

MAHARANA PRATAP GROUP OF INSTITUTIONS KOTHI MANDHANA, KANPUR

(Approved by AICTE, New Delhi and Affiliated to Dr.AKTU, Lucknow)



Digital Notes

**[Department of Mechanical & Electrical
Engineering]**

**Subject Name : Constitution of India,
law And engineering**

Subject Code : KNC501

Course : B. Tech

Branch : EE & ME

Semester : III (B & D)

Prepared by : Mr. Prakash Mishra

Reference No./ME&EE/KNC501/3/5

Unit – 1

Introduction and Basic Information about Indian Constitution

Syllabus

- Meaning of the constitution law and constitutionalism,
- Historical Background of the Constituent
- Assembly, Government of India Act of 1935 and Indian Independence Act of 1947,
- Enforcement of the Constitution, Indian Constitution and its Salient Features,
- The Preamble of the Constitution,
- Fundamental Rights, Fundamental Duties, Directive Principles of State Policy,
- Parliamentary System, Federal System, Centre-State Relations,
- Amendment of the Constitutional - The historical perspectives of the constitutional amendments in India,
- Emergency Provisions: National Emergency, President Rule, Financial Emergency
- Local Self Government – Constitutional Scheme in India.

Unit – 1

Introduction and Basic Information about Indian Constitution

1.1 Constitution Of India :

Constitution is the foundational law of a country which ordains the fundamental principles on which the government (or the governance) of that country is based. It lays down the framework and principal functions of various Organs of the government as well as the modalities of interaction between the government and its citizens. With the exception of the United Kingdom (U.K.), almost all democratic countries possess a written constitution. India also possesses an elaborate written constitution which was enacted by a constituent assembly specifically set up for the purpose.

1.2 Our Constitution:

Our present constitution—the first Constitution of India framed and given to themselves by the people of India was adopted by the Constituent Assembly on 26 November, 1949. It came into full operation with effect from 26 January, 1950. The Constitution as originally adopted had 22 parts, 395 articles and 8 schedules. Its present text is as amended from time to time.

1.3 Evolution of Indian Constitution/ Historical Background of the Constituent

Although the systems of ancient India do have their reflections in the Constitution of India, the direct sources of the Constitution lie in the administrative and legislative developments of the British period. A concise and chronological description of the Acts, documents and events that culminated in the framing of the world's largest written Constitution is given here.

1.4 Administrative & Legislative Reforms Before 1857

Regulating Act of 1773

- ☐ This Act was based on the report of a committee headed by the British Prime Minister Lord North.
- ☐ Governance of the East India Company was put under British parliamentary control.
- ☐ The Governor of Bengal was nominated as Governor General for all the three Presidencies of Calcutta, Bombay and Madras. Warren Hastings was the first such Governor General.
- ☐ A Supreme Court was established in Calcutta (now Kolkata).
- ☐ Governor General was empowered to make rules, regulations and ordinances with the consent of the Supreme Court.

Pitts India Act of 1784

- ☐ It was enacted to improve upon the provisions of Regulating Act of 1773 to bring about better discipline in the Company's system of administration.

- ☐ A 6-member Board of Controllors was set up which was headed by a minister of the British Government. All political responsibilities were given to this board.
- ☐ Trade and commerce related issues were under the purview of the Court of directors of the company.
- ☐ Provinces had to follow the instructions of the Central Government and Governor General was empowered to dismiss the failing provincial government.

Charter Act of 1793

- ☐ Main provisions of the previous Acts were consolidated in this Act.
- ☐ Provided for the payment of salaries of the members of the Board of Controllors from Indian revenue.
- ☐ Courts were given the power to interpret rules and regulations.

Charter Act of 1813

- ☐ Trade monopoly of the East India Company came to an end.
- ☐ Powers of the three Councils of Madras, Bombay and Calcutta were enlarged, they were also subjected to greater control of the British Parliament.
- ☐ The Christian Missionaries were allowed to spread their religion in India.
- ☐ Local autonomous bodies were empowered to levy taxes.

Charter Act of 1833

- ☐ The Governor General and his Council were given vast powers. This Council could legislate for the whole of India subject to the approval of the Board of Controllors.
- ☐ The Council got full powers regarding revenue, and a single budget for the country was prepared by the Governor General.
- ☐ The East India Company was reduced to an administrative and political entity and several Lords and Ministers were nominated as ex-officio members of the Board of Controllors.
- ☐ For the first time the Governor-General's Government was known as the 'Government of India' and his Council as the 'Indian Council'.

Charter Act of 1853

- ☐ This was the last of the Charter Acts and it made important changes in the system of Indian legislation.
- ☐ This Act followed a report of the then Governor General Dalhousie for improving the administration of the company.
- ☐ A separate Governor for Bengal was to be appointed.
- ☐ Legislative and administrative functions of the Council were separately identified.
- ☐ Recruitment of the Company's employees was to be done through competitive exams.
- ☐ British Parliament was empowered to put Company's governance of India to an end at any suitable time.

1.5 Administrative & 'Legislative Reforms after 1857

Government of India Act, 1858

- ☐ British Crown decided to assume sovereignty over India from the East India Company in an apparent consequence of the Revolt of 1857, described as an armed sepoy mutiny by the British historians and remembered as the First War of Independence by the Indians.

- ☐ The first statute for the governance of India, under the direct rule of the British Government, was the Government of India Act, 1858.
- ☐ It provided for absolute (British) imperial control over India without any popular participation in the administration of the country.
- ☐ The powers of the crown were to be exercised by the Secretary of State for India, assisted by a council of fifteen members, known as the Council of India.
- ☐ The country was divided into provinces headed by a Governor or Lieutenant-Governor aided by his Executive Council.
- ☐ The Provincial Governments had to function under the superintendence, direction and control of the Governor-General in all matters.
- ☐ All the authority for the governance of India was vested in the Governor-General in Council who was responsible to the Secretary of State.
- ☐ The Secretary of State was ultimately responsible to the British Parliament.

Indian Councils Act, 1861

- ☐ This is an important landmark in the constitutional history of India. By this Act, the powers of the crown were to be exercised by the Secretary of State for India, assisted by a council of fifteen members (known as the Council of India). The Secretary of State, who was responsible to the British Parliament, governed India through the Governor General, assisted by an Executive council.
- ☐ This Act enabled the Governor General to associate representatives of the Indian people with the work of legislation by nominating them to his expanded council.
- ☐ This Act provided that the Governor General's Executive Council should include certain additional non-official members also while transacting legislative business as a Legislative Council. But this Legislative Council was neither representative nor deliberative in any sense.
- ☐ It decentralized the legislative powers of the Governor General's Council and vested them in the Governments of Bombay and Madras.

Indian Councils Act, 1892

- ☐ The non-official members of the Indian Legislative Council were to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils while the non-official members of the Provincial Councils were to be nominated by certain local bodies such as universities, district boards, municipalities, zamindars etc.
- ☐ The Councils were to have the power of discussing the Budget and addressing questions to the Executive.

Morley-Minto Reforms and the Indian Councils Act, 1909

- ☐ Reforms recommended by the then Secretary of States for India (Lord Morley) and the Viceroy (Lord Minto) were implemented by the Indian Councils Act, 1909.
- ☐ The maximum number of additional members of the Indian Legislative Council (Governor-General's Council) was raised from 16 (under the Act of 1892) to 60 (excluding the Executive Councilors').

- ❑ The size of Provincial Legislative Councils was enlarged by including elected non-official members so that the official majority was gone.
- ❑ An element of election was also introduced in the Legislative Council at the centre also but here the official majority there was maintained.
- ❑ The Legislative Councils were empowered to move resolutions on the Budget, and on any matter of public interest, except certain specified subjects, such as the Armed forces, Foreign Affairs and the Indian States.
- ❑ It provided, for the first time, for separate representation of the Muslim community and thus sowed the seeds of separatism.

The Government of India Act, 1915

- ❑ This act was passed to consolidate the provisions of the preceding Government of India Acts.

Montague-Chelmsford Report and the Government of India Act, 1919

- ❑ The then Secretary of State for India Mr. E.S. Montagu and the Governor General Lord Chelmsford formulated proposals for the Government of India Act, 1919.
- ❑ Responsible Government in the Provinces was to be introduced, without impairing the responsibility of the Governor (through the Governor General), for the administration of the Province, by resorting to device known as 'Dyarchy' or dual government.
- ❑ The subjects of administration were to be divided into two categories Central and Provincial.
- ❑ Central subjects were those which were exclusively kept under the control of the Central Government.
- ❑ The provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
- ❑ The 'transferred subjects' were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council in which the proportion of elected members was raised to 70 percent.
- ❑ The 'reserved subjects' were to be administered by the Governor and his Executive Council with no responsibility to the Legislature.
- ❑ The previous Central control over the provinces in administrative, legislative and financial matters was relaxed. Sources of revenue were divided into two categories so that the provinces could run the administration and the revenue raised by the provinces themselves.
- ❑ The political budget was separated from the central budget.
- ❑ The provincial legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue.
- ❑ The Central legislature, retained power to legislate for the whole country on any subject.
- ❑ The control of the Governor General over provincial legislation was retained by providing that a Provincial Bill, even though assented to by the Governor, would become law only when assented to also by the Governor General.
- ❑ The Governor was empowered to reserve a Bill for the consideration of the Governor General if it was related to 'reserved' specified matters.
- ❑ The Governor General in Council continued to remain responsible only to the British Parliament through the Secretary of State for India.
- ❑ The Indian Legislature was made more representative and, for the first time 'bi-cameral'.

- ❑ The Upper House was named the Council of State. This was composed of 60 members of whom 34 were elected.
- ❑ The Lower House was named the Legislative Assembly. This was composed of about 144 members of whom 104 were elected.
- ❑ The electorates were arranged on a communal and sectional basis, developing the Morley-Minto device further.
- ❑ The Governor General's overriding powers in respect of Central legislation were retained as follows :
 - ❑ His prior sanction was required to introduce Bills relating to certain matters;
 - ❑ he had the power to veto or reserve for consideration of the Crown any Bill passed by the Indian Legislature;
 - ❑ he had the converse power of certifying Bill or any grant refused by the Legislature;
 - ❑ he could make Ordinances, in case of emergency.

Simon Commission

- ❑ This commission, headed by Sir John Simon, constituted in 1927 to inquire into the working of the Act of 1919, placed its report in 1930. The report was examined by the British Parliament and the Government of India Bill was drafted accordingly.

The Government of India Act, 1935

- ❑ The Act of 1935 prescribed a federation, taking the Provinces and the Indian States (native states) as units.
- ❑ It was optional for the Indian States to join the Federation, and since they never joined, the Federation never came into being.
- ❑ The Act divided legislative powers between the Centre and Provinces.
- ❑ The executive authority of a Province was also exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor General.
- ❑ The Governor was required to act with the advice of Ministers responsible to the Legislature.
- ❑ In certain matters, the Governor was required to act 'in his discretion' without ministerial advice and under the control and directions of the Governor General, and, through him, of the Secretary of State.
- ❑ The executive authority of the Centre was vested in the Governor General (on behalf of the Crown).
- ❑ Counselors or Council of Ministers responsible to the Legislature was not appointed although such provisions existed in the Act of 1935.
- ❑ The Central Legislature was bi-cameral, consisting of the Federal Assembly and the Council of State.
- ❑ In six provinces, the legislature was bi-cameral, comprising a Legislative Assembly and a Legislative Council. In other provinces, the Legislature was uni-cameral.
- ❑ 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 Governor General could prevent discussion in the Legislature and suspend the proceedings on any Bill if he was satisfied that it would affect the discharge of his special responsibilities.
- ❑ The Governor General had independent powers of legislation, concurrently with those of the Legislature.

- ☐ On some subjects no bill or amendment could be introduced in the Legislature without the Governor-General's previous sanction.
- ☐ A three-fold division in the Act of 1935 There was a Federal List over which the Federal Legislature had exclusive powers of legislation. There was a Provincial. List of matters over which the Provincial Legislature had exclusive jurisdiction. There was a Concurrent List also over which both the Federal and Provincial Legislature had competence.
- ☐ The Governor-General was empowered to authorize either the Federal or the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the above noted Legislative Lists.
- ☐ Dominion Status, which was promised by the Simon Commission in 1929, was not conferred by the Government of India Act, 1935.

Cripps Mission

- ☐ In March 1942, Sir Stafford Cripps, a member of the British cabinet came with a draft declaration on the proposals of the British Government.
- ☐ These proposals were to be adopted at the end of the Second World War provided the Congress and the Muslim League could accept them.

According to the proposals

A) The Constitution of India was to be framed by an elected Constituent Assembly by the Indian people.

B) The Constitution should give India Dominion Status.

C) There should be one Indian Union comprising all the Provinces and Indian States;

D) Any Province (or Indian State) not accepting the Constitution would be free to retain its constitutional position existing at that time and with such non-acceding Provinces the British Government could enter into separate Constitutional arrangements.

Cabinet Mission Plan

- ☐ In March 1946, Lord Attlee sent a Cabinet Mission to India consisting of three Cabinet Ministers, namely Lord Pethick Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander.
- ☐ The object of the Mission was to help India achieve its independence as early as possible, and to set up a Constituent Assembly.
- ☐ The Cabinet Mission rejected the claim for a separate Constituent Assembly and a separate State for the Muslim.
- ☐ According to Cabinet Mission Plan there was to be a Union of India, comprising both. British India and the States, and having jurisdiction over the subjects of Foreign Affairs, Defense and Communication. All residuary powers were to be vested in the Provinces and the States.
- ☐ The Union was to have an Executive and a Legislature consisting of representatives of the Provinces and the States.
- ☐ Any decision involving a major communal issue in the legislature was to require a majority support of representatives of each of the two major communities present and voting as well as a majority of all the members present and voting.
- ☐ The provinces could form groups with executives and legislatures, and each group could be competent to determine the provincial subjects.

The Mountbatten Plan

- ☐ The plan for transfer of power to the Indians and partition of the country was laid down in the Mountbatten Plan.
- ☐ It was given a formal shape by a statement made by the British Government on 3rd June, 1947.
- ☐ The Indian Independence Act, 1947 of the British Parliament
- ☐ In pursuance of this Act, the Government of India Act, 1935, was amended by the Adaptation Orders, both. in India and Pakistan, for setting up an interim Constituent Assembly to draw up the future Constitution of the country.
- ☐ From the 15th August, 1947 India ceased to be a Dependency, and the suzerainty of the British Crown over the Indian States and the treaty relations with Tribal Areas lapsed from that date.
- ☐ The office of the Secretary of State for India was abolished.
- ☐ The Governor-General and the Governors lost extraordinary powers of legislations to compete with the Legislature.
- ☐ The Central Legislature of India, composed of the Legislative Assembly and the Council of States, ceased to exist on August 14, 1947.
- ☐ The Constituent Assembly itself was to function also as the Central Legislature with complete sovereignty.

2. Constituent Assembly and Making of the Constitution

- ☐ The Cabinet Mission envisaged the establishment of a Constituent Assembly to frame a Constitution for the country. Members of the Constituent Assembly were elected by the Provincial Legislative Assemblies.
- ☐ Each Province and each Indian State were allotted seats in proportion of its population, roughly in the ratio of one to a million. The seats so ascertained were distributed among the main communities in each Province. The main communities recognized were Sikh, Muslim and General.

Important Committees of the Constituent Assembly and their Chairman

Chairman	Name of the Committee
Committee on the Rules of Procedure	Dr. Rajendra Prasad
steering Committee	Dr. Rajendra Prasad
Finance and Staff Committee	Pt. Jawaharlal Nehru
Ad Hoc Committee on the National Flag	Pt. Jawaharlal Nehru
Union power Committee	Pt. Jawaharlal Nehru
State Committee	Sardar vallabh bhai patel
Drafting committee	B.R. Ambedkar
Advisory Committee on Fundamental	Sardar vallabh bhai patel
Credential Committee	Alladi Krishnaswami Ayyar
House Committee	B.Pattabhi Sitaramayya
Order of Business Committee	K. M. Munshi
Minorities Sub-Committee	H.C. Mookherjee
Excluded and Partially Excluded Areas	A. V. Thakkar

- ❑ The total number of members of the Constituent Assembly was 385, of whom 93 were representatives from the Indian States and 292 from the Provinces (British India).
- ❑ After the partition of India number of members of the Constituent Assembly came to 299, of whom 284 were actually present on the 26th November, 1949 and signed on the finally approved Constitution of India. The Constituent Assembly, which had been elected for undivided India, held its first meeting on December 9, 1946, and reassembled on August 14, 1947, as the sovereign Constituent Assembly for the dominion of India.
- ❑ It took two years, eleven months and eighteen days for the Constituent Assembly to finalize the Constitution.
- ❑ Objective Resolution was moved in the first session of the Constituent Assembly (on 13 December, 1946) by Pandit Jawaharlal Nehru which was adopted after considerable deliberation and debate in the Assembly on 22 January, 1947. The following objectives were embodied in the resolution
- ❑ To foster unity of the Nation and to ensure its economic and political security, to have a written Constitution, and to proclaim India as a Sovereign Democratic Republic.
- ❑ To have a federal form of Government with the distribution of powers between the centre and states.

To guarantee and secure justice, equality, freedom of thought, expression, belief, faith, worship, vocation, association and action to all the people of India.

- ❑ To provide adequate safeguards for minorities, backward and tribal areas and depressed and other backward classes.
- ❑ To maintain the integrity of the territory of the republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations.
- ❑ To attain rightful and honored place in the world and make its full and willing contribution to the promotion of the world peace and the welfare of mankind.
- ❑ The principles of the Constitution were outlined by various committees of the Assembly, and there was a general discussion on the reports of these Committees. The Assembly appointed the Drafting Committee with Dr. B.R. Ambedkar as the Chairman on August 29, 1947.
- ❑ The Drafting Committee, headed by Dr. B.R. Ambedkar, submitted a Draft constitution of India to the President of the assembly on 21 February 1948.
- ❑ The members of Drafting Committee were N. Gopalaswamy Ayyangar, Alladi Krishnaswamy Ayyar, K.M. Munshi, Mohd. Saadullah, B.L. Mitter (later replaced by N. Madhava Rao), Dr. D.P. Khaitan (replaced on death by T.T. Krishnamachari).
- ❑ The third and final reading of the draft was completed on November 26, 1949. On this date, the signature of the President of the Assembly was appended to it and the Constitution was declared as passed.
- ❑ The provisions relating to citizenship, elections and provisional Parliament etc. were implemented with immediate effect, that is, from the 26th November, 1949. The rest of the provisions of the constitution came into force on January 26, 1950 and this date is referred to in the Constitution as the date of its commencement.

2.1. Different Sources of the Indian Constitution

Although the skeleton of the constitution was derived from the Government of India Act 1935, many provisions were imported from other constitutions of the world. Some of them are listed below along with the Government of India Act, 1935 :

- Government of India Act, 1935 : This Act formed the basis or 'blueprint' of the constitution of India with the features of Federal system, office of Governor, emergency powers etc. Besides, the Constitution of India has borrowed from the
- Constitution of Britain : Law making procedures, Rule of law, Single citizenship, Bicameral Parliamentary system, office of CAG.
- Constitution of USA : Independence of judiciary, judicial review, fundamental rights , removal of Supreme Court and High Court judges, Preamble and functions of President and Vice-president
- Constitution of Canada : Federation with strong Centre, to provide residuary powers to the Centre, Supreme Court's advisory jurisdiction.
- Constitution of Ireland : Directive Principles of State policy, method of presidential elections, and the nomination of members to Rajya Sabha by the President.
- Constitution of Germany : Provisions concerning the suspension of fundamental rights during emergency.
- Constitution of Australia : Idea of the Concurrent List, Trade and Commerce provisions

3. The Preamble of the Constitution

- A preamble is an introductory statement in a document that explains the document's **philosophy and objectives**.
- In a Constitution, it presents the **intention of its framers, the history behind its creation, and the core values and principles of the nation**.
- The preamble basically gives idea of the following things/objects:
 - **Source of the Constitution**
 - **Nature of Indian State**
 - **Statement of its objectives**
 - **Date of its adoption**

History of the Preamble to Indian Constitution

- The ideals behind the Preamble to India's Constitution were laid down by **Jawaharlal Nehru's Objectives Resolution**, adopted by the Constituent Assembly on January 22, 1947.
- Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

Components of Preamble

- It is indicated by the Preamble that the **source of authority** of the Constitution lies with the **people of India**.
- Preamble declares India to be a **sovereign, socialist, secular and democratic republic**.
- The objectives stated by the Preamble are to **secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation**.
- The date is mentioned in the preamble when it was adopted i.e. **November 26, 1949**.

THE CONSTITUTION OF INDIA

PREAMBLE

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

JUSTICE, social, economic and political;

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

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

FRATERNITY assuring the dignity of the individual and the ²[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.**

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Sovereign Democratic Republic" (w.e.f. 3.1.1977)
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Unity of the Nation" (w.e.f. 3.1.1977)

The **Fundamental Rights, Directive Principles of State Policy** and **Fundamental Duties** are sections of the Constitution of India that prescribe the fundamental obligations of the states to its citizens and the duties and the rights of the citizens to the State. These sections comprise a constitutional bill of rights for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the Constituent Assembly of India.

4.1 The Fundamental Rights of an Indian Citizen

The fundamental rights definition says that these are the basic human rights of all citizens, defined in Part III of the Constitution. These are applicable irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions. Following are some of the important rights of the citizens of India in accordance with the Constitution.

- Right to Equality
- Right to freedom
- Right against exploitation
- Right to freedom of religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

4.2 The Fundamental Duties in the Life of an Indian

These are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India and concern the individuals and the nation. Included in Part IVA of the Constitution, like the Directive Principles, they are not enforceable by the law. According to the constitution, let us have a look at the following information on duties to be followed by every citizen of India

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To uphold and protect the sovereignty, unity, and integrity of India.
- To defend the country and render national service for the nation's security when called upon to do so.
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, social and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

- To value and preserve the rich heritage of our composite culture.
- To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to abjure violence.
- To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
- Who is a parent or guardian, to provide opportunities for education to his child, or as the case may be, ward between the age of six to fourteen years.
- According to the 86th constitutional amendment in 2002, it is the duty of the people of India to adapt to make India a safer place to live, to be clean and make the surrounding clean and not to hurt anybody physically and mentally.

The Relationship Between the Fundamental Rights, Directive Principles and Fundamental Duties

Directive Principles have been used to uphold the Constitutional validity of legislation in case of conflict with Fundamental Rights. According to the amendment of 1971, any law that even though it deviates from the Fundamental Rights, but has been made to give effect to the Directive Principles in Article 39(b)(c) would not be deemed invalid. The Fundamental Duties will be held obligatory for all citizens subject to the State enforcing the same by means of a valid law.

5. Parliamentary System and Centre-State Relations

India has a parliamentary system of Government. Article 74 and Article 75 deal with the parliamentary system at the centre and Articles 163 and 164 deals with the states. There are multiple features of the Parliamentary system and various advantages over the Presidential system.

The democratic system of government can be divided into the parliamentary and the presidential system based on the relationship between the executive and the legislature. In a parliamentary system, executive is a part of legislature, which implements the law and plays an active role in framing it as well.

In a parliamentary system, the head of the state may be a monarch or a president, but both of these positions are ceremonial. The head of the government, who is generally called as the Prime Minister, is the real head. Thus, all the real executive powers are vested in the Prime Minister.

5.1 Indian Presidency

The elected members of both the houses of the Parliament, the Legislative Assemblies of all the states of India elect the President who serves for a period of five years. He is the Head of the State of India and also the Commander-in-chief of the Indian Armed Forces. He is the first citizen of the country.

The executive authority of the President is exercised mostly by the Prime Minister and his Council of Ministers. Pranab Mukherjee is the 13th and current President of India. He is the first Bengali to have become the President.

Any person who is a citizen of India aged above 35 years and who is qualified to be a member of the Lok Sabha is eligible for the President's post. He should not hold any office of profit under the Government of India or any other state. The current Vice-President, the Governor of any state or a Union or state Minister are permitted to stand as Presidential candidates.

- **Powers of the President**

It is the foremost duty of the Indian President to preserve and protect the constitution and the law of the land. He has the power to summon and prorogue both the Houses. He can dissolve the Lok Sabha too.

Bills can become laws only after the President gives his approval. The Union Cabinet along with the Prime Minister should advise the President in performing his functions. The President appoints the Chief Justice of India, Prime Minister and other members of the Council of Ministers.

He appoints 12 eminent personalities from various fields to the Rajya Sabha. He lays the Annual Financial Statement before the Parliament. He can declare war or conclude peace, on the advice of the PM and his ministers. He has the power to grant pardon and also to declare emergencies.

5.2 Lok Sabha

The members to the lower house or the Lok Sabha are elected directly by the people. They hold the post for a term of five years or until the Lok Sabha is dissolved by the President. The Lok Sabha has a maximum strength of 552, out of which 530 are elected from the states, 20 from the Union territories and two from the Anglo-Indian community who are generally nominated by the President of India.

The current strength of the Lok Sabha is 545. The membership of the House is distributed among the states in proportion to their population. Any person who is a citizen of India and aged not less than 25 years and who has her/his name in the electoral rolls in any part of the country can become a member of the Lok Sabha provided he/she is selected through universal suffrage.

Lok Sabha is certainly more powerful than Rajya Sabha. A no-confidence motion against the government can be introduced and passed only in the Lok Sabha. Money bills can be introduced only in the Lok Sabha.

In case national emergency is declared and the Lok Sabha is dissolved then the Rajya Sabha becomes the Parliament. Lok Sabha has more number of members than the Rajya Sabha. Three sessions of Lok Sabha take place in a year. They are the budget session, monsoon session and the winter session.

5.3 Rajya Sabha

The members to the Rajya Sabha are indirectly elected by state and territorial legislatures using single transferable votes.

The Constitution states that the Upper House can have a maximum of 250 members whose term lasts for six years with one third of the members retiring every two years. The joint session of both houses are rare and there has been only three such sessions so far.

The Vice President of the country is the ex-officio Chairman of the Rajya Sabha and he presides over the sessions. Any person who is a citizen of India aged above 30 and whose has his name enrolled in the voter's list can become member of the Rajya Sabha.

The twelve members who are nominated by the President are not entitled to vote in the Presidential elections.

Elements and Features of Parliamentary System are;

- 1. Nominal and Real Head:** The head of the state holds a ceremonial position and is the nominal executive. For example, the President.
- 2.** In India, the head of government is the Prime Minister who is the real executive. Article 75 of the Indian constitution provides for a Prime Minister to be appointed by the president. According to Article 74, the Prime Minister headed council of ministers would aid and advise the President in the exercise of his functions.
- 3.Executive is a Part of Legislature:** The Executive forms a part of the legislature. In India, the person should be a member of parliament to become a member of the executive. However, the constitution provides that a person can be appointed as a minister for a period of not more than six consecutive months if he is not a member of the parliament, after which the person ceases to be a minister.
- 4. Majority Party Rule:** The party which wins majority seats in the elections of the Lower House forms the government. In India, the President invites the leader of the majority party in Lok Sabha to form the government. The President appoints the leader as the Prime Minister and the other ministers are appointed by the President on the advice of the Prime Minister. The President may invite a coalition of parties to form the government, in case, no party has got majority.
- 5. Collective Responsibility:** The council of ministers are collectively responsible to the parliament. The lower house of parliament has an ability to dismiss a government by getting the no confidence motion passed in the house. In India, the government survives till the time it enjoys support of the majority of members in the Lok Sabha. Thus, Lok Sabha is empowered to introduce no-confidence motion against the government.
- 6.Prime Minister as the Centre of Power:** In India, the Prime Minister is the real executive. He is the head of the government, the council of ministers and the ruling government. Thus, he has to play a significant and important role in the working of the government.
- 7. A Parliamentary Opposition:** No government in the parliament can get hundred percent majority. The opposition plays an important role in checking the arbitrary use of authority by the political executive.
- 8. Independent Civil Service:** The civil servants advice and implement decisions of the government. Civil servants hold permanent appointments based on merit-based selection process.

They ensure continuity of employment even when the government changes. The civil service also ensures efficiency in execution of duties and responsibilities.

9. Bicameral Legislature: Most of the countries following parliamentary system, including India, have bicameral legislature. The members of the Lower House of all these countries are elected by the people. The Lower House can be dissolved, in case, the term of the government is over or there is no scope of government formation due to lack of majority in house. In India, the President can dissolve the Lok Sabha on recommendation of the Prime Minister.

10. Secrecy: The members of the executive in this system have to follow the principle of secrecy in matters such as proceedings, executive meetings, policymaking etc. In India, the ministers take oath of secrecy before entering their office.

Advantages of Parliamentary System

The parliamentary system has the following advantages over the presidential system:

1. Represents Diverse Group: The parliamentary form of government provides opportunity to various ethnically, racially, linguistically and ideologically diverse groups to share their views in framing of laws and policymaking. Countries, such as India, which have high level of diversity enables accommodation by providing political space to various diverse sections of the society.

2. Better Co-Ordination Between Legislature and Executive: The executive is a part of the legislature. As the government enjoys the support of majority of members in the lower house, the tendency of disputes and conflicts decreases. It makes easy for the government to pass the legislation in the parliament and implement them.

3. Prevents Authoritarianism: In a parliamentary system, the tendency of authoritarianism decreases as the power is vested in the council of minister rather than a single individual. The parliament can remove the government through no-confidence motion.

4. Responsible Government: The parliament can check the activities of the executive as the latter is responsible to the former. In a presidential system, the president is not responsible to the legislature. The members of the parliament can ask question, move resolutions, and discuss matters of public importance to pressurize the government. Such provisions are not available in Presidential system.

5. Availability of Alternate Government: The lower house of the parliament can introduce and pass a no-confidence motion. In such a situation, the head of the state invites the leader of the opposition party to form the government. In the United Kingdom, the opposition forms a shadow cabinet for the cabinet of the government, so that they can become ready for the role.

6. Centre-State Relations

India is a union of states. The constitution of India has divided the legislative, executive and financial powers between the centre and the states, which gives the constitution a federal character whereas judiciary is integrated in a hierarchical structure.

The centre-state relations are divided into three parts, which are mentioned below:

(A) Legislative Relations (Article 245-255)

(B) Administrative Relations (Article 256-263)

(C) Financial Relations (Article 268-293)

6.1 Legislative Relations

Articles 245 to 255 in Part XI deals with different aspects of legislative relations between centre and states. These include:

- (1) Territorial jurisdiction of laws made by the Parliament and by the Legislatures of States.
- (2) Distribution of legislative subjects
- (3) Power of parliament to legislate with respect to a matter in the State List
- (4) Centre's control state legislation

However, Seventh Schedule of the Constitution provides for the distribution of legislative powers between the centre and the states. The legislative subjects are divided into List I (the Union List), List II (the Concurrent List) and List III (the State List).

- At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defence, railway, postal services, banking, atomic energy, communication, currency etc.
- At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.
- At present, there are 52 subjects in the concurrent list. The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labour welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.

Article 245 empowers the centre to give directions to the states in certain cases in regards to the exercise of their executive powers.

Article 249 empowers the parliament to legislate with respect to a matter in the State List in the national interest.

Under Article 250, the parliament becomes empowered to make laws on the matters related to state list when national emergency (under Article 352) is in operation.

Under Article 252, the parliament is empowered to legislate for two or more States by their consent.

6.2 Administrative Relations

Article 256 to 263 deals with the administrative relations between the centre and the states. Article 256 states that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

Cooperation Between the Centre and the States

The constitution lays down various provisions to secure cooperation and coordination between the centre and the states. These include:

- (i) Article 261 states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State".
- (ii) According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- (iii) Article 263 empowers the President to establish an inter-State Council to inquire into and advise upon disputes between states, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- (iv) As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

Centre-State Relations during Emergency

- (i) During a national emergency (under Article 352), the state government become subordinate to the central government. All the executive functions of the state come under the control of the union government.
- (ii) During a state emergency (under Article 356), the president can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State.
- (iii) During the operation of financial emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

6.3 Financial Relations

The Constitution deals with the centre-state financial relations in Article 268-293 of Part XII.

Allocation of taxing powers

The Constitution has provided the union government and the state governments with the independent sources of revenue. It allocates the powers to centre and the states in the following way:

- (i) The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- (ii) The state legislatures has exclusive power to levy taxes on the subjects mentioned in the

State List

- (iii) Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.

(iv) The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

However, in case of tax revenue distribution,

- article 268 states that duties are levied by the Union but are collected and appropriated by the States;
- Service tax levied by Union and collected and appropriated by the Union and the States (Article 268-A);
- Taxes levied and collected by the Union but assigned to the States (Article 269);
- Taxes levied and collected by the Union but distributed between the Union and the States (Article 270).
- Surcharge on certain duties and taxes for purposes of the Union (Article 271)

Under Article 275, the parliament is authorized to provide grants-in-aid to any state as parliament may determine to be in need of assistance, and different sums may be fixed for different States.

Under Article 282, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Under Article 352, during the operation of national emergency, the distribution of revenues between the centre and the states can be altered by the president.

Under Article 360, during the financial emergency, the executive authority of the Union shall give directions to any State to observe such canons of financial propriety as may be specified in the directions and to the give the directions as the President may deem necessary and adequate for the purpose.

The important recommendations of the first administrative reforms commission related to the centre-state relations are:

Establishment of an Inter-state council under Article 263

1. Decentralization of powers to the states as much as possible
 2. More transfer of financial resources to the states
 3. Arrangements for devolution in such a way that the states can fulfil their obligations
 4. Advancement of loans to states should be related to as 'the productive principle'.
 5. Deployment of central armed forces in the states either on their request or otherwise
- During state emergency, under Article 356, President's Rule can be imposed in event of the failure of constitutional machinery in a s

7. Amendment of the Constitutional - The historical perspectives of the constitutional amendments in India

Some important Amendments of the Constitution

- 1st Constitutional Amendment Act, 1951 : This amendment added Article, 15(4) and Article, 19(6) and brought changes in the right to private property in pursuance with the

decision of. Supreme Court concerning fundamental rights. Ninth schedule to the Constitution was also added by It.

- 7th Constitutional Amendment Act, 1956 : Through this amendment the implementation of State Reorganisation Act, was made possible. The categorisation of States into Part A, Part B and Part C ceased henceforth. Part C states were redesignated as Union Territories. The seats in the Rajya Sabha and in the Union. and State Legislatures were reallocated. It also effected changes regarding appointment of additional and acting judges, High Courts and their jurisdictions etc.
- 10th Constitutional Amendment Act, 1961 : Incorporated Dadra and Nagar Haven as Union Territory.
- 12th Constitutional Amendment Act, 1962 : Inclusion of territories of Goa, Daman and Diu into the Indian Union.
- 13th Constitutional Amendment Act, 1962 : Insertion of Art. 371 A to make special provisions for the administration of the State of Nagaland.
- 14th Constitutional Amendment Act, 1962 : Pondicherry, Ka raikal, Mahe and Yenam, the former French territories, were specified in the Constitution as the Union Territory of Pondicherry (now Puducherry). Enabled the UTs of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry to have Legislatures and Council of Ministers.
- 15th Constitutional 1 Amendment Act, 1963 • It raised the age of retirement of a High Court Judge from 60 to 62. Extended the jurisdiction of a High Court to issue writs under Art. 226 to a Government or authority situated Outside its territorial jurisdiction where the cause of action arises such jurisdiction.
- 19th Constitutional Amendment Act, 1966 : Art. 324 was amended to clarify the duties of the Election Commission. It deprived the Election Commission of the power to appoint election tribunals for deciding election disputes of members of Parliament and State Legislatures.
- 21st Constitutional Amendment Act, 1967 : Sindhi language was included as 15th regional language in the Eighth Schedule.
- 24th Constitutional Amendment Act, 1971 : It was a retaliatory act of the Parliament to neutralise the effect of the judgement in Golak. Nath Case. It affirmed the parliament's power to amend any part of the Constitution, including Fundamental Rights by amending Arts. 368 and 13. It made obligatory for the President to give assent to Amendment Bills, when they' are presented to him/ her.
- 25th Constitutional Amendment Act, 1971 (came into force on 20.04.1972): It restricted the jurisdiction of the Courts over acquisition laws with regard to adequacy of Compensation. This amendment came primarily in the wake of Bank Nationalisation case and the word 'amount' was substituted in place of 'compensation' in Article 31. It also provided that no law passed by the State to give effect to Directive Principles specified under clauses (b) and (c) of Art. 39 can be declared void on the ground that it was inconsistent with Fundamental Rights conferred by Arts. 14, 19 and 31.
- 26th Constitutional Amendment Act, 1971 : This amendment withdrew the recognition to the rulers of Princely States and their privy purses were abolished.
- 30th Constitutional Amendment Act, 1972 (w.e.f. 27.02.1973) : It provided that only such appeals can be brought to the Supreme Court which involve a substantial question of law. The valuation aspect of Rs. 20,000 for appeals in civil cases to the Supreme Court was abolished.

- 31st Constitutional Amendment Act, 1973 : By this amendment, the seats of the Lok Sabha was increased from 525 to 545 but reduced the representation of UTs in Lok Sabha from 25 to 20. Vith mstitutional Amendment Act, 1974 (w.e.f. 01.03.1975) : Accorded status of Associate State to Sikkim by ending its protectorate kingdom status which was a novel concept introduced in the Constitution. Ithh Constitutional. AmenUment Act, 1975 : Made Sikkim a full fledged State of the Union of India.
- 38th Constitutional Amendment Act, 1975 : Clarified that declaration of emergency by the President and promulgation of Ordinance by the President or Governor cannot be challenged in any Court On any ground. Constitutional Amendment Act, 1975 The disputes or questions regarding elections of President, Vice-President Prime Minister and Speaker
- 43rd Constitutional Amendment Act, 1977 (w.e.f. 13.04.1978) : The 43rd Amendment omitted many articles inserted by 42nd Amendment. It restored the jurisdiction of the Supreme Court and the High Courts, which had been curtailed under the 42nd Amendment.
- 44th Constitutional Amendment Act, 1978 (w.e.f. June-September, 1979) : The amendment was brought by the Janata Party Government which repealed some of the changes effected by 42nd Amendment, omitted a few and provided alterations. Right to property was taken away from the list of Fundamental Rights and placed in a new Art. 300A as an ordinary legal right. Constitutionality of the Proclamation of Emergency by the President could be questioned in a court on the ground of malafide (42nd Amendment had made it immune from judicial review). It brought the revocation of a Proclamation under Parliamentary control. In Article 352 regarding National Emergency, the words ' internal disturbance' were substituted by th.e words 'armed rebellion'. It authorised the President to refer back the advice to the Council of Ministers for reconsideration, but made it binding for the President to act on the reconsidered advice. The power of the Courts to decide disputes regarding election of Prime Minister and Speaker was restored. Constitutional protection on publication of proceedings of Parliament and State Legislatures was provided.
- 52nd Constitutional. Amendment Act, 1985 : This amendment was brought about during Rajiv Gandhi regime with a view to put an end to political defections. It added Tenth Schedule to the Constitution containing the modes for disqualification in case of defection from the Parliament or State Legislature.
- 55th Constitutional Amendment Act, 1986 (w.e.f. 20.02.1987) : The formation of Arunachal. Pradesh took place with special powers given to th.e Governor. It also provided for a 30-member State Assembly.
- 56th. Constitutional Amendment Act, 1987 :Goa was made a full fledged State with a State Assembly but Daman and Diu stayed as UT.
- 61st Constitutional Amendment Act, 1988 (w.e.f. 28.03.1989) : It brought about an amendment to Article 326 for the reduction of voting age from 21 to 18 years .
- 62nd Constitutional Amendment Act, 1989 : It increased the period of reservation of seats provided to the Scheduled Castes and Scheduled Tribes for another 10 years i.e. upto 2000 A.D. The reservation for Anglo-Indians through nomination in case of their inadequate representation, was also extended upto 2000 A.D.

- ❑ 65th Constitutional Amendment Act, 1990 (w.e.f. 12.03.1992) : A National Commission for Scheduled Castes and Scheduled Tribes with wide powers was provided to take care of the cause of SCs / STs.
- ❑ 66th Constitutional Amendment Act, 1990 : This amendment provided for the inclusion of 55 new land reform Acts passed by the States into the Ninth Schedule.
- ❑ 69th Constitutional Amendment Act, 1991 (w.e.f. 01.02.1992) : Arts. 239- AA and 239- AB were inserted in the Constitution to provide a National Capital Territory designation to Union Territory of Delhi with a legislative Assembly and Council of Ministers.
- ❑ 70th Constitutional Amendment Act, 1992 : Altered Art. 54 and 368 to include members of legislative assemblies of Union Territories of Delhi and Pondicherry in the electoral college for the election of the President.
- ❑ 71st Constitutional Amendment Act, 1992 : It included Manipuri, Konkani and Nepalese languages in the 8th Schedule.
- ❑ 73rd Constitutional Amendment Act, 1992 (w.e.f. 24.04.1993) The institution of Panchayati Raj received Constitutional guarantee, status and legitimacy . Xith Schedule was added to deal with it. It also inserted part IX, containing Arts, 243, 243A to 243O.
- ❑ 74th Constitutional Amendment Act, 1992 (w.e.f. 01.06.1993) : Provided for constitutional sanctity to Municipalities by inserting Part IX-A, containing Arts. 243P to 243ZG and the XIIth Schedule which deals with the items concerning Municipalities.
- ❑ 77th. Constitutional Amendment Act, 1995 : By this amendment a new CLASs 4A WAS added to Art.16 which authorised the State to make provisions
- ❑ 79th Constitutional Amendment Act, 1999 Amended Art. 334 to extend the reservation of seats for SCs/STs and Anglo-Indians in the Lok Sabha and in the State Legislative Assemblies upto 60 years from the commencement of the Constitution (i.e., till 2010).
- ❑ 80th Constitutional Amendment Act, 2000 Amended Art. 269 and Commission. This amendment was deemed to have come into substituted a new Article for Art. 270 and abolished Art. 272 of (THE Constitution. This was based on the recommendation of the Tenth Finance from 1 st April 1996. The Amendment widened the scope of the Central taxes and duties on the consignment of goods levied by the Government of India and distributed among States.
- ❑ 81st Constitutional Amendment Act, 2000 : Amended Art. 16(1) of the Constitution and added a new clause (4-B) after clause (4-A) to Art. 16(1) of the Constitution. The new clause (4-B) ends the 50% ceiling on reservation for Scheduled Caste and Scheduled Tribes and other Backward Classes in backlog vacancies.
- ❑ 82nd Constitutional Amendment Act, 2000 : This amendment restored the relaxation in qualifying marks and standards of evaluation in both job reservation and promotions to Scheduled Castes and Scheduled Tribes which was set aside by a Supreme Court's judgement in 1996.
- ❑ 84th Constitutional Amendment Act, 2001 (w.e.f. 21.02.2002) : This amendment provided that till the publication of the relevent figures of the first census after 2026 the ascertainment of the population of a State for following purposes shall be made on the basis of the census shown against each of them : Election of the President under Art. 55 1971 census. Allotment of seats to each State in I ok Sabha — 1971 census. Division of State into territorial Lok Sabha constituencies - 1991 census. Composition of Legislative Assemblies under Art. 170 1991

- ❑ 85th Constitutional Amendment Act, 2001 : It amended clause (4- The amendment provided for 'consequential seniority' to the SCOSTs With A) of Art. 16 and substituted the words "in matters of promotion, consequential seniority, to any class" for the words "in matter of promotion to any class"for promotion in government service.
- ❑ 86th Constitutional Amendment Act, 2002 : Added a new Art. 21A Art. 21 which makes the right of education for children of the age of 6 to 14 years
- ❑ 89th Constitutional Amendment Act, 2003 : Provided for the establishment of a separate National Commission for Scheduled Tribes by bifurcat- ing the existing National Commission for Scheduled Castes and Scheduled Tribes. The commission shall consist of a Chairman, Vice-Chairman and three other members. They shall be appointed by the President of India.
- ❑ 90th Constitutional Amendment Act, 2003 : This amendment was necessitated due to creation of Bodoland Territorial Areas District within the State of Assam by agreement reached between the Centre and Bodo repre- sentatives for solving Bodoland problem. It stated that the representation of Scheduled Tribes and non-Scheduled Tribes in the Constitution of the Bodoland Territorial Areas District shall he maintained. It meant that the representation of the above categories shall remain the same as existed prior to the creation of Bodoland Territorial Areas District.
- ❑ 91st Constitutional. Amendment Act, 2003 (w.e.f. 01.01.2004) : This amendment limits the size of Ministries at the Centre and in States.According to new Clause (1-A) the total number of Ministers, including the Prime Minister in the Union Council of Ministers or Chief Minister in the State Lagislative Assemblies shall not exceed 15 per cent of the total members of the Lok Sabha in the Centre or Vidhan Sabha in the states. The new Clause (1-B) of Article 75 provides that a member of either House of Parliament belonging to any political party who is disqualified for being member of that house on the ground of defection shall also he disqualified to be appointed as a minister under Clause (1) of Art. 75 and 164 until he is again elected. However, the number of Ministers, including, the Chief Minister in a State shall not be less than 12 (in smaller States like Sikkim, Mizoram and Goa).
- ❑ 92nd Constitutional AmendmentAct, 2003 (w.e. f. 07.01.2004): It amended the Eighth Schedule of the Constitution and has inserted 4 new languages in it, namely Bodo, Dogri, Maithili and Santhali. After this amendment the total number of constitutionally recognised official languages has become 22.
- ❑ 93rd onstitutional Amendment Act, 2005 (w.e.f. 20.01.2006) : Provided reservation in admissions in private unaided educational institutions far students belonging to scheduled castes/ tribes and other backward classes

8. Emergency Provisions: National Emergency, President Rule, Financial Emergency

Black law's dictionary defines emergency "as a failure of social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them". Dr. B.R Ambedkar claimed that the Indian Federation was unique as during the times of emergency it could convert itself into an entirely unitary system. In India, the emergency provisions are such that the constitution itself enables the federal government acquire the

strength of unitary government whenever the situation demands. During such urgent needs all the pacific methods should be exhausted and emergency should also be the last weapon to use as it affects India's federal feature of government.

There are three types of emergencies under the Indian Constitution namely-

- National Emergency
- Failure of constitutional machinery in states
- Financial Emergency

8.1 National Emergency

Article 352 of the Indian Constitution talks about the national emergency. National emergency is imposed whereby there is a grave threat to the security of India or any of its territory due to war, external aggression or armed rebellion. Such emergency shall be imposed by the president on the basis of written request by the council of ministers headed by the Prime Minister. When they are satisfied that they are satisfied that there is an eminent danger thereof.

Every proclamation is required to be laid before each House of Parliament, it will cease to operate after one month from the date of its issue unless in the meantime it is approved by the parliament, the proclamation may continue for a period of 6 months unless revoked by the president. For further continuance of emergency the resolution has to be passed by either house of parliament by a majority of not less than two-third members of the houses.

During the times of such emergency the executive, legislative and financial power rests with the centre whereas the state legislature is not suspended. The union government under Art.250 of the constitution gets the power to legislate in regards to subjects enumerated in the state list. Except Art.20 and 21 all the fundamental rights are suspended. Under Art.359 the president may suspend the right to move to the courts for enforcement of fundamental rights during the time of emergency.

National emergency has been imposed thrice in the country- in 1962 at time of Chinese aggression, in 1971 during the indo-pak war, in 1975 on the grounds of internal disturbances.

8.2 Failure Of Constitutional Machinery In State - President's rule

Article 256 talks about the failure of constitutional machinery in state also known as the President's rule. If the president on Governor's report or otherwise is satisfied that the situation has arisen that the government can't be carried in accordance with the constitutional provisions then, he may issue State emergency.

President can declare emergency either by the report of Governor or he himself is satisfied that the situation is such that the emergency has to be imposed. But at times, President may declare emergency when a report is not received from the governor. This was done by President Venkataraman in 1991 in the state of Tamil Nadu even though he didn't receive a report from the governor.

After the 42th Amendment of the constitution the state emergency was made immune from judicial review. But later in the 44th Amendment the legality of President's rule could be challenged

The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve it, the emergency shall cease to have effect after the expiry of a period of two months. Further the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance. Beyond the period of an year the proclamation can only be continued if the Election Commission certifies that it is not possible to hold election in the state or that territory. The consequences of state emergency are-

- The president assumes all the executive power of the state himself. The state administration runs by him or any person appointed by him generally the Governor.
- During such proclamation, the state assembly is either dissolved or suspended. But the MLA's do not lose their membership of the Assembly.
- Parliament makes laws regarding the state list. The parliament only passes the budget for the state.
- The High court of the state functions independently.
- President also proclaims ordinances in the state.

During the state emergency the Union government has absolute control over the state except the judiciary.

If one looks at the past instances of state emergency in the country, three common grounds emerge that have been invoked under Art.356- breakdown of law and order, political instability, corruption and maladministration.

In Rameshwar Prasad V. UOI (Bihar Assembly Dissolution Case) it was held that the presidential proclamation dissolving state assembly in Bihar under Art.356 was unconstitutional on extraneous and irrelevant ground. The court said that the state governor misled the centre in recommending dissolution of state assembly.

In the historic case of S.R Bommai V. UOI, a full bench of the Karnataka High court produced different opinion about the imposition of the President's rule in Karnataka, while in other states the court held that it was in violation of the constitution and would have restored the original position.

8.3 Financial Emergency

The president under Article 360 of the constitution has the power to declare financial emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is

threatened. It has to be laid before both the Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses.

During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canons or financial propriety and such other directions that the President may find necessary. The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of union including judges of high court and Supreme Court. There has been no occasion of financial emergency in India.

9. Local Self Government – Constitutional Scheme in India

Local government in India refers to governmental jurisdictions below the level of the state. India is a federal republic with three spheres of government: central, state and local. The 73rd and 74th constitutional amendments give recognition and protection to local governments and in addition each state has its own local government legislation. Since 1992, local government in India (bala) takes place in two very distinct forms. Urban localities, covered in the 74th amendment to the Constitution, have Nagar Palika but derive their powers from the individual state governments, while the powers of rural localities have been formalized under the *panchayati raj* system, under the 73rd amendment to the Constitution.^[1] For the history of traditional local government in India and South Asia, see panchayati raj.

As of 2017, there are a total of 267,428 local government bodies, of which 262,771 are rural and 4,657 urban. Of the rural local governments, 632 are zila parishads at the district level, 6,672 are panchayat samitis at the block level, and 255,466 are gram panchayats at the village level. Following the 2013 local election, 37.1% of councillors were women, and in 2015/16 local government expenditure was 16.3% of total government expenditure.

The panchayati raj system is a three-tier system with elected bodies at the village, taluk and district levels. The modern system is based in part on traditional {Panchayati raj. Panchayat governance}, in part on the vision of (Mahatma Gandhi) and in part by the work of various committees to harmonize the highly centralized Indian governmental administration with a degree of local autonomy. The result was intended to create greater participation in local government by people and more effective implementation of rural development programs. Although, as of 2015, implementation in all of India is not complete, the intention is for there to be a gram panchayat for each village or group of villages, a tehsil level council, and a zilla panchayat at the district level.

Rural local governments (or panchayat raj institutions):^[5]

- Zilla panchayats
- Mandal or taluka panchayats
- Gram panchayats

In 1957, a committee led by Balwant Rai Mehta Committee studied the Community Development Projects and the National Extension Service and assessed the extent to which the movement had succeeded in utilising local initiatives and in creating institutions to ensure continuity in the process of improving economic and social conditions in rural areas. The Committee held that community development would only be deep and enduring when the

community was involved in the planning, decision-making and implementation process.^[6] The suggestions were for as follows:

- an early establishment of elected local bodies and devolution to them of necessary resources, power, and authority,
- that the basic unit of democratic decentralisation was at the block/samiti level since the area of jurisdiction of the local body should neither be too large nor too small. The block was large enough for efficiency and economy of administration, and small enough for sustaining a sense of involvement in the citizens,
- such body must not be constrained by too much control by the government or government agencies,
- the body must be constituted for five years by indirect elections from the village panchayats,
- its functions should cover the development of agriculture in all its aspects, the promotion of local industries and others
- services such as drinking water, road building, etc., and
- the higher-level body, Zilla Parishad, would play an advisory role.

The PRI structure did not develop the requisite democratic momentum and failed to cater to the needs of rural development. There are various reasons for such an outcome which include political and bureaucratic resistance at the state level to share power and resources with local-level institutions, the domination of local elites over the major share of the benefits of welfare schemes, lack of capability at the local level and lack of political will.

It was decided to appoint a high-level committee under the chairmanship of Ashok Mehta to examine and suggest measures to strengthen PRIs. The Committee had to evolve an effective decentralised system of development for PRIs. They made the following recommendations:^[8]

- the district is a viable administrative unit for which planning, coordination, and resource allocation are feasible and technical expertise available,
- PRIs as a two-tier system, with Mandal Panchayat at the base and Zilla Parishad at the top,
- the PRIs are capable of planning for themselves with the resources available to them,
- district planning should take care of the urban-rural continuum,
- representation of SCs and STs in the election to PRIs on the basis of their population,
- four-year term of PRIs,
- participation of political parties in elections,
- any financial devolution should be committed to accepting that much of the developmental functions at the district level would be played by the panchayats.

The states of Karnataka, Andhra Pradesh and West Bengal passed new legislation based on this report. However, the flux in politics at the state level did not allow these institutions to develop their own political dynamics.

97th Constitutional Amendment Act: Cooperative Societies are taken under "Local Government" after 97th Constitutional Amendment act 2011, under Dr Manmohan Singh's Govt. Part-IX of Indian Constitution is related to Local Government, under which Panchayt Raj was defined, then after 74th amendment Municipal Corporation and council were included and defined by inducing Part IX-A, and in 2011, Cooperative Societies were included in Local Government by inducing Part IX-B in the Constitution. The 97th Constitutional Amendment Act,

2011 provided for amendment in following things : 1. It amended article 19(1)c by inserting after the word 'or unions' the words 'or Co-operative Societies'. 2. It also inserted Article 43B in part IV of the Constitution as "The State shall endeavor to promote Voluntary formation, autonomous functioning, democratic control and professional Management of the Co-operative Societies" and 3. After Part IX-A of the Constitution Part IX-B was inserted. Part IX-B extended from Article 243ZH to Article 243ZT.

