

***INDIAN CONSTITUTION &  
POLITICS – BASIC FEATURES &  
GOVERNMENTAL STRUCTURES  
(ICP1(2)C01)***

**I / II Semester Study Material**

**Complementary Course for**

***B.A. HISTORY/ECONOMICS/ SOCIOLOGY  
& PHILOSOPHY***

***CBCSS (2019 Admission)***



**UNIVERSITY OF CALICUT**

**SCHOOL OF DISTANCE EDUCATION**

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(ICP1(2)C01)***

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## **MODULE I**

An overview of constitutional development with reference to Government of India act 1909,1919,1935 and Indian Independence Act 1947.The Constituent Assembly of India.

## **MODULE II .**

Salient features of the Indian Constitution – the Preamble – Fundamental Rights Directive Principles of State Policy – Fundamental Duties

## **MODULE III.**

Indian federalism, Centre state relation- distribution of legislative powers, administrative and financial relations between the union and states. The finance commission – Planning commission

## **MODULE IV. Government of the Union**

- (a) The Union Executive – the President and the Vice-President – The Council of Ministers and the Prime Minister – Powers and functions
- (b) The Union legislature – The Parliament – The Lok Sabha and the Rajya Sabha, Composition, powers and functions – the role of the Speaker.
- (c) Indian judicial system
- (d) Government of the State. The Governor – the Council of Ministers and the Chief Minister – Powers and Functions The State Legislature – composition, powers and functions.

## **MODULE I – An overview of constitutional development**

### **Introduction**

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

### **AN ANALYSIS OF NATIONAL MOVEMENT**

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

The English East India Company was founded in London in 1600, whose one share holder was Queen Elizabeth I, to have trade with India. Within a span of about 150 years, the company became a territorial power. The company's commercial activities came under cloud and the British Government sought to regulate its affairs and assert sovereignty over the company's expanding territories, until the British Government finally took over region of India in 1958. But for the people of India the rule continued to be the same suppressive and exploitive.

Social and religious renaissance made a ground for political awakening in India. Raja Ram Mohan Roy rightly regarded as the prophet of Indian Renaissance, was, indeed, the father of modern India. The Indian dailies like *Amrit bazar Patrika*, *the Indian Mirror*, *the Hindu*, *the Kesari*, *the Bengali* and like contributed a lot to the growth of Indian nationalism. The English language, the means of transport and communication bring the Indians closer.

Before the birth of Indian National Congress, there had emerged numerous provincial organisations in the country. They were the *British Indian Society*, the

*British Indian Association, the Bombay Presidency Association, and the Mahajan Sabha* etc. The Indian National Congress was founded in 1885 by an English East India Company's retired official, A O. Hume. The first session of Indian National Congress began in Bombay, on December 28, 1885 with W C. Bannerjee, who was the first president, in the chair.

The Indian liberation struggle, spearheaded mainly by the Indian National Congress, witnessed a fairly long period of struggle, passed through reforms (1885 – 1905), the demand for Swaraj (1906 -1928), and sought independence (1929 – 1947), largely a peaceful and non-violent movement. The three major stages through which the Indian national movement passed were: (a) the moderate period, (b) the extremist period, and (c) the Gandhian period.

The moderate period, from 1885 -1905, was led by Hume, Naoroji, Mehta, Rande, Gokhale and the like. These leaders thought of English rule in India as a blessing and related India's social economic development to the just rule of British in the country; their method is limited prayers, petitions, and sending deputations to the authorities in India as well as in England in order to build a favorable public opinion for India.

Extremism, was led by Bal Gangadhar Tilak, Lala Lajpath Rai, Bipin Chandra Pal, and Aurobindo Ghosh. The partition of Bengal which was revoked in 1905 gave birth to the protest movement engulfing whole nation. Together with the anti-partition feelings, there spread *swadeshi and boycott activities*; the whole country was ablaze with sentiments full of nationalism. The nationalist movement came to be led by the extremists demanding **Swaraj** with measures such as passive resistance and national wide protests.

The Gandhian era the nationalist liberation struggle began around 1917 and covered almost three decades. With the techniques of non-violent Satyagraha – Gandhi rose from local mass struggle at Champaran, Kheda and Ahmedabad to the nationalist movements. He used the methods including the Non-Cooperation Movement (1920 -1922), the Civil Disobedience Movement (1930 -34), the Individual Satyagraha (1940), and the Quit India Movement (1942). Truth was his goal; non-violence, his means; humanity, his religion. Rabindranath Tagore gave Gandhi the title of *Mahatma*, and the nation, the '*Father*'.

So many legislative provisions were made and administrative reforms were implemented by British India through Indian Council Acts 1861, 1892 etc. The first attempt of British administration to introduce a representative and popular government was made by the Minto-Moreley reforms of 1909.

### **Indian Councils Act 1909**

The Indian Councils Act 1909 is commonly known, as the Moreley-Minto Reforms. It was an Act of the Parliament of the United Kingdom that brought about a limited increase in the involvement of Indians in the governance of British India.

John Morley, the then Secretary of State for India, and the Governor general of India Minto believed that cracking down on terrorism in Bengal was necessary but

not sufficient for restoring stability to the British Raj after Lord Curzon's partitioning of Bengal. They believed that a dramatic step was required to put heart into loyal elements of the Indian upper classes and the growing westernized section of the population.

They produced the Indian Councils Act of 1909 (Morely –Minto reforms). These reforms did not go any significant distance towards the Indian National Congress demand for 'the system of government obtaining in Self-Governing British Colonies'.

The Act of 1909 was important for the following reasons.

It effectively allowed the election of Indians to the various legislative councils in India for the first. Previously some Indians had been appointed to legislative councils. The majorities of the councils remained British government appointments. Moreover, the electorate was limited to specific classes of Indian nations.

The deliberative functions of the Legislative Councils were also increased by the Act. It gave them the opportunity to move resolutions on the Budget and any matter of public interest. An element of election was also introduced in the Legislative Councils at the Centre.

- The system of election introduced by the Act provided for separate representation for Muslim Community. It sowed the seeds of separation which led to the partition of the country. The Act provides that
  - a) Indian Muslims be allotted reserved seats in the Municipal and District Board, in the Provincial Councils and in the Imperial Legislature;
- the number of reserved seats be in excess of their relative population (25 percent of the Indian population); and
- only Muslims should vote for candidates for Muslim seats (separate electorates)
- The number of the members of the Legislative Council at the center was increased from 16 to 60
- The number of the members of the Provincial Legislatures was also increased. It was fixed as 50 in the provinces of Bengal, Madras and Bombay, and for the rest of the provinces it was 30.
- The member of the Legislative Councils, both at the Centre and in the provinces, were to be of four categories ie, ex-officio members (Governor General and the members of their Executive Councils) nominated official members (those nominated by the Governor General and were government officials), nominated non-official members (nominated by the Governor General but were not government officials and elected members (elected by different categories of Indian people)
- The right of separate electorate was given to the Muslims.

- Official members were to form the majority but in provinces non-official member would be in majority.
- The members of the Legislative Councils were permitted to discuss the budgets, suggest the amendments and even to vote on them; excluding those items that were included as non-vote items. They were also entitled to ask supplementary questions during the legislative proceedings.
- The Secretary of State for India was empowered to increase the number of the Executive Councils of Madras and Bombay from two to four.
- Two Indians were nominated to the Council of the Secretary of State for Indian Affairs.
- The Governor General was empowered to nominate one Indian member to his Executive Council.
- Subsequently, to this, the Government of India Act 1919, as passed merely to consolidate all the preceding Government of India Acts.

#### **B. MONTAGU –CHELMSFORD REFORMS / GOVERNMENT OF INDIA ACT 1919**

The Indian National Congress, which established in 1885, became more active during the first world war and started its campaign for self-government. In response to this popular demand, the British government declared its policy in 1917 through Montagu (Secretary of state) and Chelmsford (Governor General) report. This led to the enactment of an Act called Government of India Act 1919. The main features of the Act, were as follows.

- i) Introduction of 'Dyarchy' in the Provinces:** The Act introduced an absurd system of administration in the Provinces known as 'Dyarchy'. The subjects of administration were to be divided: Central and provincial. The 'Central' subjects were exclusively kept under the control of Central government. The 'provincial subjects' were sub-divided into 'transferred' and 'reserved' subjects. The 'transferred' subjects assigned to the provinces were to be administered by the 'Governor' with the aid of ministers, who were responsible to the legislative councils. The 'reserved subjects' were to be administered by the Governor and Executive Council, without any responsibility to the Legislative Council.
- ii) Relaxation of central control over the Provinces:** The rules made by the Government of India Act of 1919 were known as 'Devolution Rules'. It separates the subjects of administration into two categories: Central and Provincial. The subjects which were brought under the category 'Central' were subjects of all India important. The matters relating to the administration of 'provinces' were classified as 'provincial'. This was actually a relation of control over provinces, even in legislative and financial matters. The provinces could run the administration with the aid of revenues collected by provinces themselves. The provincial budgets were separated



from central budget. The provincial legislature was empowered to present its own budget and levy its own taxes.

The devolution of power should not be like a 'Federal' distribution of powers. The provinces got power by way of delegation from the Centre. The central legislature, retained the power to legislate for the whole of India. The control of the 'Governor General' over provinces was also retained by laying down a provincial bill which would not become the law unless it was also assented to by the Governor General. The Act empowered the Governor to reserve a bill for the consideration of Governor General.

**iii) The Indian legislature made more representative.**

The Central Government, led by the Governor General continued to remain responsible only to the British Parliament, through the Secretary of state. Nevertheless, the Indian legislature was made more representative and bicameral. The Indian Legislative Council was transformed into a bi-cameral legislature existing of council of states (upper house) and Legislative Assembly (Lower house) The elections were arranged on a communal and social basis, developing the 'Morely-Minto' device.

The reforms of Act 1919, failed to fulfil the aspirations of the people in India and led to an agitation by the Congress under the leadership of Gandhiji (Non – cooperation movement)

**Government of India Act 1935**

The non –cooperation movement led the British Government in 1927, to appoint a statutory commission, as envisaged by the Government of India Act 1919. The commission was appointed to enquire into and report on the working of the Act.

The commission was headed by Sir John Simon and reported in 1930. The report was considered by the round table conferences consisting the delegates of British government, and of British India and the rulers of Indian states. A white paper was prepared on the basis of this conference.

The British government gave the joint select committee the task of formulating the new Act for India. Lord Linlithgow was appointed as the president of the committee, which consisted of members from the two houses of British parliament, representation of British India and princely states. The bill, after proper discussion and passage in two house of British Parliament, was enforced as the Government of India' Act 1935, in July 1935.

The main features of the Act of 1935 were:

- i) The Act promised a federation of India, comprising both the provinces and

the Indian states as units. It was optional for the Indian states to join the federation. Since a specified number of rulers of Indian states had not signed the 'Instruments of Accession' the Federation envisaged by the Act of 1935, never came to being. The central government continued to function in accordance with the 1919 Act

1. A Federation of India was promised for, comprising both provinces and states. The provisions of the Act establishing the federal central government were not to go into operation until a specified number of rulers of states had signed 'Instrument of Accession'. Since, this did not happen, the central government continued to function in accordance with the 1919 Act and only the part of the 1935 Act dealing with the provincial governments went into operation.
  2. The Governor General remained the head of the central administration and enjoyed wide powers concerning administration, legislation and finance.
  3. No finance bill could be placed in the Central Legislature without the consent of the Governor General.
  4. The Federal Legislature was to consist of two houses, the Council of State (Upper House) and the Federal Assembly (Lower House).
  5. The council of State was to consist of 260 members, out of whom 156 were to be elected from the British India and 104 to be nominated by the rulers of princely states.
  6. The Federal Assembly was to consist of 375 members; out of which 250 were to be elected by the Legislative Assemblies of the British Indian provinces while 125 were to be nominated by the rulers of princely states.
- The Central Legislature had the right to pass any bill, but the bill required the approval of the Governor General before it became Law. On the other hand, Governor General had the power to frame ordinances.
7. The Secretary of State was not expected to interfere in matters that the Governor dealt with, with the help of Indian Ministers.
  8. The provinces were given autonomy with respect to subjects delegated to them.
  10. Dyarchy, which had been established in the provinces by the Act of 1919, was to be established at the Centre. However, it came to an end in the provinces.
  11. Two new provinces Sindh and Orissa were created.
  12. Reforms were introduced in N.W.F.P as were in the other provinces.
  13. Separate electorates were continued as before.

14. One-third Muslim representation in the Central Legislature was guaranteed.
15. Autonomous provincial governments in 11 provinces, under ministries responsible to legislatures, would be setup.
16. Burma and Aden were separated from India.
17. The Federal Court was established in the Centre.
18. The Reserve Bank of India was established.

Both the Indian National Congress and the Muslim League opposed the Act, but participated in the provincial elections of winter 1936-37, conducted 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.

#### **The Period after Government of India Act, 1935**

The demand for a competition made by the people of India, without outside interference, was officially asserted by the INC in 1935 itself. Even though the Act of 1935 were opposed by the prominent parties, viz, INC and Muslim League, elections to the provincial assemblies were held in 1937. The INC formed ministries in major provinces and history proves that the ministries were able in administration and tackled the problems of basic education and adult literacy. In 1938, Pandit Nehru definitely formulated the demand for Constituent Assembly and the Working Committee of Congress in 1938 reiterated it. In 1940, the coalition government in Britain recognized this demand and in 1942, sent Sir Stafford Cripps to India with a draft declaration of proposals (Cripps proposals). The Cripps offered "Dominion Status" to India and the right of secession from the commonwealth. It also proposed that the provinces and states would be given the option of not acceding to any constitution and again the right to keep themselves as states independent of the Indian Union. INC rejected the proposal and encountered the opposition of the entire range of Indian public opinion.

#### **Cabinet Mission Plan**

After the rejection of the Cripps Proposals, followed by the dynamic "Quit India Movement" various attempts were made to reconcile the Indians 'Simla conference' was held at the instance of the Governor General, Lord Wavell (Wavell Plan). All these having failed, the British Cabinet sent three of its members, including Cripps, to make another attempt. The Cabinet Mission arrived in India in March 1946. The members of the mission together with Wavell, carried on long negotiations with Indian leaders on the two issues of an interim government and principles and procedures of framing a new constitution giving India freedom. The Cabinet Mission came out with a plan but the Congress and Muslim League could not reach an agreement on the future constitution. The plan rejected the Jinnah's demand of

Pakistan. Initially the long term plan envisaged in the proposal was accepted by both Congress and Muslim League, but the League withdrew its acceptance of the long-term plan and called on the Muslim to go in for the 'Direct Action' to achieve Pakistan.

### **Interim Government**

The Cabinet Mission plan also contained a provision for setting up a short-term interim government. After the failure of care-taker government a Congress dominated government under the leadership of Nehru was sworn in on September 02, 1946. Muslim League also joined the government on October 26, without giving up its Direct Action Programme. In July 1946, elections to the Constituent Assembly were held and the Congress and League were returned with an overwhelming majority. The League refused to attend the Cabinet Assembly which had started its functioning, from December 09, 1946.

The programme of 'Direct Action' inaugurated by Muslim League transformed the whole of Indian scene to communal riots on an unprecedented scale. Large scale Muslim attacks began on the Hindus at different Muslim dominated parts of India. Thousands were killed. The widespread riots and massacres changed the views of the Interim government led by Nehru and they had begun to think in terms of two dominions.

Prime Minister Attlee who came to power in Great Britain, after II<sup>nd</sup> world war, made a speech in the British Parliament, and fixed 1948 June as deadline for the transfer of power to Indians, whether as a whole or in some areas or in such other way as may seem reasonable for the best interest of the Indian people. Viceroy Wavell was replaced by Mount Batten who had given plenipotentiary powers and charged with the task of transferring power to India. Mountbatten after discussions with the Congress leaders and convinced them that the only alternative was the partition of India. This agreement has come to be known as the '3<sup>rd</sup> June plan' or "Mountbatten plan". The 3<sup>rd</sup> June Plan of 1947 included the principles:

- 1) Principle of partition of India was accepted by British Government.
- 2) Successor governments would be given dominion status.
- 3) Implicit right to secede from the British common wealth

The Governor-General announced that the transfer of power would take place by August 15, 1947. This Mount Batten Plan became the basis of Indian Independence Act 1947 which ratified the British Parliament on July 18 and implemented in 15<sup>th</sup> August 1947.

### **The Indian Independence Act, 1947**

The Prime Minister of Britain, Clement Attlee announced on 20 February 1947 that:

- i) The British Government would grant full self government to British India by June 1948,

- ii) The future of princely states would be decided after the date of final transfer is decided and
- iii) The Indian Independence Act was the implementation of June 3 plan.

On the basis of Mount Batten plan (3 June Plan), the British Parliament passed an Act, called the Indian Independence Act, 1947. The Act partitioned India into two independent dominions of India and Pakistan. The Act received the royal assent on 18<sup>th</sup> July, 1947 and the two dominions came into being on 15<sup>th</sup> August, 1947. The most important provisions of the Act were:

- The division of British India into the two new and fully sovereign dominions of India and Pakistan, with effect from 15 August 1947.
- The partition of the provinces of Bengal and Punjab between the two new countries;
- The establishment of the office of Governor- General in each of the two new countries, as representative of the Crown;

The conferral of complete legislative authority upon the respective Constituent Assemblies of the two new countries;

- The termination of British sovereignty over the princely states with effect from 15 August 1947 (this was intended to encourage the various rulers to accede to one or other of the two new countries);

The Act also made provision for the division of joint property, etc. between the two new countries, including in particular the division of the armed forces.

#### **Dominion of India**

Lord Mountbatten, the last Viceroy, was retained as the Governor-General of India. Jawaharlal Nehru became the Prime Minister of India and Sardar Vallabhbhai Patel became the Deputy Prime Minister of India.

#### **Dominion of Pakistan**

Mohammed Ali Jinnah became the Governor-General of Pakistan, and Liaquat Ali Khan became the Prime Minister of Pakistan.

Three princely states geographically inalienable to Pakistan joined the Dominion.

#### **THE CONSTITUENT ASSEMBLY OF INDIA:**

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

It first met on December 9, 1946 in Delhi, while India was still under British rule. It originally included the provinces that now compose Pakistan and the representation of the princely states of India. In June 1947, the delegations from the provinces of Sindh, East Bengal, Baluchistan, West Punjab and the North West Frontier Provinces withdrew in order to form the Constituent Assembly of Pakistan in Karachi.

The Constituent Assembly took almost three years (two years, eleven months and seventeen days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.

As to its composition, members were chosen by indirect election by the members of the Provincial Legislative Assemblies according to the scheme recommended by the Cabinet Mission. The arrangement was (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners Provinces. The total membership of the Assembly thus was to be 389. However, as a result of the partition under the Mountbatten Plan of 3 June, 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

On 13 December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution.

The Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.

Late in the evening of 14 August, 1947 the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislature of an Independent India.

On 29 August, 1947 the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R Ambedkar to prepare a Draft Constitution for India. While deliberating upon the draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled.

The Constitution of India was adopted on 26 November, 1949 and the hon'ble members appended their signatures to it on 24 January, 1950. In all, 284 members actually signed the Constitution.

The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.

Dr. Sachchidananda Sinha was the first President (temporary Chairman of the Assembly) of the Constituent Assembly when it met on December 9, 1946. Dr. Rajendra Prasad then became the permanent President of the Constituent Assembly, and would later become the first President of India. The Vice President of the Constituent Assembly was Professor Harendra Kumar Mukarjee

## MODULE II

### a) SALIENT FEATURES OF THE INDIAN

Every constitution aims to build up a political structure based upon certain principles and ideologies. Some of these principles vary from constitution to constitution. These variations are the product of varying conditions and circumstances that determine the very nature of a constitution. Indian constitution is not an exception to this rule. Indian constitution has its own characteristics. The theory, philosophy, and ideology that influenced the constitution of India were the result of the ideological background and philosophical knowledge of the members of Constituent Assembly, which drafted the constitution.

The most important ideological groups represented the Constituent Assembly were the socialists, the Gandhians and the rightists. The socialist groups were divided into two: the Marxian socialists and democratic socialists. Marxians advocated a revolutionary reconstruction of society; while democrats wanted to transform society through peaceful parliamentary methods. Both these groups were opposed to the private ownership of the important means of production. The rightist group, supported the interests of bourgeoisie and landed class. The Gandhians criticized the capitalists mode of production. They wanted the renewal and promotion of village and small scale industries. In the political field, they proposed a decentralized democracy based on self-sufficient village panchayats. All these ideologies have some influence on the constitution of India. Besides these ideological and philosophical commitments, the constitution of India continued the constitutional developments that took place under the British, retaining the basic percepts of the Government of India, Act 1935.

Dr. Subhash Kashyap observes, “the constitution of India is a most comprehensive document. It is unique in many ways. It cannot be fitted in any particular model. It is a blend of the rigid and flexible, federal and unitary and presidential and parliamentary. It attempts a balance between the fundamental rights of the individual on the one hand and the socio-economic interests of the people and security of the state on the other. It represents a via-media between the principles of parliamentary sovereignty and judicial supremacy”.

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

1. **Longest Written constitution:** The Republic of India has a written and enacted constitution. The original constitution contains 395 Articles divided into 22 parts. In the later period, a number of amendments were made on the constitution. Provisions were either added or deleted. Even after these amendments Indian constitution still remains as the largest written constitution in the world.
2. **Popular Sovereignty:** Indian constitution upholds popular sovereignty. The will of the people that prevails ultimately in the affairs of the state. The sovereignty of



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

3. **Sovereign, Democratic, Republic:** The preamble of the constitution declares that India to be a sovereign democratic, republic. The Dominion status established under the Independence Act of 1947 has been terminated and India emerged itself as a completely independent, sovereign state. India is totally ‘democratic’ because the real power emanates from the people. The word ‘Republic’ denotes that the state is headed by a president, elected indirectly by the people.
4. **Rigid and Flexible:** Indian constitution is partly rigid and partly flexible. The procedure for the amendment of Indian constitution is neither very easy, as in England, nor very rigid as in USA. Indian parliament has given the power to amend many provisions of the constitution by a simple majority, as it required for general legislation. Some other provisions may be amended by a special majority of the Indian Parliament. ie. a majority not less than 2/3 of the member of the each house present and voting, which again, must be a majority of the total membership of the House. A very few provisions, of the Indian constitution required a further ratification of not less ½ of the state legislatures for its amendment.
5. **Cabinet System of Government:** Indian constitution established cabinet system of government both at the centre and in the states. The governments should be always responsible to respective popular chambers of legislatures. At the centre, the Cabinet composed of a Prime Minister and a number of ministers. Cabinet is the policy formulating and executing body of the government. An executive system always responsible to the popular chamber of the legislature, is a contribution of Britain to the world.
6. **Secular State :** The commitment to the goal of ‘secularism’ has been spelled out in clear terms. The word ‘secular’ has been added in the preamble, by 42<sup>nd</sup> amendment of the constitution (1976). In India there is no official or state region. It treats all its citizens alike and give them equal opportunities. Indian constitution, guarantees freedom of religion to all persons.
7. **A Federal System with Unitary bias:** Normally in India the system of government is federal but the constitution enables the federation to transform into a Unitary State. The constitution establishes a Federal polity with division of powers. India has a written constitution, with dual polity and division of powers between the centre and states. There is also a provision for a Supreme Court, the guardian of the constitution. The Supreme Court decides all disputes which arise between the states and centre. Not outstanding with all these features of a federal set up, Indian constitution has a Unitary bias too. Eg. After distributing the governmental powers in three lists: Union list, state list, and concurrent list; the residual



subjects are left with the centre,

by which the centre is made more powerful than the states. Even in matters relating to concurrent list, the Union government has the final say. Besides that the head of state (Governor) is appointed by the President and they as mere agents in the states. At any time, the centre can, declare emergency in the states (Art 356) and can take over the administration of any state.

8. **Universal Franchise:** Art 326 ensures the adoption of Universal adult suffrage. It enables any citizen of India to cast his vote, without considering any caste, colour, sex, qualification on property or the like. The suffrage in India is wider than that in Great Britain and U.S.A. The concept of popular sovereignty which underlies in the declaration in the preamble would have been hollow unless the franchise were extended to the entire population. Another creditable point of the constitution, is the abolition of communal representation. In the constitution, there was no reservation of seats except for the SCs and STs and for the Anglo Indian community.

9. **Compromise between Judicial review and parliamentary superiority.**

Indian parliament is not supreme as that of British parliament. At the same time Indian judiciary is not as supreme as in USA. Indian constitution follows a via-media between the two. Indian constitution endows the judiciary with the power of declaring any law as unconstitutional, if it is beyond the competence of legislature; or if it is in contravention of the fundamental rights guaranteed by the constitution. Major portions of the constitution is liable to be amended only by the parliament by special majority, the judiciary proves too obstructive. Ultimately the fact remains that the legislature must be supreme and the judiciary must not be interfered in such measures as social reforms.

10. **No double citizenship:** Double citizenship has not been provided for all citizens of India, even though India has a federal system of administration. In USA, double citizenship has been provided. All Indians irrespective of their domicile, enjoy single citizenship.

11. **Impartial and independent Judiciary.:** Democratic freedom is meaningful only in the presence of an impartial, and independent judiciary. The framers of the Indian constitution were highly conscious of this fact. The judiciary of India is not an agent or subordinate of the Government of India. If the Judiciary is a subordinate or agent of the government; it could not be trusted as an impartial interpreter of the constitution, and conflicts and controversies between the centre and the states. These facts compelled the constitution makers to adopt judicial independence as a basic principle of Indian constitution.

12. **Fundamental Rights:** The constitution of India, includes a separate chapter which guarantees the fundamental rights to all citizens. These fundamental rights are justifiable and inviolable. They are binding on the legislature as well as executive. A citizen of India has the right to seek the protection of the judiciary, if any of the fundamental rights is violated. Any parliamentary act or executive order can be declared null and void by the Supreme Court/ High Courts, if it violates any of the

fundamental rights, guaranteed by the constitution.

13. **Fundamental Duties.:** Article 51 A (Part IV A) was incorporated to the Indian constitution in 1976 by the 42<sup>nd</sup> Amendment. It introduced fundamental duties, which can not be judicially enforceable. This incorporation was an attempt to balance individual freedom with individual duties.
14. **Directive Principles of State Policy:** Another distinctive feature of Indian constitution is the Directive principles of state policy. This feature has been taken from Irish constitution. The philosophy behind the Directive Principles is that the state and its agencies are commanded to follow certain fundamental principles while they frame their policies. These principles are assurances to the people. At the same time, they are directions to the Government, both central and state. The percepts of Directive Principles are not justiciable and hence they are not enforceable by a court order. They are designed to serve as a guide for the Union Parliament and the state assemblies in framing new legislation.
15. **Unamendable basic feature:** Indian constitution has a basic structure, which can not be amended. Democracy, federal and republican character, secularism, judicial review, system of free and fair elections etc. are some of the features, which constitute the basic structure of Indian Constitution.

### **Conclusion**

The constitution of India is remarkable for many outstanding features. These features will distinguish it from other constitutions. There were members is the Constituent Assembly who criticized the constitution as a 'carbon copy of the Act of 1935', as a 'paradise of lawyers'; as a 'borrowed constitution' etc. But the fact that it has survived for more than sixty years; belies the apprehensions of the critics.

### **THE PREAMBLE**

An introductory statement in speech or writing to a statute or constitution is called as 'Preamble'; Every written constitution has a preamble. It embodies the objectives or basic purposes of it. It states the object or policy which it is designed to achieve. The preamble of Indian constitution was an opportunity for the framers of the constitution to give expressions to the dreams of a new order they were dreaming for years. Naturally they draw up a preamble, which embodies the fundamental principles of that new order.

The first meeting of the Constituent Assembly, was held on December 09, 1946, had taken the task of formulating the objectives and guiding principles of the constitution. The "objectives resolution " moved by Jawahar Lal Nehru on December 13, 1946, was adopted by the Constituent Assembly on January 22, 1947 and has been appreciated as the nature of the preamble of the Indian Constitution. The Drafting Committee of the Constituent Assembly while formulating the 'preamble' in the tight of the 'objectives resolution' felt that the preamble restricted to defining the essential features of the new state. The Committee adopted the expression'

Sovereign Democratic Republic ‘, in place of ‘Sovereign Independent Republic’, as used in the “objective resolution” . The Committee also adopted the clause ‘fraternity’ which did not see in the ‘objectives resolution. By 42<sup>nd</sup> constitutional amendment Act of 1976, two amendments were made in the original preamble and the preamble after it, now reads as follows:

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

JUSTICE, social, economic and political;

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

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

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

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

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

- (i) **Source of the constitution:** The opening words “We the people of India” and the closing words, ‘adopt enact and give to ourselves this constitution’ convey that the constitution emanated from the ‘people’ and the sovereignty under the constitution is vested in the people. Most of the modern constitutions emphasis the same principles.

**Types of Government:** The polity (Type of government) enacted adopted and assumed in the preamble by the people of India themselves, is ‘Sovereign Socialist, Secular Democratic, Republic’. The words ‘socialist’ and ‘secular’ were added in the preamble by 42<sup>nd</sup> amendment of the constitution.

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

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

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

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

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

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

### **Objectives of the Indian Republic**

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

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

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

‘Equality’ is complementary to ‘Liberty’. Equality does not mean that all human beings are equal mentally and physically. It really signified the equality of status, the status of free individuals and equality of opportunity. Equality of opportunity implies the availability of opportunity to everyone to develop his or her potential capacities. The concept of ‘equality’ envisaged in the Preamble as it

embraces both equality of status and of opportunity.

Finally, the Preamble signifies the objective of 'Fraternity'. The concept of fraternity ensures both the dignity of the individual and the unity and integrity of the nation. The spirit of brotherhood among citizens was first emphasized by the French revolution and ever since, it has become a slogan of universal application. In the declaration of Human Rights, the UNO proclaims "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". This spirit of brotherhood is emphasized by the use of term 'fraternity' in the Preamble

#### **4) Date of Adoption.**

The last part of the Preamble mentions the date i.e., 26<sup>th</sup> November 1949, on which the Constituent Assembly adopted, enacted and gave this constitution to the nation. The constitution came to force, only on 26<sup>th</sup> January, 1950.

The preamble of the constitution of India is one of the best of its kind ever drafted. One of the members of the Constituent Assembly rose to poetic heights, when he commended, "The Preamble is the most precious part of the constitution. It is the soul of the constitution. It is a key to the constitution." In *Kesavananda Bharati Vs , State of Kerala* case(1973), majority of Supreme Court Judges referred Constituent Assembly debates and held that the Preamble was part of the constitution and contained its basic structure.

#### **b) FUNDAMENTAL RIGHTS**

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

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

with fundamental rights. These rights are characterised by certain features which may be as follows:

**1. Integral part of the constitution**

Fundamental are an integral part of the constitution. They cannot be altered or taken away by the ordinary legislation. Any law passed by any legislature in the country could be declared null if it is derogatory to the rights guaranteed by the constitution.

**2. Detailed and comprehensive:**

The chapter in fundamental rights in the constitution is most comprehensive and elaborate. All Articles included in this chapter is within an elaborate set of limitations and reservations.

**3. Positive and Negative rights:**

Fundamental rights can be divided into two broad categories: namely, positive rights and negative rights. Positive rights which infer privileges on the people. Right to liberty, equality or freedom to express or worship. etc come under positive rights. Negative rights are which impose certain restrictions on the state.

**4. Fundamental rights are justifiable:**

Another feature of fundamental rights is that are justifiable. If any of these rights is violated, the affected individual is entitled to move either to Supreme Court or High court for the protection and enforcement of his rights.

**5. Restrictive nature of fundamental rights:**

Fundamental rights , guaranteed in Part III of the constitution, are not absolute rights. They are subjected to reasonable limitations provided in the constitution itself. Every right is permitted under certain limitations and reasonable restrictions. It can be imposed at anytime for the longer interest of the general community

**6.Suspension of rights:**

The President of India may suspend to all or any of the fundamental rights during the emergency operation. He may also suspend the right of the people to move the courts for the enforcement of fundamental rights.

**7. Citizens alone enjoy fundamental rights:**

Another feature of the fundamental rights is that some of the fundamental rights are available to Indian citizens alone E.g. Art 15, 16,18,29,30. Rights relating to protection of life, freedom of religion, and right against exploitation are guaranteed to every citizen with Indian or alien.

**8. No natural or un enumerated rights:**

F.Rs in the Indian constitution is not based on the theory of natural rights. Besides that,

Indian constitution has left no scope for unenumerated rights.

**9.Amendable:**

In Kesavananda Bharati case the Supreme Court ruled that the fundamental



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

**Classification of fundamental rights:**

The constitution itself classifies the FRs under 7 groups:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and Educational Rights
6. Right to property
7. Right to constitutional remedies

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

**1. Right to equality**

Articles 14 to 18 of the constitution deals with the right to equality. Equality is the principal foundation of all other rights and liberties.

**(a) Equality before law:**

Article 14 declares that “the state shall not deny to any person equality before the law or equal protection of laws within the territory of India”. ‘Equality before law’ is an expression of English common law, while ‘equal protection of laws’ owes to the American Constitution.

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

‘Equality before law’ is the second corollary of Dicey’s concept of the ‘Rule of law’. It means that no man is above the law of the land and that every person, is subject to ordinary law. But certain exceptions are recognised to the above rule of equality in the public interests. E.g., The exercise and performances of the power and duties of the President of India or governors of states.

‘Equal protection of laws’ is borrowed from the American constitution. It means the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed by the laws.

**(b) Prohibition of discrimination on certain grounds (Article 15)**

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

The state shall not discriminate against any persons on grounds of religion , caste ,sex, or place of birth or any of them. Every person shall have equal access to public places like public parks, museums, wells etc. However, the state may make any provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward classes or SCs or STs.

Interpreting the Article, Supreme Court rejected the plea that 'residence' in the state was equivalent to place of birth, and held that these are two distinct conceptions both in ,law and in fact.

**(c) Equality of opportunity in matters of public employments(Art.16)**

Article 16 guarantees equality of opportunity in matters of public employment. The state is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, place of birth or residence. The only exceptions to the above rule of equality are:

- (i) Residence within the state may be laid down by parliament as a condition for particular classes of employment;
- (ii) The state may reserve any post of appointment in favour of any backward class of citizens, who are not adequately represented in the services under the state.
- (iii) The claim of members of scheduled castes and scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the states.
- (iv) The claim of members of scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the union and the states

**(v) Abolition of Untouchability : (Article 17)**

Article 17 abolishes untouchability and its practice in any form is made an offence punishable under law. Parliament is authorized to make a law prescribing the punishment for this offense(Art.35).In the exercise of this power, parliament has enacted the untouchability (offences) Act 1955.This Act has been amended and renamed in 1976 as the 'Protection of civil Rights Act,1955'.

**(d) Abolition of titles (Art 18):**

Article 18 prohibits the state to confer titles on anybody, whether Indian or alien. Military and academic distinctions are ,however, exempted from this prohibition. In 1954,the Govt of India introduced decorations of four categories, namely, Bharata Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri. These awards were mere decorations and are not prohibited. They are mere state recognitions of good work by citizens in various fields of activity. There was a vehement criticism from some quarters that the introduction of these awards violates Article



18.

## **2. Right to Freedom**

According to M.V.Pylee, "Personal liberty is the most fundamental of all fundamental rights". Articles 19 to 22 of the constitution guarantees to the citizens of India, a set of rights, collectively known as 'Right to freedom'. Article 19, is the most important of these. Art.19 originally guarantees seven fundamental freedoms to the citizens of India.

They are: (a) Freedom of speech and expression.(b)freedom to assemble peacefully ,without arms(c)freedom to form associations or unions,(d)freedom to move freely throughout the territory of India(e)freedom to reside and settle in any part of the territory of India;(f)freedom to acquire ,hold and dispose of property and (g) freedom to practice any profession or to carry any occupation, trade or business. The 44<sup>th</sup> amendment act 1978, omitted the "right to property " and hence it is ceased to be a fundamental right and became only a legal right, under the control of ordinary law. The rest of rights guaranteed by the Article 19 are, popularly known as '**six**' **freedoms under the constitution**.

### **Limitations upon Article 19**

The rights or freedoms guaranteed by the Art 19 are not absolute. The guarantee of each of the above rights is limited by the constitution itself by conforming upon the state a power to impose by law reasonable restrictions as may be necessary in the larger interest of the community. The restrictions on their freedoms are provided in clauses 2 to 6 of the Article 19 of the constitution. It should be noted that when a proclamation of emergency (Article 352), Article 19 itself remains suspended.

The freedom of speech and expression is subjected to reasonable restrictions imposed by the state relating to (a) defamation;(b) contempt of court;(c)decency or morality;(d) security of the state; (e)friendly relations with foreign states;(f) incitement to an offence;(g)public order; (h)maintenance of sovereignty and integrity of India.

The freedom of assembly is subject to the qualification that the assembly must be peaceful and without arms and subject to such reasonable restrictions as may be imposed by the 'state' in the interest of public order.

Again, the right to form associations or union is also subject to reasonable restrictions imposed by the state. Similarly the right of everyone to move freely throughout the territory of India or to reside and settle in any part of the country shall also be subjected to restrictions imposed by the state in the interest of general public or for the protection of any scheduled tribes.

Similarly, the right of every citizen to practice any profession or to carry on any occupation trade or business is subject to reasonable restrictions imposed by the state and subject to any law laying down qualifications for carrying on any profession or a technical occupation or enabling state itself to carry as any trade or business to the exclusion of the citizens.

**Freedom of the press:**

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

**Protection in respect of conviction for offenses-Article 20**

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

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

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

**Protection of life and personal liberty (Art.21)**

Article 21 of our constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The keynote in Article 21 is "law."

The Supreme Court in 1992, declared that Indians have a fundamental right to education 'at all levels'. This right has been held to be part of the fundamental right to life under Article 21 of the constitution. The Supreme Court stated that the right to life and dignity of an individual "cannot be assured unless it is accompanied by the right to education". With this judgement the Supreme Court has converted the non enforceable 'right to education' in the Directive Principles of the constitution into an enforceable fundamental right. By the 86<sup>th</sup> constitutional amendment, 2002, the following Article has been inserted after article 21 of the constitution : "21 A –States that the state shall provide free and compulsory education to all children of the age

of 6 to 14 years in such a manner as the state may, by law, determined". The Right of Children to Free and Compulsory Education Act has come to force from 1<sup>st</sup> April, 2010. Now every child in the age group of 6-14 years will be provided eight years of elementary education in an age appropriate class room in the vicinity.

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

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

Article 22 guarantees three rights:

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

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

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

### **Preventive Detention**

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

The Constitution imposes certain safeguards against the abuse of the power of Preventive Detention. The Parliament has the power to prescribe the maximum period for which a person may be retained under a law of preventive detention. The Preventive Detention Act 1950 was passed by the parliament which constituted the law of preventive detention in India. It continued for two decades-from 1950 to 1970, The act came to an end in the year 1969. The parliament enacted a new act named the Maintenance of Internal Security Act (MISA) in 1971. In 1974, parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling activities Act 1974 (COFEPOSA). Further, in 1980, National Security Act (NSA) was enacted. According to this Act, the maximum period for which a person may be detained shall be six months from the date of detention. The Congress Govt. again revived the MISA to TADA in 1984. But this measure did not stay long period because, its misuse had

killed thousands of innocent people and put some thousands of men and women behind bars. In 2001, the Govt. promulgated the Prevention Of Terrorism Ordinance (POTO). The Lok Sabha passed the POTA in 2002, but the bill was not passed due to the rejection of Rajya Sabha. In 2002 POTA was passed in a joint session of Parliament. It is a measure of inaccessibility because 21 states had declined to use POTA. Special provisions such as the Preventive Detention law is still needed in India in order to retain democratic freedom and to make the country capable of defending itself.

### **3 Right Against Exploitation**

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

The Constitution also prohibits forced labour of any form which is similar to beggar. The abolition of forced labour and of economic and physical exploitation of the weaker sections of the people has been taken by the enactment of the Bonded Labour System (Abolition) Act 1976, by the parliament.

### **4. Right to freedom of religion.**

The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. They adopted a separate group of Articles dealing solely with the right to freedom of religion. India being a secular state, observes an attitude of neutrality and impartiality towards all religions. Articles 25, 26, 27 and 28 provide freedom of religion.

Article 25 enacts that all persons are equally entitled to freedom of conscience and the right to profess practice and propagate religion. There are only three restrictions to the freedom of religion, namely, public order morality and health, Article 26 is a corollary to Article 25. It guarantees the freedom to manage religious affairs. According to this, every religious denomination is given the right:

- 1) To establish and maintain institutions for religious and charitable purposes;
- 2) To manage its own affairs in matters of religion;
- 3) To own and acquire movable and immovable property; and

4) To administer such property in accordance with law.

Article 27 provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes.

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

### **5. Cultural and Educational Rights**

The Constitution provides that a minority shall have the right to conserve its own language, script, literature and culture. Admission to any state aided educational institution shall not be refused to anybody on grounds of religion, race, caste or language (Article 29).

Article 30 provides that all 'minorities', whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." The state shall not on granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

### **6. Right to constitutional remedies.**

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

### **Writs mentioned in the Constitution:**

**a) Habeas Corpus:** The term literally means, "You may have the body " In

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

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

**c) Prohibition:** Prohibition is a writ issued by the Supreme court or High court to an inferior court forbidding the latter to continue proceedings therein in excess of its jurisdictions or to usurp a jurisdiction with which it is not legally vested. The object of the writ is to compel inferior courts to keep themselves within the limits of their jurisdiction.

**d) Certiorari:** It is a prerogative writ which orders the removal of a suit from an inferior court to a superior court. It may be used before trial to prevent an excess or abuse of jurisdiction and to remove the case for trial to a higher court.

Prohibition and certiorari are both issued against courts or tribunals exercising judicial or quasi-judicial powers. Certiorari is issued to quash the order or decision of the tribunal, while prohibition is used to prohibit the tribunal from making the ultra vires order or decision. While prohibition is available at an earlier stage, certiorari is available at a later stage, on similar grounds.

**e) Quo warrant:** It is a proceeding whereby the court enquires in to the legality of the claim which a party asserts to a public office, and to oust him from its enjoyment if the claim be not well founded. The fundamental basis of the proceeding of quo warrant is that the public has an interest to see that an unlawful claimant does not usurp a public office.

Thus Article 32 provides a guaranteed remedy for the enforcement of fundamental rights and this remedial right is itself made fundamental by being included in Part III. The court is, constituted the protector and guarantor of the fundamental rights. The Indian Constitution by providing this right, that is, by making that remedial right itself a guaranteed fundamental right has gone a step further than most of the constitutions of the world.

### **An assessment on Fundamental Rights**

The chapter on fundamental rights has been subject to a number of criticisms.

In the first place, it is criticised on the ground that it omits number of important economic and social rights. Right to work, rest and leisure social security



etc are not included in it.

Another criticism directed against the Fundamental Rights is related to the restrictions, exceptions and explanations which accompany them. These restrictions, exceptions and explanations have the effect of really depriving all rights. A critic even suggested that the chapter on fundamental rights may be renamed as “limitations on fundamental rights.”

Some other critics think that the spirit of the whole chapter and much of its substance are taken away by the provisions such as preventive detention, and suspension of the right to constitutional remedies. The provision for preventive detention is harder to justify. The suspension of fundamental rights by the union executive under emergency is another controversial feature of the constitution.

It is also alleged that the fundamental rights are in difficult language, so they are beyond the apprehension of an ordinary reader of the constitution.

Thus, even with these criticisms,” the chapter on Fundamental Rights remains of formidable bulwark of individual liberty, a code of public conduct and a strong and sustaining basis of Indian democracy

#### **THE DIRECTIVE PRINCIPLES OF STATE POLICY**

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

The Directive principles of state policy was aptly described by Dr.Ambedkar as a ‘novel feature of the constitution’. Sir Ivor Jennings claims that this part of the constitution expresses, ‘Fabian socialism’ without the word ‘socialism’.

These principles are directives to the various governments and governmental agencies to be followed as fundamental in the governance of the country. It shall be the duty of the state to apply these principles in making laws. Thus they place an ideal before the legislatures of India while they frame new legislation. They lay down a code of conduct for the administrators of India. In short, the Directive Principles enshrines the fundamentals for the realisation of which the state in India stands. They guide the path which will lead the people of India to achieve the noble ideas which the Preamble of the constitution proclaims: Justice, Liberty and Fraternity.

DPSP are not legally enforceable by any court and the state can not be compelled through the courts to implement them Nevertheless the constitution declares that they are “fundamental in the governance of the country and that it shall be the duty of the state to apply these principles in making laws.”.

### **Classification of Directive Principles**

In order to understand the comprehensiveness of the DP, it is convenient to classify them into related groups. Dr.M.P.Sharma has suggested that they can be grouped into three categories, viz,, socialistic, Gandhian and liberal intellectualistic. The generally accepted classifications are:

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

To organise village panchayats;

to secure the right to work, education and public assistance in cases of unemployment, old age, sickness etc,;

To secure just and humane conditions of work and maternity relief; To secure uniform civil code;

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

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

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

### **2. Directions related with cultural and educational matters :**

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

### **3. Directive principles aiming to implement Gandhian Principles:**

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

- 1) Article 40- the state shall organise village panchayats as units of self government;
- 2) Article 45- state shall promote with special care the educational and economic interests of the weaker sections of the people;
- 3) Article 43-State shall try to promote cottage industries;
- 4) Article 48-State shall preserve and improve the breeds and prohibit the slaughter of cows ,calves and other milch and draught cattle;
- 5) Article 47-State shall try to improve public health and the prohibition of intoxicating drinks and drugs.

### **4. Directions related with International peace:**

There are certain DPs related with international peace and security. Article



51 declares that the shall endeavour to (a)promote international peace and security; (b)maintain just and honourable relations between nations; and (c) the settlement of international disputes through arbitration.

### **5. Miscellaneous:**

Some other important directive principles are (1) To separate judiciary from executive(Article 50);(2)to secure uniform civil code applicable to the entire country(Article 44); (3)to organise agriculture and animal husbandry on scientific lines, etc.

By the 42<sup>nd</sup> amendment, certain changes have been introduced in Part IV, adding new directives to accentuate the socialistic bias of the constitution. By 44<sup>th</sup> amendment, the Janatha government inserted section (2) in Article 38 and it reads now as, “the state shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

### **Criticism of Directive Principles**

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

- 1) Lack of legal sanction: Though DPs are fundamental in the governance of the country , they are expressly made non- justifiable. The courts of India have no power to enforce them. But fundamental rights are justifiable and therefore , enforceable by the courts of Law. The DPs have been described by K.C.Wheare as a “manifesto of aims and aspirations”.
- 2) Vague and illogically arranged: Ivor Jennings has expressed that fundamental rights as well as DPs are “based on no consistent philosophy” According to Sreenivasan, the formulation of the directives of the state policy can hardly be considered inspiring. It is both vague and repetitive. The Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital, economic and social questions.
- 3 Moral precepts: According to the critics the DPs are little more than a set of moral precepts. These principles were no better than’ new year resolutions which are broken on 2<sup>nd</sup> January.’ Professor K.T Shah described them as a cheque payable by the bank only when the resources of the bank permit.

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

economic democracy, to sustain the former.

### **FUNDAMENTAL DUTIES**

Rights and duties are the two sides of the same coin. They are the same things viewed from different angles. The condition of duty of one individual becomes the condition of right of others in society. In a democratic society, rights are now regarded by the citizens as their claims which they fight for.

But the enjoyment of rights involves fulfillment of certain obligations. Rights imply duties; rights and duties are correlative. The two go hand in hand. There is a common tendency on the part of the individual to be more aware of his rights than of his obligations towards his fellow citizens and the community. He needs the laws and the authority of the states to protect the privileges which his rights confer upon him. It follows from this that the individual owes some duties to the state. Laski has described the relation between rights and duties in its three aspects:

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

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

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

the duty of every citizen of India.

1. To abide by the Constitution and respect the National Flag and the National Anthem;
- II. To cherish and follow the noble ideas which inspired our national struggle for freedom;
- III. To protect the sovereignty, unity and integrity of India;
- IV. To defend the country;
- V. To promote the spirit of common brotherhood amongst all the people of India;
- VI To preserve the rich heritage of our composite culture;
- VII. To protect and improve the natural environment;
- VIII. To develop the scientific temper and spirit of inquiry;
- IX. To safeguard public property;
- X. To strive towards excellence in all spheres of individual and collective activity. By 86<sup>th</sup> Constitutional Amendment Act, 2002 in Article 51A of the Constitution after Clause (j) the following clause has been added, namely:

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

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

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

## MODULE III

### (A). INDIAN FEDERALISM

“India, that is Bharat, shall be a Union of States,” declares **Art.1** of the Constitution of India. Thus, the Indian State is neither a federal state nor a unitary state. It has both federal as well as unitary features. Scholars have termed it as Unitarian federalism. And the nature of Indian federalism is indeed unique. **K.C. Wheare** has described the Indian federalism as ‘**quasi federal**’ and observes that the “Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features.” Here it is necessary to understand the federal and unitary features of the Constitution of India.

#### **FEDERAL FEATURES OF THE INDIAN CONSTITUTION**

1. **Written constitution:** An essential feature of a federal system is a written and rigid Constitution. The Indian Constitution is a written document containing 395 Articles and 12 schedules. It is the supreme law of the land and all authorities in India are legally bound to respect it.

2. **Rigid Constitution:** Another essential feature of a federation is a rigid Constitution which cannot be amended by the ordinary law making process of the land. The Indian Constitution is rigid to a large extent. Those provisions of the Constitution which concern the relation between the Union and State Governments and the judicial organization of the country can be amended only by the joint action of the Indian Parliament and the State Legislatures.

3. **Dual Governments:** While in a unitary state, there is only one government, namely, the national government, in a federal state, there are two governments: the national or the federal government and the government of component states. The Indian Constitution establishes a dual polity. There is a central Government and the twenty eight units described as states. Each State has its separate governmental system. The states have been created by the Constitution. They are not a creation of the Central Government.

4. **Distribution of powers:** A distinctive features of a federal state is a division of governmental powers between the national Government and the Constituent units (states, provinces, republics, regions or cantons). Such division of powers is specified in the Constitution itself. The spheres of activities of both the Centre and States are clearly demarcated. There are three lists of governmental functions – the Union list, the Concurrent list, and the State list. The Indian Parliament has the exclusive power to make laws with respect to the subjects enumerated in the Union list. It also has the power to make laws in respect of all matters enumerated in the Concurrent list. The States have the power to make laws in respect of subjects given in the State list.

5. **Supremacy of the Constitution:** The supremacy of the Constitution is another important feature of a federal system. In India, the Constitution is sovereign. It stands at the top of the hierarchy of laws – both national and state. The Central as well as the State governments have to operate within the limits prescribed by the Constitution.

6. **Authority of Courts:** The existence of more than one centre of authority in a

**federal** state and the supremacy of the Constitution necessitate that there should be some authority, such as a Supreme Court to interpret Constitution, decide disputes between the Centre and the units India, there is a Supreme Court whose function is to act as the guardian of the Constitution. It interprets the Constitution, decides disputes between the Centre and States and among the States themselves. It has the power of judicial review and can declare unconstitutional any law of Parliament or of a State Legislature if it is deemed to be in conflict with the provisions of the Constitution.

**7. Bicameral Legislature:** Dual representation is another feature of a federal system. The legislatures of federal states are bicameral. One chamber represents the federating units and the other the people. The Indian Constitution also provides for a bicameral legislature at the Centre. The Rajya Sabha which is the upper house represents the States and the Lok Sabha represents the people of India.

#### **UNITARY FEATURES OF THE INDIAN CONSTITUTION**

The Indian Constitution has many unitary features which have led the critics to challenge its federal character and characterized it as federal in form and unitary in spirit. The Governmental system created by the Constitution is highly centralized and the powers conferred on the units are extremely circumscribed. The important unitary features of the Constitution are as follows:

**1. The Use of the word 'Union':** Some scholars point out that nowhere in the Constitution the term federation has been used. Article one simply described India as a union of states which, in effect, meant a very strong Central government.

**2. Single Constitution for Union and States:** The States, except Jammu and Kashmir, have no right to frame their Constitutions. There is only one Constitution which includes the Constitution of the States also. This is unlike other federal states where federating units have the power to determine their own Constitutions.

**3. States Assigned Minor Role in Amendment of Constitution:** In the matter of amendment of the Constitution, the part assigned to the States is minor, as compared with that of the union. In India, the states have no power to initiate an amendment to the Constitution. The initiative rests entirely with the Parliament. There are many articles of the constitution which can be amended by Parliament without any reference to the States. This violates the principle of equality between the centre and the States.

**4. Territorial Integrity of States not guaranteed:** In our constitution, it is possible for Parliament to organize the States by a simple majority in the ordinary process of legislation. Parliament by law may form a new state by separation of territory from any state or by uniting more two or more States or parts of States or by uniting any territory to a part of any State. However, a bill for the purpose has to be referred by the President to the Legislature of the State whose area, boundary or name is affected by the Bill, for expressing its views thereupon. Parliament has the exclusive power to admit a state into the Union or establish new states; on terms and conditions as it thinks fit vide **Art.2** of the Constitution.

**5. Single Citizenship:** Usually in other federations there is provisions for double citizenship; each citizen is not only a citizen of the federal State as such but also of the particular federating State in which he resides. But there is no dual citizenship in India.

**6. No Right to Secession:** The States of the Union of India do not have the right to exercise any right of secession.

**7. No Equal Representation in Upper House:** *There is provision for equal*

*representation to the federating units in the upper house of the Central Legislature.* But as per the Indian Constitution representation to the states in the upper house (the Rajya Sabha) is on the basis of their population.

**8. Overriding Legislative powers of the Union:** As pointed out above, there are three lists of subjects: the Union list, the State list and the Concurrent list. In respect of the subjects given in the concurrent list both Parliament and the State legislature has the power to legislate. But if both make law on the same subject and if they conflict with each other, the law made by the Parliament supersedes the State law. This makes legislative power of the Parliament formidable. The State does not enjoy full legislative freedom even in respect to the matters given in the State list.

**9. Administrative Control of the Union over the states:** In the administrative sphere also the Union government exercises control over the State governments even in normal times. Article 256 of the constitution states that the executive power of the state shall be so exercised as to ensure compliance with the laws made by the Parliament. Further, the executive power of the Union extends to the giving of such directions to the State as may appear to the Government of India to be necessary for that purpose. Article 355 states that it shall be the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

**10. Financial Control of the union over States:** In the financial matters also the autonomy of the States is seriously restricted. The division of taxing powers is also tilted in favour of the Union Government.

**11. State Governors act as Agents of the Centre:** The State Governor is appointed by the President. But as the president has to act on the advice of the Cabinet, the Governor is actually a nominee of the party in power at the Centre. The Governor actually acts as an agent of the Central government which through him can control the policy and measures of the State government.

**12. Emergency provisions:** The emergency provisions embodied in the Constitution pose a serious challenge to the federal character of the Indian polity. The president has the power to proclaim a state of emergency. Emergency is of three kinds: (1) actual aggression or threat of aggression, (**Art.352 National Emergency**) (2) breakdown of the Constitutional machinery of the state, (**Art.356 State Emergency**) (3) financial emergency, (**Art.360 Financial Emergency**)

**13. No Division of Services:** An extraordinary feature of the Indian Constitution which seriously imparts the federal character of our polity is that there is no clear-cut division of services between the Centre and the States. The majority of public servants are employed by the states, but they administer both Union and State laws as are applicable to their respective states by which they are employed.

**14. Single Centralized Judiciary:** In India there is a single unified system of courts headed by the Supreme Court which administers both the union and the state laws as are applicable to cases coming up for adjudication. The judges of the State high Courts are independent of the States who do not possess any power with regard to their appointment, removal or service conditions.

**15. Centralized Machinery for Elections, Accounts and Audit:** The machinery for elections, accounts and audit is also integrated. The Constitution provides for an Election Commission whose members are appointed by the President, and the States have no say in their appointment, removal or service conditions. But the commission is responsible for the conduct, supervision, control and direction of elections not only to the Parliament but to the State Legislatures as well. Similarly, the Comptroller and



Auditor general of India, is appointed by the President and the States have no say in this appointment or removal. But he is responsible for the Audit of the Accounts of the Centre as well as the States.

Indian Constitution & Politics (Part II)

### **CENTRE STATE RELATIONS**

The essence of federalism is division of powers between the National Government and the State Governments. The most significant feature of any federation is the division of powers between the federation and constituent units. This is also the most important feature of the Indian federation. Part XI of the Constitution of India is titled 'Relation Between The Union And The States'. Its Chapter I covering articles 245 to 255 deal with the Legislative Relations and distribution of legislative powers. The Administrative Relations are given in Chapter II covering articles 256 to 263. The matters related to Financial Relations are specified in Part XII of the Constitution.

#### **LEGISLATIVE RELATIONS BETWEEN CENTRE AND STATES**

In our Constitution, we have followed a system in which there are two lists of legislative powers, one for the Centre and the other for the states. The residue is left for the Centre. This system is similar to the system that is there in the Constitution of Canada. An additional list called the Concurrent List is also added in our Constitution on the pattern of the Constitution of Australia. It must be emphasized that the scheme regarding the distribution of powers and the actual division of powers is almost the same as it was in the Government of India act, 1935. The three lists are embodied in the Seventh Schedule of the Constitution.

**The Union list:** The Union List which consists of **ninety seven** items is the longest of the three. It includes items such as defense, armed forces, foreign affairs, citizenship, shipping and navigation, currency, inter-state trade and commerce, mineral and oil resources, Supreme Courts, High Courts, Income tax, customs duty etc. The Union Parliament has exclusive powers of legislation with regard to the items mentioned in the list. The selection of these items is made on the basis of common interest to the Union and with respect to which uniformity of legislation throughout the Union is essential.

**The State List:** The State list consists of **sixty six** items. Some of the more important of these items are as follows: public order, police administration of justice, prisons, local government, public health and sanitation, education, agriculture, animal husbandry, State public services, taxes on agricultural income, taxes on lands and buildings etc. The selection of these items is made on the basis of local interest and it envisages the possibility of diversity of treatment with respect to different items in the different States of the Union. The State legislature has the power of legislation with regard to every one of the items included in the State List.

**The Concurrent List:** The Concurrent list consists of **forty-seven** items. These are items with respect to which uniformity of legislation throughout the Union is desirable but not essential. As such, they are placed under the jurisdiction of both the Union and the States. The list includes items such as marriage and divorce, transfer of property other than agricultural land, contracts, bankruptcy and insolvency, adulteration of foodstuffs, drugs and poisons economic and social planning etc.

The Parliament of India and the States legislature have concurrent powers of legislation over the items included in the list. Once Parliament enacts a law on an

item in the list, parliamentary Law shall prevail over any state law on the item. law shall prevail over any state law on the item.

In the federation of the United States, Switzerland and Australia the **residuary powers** are assigned to the federating units. While in India, like Canadian federation, the residuary powers are vested in the Union as per **Art.248**.

### ***PARLIAMENT CAN LEGISLATE ON THE SUBJECTS OF STATE LISTS***

Although the States have the exclusive power of legislation over every item in the State List, there are certain exceptions to this general rule. These exceptions are:

1. **Article 249** specifies the 'power of Parliament to legislate with respect to a matter in the State List in the national interest.' It provides that if the Rajya Sabha declared by a resolution supported by not less than two-thirds of the members present and voting that it was necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it became lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter during the period the resolution remained in force. Such a resolution remained in force for such a period, not exceeding one year, as might be specified therein. The Rajya Sabha, however, could extend the period of such a resolution for a further period of one year from the date on which it would otherwise have ceased to operate.
2. Under **Article 250**, Parliament is empowered to make laws on any item included in the State List for the whole or any part of India while a proclamation of Emergency is in operation. The maximum period for which such a law can be in force is the period for which emergency lasts and six months beyond that period.
3. Under **Article 252**, Parliament also became entitled to legislate for two or more states by their consent. If two or more States request the Central government to legislate on a particular subject mentioned in the State List, in so far as their State is concerned, the Central Parliament shall legislate on these subjects as well. If any such law is to be amended or repealed, it can be done only by the Parliament alone but the initiative for it rests with the States.
4. Under **Article 253**, Parliament had power to make any law for the whole or any part of India for implementing any treaty, agreement or convention with any other country or country or any decision made at any international conference, association or other body. This provision entitled Parliament to legislate even in respect of those subjects that were included in the State List.
5. The predominance of Parliament was further established by **Articles 356 and 357** of the Constitution. Article 356 stipulated that if the President was satisfied that a situation had arisen in which the Government of a State could not be carried on in accordance with the provisions of the Constitution he might declare that the powers of the Legislature of the State would be exercisable by or under the authority of Parliament. The effect of Article 356 would be that the legislature of the State in question would stand dissolved or suspended and the law-making power would rest in Parliament during the period the proclamation of emergency was in force.
6. Not only Parliament enjoyed predominance over law-making in the States, the Union executive also exercised some control. Certain Bills adopted by the State Legislature would not be effective unless it had been reserved for the consideration of the President and had received his assent.
7. There is also Union control over the ordinance making power of the Governor. The Governor of a State can issue Ordinances vide Art.213 of the Constitution when the



State legislature is not in session. Under certain circumstances, the Governor can issue the ordinance with the prior approval of the President, without getting the approval of the State Council of Ministers.

Thus, it is clear that in spite of division of legislative powers of the Centre and the States, the Centre has overriding powers in this sphere. The Union Parliament has powers to legislate not only on subjects in the Union and Concurrent List, but also on the subjects in the State List as per certain constitutional provisions.

### **ADMINISTRATIVE RELATIONS BETWEEN CENTRE AND STATES**

The executive power of the Union extends only to those matters which are mentioned in the Union List and over which the Parliament have legislative powers. In addition, the union can exercise administrative control over the states through the following methods.

1. **Articles 256** of the Constitution specifies the respective obligations of the Union and the State Governments and lays down, "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 direction to the State as may appear to the Government of India to be necessary for that purpose." Thus, this article clearly provides that the executive authority of the State shall be so exercised that the laws made by the Parliament and the existing laws of the States are properly enforced.

2. **Article 257(1)** lays down, "the executive powers of every state shall be so exercised as not to impede or prejudice the exercise of the executive powers of the union, 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." Thus, within the sphere covered by the State list, the Union government can give directions to the State Governments.

3. By **Article 257(4)** The Union Government can also give directions to the States regarding the construction and maintenance of means of communications declared to be of national or military importance. The Union Government can also give directions to the States regarding the measures to be taken for protecting the railways within the boundaries of the State. However, the excess expenses incurred by the State Governments are paid by the Government of the Union.

4. In case, the State Government fails to carry out any of the directions of the Union Government, the president has been empowered by **Article 365** of the constitution to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the constitution. In other words, if the state fails to carry out the orders or directions of the union, the President's rule may be imposed on that state. In such eventuality the president shall assume to himself, all or any of the functions of the State Government.

5. **Delegation of Union Functions to the States** is also provided in the Constitution. The President with the consent of the State Government can entrust to the officers of the State Government any function in respect to any subject over which the executive power of the Union extends. Thus, the States may be converted into agents of the union Government. However, any extra cost incurred by the States for carrying out such an obligation is to be paid by the Union.

6. The presence of **All-India Services** like the Indian Administrative Service, the Indian Police Service etc. further makes the authority of the Central Government dominant over the States. The members of these All-India Services are appointed by the President of India on the basis of a competitive examination conducted by the Union Public Service Commission. The Constitution also makes provisions for the creation of new All-India Services by the Parliament. The Parliament can create new All-India Service if the Rajya Sabha passes a resolution by a majority of two-thirds of its members present and voting, that it is necessary in the national interest to do so.

7. The Constitution vests the President with the power to establish an **Inter-State Council**, to bring about co-ordination between states. **Article 263** which deals with the inter-State council says: "If at any time it appears to the President that the public interests would be served by the establishment of a council charged with the duty of  
(a) Inquiring into and advising upon disputes which have arisen between the states  
(b) Investigating and discussing subjects in which some or all of the States, or the union and one or more of States, have common interest; or  
(c) Making recommendations upon any such subject and in particular, recommendations, for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a council, to define the nature of duties to be performed by it and its organization and procedure.

8. The Constitution further ordains that **full faith and credit** must be given throughout the territory of India to public acts, records and judicial proceedings of the union and of every state. The Parliament is authorized to make necessary laws in this regard. Further, all the final judgments or orders delivered or passed by the civil courts in any part of India are executable anywhere within India in accordance with law.

9. The Constitution has authorized the parliament to make laws for the adjudication of the disputes relating to Inter-State Rivers or river valleys. The Parliament is also authorized to exclude such disputes from the jurisdiction of the courts, including the Supreme Court, through the enactment of necessary law.

10. During the time when **Emergency** is proclaimed the President is authorized to give directions to the State Governments regarding the manner in which they have to exercise their executive power. Even the Parliament gets power to make laws for the whole of the country or a part thereof even in respect of matters mentioned in the State List. Thus, the federal structure provided under the Constitution is virtually transformed into a unitary one.

11. The Parliament, **vide Art.307** of the Constitution, can also set up **Inter-State Commerce Commission** or any other such authority which it considers appropriate for enforcing the provisions of the Constitution with regard to Inter-State trade and commerce. It can assign such duties to such a commission or authority, as it deems fit.

### **FINANCIAL RELATIONS BETWEEN CENTRE AND STATES**

The Constitution of India makes an elaborate and detailed provisions as the with respect to the relationship between the Union and the States in the financial field.

The Indian Constitution lays down a broad scheme for the distribution of revenue resources between the Union and the States and it is the function of the Finance Commission to allocate the resources between the Centre and States and to the distribute the grants-in-aid.

#### **Union Sources of Revenue**

Duties of Customs including export duties.

Corporation tax

Currency, coinage and legal tender, foreign exchange

Duties of excise on tobacco

Foreign Loans

Estate duty in respect of property other than agricultural land.

Post -office savings bank.

Railways.

Reserve Bank of India.

Taxes on income other than agricultural income.

Taxes on the sale or purchase of newspapers

Terminal taxes on goods or passengers carried by railways, sea or air

Taxes other than stamp duties on transactions in stock exchanges

#### **State Sources of Revenue**

Duties in respect of succession to agricultural land.

Duties of excise on certain goods produced in the States like alcoholic liquids

Estate duty in respect to agricultural land.

Land Revenue.

Taxes on agricultural income.

Taxes on buildings and land.

Taxes on consumption of electricity or its sale.

Taxes on the entry of goods

Taxes on vehicles.

Taxes on animals and boats

Taxes on professions, trades and employments.

Tolls

Taxes on luxuries including taxes on entertainments.

The distribution of revenues between the centre and states are as follows.

Taxes levied by the Union but collected and appropriated by the States (Art.268)

Stamp duties and duties of excise on medicinal and toilet preparations (those mentioned in the union list) shall be levied by the Government of India but shall be collected

(i) in the case where such duties are leviable within any Union Territory, by the Government of India, and (ii) in other cases, by the States within which such duties are respectively leviable. Taxes Levied and Collected by the Union but assigned to the States (Art.269)

1. Duties in respect of succession to property other than agricultural land.
2. Estate duty in respect of property other than agricultural land.
3. Taxes on railway fares and freights.
4. Taxes other than stamp duties on transactions and on advertisements published therein.
5. Terminal taxes on goods or passengers carried by railways, sea or air.
6. Taxes on the sale or purchase of newspapers and on advertisements published therein.
7. Taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-state trade or Commerce.

Taxes which are levied and collected by the Union but which may be distributed between the Union and States (Art.270)

(vi) Taxes on income other than agricultural income.

Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List and collected by the Government of India.

Taxes on income do not include Corporation Tax. The distribution of income-tax proceeds between the Union and the States is made on the basis of the recommendations of the finance Commission.

The Constitution of India has followed the following pattern regarding the distribution of financial resources between the Union and State Governments.

1. Taxes exclusively assigned to the Union which include – customs and export duties, income tax, excise duties on tobacco, jute etc., corporation tax on capital value of assets of individuals and companies; estate duty and succession duty in respect of property other than agricultural land and income from the earning departments like the railways and postal departments.

2. Taxes exclusively assigned to the States which are – land revenue; stamp duty (except on documents included in the Union List) ; succession duty and estate duty; taxes on goods and passengers carried by road or inland waters; consumption or sale of electricity; tolls; taxes on employment; duties on alcoholic liquors for human consumption, opium ; taxes on the entry of goods into local areas; taxes on luxuries entertainments, amusements, betting, gambling etc.

3. Taxes leviable by Union but collected and appropriated by States: The revenue from the following items is collected and appropriated by the States:

(i) Stamp duties on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares etc.

Excise duties on medicinal, toilet preparations containing alcohol or opium or Indian hemp or other narcotic Government can levy taxes on them, yet all these duties are collected by the states and from the part of the revenue of the state which collects them.

4. Taxes levied and collected by Union but assigned to the States: The taxes on the following items are levied and collected by the Union, but wholly assigned to the states within which they are levied:

(a) duties in respect of succession to property other than agricultural lands;

(b) estate duty in respect of property other than agricultural land;

(c) terminal taxes on goods or passengers carried by rail, sea or air.

(d) taxes on railways freights and fares;

(e) taxes other than stamp duties on transactions in stock exchanges and future markets;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.

5. Taxes levied and collected by Union and shared with States: The taxes from the following items are levied and collected by the Union but shared with the States in certain proportions, with a view to securing an equitable distribution of the financial resources:

(i) taxes on income other than agricultural land;

(ii) excise duties, other than those on medicinal and toilet preparations.

6. Grants-in-aid: The Constitution provides that the Parliament may by law give grants-in-aids to the needy states out of the revenue of the Central government. The amount of such grants is determined by the Parliament in accordance with the needs of the state. The Constitution however, lays down that the cost of all the schemes aiming at the welfare of the Scheduled tribes is to be met by the Union Government and the Union Government makes the necessary grants to the state concerned on this account.

The constitution also makes special provisions for grant to the State of Assam to enable it to meet the extra cost involved in raising the administrative level of the tribal areas. Moreover, the states of Assam, Bihar, Orissa and West Bengal are paid such sums, as prescribed by the President of India, in lieu of their share in the export duty on jute products.

7. Finance Commission: The President of India is authorized by the Constitution to appoint a Finance Commission every five years vide Art.280. This commission is expected to make recommendations regarding the allocation of revenues to the Union Government and the State Governments, grants-in-aid by the Union Government to the State and other financial matters. However, the Constitution does not clearly provide, whether the President is bound to accept the advice and recommendations of the Finance Commission. The convention, so far, has been that the union Government accepts all the recommendations of the Finance Commission. In fact, under the Constitution, the President is expected to place every recommendation of the Finance Commission, together with an explanatory memorandum as to the action taken by thereon, before each house of the Parliament.

8. Financial Emergency: During the proclamation of Financial Emergency, the President can suspend the provisions relating to the division of taxes between the Union and the States and the grants-in-aids to the States. When such a proclamation is made, the States are left with the revenues available in the States List. However, during such a proclamation the Union Government has the power to give directions to the States to:

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- (a) observe such canons of financial propriety and other safeguards as may be specified;
- (b) reduce the salaries and allowances of all persons serving in connection with the affairs of the State; including the high court Judges;
- (c) reserve for the consideration of the President all money bills passed by the State Legislature.

9. Control by the Comptroller and Auditor General of India: The Comptroller and Auditor General, who is responsible for the maintenance and audit of the union and States accounts is an official of the Central Government. He is appointed by the President. His powers and duties are determined by the Parliament. The forms for the maintenance of accounts are prescribed by the Comptroller and Auditor General of India in consultation with the President of India, and the States have no say in this matter.

It is evident from the above discussion that the states do not possess adequate financial resources to meet their requirements. Their sources are not only very limited but are also very inelastic. The Union Government on the other hand possesses very wide and ever expanding sources of revenue. This naturally places the Union Government in a favorable position and the states have to frequently look up to the Centre for financial assistance.

### **MAIN ISSUES OR TENSION AREAS IN UNION- STATE RELATIONS**

The Constitution of India envisages two levels of government- one at the level of Union and other at the level of the states. From the functional stand point of the Constitution, it is a dynamic process. However, the very dynamism of the system with all its checks and balances has also brought problems and conflicts in the working of the Union-State relations. Consensus and cooperation which is a prerequisite for smooth functioning of Union-State relations is threatened by politics of confrontation. The main issues in Centre-State relations are as follows –

1. Less revenue resources of the states and financial relations between the Union and the state.

The division of financial resources and the system of financial relations as laid down by the constitution have been major tension areas. The states find themselves dependent upon the Union because of their meager and limited resources and restricted field of taxation. States are dependent on the Centre for allocation of funds and grants-in-aid. The states ruled by the parties other than the party at the Centre often complain of discriminatory treatment in the matters of allocation of funds and giving of grants-in –aid.

2. Role of Governor.

The Governor plays a dual role –as the agent of Centre in the state and as the Constitutional head of the state. As a central agent he has to ensure that state governments run in accordance with the constitutional provisions, otherwise he can report to the centre about breakdown of constitutional machinery and get the President impose State emergency vide Art 356. The provision for the appointment and removal of the Governor by the President, who always acts upon the advice of the Union cabinet, makes him an agent of the party in power at the Centre. The exercise of the Governor's discretionary powers has also been an issue in Centre-state relations such as dissolution of State Legislative Assemblies.

(ii) Narcotics. Though all the above items are included in the Union list and the Union

3. Centre-State tensions over the use of Article 356.

This article empowers the President to take a decision based on the report of the Governor of the State regarding the 'breakdown of Constitutional machinery in the state'. The President is guided by the advice of the Union Government. This article has been at times misused for political purposes by the Centre.

4. Concentration of Amending Powers in the hands of the Union.

As per the Indian Constitution constitutional amendments can be initiated only by the Union Parliament and not by the State Legislatures. Further, only certain amendments need approval of at least half of the state legislative assemblies. This is another area of tension.



5. Deployment of Central Para-military forces in the States.

Another area of conflict between the Union and the states in India has been the issue of deployment of Central Para-military forces by the Union in the States in times of crisis like communal riots, strikes or other law and order disturbances.

6. Issue of Implementation of Union Laws by the States.

The Constitution vests in the States the responsibility of implementing the Union laws. For this purpose, the Union can issue directives to the States. Each state has the Constitutional responsibility to exercise its powers in such a way as may be helpful in securing of compliance with Union Laws. At times the State Governments are not quite willing to effectively implement a particular Union law which is considered to adversely affect its politics and programmes.

7. Issue of discrimination against States.

The States feel dissatisfied with the system of Central grants-in-aid and allocation of funds by two Central agencies – the Planning Commission and the Finance Commission. The Union Government is often charged of partiality in favour of some states and discrimination against other states which are ruled by opposition parties and regional parties.

8. Issue of All India Services.

The personnel of All India Services like the IAS and IPS hold key positions in the State administration. They are recruited by the UPSC and the Union Home Ministry allocates them to various states. Their conduct is regulated by central laws and the state governments can take only limited action against them. The Union Government can issue direction to them for carrying out its decision. Such directions can be sometimes opposed to the policies and programmes of the state governments of which they are the administrators. Thus, the use of All India Services by the Union Government for carrying out its directions in States is a tension area in Indian federalism.

9. Inter State disputes and the Union.

The failure or delay in activity on the part of the Union Government to secure a settlement of several inter-state disputes has also been a cause of tension in the Union State relation.

10. Demand for State Autonomy.

The States have been demanding greater state autonomy in the federal structure which has worked with a Unitarian spirit. The states find the balance of power tilted in favour of Union in the federal scheme drawn by the Constitution. Therefore, the need for autonomy and transfer of some additional powers and resources to the States has been emphasized upon.

**Sarkaria Commission**

The Sarkaria Commission was set up in June 1983 by the Central government of India during the regime of Smt. Indira Gandhi. The Sarkaria Commission's charter was to examine the relationship and balance of power between state and central governments in the country and suggest changes within the framework of Constitution of India. The Commission was so named as it was headed by Justice Rajinder Singh Sarkaria, a retired judge of the Supreme Court of India. The other two members of the committee were Shri B.Shivaraman and Dr.S.R.Sen.

The Commission submitted its final 1600-page report in October 1987 and was published in 1988. The final report contained 247 specific recommendations. In spite of the large size of its reports - the Commission recommended, by and large, status quo in the Centre-State relations, especially in the areas, relating to legislative matters, role of Governors and use of Article 356.

It is widely accepted that to whatever extent the Commissions suggested change; the recommendations were not implemented by the government

The Commission after conducting several studies, eliciting information, holding discussions and after detailed deliberations submitted its report in January 1988. The report contains 247 recommendations spreading over 19 Chapters dealing with Legislative Relations, Administrative Relations, Role of the Governor, Reservation of Bills by Governors for President's consideration and Promulgation of Ordinances, Emergency Provisions, Deployment of Union Armed Forces in States for Public Order Duties, All India Services, Inter-Governmental Council Financial Relations, Economic and Social Planning, Industries, Mines and Minerals Chapter, Agriculture , Forests, Food and Civil Supplies, Inter-State River Water Disputes, Trade, Commerce and Inter-course within the Territory of India and Mass Media

#### **RECOMMENDATIONS OF THE SARKARIA COMMISSION**

1. Residuary powers of legislation in regard to taxation should continue to remain exclusively in the Concurrent List, while the residuary field other than that of taxation, should be placed in the Concurrent List.
2. It favoured the retention of strong Centre and firmly rejected the demand for the curtailment of the powers of the Centre in the interest of national unity and integrity.
3. The commission rejected the demand for the transfer of certain state subjects to the Concurrent List and held that the Centre should consult the states on Concurrent subjects.
4. The commission did not favour restrictions on the powers of the Centre to deploy armed forces in the states, even though it favoured consultations with the concerned state governments before these forces were actually deployed in the states.
5. It favoured greater co-operation between the Centre and the States in the matter of formulation of plans and their implementation. It recommended the Constitution of the Inter-State Council.
6. The report rejected the demand for the abolition of the office of the Governor and the suggestion regarding selection of Governors out of a panel of names given by the States. When a State and the Centre were ruled by different parties, the Governor should not belong to the ruling party.
- 7) The report did not agree with the demand for major changes in the scheme of distribution of financial resources as provided by the Constitution.

8)The report turned down the demand for doing away with Article 356 of the Constitution under which President rule could be imposed on a State on the grounds of breakdown of constitutional machinery. However, it suggested several measures for preventing its misuse by the Centre and emphasized that it should be used very sparingly and only in extreme cases.

9)The report rejected the demand for disbanding of All India Services on the ground that it would greatly undermine the unity and integrity of the country.

10)The report suggested that the leader of the majority party in the legislature should be appointed as the Chief Minister. If no single party enjoyed a clear-cut majority in the State Legislature, the person who was likely to command a majority in the assembly be appointed Chief Minister by the Governor. The Chief Minister should seek a majority vote in the assembly within thirty days.

11)The commission recommends that in dealing with the state bill presented to the Governor under Article 200, he should not act contrary to the advice of his Council of Ministers because personally he does not like the policy embodied in the bill. Bill should be reserved only in exceptional circumstances.

12)The report favoured the implementation of the three language formula throughout the country and stressed special steps for activating the Linguistic Minorities Commission. It also favoured relaxation of Central control over the radio and television and wanted greater decentralization of authority in matters of their day-to-day operation.

## **PLANNING COMMISSION**

### ***Composition***

The Planning Commission of India was set up in March 1950 with Pandit Jawaharlal Nehru as its Chairman. It is an extra-constitutional and non-statutory body set up by a resolution of the cabinet, to formulate integrated Five year Plans for economic and social development and to act as an advisory body to the Union Government. It was set up in pursuance of declared objectives of the Government to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production and offering opportunities to all for employment in the service of the community.

The Commission is composed of twelve members. Prime Minister(Chairman); eight other members(including the deputy chairman),who are experts in different fields like economics, industry, science, agriculture and general administration; Minister of Planning; Minister of Finance and Minister of Defence. As a composite body it provides advice and guidance to the subject divisions for the formulation of Five Year Plans, Annual Plans, State Plans, Monitoring Plan Programmes, Projects and Schemes.

### **Functions**

The main functions of the Planning Commission include:

Making an assessment of the material, capital and human resources of the country.  
Formulation of plan for the most effective and balanced utilization of the country's resources.

Defining stages of plan implementation and determining plan priorities

Identifying the factors which are tending to retard economic growth and determining condition for its successful implementation

Making periodic assessment of the progress of achievements and recommending changes in policy measures.

### **Evolving Functions**

In the context of the changed economic scenario, the role of the Planning Commission has been redefined. From a highly centralized planning system, the Indian economy is gradually moving towards indicative planning where the Planning Commission will concern itself with the building of a long term strategic vision of the future and decide on priorities of the nation. It will work out sectoral targets and provide promotional stimulus to the economy to grow in the desired direction. The Planning Commission will play an integrative role in the development of a holistic approach to the policy formulation in critical areas of human and economic development.

**NITI Aayog** ([Hindi](#): नीति आयोग, lit. "Policy Commission") or **National Institution for Transforming India Aayog** is a policy think-tank of [Government of India](#) that replaces [Planning Commission](#) and aims to involve the states in economic policy-making in [India](#). It will be providing strategic and technical advice to the central and the state governments. The [Prime Minister](#) heads the Aayog as its chairperson.

There are a couple of things to be considered here. NITI Aayog would therefore mean:

- A group of people with authority entrusted by the government to formulate/regulate policies concerning transforming India.
- It is a commission to help government in social and economic issues.
- Also it's an Institute of think tank with experts in it.

India's Finance Minister Arun Jaitley made the following observation on the necessity of creating NITI Aayog: "The 65-year-old Planning Commission had become a redundant organisation. It was relevant in a command economy structure, but not any longer. India is a diversified country and its states are in various phases of economic development along with their own strengths and weaknesses. In this context, a 'one size fits all' approach to economic planning is obsolete. It cannot make India competitive in today's global

### **THE NATIONAL DEVELOPMENT COUNCIL**

#### **Composition**

The establishment of the Planning Commission led to the setting up of another extra-constitutional body, namely the National Development Council. It was set up on 6<sup>th</sup>

August, 1952 in order to promote co-ordination with the states and to associate the states in the formulation of the Plans. Its main aim is to strengthen and mobilize the effort and resources of the nation in support of the Plan, to promote common economic policies in all vital spheres and to ensure the balanced and rapid development of all parts of the country.

In the NDC representatives of both the Central and State Government sit together to finally approve all important decisions relating to planning. The NDC is composed of the following members – Prime Minister; All state Chief Ministers; Administrators of Union Territories; Members of Planning Commission; other Ministers are also invited to participate in its discussions.

### ***Functions***

The NDC is working as an advisory council and has the following functions –

To make periodical review of the working of National Plan from time to time.

To consider important questions related to social and economic policy affecting national development.

To recommend various measures for achieving aims and targets set out in our National Plan.

To ensure maximum cooperation of people in the planning and improvement of administrative capacity.

To suggest programmes and schemes for the development of less developed and backward classes and regions.

To assess resources required for implementing plans and to suggest ways and means for raising national resources.

To take decision regarding allocation of Central assistance for planning among different states.

To prescribe guidelines for the formulation of national plans.

To consider national plans as formulated by the Planning Commission and to approve the same.

### ***ROLE OF THE NATIONAL DEVELOPMENT COUNCIL***

The National Development Council has a special role in our federal polity. It is the apex body for decision making and deliberations on development matters. The NDC enjoys an important position because it is chaired by the Prime Minister with the Chief Ministers of all the States participate in its meetings. The states get an

opportunity to advance their viewpoints with respect to their specific problems and targets. This also ensures the consent of states to the proposed plan after detailed discussions and debates. It symbolizes the federal approach to planning. It is also an instrument for ensuring that the planning system adopts a national perspective. The consent of states ensures the smooth implementation of plans. The participation of states in the formulation of plans also ensures that the targets of both the Central and State governments are fulfilled. In legal terms, the NDC is an advisory body but in reality, the NDC approves the five year plans and prescribes guidelines for the formulation of plans.

### **FINANCE COMMISSION**

#### ***Composition***

Article 280 of the Indian Constitution provides that the President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier times as the President considers necessary, by order constitute a Finance Commission. It consists of a Chairman and four other members to be appointed by the President. The Chairman must be a person having experience in public affairs. The other four members are appointed as per the following criteria –

- (a) A person should either be a High court judge or qualified to be appointed as a judge of High Court.
- (b) One person having special knowledge of the finances and accounts of the Government.
- (c) A person having wide experience in financial matters and administration.
- (d) A person having special knowledge of economics.

#### ***Functions***

The function of the Commission is to make recommendations to the President regarding-

- (i). the distribution between the Union and the States of the net proceeds of taxes which are to be divided between them and the allocation between the States of the respective shares of such proceeds.
- (ii). the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India.
- (iii). the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State ( inserted by the 73<sup>rd</sup> Constitutional Amendment Act, 1992).
- (iv). the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State ( inserted by the 74<sup>th</sup> Constitutional Amendment Act, 1992).
- (v). any other matter referred to the Commission by the President in the interests of sound finance.

Article 281 of the Constitution provides that the President shall cause every recommendation made by the Finance Commission to be laid before each House of Parliament.

The first Finance Commission was constituted in 1951 under the Chairmanship of Sri. K.C. Neogy. So far Thirteen Finance Commissions have been constituted to make recommendations on the distribution of net proceeds of shareable taxes between union and states. The Chairman of the Twelfth Commission was headed by the veteran Indian economist Sri. C. Rangarajan. The Thirteenth Finance Commission was chaired by Sri. Vijay Kelkar.

The fourteenth finance commission chair man is Dr. Y.V Reddy Commission. It consists of a Chairman and four other members to be appointed by the President. The Chairman must be a person having experience in public affairs. The other four members are appointed as per the following criteria –

1. A person should either be a High court judge or qualified to be appointed as a judge of High Court.
2. One person having special knowledge of the finances and accounts of the Government.



## MODULE IV

### (a) GOVERNMENT OF THE UNION

Government is the most important organ of the state. It is the instrument through which the state does everything. The government is the administrative organ of the state. A government works through its organs. The three organs of the government are: legislature, executive and judiciary.

The executive is the important organ of the government, usually referred to as the government itself. The executive is identified by the head of the government. The executive enforces the laws, runs the administration, make appointments, and formulates policies. Legislature is the law making body in a democratic system. In a parliamentary system of government, Legislature is formally supreme and appoints the executive. Legislature has exclusive authority to raise taxes and adopt budget and other money bills, amend the constitution, control the executive, participate in the electing officials. Judiciary is the third organ of the government. The judges are usually appointed by the executive heads and can be removed through impeachment by the legislature. Its main functions include the settlement of disputes, interpretation of law and the constitution; to protect constitution, the federal system and the rights and liberties of the people.

The Constitution of India has adopted the British model of Parliamentary system of government. The President at the union and the Governor at the state level constitute the head of the state in whose name there are power but who do not exercise them. The Prime Minister and his council of ministers at the union level and the Chief Minister and the council of ministers at the state level exercise all the powers vested in the nominal executive. Part V, Chapter 1, from article 52 to 78, of the constitution of India deal with the union executive, i.e., the President, vice President, the council of ministers and the Prime Minister. Under the Indian constitution, the political executive is legally and democratically constituted and is subjected to legislative control and judicial review.

#### **The President of India**

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

This article makes the following things clear:

- (a) The President can exercise the executive power of the union himself;
- (b) He can exercise these powers through officers subordinate to him;
- (c) Either he or his officers subordinate to him would exercise these powers in

accordance with the constitution;

- (d) His function can be increased by Parliament, and that the function can be conferred on authorities other than President.

### **Election of the President**

The election of the President is indirect. Article 54 of the constitution says that the President shall be elected by members of an electoral college consists of the elected members of both house of the Parliament and the elected members of the legislative Assemblies of the states.

Article 55 explains the manner of the election of the President. The election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot.

Value of votes of elected members of the state legislative assemblies and parliament is decided as per provisions of article 55(2) of the Constitution of India. Presidential election of India involves proportional representation from respective states. The number of votes assigned to a particular vote from a state assembly is decided as follows.

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

The value of votes of each MLA varied from state to state.(for example the President election of 2007 in Andhra Pradesh each MLA had 148 votes ,in Bihar ,each MLA had 173 votes ,and so on).

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

Value of vote of each elected

Members of parliament = Total value of votes of all the elected MLAs of

28 state Legislative Assemblies

Total number of elected MPs

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

Total number of valid votes polled + 1

Total number of seats to be filled + 1

### **Term of Office**

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

### **Qualification**

Article 58 prescribes the qualifications for the election as President. These are:

- (e) be a citizen of India
- (f) have completed the age of thirty five years
- (g) be qualified for election as a member of the house of the Parliament; and
- (h) must not hold any office of profit under the government of India or state government or other authority subject to the control of any of the said.

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

### **Emoluments and allowances of the President**

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

### **Procedure for Impeachment of the President**

When a President is to be impeached for violation of the constitution, the charge shall be preferred by either house of Parliament. The proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the house has been given of their intention to move the resolution and such resolution has been passed up by a majority of not less than two-thirds of the total membership of the house.

When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation. If as a result of the investigation a resolution is passed by a majority of not less than

two-thirds of the total membership of the House by which the charge was investigated or, caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

### **The President of India: Powers and Functions Administrative Powers**

Under Article 53 of the constitution the executive power of the union vested in the President who is empowered to exercise it either directly or through officers subordinate to him. This may be broadly classified under three categories: Executive powers, Legislative powers and Emergency powers. All executive actions of the Government of India are expressed to be taken in his name. All orders and instruments are to be made and executed in his name. He appoints the Prime Minister and other ministers on the advice of the Prime Minister. He allocates portfolios of the ministers. The ministers hold the office during the pleasure of the President. He appoints the Chief Justice of India, Judges of the Supreme court and High court of the States, Governor of the State, Lt. Governors and Chief Commissioners of the Union Territories, Attorney General of India, Comptroller and Auditor General of India, Chairman and Members of the UPSC, Election Commissioners and other statutory commissioners and India's Ambassadors, High Commissioners and Envoys to other countries.

As the Head of the State, The President accredits India's Ambassadors and envoys to foreign countries and receives foreign Ambassadors to India. All diplomatic activities are taken place in his name. All international treaties and agreements, multilateral as well as bilateral are negotiated by the Government of India in the name of the President. Establishment of diplomatic relationship with new state is done in his name.

The President is the Supreme Commander of the Defence Forces of India. He makes all higher appointments and promotions in respect of the Defence Force. He grants all honours and titles for acts of bravery and commendable services to the nation during war and peace.

The administration of the Union Territories is under the President. Article 243 of the constitution empowers the President to administer the union territories through the Governors or Chief Commissioners or any authority to be appointed him. He can entrust administration of a Union Territory to the Governor of the neighboring state. Such Governors always acts in accordance with the instruction of the President.

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

### **Role in Law -Making**

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

The President has the power to summon and prorogue the session of the Parliament or either of its two houses. The President can address both house of Parliament at the first session after general election, and the commencement of the first session of the Parliament of each year. The President can dissolve the Lok Sabha before the expiry of its full term of five years. In case of an unresolved deadlock in respect of any bill between the two houses, the President can summon, a joint sitting of the two houses.

The President can nominate two members from Anglo Indian community to the Lok Sabha in case that community has not got adequate representation in the house. President nominates 12 members to Rajya Sabha from the fields of Arts, Science, Literature, or Social Services.

Money bills can be introduced in Lok Sabha with the prior consent of the President. A bill passed by the Parliament becomes a law only after it gets the signature of the President. The President can also withhold his assent. He can return any bill to the Parliament for reconsideration. However, in case the Parliament passes it a second time, the President has to sign the bill and it essentially becomes law.

During the intervals between the two sessions of Parliament, the President can issue ordinances which have the same force and effect of an act of Parliament. Such ordinance has to be placed before the Parliament, when they came into session' and it ceases to operate at the expiry of six weeks from the reassembly of the Parliament or earlier if it fails to get approval of both the houses.

### **Financial Powers**

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

### **Judicial Powers**

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

## **Emergency Powers**

The Constitution of India contains special provision for dealing with emergencies. The President can declare three types of emergencies: National Emergency (Article 352), Constitutional Emergency in a State (Article 356), and Financial Emergency (Article 360).

National Emergency is declared, when the President is satisfied that the security of India threatened by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such an emergency was declared in 1962 (India- China war), 1965 (Indo - Pak war), and 1975-77 (declared by Indira Gandhi on account of 'internal disturbances'). After the 44<sup>th</sup> amendment the President can declare such an emergency only on the basis of a written request by Council of Ministers headed by Prime Minister. Such proclamation must be approved by the Parliament within one Month. Such emergency can impose for six months. It can be extended by six months by Parliamentary approvals. In such emergency, fundamental rights of India can be suspended.

Constitutional Emergency in a State is declared due to failure of constitutional machinery in a state. This emergency is also known as President's rule. If President is satisfied, on the basis of the report of the Governor of the state or from other sources that the governance in a state cannot be carried out according to the provisions of the constitution, he can declare emergency in the state. Such emergency must be approved by the Parliament within a period of two months. It is imposed for six months and can last for a maximum period of three years with repeated Parliamentary approvals in every six months. During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Parliament makes laws on the subject of the state list. All money bills have to be referred to the Parliament for approval.

If the President is satisfied that there is an economic situation in which financial stability or credit of India is threatened, he can proclaim Financial Emergency as per Article 360. Such an emergency must be approved by Parliament within two months. It has never been declared. In case of financial emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Court. All money bills passed by the State Legislature are submitted to the President for his approval. The President can suitably modify the distribution of revenues between the Union and the State. He can direct the states to observe certain principles relating to financial matters.

A review of the working of the provisions of the office of the President reveals that all the Presidents accepted their positions as the constitutional head of the state and they always acted upon the advice of the Council of Ministers.

### **Vice-President of India**

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

executive but as Chairman of Rajya Sabha, he is a part of Parliament.

### **Qualifications for the office of the Vice-President**

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

### **Election**

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

### **Term**

The term Vice- President is elected for five years. He is eligible for re -election. He may resign his office before the expiry of the normal term. His letter of resignation is to be addressed to the President.

### **Method of removal**

The Vice-President can be removed from his office by a resolution of the Rajya Sabha passed by its members and agreed by Lok Sabha. At least fourteen days' notice is necessary before such resolution is moved.

### **Salary**

The Vice-President gets a salary of Rs 75000 per month. However, the salary is not paid to him as vice-president, but he gets these emoluments as being the ex-officio Chairman of Rajya Sabha. In this capacity, he enjoys other facilities also like free residence, free medical aid etc.

### **Functions**

Vice-President performs a dual role : (1) as Vice-President (2) as the Chairman of Rajya Sabha. Under Article 65 of the constitution of India, the Vice-President act as the President in the event of a vacancy occurring due to death, resignation or removal of the President, or otherwise. When the President is unable to act owing to his absence, illness or any other cause, the Vice-President discharges the President's



functions for a temporary period until the President resumes his duties.

As the Chairman of the Rajya Sabha, the Vice-President presides over the meetings of the House. As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the house. He is the custodian of the rights and privileges of the House.

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

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

### **Organization of the Council of Ministers**

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

### **Powers and Functions Prime Minister**

Article 78 prescribes the duties of the Prime Minister. It says: It shall be the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposal for legislation. To furnish such information relating to the administration of the affairs of the Union and proposal for the legislation as the President may call for; and if the President requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

The above provisions suggest that there has to be a Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his powers. The powers of the Prime Minister are enormous and his position is paramount.

### **Formation of the Council of the Ministers**

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

### **Allocation of Portfolios**

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

### **Chairman of the Cabinet**

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

### **Chief Link between the President and the Cabinet**

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

### **Chief Co-ordinator**

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

### **Leader of the Parliament**

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

### **Determines the Foreign Policy**

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

### **Role in Economic Planning**

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

### **Role of Prime Minister during an Emergency**

The President declares an emergency only under the advice of the Cabinet, which in reality means the advice of the Prime Minister. During an emergency under

Art.352 the Prime Minister becomes very powerful and perhaps can act in a manner that may be a dictator.

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

### THE UNION COUNCIL OF MINISTERS

The council of Ministers headed by Prime Minister is the real executive in India. The President exercises all his powers and performs all his functions with the aid and advice of the Council of Ministers. The Ministers of the Council is appointed by the President on the recommendation of the Prime Minister. Each minister is allocated a department and all the ministers' work under the supervision of Prime Minister. All the ministers are collectively responsible to the House of the People. This responsibility, called the *collective responsibility* implies that the ministers work as one unit, one team; they swim and sink together. For attaining political homogeneity in a parliamentary democracy, the members are belonging to the majority political party (coalition).

The Council of Ministers is large body of ministers consisting of 80-85 ministers. Among them, the top category called *Ministers of Cabinet Rank*, which holds charge of the important ministries. Below this category, there is the body of ministers called the *Ministers of State*: some of them hold independent charge of some relatively minor departments while others are attached to the Cabinet Ministers. Still below is the body of ministers called the *Deputy Ministers*, each attached to the ministers of the two above categories. The usual cabinet meeting is attended by the Ministers of Cabinet Rank; the Ministers of State attended the Cabinet meeting only when they are invited.

The Council of Ministers work on certain features: ministers are members of the Parliament or they become members of either house with in a period of six months; they are collectively responsible to the Lok Sabha; they work as a team; they belong to the majority party; the proceedings of the cabinet meeting is kept secret; all the ministers work under the leadership of the Prime Minister.

#### **Cabinet**

Article 74 of the Constitution provides only the Council of Ministers and makes no mention of Cabinet. The Cabinet is as such an extra constitutional body. The following points illustrate the difference between the Council of Ministers and the Cabinet: The Cabinet is the part of Council of Ministers. The Council of Ministers is wider body of which Cabinet is small but very powerful All the ministers constitute the Council of Ministers, whereas the Cabinet consists of the top 15 20 ministers who stand designated as Cabinet Ministers. Only the Cabinet ministers take part in the

meetings of the Cabinet which are regularly held under the chairmanship of the Prime Minister. Policy making is the function of the Cabinet and not of the Council of Ministers.

### **Tenure**

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

The Council of Ministers perform very important functions: it formulates and determine all policies of the government; it carries on the whole administration of the Union Government; it recommends all major appointments; it prepare and enacts the national budget; it alone take the decisions of the administration; it conducts and regulate foreign relations; it helps all government legislations. There is a Cabinet Secretariat headed by an administrative official called the Cabinet Secretary who, conduct and coordinates the whole administration.

The powers and function of the Council of Ministers reveals that the strong and central position it occupies as the real and powerful executive in the Indian political system. As the maker of all policies, the director of administration and the supreme coordinator of government activity, the Cabinet enjoys an enviable position. The Council of Ministers is the centre of gravity and the most powerful institution of the Indian political system.

### **(b) Union legislature Parliament : Lok Sabha and Rajya Sabha**

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

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

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

**The parliament has three sessions every year:**

Budget session: 20–35 days in the months of

February to May. Monsoon session: 20–35 days in the months of July to August.

Winter session: 20-34 days in the months of November to December

**The Upper House of the Union Parliament: The Rajya Sabha (The Council of State )**

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

**Composition**

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

**Qualification of Members**

(a) He must be a citizen of India.

(b) He must be above the age of 30 years.

(c) He must not hold an office of profit under the Central or State Government.

(d) He should not be a insane or a bankrupt.

(f) He should not have been disqualified under any law of the Parliament.

**Tenure**

Rajya Sabha is a permanent House. It is not subject to dissolution like Lok Sabha. One-third of its members retire after every second year and elections are

held for the vacant seats. The tenure of a member of the Rajya Sabha is six years.

### **Chairman and the Deputy-Chairman of the Rajya Sabha**

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

### **Powers and Functions of Rajya**

#### **Sabha Legislative Powers**

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

#### **Financial Powers.**

A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited. Rajya Sabha has to return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within that time, the Bill is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha. Again, Rajya Sabha cannot amend a Money Bill; it can only recommend amendments and Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha.

Apart from a Money Bill, certain other categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some other types of Financial Bills on which there is no limitation on the power of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial Bills like any other Bill.

From all this, however, it does not follow that Rajya Sabha has nothing to do in matters relating to finance. The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of various Ministries - a matter exclusively reserved for Lok Sabha - no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill has been passed by both the Houses. Similarly, the Finance Bill is also brought before Rajya Sabha. Besides, the Department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees having ten members from Rajya



Sabha.

### **Executive Powers**

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

### **Constitution Amending Powers**

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

### **Electoral Powers**

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

### **Judicial Powers.**

The Rajya Sabha plays some role in the exercise of some Judicial Powers. The Rajya Sabha acting along with Lok Sabha impeaches the President of India. It can pass a special address for causing the removal of a judge of the Supreme Court and High Court. The charge against the Vice-President can be levelled in the Rajya Sabha only. The Rajya Sabha can pass resolution for the removal of some high officers like the Attorney General, Comptroller and Auditor General of India and Chief Election Commissioner. In case Lok Sabha stands dissolved, the Rajya Sabha is competent to give approval to an emergency proclamation of the president.

### **Special Powers of Rajya Sabha**

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

If Rajya Sabha passes a resolution by a majority of not less than two-thirds of



the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament becomes empowered to create by law such services.

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

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

Lok Sabha is the lower house of the Union Parliament. It represents the people of India. Lok Sabha is also known as the "House of the People" or the lower house. All of its members are directly elected by citizens of India on the basis of Universal Adult Suffrage, except two who are appointed by President of India. Every citizen of India who is over 18 years of age, irrespective of gender, caste, religion or race, who is otherwise not disqualified, is eligible to vote for the election of Member of Lok Sabha.

The Constitution provides that the maximum strength of the House be 552 members. It has a term of five years. To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt and should not be criminally convicted. At present, the strength of the house is 545 members.

Up to 530 members represent the territorial constituencies in States, up to 20 members represent the Union Territories and no more than two members from Anglo-Indian community can be nominated by the President of India if he or she feels that the community is not adequately represented. House seats are apportioned among the states by population in such a manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States.

Several seats are reserved for representatives of Scheduled Castes and Scheduled Tribes as per reservation quota implemented. There is currently no quota in India's parliament for participation from women; however, the Women's Reservation Bill proposes to reserve 33% of the seats in Lok Sabha for women

### ***Membership qualifications***

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

- (1) He must be a citizen of India.
- (2) He must not be less than 25 years of age.

- (3) He must not hold any office of profit under the Union or State Governments.
- (4) He should not have an unsound mind.
- (5) He should not be a bankrupt.
- (6) He should not have been declared an offender of a grave crime by any court of law.
- (7) He should possess all such qualifications as may be prescribed by a law of the Parliament.
- (8) For reserved seats, one should be member of the appropriate castes and/or tribes.

### **Tenure**

The normal term of the Lok Sabha is five-years, after which it is automatically dissolved. This term can be extended by during an emergency. In such cases, the term may be extended by one-year increments but fresh elections to the Lok Sabha must be held within six months of the end of the emergency. The President can dissolve Lok Sabha before the expiry of its term.

### **Sessions**

President can call the sessions of the Parliament at any time but the gap between two meetings of the Parliament cannot be more than six months. The President has the power to summon or prorogue or dissolve the Lok Sabha. At least three sessions of Lok Sabha take place in a year: Budget session: February to May, Monsoon session: July to September, winter session: November to December.

### **Special Privileges**

The members of Lok Sabha enjoy several privileges. They enjoy unrestricted freedom to express their views in the House. No action can be taken against them for any said by them in the House. They cannot be detained for any civil offence during and 40 days before and after the session. Their arrest in criminal cases can be made only after Speaker has been informed of it.

### **Powers and Functions of the Lok Sabha**

The Lok Sabha exercises Legislative, Executive, Financial, Judicial and Constituent powers.

#### **Legislative Powers**

An ordinary bill can become a law only after it has been passed by both Houses of Parliament. It can introduced either in the Lok Sabha or in the Rajya Sabha. In matters relating to ordinary bills, after the bill has been passed by the House where it was originally tabled (Lok Sabha or Rajya Sabha), it is sent to the other house, where it may be kept for a maximum period of 6 months. If the other House rejects the bill or a period of 6 months elapses without any action by that House, or the House that originally tabled the bill does not accept the recommendations made by the members of the other house, it results in a deadlock. This is resolved by a joint session of both Houses, presided over by the Speaker of the Lok Sabha and decided by a simple majority. The will of the Lok Sabha normally prevails in these matters, as its strength is more than double that of the Rajya Sabha.

### **Executive Powers**

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

### **Financial Powers**

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

### **Judicial Powers**

The Lok Sabha performs several judicial functions also. Lok Sabha has equal powers with the Rajya Sabha in initiating and passing a motion for the impeachment of the President by two-thirds of the membership of the House. Equal Powers with the Rajya Sabha in initiating and passing a motion for the impeachment of the judges of the Supreme Court and the state High Courts by a majority of the membership of the House and at least two-thirds majority of the members present and voting. It also investigates the charges levied by Rajya Sabha against the Vice-President of India. It can also jointly pass a special address to the President for the removal of some high officers of the state like the Attorney General, the Chief Election Commissioner, and the Comptroller and Auditor General of India. It can also take a disciplinary action against any member or any citizen who is found by it guilty of committing contempt of the House.

### **Amendment Power**

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

### **Approval of Declaration of Emergency**

Each declaration of emergency by the President has essentially get approved

by both the Lok Sabha and the Rajya Sabha within a stipulated period. 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. However, when the new Lok Sabha gets constituted, the emergency proclamation has to be got approval from it within 30 days, otherwise the declaration gets revoked.

### **Some other powers of Lok Sabha**

The Lok Sabha also perform several other functions: (a) Approval of ordinance issued by the President. (b) Change the boundaries of the states, creation of new states and change the name of the state. (c) Changing the jurisdiction of the Supreme Court and the High Court. (d) Revising the salary and allowances of the members of the Parliament. (e) The setting up of Joint PSC for two or more States. It can also pass a resolution for abolishing or reconstituting the upper chamber of a State Legislature. As directly elected, national representative House, the Lok Sabha really represents the sovereign will of the people of India.

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

The office of the Speaker occupies a pivotal position in a parliamentary democracy. It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. Speaker symbolises the dignity and power of the House over which he is presiding. Therefore, it is expected that the holder of this office of high dignity has to be one who can represent the House in all its manifestations. Even though the Speaker speaks rarely in the House, when he does, he speaks for the House as a whole. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy. His unique position is illustrated by the fact that he is placed very high in the Warrant of Precedence in our country, standing next only to the President, the Vice-President and the Prime Minister.

The Constitution of India provides that the Speaker's salary and allowances are not to be voted by Parliament and are to be charged on the Consolidated Fund of India. The Speaker has extensive functions to perform in matters administrative, judicial and regulatory, falling under his domain. He enjoys vast authority under the Constitution and the Rules, as well as inherently. As the conventional head of the Lok Sabha and as its principal spokesman, the Speaker represents its collective voice. Of course, he is the ultimate arbiter and interpreter of those provisions which relate to the functioning of the House. His decisions are final and binding and ordinarily cannot be questioned, challenged or criticised. The Speaker is the guardian of the rights and privileges of the House, its committees and members. It depends solely on the Speaker to refer any question of privilege to the Committee of Privileges for examination, investigation and report.

### **Term of Office**

The Speaker holds office from the date of his election till immediately before

the first meeting of the Lok Sabha after the dissolution of the one to which he was elected. He is eligible for re-election. On the dissolution of the Lok Sabha, although the Speaker ceases to be a member of the House, he does not vacate her office. The Speaker may, at any time, resign from office by writing under her hand to the Deputy Speaker. The Speaker can be removed from office only on a resolution of the House passed by a majority of all the then members of the House. Such a resolution has to satisfy some conditions like: it should be specific with respect to the charges and it should not contain arguments, inferences, ironical expressions, imputations or defamatory statements, etc. Not only should these, discussions be confined to charges referred to in the resolution. It is also mandatory to give a minimum of 14 days' notice of the intention to move the resolution

### **Election of Speaker**

In the Lok Sabha, the lower House of the Indian Parliament, both Presiding Officers—the Speaker and the Deputy Speaker- are elected from among its members by a simple majority of members present and voting in the House. As such, no specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that Speaker should be a member of the House.

### **Powers and Functions of the Speaker**

In the Lok Sabha Chamber, the Speaker's Chair is distinctively placed and, gets a commanding view of the entire House. Insofar as the proceedings are concerned, he is guided by the provisions of the Constitution and the Rules of Procedure and Conduct of Business in Lok Sabha. He also benefits from the directions issued by her predecessors which are compiled periodically. Besides, he is assisted by the Secretary-General of the Lok Sabha and senior officers of the Secretariat on parliamentary activities and on matters of practice and procedure. In the absence of the Speaker, the Deputy Speaker discharges his functions. A member from the Panel of Chairmen presides over the House in the absence of both the Speaker and the Deputy Speaker.

- (1) **To presides over the meetings of the House.** The Speaker presides over the meetings of the House and conducts its proceedings; he also presides over the joint sitting of the two houses.
- (2) **To maintain discipline in the Lok Sabha.** The Speaker maintains discipline in the House. If any member disrupts or tries to disrupt the proceedings of the House, the Speaker can warn him or can ask him to leave the House. He can suspend from the House a member whom he finds guilty of violating the discipline and decorum.
- (3) **To fix the Agenda of the House.** The Speaker, in consultation with other members, committee of the House and the Prime Minister, fixes agenda of the meeting of the House.
- (4) **Permission to Ask Questions.** Each member of the House can put question to the minister for getting information on various matters. For the exercise of this power, however the permission of the Speaker is required

- (5) **To Conduct the Business of the House.** The Speaker conduct the business of the House, allows the members to introduce the bill or the call attention and adjournment motions, recognise the members on the floor of the House, gives them time for speaking, puts the matters to vote, and announces the results.
- (6) **Interpretation of Rules and Procedures.** In case a dispute regarding the rules of the House, the Speaker interprets and applies the rules. The interpretation of the Speaker is final and cannot be challenged in any court of law.
- (7) **Power to adjourn the House.** The Speaker can adjourn the meeting of House when it is not complete or if the conduct of the business of the House is not possible due to the disorderly behaviour of its members or for any other purpose.
- (8) **Decision about the Money Bill.** If a dispute arising regarding the question as to the whether a bill is a Money Bill or not, the decision is made by the Speaker. Such a decision is final and it cannot be challenged inside or outside the House.
- (9) **Protection of the Privileges of the Members.** The members of the House enjoy many privileges which are protected by the Speaker. All cases of disputes relating to the privileges of the members are referred by the Speaker to the committee on privileges.
- (10) **Link between the President and the Parliament.** The members of the Lok Sabha can approach the President through the Speaker who acts a link between President and the Parliament.
- (11) **Role regarding the Committees of the House.** The Speaker plays an important role in the composition of the Committees. He is the *ex-officio* Chairman of some important Committees such as Business Advisory Committee, Committee on Rules.
- (12) **Administrative Functions.** The Speaker has several administrative responsibilities. He is the final control of the Lok Sabha Secretariat. He appoints the employees of the secretariat, determines several rules for them and supervise their work.
- (13) **The Speaker has certain other functions to perform as the head of the Lok Sabha.** She is the *ex officio* President of the Indian Parliamentary Group (IPG), set up in 1949, which functions as the National Group of the Inter-Parliamentary Union (IPU) and the Main Branch of the Commonwealth Parliamentary Association (CPA). In that capacity, members of various Indian Parliamentary Delegations going abroad are nominated by him after consulting the Chairman of the Rajya Sabha. Most often, the Speaker leads such Delegations. Besides, he is the Chairman of the Conference of Presiding Officers of Legislative Bodies in India.

The Speaker of Lok Sabha enjoys a position of respect and dignity. He acts as the representative and leader of the House and its impartial Chairman. The office of the



Speaker in India is a living and dynamic institution which deals with the actual needs and problems of Parliament in the performance of its functions. The Speaker is the constitutional and ceremonial head of the House. He is the principal spokesperson of the House. It is in his responsibility of conducting the business of the House in a manner befitting the place of the institution in a representative democracy is invested. The founding fathers of our Constitution had recognised the importance of this office in our democratic set-up and it was this recognition that guided them in establishing this office as one of the prominent and dignified ones in the scheme of governance of the country

### **Deputy Speaker of Lok Sabha**

The Deputy Speaker of the Lok Sabha is the vice-presiding officer of the Lok Sabha, the lower house of Parliament of India. He acts as the presiding officer in case of leave or absence caused by death or illness of the Speaker of the Lok Sabha.

The Deputy Speaker 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 Lok Sabha. He holds office till either he ceases to be a member of the Lok Sabha or he himself resigns from the Lok Sabha. He can be removed from office by a resolution passed in the Lok Sabha by a majority of its members. He is supposed to resign from his original party because as a Deputy Speaker, he has to remain impartial.

### ***Powers and functions of the Deputy Speaker***

In case of the absence of the Speaker, the Deputy Speaker presides over the sessions of the Lok Sabha and conducts the business in the house. He decides whether a bill is a money bill or a non money bill. He maintains discipline and decorum in the house and can punish a member for his unruly behavior by suspending him. He permits the moving of various kinds of motions and resolutions like the motion of no confidence, motion of adjournment, motion of censure and calling attention notice. The Deputy Speaker decides on the agenda to be taken up for discussion during the meeting

## **(c) THE INDIAN JUDICIAL SYSTEM**

The Indian Judiciary is partly a continuation of the British legal system established by the English in the mid-19th century. The Constitution of India is the supreme legal document of the country. There are various levels of judiciary in India — different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government. The Indian judiciary is independent of the executive and legislative branches of government according to the Constitution

### **The Supreme Court of India**

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and leaving it to Parliament to increase this number. In the early years, all the



Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to accumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India, as the sanctioned full strength. Supreme Court Judges retire upon attaining the age of 65 years.

### **Qualifications of the Judges of the supreme Court**

In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

### **Term of office**

A judge of the Supreme Court holds office till he attains the age of sixty five years. Judges can be removed by impeachment.

### **Independent Judiciary**

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. Judges can be removed by impeachment. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity. A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India.

### **Powers and Functions of the Supreme Court**

The Supreme Court of India is the highest court of the land as established by Part V, Chapter 4 of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest court of appeal.

### **Original Jurisdiction**

It has an original jurisdiction in any dispute between the Government of India and or more States; or between the Government of India and any States or States on the one side and one or more other States on the other; or between two or more States; that involves any question on which the existence of a legal right depends.

### **Appellate Jurisdiction**

Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which

takes up appeals against judgments of the High Courts of the states and territories. However, it also takes writ petitions in cases of serious human rights violations or any petition filed under Article 32 which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution. The appellate jurisdiction is mentioned in Articles 132(1), 133(1) or 134 of the Constitution. The decision of the High Court can be questioned in the Supreme Court of the country. One can appeal to the Supreme Court, if he or she is not satisfied with the decision of the High Court. The Supreme Court has the provision of accepting or rejecting the case at its own discretion. There are also provisions of pardoning criminals and canceling their lifetime imprisonment or death sentence by the Supreme Court.

### **Advisory Jurisdiction**

The President of India can seek the advice of the Supreme Court in respect of any legal matter and disputes of high public importance. In such a case Supreme Court gives its advisory opinion to the President.

### **Judicial Review**

The Constitution is the supreme law of the land and the Supreme Court acts as the final interpreter of the Constitution. It can determine the constitutional validity of all Acts passed by the Union Parliament and the State Legislatures. It has power to reject any act of the legislature or the executive, which finds unconstitutional.

### **The Court of Records**

The Supreme Court is the Court of records. Its decisions bind all courts in India. Under Article 141 of the Constitution of India all courts in India which includes High courts are bound by the judgments and orders of the Supreme Court of India by precedence.

### **Powers to punish contempt**

Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish anyone for contempt of any law court in India including itself.

### **High Courts in India**

There are High Courts in almost all the states of India and the Union Territories. The High Courts work under the Supreme Court in the country. These courts are vested with lot of powers. They decide on both civil as well as criminal cases. Most of the cases that are handled by the High Courts of the country are passed on from the district or lower courts. India's unitary judicial system is made up of the Supreme Court of India at the national level, for the entire country and the 21 High Courts at the State level. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other district courts. High Courts are instituted as constitutional courts under Part VI,

Chapter V, Article 214 of the Indian Constitution.

### **Qualifications**

The Constitution provides the essential qualifications for the appointments of

the judges in the High Court: he should be a citizen of India. He must have held a judicial office in the territory of India for at least ten years, or he must have been an advocate of a High Court or two or more such courts in succession for at least ten years.

### **Appointments**

The judges of the High Courts are appointed by the President of India, in consultation with the Chief Justice of India and the Governor of the state. The Chief Justice heads each of the High Courts in India. The numbers of judges vary from one court to other depending on the area that the High Court covers and the number of cases that it handles. There are also High Courts that serve more than one Indian state or Union Territory. Each of these courts have original and appellate jurisdiction under them. Summons can also be issued by the High Court.

### **Tenure**

Every judge of a High Court, including the Chief Justice holds office till attain the age of 65 years. A judge can also resign earlier if he so desires. A judge of the High Court can be removed by the process impeachment.

### **Powers and Functions**

The High Courts are the principal civil courts of original jurisdiction in the state along with District Courts which are subordinate to the High courts.

### **Original Jurisdiction**

However, High courts exercise their original civil and criminal jurisdiction only if the courts subordinate to the High court in the state are not competent to try such matters for lack of pecuniary, territorial jurisdiction. High courts may also enjoy original jurisdiction in certain matters if so designated specifically in a state or Federal law. e.g.: Company law cases are instituted only in a High court.

### **Appellate Jurisdiction**

The appellate jurisdiction of a High Court extends to both civil and criminal cases. In a civil case appeal to the High Court lies from the decision of a district court. Thus the High Court, appeal can be either a first appeal or a second appeal. All cases involving capital punishment awarded by the Session Court or the punishment of four years or more come to High Court as appeal.

### **Jurisdiction regarding Fundamental Rights**

However, primarily the work of most High Courts consists of Appeals from lower courts and writ petitions in terms of Article 226 of the Constitution of India. Writ Jurisdiction is also original jurisdiction of High Court.

### **The Court of Record**

High Courts, like the Supreme Court of India, are also Courts of Record. These have the power to punish for their contempt by any person or institution.

### **Power of Judicial Review**

It has the power to declare any law or ordinance *ultra vires* if it is against the Constitution or it contravenes any provision of the Constitution.

The High Court occupies an important position in the judicial system of India.

### **District Courts**

The District Courts of India are the courts established by the State governments in India for every district or for one or more districts together taking into account the number of cases, population distribution in the district. They administer justice in India at a district level. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The decisions of District court are subject to the appellate jurisdiction of the High court. Each state is divided into judicial districts presided over by a 'District and Sessions Judge'. He is known as a District Judge when he presides over a civil case and a Sessions Judge when he presides over a criminal case. He is the highest judicial authority below to a High Court judge. Below to it, there are courts of civil jurisdiction, known by different names in different states.

### **Independence of Judiciary in India**

The following steps have been taken to secure the independence of judiciary in India.

#### **Separation Judiciary from Executive and Legislature**

Judiciary in India is neither a branch of the executive nor a subordinate of the Legislature. Part IV of the Constitution gives directive to the state to effect separation of judiciary from the executive.

#### **Appointment of Judges by the President**

The judges of the High Court and Supreme Court are appointed by the President. The President consults the Chief Justice while appointing the other judges of the Supreme Court.

#### **High Qualification**

The constitution prescribes specific and high qualification for the judges.

#### **Long Tenure**

The Constitution provides that the Judges shall remain in office till they attain the age of 65 years.

#### **Security of Service and High Salary**

No judge can be removed from the office except by impeachment and only on the grounds of proven misbehavior or incapacity. Every Judge of the Supreme Court and High Court gets huge salary. Besides this, they are entitled to a residential accommodation, medical allowances and several other perks. Their salaries cannot be reduced during their term of office, except a situation of financial emergency under Article 360.

#### **Power to punish Contempt of Court**

The Supreme Court and other courts have been given the power to punish all cases involving a commission of contempt of court.

#### **Wide Jurisdiction and Power of Judicial review**

It acts as a guardian and interpreter of the Constitution, the protector of the Fundamental Rights, and the arbiter between the Union and the State. It has the power to determine the Constitutional validity every Act of the legislature and the executive.

Thus the Constitution of India incorporates all such features as are considered

essential for the preservation of independent judiciary.

### **Judicial Activism and Public Interest Litigation**

Judicial activism is when courts do not confine themselves to reasonable interpretations of laws, but instead create law. Alternatively, judicial activism is when courts do not limit their ruling to the dispute before them, but instead establish a new rule to apply broadly to issues not presented in the specific action. "Judicial activism" is when judges substitute their own political opinions for the applicable law, or when judges act like a legislature rather than like a traditional court. In so doing, the court takes for itself the powers of legislature, rather than limiting itself to the powers traditionally given to the judiciary. Judicial activism describes judicial ruling suspected of being based on personal or political considerations rather than on existing law. Judicial activism was made possible in India, thanks to PIL (Public Interest Litigation).

PIL, a manifestation of judicial activism, has introduced a new dimension regarding judiciary's involvement in public administration. In the beginning, the application of PIL was confined only to improving the lot of the disadvantaged sections of the society who by reason of their poverty and ignorance were not in a position to seek justice from the courts and, therefore, any member of the public was permitted to maintain an application for appropriate directions. Beginning with the *Ratlam Municipality case* the sweep of PIL had encompassed a variety of causes.

Prior to the 1980s, only the aggrieved party could approach the courts for justice. However, post 1980s and after the emergency era, the apex court decided to reach out to the people and hence it devised an innovative way wherein a person or a civil society group could approach the supreme court seeking legal remedies in cases where public interest is at stake. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were among the first judges to admit PIL's in the court. Filing a PIL is not as cumbersome as any other legal case and there have been instances when even letters and telegrams addressed to the court have been taken up as PIL's and heard by the court.

Ensuring green belts and open spaces for maintaining ecological balance; forbidding stone-crushing activities near residential complexes; earmarking a part of the reserved forest for Adivasis to ensure their habitat and means of livelihood; compelling the municipal authorities of the Delhi Municipal Corporation to perform their statutory obligations for protecting the health of the community; compelling the industrial units to set up effluent treatment plants; directing installation of air-pollution-controlling devices for preventing air pollution; directing closure of recalcitrant factories in order to save the community from the hazards of environmental pollution and quashing of a warrant of appointment for the office of Judge, High Court of Assam and Guwahati are some of the later significant cases displaying judicial activism. A five-member Bench of the Andhra Pradesh High Court in *D. Satyanarayana vs. N.T. Rama Rao* has gone to the extent of laying down the proposition that the executive is accountable to the public through the instrumentality of the judiciary.

A common criticism we hear about judicial activism is that in the name of interpreting the provisions of the Constitution and legislative enactments, the judiciary often rewrites them without explicitly stating so and in this process, some of the personal opinions of the judges metamorphose into legal principles and constitutional values. One other facet of this line of criticism is that in the name of judicial activism, the theory of separation of powers is overthrown and the judiciary is undermining the authority of the legislature and the executive by encroaching upon the spheres reserved for them. Critics openly assert that the Constitution provides for checks and balances in order to pre-empt concentration of power by any branch not confided in it by the Constitution.

#### **d) GOVERNMENT OF THE STATES**

##### **THE GOVERNOR**

The Governor is the head of the state executive. He is also the representative of the Centre in the state. The Governors and Lieutenant-Governors of the states and territories of India have similar powers and functions at the state level as that of the President of India at Union level. Governors exist in the states while Lieutenant-Governors exist in union territories and in the National Capital Territory of Delhi. The Governor acts as the nominal head whereas the real power lies in the hand of the Chief Ministers of the states and the Chief Minister's Council of Ministers. The Governors and Lieutenant-Governors are appointed by the President for a term of 5 years.

Article 153 of the Constitution provides that "There shall be a Governor for each state". Article 155 lays down that "Governor of a state shall be appointed by the President by a warrant under his hand and seal". The President appoints the Governor on the advice of the Prime Minister.

##### **Qualifications**

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

##### **Term**

The Governor is appointed for a period of five years. But he holds office during the pleasure of the President. The President can remove or transfer him at any time. There is no provision of impeachment, as it happens for the President.



### **Legal Immunities of the Governor**

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

### **Powers and Functions of the Governor**

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

#### **Executive powers**

The Constitution vests in the Governor all the executive powers of the State Government. The Governor appoints the Chief Minister who enjoys the support of the majority in the Legislative Assembly (Vidhan Sabha). The Governor also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the Chief Minister.

The Council of Ministers remains in power during the 'pleasure' of the Governor, but in the real sense it means the pleasure of the Vidhan Sabha. As long as the majority in the Vidhan Sabha supports the government, the Council of Ministers cannot be dismissed.

The Governor appoints the Chief Minister of a state. He/she also appoints the Advocate General and the chairman and members of the State Public Service Commission. The President consults the Governor in the appointment of judges of the High Courts and the Governor appoints the judges of the District Courts. The Governors of Assam and Sikkim have special powers for protecting the interests of the Scheduled Tribe.

#### **Legislative powers**

The Governor summons the sessions of both houses of the state legislature and prorogues them. The Governor can even dissolve the Legislative Assembly. These powers are formal and the Governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister.

The Governor inaugurates the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. The Governor's address on these occasions generally outlines new policies of the state government.

A bill that the state legislature has passed can become a law only after the Governor gives his assent. The Governor can return a bill to the state legislature, if it is not a money bill, for reconsideration. However, if the state legislature sends it back to the Governor for the second time, the Governor must assent to it. The Governor has the power to reserve certain bills for the President.

When the state legislature is not in session and the Governor considers it necessary to have a law, then the Governor can promulgate ordinances. These



ordinances are submitted to the state legislature at its next session. They remain valid for no more than six weeks from the date the state legislature is reconvened unless approved by it earlier.

### **Financial powers**

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

### **Judicial Powers**

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

### **Discretionary powers**

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

#### **In the appointment of the Chief Minister of a state**

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

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

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

#### **Dismissal of the Ministry**

The Governor can use his discretion in dismissing a ministry when the party in power loses majority or is likely to lose majority in the State Legislature due to a revolt or split in the party.

### **State Council of Ministers and the Chief Minister**

The Constitution of India provides a parliamentary system of government at the state level. It lays down that the Governor of the state shall act the constitutional and nominal head of the state executive and that the real executive powers shall be exercised by the State Council of Ministers with the Chief Minister as its head.

The process of the formation of State Council of Ministers begins with the appointment of Chief Minister by the Governor. The Chief Ministers elects his team of ministers and submits the list to the Governor who formally appoints the

ministers. The Council of Ministers has the following categories of ministers: Cabinet Ministers, Minister of State and Deputy Ministers.

### **Tenure**

The term of the State Council of Ministers is not fixed. The Minister hold office during the pleasure of the Governor. In actual practice it remains in office so long as it enjoys the support of the majority in Legislative Assembly. The ministers are individually responsible to the Legislative Assembly.

### **Powers and Functions**

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

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

### **State Chief Minister**

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

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

- (1) **Formation of the Council of Ministers.** The Constitution gives him the legal right to select his ministers. All ministers are appointed by the Governor on the advice

of the Chief Minister. The Chief Minister has the privilege to re-organize the Council of Ministers, if he desires. He can ask any ministers to resign from his Cabinet.

- (2) **Distribution of Portfolios.** The Chief Minister allocates the portfolios among the ministers. He decides who will be a Cabinet Minister or a Minister of State or Deputy Minister. The Chief Minister also has the power to re-shuffle the portfolios of the ministers in his Cabinet.
- (3) **Chairman of the Council of Ministers.** The Chief Minister preside over the meetings of the Cabinet. He prepares the agenda of the meetings, communication it to the ministers and then presides over the meetings.
- (4) **The Chief Link and the Advisor.** The Chief Minister is the link between the Governor and the Council of Ministers. It is his duty to communicate to the Governor all the decisions of the Council of Ministers, relating to the administration of the State and proposal of the legislation. He is the chief advisor of the Governor
- (5) **To manage and Co-ordinate the working of the various Departments.** The Chief Minister has the responsibility of coordinating the work of various departments of the government. He resolves the conflict or deadlocks between any two or more departments. His decisions supersede the decisions of the ministers.
- (6) **Role as the Leader of the State Legislative Assembly.** The Chief Minister is the leader, not only of his party, but also of the Legislative Assembly. He acts as the spokesmen of the government and makes important announcement on behalf of the government. He is the chief defender of the policies of the government.
- (7) **Appointment making Powers.** All the major appointments and promotions are made by the Governor on the advice of the Chief Minister.
- (8) **Power of getting the state Legislature Dissolved.** The Chief Minister has the right to advice the Governor to dissolve the State Legislative Assembly. The advice is binding upon the Governor when the Chief Minister still has a majority support.

### **State Legislature**

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

### **Legislative Assembly or Vidhan Sabha.**

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

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

***Qualifications required to become a member***

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

**Term**

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

**Powers and Functions of the Legislative Assembly**

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

**Control over the Executive**

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

**Financial powers**

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

**Legislative Powers**

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

### **Amendment Powers**

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

### **Electoral Functions**

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

### **Speaker of the Legislative Assembly**

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

#### **(1) To preside over the meetings of the House**

The Speaker presides over the meetings of the House and conducts its proceedings; he also presides over the joint sitting of the two houses.

#### **(2) To maintain discipline in the Legislative Assembly**

The Speaker maintains discipline in the House. If any members disrupt or try to disrupt the proceedings of the House, the Speaker can warn him or can ask him to leave the House. He can suspend from the House a member whom he finds guilty of violating the discipline and decorum.

#### **(3) To fix the Agenda of the House**

The Speaker, in consultation with other members and the Chief Minister fixes agenda of the meeting of the House.

#### **(4) Permission Ask Questions**

Each member of the House can put question to the minister for getting information on various matters. For the exercise of this power, however the permission of the Speaker is required

#### **(5) To Conduct the Business of the House**

The Speaker conduct the business of the House, allows the members to introduce the bill or the call attention and adjournment motions, recognise the members on the floor of the House, gives them time for speaking, puts the matters to vote, and announces the results.

#### **(6) Interpretation of Rules and Procedures.** In case a dispute regarding the rules of the House, the Speaker interprets and applies the rules. The interpretation of the Speaker is final and cannot be challenged in any court of law.

#### **(7) Power to adjourn the House**

The Speaker can adjourn the meeting of the House when it is not complete or if the conduct of the business of the House is not possible due to the disorderly behaviour of its members or for any other purpose.

#### **(8) Decision about the Money Bill**

If a dispute arising regarding the question as to the whether a bill is a Money Bill or not, the decision is made by the Speaker. Such a decision is final and it cannot be challenged inside or outside the House.

### **(9) Protection of the Privileges of the Members**

The members of the House enjoy many privileges which are protected by the Speaker. All cases of disputes relating to the privileges of the members are referred by the Speaker to the committee on privileges.

### **(10) Link between the Governor and the Legislative Assembly**

The members of the Legislative Assembly can approach the Governor through the Speaker who acts a link between Governor and the Legislative Assembly.

### **(11) Administrative Functions**

The Speaker has several administrative responsibilities. He appoints the employees of his office, determines the several rules for them and supervises their work.

### **Legislative Council or Vidhan Parishad**

The Legislative Council or the Vidhan Parishad is the Upper Chamber of the State Legislature. Union Parliament has the power' to create or abolish the Legislative Council in various states on the basis of resolutions adopted by special majority in the Assemblies.

As mentioned in the constitution the total membership of the Legislative Council shall not be less than forty and more than one third of the total number of members of the Legislative Assembly of the concerned state.

All the members of the Legislative Council are either indirectly elected or nominated by the Governor. Let us take a look at the way the Legislative Council is constituted.

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

### **Qualifications**

Very simple qualifications are prescribed for membership in the Vidhan Parishad. Any Indian citizen who is 30 years of age or more having such other qualifications as prescribed by the Parliament can become a member of the Vidhan



Parishad.

Of course a person cannot simultaneously be a Member of Parliament and State Legislature. The Legislative Council like the Council of States is a permanent chamber, not subject to dissolution. The members are elected for a period of six years and like Rajya Sabha one-third of members retire every second year. The Legislative Council elects its Chairman and Deputy Chairman from amongst its members.

### **Powers and Functions of Legislative Council**

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

#### **Legislative Powers**

Ordinary bills can originate in any chamber of the legislature. A bill in order to become an Act must be approved by both the chambers and receive the assent of the Governor. The Governor may give his assent or return the bill back to" legislature with his observations. If the Legislative Council disagrees with a bill passed by the Legislative Assembly, then the bill must have a second journey, from the Assembly to the Council.

But ultimately the views of the Assembly shall prevail. The Council has no powers to advise a bill passed in the Assembly. It can only delay the passage of the bill for 3 months in the first instance and for one month in the second. There is no provision of joint sitting as in case of disagreement in Parliament over ordinary bills. In the ultimate analysis the Legislative Council is a dilatory chamber so far as ordinary legislation is concerned. It can delay the passage of the bill maximum for a period of four months.

#### **Financial Powers**

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

#### **Control over the Executive**

The Council can control the executive by way of putting questions to ministers, by raising debates and adjournment motions to highlight the lapses of the government but it cannot throw a government out of power. The Legislative Assembly in addition, to the powers discussed above enjoys the power to move vote of no confidence which can force the government to resign. In case of controlling the executive the final say lies with the Legislative Assembly.

The makers of the Constitution have deliberately given a secondary position to the Legislative Council so that both the chambers in the state do not compete with each other for supremacy. The purpose was to accommodate various professional interests in the Legislative Council, who through their experience can act as the friend, philosopher and guide of the Legislative Assembly.



