

**B.A. First Year**  
**Political Science, Paper - II**

**INDIAN GOVERNMENT  
AND POLITICS**



**मध्यप्रदेश भोज (मुक्त) विश्वविद्यालय – भोपाल**  
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### **Indian Government and Politics**

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<b>UNIT-III:</b> Indian Parliament; Lok Sabha, Rajya Sabha. The Supreme Court: Election Commission	<b>Unit-3:</b> The Indian Parliament and the Supreme Court <b>(Pages 67-91)</b>
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## INTRODUCTION

The term politics describes the activities associated with the governance of a country or area. In India, such activities are done under the direction of the glorious document called the Indian Constitution. The Indian Constitution is the document that was created after the long struggle of India's independence. It embodies the ethos of the Indian freedom struggle and the dreams of the Indian people. The Constitution of India envisions India to be a democratic secular socialist republic. It lays down the laws of the land, provides the framework for administration of governance and also gives direction to policies to be undertaken by the governments at the state and the central level.

Political activities today impact the everyday life of Indian citizens. In fact there is no area in the personal or professional life of citizens that remains untouched or uninfluenced by the political conditions of the country. There are a wide variety of political issues in India; some of them are national while others are regional. This book, *Indian Government and Politics*, contains the history and ideology of the Indian Constitution. It attempts to describe the nature of Indian federalism and also looks at in detail the various political issues in India.

This book is written keeping the distance learning student in mind. It is presented in a user-friendly format using a clear, lucid language. Each unit contains an Introduction and a list of Objectives to prepare the student for what to expect in the text. At the end of each unit are a Summary and a list of Key Terms, to aid in recollection of concepts learnt. All units contain Self-Assessment Questions and Exercises, and strategically placed Check Your Progress questions so the student can keep track of what has been discussed.

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# UNIT 1 THE INDIAN CONSTITUTION

## Structure

- 1.0 Introduction
- 1.1 Objectives
- 1.2 Brief History of Indian National Movement
- 1.3 The Making of Indian Constitution and its Sources
  - 1.3.1 The Constituent Assembly
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## 1.0 INTRODUCTION

Most countries in the world have a constitution. A constitution serves several purposes. First, it lays out certain ideals that form the basis of the kind of country that we as citizens aspire to live in. A constitution tells us what the fundamental nature of our society is. It helps to serve a set of rules and principles that all citizens of a country can agree upon as the basis of the way in which they want the country to be governed. The making of the Indian Constitution was in progress even before the country attained independence in 1947. Indian nationalism took birth in the 19th century as a result of the conditions created by the British rule. Nationalist leaders of India demanded many reforms in constitutional arrangements during the colonial rule. To meet some of their demands, the British enacted some legislations, such as the Government of India Act, 1858; the Indian Council Act, 1861; the Indian Council Act, 1892; the Indian Council Act, 1909; the Government of India Act, 1919; and the Government of India Act, 1935.

The Constituent Assembly of India was elected in 1946 to write the Constitution of India. Following India’s independence from Great Britain, its members served as the nation’s first Parliament. The first historical session of Indian Constituent Assembly was held on 9 December 1946, under the chairmanship of Dr Sachidananda Sinha. On 11 December, it elected Dr Rajendra Prasad as its permanent president. The membership of the Constituent Assembly included all eminent Indian leaders. Pandit Jawaharlal Nehru introduced the Objectives Resolution on 13 December 1946. After a full discussion and debate, the Constituent Assembly passed the Objectives Resolution on 22 January 1947. It clearly laid down the ideological foundations and values of the Indian Constitution and guided the work of the Constituent Assembly. When on 15 August 1947,

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India became Independent, the Constituent Assembly became a fully sovereign body and remained so till the inauguration of the Constitution of India. During this period, it acted in a dual capacity: first as the Constituent Assembly, it engaged in the making of the Indian Constitution, and secondly as the Parliament of India, it remained involved in legislating for the whole of India. For conducting its work in a systematic and efficient manner, the Constituent Assembly constituted several committees which were to report on the subjects assigned to them. Some of these committees were committees on procedural matters while others were committees on substantive matters. The reports of these committees provided the bricks and mortar for the formation of the Constitution of India.

In the making of the Constitution, a very valuable role was played by the Drafting Committee. The Committee was constituted on 29 August 1947 with Dr B.R. Ambedkar as its chairman. The Drafting Committee submitted its report (draft) to the Constituent Assembly on 21 February 1948 and the Constituent Assembly held debates on it. On the basis of these discussions, a new draft was prepared by the Drafting Committee and submitted to the Assembly on 4 November 1948. From 14 November 1949 to 26 November 1949 the final debate was held on the draft. Later, in order to perpetuate the memory of the great pledge of the ‘Purna Swaraj Day’, 26 January 1950 was chosen to be the day of the commencement of the Constitution and declared India a Republic state with Dr Rajendra Prasad as its first President. On completion of the constitution-making task of the Constituent Assembly, Dr Rajendra Prasad said: ‘I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits and demerits of the Constitution which it has framed, I am content to leave that to others and posterity.’

This unit examines various aspects of the Indian constitution in detail.

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### 1.1 OBJECTIVES

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

- Summarize briefly the Indian national movement
- Analyse the philosophical foundations of the Indian Constitution
- Discuss the development of the Indian constitutional structure
- Examine the salient features of the Indian Constitution

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### 1.2 BRIEF HISTORY OF INDIAN NATIONAL MOVEMENT

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The adverse impact of British imperialist rule in India in all spheres, whether it was political, social, economic, etc., led to widespread dissatisfaction among the people and gave rise to a number of resistance movements. Some of these resistance

movements were violent in nature, for example the activities of radical extremists, notably in Bengal. Others were worker and peasant led resistance movements under the leadership of the Communist Party of India especially in the southern part of the country. However, the most widespread and popular of the resistance movement was the nonviolent struggle waged by the Congress Party under the leadership of Gandhi. All of these movements against British Imperialist rule are today considered to be a part of the Indian freedom struggle.

Since the Indian independence struggle involved a wide array of resistance movements against oppressive imperialist rule, it incorporated a wide spectrum of philosophical traditions from India and elsewhere. Thus, when India became independent, the Constituent Assembly kept in mind this wide array of philosophical traditions while drafting the Indian Constitution.

The resistance movements and philosophical traditions behind the Indian freedom struggle are studied in more detail below.

### **Early Socio-Religious Resistance Movements**

The displaced peasants and demobilized soldiers of Bengal led by religious monks and dispossessed zamindars were the first to rise up against the British in the form of a movement known as the *Sanyasi* and *Fakir* movement in Bengal. This was started by a group of *sanyasis* (monks) after the great famine of Bengal in 1770. The *sanyasis*, hugely supported by the common people, rose against the East India Company. They raided their factories, settlements, blocked their funding as a means of their resistance. At the same time, there was a group of Muslim mendicants known as *fakirs*, led by Majnu Shah and Cheragh Ali, who stood against the British forces and started their own resistance movement. They went on to attack English factories and plundered their goods, arms and money. Several battles took place between these *fakirs* and the British troops, where the British were on the losing side most of the time. These movements were made more famous by Bankim Chandra Chatterjee's in his renowned literary work, *Anand Math*.

Another important movement was the Faraizi movement (1804-1860) started by Haji Shariatullah of Faridpur. The main objective of this movement was to remove un-Islamic practices from Muslim society as well as to revive and restore Muslim rule once again by expelling the British invaders. Haji and his successors were successful in mobilizing Muslim farmers of central and eastern Bengal to act against the cruel practices of the exploitative landowners and moneylenders and the British indigo planters. This resistance movement was quelled by the Bengal government in 1860s by conducting several arrests, trials and persecutions. The other socio-religious movements were the Wahabi Movement (1820-1870) led by Saiyad Ahmad of Rae-Bareily, Kuka Movement in the Punjab (1860-1872) and numerous tribal uprisings.

The late eighteenth and nineteenth century witnessed a number of other serious uprisings against British rule. The most important of these rebellions were

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the Chuar rebellion in western Bengal, the Paik rebellion in Orissa, Vishakhapatnam revolts in Andhra, Khasi uprising in Assam, Bundela rebellion in central India, Polygar rebellion in South India, Indigo uprising in Bengal, Deccan riots, Kol-Munda-Ho uprisings of Chotanagpur region, tribal uprising under Birsa Munda and so on. What was common about all these movements was a shared desire to end the British oppression and exploitation. These movements were characterised by an active participation of the people belonging to different castes, creeds and communities.

### Indian National Movement

Resistance to British rule in the 18th and the 19th century was mainly characterized by socio-religious movements and tribal uprisings. Even the 1857 revolt largely began as a result of perceived religious insults to Hindu and Muslim Sepoys by the British colonialists. While all of the resistance movements wanted the end of exploitation at the hands of the British with people of different castes and creeds participating, they failed to achieve any sort of cohesive national character (except the 1857 revolt) that was required to achieve success against the colonialists. As historian Bipin Chandra has stated, ‘The pre-nationalist resistance to colonial rule failed to understand the twin phenomena of colonialism and the nation-in-the-making. In fact, these phenomena were not visible, or available to be grasped, on the surface. They had to be grasped through hard analysis. This analysis and political consciousness based on it were then taken to the people by intellectuals who played a significant role in arousing the inherent, instinctive, nascent, anti-colonial consciousness of the masses.’ These intellectuals that Chandra talks about were born in the universities that the British established. Some of these intellectuals became leaders of radical extremist organizations or led peasant and worker rebellions, while others became social reformers. Some of them were to establish the Indian National Congress.

Although the Congress began merely as a group to organise public opinion in India, in the twentieth century, it became the chief instrument through which the Indian people waged their struggle against British imperialism. The chief strategy employed by the Congress to win independence was that of nonviolent resistance. Non-violent resistance is carried on using symbolic protests, civil disobedience, economic or political non-cooperation, and other methods, which do not involve violence.

The nonviolent methods employed by the Congress can be analysed by studying the major Congress led movements against the British in the twentieth century. Some of these movements are enumerated here.

### The Non-Cooperation Movement

The Non-cooperation Movement was a great landmark of the freedom movement in India in the twentieth century. Mahatma Gandhi proposed the idea of non-cooperation against the British Government at a special session of the Congress held in Calcutta in September 1920. The resolution adopted by the Congress at the Calcutta Session stated, ‘This Congress is of the opinion that there is no course

left open for the people of India but to approve of and adopt the policy of progressive non-violent non-cooperation until the said wrongs are righted and Swaraj is established.'

Non-cooperation was directed against the boycott of the following things:

- Boycott of British goods
- Boycott of elections to the legislatures in the country
- Boycott of courts and offices by lawyers
- Boycott of schools and colleges by students
- Surrender of titles and honours conferred by the British government

The above five-fold boycott was the main objective of the Non-cooperation Movement. The Congress appealed to the people to use Swadeshi goods and follow peaceful and legitimate means to achieve the end. The Non-cooperation Movement initially appeared to have gathered great momentum. Gandhi travelled the whole country in order to get support from the people. He returned the medal which was awarded to him for his services to the British Government during the First World War. People belonging to different states stopped cooperating with the British government. Many lawyers left the courts and students voluntarily joined the movement, leaving their schools and colleges. The boycott of elections to the legislature was also quite successful. The Congress also boycotted the visit of the Prince of Wales who visited India in 1921. A strike was observed at places where the Prince of Wales was visiting. However, the movement gradually started becoming violent. After an incident of serious mob violence in Chauri Chaura, U.P. Gandhi decided to suspend the movement.

Despite its failure, the Non Cooperation was important because it was the first mass resistance movement in India. The sense of unity brought about by the movement was quite unusual in the history of the country and it paved the way for achieving independence in the future.

### Civil Disobedience Movement

Another important movement in India's freedom struggle was the Civil Disobedience Movement. Its aim was to disobey the laws of the British government. Like the Non-Cooperation Movement, the Civil Disobedience Movement was based on Gandhi's principle of non-violence. As a token of disobedience of the unjust laws of the British, Gandhi chose to violate the Salt Law, which was a law that prohibited the people from manufacturing salt. Gandhi started his famous Salt March on March 12, 1930, along with 70 other satyagrahis; by the time he reached the sea coast near the village of Dandi, thousands had joined him. Gandhi's violation of the Salt Law sparked large scale acts of civil disobedience against the British Raj salt laws by millions of Indians. The mass participation seen in the Civil Disobedience Movement was without parallel in history. Another remarkable feature of this movement was the participation of a large number of women. The Civil Disobedience Movement was finally suspended in 1934.

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The following were the chief features of the Civil Disobedience Movement:

- It was more severe and intense than the Non-Cooperation Movement.
- It created a strong sense of nationalism among the Indians.
- It was supported by a large number of women.
- It promoted the spirit of patriotism among the people of India.

### Quit India Movement

The Quit India Movement was another mass resistance movement that was started by Gandhi in August 1942. It is also known as the August Revolution. The background of the movement was the failure of the Cripps mission and a lack of sympathetic attitude of the British colonial government towards Indian independence. During the Bombay Session of the Congress held on 7th and 8th August 1942, Gandhi gave a call to the people of India to ‘Do or Die’. The purpose of the movement was to force the British government to quit India lock, stock and barrel. The Quit India Movement had great impact on the people. Students left their studies, lawyers gave up their practice, government officials resigned in order to join the movement. Gandhi and other leaders of the Congress were arrested by the British, however, this made no impact on the movement.

At first the movement was peaceful but later it took a violent turn. Cases of violence were reported from many places. Railway stations, post offices, etc. were set ablaze. Railway bridges and buildings were destroyed. Treasuries were looted and government records were destroyed. The British government started a policy of repression to suppress the movement. But it was not that easy as the people were spontaneously fired by the enthusiasm of driving out the British government. However, before the superior strength of the British government, the revolutionaries could not carry on their struggle for long. Ultimately, they were suppressed and the movement was quelled. The Quit India Movement had great significance. The entire cross section of Indian society, irrespective of caste, class, region or religion joined the movement to drive the British. Thereby, the struggle for independence that was almost one hundred years old approached the total mass, i.e., encompassing the entire cross-section of the society, making Indian independence inevitable.

Indian independence was achieved not through a single revolution, but through a prolonged, popular struggle based on a moral, political and ideological commitment. This struggle started from socio-religious resistance movements in the nineteenth century, which was then passed on to the English educated intellectuals. The struggle trickled down to the students and the middle classes during the days of the Swadeshi Movement. And finally, the Non-cooperation Movement and the Quit India movement witnessed the participation of the peasants, lower middle class, women, the petty bourgeoisie, the poor, urban and rural artisans, peasants, workers, merchants, capitalists and even a large number of small landlords.

### Check Your Progress

1. When did Gandhi propose the idea of non-cooperation against the British Government?
2. What is the Quit India Movement also known as?

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## 1.3 THE MAKING OF INDIAN CONSTITUTION AND ITS SOURCES

The Indian political system in general and its Constitution in particular were not created just after the transfer of power from the British. The structure and values of independent India's political system is largely the products of the evolution of the ideological legacy and conceptual discourse during the national movement.

The Indian national movement, which was based on new political ideas, a new intellectual perception of reality, new social, economic and political objectives and above all new techniques of political organisation, ultimately led to the emergence of India as an independent nation and a unique political system.

The impact of the national movement in the minds of the people of India was very deep and it made them aware of the concept of politics in the domain of the people. The Indian National Congress took up the task of politicizing, activism and mobilizing the Indian masses and thereby made them aware of their rights and duties. The Congress was able to mobilize all classes, castes, religion and regions of the Indian society. Thus, it can be said that political democracy is the cardinal principle of which the sovereignty of the people is a legacy of the national movement. From the beginning, the nationalist leaders believed that India could eventually move towards democratic self-government. In the early phase, moderate leaders demanded self-government with a step by step approach by demanding the expansion of powers of the Legislative councils and their enlargement for the representatives elected directly by people. Eventually, with the gradual widening of its social base, the national movement during Gandhian phase demanded for 'Purna Swaraj', meaning thereby, complete independence. It is worth mentioning that although the definition of nationalist political goal was at variance in the moderates, extremist and Gandhian phase of the national movement, the goal of democratic self-government was implicit from the beginning. The objective of the political democracy is also reflected in the stress on civil liberties like the freedom of speech, the freedom of press, freedom of thought and association whose maintenance and extension became an integral part of national movement. Moreover, the very organisation and functioning of the Indian National Congress, the chief representative and the symbol of the national movement, by its insistence on debate and discussion reflected and popularized democratic tradition. Thus over the years, the national movement successfully created the ideology and culture of democracy and civil liberties based on respect for decent, freedom of expression, the majority principle, and the right of the minority opinions.

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The nationalist leaders' ideas and views on economics had a significant impact on the formulation of economic principles of the country. They developed an anti-colonial ideology and developed a drain theory. They could realize that the changes in Indian economy had a transition from traditional feudal backwardness to colonial backwardness leading to backward agriculture, repressed industry and foreign domination of economic life. Apart from providing a strong critique of colonial economic policies, they also provided alternate solutions and remedial measures to the pressing problems of poverty and deprivation. From the beginning, the nationalist movement had an objective of complete transformation of the country on the basis of modern industrial and agricultural development. However, Gandhi was an exception who stressed more on agrarian transformation and cottage industries. The national leadership right from Dadabhai Naoroji and Mahadev Govind Ranade visualized a crucial role for the state in the building of an independent and modern economy. The idea of planning an economic development was also popularized during the nationalist movement. On the whole, the national leaders were optimistic that a development strategy, based on an independent strategy and self-reliant industrialisation actively added by the state, would transform the Indian economic scene.

The nationalist leaders were also influenced by the great economic depression of the 1930s, the socialist planning in the Soviet Union and anti-Fascist wave over the world in 1930s. Most of the leaders of the Youth Movement of 1920s and a large number of revolutionary freedom fighters were also attracted by socialism. As a result, socialist ideals soon became the basic constituent of nationalist thoughts and the Congress progressively evolved in a radical socio-economic and political direction, which had a significant impact on the making of our political system. The overall social outlook of Gandhi, which constituted a major ideological dimension of the national movement, was that of social transformation. His emphasis on social and economic equality; self-activity of masses; the removal of distinction and discrimination between physical and mental labour; women's social liberation; upliftment and welfare of the exploited, the oppressed and the downtrodden; and the principles of bread labour and trusteeship impacted a radical and ideological direction to the national movement.

One major objectives that the Indian national movement set for itself was to promote the unification process, to weld Indians into a nation, to unify Indian people and thus to promote the national unity. Secularism was another major ideological dimension of the national movement through which it sought to bind the multi-religious and multi-ethnic society into a nation. This aspect of the national movement, which is reflected in independent India, is its external policy. Indian leaders had developed a broad international outlook. Over the years, they evolved a policy of opposition to imperialism on a worldwide scale and solidarity with anti-colonial movement in other parts of the world. We may, therefore, say that a non-racist, anti-imperialist outlook, which continued to characterize the Indian foreign policy for a long time was a part of the legacy of the national movement.

The effort of the national leaders resulted in the formation of a grand nationalist alliance in which Hindus, Muslims, and Sikhs; the rich and the poor, landlords,

industrialists and the middle classes; peasants, artisans and tribes; all joined their hands together. Their objective now was to establish a sovereign nation in the subcontinent. This basis of the indigenous class structure and the distribution of political and economic power with renewed hopes, aspiration and expectation were bound to influence the institutional structure and political process in the new Indian state, which had its own specific problems and expectations.

### 1.3.1 The Constituent Assembly

The Indian Constituent Assembly was elected to form the Constitution of India. It served as an independent nation to its first Parliament. There were negotiations in between the Indian leaders and the British Cabinet Mission members that led to the setting up of the Constituent Assembly, which was elected indirectly by the Provincial Legislative Assembly members. The Congress maintained a good majority in the General seats of 69 per cent, whereas the Muslim League could manage to sweep almost a majority of seats for Muslims. Also, there were members from the Scheduled Caste Federation, the Unionist Party and the Communist Party of India.

The Constituent Assembly was first held on 9 December 1946, and included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi.

It had 207 representatives, including fifteen women. Twenty-eight of the representatives of the Muslim League could only join the Indian Assembly then. Eventually, ninety-three members got nominated from India's princely states. Thereafter, the Congress secured a majority of 82 per cent. On 2 September 1946, the Interim Government of India was formed from the newly elected Constituent Assembly. On 15 August 1947, India became independent and the Constituent Assembly became the Parliament of India.

The enormous task of drafting free India's Constitution was taken up by the Constituent Assembly. The Assembly brought into being by the will of the Indian people, drafted a Constitution of India from December 1946 to December 1949. It had been elected for on divided India and held its first sitting on the 9 December 1946 reassembled on the 14 August 1947, at the Constituent Assembly for the dominion of India.

According to the Cabinet Mission Plan of 1946, the Constituent Assembly was established. During its entire sitting, it had 11 sessions and 165 days of actual work. After deliberation spread over three years, the historic document - free India's Constitution adopted by the Assembly on 26 November 1949 and came into force on 26 January 1950. Thus, a draft constitution had 315 Articles and thirteen Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules. This shows that the original draft had undergone considerable changes. In fact, there were notices for over 7000 amendments to the Draft Constitution. Of these 2473 were actually moved, debated and disposed of. This alone should show the manner in which the Assembly

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conducted its business. It was indeed a great democratic exercise; discussion, debates and deliberation were encouraged enormously. There was also a great tolerance of criticism and no impatience with long drawn out debates and no endeavour to imposition. It was truly a full-fledged democratic procedure which deserves utmost admiration.

### Meaning

There is divergent of opinions on the meaning of Constituent Assembly. According to Dood, ‘it is a representative body chosen for the purpose of considering and either adopting or proposing a new constitution and changes in the existing constitution.’ Abbe Siezes has defined it as ‘an assembly of extraordinary representatives to which the nation shall have entrusted the authority to make a constitution or at any point to define its content.’ In simple words, a constituent assembly can be defined as a democratic device for formulating and adopting a new constitution or bringing about some fundamental changes in an existing constitution by free people. It implies the right of the people to determine their own future and decide the nature and type of the polity under which they would like to live. The rights of people to give to themselves a constitution of their choice, requires a representative constituent assembly as an attribute of national freedom. The making of the constitution by people representing themselves in the Constituent Assembly reflects the sovereign will of the people.

The founding fathers of the Indian Constitution conceived of a Constituent Assembly as something dynamic, not merely a representative but a nation on the move. The principal job of the Constituent Assembly was not only to produce a constitution of the country but to throw away the spell of its past political and possibly social structure and fashioning for itself a new government its own making. According to Sir Ivor Jennings, a constituent assembly comes into being specially in three situations - when there is a great social revolution, when a nation through up it foreign yoke, and when a nation is created by the fusion of smaller political units. Whatever the circumstances, Jennings points on ‘the need is felt and some person is set to draft a constitution’. According to this view, the Indian Constituent Assembly falls into the second category. Its task was mainly to put an end to the British rule in India and to establish an independent Republic of India. But it was not devoid up of revolutionary concept and Pundit Nehru termed it as the psychological revolution that the idea of the Constituent Assembly created in the minds of the Indian people. It was both in the slogan and a creed to concretise the fundamental issue in a struggle for freedom and a method and procedure for the framing of a constitution for an independent India.

### Composition

When it comes to the composition of the Constituent Assembly, it should be noted that it was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme in recommendation with the Cabinet Delegations. The prime features of the scheme were:

- Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively, in the ratio of one

to a million approximately. Due to which the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of 93 seats.

- Each provincial seat was distributed amongst three major communities - Muslim, Sikh and General proportional to their respective populations.
- Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- The selection method for Indian representatives had to be determined through consultation.

In all, the Constituent Assembly was to have 389 members but, when Muslim League boycotted the Assembly, therefore out of 296 members only 211 attended its first meeting on 9 December 1946. Apart from that, the Partition Plan of June 3 1947 gave rise to setting up a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North western Frontier Province, Baluchistan, and the Sylhet district of Assam which had to join Pakistan by a referendum ceased to be member of the Constituent Assembly of India, and there was a fresh election in the new Provinces of West Bengal and East Punjab. Due to which, on 31 October 1947, when the Constituent Assembly reassembled, the House membership was lessened to 299. Out of these, 284 were actually present on 26 November 1949, and attached their signatures to the Constitution to regard it as finally passed.

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### **Committees to draft a Constitution**

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

### **Committees on Procedural Affairs**

- (i) The Steering Committee (Chairman Dr K.M. Munshi)
- (ii) The Rules of Procedure Committee (Chairman Dr Rajendra Prasad)
- (iii) The House Committee
- (iv) The Hindi-translation Committee
- (v) The Urdu-translation Committee
- (vi) The Finance and Staff Committee
- (vii) Press Gallery Committee
- (viii) The Committee based on the Indian Independence Act of 1947
- (ix) The Order of Business Committee
- (x) The Credential Committee

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### Committees on Substantial Affairs

- (i) The Drafting Committee (Chairman B.R. Ambedkar)
- (ii) The Committee for negotiating with States (Chairman Dr Rajendra Prasad)
- (iii) The Union Constitution Committee (Chairman Jawaharlal Nehru)
- (iv) The Provincial Constitution Committee (Chairman Sardar Patel)
- (v) A Special Committee to examine the Draft Constitution (Chairman Sir Alladi Krishnaswami Iyer)
- (vi) The Union Powers Committee (Chairman Pandit Jawaharlal Nehru)
- (vii) The Committee on Fundamental Rights and Minorities (Chairman Sardar Patel)
- (viii) The Committee on Chief Commissioners Provinces
- (ix) The Commission of Linguistic Provinces
- (x) An Expert Committee on Financial Provisions
- (xi) Ad-hoc Committee on National Flag
- (xii) Ad-hoc Committee on the Supreme Court

### 1.3.2 Constitutional Development

The Constitution of the Indian republic is the result of the research and deliberations of a body of eminent representatives of the people who sought to improve the system of administration during British imperialist rule. This rule in India can be categorized into two phases:

- (i) The Company Rule until 1858
- (ii) The Crown Rule during 1858–1947

Crown Rule from 1858 to 1947, also called the British Raj, saw the laying of the foundations of the Indian constitutional structure through various acts passed by the British government. These acts have been discussed below.

#### Government of India Act, 1858

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

#### Indian Council Act, 1861

The Indian Council Act, 1861 introduced a representative institution in India for the first time. It converted the Executive Council of the Viceroy into a Cabinet on the portfolio system. This cabinet had six ordinary members, each of whom was in

charge of an independent department in the British colonial government comprising home, government, revenue, law and finance, and public works (post 1874). The Military Commander in Chief worked with the Council as a special member. Under the provisions of the Act, the Viceroy was allowed to overrule the Council when he deemed it necessary. Although the Council Act of 1861 made no statutory provisions made for the admissions of Indians, in actuality some of the non-official seats were offered to Indian elites.

### **Indian Council Act, 1892**

The Indian Council Act of 1892 dealt entirely with the powers, functions and compositions of the legislative councils in India. In regards to the Central Legislature, the Act ensured stated that the number of additional members remained between six and twelve. The act also affirmed that 2/5th of the total members in the Council would be non-officials. Some of them were to be nominated and others were elected. According to the Act, the members of the legislatures were given equal rights to express themselves in financial issues. It was decided that all financial affairs statements would be prepared in the legislation. However, the members were not allowed to either move resolutions or divide the houses as per financial concerns. The members could only put questions limited to the governmental matters of interest on a six days' notice.

The most significant feature of the Act was the introduction of election procedure. The term 'election' was carefully used in the Act. In addition to the elected official members, the Act pronounced that there should be five non-official members. It further stated that these members should be elected by the official members of the provincial legislatures of Bombay, Madras, Calcutta, the north-western province and the Calcutta Chamber of Commerce. The Governor-General had the authority to nominate the five non-official members. The bodies were allowed to elect the members of District Boards, Municipalities, Universities and the Chamber of Commerce but the election methods were not clearly mentioned. The elected members were officially regarded as 'nominated' in spite of the fact that the recommendations of each legislative body was taken into consideration for the selection of these members. Often the person favoured by the majority was not considered 'elected', but was directly recommended for nomination. According to this Act, the members were allowed to make observations on the budget and give their suggestions on how revenue could be increased and expenditure could be reduced. The principle of election, as introduced by the Acts of 1892, was used in the formation of the Constitution as well. The Acts of 1892 was criticized in various sessions of the Indian National Congress. Their main criticism of the act was the election procedure mentioned in the Act. Congress leaders also felt that the functions of the legislative councils were rigorously confined.

### **Indian Council Act, 1909**

Lord Morley, the Secretary of State for Indian Affairs, announced in the early 1900s that his government wished to formulate new reforms for India, wherein Indians would be granted more powers in legislative affairs, in a bid to counter alienation in India that was increasingly taking the form of violence, especially in

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Bengal. Thus, the British Indian government appointed a committee to propose a scheme of reforms. The committee submitted the report and the reforms mentioned in the report were agreed upon by Lord Minto and the Viceroy Lord Morley, after which the Indian Council Act of 1909 was passed by the British Parliament. The Indian Council Act of 1909 was also referred as the Minto-Morley Reforms.

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

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

### Government of India Act, 1919

The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand the participation of Indians in the government of British India. The Act embodied the reforms recommended in the joint report of Sir Edwin Montagu and Lord Chelmsford thus was also known as the Montagu-Chelmsford reforms. The Indian National Congress called the act ‘disappointing’.

The changes introduced by the Act were as follows:

1. System of diarchy in the provinces
2. Central control over the provinces was relaxed
3. Indian legislature was made more representative

### Government of India Act, 1935

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

The White Paper was examined by Joint Select Committee of the British Parliament. The Committee presented a draft Bill on 5 February 1935. The Bill as passed in the British parliament as the Government of India Act, 1935.

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

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

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### Shortcomings of the 1935 Act

- Apart from the Governor General's power of veto, a bill passed by the central legislature was also subject to veto by the Crown.
- No bill could be introduced in the legislature without the Governor General's sanction with respect to certain matters. There were similar fetters on the provincial legislatures.

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

#### Check Your Progress

3. When was the Constituent Assembly first held?
4. How did Abbe Siezes define constitutional assembly?
5. Which act ended East India Company rule in India?

## 1.4 PREAMBLE OF THE INDIAN CONSTITUTION

The spirit/philosophy of the Indian Constitution is clearly reflected in the Preamble of the Indian Constitution. The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution', which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947. Also, the

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drafting committee of the Constituent Assembly, after a lot of deliberations, decided that the ‘Preamble stands part of the Constitution’.

Recognizing its importance, the Preamble was amended in 1976 by the 42nd Constitution Amendment Act. According to an eminent constitutional expert Subhash C. Kashyap, ‘the text of the Preamble stands for the fundamental Constitutional values in which the founding fathers believed, which they wanted to foster among the people of the Republic and which, they hoped, would guide all those who, from generation to generation, were called upon to work.’ The values expressed in the Preamble are sovereignty, socialism, secularism, democracy, republican character, justice, liberty, equality, fraternity, human dignity and the unity and integrity of the Nation. In addition to them, our Constitution promotes respect for diversity and minority rights, accommodates regional and political assertions through federalism and fosters international peace and cooperation.

The Preamble to the Constitution of India reads as follows:

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

JUSTICE, social, economic and political;

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

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

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

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

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

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

### (i) Sovereignty

By declaring us as a sovereign entity, the Preamble emphasizes complete political freedom.

It implies that our state is internally powerful and externally free. She is free to determine for herself without any external interference. There is none within her to challenge her authority. Only this attribute of sovereignty has made her a member in the comity of nations. Without sovereignty she has no essence. If a state cannot freely determine what it wants and how to achieve it, it loses the rationale to exist. Further, sovereignty gives the state the dignity of existence. It would not receive respect from within as well from outside if it does not possess the sovereign status. This suggests that sovereignty is one of the most important values of a state.

Therefore, the government is duty bound to defend its sovereignty by preventing any kind of threat to it coming from any entity and direction.

Though our Constitution does not specify where the sovereign authority lies but by mentioning the source of our Constitution as ‘We the people of India’ it announces to the world that the ultimate sovereignty rests with the people of India as a whole. Political sovereignty is the hinge of our polity. Accordingly, it is implied that the constitutional authorities and organs of government derive their power only from the people. Therefore, our political system should ensure the support and approval of people to it. Article-51A(c), on the other hand, says that it shall be the duty of every citizen to uphold and protect the sovereignty, unity and integrity of India.

### **(ii) Socialism**

The word ‘socialist’ was added to the Preamble by the 42nd Amendment Act of 1976, however, several articles of our Constitution were already there giving credence to the ideal. The fathers of our Constitution had a wider vision of social transformation. Despite all social, economic and political inequality present and inherent in Indian traditional society, our Constitution started a crusade against that order. The Constitution has deliberately imposed on us the ideal of socialist pattern of society—a kind of Indian model of socialism to suit to our needs and temperament. It stands to end all forms of exploitation in all spheres of our existence. Our Constitution directs the state to ensure a planned and coordinated social advance in all fields while preventing concentration of wealth and power in few hands. Our Constitution supports land reforms, promotes the well-being of working class and advocates for social control of all important natural resources and means of production for the well-being of all sections. To ensure a basic minimum to all has been the crux of many of our public policies today. Government of India has adopted mixed economy, introduced five year plans and has framed many such laws to achieve the value of socialism in a democratic set up. To achieve the objective of socialism, Part-IV of our Constitution has outlined the principles to be followed.

### **(iii) Secularism**

India is a home to almost all major religions in the world. To keep the followers of all these religions together, secularism has been found to be a convenient formula. The ideal of secularism in Indian context implies that our country is not guided by any religion or any religious considerations. However, our polity is not against religions. It allows all its citizens to profess, preach and practice any religion of their liking. Articles from 25 to 28 ensure freedom of religion to all its citizens. Constitution strictly prohibits any discrimination on the ground of religion. All minority communities are granted the right to conserve their distinctive culture and the right to administer their educational institutions. The Supreme Court in *S.R Bommai vs Union of India* held that secularism was an integral part of the basic structure of the Constitution. Secularism thus is a value in the sense that it supports to our plural society. It aims at promoting cohesion among different communities living in India. Despite the Constitutional provisions and safeguards it is unfortunate

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that we still remain insufficiently secular. That has resulted in communal riots. Therefore, to achieve true secularism has remained a challenging objective.

#### (iv) Democracy

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India is a democracy. We have adopted parliamentary democracy to ensure a responsible and stable government. As a form of government it derives its authority from the will of the people. The people elect the rulers of the country and the latter remain accountable to the people. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as ‘One man one vote’. Elections are held periodically to ensure the approval of the people to the governments at different levels. All the citizens without any discrimination on the basis of caste, creed, colour, sex, religion or education are allowed freedom of speech, thought and expression and also association. Democracy contributes to stability in the society and it secures peaceful change of rulers. It allows dissent and encourages tolerance. It rules by persuasion, not by coercion. It stands for a constitutional government, rule of law, inalienable rights of citizens, independence of judiciary, free and fair elections and freedom of press etc. Therefore, to develop a democratic political culture has been an important objective.

#### (v) Republic

As opposed to a monarchy, our Constitution prefers to remain a republic. The office of the head of the state is elective. This idea strengthens and substantiates democracy that every citizen of India (barring some who are constitutionally disqualified) after attaining a particular age is equally eligible to become the head of the state if he is elected as such. Political equality is its chief message. Any sort of hereditary rule is thus regarded as a disvalue in India.

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## 1.5 BASIC FEATURES OF THE INDIAN CONSTITUTION

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The Indian Constitution represents the vision and values of its founding fathers and is the basis of the faith and aspiration of Indian people. When the Indian Constitution was formally ratified on 26 November 1949, it concluded a process that resulted in a remarkably forward-looking document that enshrined individual liberty, equality of opportunity, social justice and secularism. As per this Constitution, the Republic of India was inaugurated on 26 January 1950.

#### Salient Features of the Indian Constitution

Salient features of the Constitution of the Republic of India are as follows:

##### 1. Living Document

The Constitution is a living document, an instrument which makes the governmental system work. Unlike many other developing countries that became Independent after the World War II, it has survived as a living document with necessary amendments.

## 2. Written Constitution

The Constitution of the Republic of India is written. As originally passed, it had 395 Articles and 8 Schedules. The written Constitution is very essential for a federal state so that whenever there is any dispute between the federal government and the federating units, it becomes the basis to resolve these disputes. In sheer physical terms, Indian Constitution is definitely the largest and most detailed Constitution in the world. The Constitution of USA contains only 7 Articles, Canada's 147 Articles and Australia's 128 Articles.

The framers of the Constitution tried to provide the solution of all the possible problems of administration and governance of the country. Even those matters which are taken as conventions in other countries have been put to writing in the Indian Constitution.

## 3. Sovereign Democratic Republic

The Indian Independence Act, 1947 declared India a dominion with the Queen of England as the Head of the State. The Governor-General was appointed by the Queen and acted as her representative in India. The authors of the Constitution decided that Dominion status was not in conformity with the dignity of the Indian nation. The preamble of the Constitution, therefore, declared India as a Sovereign Democratic Republic. It means that India as a nation does not owe allegiance to any foreign power, is independent in her dealings with foreign countries and enjoys equal status in the world community with other independent sovereign states.

India is a democracy. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. Besides, the Constitution confers on Indian citizens some fundamental rights which are considered to be the essence of a democratic system.

## 4. Parliamentary Form of Government

The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his functions in accordance with the Prime Minister's advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). Every State has a Legislative Assembly. Certain States have an upper House also called State Legislative Council. There is a Governor for each State who is appointed by the President. Governor is the head of the State and the executive power of the State is vested in him. The Council of Ministers with the Chief Minister as its head advises the Governor in the discharge of executive

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functions. The Council of Ministers of a State is collectively responsible to the Legislative Assembly of the State.

The Constitution distributes legislative powers between Parliament and State legislatures as per the lists of entries in the Seventh Schedule to the Constitution. The residuary powers are vested in the Parliament. The centrally administered territories are called Union Territories.

### 5. A Federal System with Unitary Bias

The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution. India has been described as a Union of States according to Article 1 of the Constitution. There are twenty-eight states in the union, each one with a separate Executive, Legislature and Judiciary. Powers have been divided between the Union Government on the one hand and the States on the other by the Constitution itself. The Constitution is sovereign and there is provision for judicial review.

The most remarkable feature of the Indian Constitution is to confer upon a federal system the strength of a unitary government. Though normally the system of government is federal, during an emergency the Constitution enables the federation to transform into a unitary State.

### 6. Adult Franchise

At the time when the Constitution was made, the vast majority of Indian people were illiterate. The framers of the Constitution took the bold step of conferring the right to vote on every adult citizen of India irrespective of the differences of education, property or sex. Every citizen who was 21 years of age was given the right to vote. It has been reduced to 18 years now. This makes the Constitution democratic in the real sense of the term.

### 7. Rigid and Flexible

The Constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. However, it provided for amendments and therefore it is flexible. The Indian Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia. In its place, it has provided a most facile procedure for amending the Constitution.

It is only the amendment of few of the provisions of the Constitution that requires ratification by the State legislatures and even then ratification by only half of them is sufficient.

The rest of the Constitution can be amended by the special majority of the union Parliament, i.e., a majority of not less than two-thirds of the members of each House present and voting, which again must be a majority of the total membership of the House.

Within a period of less than 60 years, the Constitution has been amended 94 times. It proves that the Constitution is flexible. The procedure laid down by

the Constitution for its amendment is neither very easy, as in England, nor very rigid as in the United States.

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## **8. Independence of Judiciary**

The framers of the Constitution were aware that democratic freedoms were meaningless in the absence of an independent machinery to safeguard them. No subordinate or agent of the government could be trusted to be just and impartial in judging the merits of a conflict in which the Government itself was a party. Similarly, a judiciary subordinates either to the Centre or the States could not be trusted as an impartial arbiter of conflicts and controversies between the Centre and the States.

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These were the compelling reasons for the creation of an independent judiciary as an integral part of the Constitution and for the adoption of judicial independence as a basic principle of the Constitution.

## **9. Supreme Court and Judicial Review**

Supreme Court is a necessary element in a federal polity. Accordingly, the Indian Constitution has established a Supreme Court of India. The Court has both original and appellate jurisdiction. It has the power of judicial review. It can declare any Legislative enactment or administrative act as unconstitutional if it is deemed to be in conflict with the provisions of the Constitution. Besides, the Supreme Court is a court of record.

## **10. Single Citizenship**

The Constitution of India grants only one citizenship to all the citizens. In a federation sometimes a citizen gets double citizenship, one of the Union and the other of State in which that person lives.

## **11. Detailed Administrative Provisions**

As Dr B.R. Ambedkar observed, it is perfectly possible to pervert the Constitution without changing the form of administration. To prevent such subversion of the Constitution, detailed administrative provisions were included in it.

We have in the Indian Constitution detailed provisions about the organization of the judiciary, the services, the Public Service Commission, Election and about the division of powers between the Union and the States.

## **12. Constitution of the Units**

The Constitution of a federal State usually deals only with the federal Government and leaves the federating units to draw their own constitutions. This practice was followed in the framing of the constitutions of the USA, USSR, Canada and other Federal States. However, the Indian Constitution provides the Constitutions of both the Union and the States. This has contributed to the bulk of the Indian Constitution.

## **13. Secular State**

India is a secular State. It means that the State does not recognize, establish or endow any church or religious organization. It is not guided in the discharge of its functions by the considerations of secular or the worldly welfare of the people. It

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does not seek to promote the spiritual or religious welfare of the people. It allows freedom of religion. The Constitution guarantees freedom of worship, faith and conscience. It does not discriminate in matters of government employment on the basis of religion. The term ‘Secular’ did not occur in any part of the original Constitution. It was incorporated in the preamble by the Forty-second Constitutional Amendment in 1976.

### 14. Welfare State

The preamble of the constitution describes India as a socialist state. The term was added to the preamble of the Constitution by the Forty-second Constitutional Amendment Act of 1976 by the Indira Gandhi led Congress government. However, it is to be noted that ‘Socialism’ envisaged by the Constitution is not the usual State socialism seen in Russia or China which entailed the nationalization of all the means of production, distribution, communication, etc. Indira Gandhi explained the nature of Indian Socialism by stating, ‘We have always said that we have our own brand of socialism. We will nationalize the sectors where we feel the necessity. Just nationalization is not our type of socialism.’ Socialism in the Indian context means that the government endeavours to make the distribution of wealth more equal, provides a decent standard of living for all and is committed towards the formation of a welfare state.

### 15. Liberal Constitution

Liberalism is a political philosophy that is centred on the freedom of an individual. The Indian Constitution contains many features that make it liberal in nature, the most important being the section on fundamental rights.

The constitution of India recognizes six fundamental rights. These are:

1. Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.
2. Right to freedom which includes speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation, right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases.
3. Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings.
4. Right to freedom of religion, including freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.
5. Cultural and Educational rights preserving Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
6. Right to constitutional remedies for enforcement of Fundamental Rights.

These six fundamental rights guaranteed in the Indian constitution is comparable to features seen in liberal constitutions around the world including the Bill of Rights in the American Constitution. Along with the fundamental rights, the remedies for enforcing the rights, namely, the writs of *habeas corpus*, *mandamus*, *prohibition* and *certiorari* are also guaranteed by the Constitution under Article 32. However, unlike other liberal constitutions around the world, the Indian Constitution today does not recognize the right to property as a fundamental right. Although originally a part of the Indian Constitution, the right to property was deleted from the list of fundamental rights after the 44th Amendment to the Constitution in 1978. However at the same time, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his or her property save by authority of law. Thus, today the right to property in India is a legal and not a fundamental right.

## 16. Fundamental Duties

Part IVA on fundamental duties was incorporated in the Constitution by the Forty-second Amendment Act. Article 51A of the Constitution enumerates ten fundamental duties of the citizens of India: to respect and abide by the Constitution and the laws; to uphold the sovereignty of the nation; to respect the democratic institutions enshrined in the Constitution; to abjure communalism and violence, etc. However, unlike the fundamental rights, the fundamental duties are not enforceable in the courts.

## 17. Directive Principles of State Policy

A distinctive feature of the Constitution is that it contains Chapter IV on the Directive Principles of State Policy. These Directives relate mostly to social and economic justice, such as adequate means of livelihood for all, distribution of wealth so as to serve the common good, equal pay for equal work, protection of adult and child labour, free and compulsory primary education, etc. These are the guiding principles of State policy. The authors of the Constitution did not make the Directive Principles justiciable.

The Directive Principles are not enforceable by the courts, i.e., if the government of the day fails to carry out these objects no court can make the government ensure them. Still the principles have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

## 18. Drawn from Different Sources

A distinguishing feature of the Indian Constitution is that it was prepared after carefully looking at all the known constitutions of the world at that time. The first meeting of the Constituent Assembly of India took place in the Constitution Hall, New Delhi. On 9 December 1946, it was chaired by Dr Sachchidananda Sinha. In his address Dr Sinha referred to several constitutions that were in existence at that time and said:

As a matter of fact, the French constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in

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1787, by the historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

The parliamentary system has been borrowed from England, the concept of independent judiciary and judicial review and fundamental rights from the US Constitution, the federal features from Canada and the Directive Principles from Ireland. Many provisions related to administration have been taken from the Government of India Act, 1935.

These borrowings were not blind as the framers of the Constitution modified them with a view to avoid the faults that have emerged in practice and adapted to the existing conditions and needs of the country. India's religious and ethnic diversity, caste inequalities and widespread illiteracy and poverty demanded these unique provisions. The Constituent Assembly members were equal to this task, debating and discussing the clauses of the Draft Constitution threadbare.

### 19. Reservation in Legislatures and Services for Backward Classes

A distinctive feature of the Indian Constitution is that there is reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the State Assemblies. The Constitution also lays down that the claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in making appointments to services in connection with the affairs of the Union or a State.

There is also reservation of the seats for Anglo-Indian community in the House of the People and in some State Assemblies.

### 20. Official Language of India

A provision was made in the Constitution to declare Hindi in the Devanagiri script as the official language of India. Till that time English was to continue as the official language.

### 21. Basic Structure

Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. However, the Supreme Court has acted as an arbiter to the legislative enthusiasm of Parliament ever since Independence. With the intention of preserving the original ideals envisioned by the constitution-makers, the apex court pronounced that Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending it.

Though the phrase ‘basic structure’ itself is not found in the Constitution, the Supreme Court recognized this concept for the first time in the historic *Kesavananda Bharati* case in 1973. Since then the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by the Parliament. However, the final word on the issue of the basic structure of the Constitution has not been pronounced by the Supreme Court yet. The sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens are some of the essential features of the Constitution that have appeared time and again in the apex court’s pronouncements.

### Sources of Constitution of India

Our Indian constitution is unique one because it was made by drawing from many sources. These sources were as follows:

1. **Russian Revolution of 1917:** the Ideal of Justice in the Social, Education, Economic and Political realm.
2. **French Revolution of 1789:** Ideal of Liberty, Equality and Fraternity.
3. **Government of India Act, 1935:**
  - Federal scheme
  - Office of Governor
  - Judiciary
  - Public service commission
  - Emergency
  - Administrative details
4. **British Constitution**
  - Parliamentary form of government
  - Rule of law
  - Legislation
  - Single citizenship
  - Cabinet form of government
  - Prerogative writs
  - Bicameralism
5. **US Constitution**
  - Fundamental rights
  - Independent judiciary
  - Judicial review
  - Impeachment of President
  - Removal of Supreme Court judges
  - Vice presidential ship

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- 6. Irish Constitution**
  - Directive Principles of State Policy
  - Nomination of members to Rajya Sabha
  - Electoral office and method of president election
- 7. Canada**
  - Federation with strong center
  - Residuary power with center
  - Appointment of state governors by center
  - Advisory/review of Supreme Court
- 8. Australian Constitution**
  - Concurrent list
  - Freedom of trade
  - Commerce and interstate trade
  - Joint sitting in the parliament
- 9. USSR Constitution**
  - Fundamental duties
  - Preamble
- 10. South Africa**
  - Procedure for amendment of the constitution
  - Election to the Rajya Sabha members
- 11. Japan**
  - Procedures established by law
- 12. Weimer Constitution of Germany**
  - Suspension of fundamental rights during emergency

**Check Your Progress**

6. What is the ideal of secularism in the Indian context?
7. How is the Indian Constitution both rigid and flexible?

**1.6 ANSWERS TO ‘CHECK YOUR PROGRESS’**

1. Mahatma Gandhi proposed the idea of non-cooperation against the British Government at a special session of the Congress held in Calcutta in September 1920.
2. The Quit India Movement was another mass resistance movement that was started by Gandhi in August 1942. It is also known as the August Revolution.

3. The Constituent Assembly was first held on 9 December 1946, and included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well.
4. Abbe Siezes has defined it as ‘an assembly of extraordinary representatives to which the nation shall have entrusted the authority to make a constitution or at any point to define its content.’
5. The Government of India Act 1858 ended East India Company rule in India and transferred the governance of the country directly to the British Crown. The Company’s rule was, thus, terminated and the administration was carried out in the name of the Crown through the Secretary of the State.
6. The ideal of secularism in Indian context implies that our country is not guided by any religion or any religious considerations. However, our polity is not against religions. It allows all its citizens to profess, preach and practice any religion of their liking.
7. The Constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. However, it provided for amendments and therefore it is flexible.

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### 1.7 SUMMARY

- The adverse impact of British imperialist rule in India in all spheres, whether it was political, social, economic, etc., led to widespread dissatisfaction among the people and gave rise to a number of resistance movements.
- Since the Indian independence struggle involved a wide array of resistance movements against oppressive imperialist rule, it incorporated a wide spectrum of philosophical traditions from India and elsewhere.
- Resistance to British rule in the 18th and the 19th century was mainly characterized by socio-religious movements and tribal uprisings. Even the 1857 revolt largely began as a result of perceived religious insults to Hindu and Muslim Sepoys by the British colonialists.
- The chief strategy employed by the Congress to win independence was that of nonviolent resistance. Non-violent resistance is carried on using symbolic protests, civil disobedience, economic or political non-cooperation, and other methods, which do not involve violence.
- The Non-cooperation Movement was a great landmark of the freedom movement in India in the twentieth century.
- Despite its failure, the Non-cooperation was important because it was the first mass resistance movement in India. The sense of unity brought about by the movement was quite unusual in the history of the country and it paved the way for achieving independence in the future.
- The Quit India Movement was another mass resistance movement that was started by Gandhi in August 1942. It is also known as the August Revolution.

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- The background of the movement was the failure of the Cripps mission and a lack of sympathetic attitude of the British colonial government towards Indian independence.
- The Indian political system in general and its Constitution in particular were not created just after the transfer of power from the British.
- The structure and values of independent India's political system is largely the products of the evolution of the ideological legacy and conceptual discourse during the national movement.
- The Indian Constituent Assembly was elected to form the Constitution of India. It served as an independent nation to its first Parliament.
- The founding fathers of the Indian Constitution conceived of a Constituent Assembly as something dynamic, not merely a representative but a nation on the move.
- The principal job of the Constituent Assembly was not only to produce a constitution of the country but to throw away the spell of its past political and possibly social structure and fashioning for itself a new government its own making.
- In the words of Granville Austin, the members of the Constituent Assembly drafted a constitution that expressed the aspiration of the nation.
- They skilfully selected and modified the provision that they borrowed, helped by experts among their members and the advice given by ministries of the Union and Provincial governments.
- The Government of India Act 1858, Indian Council Act 1861, Indian Council Act 1892, Indian Council Act 1909, Government of India Act 1919, Government of India Act, 1935 and Government of India Act 1947 laid the foundation of the Indian constitutional structure.
- The rule of the East India Company ended with the enactment of the Government of India Act 1858. After this, the British Crown ruled over India.
- The most significant feature of the Indian Council Act of 1892 was the introduction of election procedure.
- Muslims were granted the right of a separate electorate after the enactment of the Indian Council Act 1909.
- The Government of India Act 1919 broadly ideated a dual form of government, called diarchy, for the major provinces.
- According to the Government of India Act 1935, the Central Legislature was divided into two houses: The Council of State and the Federal Assembly.
- One shortcoming of the Government of India Act 1935 was that apart from the Governor General's power of veto, a bill passed by the central legislature was also subject to veto by the Crown.
- The spirit/philosophy of the Indian Constitution is clearly reflected in the Preamble of the Indian Constitution.

- The wordings of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity.
- The Indian Constitution represents the vision and values of its founding fathers and is the basis of the faith and aspiration of Indian people.
- The Constitution of India is written. As originally passed, it had 395 Articles and 8 schedules.
- The written Constitution is very essential for a federal State so that whenever there is any dispute between the federal government and the federating units, it becomes the basis to resolve these disputes.
- The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features.
- The Constitutional head of the Executive of the India Union is the President.

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### 1.8 KEY TERMS

- **Habeas corpus:** It is a writ requiring a person under arrest to be brought before a judge or into court.
- **Sovereignty:** It is the full right and power of a governing body over itself, without any interference from outside sources or bodies.
- **Diarchy:** It was a system of double government introduced by the Government of India Act (1919) for the provinces of British India.
- **Panchayat:** It is the only grassroots-level of panchayati raj formalised local self-governance system in India at the village or small-town level.
- **Sarpanch:** It is a term that refers to the head of the panchayat in a village.
- **Ultra vires:** It is a legal term meaning beyond one's legal power or authority.

### 1.9 SELF-ASSESSMENT QUESTIONS AND EXERCISES

#### Short-Answer Questions

1. What was the non-cooperation movement?
2. What was the composition of the Constituent Assembly?
3. List the objective resolutions of the Constituent Assembly.
4. What were some of the criticisms of the Constituent Assembly?
5. Write a short-note on the Indian Council Act, 1909.
6. List the sources of the Indian Constitution.

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**Long-Answer Questions**

1. Discuss the anti-British movements led by the Congress in the twentieth century.
2. Examine the salient features of the Constituent Assembly.
3. Explain the Government of India Act, 1935.
4. The Indian polity is a sovereign, socialist, secular, democratic republic. Discuss the statement with reference to the preamble of the constitution.
5. Describe the salient features of the Indian Constitution.
6. Discuss the problems in the working of the Panchayat System in India.

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## **1.10 FURTHER READING**

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## **UNIT 2 FUNDAMENTAL RIGHTS, DUTIES AND THE UNION EXECUTIVE**

### **NOTES**

#### **Structure**

- 2.0 Introduction
- 2.1 Objectives
- 2.2 Fundamental Rights
- 2.3 Fundamental Duties and Remedies
- 2.4 Directive Principles of State Policy
- 2.5 Union Executive: President, Prime Minister and Cabinet
  - 2.5.1 The President
  - 2.5.2 Prime Minister
  - 2.5.3 Council of Ministers and the Cabinet
- 2.6 Answers to 'Check Your Progress'
- 2.7 Summary
- 2.8 Key Terms
- 2.9 Self-Assessment Questions and Exercises
- 2.10 Further Reading

### **2.0 INTRODUCTION**

In this unit, the first section will deal with the fundamental rights and duties that are a part of the Indian Constitution. It will also discuss the directive principles of State policy.

The fundamental rights of a citizen have been defined in Part III of the Indian Constitution and can be summarized as the basic human rights of all citizens. Every individual has access to these rights irrespective of caste, creed, gender, race or religion. Similarly, fundamental duties are outlined in Part IV-A of the Indian Constitution and deal with the moral obligations of all citizens towards the State. This is not only to ensure the unity of India as one nation but also to see to it that the spirit of patriotism prevails amongst all citizens of a state. The Directive Principles of State Policy mentioned in Part IV of the Indian Constitution are the recommendations or guidelines which the state needs to adhere to while framing and passing laws. The final section of the unit will discuss the union executive in detail.

The Union Executive is headed by the President, the Head of State of the Indian Republic, who exercises his or her power directly or through his or her subordinates. The President is the formal head of the legislature, executive and judiciary branches of Indian democracy and is the commander-in-chief of the Indian Armed Forces. The Prime Minister of India is the chief of government, chief advisor to the President of India, head of the Council of Ministers and the leader of the majority party in Parliament. The Prime Minister leads the executive

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branch of the Government of India. The PM selects and can dismiss other members of the cabinet; allocates posts to members within the Government; is the presiding member and chairman of the cabinet and is responsible for bringing proposal of legislation. The resignation or the death of the Prime Minister dissolves the cabinet.

### 2.1 OBJECTIVES

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

- Discuss the fundamental rights given in the Constitution
- Describe the fundamental duties of an Indian citizen
- Evaluate the directive principles of state policy
- Describe the powers of the President
- Evaluate the position, power and functions of the Prime Minister
- Elucidate the importance of the Council of Ministers

### 2.2 FUNDAMENTAL RIGHTS

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

The Constitution classifies fundamental rights into six categories:

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 23–24)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to constitutional remedies (Article 32)

#### Right to Equality (Article 14–18)

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

### (i) Equality before law

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

### (ii) Equal protection of laws

This clause has been taken verbatim from the XIV amendment to American constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not mean that every law must have a universal application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money) in the same position as others. Varying needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be violative of equal protection. The Constitution, however, does not stand for absolute equality. The State may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have same nature, attainments, qualifications or circumstances. It means that the State is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

### (iii) Prohibition of discrimination (Article 15)

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

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

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

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

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

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

### (iv) Equality of opportunity (Article 16)

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

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

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

Article 16 (4) allows the State to reserve appointments in favour of a backward class of citizens which in its opinion is not adequately represented in the

services under the State. The Supreme Court had held that such reservation should generally be less than 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats member of backward classes are free to compete with others and be appointed to non-reserved seats, if otherwise, they are eligible on merit.

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

Although Article 16 guarantees equality of opportunity in matters of public employment, for all citizens and is expected to provide a bulwark against considerations of caste, community and religion, the result so far has been far from satisfactory.

#### **(v) Social equality by abolition of untouchability (Article 17)**

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

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

#### **(vi) Social equality by abolition of titles (Article 18)**

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

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

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

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

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

- Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India
- Right to practice any profession, or to carry on any occupation, trade or business

#### (i) Freedom of speech and expression

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

Freedom of expression in this clause means right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. It, thus, includes not only the freedom of press but also the expression of one's ideas in any other form. Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to constitutional and statutory provisions.

#### 'Reasonable' restrictions on freedom of speech

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

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

These reasonable restrictions to the freedom of speech have been subject to much criticism since its inception. It is argued that words like 'public order' and

'decency' or 'morality' are deliberately made vague through amendments to the constitution to allow the state to suppress dissent. On the other hand, it could also be argued that in a state as diverse as India, where people's sentiments run high, such restrictions are necessary to maintain public order. While one can argue the merits of reasonable restrictions relating to public order, there can be no argument on the unreasonableness of restricting freedom of speech in relation to 'relations with foreign states'. Such a restriction theoretically puts curbs on citizens of the country from criticizing the foreign policy of the Indian state, which is the democratic right of citizens.

### **(ii) Right of peaceful unarmed assembly**

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

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

### **(iii) Freedom of association and unions [Articles 19 (1) and (4)]**

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

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

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

- Sovereignty and integrity of India
- Public order
- Morality

### **(iv) Freedom of movement and residence**

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

The freedom of movement of a citizen has three aspects

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

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

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

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

### (v) Freedom of profession

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

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

### (vi) Protection in criminal convictions (Article 20)

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

### (vii) Right to life and personal liberty (Article 21)

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

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

### (viii) Right to Information

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. Concerned Bill, however, was introduced in the Parliament as Freedom on Information Bill, 2002 which along with certain

restrictions made it mandatory for the government to provide information pertaining to public sphere. This right of information was further illustrated by the Supreme Court, which held that ‘a voter has a fundamental right to know the antecedents of a candidate’. Accordingly, Supreme Court struck down some parts of Representation of People (Amendment) Act, 2002 by making a clear distinction between the constitutional right of a voter and his rights under general laws. The Court declared that voter’s fundamental right to know the antecedents of a candidate is independent of statutory right under election law.

#### **(ix) Right to Education (Article 21(a))**

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

#### **(x) Protection against arrest and detention (Article 22)**

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

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

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move the high court, for the grant of the writ of habeas corpus.
- The second protection granted by Clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge, nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the time necessary for journey from the place of arrest to the court of the magistrate.

#### **(xi) Preventive detention**

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

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

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

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

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

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

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended 7 times, each for a period of 3 years. The revival of anarchist forces obliged Parliament to enact a new Act, named The Maintenance of Internal Security Act (MISA) in 1971, having provision broadly similar to those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPSA still remains in force. Further, in 1980, National Security Act (NSA) was enacted. According to the NSA the Maximum period for which a person may be detained shall be 6 months from the date of detention. Next in the series was Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, try them summarily, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the Government to enact The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, which, in fact, empowered the executive for suppression of all kind of dissent and was widely criticized for being undemocratic. In wake of intensified terrorist activities in many parts of the country, Vajpayee government was compelled with yet another enactment in 2002, named as Prevention of Terrorism Act (POTA), which has been criticized for its probable misuse.

### Right against Exploitation (Articles 23 and 24)

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

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

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

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

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

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

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

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

Explanation 1 to Article 25 declares that the warring or carrying of *kirpan* (sword) by the Sikhs shall be deemed to be included in the profession of Sigh

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religion. Basu points out that this right is granted subject to the condition that no Sikh will carry more than one sword without obtaining licence.

Article 26 guarantees to every religious denomination the following rights:

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

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

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

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

Article 28 is confined to educational institutions, maintained, aided or recognized by the State. Clause 1 of this Article relates to educational institutions wholly maintained out of the State funds. It completely bans imparting of religious instructions in such institutions. Clause 2 relates to educational institutions which are administered by the State under some endowment or trust, like the Banaras Hindu University. In such institutions religious instructions may be given.

### Cultural and Educational Rights (Articles 29–30)

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

Clause 2 of Article 29 is a counterpart of Article 15. It says that there should be no discrimination against children on grounds only of religions, race, caste or language, in the matters of admission into any educational institution

maintained or aided by the State. Thus, this clause gives to an aggrieved minority of citizens the protection in matters of admission to educational institutions against discrimination on any of these grounds. The persons belonging to Scheduled Castes or Tribes are in any case to be given special protection in matters of admission to educational institutions.

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

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

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

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

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

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

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

**(i) Habeas corpus:** The writ of habeas corpus literally means ‘have the body’.

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

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- (ii) **Mandamus:** The writ of mandamus means ‘we command’. It is an order directing person, or body, to do his legal duty. It lies against a person, holding a public office or a corporation or an inferior court, for it is to ask them to perform their legal duties. They are under legal obligation not to act contrary to law, without the authority of law, or in excess of authority conferred by law. As such, mandamus is available in the following cases:
- To compel the performance of obligatory duties imposed by law; and
  - To restrain action which is taken without the authority of law, contrary to law, in excess of law
- (iii) **Certiorari:** The writ of certiorari means ‘to be more fully informed of’. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it. It lies not only against the inferior courts but also to any person, body or authority, having the duty to act judicially. It may be issued to the Union government, the state governments, municipalities or other local bodies, universities, statutory bodies, the individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights, because these rights are available only against the State.
- (iv) **Prohibition:** The writ of prohibition is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. It is generally issued to transfer a case from a lower to a higher court. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom proceedings have been taken can move the superior court for the writ of prohibition. If the request is guaranteed by the superior court, the inferior court is stopped from continuing the proceedings in that case, and the case is transferred to another court to secure justice.
- (v) **Quo warranto:** The writ of quo warranto is issued to stop the irregular and unlawful assumption of any public position by any person. Through this writ, the courts may grant an injunction to restrain a person from acting in any office to which he is not entitled, and may also declare the office vacant.

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

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

### Check Your Progress

1. What does Article 14 of the Indian Constitution declare?
2. What do you understand by the writ of habeas corpus?

## 2.3 FUNDAMENTAL DUTIES AND REMEDIES

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

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

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

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

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

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

## 2.4 DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy, Part IV of the Constitution of India, constitute directions given to the Central and state governments for the establishment of a just society. They commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality.

Article 31C, added by the Twenty-fifth Amendment Act of 1971, upgraded the Directive Principles so that if the government made laws to give effect to the Directive Principles over Fundamental Rights, they would remain valid. In case of a conflict between Fundamental Rights and Directive Principles, if the latter aimed at promoting larger interest of the society, the courts would have to uphold the case in favour of Directive Principles. It is clearly stated in Article 37 that the provisions contained in the Directive Principles is not enforceable in any court of law, but the principles therein laid down are nevertheless fundamental in the governance of the country and it would be the duty of the State to apply these principles in making laws.

### (I) Economic and Social Principles

Directive principles relating to the economic and social sphere are as follows:

1. Article 39 states that:

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

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**2. Article 39A** states that:

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

**3. Article 41** states that:

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases as such that might be considered necessary.

**4. Article 42** states that:

The State shall make provision for securing just and humane conditions of work and for maternity relief.

**5. Article 43** states that:

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

**6. Article 43A** states that:

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

**7. Article 44** states that:

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

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### 8. Article 45 states that:

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

This stand was substituted by the Constitution (Eighty-sixth Amendment) Act, 2002, which stated that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

### 9. Article 46 states that:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

## (II) Gandhian Principles

Directive principles relating Gandhian principles include:

### 1. Article 40 states that:

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

### 2. Article 47 states that:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

### 3. Article 48 states that:

The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

### 4. Article 48A states that:

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

## (III) Cultural Principles

Directive principles relating to the cultural sphere are as follows:

### Article 49 states that:

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

#### (IV) Directive Principles related to Foreign Affairs

Article 51 states that:

The State shall endeavour to—

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

Defending the adoption of the Directive Principles of State Policy in the Indian Constitution, Dr Ambedkar stated:

In the Draft Constitution the Fundamental Rights are followed by what are called ‘Directive Principles’. It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words. If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

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#### Check Your Progress

3. When were fundamental duties inserted into the Indian Constitution?
4. What do the Directive Principles of State Policy commit the state to do?

## 2.5 UNION EXECUTIVE: PRESIDENT, PRIME MINISTER AND CABINET

Let us begin by studying the powers and privileges of the President.

### 2.5.1 The President

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

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

### Position and Role of President

Let us begin by discussing the constitutional position of the President.

#### Constitutional Position

Broadly speaking, there have been two views regarding the actual position of the President, which are as follows:

1. President is a nominal head
2. President is not a nominal head

#### President is a nominal head

We have a parliamentary system of government in which the President can only be a nominal head. The actual powers lie with the Prime Minister and his council of Ministers. Article 74 states that there shall be a Council of Minister with the Prime Minister as the head to aid and advice the President who shall, in the exercise of his functions, act in accordance with such advice. The President may ask the Council of Ministers to reconsider its aid and advice, but he is bound to act according to the advice tendered after such reconsideration. There is no provision in the Constitution which says that the President shall be responsible to the Lok Sabha or the Parliament. The fact that the Council of Ministers takes the decision is clear from Article 78, which enumerates the duties of the Prime Minister in relation to President. The Indian President has not given any discretionary power and exercise all his powers and functions strictly according to the advice of the Council of Ministers. Last but not the least, in the operations of Indian political system during the last fifty years on the whole the Presidents have acted as nominal Head.

#### President is not a nominal head

This has been more or less a legalist view, which was more relevant before the 42nd Constitutional Amendment Act. The Amendment Act provided that the President would act according to the advice tendered by the Council of Ministers. But still there are certain arguments which believe that at least the Constitution did

not provide for Nominal Head. Before assuming his office, the President takes an oath to faithfully execute the office of the President of India and to preserve, protect and defend the Constitution and the Law and that he will devote himself to the service and well-being to the people of India. For the purpose of following his oath, he acts independently if he feels that the Cabinet advice is contrary to the oath he has undertaken. Further as per the Article 53, he has to exercise the executive powers of the Union, either directly or through officers subordinate to him in accordance with the Constitution. This also leaves certain undefined powers with the President.

### Constitutional Role

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

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

Article 53(1) of the Constitution vests in the President ‘the executive power of the Union’ that is to be ‘exercised by him either directly or through officers subordinate to him’ in accordance with the provisions of the Constitution. However, the Constitution also states that the Council of Ministers, headed by the Prime Minister, is to ‘aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice’. However, the Article 74(2) bars all courts completely from assuming even an existence of such an advice. Therefore from the courts’ point of view, the real executive power lies with the President. As far as President’s decision and action are concerned no one can challenge such decision or action on the ground that it is not in accordance with the advice tendered by the Ministers or that it is based on no advice.

Let us now study in detail, the various powers of the President.

### Powers of the President

Let us discuss the executive powers of the president.

#### (a) Executive Powers

As you studied, being the chief executive of the Indian union, the executive powers of the central government have been vested in the President, to be exercised by

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him either directly or through officers subordinate to him, in accordance with the Article 53 of the Constitution. His position is such that every significant institution and functionary is either directly or indirectly connected to him.

The Executive powers of the President are explained below:

- The President is invested with powers of making and unmaking executive appointments. In the first place, he appoints the Prime Minister and on the latter's advice, the other members of the Union Council of Ministers, to aid and advise him in the exercise of his functions. The President is also authorized to receive and accept their resignations and also to dismiss them individually or collectively as they all hold office during his pleasure.
- He/she further appoints the Attorney-General of India. He can appoint any person as the Attorney-General who is qualified to be appointed as a judge of the Supreme Court.
- He/she has the authority to appoint the Comptroller and Auditor-General of India, provided the candidate to be appointed is qualified to be a judge of the Supreme Court.
- She/He appoints the Governors of states. These appointments are done in consultation with the Prime Minister.
- She/He alone can receive the Governor's resignation or dismiss him, as the latter holds his office during the pleasure of the President.
- The President also appoints the administrators of Union-Territories and determines the designations to be held by them. They are variously known as Lt. Governors, chief-commissioners or administrators.
- She/He is competent to appoint an inter-state council to exercise the following functions: (a) advising upon the disputes between the states; (b) investigate and discuss matters of common interest between the Union and the state or amongst the states themselves.
- The President appoints chairmen and members of the Union Public Service Commission and the Joint Public Service Commissions.
- He nominates the Chief Election Commissioner and the Deputy Chief Election Commissioners.
- He chooses commissioner to report to him on the administration of the 'scheduled areas' and the welfare of scheduled tribes. He also appoints another commissioner to investigate the conditions of the backward classes in the states.
- He decides on an Official Language Commission to recommend to him the ways through which Hindi can be progressively used in place of English for the official purposes of the Union. He also appoints a special officer for all matters relating to the safeguards provided for linguistic minorities under the Constitution.
- The President has also been empowered to entrust to the states, or to its officer with the exercise of executive power of the Union, provided that the state or the officers concerned, consent to do so.

- He/she has the power to administer Union Territories either directly or through officers or administrators of his choice. The executive power of the Union with respect to the Union Territories extends to all subjects.
- The President has the power to receive reports of the Comptroller and Auditor-General of India, Union Public Service Commission, Election Commissioners, the Official Language Commission, commissioners for scheduled areas and backward classes, and the special officers for scheduled castes and tribes, and for the linguistic minorities.

### **(b) Legislative Powers**

The following paragraphs discuss the legislative powers of the President:

- The President is an integral part of the parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as the Rajya Sabha and the Lok Sabha. So, a bill before becoming an Act must not only be approved by the two houses of Parliament but must also be assented to by the President.
- The President has the power to nominate a maximum of twelve members to the Rajya Sabha on the ground that they possess special knowledge or practical experience in the fields of art, science, literature and social service. Article 331 empowers him to nominate not more than two members belonging to the Anglo-Indian community to Lok Sabha. The President appoints acting Speaker of the Lok Sabha in case both, the Speaker and Deputy Speaker are not available. Similarly, he appoints the acting-Chairman of the Rajya Sabha in case both the Chairman and Deputy Chairman are not available.
- The President administers the oath of office to the members of both the houses of Parliament.
- He/she decides the final authority, after consultations with the Election Commission, as to whether any Member of Parliament (MP) has become ineligible to hold his office as an MP.
- The President has the power to specify the period within which a person who has been elected a member both to parliament and to a state legislature must resign from either of his seats.
- He or she has the power to summon, from time to time, each house of the Parliament in such a manner that six months do not intervene in between the sessions. He or she has the power to prorogue either or both the houses. He is also empowered to summon the joint sitting of the two houses of parliament in case of deadlocks over non-money bills passed by one house and either rejected or delayed for more than 6 months by the other house.
- The President inaugurates the first session of parliament after each general election to the Lok Sabha, and delivers his inaugural address to the two houses sitting together in a joint session.
- Article 123 authorizes the President to promulgate ordinances during the recess of parliament.

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- All bills passed by the Parliament are sent to him for his consideration. He may assent to the bill. And only upon his assent, the bill becomes a law. If, however, he wants the Parliament to modify or amend the bill, he is free to return it for their reconsideration, with or without his recommendations.
- He also has the power to recommend to the parliament to formulate laws to form new states or to alter areas, boundaries, or names of the existing states.
- The President has been authorized by Article 370 to extend the various provisions of the Constitution to the states of Jammu and Kashmir, with the concurrence of its government.
- He/she has also been authorized to consider and approve state laws and ordinances which under various provisions of this Constitution are reserved by state Governors for his assent. Finally, he has the power to make regulations for the peace, progress, and good government of all the Union Territories, excepting Chandigarh and Delhi.

### (c) Judicial Powers

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

### (d) Financial Powers

Following are the financial powers of the President of India:

- The President has control over the finance of the nation. It is President who causes the national budget to be laid before each House of Parliament.
- He or she has been authorized by Article 280 to appoint a Finance Commission consisting of a chairman and other members every fifth year, or earlier if necessary.

- The President has also been given control over the Contingency Fund of India. He can advance money from this fund to the Government of India for meeting unexpected expenditures.
- Certain money bills (Article 110) and bills affecting the taxation in which states are interested (Article 274) are to be reserved by the state Governors for the approval by the President.

#### **(e) Military Powers**

The major powers of the President are:

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

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#### **(f) Diplomatic Powers**

The President is invested with the following diplomatic powers:

- The President represents India in international affairs. He appoints and recalls India's Ambassadors, High Commissioners and other diplomatic envoys to the foreign states, the United Nations and its specialist agencies. He receives the credentials of the Ambassadors, High Commissioners, and other diplomatic envoys accredited to India by the United Nations and the foreign States.
- All international treatise and agreements to which India is a party are concluded on his behalf and are finally signed by him.

#### **(g) Emergency Powers**

The emergency powers of the President includes the following:

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

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### Relationship between Council of Ministers and the President

Before the 42nd Amendment to the Constitution, there was some confusion about the relationship between the Council of Ministers and the President. The 42nd Amendment Act of 1976 amended Article 74 (1) to clearly state that the President was bound to act in accordance with the advice of his Council of Ministers; before the Amendment, there was no clear cut rule to this effect in the Constitution. After the 44th Amendment Act of 1978 the President has no power, except in certain marginal cases, to act in his discretion.

He was not only bound to act according to the advice of his Council of Ministers, but also be liable to impeachment for violation of the Constitution if he refused to act by the advice. He has been given the new power to send back to the Council of Ministers for reconsideration the advice given by them in any particular case. But he can do this only once, and if the Council of Ministers adheres to their previous advice, the President has no option but to act in accordance with the advice.

### 2.5.2 Prime Minister

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

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

A convention has always been followed in India that the PM needs to be a member of the Lok Sabha. However, Dr Manmohan Singh was an exception, when as a member of the Rajya Sabha, he was elected as the Prime Minister in the United Progressive Alliance (UPA) government. Noteworthy is the fact that the President is free to appoint any person as PM if he is of the opinion that the person to be appointed is likely to enjoy the confidence of the Lok Sabha. He may appoint the PM from amongst the members of either House of the Parliament or even from amongst the outsiders. In case an outsider is appointed as the PM or as a minister, he must become a member of either House of Parliament within six months of his appointment. The continuation of the PM in office depends upon his majority support in the Lok Sabha, though the Constitution provides that the

Ministers hold office during the pleasure of the President. However, the pleasure of the President is, in fact, the pleasure of the majority support of the Lok Sabha, to whom the government is collectively responsible and whose vote of no-confidence leads to the withdrawal of the pleasure of the President, resulting in the ouster of the government. The current Prime Minister of India is Narendra Modi.

### **Role, Power and Functions of the PM**

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

The PM's role spans many diverse areas. These include:

- The power to advise the President about the appointment of other ministers to constitute the Union Council of Ministers. He has a free choice in selecting his colleagues. The only thing which he has to keep in mind, while preparing the list of ministers, is that he has given representation to various groups in his party and that ministers are drawn from different states.
- The political life and death of ministers also depends upon the PM. He assigns to them various ministries and departments. He may change their portfolios or may even advise the President to dismiss them.
- The PM influences to a great extent every other appointment made by the President. The President appoints Chief Justices and Judges of the Supreme Court and the High Courts, Comptroller and Auditor-General, Attorney General, Election Commissioners, Chiefs of Staff of Army, Navy and Air Force, State Governors, Ambassadors and High Commissioners and many other State officers. All these appointments are essentially the choice of the PM.
- The Parliament is summoned and prorogued by the President on the advice of the PM. The PM also advises the President about the dissolution of the Lok Sabha.
- The Prime Minister is the channel of communication between the President and the Council of Ministers.
- As Chairman of the Union Council of Ministers, the Prime Minister summons meetings of the Council of Ministers and presides over them.
- The Prime Minister, being the Chairman of the Council of Ministers, not only supervises the departments under his personal charge but also co-ordinates and supervises the work of all other departments and ministers.
- The Council of Ministers is collectively responsible to the Lok Sabha. This they can do only if their leader shields and defends them and their actions both in and out of the Parliament. They must speak with one voice.

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- Important policy matters are initiated by the PM in both the Houses of Parliament. It is he who gives his opening speech on important policy matters and informs the Houses of the purpose the government wants to achieve.
- It has been the prerogative of the PM to take a direct and keen interest in India's international relations.
- The PM, being the leader of the majority party, has to take the whole party into confidence, so that he continues to command the confidence and support of his party.

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

### 2.5.3 Council of Ministers and the Cabinet

The makers of the Indian Constitution intended that though formally all executive powers were vested in the President, he or she should act as the Constitutional head of the Union Executive like the British Crown, acting on the advice of ministers responsible to the Lok Sabha. Thus, the Council of Ministers of the Executive consisting of the top leadership of the governing party or parties and assured support of the majority in the Parliament is the seat of authority and source of all decisions of the Executive. The council of ministers work within the framework of public opinion, pressure of interest groups, limitations of party programme and promises, media coverage, pressures of opposition, nursing of majority in the House, and also the commitment to its own deeds, misdeeds, errors or omissions.

All the Council of Ministers do not belong to the same rank. They are classified under three ranks: (a) Cabinet Minister or 'Members of the Cabinet'; (b) Minister of State; and (c) Deputy Ministers. The Cabinet rank ministers are the heads of their departments. The Ministers of State are formally of Cabinet status and are paid the same salary as the Cabinet Ministers and they may hold independent charge of their department. The Deputy Ministers are paid lesser salary than the Cabinet rank ministers and have no separate charge of a department. Theoretically, the complete body of executives comprises the Council of Ministers, with the cabinet being but one of its three components. In reality, the Cabinet is more important, influential and powerful than the members of the cabinet. The Cabinet consists of a few important senior ministers who are in charge of departments like Finance, Defence, etc. It is described as 'a wheel within a wheel' and is thus the nucleus of the Council of Ministers. According to the 91st Constitutional Amendment (2003) 'the total number of Ministers, including the

Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People'.

Another important feature about the Council of Ministers is the notion of collective responsibility. All members of the Cabinet must publicly support all governmental decisions made in Cabinet, even if they do not privately agree with them. This is because the Constitution states that the Council of Ministers are collectively responsible to the Lok Sabha. This means that they can stay in office only so long as they enjoy the confidence or pleasure of the Parliament. They are collectively responsible; they sink and swim together. Accordingly, if even one member of the Council of Ministers loses the confidence of the Lok Sabha, either by a vote of no-confidence, rejection of budgetary demands or defeat on any major matter, the entire council of ministers are voted out.

### **The Cabinet**

The cabinet is the minor body of the Council of Ministers, which comprises the principal ministers who, while holding important portfolios, are responsible generally for government administration and policy. The Cabinet must be of small size, which ranges between 12 and 18 people. It has more often been the result of political considerations than of efficient decision-making. The composition of the Cabinet reflects a concern for a degree of regional balance and for the representation of important communities – Muslims, Sikhs SCs, STs and OBCs.

The Cabinet has four major functions—to approve all proposals for the legislative enactment of government policy; to recommend all major appointments; to settle interdepartmental disputes; and to coordinate the various activities of the government and oversee the execution of its policies. Only members are entitled to attend the weekly meetings of the Cabinet, but Ministers of State, Chief Ministers and technical experts may be invited to attend discussions of subjects with which they have special concern. Votes are rarely taken into consideration in the Cabinet. Important decisions usually are reached after discussion. Only major issues are referred to the Cabinet, and frequently even these, such as the preparation of the budget, are decided by the appropriate minister in consultation with the Prime Minister. The work of the Cabinet is handled largely by Committees.

### **Powers and Functions of the Council of Ministers**

The Council of Ministers form the Government of the Union. It is headed by the Prime Minister, who is the head of the Union Government. Functions of the Council of Ministers are to aid and assist the President in exercising his or her role as the head of nation. Its powers and functions may be discussed as follows:

- (i) **Legislative functions:** The Council of Ministers controls the legislature of the Union Government, i.e., the Parliament. Council of Ministers formulates its policy, submits and explains it to the Parliament for approval. Since it holds majority in the Parliament, it is always sure of the acceptance of its policy. The entire legislation of importance passed by the Parliament is initiated by the Ministers. Maximum legislative bills are prepared and submitted in the Parliament by the Council of Ministers.

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- (ii) **Financial powers:** The Cabinet controls the financial policy of the Union executive. It is the Finance Minister who submits the budget to the Parliament. The Parliament approves the budget-expenditure and revenue items in its original form with the support of a subservient majority.
- (iii) **Executive powers:** The Council of Ministers is the executive branch of the Union. The ministers preside over various departments of the government and give directions to the administration. The Cabinet brings about the coordination of policy among various departments and settles their conflicts. The Cabinet formulates foreign and defence policies of the country and executes the five year plans.
- (iv) **Council of ministers in foreign and military affairs:** The Council of Ministers may declare war with a country and concludes peace. All the treaties and international agreements are negotiated and concluded by the Council of Ministers.

### Check Your Progress

5. List one judicial power of the President.
6. Under what Article of the Indian Constitution is the appointment of the PM ordained by the President?
7. What is the cabinet?
8. How are the Council of Ministers classified?

## 2.6 ANSWERS TO ‘CHECK YOUR PROGRESS’

1. Article 14 declares that the State shall not deny any person the equality before the law or the equal protection of laws within the territory of India.
2. The writ of habeas corpus literally means ‘have the body’. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention.
3. The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties. It was during the ‘Internal Emergency’, declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties.
4. The Directive Principles of State Policy commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality.
5. One judicial power of the President is that he appoints the Chief Justice and other judges of the Supreme Court of India in consultation with the former. He or she may dismiss the judges if and only if the two Houses of Parliament pass resolutions to that effect by two-thirds majority of the members present.

6. Under Article 75 of the Indian Constitution, the appointment of the PM is ordained by the President who conventionally invites the leader of the majority party in the Lok Sabha to form the government.
7. The cabinet is the minor body of the Council of Ministers, which comprises the principal ministers who, while holding important portfolios, are responsible generally for government administration and policy.
8. Council of Ministers do not belong to the same rank. They are classified under three ranks: (a) Cabinet Minister or ‘Members of the Cabinet’; (b) Minister of State; and (c) Deputy Ministers.

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## 2.7 SUMMARY

- The fundamental rights of a citizen have been defined in Part III of the Indian Constitution and can be summarized as the basic human rights of all citizens. Every individual has access to these rights irrespective of caste, creed, gender, race, or religion.
- There are six fundamental rights given to the Indian citizen. The six fundamental rights are:
  - Right to equality (Articles 14–18)
  - Right to freedom (Articles 19–22)
  - Right against exploitation (Articles 25–28)
  - Right to freedom of religion (Articles 25–28)
  - Cultural and educational rights (Articles 29–30)
  - Right to constitutional remedies (Article 32)
- The Constitution of India contained seven fundamental rights originally. But the Right to Property was repealed in 1978 by the Forty-Fourth Constitutional Amendment bill.
- Fundamental duties are outlined in Part IV-A of the Indian Constitution and deals with the moral obligations of all citizens towards the State. Unlike fundamental rights, the duties of a citizen are not legally enforceable
- The Directive Principles of State Policy mentioned in Part IV of the Indian Constitution are the recommendations which the state needs to adhere to while framing and passing laws.
- The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended 7 times, each for a period of 3 years.
- The declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state High Courts under Article 226.

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- An individual who complains the violation of his fundamental rights can move the Supreme Court or the state High Court for the restoration of his fundamental rights.
- The Constitution of India did not incorporate any chapter of fundamental duties. It was during the ‘Internal Emergency’, declared in 1975, that the need and necessity of fundamental duties was felt. Accordingly, a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties.
- Article 32 provides remedies for the enforcement of Fundamental Rights. Article 33 gives power to the Parliament to modify the rights in their application to uniformed forces, intelligence organizations, etc. Article 34 provides for restriction on rights conferred by this Part while martial law is in force in any area.
- The Directive Principles of State Policy, Part IV of the Constitution of India, constitute directions given to the Central and state governments for the establishment of a just society.
- The Directive Principles commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality.
- It is clearly stated in Article 37 that the provisions contained in the Directive Principles is not enforceable in any court of law, but the principles therein laid down are nevertheless fundamental in the governance of the country and it would be the duty of the State to apply these principles in making laws.
- The President of India is the Head of State of India. The president is the formal head of the Legislature, Executive and Judiciary branches of Indian Democracy.
- The President and the Vice-President are the formal executive heads of the Union, while the actual executive is the Union Council of Ministers, with the Prime Minister as its Chairman.
- The executive powers of the central government have been vested with the President, to be exercised either by him directly or through his subordinates according to Article 53 of the Constitution.
- The President is vested with the role to advise, encourage and warn the Indian Parliament which lends the office of the President much authority and influence.
- The Vice-President is the second-highest ranking official in the government who is also the ex-officio Chairman of the Council of State and he shall not hold any office of profit.
- In the parliamentary system of the Government of India, the Prime Minister is the real executive of the state. He/she leads the executive branch of the Government of India.

- The Prime Minister is the senior member of cabinet in the executive branch of government in a parliamentary system.
- The Council of Ministers consists of three types of ministers, viz. cabinet ministers, ministers of states and deputy ministers.
- The Council of Ministers is collectively responsible to the Lok Sabha.
- The Council of Ministers having the top leadership of the party and assured support of the majority in the Parliament becomes the seat of authority and source of all decisions.
- The Cabinet consists of a few important senior ministers who are in charge of departments like Finance, Defence, etc. It is described as ‘a wheel within a wheel’ and is thus the nucleus of the Council of Ministers.
- According to the 91st Constitutional Amendment (2003) ‘the total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People’.
- A recent trend in the working of Indian administration has seen legislators and the executive ceding more powers to the judiciary. This has sparked a debate about increased intrusion into the executive’s role by the judiciary and the supremacy of the executive in taking decisions.

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## 2.8 KEY TERMS

- **Detention:** It is the action of confining someone or the state of being confined to official custody.
- **Absolute:** It refers to something that is a universally valid principle.
- **Lok Sabha:** The Lok Sabha or the House of People is the lower house of the Parliament of India.
- **Rajya Sabha:** The Rajya Sabha or the Council of States is the upper house of the Parliament of India.
- **The Council of Ministers:** This is a collective body of executive headed by the Prime Minister, bearing their collective responsibility to the Parliament.
- **Emergency Powers:** Part XVIII of the Constitution deals with emergency powers. It handles the circumstances in which a state of emergency can be proclaimed by the President.

## 2.9 SELF-ASSESSMENT QUESTIONS AND EXERCISES

### Short-Answer Questions

1. Write a short-note on the Right to Equality given in the Indian Constitution.
2. Why were fundamental duties added to the Indian Constitution?

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3. What are some of the criticisms of fundamental duties?
4. Define the writ of mandamus.
5. State the executive powers of the President of India.
6. What are the judicial powers of the President of India?
7. Write a short note on the Council of Ministers.
8. Discuss the relationship between the President and the Council of Ministers.

### Long-Answer Questions

1. What are the six categories of fundamental rights? Give reasons for their inclusion in the Indian Constitution.
2. Elaborate on the different writs given under Article 32(2) which empowers the Supreme Court.
3. The ‘reasonable’ restrictions to freedom of speech have been subject to much criticism since its inception. Discuss.
4. The Directive Principles of State Policy constitute directions given to the Central and state governments for the establishment of a just society. Discuss.
5. The President has the authority to exercise diplomatic as well as emergency powers. Discuss the powers in detail.
6. The Prime Minister is the real executive of the state. In this context, discuss his powers and functions.
7. Examine the powers and functions of the Council of Ministers.

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## 2.10 FURTHER READING

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## UNIT 3 THE INDIAN PARLIAMENT AND THE SUPREME COURT

### Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 The Indian Parliament
  - 3.2.1 Lok Sabha and Rajya Sabha
- 3.3 The Supreme Court
  - 3.3.1 Judicial Review
  - 3.3.2 Judicial Reforms
- 3.4 The Election Commission
- 3.5 Answers to ‘Check Your Progress’
- 3.6 Summary
- 3.7 Key Terms
- 3.8 Self-Assessment Questions and Exercises
- 3.9 Further Reading

### 3.0 INTRODUCTION

In the previous unit, you learnt about the fundamental rights and duties enshrined in our constitution. The unit also discussed the union executive, its powers and functions. This unit will discuss the Indian Parliament and the Supreme Court in detail.

The Parliament of India is a bicameral institution consisting of the President, and two houses: the Lok Sabha and the Rajya Sabha. The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha. The rest of the powers and functions of the President of India have been discussed previously. The principal function of the Lok Sabha is to make laws. It can even amend a major portion of the Indian Constitution although it needs ratification by at least half of the states to do so. The Rajya Sabha, on the other hand, is the upper house of the Parliament of India, and serves as the council of states. For the smooth, efficient and the impartial conduct of its proceedings, each House of Parliament has been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer. The Chief Presiding Officer of the Lok Sabha is known as the Speaker and that of the Rajya Sabha is known as the Chairman.

In India, the world’s largest democracy, the Judiciary plays a very significant role. Justice is conducted by the Judiciary, according to law. The Judiciary administers justice through legal reasoning, review of evidence and argumentation. The reliability of the process of justice administered by the Judiciary depends on the way in which it carries out justice. The judgments of the Judiciary can promote social justice, in the absence of which the sufferings of the common man will be too many. The Supreme Court is the highest judicial body in India. It is headed by

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the Chief Justice of India and comprises a maximum of 33 judges. As the final court of appeal of the country, the Supreme Court takes up appeals primarily against verdicts of the high courts of various states of the Union and other courts and tribunals. It safeguards fundamental rights of citizens and settles disputes between various government authorities as well as the central government vs state governments or state governments versus another state government in the country.

### 3.1 OBJECTIVES

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

- Discuss the composition of the Indian Parliament
- Examine the powers and functions of the Lok Sabha and Rajya Sabha
- Analyse the role of the Supreme Court of India
- Discuss the role of the Election Commission of India in organizing elections

### 3.2 THE INDIAN PARLIAMENT

Our Parliament or the Union Legislature, the supreme legislative body in the country, comprises two Houses—Lok Sabha (House of the People) and Rajya Sabha (Council of States). The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha. This is why the President is also one of the constituents of our Parliament. Lok Sabha is the body of representatives of the people. Its members are directly elected, normally once in every five years by the adult population who are eligible to vote. The present membership of Lok Sabha is 545. Rajya Sabha is the Upper House of Parliament. It has not more than 250 members. Members of Rajya Sabha are not elected by the people directly but indirectly by the Legislative Assemblies of the various states. Lok Sabha elects one of its own members as its Presiding Officer and he is called the Speaker. The Vice-President of India is the ex-officio Chairman of Rajya Sabha.

The main function of both the Houses is to pass laws. Every Bill has to be passed by both the Houses and assented to by the President before it becomes law. The subjects over which Parliament can legislate are the subjects mentioned under the Union List of the Constitution of India. Broadly speaking, Union subjects are those important subjects which for reasons of convenience, efficiency and security are administered on all-India basis. The principal Union subjects are defence, foreign affairs, railways, transport and communications, currency and coinage, banking, customs and excise duties. There are numerous other subjects on which both Parliament and State Legislatures can legislate. Under this category mention may be made of economic and social planning, social security and insurance, labour welfare, price control and vital statistics. Besides passing laws, Parliament can by means of resolutions, motions for adjournment, discussions and questions addressed by members to ministers exercise control over the administration of the country and safeguard people's liberties.

## **Composition of the Parliament**

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

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

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

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

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

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

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When a General Election is due, the President calls upon all parliamentary constituencies to elect members to the Lok Sabha on such dates as recommended by the Election Commission. The elections are held in accordance with the provisions of the Representation of People's Act 1951, as amended up to date, and the rules or orders made under it. As soon as the notification is issued by the President, the Election Commission declares the date for filing nominations, for scrutiny and withdrawal of nominations and the actual dates of polling. A candidate for election is required to deposit a security of Rs. 10,000 to make his nomination valid. In case of the candidates belonging to scheduled castes and scheduled tribes, the security deposit is only Rs. 5,000. On the expiry of the date of withdrawals, the Returning Officer prepares and publishes a list of validly nominated candidates. Sufficient number of polling stations are set up in each constituency, keeping in view that the voters do not have to travel for more than two miles to cast their votes. The voters have to appear in person on the polling booths to cast their votes as no proxy is allowed. The candidate who receives the largest number of votes is declared elected by the Returning Officer, who issues to him the certificate of election. It is only when the newly elected member presents the certificate of election to the Secretary of Lok Sabha that the Presiding Officer can administer to him or her the oath of this office.

### Qualifications for the Membership of the Parliament

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

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

### Term of the Houses of the Parliament

Members of the Rajya Sabha are elected for a period of 6 years, one-third of them retiring every second year. This makes the Rajya Sabha a continuous and permanent chamber, never subject to dissolution. On the other hand, members of

the Lok Sabha are elected for a period of 5 years. Normally, the term of each member's office as well as the life of the Lok Sabha is 5 years. If the Lok Sabha is dissolved earlier, the membership of its members automatically terminates. During the Proclamation of Emergency, under Article 352, the Parliament may extend the life of the Lok Sabha for not more than 1 year at a time, but not beyond a period of 6 months after the Proclamation of Emergency has ceased to operate. In case of extension of the Lok Sabha, the term of its members stands automatically extended.

### **Presiding Officers of Two Houses**

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

### **Speaker of the Lok Sabha**

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

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

### **Election of the Speaker**

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

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### Term of Office

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

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

### Removal of the Speaker

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

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

### 3.2.1 Lok Sabha and Rajya Sabha

The Lok Sabha is the House of the People as it is directly elected by the people. It is also known as the Lower House. Until 1853, there was no legislative body in India. In 1853, the Charter Act provided some sort of a legislature in the form of a twelve-member Legislative Council. The Indian Independence Act, 1947 declared the Constituent Assembly of India to be a full sovereign body. Apart from being a constitution on 26th January 1950, the Constituent Assembly also started functioning as the Provisional Parliament unit. Later on the Hindi nomenclature was also adopted on 14th May 1954.

The members of this House are elected on the basis of the universal adult suffrage. Every citizen of India who is not less than eighteen years of age is entitled to vote in elections to the Lok Sabha unless he/she is otherwise disqualified under law—Article 326. People such as non-residents, insane people, criminals and those who have been convicted of corrupt electoral practices are not eligible to vote in elections. During these elections, there is no reservation of seats for any minority community other than the Scheduled Castes and Scheduled Tribes provided under Article 330, 341 and 342. The Lok Sabha is presided over by the speaker who is elected in the very first meeting of the Lok Sabha after the general elections for a term of 5 years from amongst the members of the house. The current speaker of the Lok Sabha is Om Birla of the Bharatiya Janata Party.

The Lok Sabha has a variegated composition. The Indian Constitution prescribes the following composition:

- Not more than 530 [Article 81 (1) (a)] representatives of the States
- Not more than twenty representatives of the Union Territories [Article 81 (1) (b)]
- Not more than two members of the Anglo-Indian community, nominated by the President, if he/she is of opinion that the Anglo-Indian community is not adequately represented in the House of the People (Article 331)

India has adopted a Parliamentary form of government in which the Parliament enjoys a pivotal position. However, unlike England, our Parliament is not supreme. The powers and functions of the Indian Parliament have been limited by the Federal Constitution. Even in case of the amendment to the Constitution, Supreme Court has held that the Parliament cannot alter the basic features of the Constitution.

The powers and functions of the Parliament will be discussed in the following heads:

### **Legislative Powers**

The principal function of the Indian Parliament is to make laws. The Constitution of India has divided the Legislative powers between the Centre and States. This division has been done according to the list system—the Union List, the State List and the Concurrent List. These lists have the residuary powers of the Union and therefore they fall under the purview of the Parliament.

Along with the state legislature, the Indian Legislature can make laws on the subjects mentioned in the Concurrent List as well. However, in case of conflict between a law made by the Parliament and a State law on a Concurrent subject, the Union law shall prevail. The Constitution also gives supremacy to the Union List. In case there is a conflict and overlapping between the three Lists, it is the Union List that prevails. With regard to State List, ordinarily the State Legislatures make law but in certain circumstances the Union Parliament is empowered to make laws mentioned in the State List. These circumstances are as follows:

- If Rajya Sabha (by not less than two-third majority of members present and voting) passes a resolution declaring a subject mentioned in the State List to have assumed national importance, then the Parliament can legislate on that subject. But such resolution will remain in force for one year only. After the completion of one year, the Rajya Sabha may further pass the same resolution.
- If there is an emergency in the country, the Parliament can make laws with respect to all matters mentioned in the State List.
- If two or more State Legislatures pass a resolution that Parliament should make law on a subject mentioned in the State List, then the Parliament acquires the power to make law on that subject. However, such law will be applicable to such states only. The other states may also adopt it by

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passing resolution in the respective state legislatures. Such a law can be amended or repealed by the Union parliament only.

- In order to implement any treaty, agreement or conversation with any other country or countries, or any decision made at any international conference, association or other body the Parliament may, if necessary, invade the state List.

Thus, the law making power of the Parliament is very wide. It covers the Union List, the Concurrent List and in certain circumstances even the State List.

### Financial Powers

The Parliament is the repository of the Union purse. It has the sole power not only to authorize expenditure for the public services and to specify the purpose to which that money shall be appropriated but also to provide the ways and means to raise the revenue required. By means of taxes and other impositions and also to ensure that the money that was granted has been spent for the authorized purposes. Thus, no money can be spent without its approval. The budget is approved by the Parliament. However, the Parliament can discuss the expenditure charged on the Consolidated Fund of India (CFI); it may increase but not decrease the amount. The expenditure charged on the CFI includes the embodiment and the allowances of the President, Vice-President, Deputy Chairman of the Rajya Sabha, Speaker and Deputy Speaker of Lok Sabha and Judges of Supreme Court and High Court. As under the English system, the Lower Houses possesses the dominant power in this respect under the Indian Constitution.

### Control over the executive

The parliamentary system of government envisages a close cooperation between the Legislative and the Executive wings of the government. The Executive is responsible towards the Legislature for all its omissions and commissions. The Prime Minister and his Council of Ministers are collectively responsible to the Lok Sabha and not to the Rajya Sabha. By a ‘No Confidence Motion’, the Lok Sabha can dismiss a Ministry. However, the ‘No Confidence Motion’ is an extreme motion. There are other ways by which the Parliament exercises control over the Executive, they are as follows:

- By asking questions the Parliament can control the Executive. Members of the Parliament have a right to seek information and receive facts on matters of public importance. However, certain types of questions are not permitted.
- If a member is not satisfied with the answer provided by the Government, then he may demand half an hour discussion on the subject.
- The Parliament also exercises control over the Executive through various motions. Calling Attention, Notices and Adjournment Motion are some such motions by which some recent matter of urgent public importance can be raised. In such condition the Parliament sets aside the normal business and discusses the matter.

- The Executive can be controlled by the Parliament through its various committees, such as the Standing Committees and the ad hoc committees. These committees help to expedite parliamentary business and to scrutinize the Executive activities.

### **Electoral Functions**

The Parliament participates in the election of the President and the Vice-President of India. Besides, both the Houses elect their presiding officers – the Speaker and Deputy Speaker of the Lok Sabha, Chairman and Deputy Chairman of the Rajya Sabha. The President is elected by an electoral college consisting of the elected members of both the Houses of the Parliament and the elected members of the Legislative Assemblies of the States, while the Vice-President is elected by both the Houses of the Parliament and the Speaker and Deputy Speaker are elected by the Lok Sabha only.

### **Judicial Functions**

The Parliament can make laws regulating the Constitution, organization, jurisdiction and powers of the Courts. Under the Constitution, the Parliament may by law extend the jurisdiction of a High Court to establish a common High Court for two or more states, and constitute a High Court for a Union Territory. The Parliament may provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State, or for two or more States. The Parliament can also impeach the President, Vice-President, Chief Justice, Judges of the Supreme Court and High Courts, etc. The impeachment can be done only if people in these positions violate the Constitution.

### **Amending Functions**

The Parliament can amend a major portion of the Constitution but it needs ratification by at least half of the States to amend the Constitution. However, the Parliament cannot amend the basic features of the Constitution. In the electoral, judicial and constitution amending functions, both the House of the Parliament have equal powers.

### **Miscellaneous Functions**

Besides the above-mentioned functions and powers, the Parliament also enjoys many other powers, some of which are as follows:

- The Parliament approves the proclamation of emergency. Such an approval is granted by both the Houses with a majority of total number of the House and a majority of not less than two-third members present and voting.
- The Lok Sabha can disapprove the continuation of National Emergency by a simple majority.
- Parliament may admit or establish new states on such terms and conditions as it thinks fit.

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- Parliament may do the following:
  - Form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state
  - Increase and decrease the area of any state
  - Alter the boundaries and the name of any state
- Parliament may regulate the right of citizenship.
- Parliament may extend the functions of the Union Public Service Commission.
- Parliament may abolish and create the Legislative Councils of States.

### The Rajya Sabha

The Rajya Sabha, referred to by the Constitution as the ‘Council of States’ is the upper house of the Parliament of India. It is sometimes also called the ‘House of Elders’. The Rajya Sabha is a permanent body that is not subject to dissolution. Membership of the Rajya Sabha is limited to 250 members, 12 of whom are nominated by the President for their contributions to art, literature, science, and social services. The remainder of the body is indirectly elected by the state and territorial legislatures through. Members of the Rajya Sabha sit for six-year terms, with one third of the members retiring every two years. The Rajya Sabha is presided over the Chairman of the Rajya Sabha, a function that is performed by the Vice President of India. The current Vice President of India is Venkaiah Naidu.

### Special Powers of the Rajya Sabha

The special powers of the Rajya Sabha are in the form of initiation of certain resolutions, which come under the following Articles:

- **Article 67:** A resolution seeking the removal of the Vice-President can originate only in the Rajya Sabha. After it is passed in the Rajya Sabha by a majority vote of members present and voted, it goes for approval to the Lok Sabha.
- **Article 249:** Any resolution seeking creation of one or more all-Indian Services, including All-India Judicial Services, if such is necessary or expedient in the national interest can only be initiated in the Rajya Sabha. Only after the House passes a resolution to this effect by a special majority, i.e., two-thirds of the members present and voting, can the Parliament legislate on it.
- **Article 312:** A resolution seeking legislation on any subject of the State List can only originate in the Rajya Sabha, if it thinks that such is necessary or expedient in the national interest.

Rajya Sabha being a federal chamber enjoys certain special powers under the Constitution. All the subjects/areas regarding legislation have been divided into three Lists—Union List, State List and Concurrent List. The Union and State Lists are mutually exclusive—one cannot legislate on a matter placed in the sphere of the

other. However, if Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting saying that it is ‘necessary or expedient in the national interest’ that Parliament should make a law on a matter enumerated in the State List, Parliament becomes empowered to make a law on the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further. If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, the Parliament becomes empowered to create such services by law.

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

### Financial Powers

A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited. Rajya Sabha has to return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within that time, the Bill is deemed to have been passed by both the Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

Rajya Sabha cannot amend a Money Bill; it can only recommend the amendments and Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha. Apart from a Money Bill, certain other categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some other types of Financial Bills on which there is no limitation on the powers of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial Bills like any other Bill. Of course, such Bills cannot be passed by either House of Parliament unless the President has recommended to that House the consideration thereof.

From all this, however, it does not mean that Rajya Sabha has nothing to do in matters relating to finance. The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of various Ministries as this matter is exclusively reserved for Lok Sabha, no money, however, can be withdrawn from

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the Consolidated Fund of India unless the Appropriation Bill has been passed by both the Houses. Similarly, the Finance Bill is also brought before Rajya Sabha. Besides, the department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees having ten members from Rajya Sabha.

The Constitution of India has assigned a unique role to Rajya Sabha in the Indian parliamentary and constitutional set up. Functioning within the parameters of the Constitution, Rajya Sabha, during more than fifty years of its existence, has consistently endeavoured to translate into reality the lofty vision of the founding fathers of our Republic. As a sagacious body reflecting the federal ethos of the Indian polity, Rajya Sabha has held dignified debates on issues of national concern with greater wisdom and focus, poise and equanimity. Its role in broadening and deepening the parliamentary discourse for strengthening the roots of democracy and improving public governance for realizing the larger goal of people's welfare has been truly creditable.

The overall performance of Rajya Sabha has reflected high level of commitment, both at the individual level of members as also at the collective level of the House, to long-term vision for growth and development. To realize this vision, the proceedings of Rajya Sabha need to remain forever relevant and effective for which knowledge of parliamentary rules and application of appropriate parliamentary devices would be paramount.

Evolving with time, Rajya Sabha has devised its rules and procedures and developed healthy conventions and traditions to govern its functioning smoothly. These have been shaped and nurtured continuously by many illustrious predecessors by members of great stature and probity who have adorned this august House and have lent dignity and substance to its proceedings. Parliamentary rules, procedures, customs, conventions and rulings have been developed to enable members to raise issues of public importance freely and effectively within the stipulated legislative time while maintaining the highest standards of parliamentary conduct, whereas, the knowledge of parliamentary rules helps members to ensure improved functioning of the House. Lack of these often results in chaos and disorder in the House.

The credibility of Parliament as the nation's highest representative body is, to a great extent, proportionate to the norms of behaviour and conduct of members. It is, therefore, imperative for the members to observe parliamentary rules and conventions to effectively raise matters of public importance on the floor of the House. The performance of our Parliament and its members is now under close scrutiny of public as well as the media, with the live telecasting of its proceedings. Members of Parliament need to lead and set high standards of behaviour through greater understanding and application of parliamentary rules and procedures to sustain the public trust reposed in them. The parliamentary institutions in our country are dynamically evolving and Rajya Sabha is no exception to it.

Table 3.1 lists the differences between Lok Sabha and Rajya Sabha.

*The Indian Parliament  
and the Supreme Court*

**Table 3.1 Differences between Lok Sabha and Rajya Sabha**

<b>Lok Sabha</b>	<b>Rajya Sabha</b>
1. The Members of Lok Sabha are directly elected by the eligible voters	The Members of Rajya Sabha are elected by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote.
2. The normal life of every Lok Sabha is five years.	Rajya Sabha is a permanent body.
3. Lok Sabha is the House to which the Council of Ministers is responsible under the Constitution. Money Bills can only be introduced in Lok Sabha. Also it is Lok Sabha which grants the money for running the administration of the country.	The Council of Ministers is not responsible to the Rajya Sabha. Money Bills cannot be introduced in Rajya Sabha. The Rajya Sabha does not have the power to grant the money for running the administration of the country.
4. Lok Sabha does not have special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all -India services common to the Union and the States.	Rajya Sabha has special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all -India services common to the Union and the States.

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### Check Your Progress

1. What is the maximum strength of the Rajya Sabha?
2. Who is the conventional and ceremonial head of the Lok Sabha?
3. What is the principal function of the Indian Parliament?

## 3.3 THE SUPREME COURT

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

- Strengthening the fundamental rights
- Acting as guardians of the Constitution

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

During the British rule, the civil and criminal laws were administered by judges-cum-magistrates, with the Judicial Committee of the Privy Council (JCPC) in England acting as the final court of appeal. The separation between the Executive and the Judiciary was made gradually by the Government of India Act of 1935. The highest court in India was established in the form of the Federal Court, which however was subordinate only to the JCPC. The British colonial period also

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witnessed the emergence of a corporate legal profession that provided pleaders and advocates for presenting the cases of clients to judges or magistrates.

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

### Composition of the Supreme Court

Article 124 of the Constitution establishes the Supreme Court of India as the highest court of the Indian Republic. It provides that the Supreme Court shall consist of the Chief Justice and twenty-five other judges (the Constitution originally specified a total of eight judges, but this was increased in 1956, 1960, 1977 and 1986 bringing it to twenty-five). Each judge is appointed by the President after consultations with other judges of the Supreme Court and the State High Courts, as deemed necessary. However, the President is bound to consult the Chief Justice of India, before appointing an ordinary judge of the Supreme Court.

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

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

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

### Independence of the Supreme Court

The framers of the Indian Constitution were concerned with the independence of the Judiciary due to the following reasons:

- The appointing authority, the President, has to consult the members of the Judiciary
- The constitution provides a fixed tenure for the judges and they cannot be removed from the office, as and when the government feels like
- The Second Schedule to the Constitution provides for the salaries of the judges, whereas the terms and conditions of their services are regulated by the Acts of Parliament
- The terms and conditions of services of a judge cannot be varied to his disadvantage, after his appointment (Article 125)
- The administrative expenses of the Supreme Court, the salaries and allowances of the judges as well as of the staff shall be charged on the Consolidated Fund of India and shall not be voted in Parliament (Article 146 (3))

- No discussion should take place in Parliament regarding the conduct of any judge in the discharge of his duties, except when an impeachment resolution is under consideration (Article 121).
- A retired judge of the Supreme Court shall not plead or act in any court or before any other authority within the territory of India.

### **Jurisdiction of the Supreme Court**

The Supreme Court originally holds appellate and advisory jurisdictions, besides a right to grant special leave for appeal.

#### **Original jurisdiction**

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

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

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

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

#### **Appellate jurisdiction**

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

#### **Advisory jurisdiction**

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

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### Special leave for appeal

The Supreme Court is empowered by Article 136 to grant Special Leave to Appeal against the judgment, decree, sentence or order in any case by any Tribunal in India, except those of courts or tribunals that are especially constituted for the armed forces. This extraordinary power has been given to the Supreme Court to ensure justice and fairness to all parties in all civil, criminal and constitutional cases.

### Review power

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

### Miscellaneous powers

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

The Supreme Court has the power to punish persons guilty of contempt of itself. The Supreme Court is also empowered to make rules and regulations for regulating the practices and procedures of the Court. The Supreme Court also enjoys complete control over its own establishment. Under Article 146, the Chief Justice of India is empowered to appoint officers and servants of the Supreme Court, after consultations with the UPSC (Union Public Service Commission). The rule related to the salaries, allowances, leave or pensions payable to the officers and servants of the Court, are also charged upon the Consolidated Fund of India and, therefore, do not form a votable item of the Union Budget.

Under Articles 257 and 258, the Chief Justice of India has been empowered to appoint arbitrator to decide cases and disputes relating to extra-costs incurred by a state government in carrying out the directions of the Union Government in the following matters: (i) Construction and maintenance of the means of communications; (ii) Protection of railways within states; and (iii) Powers and duties conferred upon a state government or its officers with their consent.

#### 3.3.1 Judicial Review

Judicial review means review by the courts to investigate the constitutional validity of the legislative enactments or executive actions. The power of judicial review in India stands between the American and British practices.

The Constitution of India, in this respect, is more akin to the American Constitution than to British or any other constitution. Being the guardian of fundamental rights and the arbitrator of constitutional conflicts between the Union and the States with respect to the division of powers between them, the Supreme

Court holds a unique position. According to this position, it is competent to exercise the power of reviewing the legislative enactments of both, the Parliament and the state legislatures. The Supreme Court in India, however, can interpret the laws and invalidate them, if they are contrary to the letter of the Constitution, but not if they are contrary to its ‘spirit’. Accordingly, our courts have to interpret the law as it is written and cannot declare a law as invalid on the ground that it is unjust. Similarly, the Indian Constitution distributes the legislative powers between the Union and the states so precisely, with residuary powers vesting in the Union, that disputes over legislative jurisdiction do not pose any serious problem. As our Constitution is not as rigid as the American Constitution, it is possible to override adverse judicial decisions by suitable amendments of the Constitution.

There are several specific provisions in the Indian Constitution, which imbibe the power of judicial review:

- Article 13(2) specifically declares that every law in force at the commencement of this Constitution, and every subsequent law, which is inconsistent with the fundamental rights shall be void.
- Article 32 empowers the Supreme Court to invalidate all such laws which violate fundamental rights.
- Under Articles 131–136, the basic function of the courts is to adjudicate disputes between individuals, between individuals and states, between states and the Union and while so adjudicating, the courts may be required to interpret the provisions of the Constitution and the laws. The interpretation given by the Supreme Court becomes the law honoured by all courts of the land.
- Article 226 constitutes high courts as protectors and guarantors of fundamental rights.
- Article 245 provides powers to both, the Parliament and the state legislatures, subject to the provision of the Constitution. Article 246 (3) expressly provides that in the state list, the state legislatures have exclusive powers. In context of Concurrent List or of those entries in the State List, for which one or more states would have requested the Parliament to make laws; Articles 251 and 254 declare that in case of inconsistency between Union and state laws, the state law shall be void. The constitutional validity of a law can be challenged in India on the ground that the subject matter of the legislation: (a) is not within the competence of the Legislature, which has passed it; (b) is repugnant to the provisions of the Constitution; or (c) it infringes one of the fundamental rights.
- In view of Article 372 (1), no pre-constitutional law, which is inconsistent with it, can continue to be valid after commencement of the Constitution.

The power of judicial review, in general, flows from the powers of the courts to interpret the Constitution. Since the Judiciary is the final interpreter of the Constitution and the Constitution regulates the exercise of political power, which, in general is considered to be the main domain of the Legislature and the Executive. Moreover, the judicial process determines the jurisdictional frontiers of the other

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branches of government. As a result of this, it constantly interacts with the Legislature, the Executive and other institutions of government, which are vested with political power.

### 3.3.2 Judicial Reforms

Judicial reforms need to take place in an integrated manner. The police, prosecution, lawyers and courts, must be thought of as being cohesive. The topic of judicial reforms has of late become very important because the public has lost faith in the system. Judicial accountability is connected with the larger area of judicial reforms. Everyone is concerned about the large delays in the disposal of cases. The agenda for judicial reforms must first tackle the problem of this backlog. We have seen many Law Commission Reports and various suggestions, one of which is the formation of tribunals to take away some of the workload of High Courts, but still, High Courts are burdened with a large number of cases. Increasing the manpower in judiciary is the need of the hour. The problem faced by the judiciary can also be solved if we have scientific data pertaining to cases that clog the dockets.

#### Pendency

Pendency is a normal feature of any system but it assumes significant proportions in courts. This will necessitate courts to prescribe time-limits for all cases. To deal with this, there cannot be one prescribed limit, but the kinds of cases need to be identified and prioritized. So setting deadlines is essential. They will vary for different cases and also for different courts. On the basis of their disposal capacity, they will be necessary to assess the performance of the courts and judicial accountability.

#### Technology

We have modern technology, which facilitates us to collect a large amount of information and make it available to the Chief Justice, so that he is able to allocate manpower efficiently. Digital techniques and tools are at our disposal, to collect information from an entire database, from the time a case is instituted in a court of law, to the final stages of appeal. Building up a judicial database will enable us to assess the performance of courts as institutions and the Chief Justice will be able to use it to assess the individual performance of judges. This will go a long way in identifying the backlog, the types of cases are clogging the dockets, etc. As part of digital resource management, we have home pages and websites, where judgments of courts can be instantly posted. At present, it takes a long time for courts to give copies of judgments, which can be instantly posted on the home page, they will be easily and readily available to everyone. This is an important step for using the technology effectively to expedite the process of judgments. Digital technology offers us new packages like database, ERP tools, court management practices, etc., which will help in increasing the productivity of courts; video-conferencing, through which we can record evidence.

There is, therefore, much technology available for the courtroom, for enhancing the quality of justice and finding the truth.

## Accountability

In terms of accountability, like any institution, judiciary is not devoid of vices, but still they are akin to temples of justice. But still, corruption cannot be acceptable. How does one deal with corruption? Impeachment was thought to be the remedy to deal with errant judges, but we found that it is not working well; we have to find some internal institutional mechanism, a sort of peer committee, enabling judges to deal with such issues. We are not very sure that increasing number of courts and judges will ameliorate the situation, unless there is a simultaneous productivity increase in courts. Judicial reform, is being looked at, as essential for the country's overall development, not just economic development; in India, the problem is more human than economic. Ninety per cent of the litigation is by rural people; parties are fighting for even half an acre of land; families are being ruined. Therefore, there has to be an overall solution.

### Judiciary in India is very unaccountable: Transparency International (TI) report

The report, based on a countrywide survey of “public perceptions and experiences of corruption in the lower judiciary,” conducted by the Centre for Media Studies finds that a very high 77 per cent of respondents believe the Indian judiciary is corrupt. It says that ‘bribes seem to be solicited as the price of getting things done’. The estimated amount paid in bribes in a 12-month period it found was around 580 million dollars. ‘Money was paid to the officials in the following proportions: 61 per cent to lawyers; 29 per cent to court officials; 5 per cent to middlemen.’

### Fast Track Courts

The government has already taken several initiatives for judicial reforms. Fast track courts have been set up, which have disposed more than 18 lakh cases transferred to them. For example, In September 2011, the Tamil Nadu government infused a fresh lease of life into the 49 fast-track courts, for which the central funds were stopped in March 2011. All these courts have now been converted into regular courts. With this, Tamil Nadu became the first state in the country to prevent abolition of fast-track courts and instead convert them into regular courts. Family courts, established in various parts of the country, have speedily settled matrimonial disputes through reconciliation.

According to the Ministry of Law and Justice, Department of Justice, as on the 26th of June 2019, currently, there are 581 fast track courts in the country that are functional. While the state of Uttar Pradesh has the highest number of functional fast track courts set at 206, there are some states and union territories such as: Arunachal Pradesh, Mizoram, Rajasthan, Nagaland, Goa, Gujarat, Punjab, Chandigarh, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Kerala and Lakshadweep, Meghalaya, Odisha, Puducherry, Uttarakhand, Daman and Diu, Dadra and Nagar Haveli, and Sikkim, which do not have even a single fast track court that is functional.

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**Check Your Progress**

4. What was the first fully independent court of the country and when was it set up?
5. What do you understand by the term judicial review?

### **3.4 THE ELECTION COMMISSION**

Elections are particularly conspicuous and revealing aspects of most of the contemporary political systems. They highlight the basic nature and the actual functioning of the system as a whole. Elections are complex events involving individual and collective decisions which directly affect, and are affected by, the total political and social process. They open up channels between the polity and the society, between the elites and the masses, and between the individual and the government. They are major agencies of political socialization and political participation.

Elections are the crucial deciding factor in modern democracies. Elections provide an opportunity to the general masses to get political education. Issues are raised and their pros and cons are discussed, and in the process the electorate gets informed. Elections are primarily held to decide as to who would govern the country. Elections are the only medium available in modern democracies through which a peaceful change in the government is effected or, to use Michael Brecher's (Professor of Political Science, McGill University) words, they are means for the 'routinization of political change'. The electoral politics lead to increasing political consciousness in which every citizen of India uses his right to vote and participate equally in the political process. In fact, there can be no democracy without elections.

Unlike the situation in many developing countries, elections in India have been central, and not peripheral, to the system. They have been truly meaningful and not mainly ritualistic acts. They have served as links between the 'traditional' and the more 'modern' aspects of the Indian life and behaviour.

Elections can now be seen not merely as useful indicators of a modern democracy, but actually as the events through which the party system and hence, in a measure, the political system achieves its evolution. Within this system, the electoral process seems to have functioned with increasing effectiveness and acceptance, and the Indian voter seems to be developing a surprising degree of maturity and sophistication. Or, in other words, India seems to be developing a 'responsible electorate' which was missing when it attained independence.

Another point to be noted is that far from contributing to the increasing 'modernization' of Indian politics on a steadily accelerating scale, recent elections show some signs of becoming more 'traditionalized' in the Indian setting. The trend has been particularly manifested in the changing character of Indian political leadership. On the whole, this leadership is changing significantly with a declining role and influence of the westernized, educated, urbanized high caste modern elite

that spearheaded the Indian National Movement and that provided most of the top leadership to India in the first decade of its independence. On the contrary, there is an increasing role and influence of the middle class, less educated, less westernized, more rural and locally based elite. Elections have been a major instrument for the emergence of this new leadership. Thus, the elections have served as a vehicle for bringing more traditional elites into a more central role in the political system, increasingly at all levels.

### **Election Commission of India**

The Indian Constitution has made provision for a suitable machinery to conduct free and fair elections in the country. It provides for the setting up of an Election Commission for this purpose, which shall consist of the chief election commissioner and such other election commissioners, as are appointed by the President. The Constitution empowers the President to determine the conditions of service of the election commissioners. In the case of the chief election commissioner, it has been laid down that he or she shall not be removed from office except in like manner and on like grounds as a judge of the Supreme Court. The other election commissioners can be removed only on the recommendations of the chief election commissioner.

The Election Commission was set-up, under Article 324 of the Constitution of India, in January 1959. It has been assigned the following main functions:

- Superintendence, direction and control of the preparation of the electoral rolls, and keeping them up-to-date at all times.
- Conducting all elections of the Parliament and the State Legislatures (including casual vacancies), as well as the election to the offices of the President and the Vice President of India.
- Appointing of the Election Tribunals to investigate into complaints made in election petitions, and so forth.

The Election Commission is a statutory body. It has only a Secretariat and no attached or subordinate office under it. But the Election Commission, in consultation with the state governments, nominates or designates an officer of the state government in each state as the chief electoral officer for that state for the preparation, revision and correction of electoral rolls, and so forth. Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer is statutorily responsible for the preparation, revision and correction of all electoral rolls and the conduct of elections in the states.

The Election Commission, as at present constituted, consists of a Chief Election Commissioner, a Deputy Election Commissioner, and other secretariat officers and staff. The office of the Election Commission is organized in nine election branches and two administration branches. The Election Commission has a total strength of 165 staff members.

The Election Commission publishes a number of reports on the general elections in India. Besides, a number of casual publications on elections are issued, mainly at the time of elections.

### **NOTES**

### Check Your Progress

6. When was the Election Commission of India established?
7. Who determines the conditions of service of the Election Commissioners?

## 3.5 ANSWERS TO ‘CHECK YOUR PROGRESS’

1. The maximum strength of the Rajya Sabha has been fixed at 250 members, of which not more than twelve are to be nominated by the President on the ground of such matters as art, literature, science and social service.
2. The Speaker is the most important conventional and ceremonial head of the Lok Sabha.
3. The principal function of the Indian Parliament is to make laws.
4. The Supreme Court of India, the first fully independent court for the country, was first set up under the 1950 constitution.
5. Judicial review means review by the courts to investigate the constitutional validity of the legislative enactments or executive actions. The power of judicial review in India stands between the American and British practices.
6. The Election Commission of India was established in January 1959.
7. The President determines the conditions of service of the Election Commissioners.

## 3.6 SUMMARY

- India has adopted a parliamentary form of government in which the Parliament enjoys a pivotal position. However, unlike England, our Parliament is not supreme.
- The Lok Sabha is known as the House of the People as it is directly elected by the people. It is also known as the Lower House.
- India has adopted a Parliamentary form of government in which the Parliament enjoys a pivotal position.
- The principal function of the Legislature is to make laws. The Constitution of India has divided the Legislative powers between the Centre and States according to List System—the Union List, State List and Concurrent List.
- The parliamentary system of government envisages a close cooperation between the legislative and the executive wings of the government.
- The Parliament can make laws regulating the Constitution, organization, jurisdiction and powers of the Courts.
- The special powers of the Rajya Sabha are in the form of initiation of certain resolutions that come under the following Articles:
  - o Article 67

- o Article 249
- o Article 312
- The diverse nature of the vast functions of the Parliament make it impossible to make an exhaustive examination of all legislative and other matters that come up before it. It is for this reason that a substantial amount of Parliamentary business is executed in the committees.
- For the efficient and impartial proceedings, both the Houses of Parliament have been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer.
- The Judiciary (also referred to as the judicial system) is a system of courts that functions for interpreting and applying law on behalf of the state.
- The Judiciary also frames a system for resolving disputes, under the principle of division of power.
- The Supreme Court of India is the topmost judicial forum and last court where an appeal can be lodged. The Constitution of India assigns the role of a federal court and protector of the Constitution, to the Supreme Court.
- The composition of the Supreme Court of India involves the Chief Justice of India and twenty-five other judges appointed by the President of India.
- It is a must for the President to appoint judges after consulting the Supreme Court. These judges are usually appointed, according to their seniority.
- Judicial review is the process that empowers the Judiciary to carry out its functions.
- Judicial reforms also intend to deliver quality justice as quickly as possible.
- Judicial accountability is connected with the larger area of judicial reforms. Everyone is concerned about the large delays in the disposal of cases. The agenda for judicial reforms must first tackle the problem of this backlog.
- Elections are particularly conspicuous and revealing aspects of most of the contemporary political systems. They highlight the basic nature and the actual functioning of the system as a whole.
- The Indian Constitution has made provision for a suitable machinery to conduct free and fair elections in the country. It provides for the setting up of an Election Commission for this purpose, which shall consist of the chief election commissioner and such other election commissioners, as are appointed by the President.
- The Election Commission is a statutory body. It has only a Secretariat and no attached or subordinate office under it. But the Election Commission, in consultation with the state governments, nominates or designates an officer of the state government in each state as the chief electoral officer for that state for the preparation, revision and correction of electoral rolls, and so forth.

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### 3.7 KEY TERMS

- **Suffrage:** It means the right to vote in political elections.
- **Prorogue:** It means to discontinue a session of (a legislative assembly) without dissolving it.
- **Defection:** It refers to the desertion of one's political party or cause in favour of an opposing one.
- **Union list:** It means the subjects defined and enlisted under the List - I of the Seventh Schedule of the Constitution of India, which form the exclusive domain of the Central Government of the Union of India.
- **State list:** It refers to the subjects defined and enlisted under the List - II of the Seventh Schedule of the Constitution of India, which form the exclusive domain of the State Governments of the Union of India.
- **Concurrent list:** It means the subjects defined and enlisted under the List - III of the Seventh Schedule of the Constitution of India, which form the domains of both the Central Government and State Governments of the Union of India.
- **Residuary powers:** These are powers given to Parliament to make any law with respect to any matter not enumerated in the Concurrent List or State List.
- **Jurisdiction:** It refers to the right, power, or authority to administer justice by hearing and determining controversies.
- **Appellate jurisdiction:** It means the power of the Supreme Court to review decisions and change outcomes of the decisions of lower courts.
- **Advisory jurisdiction:** It is the power of a court to give advisory opinion on specific issues of law.

### 3.8 SELF-ASSESSMENT QUESTIONS AND EXERCISES

#### Short-Answer Questions

1. Who can qualify to be a member of the Indian Parliament?
2. What are the judicial functions of Parliament?
3. What is the significance of Articles 249 and 312 of the Indian Constitution?
4. List the specific provisions in the Indian Constitution, which imbibe the power of judicial review.
5. How are elections the crucial deciding factor in modern democracies?
6. Under what article of the Indian Constitution was the Election Commission set up?

## Long-Answer Questions

1. Examine the powers of the Lok Sabha.
2. Explain the financial powers of the Rajya Sabha.
3. Explain the composition and the method of appointing judges of the Supreme Court.
4. Discuss the jurisdiction and the powers of the Supreme Court.
5. What do you understand by judicial reforms? Discuss a few reforms that would help improve the functions of the judiciary in India.
6. What are the main functions of the Election Commission of India? Discuss.

*The Indian Parliament  
and the Supreme Court*

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### 3.9 FURTHER READING

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## UNIT 4 THE STATE EXECUTIVE AND LEGISLATURE

### Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Governor
- 4.3 Chief Minister and Council of Ministers
  - 4.3.1 The Council of Ministers
- 4.4 State Legislature
  - 4.4.1 State Legislative Council
  - 4.4.2 State Legislative Assembly
- 4.5 Answers to ‘Check Your Progress’
- 4.6 Summary
- 4.7 Key Terms
- 4.8 Self-Assessment Questions and Exercises
- 4.9 Further Reading

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## 4.0 INTRODUCTION

In the previous unit, you learnt about the Indian Parliament and the Supreme Court. This unit will discuss the state legislature and the executive. In India, the state governments are on a level below the Central government. Sovereignty is shared between the Centre and the state government, but the Central government is given greater powers. In the states, the Governor is the head of Executive, but real executive power vests with the Chief Minister who heads the Council of Ministers.

The Constitution of India gives a special role and responsibility to the State Government of preserving law and order and ensuring the welfare of citizens. The Seventh Schedule of the Constitution clearly demarcates the legislative and functional domain of the Union and the State. It highlights the critical role envisaged for State Government in fulfilling the aspirations set out in the Directive Principles of State Policy. The Chief Minister holds the central position in the state administration just as the Prime Minister plays the key role in the central administration. The Governor of the state and the Council of Ministers are linked through the Chief Minister and therefore, he is considered as the kingpin of the state administration. In this unit, you will learn about the power and functions of the Governor, Chief Minister and the relationship between the Chief Minister and the Council of Ministers.

## 4.1 OBJECTIVES

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

- Analyse the role of the governor, chief minister and council of ministers at the state level

- Explain the role and hierarchy of the state legislature
- Analyse the difference between the legislative assembly and legislative council

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### 4.2 GOVERNOR

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

In accordance with the parliamentary framework, like the Union Government, the State Governments also have two forms of Executive—the constitutional head and the real executive. The Governor is the constitutional head of the state and the Chief Minister is the real executive of the state.

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

#### Office of the Governor

**Appointment:** According to Article 153 of the Constitution, each state in India has a Governor and the executive power of the state is vested in him. He is appointed by the President of India for a term of 5 years and holds office during the pleasure of the President (Article 156). This means that a Governor can be removed by the President at any time even before the expiry of the term.

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

- (i) The Governor is appointed from outside the state concerned. This convention is there to ensure impartiality of the Governor in state politics. However, there have been instances when this convention was not followed.
- (ii) The states are consulted by the Centre in the appointment of the Governor. However, this practice is also not always followed in every appointment.

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

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

- (a) He must be a citizen of India
- (b) He must have completed the age of 35
- (c) He should not be a Member of Parliament or State Legislature
- (d) He shall not hold any office of profit

## Powers and Functions of the Governor

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

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

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

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

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

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

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

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

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

### Position and Role of Governor

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

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

- (i) As the Constitutional head of the state
- (ii) As the agent of the Centre

### Governor as the head of the state

The Governor as the head of the state works under the parameters of parliamentary democracy. Thus, he acts as a nominal head and exercises his functions strictly according to the ‘aid and advise’ of the Council of Ministers. Though the administration is carried out in the name of the Governor, the real authority is exercised by the Chief Minister and his Council of Ministers, who are collectively responsible to the Legislative Assembly. After the fourth General Elections in 1967, the monopoly of political power by the Congress party was broken and the non-Congress governments were formed in seven states. This phenomenon continues even today where no one party is capable of forming governments in both the Union and in many of the states. This changed scenario redrafted and redefined the position and role of the Governor in state politics. The Governors became actively involved in state politics and invariably acted in the interests of the party-in-power at the Centre. They also used their discretionary powers for their party purposes and thus made the office of the Governor highly controversial, with the result that there was a demand to abolish the office of the Governor.

### Governor as an agent of the Centre

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

- (a) The Union Government is responsible for good governance in all the states. In case of the constitutional breakdown of state machinery, the Governor may recommend President's rule or emergency in the state under Article 356.
- (b) The Governor sends his report regarding the affairs of the state to the President, periodically.
- (c) The Centre has the power to issue directives to the states and it is the duty of the Governor to see that such directives are followed by the state government.
- (d) The Governor of a state can reserve a bill passed by the State Legislature for the consideration of the President. Moreover, certain types of bills must be reserved by the Governor for the President's consideration.

### Controversy Regarding the Role of the Governor

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

One of the reasons for the attack or the criticism of Governor's role in state politics is the way the Governors have been appointed in the past. In January 1990, 18 Governors were asked to resign by the President to facilitate a reshuffle by the Union government led by V.P. Singh, which in turn, made the office of the Governor a puppet position. As mentioned earlier, the Centre has generally followed the policy of appointing people as Governors who have either failed to win any seat in the elections, or they are ex-bureaucrats or ex-judges (as a reward to their loyalty). Thus, such Governors owe their loyalty more towards the Centre and less towards the state. Moreover, during their appointment, the Centre sometimes does not consult the Chief Minister and his Council of Ministers. Thus, the state Chief Ministers complain that the selection of the Governors is imposed on them.

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

**(i) Appointing a Chief Minister in case no party gets a clear majority:**

Though the appointment of Chief Minister, in general, is decided by the party in majority in the Assembly, in certain cases it had become controversial. In March 1982, the Haryana Governor G.D. Tapase asked Devi Lal, leader of the BJP-Lok Dal combine to prove majority, but before he could do so, Bhajan Lal of the Congress was administered the oath of office, and was given a month time to show his strength. Appointments of Jayalalitha by Fatima Bibi in Tamil Nadu (despite the former's involvement in various corruption cases) and Nitish Kumar by Sunder Singh Bhandari in Bihar in 2000 are some such examples.

In the Assembly election held in Bihar in February 2000, the RJD, headed by former Chief Minister Laloo Prasad Yadav, emerged as the single largest party, with 123 seats. However, the elections led to a hung Assembly. Being the largest party, it was widely expected that RJD would be invited first to form the government. Curiously, and without proffering any reasons for his

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decision, the Governor Sunder Singh Bhandari invited Nitish Kumar who represented NDA, to form a government and prove its majority in the assembly within 10 days. The Governor's action came in for strident criticism because it was very clear that the alliance did not have the required numbers in the Assembly. It was only at the behest of NDA (which was in power at the Centre), the Governor acted as the agent of the Centre.

**(ii) Deciding the fate of chief minister in case of intra-party defections:**

On many occasions, Governors have dismissed Chief Ministers, when the State Legislature should have decided the matter. Many a time, the state governments were dismissed when large intra-party defections had taken place and the ruling party was prepared to prove its majority on the floor of the House. But before it could do so, the Governor had given the orders for the dissolution of the State Legislature.

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

**(iii) Advising the President for proclamation of emergency under Article 356:**

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

However, in 2005, the use of Article 356 became a centre of debate. During February 2005 elections, no party could get majority in the Bihar Assembly. In such a situation, Governor Buta Singh recommended President's rule to the Central government. His recommendation was accepted by the UPA government and was further approved by the President. However, instead of being dissolved, the Assembly was kept under suspended animation, obviously hoping some leader could be in a

position to stake claim to form a government. Thus, the possibility of change in the loyalties of members was accepted as legitimate. Later, when challenged, the Supreme Court invalidated the imposition of President's Rule and ordered for the fresh elections that were held in October–November 2005.

- (iv) **Using discretionary powers in day-to-day affairs:** Apart from appointing, toppling or dismissing ministries, the Governor has also been interfering in the state government's affairs in the name of discretionary powers.
- (v) **Sending reports to the Central government:** Even the role of Governors while sending reports to the Central government had also, sometimes, invoked controversy. Governor B.N. Nehru's transfer from Jammu and Kashmir to Gujarat and S.S. Barnala's transfer from Tamil Nadu to Bihar because of refusal to cooperate with the Centre to topple Farooq Abdullah's government and Karunanidhi's government respectively were examples of such controversies.
- (vi) **Reserving a bill for the President's assent:** The power of the Governor to reserve a bill, passed by the State Legislature and against the advice of the state ministry, for the President's assent is yet another issue of contention between the Centre and the states. The Sarkaria Commission found that during the period from 1977 to November, 1985, 1130 state bills were reserved for the consideration of the President. Out of these, 1039 bills were assented to by the President. Opposition ruled states have raised their complaints against the misuse of Articles 200 and 201, which empowers the Governor to reserve the bill for Presidential assent. As part of their reactions in front of Sarkaria Commission, the state like West Bengal had even asked for these articles to be deleted from the Constitution.

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

#### Check Your Progress

1. Who appoints the Governor of a State in the Indian Union?
2. What are the dual roles of a governor?

### 4.3 CHIEF MINISTER AND COUNCIL OF MINISTERS

Taking the analogy of the parliamentary system of governance at the state level, the Constitution provides for the office of the Chief Minister to be the real executive

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of the state. The chief minister symbolizes ruling power structure and wields more authority than anybody else in the state.

However, the philosophy underlying the creation of a democratic set-up in the state under the Indian Constitution appears to be guided by the compulsions of the unity and consistency in the governance of the country as a whole rather than ensuring to each state a fair degree of functional autonomy in the true spirit of the federal structure of the Indian polity. Consequently, the position of the Chief Minister, rather than being that of a democratic ruler with wide-ranging powers and functions, appears to be that of a local ruler with many fetters put on his functional autonomy—in the form of the vast discretionary powers afforded to the centrally nominated Governor, by using which he can impair the effectiveness of the Chief Minister as the real ruler of the state elected by the people.

### Appointment of the Chief Minister

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

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

The Constitution says nothing about the qualification of the Chief Minister. Under the Constitution, all that is required is that such a person is a citizen of India and possesses such qualifications, as are required for becoming a member of the Legislative Assembly. Such a person could be a member of either house of the legislature or even an outsider. Although constitutionally a non-legislator does not stand barred from becoming a minister or a Chief Minister, he must, however, become a member of the legislature within 6 months, failing which he is liable to forfeit his office.

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

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

### Powers and Functions of the Chief Ministers

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

1. He is the working head of the state government and as such, he advises the Governor in matters relating to the selection of his ministers, change in their portfolios and their removal from his government.
2. He presides over the meetings of his Council of Ministers and sees to it that the principle of collective responsibility is maintained. He may, thus, advise a minister to resign from his post or may advise the Governor to dismiss a minister in case he differs from the policy of the Cabinet.
3. He communicates to the Governor such information relating to the administration of the state of affairs and proposals of legislation as he may call for.
4. He furnishes to the Governor such information relating to the administration of the state.
5. He places a matter for the consideration of the Council of Ministers where the Governor requires him to have the decision of the government. He thus, acts as the sole channel of communication between his ministers and the Governor.
6. Likewise, the Chief Minister is the sole channel of communication between his ministers and the legislature. All bills, resolutions, etc. that are moved in the legislature must have his prior approval. Criticism of his government is answered by him.
7. He may resign any time and then advise the Governor to summon such and such person for the installation of another ministry or to dissolve the House and thereby place the state under President's Rule.
8. Though in theory all appointments are made by the Governor, yet in practice the power of patronage vests with the Chief Minister. He is consulted about the appointment of judges of the state high court. No posting and transfer can take place in the state without his approval. He is consulted in the appointment of State Advocate General and the members of state Public Service Commission.

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#### The Chief Minister and the Legislature

In a parliamentary form of government, the executive headed by Chief Minister, and the legislature are supposed to work in close cooperation with one another. He defines government policies and programmes in the House and faces the

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opposition. For all practical purposes, the agenda of the House is decided by him. But in respect of legislature, his most important power is that of the dissolution of the House. At any time, the Chief Minister can advise the Governor that the Vidhan Sabha be dissolved, though the latter is not bound by that. But usually such an advice is accepted.

### **The Chief Minister and the Governor**

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

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

However, there have been times when the Governor and the Chief Minister had tensions between them.

### **Position of the Chief Minister**

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

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

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

The relationship of the Chief Minister with the MLAs of the Legislative Assembly depends on two factors: the standing of the Chief Minister in front of the MLAs and the attitude of the former towards the latter. If the Chief Minister does not command a comfortable majority in the Assembly, his position becomes quite precarious in front of the MLAs and he is in a vulnerable position. In substance, a

democratic rather than an authoritarian attitude of the Chief Minister towards the MLAs and the legislature itself needs to be the norm of the effective and all-embracing functioning of the Chief Minister.

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

The fundamental source of the Chief Minister's prime position in the planning process emanates from his association with the Planning Commission and the National Development Council (NDC), the apex bodies of the planning system in the country. Strictly, though the Chief Ministers are not a part of the Planning Commission, their participation in the formulation of the Five Year Plans is ensured through the mechanism of the NDC. The NDC consists of the Prime Minister, some key Union Ministers and Chief Ministers of all states and executive heads of the Union Territories. The Chief Ministers also remain in touch with the Planning Commission in order to ensure the smooth flow of funds for the implementation of several centrally sponsored developmental schemes in the state.

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

#### 4.3.1 The Council of Ministers

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

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

#### Organization

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

The size of the State Council of Ministers was not previously specified in the Constitution. Thus, the chief ministers were prone to have an unwieldy Council of Ministers in order to satisfy all the factions contending for power in the state government. But with the passage of the Ninety-First Constitution Amendment

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Act, 2003, the size of the ministries is limited to only 15 per cent of the total membership of the State Legislative Assembly. A remarkable improvement has been brought about in regard to the frivolous elements finding a place in the Council of Ministers.

### Working of the Council of Ministers

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

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

## 4.4 STATE LEGISLATURE

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

### 4.4.1 State Legislative Council

**Composition:** The total number of members in the Legislative Council of a state having such a council shall not exceed one-third of the total number of members in the Legislative Assembly of that state. The total number of members in the Legislative Council shall in no case be less than 40, unless Parliament by law otherwise provides.

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

- (a) One-third of the members of municipalities, district boards and other local authorities in the state;
- (b) One-twelfth to be elected by an electoral college consisting of university graduates;
- (c) One-twelfth to be elected by an electoral college consisting of teachers in universities, colleges and secondary schools;

- (d) One-third to be elected by members of the Legislative Assembly from amongst persons who are not members of the Assembly; and
- (e) The remainder are to be nominated by the Governor from amongst people having ‘special knowledge or practical experience’ in the fields of ‘literature, science, art, cooperative movement and social service’.

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

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

- (i) He should be a citizen of India.
- (ii) He must have completed the age of 30 years.
- (iii) He must possess such other qualifications as may be prescribed by the Parliament from time to time.
- (iv) He should not hold any office of profit under the Union or the State government. Also, he should not have been convicted by the court for election malpractices or other crimes.

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

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

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

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

- (a) Critics feel that the representation of various categories in the Council is not satisfactory. Functional representation should be broad-based. Thus, representation may be extended to such other functional categories as medicine, engineering, trade union, business, civil service, etc.
- (b) The critics also feel that the Legislative Council does not serve any useful purpose. There is no reason to believe that the elected representatives of these five states are more irresponsible than the elected

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representatives in other states, so that the legislation passed by them requires reviewing or delaying by the members of the Council. If the majority of the states in India do not have upper houses or Legislative Councils, there is no reason why only a few states should bear the burden of having them.

- (c) Also, the Legislative Councils are more of a financial burden on the limited resources of the poor people of the states concerned.
- (d) The Legislative Councils have been misused by the political parties in power and in opposition in the respective states. The candidates defeated in the general elections have been either elected by the Councils or nominated by the Governor on the advice of the Council of Ministers. Such persons also hold ministerial posts.

### 4.4.2 State Legislative Assembly

Let us begin by discussing the composition of the state legislative assembly.

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

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

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

- (a) He should be a citizen of India.
- (b) He should be more than 25 years of age.
- (c) He should possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Every Legislative Assembly has a 5-year term from the date appointed for its first meeting, unless dissolved earlier. The Assembly stands automatically dissolved after 5 years. The period of 5 years, may, while a proclamation of emergency is in operation, be extended by Parliament by law for a period not exceeding 1 year at a time, and not extending, in any case, beyond a period of six months after the proclamation has ceased to operate.

As per the Constitution, the Assembly must have two sessions per year. Also, the interval between the two sessions of the Assembly must not be more

than 6 months. The quorum of the Assembly should be one-tenth of the total membership of the House.

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

- (i) It can make laws on any subject provided in the State List or on a subject provided under the Concurrent List, provided it does not conflict with a law already made by the Parliament.
- (ii) It has control over the Council of Ministers. It has the right to ask questions from the ministers and it is the duty of the ministers to satisfy the members of the Assembly. The members of the Council can also pass a no-confidence motion against the government. The state government has to resign if it loses in the no-confidence motion.
- (iii) It also controls the finances of the state. A money bill can originate only in the Legislative Assembly. The Legislative Council can only keep the money bill only for 14 days, after which it is considered passed if it has been passed by the Legislative Assembly. It may pass, reject the demands or reduce the amount in the budget. Thus, no tax can be imposed or withdrawn without the approval of the Legislative Assembly.
- (iv) The Legislative Assembly also has constituent powers. According to Article 368, a bill of constitutional amendment, first passed by the Parliament, shall be referred to the states for ratification. The Assembly has to give its verdict by passing a resolution by its simple majority showing approval or disapproval of the said bill. Also, the President of India may send a bill to the House regarding change of boundary lines of the state or its reorganization to elicit its views on the subject before he recommends that such a bill be introduced in the Parliament.
- (v) The Assembly also elects its own Speaker and Deputy Speaker and may remove them by a vote of no-confidence motion. It also takes part in the election of the President of India by being a part of the Electoral College. It considers the reports submitted by various independent state agencies like the State Public Service Commission, Auditor-General, etc.

### **Comparison between the Legislative Assembly and Legislative Council**

At the Centre, the Rajya Sabha has, except in the field of money bills, co-equal powers with the Lok Sabha in all legislative matters. In the State Legislature, on the contrary, the Council is designed to play a definitely inferior role. Its functions are of an advisory nature only.

The Legislative Council has no power regarding the money bill. A money bill cannot originate in the Council. It cannot, also delay a Money Bill or make recommendations in the bill if they are not acceptable to the Legislative Assembly.

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

### Criticism of the State Legislature

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

- (a) In states, which have bicameral legislature, the power of the Legislative Council is highly restricted. In fact, in the Legislative sphere, it has no effective voice.
- (b) From the point of view of the state autonomy, the powers of the State Legislatures are very restricted. The Sarkaria Commission has pointed out that in several cases, bills were sent to the President for his consideration by the Governor. A President can take any number of days to send back the bill accepting or rejecting it. This forms a severe erosion of state autonomy.
- (c) The members of the majority party in the Legislative Assemblies have shown scant regard for the sentiments and views of the opposition parties while framing their policy.
- (d) Defections have been a major drawback in the working of the State Legislatures.
- (e) Many a time, members had been absent from the Legislatures in large numbers, resulting in lack of quorum. Consequently, the functioning of the State Legislatures had been hampered.
- (f) Over the years, the composition of the State Legislatures has changed, with more and more groups, castes, religions, and professions being represented in them. On one hand, it is a positive feature since the Legislature is becoming truly representative. On the other hand, men and women of rural background, especially farmers and cultivators are steadily increasing their number in the Legislative Assemblies. These people cannot be expected to take a sustained interest in the highly complicated and demanding business of Legislation. Thus, over the years, State Legislatures in India have tended to become mere forums of declamatory politics than of serious engagement in the overview of the government's policies, activities and expenditure of public money.

### Check Your Progress

3. Name two chief functions of the chief minister.
4. What is the maximum number of member a legislative council may have?
5. Who is the presiding officer of the Legislative Council?

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## 4.5 ANSWERS TO ‘CHECK YOUR PROGRESS’

1. The Governor is appointed by the President of India for a term of 5 years and holds office during the pleasure of the President (Article 156).
2. The dual roles of a Governor are the Constitutional head of state, and agent of the Centre.
3. Two chief functions of a chief minister as a working head of the state government, and presiding over meetings of the Council of Ministers.
4. The total number of members in the Legislative Council of a state should not exceed one-third of the total number of members in the Legislative Assembly of that state.
5. The presiding officer of the Legislative Council is the Chairman, who is elected by the members from amongst themselves.

## 4.6 SUMMARY

- In accordance with the federal characteristics, the Constitution of India envisages two tiers of government, one at the level of the Union, and the other at the level of the states.
- In accordance with the parliamentary framework, like the Union Government, the State Governments also have two forms of Executive—the constitutional head and the real executive. The Governor is the constitutional head of the state and the Chief Minister is the real executive of the state.
- According to Article 153 of the Constitution, each state in India has a Governor and the executive power of the state is vested in him.
- The Governor appoints the Chief Minister and his Council of Ministers. However, following the Parliamentary form of government norms, they are responsible to the State Assembly and remain in power till they enjoy the confidence of the State Assembly.
- The Governor of a state has the power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

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- The Governor as the head of the state works under the parameters of parliamentary democracy. Thus, he acts as a nominal head and exercises his functions strictly according to the ‘aid and advise’ of the Council of Ministers.
- The Chief Minister is appointed by the Governor, the executive head of the state, who invites the leader of the majority party in the Legislative Assembly to form the government.
- The Constitution says nothing about the qualification of the Chief Minister. Under the Constitution, all that is required is that such a person is a citizen of India and possesses such qualifications, as are required for becoming a member of the Legislative Assembly.
- The Chief Minister is the working head of the state government and as such, he advises the Governor in matters relating to the selection of his ministers, change in their portfolios and their removal from his government.
- In a parliamentary form of government, the executive headed by Chief Minister, and the legislature are supposed to work in close cooperation with one another.
- Following the model of the parliamentary government, the real government of the state consists of the Council of Ministers headed by the Chief Minister.
- The Council of Ministers is collectively responsible to the Legislative Assembly. This means that every member of the Council of Ministers accepts responsibility for every decision of the cabinet. If a minister is unable to accept responsibility, the only alternative left for him is to resign, as there is collective responsibility.
- The state legislature in India consists of the Governor and one or two Houses. The Constitution provides that in each state there shall be a Legislative Assembly.
- At present, under Article 168 of the Constitution five states—Andhra Pradesh, Bihar, Maharashtra, Karnataka and Uttar Pradesh have bicameral legislatures, i.e. they have Legislative Council (Vidhan Parishad) and Legislative Assembly (Vidhan Sabha).
- The Legislative Council plays more of an advisory role. A bill, other than a money bill, may originate in either House of the Legislature.
- The members of the Legislative Assembly are elected on the basis of universal adult franchise without any distinction on the basis of caste, creed or religion.
- Every Legislative Assembly has a 5-year term from the date appointed for its first meeting, unless dissolved earlier.

## 4.7 KEY TERMS

- **Chief minister:** It refers to the working head of a state government who advises the Governor in matters related to the selection of ministers, changing their portfolios or, if required, their removal.
- **Council of ministers:** They refer to the chief executive body in a state.
- **Quo warranto:** It refers to a writ or legal action requiring a person to show by what warrant an office or franchise is held, claimed, or exercised.

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## 4.8 SELF-ASSESSMENT QUESTIONS AND EXERCISES

### Short-Answer Questions

1. What are the minimum qualifications of a Governor?
2. State the relationship between a Governor and Chief Minister.
3. What is a state legislative assembly?

### Long-Answer Questions

1. Discuss the powers and functions of a Governor.
2. In what ways is a Governor's role controversial? Discuss.
3. Examine the powers and functions of a chief minister.

## 4.9 FURTHER READING

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## UNIT 5 JUDICIAL ACTIVISM AND TRANSPARENCY

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#### Structure

- 5.0 Introduction
- 5.1 Objectives
- 5.2 Judicial Activism
- 5.3 Lok Adalat (Public Courts)
- 5.4 Right to Information
- 5.5 Electoral Reforms
- 5.6 Answers to ‘Check Your Progress’
- 5.7 Summary
- 5.8 Key Terms
- 5.9 Self-Assessment Questions and Exercises
- 5.10 Further Reading

### 5.0 INTRODUCTION

In the previous unit, you learnt about the framework of the state administration in India. In it, you learnt about the powers of the Governor and the Chief Minister. In this unit, we will discuss some important issues in the Indian political system such as judicial activism, electoral reforms, and the Right to Information.

The Judiciary’s decree in issues of usual social interest and welfare, even if they are not legally within their jurisdiction can be referred to as judicial activism. Judicial activism does not require the Judiciary to essentially adhere to the set measures of legal actions.

### 5.1 OBJECTIVES

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

- Discuss judicial activism in India
- Examine the functioning of Lok Adalats in India
- Describe the Right to Information Act, 2005
- Discuss electoral reforms in India

### 5.2 JUDICIAL ACTIVISM

The term judicial activism is explained in *Black’s Law Dictionary*, Sixtieth Edition, [Centennial Edition (1891–1991)]. It states that judicial activism is a ‘philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.’ Thus, judicial philosophy

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motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in matters of the Legislative and the Executive.

No one will dispute that the Judiciary has to perform an important role in the interpretation and enforcement of human rights inscribed in the fundamental law of the country. Therefore, it is necessary to consider what should be the approach of the Judiciary in the matter of constitutional interpretation. An approach must be a creative and purposive in the interpretation of various rights embodied in the Constitution, with a view to advancing human rights jurisprudence and social justice.

Judicial activism has emerged as the thematic thread running through the diverse areas of law that are represented in this comprehensive review of the Indian Supreme Court's jurisprudence. Subjects (to name just a few) ranging across areas as distinctive as fundamental rights, matrimonial adjudication, mercantile law, environmental justice, agrarian reforms, industrial jurisprudence and election laws, are all viewed through the approving lens of 'proactive adjudication'.

During the last five decades, the Judiciary has emerged as the most powerful institution of the State. It has assumed the power to strike down amendments to the Constitution on the basis of the innovative theory of basic structure. The area of judicial intervention has been steadily expanding through the device of Public Interest Litigation (PIL) and enforcement of human rights. Problems relating to environment pollution and natural resources of the nation, which ought to have been tackled on priority by the Executive and the Legislature are brought up through PIL, to be handled by the Supreme Court and the high courts. Lack of proper governance, non-governance and mis-governance are, probably, more responsible for increasing judicial activism. Speaking at Dr Zakir Hussain Memorial Lecture in 1997, A.M. Ahmedi (former Chief Justice) asserted that judicial activism might be seen as a transient phase responding to peculiar needs of the nation. Shedding its pro-status quo approach, the Judiciary has taken upon itself the duty to enforce the basic rights of poor and vulnerable sections of the society. Apart from its traditional limited role of administration of justice, it has also vowed to actively participate in the socioeconomic reconstruction of society, by progressive interpretation and affirmative action.

### Public Interest Litigation

A Public Interest Litigation (PIL) is a claim that can be lodged in any high court or directly in the Supreme Court. It is not mandatory for the petitioner to suffer an injury or have a personal grievance for filing the litigation. PIL can be referred to as the right that every socially aware member or public-supportive NGO has, to support a public cause by seeking judicial redressal of a public grievance. Such a grievance may arise as an outcome of a breach of public duty or due to some provision of the Constitution that has been violated. Public Interest Litigation is the mechanism by which public participation in judicial review of administrative action

can be assured. It works to increase the democracy of the judicial process. Public Interest Litigation cannot be referred to as any statute or act. Judges have interpreted it for considering the overall objective of the public. Therefore, public interest is the prime and sole focus of such litigation.

### Provision of Legal Aid

Several substantial assurances have been made for defending human rights in Section 39 of the Indian Constitution. In spite of this, there are a large number of challenges faced by India, pertaining to the implementation of domestic laws for the protection of due process rights like piling of cases which are likely to go on for decades, in addition to 70 per cent of prisoners who have been detained without trials. Nevertheless, law has been a tradition in India since ages and even judicial activism in Asia, was born in India. It has the required legal infrastructure. In the domain of legal aid and legal services, establishments have been set up at the national, state and district levels. This endorses a sound capability to provide quality criminal defence to every accused citizen, more importantly belonging to the underprivileged groups, e.g., the poor, etc. It is the need of the moment to provide quality and prompt legal aid to every citizen of India. This will protect all their due process rights beginning from the time they are arrested by the police for an alleged crime.

### Amicus Curiae

*Amicus Curiae* or *Amici Curiae* (plural *Amici Curiae*) is a legal phrase in Latin language. It is literally translated as ‘friend of the court’. Friend of the court means any person who is not a participant in a case, but offers to provide information on a legal aspect or any other aspect, to help a court in ruling over a matter before it. The mode of information may be a legal opinion in the form of a brief, a testimony that none of the parties have solicited, or a learned treatise on any aspect of the case that has a bearing on it. It is for the court to judge if the information can be considered.

The term *Amicus Curiae* should not be confused with someone who is involved in a case just because his direct interest lies in the result. Salmon LJ (also addressed as Lord Salmon) defines *Amicus Curiae* as follows: ‘I had always understood that the role of an *Amicus Curiae* was to help the court by expounding the law impartially, or if one of the parties were unrepresented, by advancing the legal argument on his behalf.’

The courts in India, have repeatedly advocated the concept of allowing *Amicus Curiae* to connect themselves with trials that usually involve public interest. In the process, a court is directed not only by the intellectual viewpoint required in a particular case, but it also gets to understand which viewpoint would allow it to deliver total justice. Those who are allowed by the courts to function as *Amicus Curiae* are ones who represent the impartial will and belief of the society.

In a large number of cases in India, the courts have provided for, or, on their own activity, have summoned several people to play the role of *Amicus Curiae* in their proceedings. An ideal instance of this is the well-known, or rather the notorious

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*BMW* case. This case has again featured in the news recently due to the fact that the Delhi High Court has suspended both, the defence and the prosecution lawyers. The charge was that they were instrumental in turning the witnesses hostile. In the corresponding case, the Delhi High Court had appointed Advocate Arvind Nigam to act as *Amicus Curiae*. His role was critical in securing justice.

Hence, in India, thus, if a petition comes from a jail or is related to any other criminal matter where there is no one to represent the accused, then the corresponding court appoints a lawyer as *Amicus Curiae*. He defends the accused and fights his case. Even in civil matters, the process followed by the court is the same. The court also has the discretion to assign *Amicus Curiae* in any matter pertaining to general public importance or where the interest of the public is involved.

### Check Your Progress

1. What is a Public Interest Litigation?
2. What do you understand by the term *Amicus Curiae*?

## 5.3 LOK ADALAT (PUBLIC COURTS)

NALSA along with other Legal Services Institutions conducts Lok Adalats. A Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.

There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties. The persons deciding the cases in the Lok Adalats are called the Members of the Lok Adalats, they have the role of statutory conciliators only and do not have any judicial role; therefore they can only persuade the parties to come to a conclusion for settling the dispute outside the court in the Lok Adalat and shall not pressurize or coerce any of the parties to compromise or settle cases or matters either directly or indirectly. The Lok Adalat shall not decide the matter so referred at its own instance, instead the same would be decided on the basis of the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

## Nature of Cases to be referred to Lok Adalat

1. Any case pending before any court.
2. Any dispute which has not been brought before any court and is likely to be filed before the court.

Provided that any matter relating to an offence not compoundable under the law shall not be settled in Lok Adalat.

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## Which Lok Adalat to be Approached

As per section 18(1) of the Act, a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

- (1) Any case pending before; or
- (2) Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

Provided that the Lok Adalat shall have no jurisdiction in respect of matters relating to divorce or matters relating to an offence not compoundable under any law.

## How to Get the Case Referred to the Lok Adalat for Settlement

- (a) Case pending before the court.
- (b) Any dispute at pre-litigative stage.

The State Legal Services Authority or District Legal Services Authority as the case may be on receipt of an application from any one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for amicable settlement of the dispute for which notice would then be issued to the other party.

## Levels and Composition of Lok Adalats

The different levels of Lok Adalats are as follows:

### At the State Authority Level

The Member Secretary of the State Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court or a sitting or retired judicial officer and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes.

### At High Court Level

The Secretary of the High Court Legal Services Committee would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes.

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### At District Level

The Secretary of the District Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

### At Taluk Level

The Secretary of the Taluk Legal Services Committee organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

### National Lok Adalat

National Level Lok Adalats are held for at regular intervals where on a single day Lok Adalats are held throughout the country, in all the courts right from the Supreme Court till the Taluk Levels wherein cases are disposed of in huge numbers. From February 2015, National Lok Adalats are being held on a specific subject matter every month.

### Permanent Lok Adalat

The other type of Lok Adalat is the Permanent Lok Adalat, organized under Section 22-B of The Legal Services Authorities Act, 1987. Permanent Lok Adalats have been set up as permanent bodies with a Chairman and two members for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc. Here, even if the parties fail to reach to a settlement, the Permanent Lok Adalat gets jurisdiction to decide the dispute, provided, the dispute does not relate to any offence. Further, the Award of the Permanent Lok Adalat is final and binding on all the parties. The jurisdiction of the Permanent Lok Adalats is upto ₹ Ten Lakhs. Here if the parties fail to reach to a settlement, the Permanent Lok Adalat has the jurisdiction to decide the case. The award of the Permanent Lok Adalat is final and binding upon the parties. The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate, taking into account the circumstances of the case, wishes of the parties like requests to hear oral statements, speedy settlement of dispute etc.

Mobile Lok Adalats are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism. As on 30.09.2015, more than 15.14 lakhs Lok Adalats have been organized in the country since its inception. More than 8.25 crore cases have been settled by this mechanism so far.

### Check Your Progress

3. Who conducts Lok Adalats in India?
4. What are permanent Lok Adalats?

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## 5.4 RIGHT TO INFORMATION

Information is the fundamental democratic right of any human being. Empowering the public with full information is the fundamental duty of the government. The people then become the nation's greatest asset in implementing policies and programmes of our democratic developing polity. The Right to Information is mainly made up of different rights and responsibilities namely:

- Every person's RIGHT to request information from the government and even private bodies in some cases;
- The DUTY on the government to make available the information that is demanded, except defined exception apply;
- The DUTY on the government to disclose proactively information that is of general public interest without the need for requests from citizens.

The Right to Information has not been mentioned specially anywhere in the Constitution of India, but it has been recognised by the Supreme Court of the country long back and has been considered as a fundamental right for proper functioning of democracy in the country. In India, the Supreme Court has acknowledged the right to information as a vital part of the right to freedom of expression and speech guaranteed by the Constitution of India under Article 19 and an essential part of life under Article 21.

The right to information shows the reality that all the information of the government belongs to the general masses. In other words, all the governmental information is not supposed to be hidden or held by the government, rather, it should be held by the people as most of the information is generated by public money and by public servants. One can have access to avail information about government decision-making process, policies, decisions, action.

The right to information is not always absolute. There is certain information that may be kept back. Leaking of such information may harm the interests of the people, thus it is good to keep those information secret. For instance, information about army force at the time of war or information about national economic policies prior to their publication. In all these cases it is valid for government officials to keep such information closed.

Right to Information can be used by the people to take initiatives in making sure that the government provides them with the services they are entitled to and the rights and benefits that are their due as citizens of India.

As we all know that the right to information applies to the whole country, across all states and Union territories thus, one can easily avail information of any

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state on any topic from the government of that particular state. One can easily sort the problem or know the numbers through the intelligent use of the right to information. For instance:

- Parents can ask for details of grants made to government aided schools to ensure that funds are being spent properly, or check that admission are not being brought through bribes, or that funds meant for education are not being diverted for other purposes.
- People holding ration cards can check the stocks and sales registers held by ration card dealers and the food department to make sure that they are getting their proper amount of rations and that rations are not being siphoned off in their name.
- Unemployed people can ask about the criteria for giving government jobs or the status of their applications and position in the waitlist.
- Owners of small businesses can find out the basis on which licences, tax concessions or subsidies are granted by government and who the beneficiaries are. They can also check that the government is granting licences/concessions/subsidies on the basis of properly applied criteria.
- People can check on the progress of their applications for government services.
- People can also get the number of deaths occurred in a government hospital and for what reasons or what the shortfall of doctors and nurses is compared with sanctioned staff.
- People can know the daily attendance of teachers in a government school.
- People can know the number of people being housed in local jails
- Know the number of inspector visit in the factories and other manufacturing units to check that they are not illegally releasing hazardous materials in the environment.

Thus, from above points it becomes clear that any citizen of India has the right to avail any sort of information that is important for him through the Right to Information Act

### Right to Information Act

It is in this context, the Right to Information Act 2005 came into force with effect from 12 October 2005. In fact, it marked a new era in the dissemination in public administration in our country. The main objective of this Act is to provide a right to all citizens to secure access to information under the control of public authorities and also to promote transparency and accountability in the working of public authorities. In other words, the Right to Information Act promotes the maximum discloser of information. In practice, this means one can get most information that is held by public authorities, subject to a few exceptions, which are designed to protect sensitive information from being released, where its release would cause more harm than public good.

The Act allows the people access to a wide range of information held by public authorities in different forms. One can use the Act to get:

- Records
- File notings
- Information related to a private body
- Material produced by a computer or other device
- Data which is in electronic form
- Models, samples
- Papers, reports, contracts
- Logbooks, orders, circulars
- Press releases and facimiles
- Advices, opinions and e-mails
- Microfiche, microfilm, memos and documents

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Under the Act, you have the:

### (i) Right to certified copies

One can get certified copies or extract of documents or records and can even ask to take notes from documents and records.

### (ii) Right to get samples and models

One can ask for certified samples or materials and models. For instance, one can ask for a sample of a road being built in front of their house so that they can check whether proper materials are being used in accordance with the contract.

### (iii) Right to inspect records or works

One can ask to inspect any work, document or record in person. For instance, one can ask to physically inspect the construction of bridge or installation of a hand pump to make sure that the work is being undertaken according to proper service standards or one can examine government files as one way of keeping down costs so that they decide what papers they want and then ask only for copies of those they want.

### (iv) Right to get information in electronic form

One has the right to get information in the form of cassettes, videos, tapes, floppies, diskettes and printouts. The Act has been drafted broadly enough so that even information held in new types of technology will be covered.

## Structure

Public Information Officers have been appointed in both the Central and the State Government to provide information to those requesting for such information under the Act. Regular departmental officers have been appointed as Public Information Officer. But in most cases Public Relations Officers have been designated as Public

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Information Officer in the government. They are basically responsible for receiving and processing applications. They also have a duty to assist requesters who are having trouble making their applications. The names of the PIOs have to be prominently displayed on notice boards at all offices and on their websites. Public authorities and the government have to organise public educational programmes to advance the understanding of the public as to how to exercise the rights under the Act. As such the RTI Act brightens the prospects of public relations communicators.

### Check Your Progress

5. When did the Right to Information Act come into force?
6. What is the main objective of Right to Information Act?

## 5.5 ELECTORAL REFORMS

Electoral reform is not an uncharted cognitive territory in contemporary India. Since the beginning of electoral politics in the fifties and particularly in the last two decades, this theme has been dealt with by a number of scholars. The key to a meaningful political discussion about electoral reform is the ideal of representation and its relation to the process of democratization in contemporary India. The institution of universal adult franchise started a democratic revolution involving greater and more intense participation along with higher expectations in the game of politics. However, the dissociation of electoral mandates from the process of government formation and policy-making has distorted the nature of representation.

This is what gives rise to the challenge of electoral reform. The challenge is to make the mechanism of election an effective instrument of the democratic will of the people, especially those who have so far been excluded from their due share of power. This is directly related to the character of representation, for effective democratization is achieved through a transition from formal representation to substantive representation.

Critics have pointed out that the elected members to the legislatures do not get sufficient number of votes to represent the people in the true sense. They get elected with twenty per cent or even less than twenty per cent of votes. They would be better representatives if they get more than fifty per cent at least of the votes cast. Further, the people in our country have a constitutional right to vote, but this right does not correspond with the duty to vote. With the result, our general elections record fifty to sixty per cent voting. The representatives in the legislatures, therefore, do not represent the people as a whole. There are few other problems as well.

The emergence of new parties, pursuing desperate regional, sectarian and segmental causes, and fragmentation of erstwhile vote banks, mounting expenditure on elections, vitiating muscle power, aggravation of caste and communal conflict, the eclipse of idealism and ideology in public life, the evil of both capturing and

rigging, public apathy resulting in lower turn out for voting, large number of candidates resulting in twenty per cent or some times less than twenty per cent of votes in favour of winning candidates are some of the evils that have so effected the situation that electoral reforms have become unavoidable. Many a times, the battle of ballots becomes the battle of bullets. On the day of elections, booths are captured, polling agents are attacked and bombs thrown to prevent the weaker sections from exercising their franchise. Criminal-politician nexus has resulted in the entry of criminals in legislatures (for example, Pappu Yadav, Rajan Tiwari, Mohd. Shahbuddin, Bablu Srivastava, and others). G.T. Nanavati, a Supreme Court Judge has pointed out, ‘criminals found politics a profitable business and also an influential field, where they could get immunity from the law of the land so that their criminal activities could go on unchallenged’.

### **Representation of the People (Amendment) Act, 1996**

To overcome such weaknesses, the Election Law underwent some important changes through the Representation of the People (Amendment) Act, 1996. Some important changes were as follows:

- Disqualification on conviction under the Prevention of Insults to National Honour Act, 1971.
- To check the multiplicity of non-serious candidates, the amount of security deposits for an election to the Lok Sabha and a state Legislative Assembly was increased. In case of Lok Sabha, the amount of security deposits was increased from ₹ 500 to ₹ 10,000. For a member of scheduled caste (SC) and scheduled tribe (ST), it stands at ₹ 5000.
- In case of a state Legislative Assembly, the Act fixed ₹ 5,000 for a general candidate and ₹ 2,500 in case of candidate belonging to SC/ST as security deposit instead of ₹ 250 and ₹ 125 respectively.
- The nomination of a candidate in parliamentary or assembly constituency was to be subscribed by 10 electors of the constituency as proposers.
- Restriction was laid on contesting election from more than two constituencies.
- For listing names of candidates, they were to be classified as candidates of recognized political parties, registered—unrecognized parties and other candidates.
- No election was to be countermanded on the death of a contesting candidate.
- Grant of paid holiday to employees and daily wagers on the day of poll.
- Prohibition of sale and distribution of liquor within a polling area.
- By-elections to any House of Parliament or a State Assembly were now to be held within six months from the occurrence of the vacancy in the House.

From 31 December 1997, central government raised the maximum ceiling on election expenditure by candidates, for Lok Sabha constituency to ₹ 15,00,000 and for Vidhan Sabha ₹ 6,00,000. In 2011, this ceiling on election expense was further enhanced for Lok Sabha constituencies to ₹ 60 lakhs and for State Assembly seats to ₹ 16 Lakhs.

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The Supreme Court of India directed the Election Commission to get the declaration from all candidates about their criminal antecedents, financial liabilities and educational qualifications.

Thus, from 2004 general elections, the ‘model code of conduct’ came into force. On 29 February 2004, the Election Commission issued detailed guidelines for the political parties and candidates. Accordingly, corrupt practices were prohibited (under Section 123 of the Representation of People’s Act, 1951), declared electoral offences as punishable (under Section 125-137 of the Representation of People’s Act, 1951), necessitated the disclosure of information about financial, criminal and educational status of candidates, restrained the use of excessive money or muscle during the elections and required the candidates to follow the model code of conduct and other related laws.

Despite all these efforts made by the Election Commission, one cannot undermine the role of good, clean democratic practice, watchdog news media, and a vigilant public opinion in raising the bar for all political parties. Above all, the Indian voter has also become quite discerning to understand which political party is able to prove its mettle and deliver the goods.

### Problem of Defection

In the 1980s, a problem that emerged in the parliamentary process was the problem of defections in state legislatures and even the Parliament. Defections meant that an elected representative of a particular party joined another party on the promise of more power or some other benefit. This was however not always true as some defections also took place on matters of principles or ideological differences.

To combat the problem of defection, the Rajiv Gandhi government moved the 52nd amendment to the Constitution and amended articles 101, 102, 190 and 191 and added a new schedule, the Tenth Schedule, which dealt with the disqualification of a Member of Parliament on the ground of defection.

Today, an elected representative is disqualified from being member of either House of the Parliament or a state legislature if he or she incurs the disqualifications mentioned in the 10th schedule. These disqualifications are as follows:

- If a member voluntarily gives up the membership of the political party on whose ticket he or she is elected to the House.
- If the member votes or abstains from voting in the House against any direction of the political party or by any person or authority authorized by it in this behalf, without the party permission of such party and unless it has been condoned by the party within fifteen days from the date of voting or abstention.
- If any nominated member joins any political party after the expiry of six months from the date on which he takes his seat in the House.

Some scholars have suggested that the defection law has been used to impose a centralized structure on political parties and has resulted in the death knell of parliamentary dissent.

## Role of Identity and Crime in Election

The enormous electorate and the large physical expanse of India make any election an expensive affair. The function of money in the electoral procedure has become important and introduced a big number of anomalies. Candidates and political parties use vast sums to persuade voters through a variety of inducements. This results in an unholy nexus between the political parties and vested interests that insist reciprocation after financing election costs. Appeal to the voters on the basis of caste, religion, region and such partisan matters have led to divide the communities with catastrophic impact upon the society. Another trend has been the propensity of elected members to alter their vote in opposition to the directions of their party. This allows horse-trading to go on where money rather than political ideology or policy decides the choice of the elected member. In many States, this became a main problem with a large number of legislatures candidly offering their votes for sale. All through a vote of no-confidence in the Parliament, a lot of opposition members showed wads of money that was supposedly given to them for switching their ballots.

A grave result of lax election laws has been the rising criminalization of politics in the country. Indian law forbids an individual from contesting election if he or she has been condemned of any criminal charges. This stipulation is easily circumvented, as court trials take tremendously long, even years, to come to a result. Meanwhile, the individual is free to contest polls and even gather ministerial posts upon winning the elections. Thereupon, it becomes rigid for police agencies to act against the person since he or she begins to unfavourably affect the witnesses and even the examiners by misusing the political associations. Many people, charged with solemn crimes such as murder and rape, have won polls and gained political surpluses. According to political researcher Mr. Verma, ‘By one estimate in 1997, 700 of 4,120 elected members of 25 State-level assemblies had criminal records. Of these, some 1,555 were accused of heinous crimes such as murder, armed robbery, rape and the like.’

This criminalization of politics began from the initial days of Indian democracy when the forward castes and well-established groups stopped lower castes and other marginalized masses from casting their votes. Prearranged ‘booth capturing’ started in 1957 when a group of upper-caste muscle-men hounded away the electorate and powerfully cast the votes for their applicant. Such booth capturing, i.e., the aggressive casting of votes in favour of a particular candidate, which forces genuine voters to stop from exercising their rights, gradually became a serious problem in several regions of India and particularly in States like Bihar and Uttar Pradesh. In 2004, a number of special officers appointed by the Election Commission discovered blatant proof of violence, threat and ‘silent booth capturing’ by the supporters of a well-known ruling party leader. The query prompted the Election Commission to annul the results and order re-polling. However, in most cases, it is not trouble-free to notice such efficient operations.

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### Prevention

A chief step taken by the Election Commission has been the improvement and introduction of electronic voting machines for the course of conducting successful election in the country. The purposes were to address two setbacks vitiating the elections: the difficulties in calculating the paper votes by hand which often led to disputes and court challenges and the other being the issue of booth capturing. It was noticed that criminals would rapidly stamp the voting papers and stuff them in the boxes which made it unfeasible to assess if a specific vote was authentically cast or done by an unlawful process. For that reason, the Commission approached the Electronic Corporation of India (ECIL) to devise a machine that would record votes at a time-consuming pace. At present, the existing machines record an utmost of five votes per minute. This design was made to aid in hardening the goal since the criminals would have to spend a great deal of the time at one booth to cast a large number of unlawful votes. This extra time would facilitate the police to respond to the call and arrive at even distant booths in time to nab the criminals. The machines could also be put out of action by polling personnel and would then need a supervisor to re-start. Furthermore, the electronic machines would also aid in calculating the total votes and declaring the results in the shortest possible time. This was expected to avoid harmful elements from disturbing the procedure.

### Check Your Progress

7. What distorted the nature of political representation in India?
8. In the context of the Indian political system, what is the meaning of defection?

## 5.6 ANSWERS TO ‘CHECK YOUR PROGRESS’

1. A Public Interest Litigation is a claim that can be lodged in any high court or directly in the Supreme Court. It is not mandatory for the petitioner to suffer an injury or have a personal grievance for filing the litigation.
2. Amicus Curiae is a legal phrase in Latin language. It is literally translated as ‘friend of the court’. Friend of the court means any person who is not a participant in a case, but offers to provide information on a legal aspect or any other aspect, to help a court in ruling over a matter before it.
3. NALSA along with other Legal Services Institutions conducts Lok Adalats.
4. Permanent Lok Adalats have been set up as permanent bodies with a Chairman and two members for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc.
5. The Right to Information Act came into force with effect from 12 October 2005.

6. The main objective of this Act is to provide a right to all citizens to secure access to information under the control of public authorities and also to promote transparency and accountability in the working of public authorities.
7. The dissociation of electoral mandates from the process of government formation and policy-making has distorted the nature of representation.
8. Defections meant that an elected representative of a particular party joined another party on the promise of more power or some other benefit.

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### 5.7 SUMMARY

- The term judicial activism is explained in Black's Law Dictionary, Sixtieth Edition, [Centennial Edition (1891–1991)]. It states that judicial activism is a 'philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.'
- Judicial philosophy motivates judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges.
- Judicial activism has emerged as the thematic thread running through the diverse areas of law that are represented in this comprehensive review of the Indian Supreme Court's jurisprudence.
- The area of judicial intervention has been steadily expanding through the device of Public Interest Litigation (PIL) and enforcement of human rights.
- A Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably.
- Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.
- The Administrative Reform Commission (ARC) submitted a particular provisional report on 'Problems of Redressal of Citizen's Grievances' in 1966. In the report, ARC suggested the establishment of two authorities elected as 'Lokpal' and 'Lokayukta' for citizen's grievances redressal.
- Information is the fundamental democratic right of any human being. Empowering the public with full information is the fundamental duty of the government. The people then become the nation's greatest asset in implementing policies and programmes of our democratic developing polity.
- Right to Information can be used by the people to take initiatives in making sure that the government provides them with the services they are entitled to and the rights and benefits that are their due as citizens of India.
- It is in this context, the Right to Information Act 2005 came into force with effect from 12 October 2005.

## NOTES

- The main objective of the RTI Act is to provide a right to all citizens to secure access to information under the control of public authorities and also to promote transparency and accountability in the working of public authorities.
- Electoral reform is not an uncharted cognitive territory in contemporary India. Since the beginning of electoral politics in the fifties and particularly in the last two decades, this theme has been dealt with by a number of scholars.
- The key to a meaningful political discussion about electoral reform is the ideal of representation and its relation to the process of democratization in contemporary India.
- In the 1980s, a problem that emerged in the parliamentary process was the problem of defections in state legislatures and even the Parliament.
- Defections meant that an elected representative of a particular party joined another party on the promise of more power or some other benefit.
- To combat the problem of defection, the Rajiv Gandhi government moved the 52nd amendment to the Constitution and amended articles 101, 102, 190 and 191 and added a new schedule, the Tenth Schedule, which dealt with the disqualification of a Member of Parliament on the ground of defection.
- A chief step taken by the Election Commission has been the improvement and introduction of electronic voting machines for the course of conducting successful election in the country.

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## 5.8 KEY TERMS

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- **Public Interest Litigation:** It means a legal action taken by a public spirited person in order to protect public interest.
- **Amicus Curiae:** It means someone who is not a party to a case and may or may not have been solicited by a party and who assists a court by offering information, expertise, or insight that has a bearing on the issues in the case; and is typically presented in the form of a brief.

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## 5.9 SELF-ASSESSMENT QUESTIONS AND EXERCISES

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### Short-Answer Questions

1. What are Public Interest Litigations?
2. List the important features of the Lokpal Bill, 2001.
3. What is the nature of cases to be referred to Lok Adalats?
4. Write a short note on the problem of defection.

### **Long-Answer Questions**

*Judicial Activism and Transparency*

1. Discuss the different levels of Lok Adalats.
2. Examine the Right to Information Act, 2005.
3. Describe some of the changes that were brought to the Representation of the People (Amendment) Act, 1996.
4. Explain the role of identity and crime in elections in India.

### **NOTES**

## **5.10 FURTHER READING**

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