argue that the quality of education would be compromised in such institutes because of autonomy given to the minority educational institutions in the matter of admission and selection of teachers, but this is not so, because, in the matter of admission besides 50% of total admission these institutes follow the procedure of CET. In the matter of teachers' appointment, the government stipulated norms are followed.

Following arguments are forwarded by those who oppose exemption of Minority Educational Institution from providing reservation to SCs, STs and OBCs communities students in the matter of admission.

(1) Denial of admission to the students belonging to SC, ST and OBC communities in the minority-run un-aided educational institutions would be against the principle of Social Justice, which is one of the Directive principles of state policy in the Constitution of India.

(2) It would be violative of Art-14 of the Constitution of India, which enunciates the principle of equality.

(3) Since large number of Medical, Engineering and Management Colleges are in private sector which have taken the status of Minority Educational Institution for the sake of their own advantages, denial of admission to SC, ST and OBC students in these colleges would deprive a large section of poor students of the country, opportunities in the matter of higher education.

(4) The Supreme Court and High Courts of various states in their decisions have maintained that the State in the case of an unaided minority educational institute can provide qualification for the teaching staff.

(5) Inclusion of SC, ST and OBC students in the minority educational institutes would help to dismantle various caste, religion and linguistic barrier and help to promote composite culture in India.

## CONSTITUTIONAL PROVISIONS OF MINORITY EDUCATIONAL INSTITUTIONS

The Constitution of India recognises religious and linguistic minorities in India. The constitution has given various protections and safeguards to the minorities under various provisions of the Constitution. Under Articles 29 and 30 in the Chapter of Fundamental Rights, people of minority communities are allowed to establish and administer educational institution for conserving their script, language or religion.

- Article 29(1) states that, ‘Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.’
- Article 30(1) states that, whether based on religion or language all minorities shall have the right to establish and administer educational institutions of their choice.
- Article 30(2) states that, the state shall not in granting aid to educational institutions discriminate against any educational institution on the grounds that it was under the management of minority, whether based on religion or language.

### Benefits available to Minority Institutions

- (1) Minority educational institutions do not have to maintain reservation in employment or admissions for SCs, STs and OBCs as required to be done by other educational institutions.
- (2) Autonomy in the Management of the Institute and control over the employees, further power to appoint teachers. These benefits are not allowed to non-Minority Institutes.
- (3) In matter of admission of students, minority educational institutions can have reservation of up to 50 per cent for students of their community.

## CHILD LABOUR IN INDIA AND PROGRAMMES FOR ITS ELIMINATION

The employment of a person below the age of fourteen years in any work is child labour in India, according to the constitution and other statutory provisions. Child labour is one of the major socio-economic problems in India.

- Child labour in India is prevalent in almost all sectors of Economy, Agriculture, Industries, Services and Household.
- Children particularly from the poor families in rural areas are employed primarily in agricultural activities, in town and cities in small manufacturing unit like, brass industry in Moradabad, Lock Industry in Aligarh and Glass Industry in Firozabad.
- In Metro, or Larger Industrial cities children are employed in large and hazardous Industrial Units by the employees because of their availability at low wages.
- Working in early age by these childrens not only put them on higher risk of diseases and dangers but it also deprives them of the opportunities of their over-all human development.
- Framers of the Constitution of India were aware of this problem that is why they inserted provisions in the constitution of India in this regard.
- The Constitution of India in the chapter of fundamental rights under Article 24, prohibits employment of children in factories.
- In the chapter of Directive principles of State policy of the constitution of India, in Article 39 It is stated that



state shall direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced

## CONSTITUTIONAL PROVISIONS AND PROGRAMMES ON CHILD LABOUR IN INDIA

- Art-24, Prohibition of Employment of Children in hazardous Industries.
- Art-21A, Right to Education to the children of 6-14 years age group was made fundamental right by 86<sup>th</sup> constitutional amendment.
- Child Labour (Prohibition and Regulation) Act, 1986.
- National Child Labour Policy, 1987.
- National Child Labour Projects, 1988.

by economic necessity to enter avocations unsuited to their age or strength.

- The Child Labour (Prohibition & Regulation) Act, 1986 was enacted by the government to curb the child labour. It contains the following provisions -

- (1) It prohibits employment of children in 13 occupations and 57 processes.
- (2) Under the Act, a Technical advisory committee is to be constituted to advice for inclusion of further occupations and processes.
- (3) The Act regulate the conditions of employments in all occupations and processes not prohibited under the Act.
- (4) Any person who employs any child in contravention of the provisions of the Act is liable for punishment with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than Rs. 10,000 or may extend to Rs. 20,000 or both.
- (5) The Central and State Governments enforce the provisions of the Act in their spheres.
  - The Government of India announced in August, 1987. The National Policy on Child Labour, which contains the action plan for tackling the problem of child labour and envisages a legislative action plan.
  - National Child Labour Project Scheme (NCLP) was started by the Government of India in 1988, in pursuance of the National Child Labour Policy of 1987.
  - In this scheme a sequential approach was adopted with focusing on rehabilitation of children working in hazardous occupations and processes in the first instance.
  - Under the scheme after a survey of child labour engaged in hazardous occupations and processes has been conducted, children are to be withdrawn from these occupations and processes and then put into special schools in order to enable them to be mainstreamed into formal education.
  - Xth Five Year Plan had adopted a strategy for elimination of child labour by linking the child labour elimination efforts with the scheme of Sarva Shiksha Abhiyan of the MHRD.
  - Indus project on the elimination of child labour is a jointly funded project by the Ministry of Labour the Government of India and the Department of Labour, USA.
  - Indus project is implemented in ten hazardous sectors in 21 districts across five states, Maharashtra, M.P., T.N., U.P. and Rajasthan.
  - 80,000 children are to be withdrawn and rehabilitated in Indus Project.



## **The Parliament (Prevention of Disqualification) Amendment Act, 2006**

The Parliament (Prevention of Disqualification) Amendment Act, 2006, was enacted to exempt 45 offices including the office of National Advisory Councils Chairperson which is being held by Mrs. Sonia Gandhi.

- It defines office of profit.
- Article 102 and 192 of Indian Constitution, contains the provisions for disqualification from being the member of Parliament and State Legislature on holding the office of profit, but does not define office of profit.
- Besides the post of National Advisory Councils, the Parliament (Prevention of Disqualification) Act 2006, exempted other posts from the purview of office of profit, these includes, Santineketan Development authority headed by Loka Sabha Speaker Somnath Chatterjee and now defunct bodies like UP Film Development Council headed by Mrs. Jaya Bachchan, UP Development Council headed by SP Leader Amar Singh and All India Council of Sports earlier headed by BJP Leader V.K. Malhotra with retrospective effect.
- MLA's of various state legislatures and UTs has also been holding posts in which many of posts has also been exempted.
- Prior to its enactment, President of India Dr. A.P.J. Abdul Kalam had sent the office of profit Bill, officially known as the Parliament (Prevention of Disqualification) Amendment Bill, 2006 to parliament for reconsideration particularly on propriety of the applicability of the Bill with retrospective effect. President stated that the Bill's focus should be on evolving a criterion which would be just, fair and reasonable and applied across all states and union territories.
- The Union Cabinet had rejected President APJ Abdul Kalam call for reconsideration of office of the profit Bill and placed it in unchanged form before both Houses of Parliament which passed it and the President of India later on assented to it.

## **DOCTRINE OF SEVERABILITY**

The doctrine of severability means severing part of a statute which is inconsistent with any of the constitutional provisions and particularly the provisions contained under the chapter of fundamental rights in the Indian Constitution. The other part of the severed statute is to remain valid.

- The Supreme Court of India has considered the doctrine of severability in various cases such as the A.K. Gopalan's Case.
  - The apex court of India, Supreme Court has summarised the rules relating to doctrine of severability as follows:
- (1) The intention of the legislature Is a factor whether the legislature enacted that law, knowing fully well that the rest of the statute is invalid - to determine whether valid parts are separable or not.
  - (2) If valid and invalid are so inextricably mixed up, the whole law is declared valid.
  - (3) If valid and invalid form part of a single scheme, the whole law is declared invalid.
  - (4) After omitting, the invalid part, if what remain is very thin and what emerges out is something different, then the entire law is declared invalid.

## **DOCTRINE OF ECLIPSE**

The Doctrine of Eclipse in constitutional law stands for over-shadowing any provision of a statute by the fundamental rights contained in Part-III of the Indian Constitution.

- In 1955, Supreme Court of India in the case of B. Narain vs. the State of MP has introduced the Doctrine of Eclipse and stated - that if any law is not consistent with any provision of the fundamental right then such law would be overshadowed by the fundamental right and it will remain dormant but it will not be dead altogether.
- This dormant statute whole or any of its part will become operative as a valid law when the shadow cast by the fundamental right is removed by a subsequent amendment.
- The Constitution of India in Article 13(1) states that all laws enforced in India immediately before the commencement of the constitution, in so far as they are inconsistent with any or all fundamental rights shall be valid to the extent of such inconsistency.
- The Supreme Court of India in its earlier decisions had applied the doctrine of eclipse only to pre-constitutional laws but later on in the case of the state of Gujarat vs. Shri Ambika Mills (1974). It stated that the doctrine can be extended to the post constitutional laws as well.

## **RESERVATION IN PRIVATE SECTOR**

The reservation in private sector is a popular debate these days in India. On the long raised demand for reservation in private sector to SCs, STs and OBCs the United progressive alliance government in accordance to its commitment in common minimum programme has set up a committee on this issue which suggested in its report reservation to SCs, STs, OBCs and other economical backward communities in private sector.

- The Government of Uttar Pradesh on August 10, 2007 has launched the voluntary reservation arrangement in private sector in Uttar Pradesh. Under this scheme any industrial project that seeks land or state assistance should make a voluntary commitment to provide reservation to the people belong to SCs, STs, OBCs and other economically backward classes.
- The Government of Maharashtra has passed a bill recently to pave the way for reservation in private sector for Dalits and Backwards, this will be applicable to those businesses which are helped or contributed by the government.
- Besides the governments steps there are various business groups like the Tatas and Videocon which are making voluntary efforts in reserving certain percentage of intakes in their organisation for the persons belonging to SCs, STs, OBCs, and other economically backward communities.

On the issue of reservation in private sector there is a group which is in favour and another is against it on the basis of their respective arguments as follows-

### **Favour**

(1) Since the basic objective of providing reservation to SCs, STs, OBCs, and other economically backward communities is to uplift socially and economically backward classes of citizens, this has been partially achieved as far as jobs in the government and public sector are concerned but due to disinvestment process and globalization jobs in the public sector for the SCs, STs, OBCs and other are receding that is why its demanded in private sector.

(2) Article 14 of the Indian Constitution provides for equality and equal protection law to all citizens as their fundamental right. So in order to make the right to equality a reality it is imperative that special efforts should be done for disadvantaged groups in society.

(3) Article 46 of part IV of the constitution under the heading of Directive Principles of state policy states that the state shall promote with special care the educational and economic interests of the weaker sections of society particularly Scheduled Castes and Scheduled Tribes.

(4) The rate of employment generation is more in private sector so it can provide employment to a large number of people.

(5) Since private sector is reaping the benefits and concession from the governments so they should also owe some social and constitutional responsibilities.

## Against

(1) Private sector works on the principle of maximisation of profits. Reservation may stand in the way of administrative autonomy.

(2) Since freedom of trade and commerce is a guaranteed constitutional right which can not be taken away or encroached into.

(3) In the era of globalisation not only quantity but also quality is equally important. Reservation may have an adverse impact upon the performance of the firms because of strict adherence to quota may delay recruitments. Moreover the right candidate for a particular job may not be available at a given time. This will eradicate our players in a globally competitive market.

## Human Rights

Human rights refer to those basic rights and freedoms to which all humans are entitled, right to life and liberty, freedom of expression equality before law etc are some of these rights.

- The Magna Carta is an English charter of 1215 is one of the world's first documents to contain human rights.
- In the modern history the Geneva conventions which came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee on the Red Cross is the first attempt to recognise and safeguard the human rights of the International Community.
- The United Nations organisation was established on 24 October 1945. Immediately after its establishment

## HUMAN RIGHTS

- 1215 - Magna Carta, world first document to contain Human Rights.
  - 1864-1949 - Geneva Convention on Human Rights.
  - 1948 - Universal Declaration of Human Rights.
  - 1948 - United Nations Commission on Human Rights was set up.
  - 2005 - United Nations Human Rights Commission was founded.
- 
- Universal Declaration of Human Rights (UDHR) is a non-binding declaration adopted by the United Nations General Assembly in 1948. UDHR urges member nations to promote a number of human, civil, economic and social rights.
  - The Commission on Human Rights had drafted the International Bill of Human Rights and it was adopted by the United Nations General Assembly on 10 December 1948 as the Universal Declaration of Human Rights.
  - 10 December is globally celebrated as Human Rights Day.

## UNHRC

The United Nations Human Rights Council was founded in 2005. It was founded to replace the United Nations Commission on Human Rights.

- UNHRC is a subsidiary body of the United Nations General Assembly and reports directly to it.
- UNHRC has fifty-three members out of total members of the United Nations General Assembly. Its members are elected by simple majority in a secret ballot of the United Nations General Assembly. Its Members are elected for the term of six years.
- UNHRC has its headquarter at Geneva.
- UNHRC can appoint independent experts to investigate alleged human rights abuses and to provide the council reports.
- UNHRC may request that the Security Council take action when human right violations occurs, this action may be direct action, or may involve sanctions and Security Council may also refer cases to the International Criminal Court (ICC).
- Besides UNHRC. Amnesty International and Red Cross Society also works for the protection and pro-motion of human rights internationally.

## NATIONAL HUMAN RIGHTS COMMISSION

- The National Human Rights Commission is a statutory body in India which came into existence through the Protection of Human Rights Act, 1993 and came into force in 1994.
- The protection of Human Rights Act, 1993 provides for setting up the National Human Rights Commission at the centre as well as one commission each at the state level.

## COMPOSITION OF NHRC

Chairperson - Hon'ble Justice Shri S.Rajendra Babu

Members - Hon'ble Dr. Justice Shivraj V. Patil Hon'ble Justice Y. Bhaskar Rao, Shri. R.S.Kalha, Shri. P.C. Sharma

Ex-officio-Members - Chairman, National Minorities Commission Chairman, National Commission for Women, Chairman, National Commission for SCs & STs.

- The National Human Rights Commission is designed to protect human rights, defined as rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenant and which are enforceable by the Courts in India.

## Composition

- National Human Rights Commission consists of a chairman and four members, all of them being full-time members.
- Apart from there full-time members, the commission also has its deemed members as the chairpersons of the National Commission for minorities, the National Commission for SCs and STs and the National Commission for women.
- The multi-membership is intended to reinforce the independence and impartiality of the commission of the five members including the chairperson, three are to possess high-level judicial background and the remaining must have knowledge of or practical experience in matters relating to Human Rights.
- The Chairman of NHRC must be a former Chief Justice of India.

## Functioning of NHRC

- NHRC can intervene in any legal proceedings involving an allegation of violation of Human Rights.
- It can visit, with the prior approval of the State Government, any jail to study the living conditions of the inmates and make recommendations.
- It can review the safeguards provided by or under the constitution or any law for the protection of Human Rights and recommend measures for their effective implementation.
- The Commission also reviews the factors including acts of terrorism, that inhibit the enjoyment of Human Rights and recommends remedial measures.
- NHRC also undertakes and promotes research in the field of Human Rights.
- It encourages the NGOs working in the field of Human Rights.

## Autonomy of the NHRC

- Appointment of its members for fixed tenure.
- The Chairperson and the members of the commission are appointed by the president on the basis of recommendations of a committee comprising the Prime Minister as the Chairperson, the Speaker of the Lok Sabha, the Home Minister, the leader of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairperson of the Rajya Sabha as members.

## Writ Jurisdiction of Supreme Court and High Courts

The Constitution of India has conferred on Supreme Court and High Courts power to issue writs.

- Writ Jurisdiction of Supreme Court and High Courts extends not only to inferior courts and tribunals but also to the state of any authority or person endowed with state authority.
- There is difference between the Writ Jurisdiction of Supreme Court and High Courts as follows:
  - (1) The Writ Jurisdiction of Supreme Court is mentioned under Article 32 of the Indian Constitution, while the Writ Jurisdiction of High Courts is mentioned under Article 226 of the Indian Constitution.
  - (2) The High Courts have wider powers as compared to Supreme Court in issuing writs.
  - (3) The Supreme Court can issue writ only in case of violation of any of the fundamental rights contained in Part-III of the constitution, while the High Courts can issue writs not only in case of violation of fundamental rights but also in case of violation of any legal rights of the citizens provided that a writ is a proper remedy in such cases, according to well-established principles.
  - (4) Article 32 of the Constitution of India imposes on the Supreme Court a duty to issue the writs, whereas no such duty is imposed on the High Courts by Art-226.
  - (5) The jurisdiction of the Supreme Court extends all over the country, whereas that of the High Courts only to the territorial confines of the particular state and the Union Territory to which its jurisdiction extends.

## RIGHT TO STRIKE

The Supreme Court of India in its judgement in the case of T.K. Rangarajan Vs. Government of Tamil Nadu and Others (the case of the dismissal of over 170,000 striking Tamil Nadu Government employees and teachers) ruled on August 7, 2003 that the government employees do not have either a Fundamental or Statutory or equitable, moral right to strike, whatever the cause, just or unjust.

- The Division Bench of Supreme Court comprises of Justice M.B. Shah and Justice A.R. Lakshmanan ob-

served that apart from statutory rights. Government employees cannot claim that they can take society at ransom by going on strike.

- The Supreme Court in 1961 in the case of Kameshwar Prasad Vs. State of Bihar had held that even a very liberal interpretation of Article 19(1)(c) of the Indian Constitution could not lead to the conclusion that the trade unions have a guaranteed Fundamental Right to strike.
- In stating that the Government employees have no legal, moral or equitable right to strike the Court has evolved a new industrial jurisprudence unthought of earlier.
- Though earlier decisions of the courts have rejected the right to strike as a Fundamental Right but not as a legal, moral or equitable right.
- The question of strike not being a statutory right or legal right has never been considered in the court.
- The decision of Rangarajan Case has ignored the statutory provisions in the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926, and an equal number of case laws laid down by larger benches that have recognised the right to strike.
- It also fails to consider International Covenants that pave the way for this right as a basic tenet of international labour standards.
- In Kameshwar Prasad's Case, the apex court had settled that the right to strike is not a Fundamental Right. But time and again the court has also settled that the right to strike is a legal right, one that is recognised by most democratic countries of the world.
- The Supreme Court evidently carried away by the fact that nearly two lakh government employees went on strike in the instant case and the Government machinery came to a standstill, also 90% of the state revenue of state is spent on salaries of the government servants.
- It is true that the Government employees everywhere are paid better salaries and enjoy more privileges and amenities than other employees. The public sympathy is generally against the Government employees who go on strike. But that is no justification for the Supreme Court to say that the Government employees have no moral justification to go on strike in every case.

# INDIAN POLITY

## PRESIDENT

Pratibha Devisingh Patil was declared elected the 12<sup>th</sup> President on July 21, 2008. On July 25, 2008 she became the first woman to head the Indian Republic. Ms. Patil defeated her lone opponent, Vice-President Bhairon Singh Shekhawat, by an impressive margin of 3,06,810 in an electoral college with votes valued at 10.98 lakh, in what was described as the most keenly contested poll.

The 73-year-old First Citizen once again made history on January 26, 2008 when she took salute at the main Republic Day parade on the 59<sup>th</sup> Republic Day of India, becoming the first woman Head of the State in the country to do so.

The Constitution of India provides for the office of the President of India. Article 52 of the Indian Constitution says that there shall be President of India. The President is the Head of the state. All executive power of the Union is vested on him and these powers are to be exercised by the President either directly or through officers subordinate to him in accordance with the constitution.

### Election of the President

The President of India is elected by an electoral college. In India the electoral college consists of the elected members of the two Houses of Parliament and Legislative Assemblies of the States (article 54). In this context, the term (state) includes the national capital territory of Delhi and the Union territory of Pondicherry also. Article 55 of the Constitution provides that, as far as practicable, there shall be uniformity in the scale of representation of the different states at the election of the President. The President's election is held in accordance with a system of proportional representation by means of a single transferable vote and the voting takes place by secret ballot.

According to article 58 of the Constitution, a person to be eligible for the election of the President should fulfill the following conditions -

- The person willing for the President's election should be a Indian citizen.
- He should have completed the age of thirty-five (35) years.
- He should be qualified for election as a member of the House of the People i.e. the Lok Sabha.
- He should not hold any office of profit under the Union Government or any state government or any local or other authority.

In addition to the above mentioned the article 59 of the Constitution lays down a few more conditions of the Presidents office -

- The President should not be a member of any house of Union or State legislature.
- He should not hold any office of profit. He is entitled to the free use of his official residences; such emoluments, allowances and privileges are determined by Parliament by law.
- During the President's term of office his emoluments and allowances shall not be diminished.

### Presidents' Term of Office

The oath of office to the President is administered by the Chief Justice of India and in his absence, by the senior most judge of the Supreme Court available. Article 62(1) says that an election should be held to fill the vacancy caused by the expiration of the term of office of President before the expiration of that term.

- The President shall hold office for a term of five years from the date on which he enters upon his office.



- President can resign at any time by addressing the resignation letter to the Vice-President of India.

## Presidents Impeachment

When a vacancy occurs in the Presidents office due to his death, resignation or removal or otherwise, the Vice-President acts as the President until a new President is elected. An election to fill such vacancy should be held within six months from the date of occurrence of such vacancy. A person who holds, or who has hold the office of a President is eligible for re-election to that office.

Article 61 lays down that the President may be removed by impeachment from his office on grounds of violation of the Constitution.

- The impeachment charges may be initiated by either houses of Parliament and these charges should be signed by 1/4<sup>th</sup> members of the house which framed the charges.
- Regarding the charges a 14 days' notice should be given.
- The resolution of the charges for impeachment of the President should be passed by a majority of not less than 2/3<sup>rd</sup> of the total membership of the House.
- Afterwards the charges are investigated in the other House of the Parliament. If the resolution is passed in this House also with a majority of 2/3<sup>rd</sup> of its total membership, then the President stands removed from his office from the date on which the bill is so passed.

## The Powers and Functions of the President

The powers enjoyed and by the President and the functions performed by him are divided into the following heads -

**Executive Powers of the President:** Article 53 pro-vides the executive powers of the President. All executive powers of the Union are vested in him. These powers are exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Supreme Command of the Defence Force is vested on the President and the exercises it in accordance with law.

- Executive powers of the President must be exercised in accordance with the Constitution. In particular it includes the provisions of article 14 i.e., equality before law.
- Without prior legislative support also, the President can exercise the executive powers if it does not violate the Constitution or the law.
- Executive power is the residue of functions of Government, which are not legislative or judicial.
- All the executive actions of the Government of India are formally taken in his name.
- The President can make rules specifying the manner in which the orders and the other instruments which are made and executed in his name shall be authenticated.
- President appoints the Prime Minister and other ministers; and they hold office during his pleasure. He appoints the Attorney General of India, he too holds office during Presidents pleasure.
- The President also appoints the Comptroller and Auditor General of India, the Chief Election Commissioner and other Election Commissioners, the Chairman and Members of the UPSC, the Governors of the states, the Chairman and the members of the Finance Commissions etc.
- The President can appoint a commission to investigate into the conditions of SCs, STs and OBCs.
- He directly administers the union territories through administrators appointed by him.

## The Legislative Powers

The President is an integral part of the Parliament. He enjoys the following legislative powers -

- The President can summon or prorogue the Parliament and dissolve the Lok Sabha. He can address the Parliament at the commencement of the first session after each general election and the first session of each year. He can also summon a joint sitting of both the houses of Parliament which is presided over by the Speaker of the Lok Sabha.
- The President can appoint any member of the Lok Sabha to preside over its proceedings when both Speaker's and Deputy Speaker's office fall vacant. He also can appoint any member of the Rajya Sabha to preside over its proceeding when both the Chairman's and Deputy Chairman's office fall vacant.
- He nominates 12 members of the Rajya Sabha from amongst the persons having special knowledge or practical experience in respect of literature, science, art and social service. He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- For introducing bills in the parliament regarding a bill involving expenditure from Consolidated Fund of India or a bill for alternation of boundaries of states or creation of new state, President's prior recommendation or permission is needed.
- When a bill is sent to the Parliament after it has been passed by the parliament, the President can give his assent to the bill or withhold his assent to the bill or return the bill (if it is not a Money Bill or a Constitutional Amendment Bill) for reconsideration of the Parliament.
- When a bill is passed by a State legislature is re-served by the Governor for consideration of the President, the President can give his assent to the bill, or withhold his assent to the bill or direct the Governor to return the bill (if it is not a Money bill) for reconsideration of the State Legislature.
- According to article 123, President can promulgate ordinances when both the Houses of the Parliament are not in session. These ordinances must be approved by the Parliament within the six weeks of its reassembly. The ordinance can be effective for a maximum period of six months and six weeks.

## Emergency Powers of the President

To deal with the emergency the President is given some extraordinary powers by the Constitution of India.

Under article 352, the President may proclaim a state of emergency in the whole or part of India if he realises/ feels that a grave situation has arisen in which the security of India on part of its territory might get threatened by war or external aggression or rebellion. The President deals with the following three types of emergencies –

- (1) **National Emergency:** According to article 352, the President proclaims National Emergency which must be approved by the both Houses of the Parliament within one month, and after approval the emergency continues for six months. During the period of National Emergency, the President acquires certain extraordinary powers. He can give directions to any state with regard to the manner in which its executive power is to be exercised. He can modify the pattern of distribution of financial resources between the Union and the states. The President can suspend the Fundamental Rights of citizen except article 20 and article 21.
- (2) **President's Rule:** President's Rule is also known as a state emergency or a constitutional emergency. On the ground of article 356 i.e. failure of constitutional machinery in the states and article 365 i.e., failure to comply with or to give effect to directions given by the Union, the President proclaims President's Rule. The proclamation should be approved within two months by both Houses of the Parliament, then it remains in force for six months. If National Emergency is in force in the entire country or in the whole or any part of the concerned state and the Election Commission certified that due to difficulties the general elections to the concerned State Legislative Assembly can not be held then President's Rule can be extended beyond the first year of implementation; it can be extended six months at a time. During President's Rule, the State Governor on behalf of the President, carries on the State Administration with the help of the

advisors appointed by the President or the Chief Secretary of the State. However the President cannot interfere with the jurisdiction of the concerned State High Court.

- (3) **Financial Emergency:** The President proclaims Financial Emergency under article 360 if he is satisfied that the financial stability or credit of India or any part thereof is threatened. This proclamation must be approved within two months by the Parliament. During the period of Financial Emergency the President can give directions to the states to observe the canons of financial propriety. He can issue directions to reduce the salaries and allowances of all or any class of persons serving under the state, under the Union including the judges of the Supreme Court and High Court. All money bills and financial bills passed by the state legislative can be reserved for President's consideration during the period of Financial Emergency. However it should be mentioned here that so far this type of Emergency has not been declared.

## Financial Powers

- Only with the prior recommendation, the Money bill can be introduced in the Parliament. Demand for a grant can not be made without his recommendation.
- The President lays the Annual Financial Statement i.e. the Union budget before the Parliament.
- To meet the unforeseen expenditure, the President can make advances out of the Contingency Fund of India.
- The President continues a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.

## Diplomatic powers

The diplomatic powers of the President empowers to him in the way that the international treaties and agreements are negotiated and concluded on behalf of the President. They are subject to approval of the parliament.

- He represents India in International forms and affairs and sends and receives diplomats like ambassadors. High commissioners etc.

## Military powers

- The President is the supreme commander of the defence forces of India, he can declare war and conclude peace which are subject of Parliaments' approval.
- The President appoints the chiefs of Army, Navy and Air Force.

## Judicial powers

- The President appoints the Chief Justice and the judges of Supreme Court and High Courts.
- He can seek advice from the Supreme Court on any question of law or fact. But the advice given by the Supreme Court is not binding on the President.
- In certain cases like in cases where the punishment or sentence is by a court martial, where the punishment or sentence is for an offence against any law relating to matter to which the executive power of the Union extends and where the sentence is a sentence of death, the President can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person.

## THE VICE-PRESIDENT OF INDIA

Mohammad Hamid Ansari, the common candidate of the United Progressive Alliance and the Left parties, was declared elected on August 10, 2008 as the country's new Vice-President. In a triangular contest, Mr. Ansari scored a

comfortable victory defeating National Democratic Alliance (NDA) nominee, Najma Heptulla, and the United National Progressive Alliance (UNPA) candidate, Rasheed Masood securing 455 out of the 762 votes polled.

Mr. Ansari, a former diplomat, became the 13<sup>th</sup> Vice-President of India. He is also the Chairman of the Rajya Sabha.

Article 63 of the Indian Constitution says that there should be a Vice-President of India. The Vice-President shall be the ex-officio Chairman of Rajya Sabha (article 64). However as the Vice-President as such no functions have been assigned to him in the Constitution. Vice-President generally takes part in several ceremonial functions like meeting ambassadors, visiting foreign dignitaries etc. in practice. The Vice-President is the Chairman of the Rajya Sabha, but he is not a member of Rajya Sabha. So, he does not have any right to vote.

- Article 65 lays down that in the event of a vacancy in the office of President by reason of his death, resignation, removal or otherwise, the Vice-President acts as the President. In case the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President discharges his functions. However while discharging the functions of President, the Vice-President does not perform the duties of the office of the Chairman of Rajya Sabha (article 64). During the period of discharging Presidents functions by the Vice-President, he is entitled for the salaries, emoluments, allowances and privileges of the office of the President of India.
- Being the Vice-President of India, he is not entitled for any salary, but is entitled to the salary and allowances payable to the Chairman of the Council of States.

## ELECTION OF VICE-PRESIDENT

The Vice-President is elected by an electoral college consisting of all members of the Lok Sabha and Rajya Sabha (including nominated ones), through proportional representation of means of a single transferable vote (article 66). This is intended to ensure that he enjoys the confidence of both the houses of Parliament.

- The eligibility conditions for the election of Vice-President is same as the President except that the Vice-President must be qualified for election as a member of the Rajya Sabha (article 66).
- The election to the vacancy of the office of the Vice-President occurring due to death, resignation or removal is held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy is entitled to hold office for the full term of five years from the date on which he enters upon his office. However generally the election to the vacancy of the office of the Vice-President is completed before the expiry of his term. Regarding vacancy there is no such mandatory provision to hold election within the six months like in the case of the President.
- The Parliament has the power to regulate matters relating to the election of the Vice-President; however all the doubts and disputes arising out of or in connection with the election of the Vice-President, are decided by the Supreme Court whose decision is the final decision.

## Vice-President's removal

- The Vice-President can be removed from his office by a resolution of the Council of States (the Rajya Sabha) passed by a majority of all the then members of the Council of States and agreed to by the House of People (the Lok Sabha). Regarding Vice-Presidents' removal there is no formal impeachment.
- Removal of the Vice-President of India requires effective majority for passage of such a resolution to this effect [article 67(b)]. The effective majority is determined by the total strength of the House minus the number of vacancies.
- The Vice-President may resign his office by writing under his hand.

## **THE PRIME MINISTER**

In the scheme of parliamentary system of government provided by the Constitution, President is the nominal executive authority (dejure executive) and Prime Minister is the real executive authority (Defacto executive). It means the President is the head of the state while Prime Minister is the head of the government. The Prime Minister is the Political head of the Services, he is the leader of the ruling party. He is the ex-officio Chairman of the Planning Commission, National Development Council, National Integration Council and Inter-state Council.

## **POWERS AND FUNCTIONS OF THE PRIME MINISTER**

### **In Relation to the Council of Ministers**

- The Prime Minister recommends persons who can be appointed as ministers by the President.
- He can allocate and also can change the portfolios among the ministers according to his will.
- If a difference in opinion arises between the Prime Minister and any of his subordinate ministers, he can ask the minister to resign or can advise President to dismiss him.
- Prime Minister presides over the meeting of the Council of Ministers and he also influences the decision of the meeting.
- He guides, directs, controls and coordinates the activities of all the ministers.
- By resigning from office, the Prime Minister can bring about the collapse of the council of ministers.

### **In Relation to the President**

- Prime Minister is the principal channel of communication between the President and the council of minister. He communicates with the President regarding all decisions of the council of ministers relating to administration of the affairs of the Union and proposals for legislation.
- He furnishes such information relating to administration of the affairs of the Union and proposals for legislation as the President may call for and if the President so requires, Prime Minister submits for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- Regarding the appointment of important officials like Attorney General of India, Comptroller and Auditor General of India, Chairman and members of the UPSC, Election Commissioners, Chairman and members of the Finance Commission etc. the Prime Minister advises the President.

### **In Relation to Parliament**

The Prime Minister is the leader of the lower House i.e. the Lok Sabha. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.

He can recommend dissolution of the Lok Sabha to President at any time.

He announces government policies on the floor of the house.

## **ATTORNEY GENERAL OF INDIA**

The current Attorney General is Milon Banerjee, who was appointed by the Congress-led government after the 2004 General Elections.

The Centre extended his tenure by two years till 2009 with effect from June 5, 2007. His three-year tenure from June 5, 2004 was to expire on June 4, 2007. Mr. Banerjee (77) was enrolled as an advocate in 1955 and designated senior advocate in May 1972. Besides regular appearances in Supreme Court and other courts in India, he appeared in several

international arbitrations as well.

He was appointed second Additional Solicitor General of India in August 1979 and thereafter as the first ASG. He was Solicitor General from 1986 to 1989 and Attorney General from November 1992 to July 1996.

Apart from the present Attorney General, the following have served as Attorney Generals since 1950: M.C. Setalvad, C.K. Daphtary, Niren De, S.V. Gupte, L.N. Sinha, K. Parasaran, Soli Sorabjee, G. Ramaswamy and Ashok Desai.

According to article 76, the President appoints a person qualified to be a Supreme Court judge as the Attorney General of India. The Attorney General is the first legal officer of India. He functions as the Chief Law Officer of the Government.

- The Attorney General of India advises the Government of India on any legal matter. He performs any legal duties assigned to him by the President of India. He discharges any functions conferred to him by the Constitution or the President.
- In the performance of his duties, the Attorney General of India has right of audience in all courts in the territory of India.
- The Attorney General represents the Union and the States before the Courts but is also allowed to take up private practice provided, the other party is not the State.
- He is not a member of either House of the Parliament. Still he enjoys the right to attend and speak in the parliamentary deliberations and meetings (of both the Lok Sabha and the Rajya Sabha), without a right to vote.
- He is not a full time officer of the House, nor is he a member of a Cabinet, he is not barred from private practice except that he can not advise or hold briefs against the Government of India.
- He should not defend accused persons for criminal prosecution without the permissions of the Government of India.
- He is entitled to all the privileges and immunities as a Member of the Parliament.
- The Attorney General of India is assisted by two Solicitor General and four assistant Solicitor General.
- He is prohibited to be appointed as a Director in any company.
- The Attorney General is not paid salary but a retainer that is determined by the President. The retainer of the Attorney General of India is equal to the salary of a judge of the Supreme Court.
- As a convention, after the change of the Government, the Attorney General resigns and the new Government appoints a new Attorney General of its own choice.
- The Attorney General holds office during the pleasure of the President and receives remuneration as determined by the President.

## **Comptroller and Auditor General of India**

Vinod Rai took over as the Comptroller and Auditor-General of India on January 7, 2008 replacing V. N. Kaul. He is a 1972 batch IAS officer, and has been appointed for a term of six years or till he attains the age of 65, whichever is earlier.

Article 148 of the Indian Constitution provides for an Independent office of the Comptroller and Auditor General of India (CAG). He is the head of the Indian Audit and Account Department. At both Central and State level the Comptroller and Auditor General of India controls the entire financial system of the country.



## Appointment of CAG

The Comptroller and Auditor General of India is appointed by the President of India for a full term of 6 years or 65 years of age whichever comes earlier. By writing a resignation letter to the President, the Comptroller and Auditor General can resign at any time. The President can remove him from his post on the same ground and in the same manner as a judge of the Supreme Court of India. He can be removed by the President on the basis of a resolution passed in the both Houses of the Parliament with special majority, either on the ground of proved misbehaviour or incapacity.

## Duties and Powers

The Parliament enacted the CAG's Act, 1971 (duties, powers and conditions of service). This Act was amended in 1976 to separate accounts from audit in the Central Government.

- CAG audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having Legislative Assembly.
- He audits all expenditure from the Contingency Fund of India and the Public Account of India in both Central and State level.
- He audits the receipts and expenditure of all bodies and authorities substantially financed from the Central or State revenues, Government companies and other corporations and bodies when so required by related laws.
- He advises the President with regard to the prescription of the form in which the accounts of the centre and the states shall be kept.
- He submits his audit reports relating to the accounts of the Centre to President and relating to the accounts of a state to the Governor.
- He compiles and maintains the accounts of the state governments as the separation of Central Governments' accounts took place.
- He audits all transactions of the Central and State governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He audits the accounts of any other authority also on a request of President or Governor.
- CAG acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament

## Some immunities enjoyed by the CAG

- CAG is appointed by the President, but he does not hold office in accordance with Presidents' pleasure. However the President can remove him in accordance with the procedure mentioned in the Parliament.
- Once CAG ceases to hold his office, he becomes ineligible for further office. - The Parliament determines his salary and other service conditions.
- The administrative expense of the office of CAG is charged upon the Consolidated Fund of India.
- No minister can be called upon to take any responsibility for any action done by CAG. The Comptroller and Auditor General of India is not represented by any minister in the Parliament.

## THE GOVERNOR

Banwari Lai Joshi was appointed the Governor of Uttarakhand on October 29, 2007.

Rameshwar Thakur was appointed the Governor of Karnataka on August 21, 2007.

Murlidhar Chandrakant Bhahdare was appointed as Governor of Orissa on August 19, 2007.



On August 19, 2007 Sudarshan Agrawal was appointed the Governor of Andhra Pradesh.

On August 19, 2007 Shilendra Kumar Singh was appointed the Governor of Andhra Pradesh.

On August 19, 2007 Narayan Dutt Tiwari was appointed the Governor of Andhra Pradesh.

On August 19, 2007 Kateekal Sankaranarayanan was appointed the Governor of Arunachal Pradesh.

Ekkadu Srinivasan Lakshmi Narasimhan was appointed the Governor of Chhattisgarh on January 25, 2007.

Article 153 says that there should be a Governor for each state. According to the Constitution (Seventh Amendment) Act of 1956, the same person may some times be appointed as Governor of two or more states, when he discharges the responsibilities of more than one state, he acts on the advice of the Council of Ministers of the respective states. President appoints the Governor and he holds office accordance with the Presidents' pleasure. The Governor's pre-scribed office term is five years but he may be any time removed by the President. However a Governor is the chief executive head of a state unlike the President who is a nominal executive head (or titular or constitutional head). The office of the Governor has dual role i.e., the Governor acts as an agent of the Central Government also in addition to that of the state.

## The Conditions for the appointment of the Governor and his office

The Constitution lays down the following conditions for Governor's office -

- According to article 157, the person opting for the Governorship should be a citizen of India and should have completed 35 years of age.
- The Governor can not be a member of either House of the Parliament or any of the State Legislatures.
- The Governor can not hold any office of profit.
- The Parliament determines the emoluments and allowances payable to him and also his free official residence. These emoluments and allowances should not be diminished during his term of office.
- The Chief Justice of the concerned High Court administers the oath of office to the Governor of that State. In the absence of the Chief Justice of the High Court, the oath is administered by the available senior most Judge of the concerned High Court.
- The Governor can be transferred from one state to another by the President. He can "resign any time by addressing his resignation to the President. The Legislature of a State does not have any role in removing the Governor from his post.
- In case, the same person is appointed as the Governor of two or more states, the President of India determines the emoluments and allowances payable to him in a proportion among the States concerned.

## The Constitutional Position of a Governor

As in the centre, the Constitution of India provides for a parliamentary form of government in the states also. As the President in the central level, the Governor in the State level exercises his powers and functions with the aid and advice of the council of ministers headed by the Chief Minister. In other words the Governor is a nominal executive, the real executive constitutes the council of ministers headed by the Chief Minister in a state. However the Governor can act in his wisdom and discretion in certain cases. They are mentioned below –

- The Governor can appoint a new Chief Minister in a situation where no single party or leader commands majority support. He can dissolve the Assembly on the advice of a Chief Minister who has lost majority support.
- He can dismiss a Ministry where the Ministry refuses to resign even after losing majority support in the

- House or after being defeated on a non-confidence motion.
- The Governor can act in his discretion in the case of reservation of a Bill for the consideration of the President.
- He can give or withhold assent to Bills, return a Bill for reconsideration of the House concerned or both the Houses reserving it for the consideration of the President. He advises the President on the issue of the failure of the constitutional machinery; and recommends for the imposition of the President's rule in the State concerned. He can use his discretion while exercising the functions as the administrator of an adjoining union territory (in case of additional charge).
- He seeks information from the Chief Minister with regard to the administrative and legislative matters of the state.

Some of the Governors may have to discharge certain special responsibilities also under the articles 371 to 371 I. In this regard, the Governor though has to consult the Council of Ministers led by the Chief Minister, the Governor acts in his individual judgement or discretion. These special cases are mentioned as follows –

- Maharashtra - Establishment of separate development boards for Vidarbha and Marathwada.
- Gujarat - Establishment of separate development boards for Saurashtra and Kutch.
- Nagaland - With respect to law and order in the State for so long as the internal disturbance in the Naga Hills Tuensang Area continues.
- Assam - With respect to the administration of the tribal areas.
- Manipur - With respect to the administration of the Hill areas in the state.
- Sikkim - For peace and for ensuring social and economic advancement of the different sections of the population.
- Arunachal Pradesh - Regarding the law and order in the state.

## The Powers and Functions of the Governor

The Governor's powers and functions can be studied under the following heads –

- (1) Executive Powers
- (2) Legislative Powers
- (3) Financial Powers
- (4) Judicial Powers under Article 356? Ans. Kerala.

### Executive Powers:

The executive power of the state is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (art 154).

- All executive actions of the government of a state are formally taken in the government's name. He can make rules specifying the manner in which the orders and other instruments made and executed in his name are authentic.
- He appoints the Chief Minister, the other subordinate ministers, the Advocate General of a state and they hold office during the Governor's office.
- The Governor also appoints the State Election Commission and the Chairman and members of the State Public Service Commission. However, they can be removed by the President of India and not by the Governor.
- He can ask for any information regarding the state's administration of the affairs.
- He can recommend the President to impose the constitutional emergency in the state.

## Legislative Powers

- The Governor of the State summons or prorogues the state legislature and he can dissolve the State Legislative Assembly.
- When both the offices of the Speaker and the Deputy Speaker fall vacant then the Governor appoints any member of the State's Legislative Assembly to pre-side over its proceedings.
- After a bill is passed in the state legislature, the Governor can give his assent to the bill, or withhold his assent. He can return the bill (if it is not a money bill) for reconsideration of the State Legislature. He can reserve the bill for the President's consideration.
- The Governor must reserve for President's consideration any bill passed by the State Legislature which endangers the position of the State High Court. Further he can also reserve the bill if it is of the nature of ultra-vires, i.e., against the constitution's provisions, if it is opposed to the Directive Principles of State Policy (DPSP); if it is against the larger interest of the country, if it is of grave national importance, and if the bill is of the nature of dealing with compulsory acquisition of property under article 31A of the Constitution.
- The Governor nominates one member to the State Legislative Assembly from the Anglo-Indian Community, he nominates 1/6<sup>th</sup> of the members of the State Legislative Council from amongst the persons having special knowledge or practical experience in literature, art, science, cooperative movement and social service.
- He can promulgate ordinances when the state legislature is not in session.
- He decides on the question of disqualification of the members of the State Legislature in consultation with the Election Commission.
- The Governor of the State lays reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

## Financial Powers

- The Governor of the state confirms that the state budget or the Annual Financial Statement is laid before the State Legislature.
- With the Governor's prior recommendation only Money Bills can be introduced in the State Legislature.
- Demands for a grant must be made only on the Governor's recommendation.
- To meet any unforeseen expenditure, he can make advances out of the Contingency Fund of the State.
- To review the financial position of the Panchayats and the municipalities the Governor constitutes a Finance Commission in the state after every five years.

## Judicial Powers and Functions of the Governor

- The Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and 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. However, the pardoning power of the Governor differs from that of the President in the manner that the President can pardon death sentence whereas the Governor is deprived of this pardoning power. The Governor does not have the power that could empower him to pardon sentences inflicted by court martial as this power is entitled only to the President of India.
- Consulted by the President, the Governor of the State appoints the judges of the concerned State High Court. And with the consultation of the State High Courts, he makes, appointments, postings and promotions of the district judges. And with consultation with the State High Court and the State Public Service Commission he appoints persons to the judicial service of the state other than the district judges.

## **CHIEF MINISTER**

The Chief Minister of a State is the head of the government, he is the real executive of the government of the State. The

position of the Chief Minister of a state resembles that of the Prime Minister's of the Centre. Generally the leader of the majority party in the Vidhan Sabha is appointed by the Governor of the concerned state as the Chief Minister of that state. The Chief Minister's oath is also administered by the Governor. The Chief Minister takes oath to his office States. Generally the Judiciary is separate from the Executive. Among the three organs of the state the Legislative, the Executive and the Judiciary, the Judiciary enjoys supreme position in the Constitution of India.

- Under various names like Nyaya Panchayata, panchayat Adalat etc., the Panchayat Courts function in some States to decide civil and criminal disputes of a petty and local nature.
- Different State laws provide for different kinds of jurisdiction of courts.
- All the states are divided into judicial districts which are the principal civil court of original jurisdiction and can try all offences including those offences which are punishable with death. These judicial districts are presided over by a district and session judge. He is the highest judicial authority in a district.
- Below the district judge, there are courts of civil jurisdiction, known in different states as munsifs, sub judges, civil judges and the like.
- The criminal judiciary is comprised of chief judicial magistrate and judicial magistrates of first and second class.
- In India, hierarchically above the subordinate courts, there are High Courts and above the High Courts, above all there is the Supreme Court.
- In order to maintain the supremacy of the constitution, there must be an independent and impartial authority to adjudicate on the disputes between the Centre and the States or between the States.

## **THE SUPREME COURT**

Justice Anil Ramesh Dave was sworn in Chief Justice of Andhra Pradesh High Court by Governor N. D. Tiwari on January 7, 2008. Justice Narayan Roy was sworn in as the new Chief Justice of the Rajasthan High Court by Governor S. K. Singh on January 5, 2008. Justice Jagdish Bhalla was sworn in as the Chief Justice of the Patna High Court by Governor R. S. Gavai on January 5, 2008. Justice Kalavamkodath Sivasankara Panicker Radhakrishnan has also been appointed as the Chief Justice of Jammu and Kashmir. S. K. Sinha is the Governor of Jammu and Kashmir.

The Constitution of India consists provisions related to the Union Judiciary in Articles 124 to 147. Article 124 provides for the establishment of the Supreme Court with a Chief Justice and seven other Judges. However the same article authorises the Parliament to increase the number of judges by law. In addition to the Chief Justice, the number of other judges was fixed at 25 by law in 1985.

## **The appointment of the Chief Justice and the other judges of the Supreme Court**

- Under article 124(2), Supreme Court Judges are to be appointed by the President. The President appoints the Judges of the Supreme Court after consultation with such Judges of the Supreme Court and of the High Courts as the President may consider to be necessary. In the appointment of a judge, other than the Chief Justice, the Chief Justice of India is always consulted with.
- In actual practice, after receiving the Opinion of the Chief Justice, the Cabinet deliberated on the matter and advised the President in regard to persons to be appointed, the President used to act according to the advice. Before the 70s generally the senior most judge of the Supreme Court was appointed as the Chief

Justice of India, but this trend was ignored when in the 70s a couple of Chief Justice were appointed superstandingly their more senior colleagues.

- The procedure of appointment of the judges of the Supreme Court was revised in 1994. According to this revision, in the matter of the appointment of the judges, the decisive view is given by the Chief Justice of India. Generally the senior most judge is appointed as the Chief Justice unless the retiring Chief Justice reported of his unfitness.
- According 1998 judgement, the Chief Justice had to consult four senior most judges of the Supreme Court and if two of the four disagreed on some name, it could not be recommended. Practically decisions were to be taken by consensus where the Chief and at least three of the four judges had to agree.
- For appointment of judges, the Constitution Com-mission (NCRWC) has recommended appointment of a National Judicial Commission as a machinery.
- Article 129 of the constitution declares that the Supreme Court is a Court of record and has all the powers of such a court including the power to punish for contempt of itself.

## Qualifications as a judge of the Supreme Court

To be qualified as a judge of the Supreme Court, a person has to fulfill the following conditions –

- He should be an Indian citizen.
- He should have been a judge of a High Court for atleast five years or he should have been a judge of two such Courts in succession.
- He should have been an advocate of a High Court for atleast ten years or he should have been an advocate of two or more such Courts in succession.
- He should be in the opinion of the President, a distinguished jurist.

NCRWC has recommended that the retirement age of High Court judges may be increased to 65 years and of the Supreme Court judges to 68 years. Normally there is no provisions in our Constitution for the impeachment of a judge.

However a judge can be removed on the ground of misbehaviour or incapacity by the order of the President passed after an address by each House of the Parliament for his removal. The majority of the total membership of the House must support it and also it should be supported by a majority of not less than two-thirds of the members present and voting is presented to him in the same session. The procedure is regulated in the Parliament by law.

The person appointed as a judge of the Supreme Court, taken oath before the President or some other person appointed in that behalf by the President in the form prescribed in the Constitution before the person appointed as a judge of the Supreme Court enters upon his office. A person who has held office as a judge of the Supreme Court is prohibited by the constitution from practicing law before any court in the territory of India. Every Judge of the Supreme Court holds office till the age of 65 years. However, he may relinquish office earlier by addressing his resignation to the President.

In- case of any vacancy in the office of the Chief Justice of India, the President of India appoints an Acting Chief Justice from among the Judges of the Court to function as the Chief Justice. In case need arises to continue a session, the Chief Justice is free to appoint ad-hoc judges in the Supreme Court from among judges of any High Court with the necessary qualifications. A retired judge of the Supreme Court or a High Court may be invited by the Chief Justice to act as judge in the Supreme Court. However, regarding these ad-hoc appointments, the President's previous consent is required.

The judges enjoy independence in a number of ways which are ensured by the Constitution. They are as follows –

- Article 125 of the Constitution says that the salaries of the judges are fixed and can not be varied to their disadvantage during their term (except during a Financial Emergency). These salaries are charged

- on the Consolidated Fund of India, so they are not votable.
- The Chief Justice of India is entitled to receive a salary of Rs. 33,000 per month and the other judges of the Supreme Court receive 33,000 per month.
- In addition to the salary, they are entitled to a rent free accommodation and other allowances like rent free furnished residences, telephone, water, electricity, medical and other facilities exclusive of allowances and privileges like traveling expenses within the country, persons etc.
- By law, the Parliament determines the salary of the Supreme Court judges. During the office term of a judge, the Parliament can not reduce his salary or any other allowances.
- The President appoints an Acting Chief Justice from among the judges of the courts to perform the duties of the Chief Justice when the office of the Chief Justice of India lies vacant or when the Chief Justice is unable to perform the duties of his office due to his absence.
- If at any time, the session of the court can not be continued due to the unavailability of the judges for any reason, the Chief Justice of India is empowered to appoint ad-hoc judges in the Supreme Court from among the Judges of the High Courts having qualifications to be appointed Judges of the Supreme Court for such a period he feels/considers as necessary. He however can do all these only with the President's previous consent and after consultation with the Chief Justice of the High Court concerned. The judges appointed in this way are bound to give priority to the Supreme Court regarding duties.
- The Chief Justice of India is also empowered to invite a retired judge of the Supreme Court or a retired judge of the High Court having the qualification to be a judge of the Supreme Court, to sit and act as a judge of the Supreme Court for as long as the Chief Justice considers it necessary. This also can be done only with the President's prior consent and also with the prior consent of the person to be appointed.

## Rules of procedure

- In the functioning of the Supreme Court, the Constitution of India mentions the following rules of procedure to be followed-
- The Judgements of the Supreme Court is delivered in an open court only. The report on the advisory opinion of the court is also made in an open court.
- The Supreme Court judgement is delivered with the concurrence of the majority of the judges present at the hearing of the case.
- The judge can give a dissenting opinion if he does not occur with the majority judgement.
- A bench of not less than five judges decide the matter regarding a case if the case is regarding the interpretation of the Constitution, if the case involves a substantial question of law and if the matter of the case has been entrusted by the President to the Supreme Court for its consideration.

## The jurisdiction and powers of the Supreme Court

The Supreme Court's jurisdiction and powers are really vast. Article 129 provides that the Supreme Court is a court of record and has all the powers of such a court. It is the highest court, of the land, so its proceedings, acts and decisions are kept in record; its records cannot be questioned for their authenticity in any court. The Supreme Court has mainly three-fold jurisdiction.

They are mentioned as follows –

### (1)Original Jurisdiction

- The Supreme Court of India has been provided with the power of Judicial The Supreme Court of India has original jurisdiction. It means there are certain cases which can originate only with the Supreme Court



over disputes (1) the government of India and one or more states and (2) the government of India and any State or States or one side and secrecy to the ministers. The State Legislature determines the salaries and allowances of the ministers. Every state has a council of ministers which is headed by the Chief Minister to aid and advice the Governor in the exercise of his powers and functions, except the discretionary ones.

## **The Powers and Functions of the Chief Minister**

The Powers and Functions of the Chief Minister can be studied under the following heads –

### **In Relation to Council of Minister**

As the head of the state of council of ministers, the Chief Minister enjoys the following powers –

- The Chief Minister recommence persons who are appointed as ministers by the Governor. It means the Governor can appoint only those persons as ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- In case of difference of opinion the Chief Minister can advice the Governor to dismiss the concerned minister or straightward he can ask the minister to re-sign from his post.
- The Chief Minister presides over the meetings of the council of minister. He influences the decision of the council of ministers' meeting.
- The activities of all the ministers are guided, directed, controlled and coordinated by the Chief Minister.
- As the Chief Minister is the head of the council of ministers, his resignation or death automatically lead to the dissolution of the council of ministers. Thus he can bring about the collapse of the council of ministers by resigning from his office.

### **Chief Minister's Powers in Relation to the Governor**

- The Chief Minister is the main channel of communication between the Governor and the council of ministers regarding the proposals for legislation and regarding the administration of the affairs of the state.
- He furnishes the information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for. And if Governor requires the information to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council, the Chief Minister is to furnish information.
- While appointing the important officials like the Advocate-General of the State, the Chairman and members of the State Public Service Commission, State Election Commissioner and the like by the Governor, the Governor is advised by the Chief Minister of the concerned state.

### **Power In Relation to State Legislature**

Regarding the Governor's summon any prorogue of the sessions of the state legislature, the Chief Minister of the State advises the Governor.

He can any time recommend the Governor for the dissolution of the State Legislative Assembly. On the floor of the house of the State Assembly, the Chief Minister of the State announces the government policies.

In addition to the above mentioned powers and functions, the Chief Minister enjoys some other powers and functions also. They are mentioned below –

- The Chief Minister is the chairman of the State Planning Board just as the Prime Minister is the chairman of the Planning Commission in the central level.
- He acts as a Vice-Chairman of the concerned Zonal Council by rotation, holding office for a period of one



year at a time.

- The Chief Minister is a member of the Inter-State Council and the National Development Council, both are headed by the Prime Minister. He is the chief spokesperson of the state government.
- He is the political head of the services, he is the leader of the party in power. As the leader of the state, he meets various sections of people and receives memoranda from them regarding all their problems, and so on.
- During the emergency period, the Chief Minister acts as the crisis-manager-in-chief at the political level. Even though the Chief Minister plays very important role in the state administration, the Governor's discretionary powers reduce to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

## **The Judiciary and development of judiciary in India**

The Indian Constitution provides a single integrated system of courts for the Union and the States to administer both Union and State Laws. The provisions regarding the judiciary in India are contained in Part V on The Union under chapter IV, titled The Union Judiciary and Part IV on The States under chapter V and VI, titled The High Court in the States and Subordinate Courts respectively. Unlike the distribution of legislative and executive powers between the States and the Union, the Constitution of India does not adopt a similar division of judicial power; the judicial system in India is unified and integrated for the entire republic of India. Unlike the other federal systems, like that of the United States the Indian Judicial system does not have separate hierarchies of federal and States Courts. It has one hierarchy of courts - with the Supreme Court as the higher or the apex court and as the only arbiter in matters of relations between the Union and the States and between the States. Generally the Judiciary is separate from the Executive. Among the three organs of the state the Legislative, the Executive and the Judiciary, the Judiciary enjoys supreme position in the Constitution of India.

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### (2) Original Jurisdiction

- The Supreme Court of India has been provided with the power of Judicial The Supreme Court of India has original jurisdiction. It means there are certain cases which can originate only with the Supreme Court over disputes (1) the government of India and one or more states and (2) the government of India and any State or States or one.

side and one or more states on the other side (3) disputes between two or more states. However this jurisdiction does not extend to a dispute arising out of a treaty agreement etc. which is in operation and excludes such judicial jurisdiction.

For any such cases no other courts in India is empowered to deal with. So, the Supreme Court is a federal court. The Supreme Court jurisdiction also excludes such cases of inter-state water disputes, matters referred to the Finance Commission, adjustment of certain expenses as between the Union and the States. When disputes regarding the Fundamental Rights are to be dealt with, most scholars suggest for the Supreme Court's original jurisdiction. It is original in the sense that the aggrieved party has the right to directly move the Supreme Court by presenting a petition. However according to some other constitutional experts, the writ jurisdiction of the Supreme Court is treated separately, as the dispute in such cases is not between the units of the Union but an aggrieved individual and the Government.

### (2) Appellate Jurisdiction

- The Supreme Court is the highest court of appeal from all courts in India. It deals with the hearing of the cases regarding - (1) interpretation of the Constitution - civil, criminal or otherwise (Article 132), (2) it deals with the hearing of the cases involving the civil cases irrespective of all constitutional issue (Article 133) and (3) it deals with the criminal matters irrespective of all constitutional issue (Article 134). In addition to all these, the Supreme Court is empowered to grant special leave to appeal in certain cases (Article 136).
- Regarding the constitutional matters as appeal can be made if the High Court certifies that the case involves a substantial question of law regarding the interpretation of the constitution. Even if the High Court does not grant any certificate, the Supreme Court can grant special leave if it is satisfied with the substantial law regarding the interpretation of the constitution.
- Regarding the civil cases, an appeal against a judgement depends on a Certificate of the High Court that the case involves a substantial question of law or general importance, or that in its opinion the question needs to be decided by the Supreme Court.
- With the High Court's certificate, that the case is fit for appeal, appeals in criminal cases lie to the Supreme Court. But if the High Court reverses an order of acquittal of the accused and sentenced him to death on an appeal, or if the High Court withdraws a case from the lower court conducted the trial itself and awarded the accused the death sentence or

more than 10 years' imprisonment, an appeal can be made in all these cases without the High Courts certificate.

- The Supreme Court is empowered to entertain appeal by special leave in any cause or matter determined by any court or tribunal (except a military tribunal) unlimitedly. This power is totally discretionary to the Supreme Court. But this power is enjoyed only under exceptional circumstances where substantial question of law or general public interest is involved, where grave injustice is involved or where a tribunal exceeds its jurisdiction or runs counter to natural justice.

### **(3) Advisory Jurisdiction**

- The Supreme Court gives advice on any question of law or fact of public importance as may be referred to it for the consideration by the President of India. But the Supreme Court's opinion is not considered as judgement, it does not have any litigation also. The President is bound by the advice of the Supreme Court. It only ensures the Government to get an authoritative opinion as to the legal validity of a matter before action is taken upon it. However, the court is bound to give its opinions on matters regarding the disputes arising out of a treaty or agreement entered into before the commencement of the constitution.

### **Some other powers enjoyed by the Supreme Court**

- The Supreme Court's decision is binding on all courts within the territory of India. But the Supreme Court is not bound by either of its own decision or by any other subordinate courts decision. Whenever the Supreme Court is convinced that it has made an error or it has harmed public interest, it can come to a different decision.
- Supreme Court is a court of record, its records can not be questioned in any court of law. It has the power to punish by fine or imprisonment and anybody guilty of contempt of Supreme Court's authority. Supreme Court issues orders and decrees, and they are enforceable all over India in the manner that they can be prescribed by any law made by the Parliament.
- The Supreme Court is empowered to make laws with the President's approval regarding the practice and procedure of the Court.
- With consultation with the UPSC, the Supreme Court can appoint its officers and servants and can also determine their conditions of service.
- Only the Supreme Court is empowered to decide the disputes over the Presidents' and Vice-Presidents' election.
- The Chairman and members of the UPSC can be removed with the recommendation of the Supreme Court.
- The Supreme Court may transfer to itself cases from one or more High Courts if these involve questions of law or of great significance. In the interest of justice, the Supreme Court may transfer cases from one High Court to another. In addition to the above