
Unit-11: Executive

Structure

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11.0 OBJECTIVES

As in all parliamentary systems, India has both a nominal and real executive. This unit examines the office of the President of India and the Council of Ministers headed by the Prime Minister. After going through this unit you should be able to:

- Describe the powers the President of India.
 - Explain the procedure for the election of the President of India.
 - Describe the composition and functions of the Council of Ministers
 - Identify the sources of power and influence of the Prime Minister
 - Discuss the position of the President and Prime Minister in the Indian political system.
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11.1 INTRODUCTION

The executive power of the government of India is vested in the President of India, who is both the formal head of the state and the symbol of the nation. The Constitution of India, however, bestows authority and dignity to the office of the President without providing adequate powers to rule. Instead, the President performs essentially a ceremonial role. The Prime Minister exercises real executive power. While the President is the head of the state, the Prime Minister is the head of the government. The President carries out the actual functions of the government only with the aid and advice of the Prime Minister. As one political scientist observed, for a President to use the executive powers formally vested in the office would be to misuse and abuse the trust reposed in the highest dignitary in the land. How are the incumbents of these two important offices of the executive elected or selected? What is the position of the President and the Prime Minister in the Indian political system?

What is the relationship between the executive and legislature in a parliamentary system such as one prevailing in India? These are some of the questions that we seek to address in this unit.

11.2 PRESIDENT OF INDIA

The constitution has made detailed provisions to see that the President, the head of the state, is a ceremonial head and that he did not arrogate to himself any real power. The President is indirectly elected for term of five years and can be removed on the basis of impeachment proceedings brought against him by the Parliament. The Constitution also provides for the post of a Vice President, also indirectly elected, who would serve as head of the state in the event of the President's incapacity or death.

11.2.1 Qualifications

Articles 58 and 59 of the Constitution of India lay down the qualifications for the office of the President of India. A candidate for the office of the President should be a citizen of India, must have completed 35 years of age and posses other qualifications which are necessary to become a member of the Lok Sabha. He/she should not hold any office of profit under the Union, State or local governments at the time of his election, nor should he be a member of either house of Parliament or state legislature. Besides, the candidate should possess such other qualifications as may be prescribed by the Parliament from time to time.

11.2.2 Method of Election

The Constitution prescribes an indirect election through an electoral college (composed of the elected members of Parliament and the elected members of the state legislative assemblies) on the basis of proportional representation and by means of single transferable vote. Based on the system of principles of uniformity among states and parity between the centre and the states, the election procedure is designed to ensure the election of a truly national candidate.

To ensure uniformity among states, the value of the votes of elected members of the state assemblies is calculated on the basis of the total population of the state. The value of a state elector's vote is worked out by dividing the total population of the state, by the total number of elected members in the assembly. The quotient obtained is divided by 1000 to obtain the value of the vote of each member of the assembly in the presidential election. The value of the vote of a member of Parliament is obtained by dividing the total number of votes given to all the elected members of the

states assemblies by the total number of elected members of both the houses of the Parliament.

Voting is by single transferable vote, with electors casting first and second preferences. A candidate who receives an absolute majority of votes cast by the Electoral College is declared the winner. In case no candidate secures absolute majority in the first counting, the second preference votes of the lowest polling candidate are transferred to the other remaining candidates until such time as one candidate crosses the threshold of 50 percent of the votes cast.

This method of election was intended to make the Presidential election broad based to achieve political balance between the Centre and the states. Consequently, the President represents not only the Union but also the States. This is in keeping with the federal character of the Indian polity.

11.2. 3 Term of Office and Removal of the President

The term of the office of the President of India is five years. His tenure commences from the date on which he assumes office after taking an oath administered by the Chief Justice of India. Though the constitution is silent, the President can seek a second term. For instance, Rajendra Prasad was elected as the President twice, though Jawaharlal Nehru, the Prime Minister was not in favour of Rajendra Prasad's second term. But the latter was supported by a large number of Congress leaders

The President remains in office until his successor enters office. However, if the President wishes to resign, he could send his resignation letter to the Vice President. If the post of the President falls vacant, the Vice-President takes over the charge. But the election for the post of President must be conducted within six months from the date of occurrence of vacancy.

Articles 56 and 61 deal with the procedure for impeaching the President of India. In this regard, the constitution lays down 'violation of the Constitution' as the ground for removal. The process of impeachment can be initiated in either house of parliament and must be passed by not less than two-thirds of the total membership of the house in which it has been moved. If the other house investigates the charge and two-thirds majority of that house find him guilty, then the President stands impeached from the office from the date of passing of the resolution. Thus, the procedure of removal of the President is difficult and has been made so to prevent misuse of this power by the Parliament. Till date, no President has been impeached.

11. 3 POWERS OF THE PRESIDENT

Article 53 deals with the executive powers of the President of India. The powers of the President are broadly divided into two types, namely, ordinary and emergency powers. The ordinary powers of the President can be grouped as executive, legislative, financial and judicial powers.

The executive powers of the Union are vested in the President. Article 53 vests all executive powers in him and empowers him to exercise these powers directly by himself or through officers subordinate to him. Article 75 requires the Prime Minister to communicate to the President all decisions of the Union Council of Ministers. Article 77 holds that all executive powers of the Union government shall be exercised in the name of the President.

The President has both administrative and military powers. The President has the power of appointment and removal of high dignitaries of the State. The President appoints the Prime Minister and, on the latter's advice, the council of ministers, the Attorney-General, the justices of the Supreme Court and High Courts, members of special commissions (such as the Union Public Service Commission and the Election Commission); and the governors of states. The choice of the Prime Minister is not a discretionary prerogative of the President but is usually dictated by the party commanding a majority following in the Lok Sabha.

The President of India is also the Commander-in-Chief of the Defence Forces. He appoints the Chiefs of the Army, the Navy and the Air Force. He has the power to declare war and conclude peace. But all these powers have to be exercised by him subject to the ratification of the Parliament. As pointed out, he exercises all the executive powers only with the aid and advice of the Council of Ministers headed by the Prime Minister.

Even though the President is not a member of either house of Parliament, Article 79 states that the President is an integral part of the Union Parliament. As we saw in Unit 11, the President has the power to summon both the houses of Parliament, nominate twelve members to the Rajya Sabha, has the right to address either house or their joint session at any time and the power to dissolve the Lok Sabha. All money bills to be introduced in the Parliament have to obtain the recommendation of the President. Such a prior recommendation is also necessary for introducing bills regarding the formation of new states, alteration of areas, boundaries, names of the existing states, etc. Finally, when any bill is passed by the Parliament, it can become an Act only when it has the assent of the President. The President can withhold or return a non-money bill for the reconsideration of the Parliament. However, if

the same is passed by both the houses with or without modifications and returned to the President, the latter is bound to give his assent.

When the Parliament is not in session, the President can promulgate ordinances in public interest. These ordinances have the same force and effect as the laws passed by the Parliament. However, they have to be placed before the Parliament within a period of six weeks from the day of the reassembling of Parliament. Without the Parliament's approval, the ordinance will become invalid.

Article 254 empowers the President to remove inconsistencies between laws passed by the Parliament and state Legislatures and the subjects included in the Concurrent list. Another legislative function President having a bearing on states is that the Governor of a state can reserve certain bills passed by the state Legislatures for the consideration of the President.

The judicial powers of the President of India include the appointment of the justices of the Supreme Court and High Courts, and the power to grant pardon, reprieve, suspension, remission or commutation of punishment or sentence of court. These powers of granting pardon are given to the President for removing the extreme rigidity in the criminal laws and for protecting the persons on humanitarian considerations. The President also has the right to seek the advice of the Supreme Court on some important constitutional, legal and diplomatic matters. In 1977, the President sought the advice of the Supreme Court for creating Special Courts to try the emergency excesses.

11.3 1 Emergency Power

With the intention of safeguarding the sovereignty, independence and integrity of Union of India, the constitution bestows the President of India with emergency powers. The President is empowered to declare three types of emergencies, namely, a) national emergency arising out of war, external aggression or armed rebellion, b) emergency arising due to the break down of the constitutional machinery in the States and c) financial emergency.

The President can make a proclamation of national emergency at any time if he is satisfied that the security of Indian any part of the country is threatened by war, external aggression or armed rebellion. This proclamation must be submitted to the Parliament for its consideration and approval. It must be accepted within one month by both the houses of Parliament by two-third of the members present and voting. If the Parliament fails to approve the proclamation bill, it ceases to operate. If approved, it can continue for a period of six months. However, it can continue for any length of time if the President

approves the proclamation for every six months. The Parliament however, has the power to revoke the emergency at any time by a resolution proposed by at least one tenth of the total members of the Lok Sabha and accepted by a simple majority of the members present and voting. National emergency under Article 352 was proclaimed for the first time in 1962 when the Chinese aggression took place. The second proclamation was made in 1971 during the Bangladesh war. On 26th June 1975, for the first time, the President proclaimed, on the advice of the Prime Minister, emergency in the name of grave danger to internal security.

When there is a breakdown of the constitutional machinery in the state, the President can impose emergency in that state. Article 356 provides that if the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the government of the state can not be carried on in accordance with the constitutional provisions, he may proclaim constitutional emergency in the state. He can also declare state emergency if the state government refuses or fails to carry out certain directives given by the central government.

The proclamation of this type of emergency, popularly called as President Rule, can remain in force for a period of six months. By the 44th Amendment, the Parliament can extend the duration of the state emergency for a period of six months at one instance. Ordinarily, the total period of such emergency cannot exceed one year unless there is a national emergency in force. However, the total period of state emergency cannot go beyond three years.

The President can impose financial emergency. Article 360 states that if the President is satisfied that a situation has arisen where the financial stability or credit of India or any part of the country is threatened, he may declare financial emergency. Like the National emergency, such a proclamation has to be laid before the Parliament for its approval.

On its face value one can say that the President enjoys formidable powers. In reality however, he can exercise his powers only on the aid and advice of the Council of Ministers, headed by the Prime Minister. In this respect, the Presidents position is more like that of the British Monarch rather than that of the President of the United States of America. While the President of India may be the head of the state, the head of the government is the Prime Minister.

Check Your Progress Exercise-1

Note: Use the space below for your answer.

Check your answer with the model answer given at the end of this unit.

- 1) Explain within three sentences how the President of Indian Republic is elected.

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- 2) What are the legislative powers of the President of India?

.....

- 3) What are the effects of the emergency powers of the President?

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11.4 THE PRIME MINISTER

The real executive power under the constitution vests with the Union Council of Ministers with the Prime Minister at its head. The President is obliged to act according to the advice of the Council of Ministers which is responsible in the real sense of the term, not to the President but to the Lok Sabha.

As in Britain, the Prime Minister is usually a member of the lower house of Parliament. When Mrs Indira Gandhi was selected as a Prime Minister in 1966, she was a member of the Rajya Sabha. By getting elected to the Lok Sabha, she strengthened the convention of the Prime Minister being a member of the lower house.

The Prime Minister is appointed by the President. However, the President has hardly any choice in selecting the Prime Minister. He can only invite the leader of the party in majority in the Lok Sabha, or a person who is in a position to own the confidence of the majority in the house. The Prime Minister holds office during the pleasure of the President. The 'pleasure' of

the President in this regard is related to the unwavering majority support which a Prime Minister receives in the Lok Sabha.

The President appoints the other members of the Council of Ministers on the advice of the Prime Minister. A minister may be chosen from either house and has a right to speak and take part in the proceedings of the other house, though he can vote only in the house to which he belongs. Even a person who is not a member of either house of Parliament can be appointed as minister but he has to qualify for it by being elected or nominated to either house within a period of six months.

11. 4.1 The Council of Ministers and the Cabinet

The term ‘cabinet’ is used interchangeably with that of Council of Ministers. But they are different. The Council of Ministers, or the Ministry, consists of different categories of ministers. At the time of independence, there was no such institution as a cabinet in India. What existed then was the Executive Council. On 15 August 1947, the Executive Council was transformed into a Ministry or Council of Ministers that is responsible to the Parliament.

The term ‘cabinet’ was used thereafter as an alternative to the Council of Ministers. At this stage, all the members of the ministry or the cabinet except the Prime Minister had the same status. But the situation changed once junior ministers were appointed to the Council of Ministers. In 1950, based on the recommendations of the Gopalswamy Ayyangar’s report, a three-tier system of the ministry was established: with the cabinet ministers at the top; ministers of the state at the middle and deputy ministers in the lowest rung.

The **Cabinet**, composed of the ‘senior most ministers’ whose responsibilities transcended departmental boundaries into the entire field of administration, is a smaller body and the most powerful body in the government. The Cabinet serves three major functions: i) It is the body which determines government policy for presentation to the Parliament; ii) It is responsible for implementing government policy; iii) It carries out inter-departmental coordination and cooperation.

The cabinet meets regularly, as it is a decision-making body. It is assisted by the cabinet secretariat that is headed by a senior member of the civil services, the cabinet secretary. To manage the volumes and complexities of work that comes before it the cabinet members have developed standing and ad hoc committees. There are four Standing Committees which are permanent in nature. These are the defence committee, economic committee,

administrative organisation committee and parliamentary and legal affairs committee. Ad-hoc Committees are constituted from time to time.

Next in rank are the **ministers of state** who hold independent charge of individual ministries and perform the same functions and exercise the same powers as a cabinet minister. The only difference between such a minister of state and a cabinet minister is that he/she is not a member of the cabinet, but attends cabinet meetings only when specially invited to do so in connection with the subject that he/she is given charge of. There are other ministers of state who work directly under cabinet ministers.

At the bottom of the hierarchy are the **deputy-ministers** who do not have specific administrative responsibilities. But their duties include: i) Answering of questions in parliament on behalf of the ministers concerned and helping to pilot bills, ii) Explaining policies and programmes to the general public and maintaining liaison with members of parliament, political parties and the press, and iii) Undertaking special study or investigation of particular problems, which may be assigned to them by particular minister.

From the above it is clear that the Cabinet is the nucleus of the Council of Ministers. Precisely because of this reason Walter Bagehot calls the Cabinet ‘the greatest committee of the legislature’. It is the ‘connecting link between the executive and legislative power’.

11.4.2 Collective Responsibility

The Council of Ministers function on the principle of collective responsibility. Under this principle, all ministers are equally responsible for each and every act of government. That is, under collective leadership each minister accepts and agrees to share responsibility for all decisions of the cabinet. Doubts and disagreements are confined to the privacy of the cabinet room. Once a decision has been taken, it has to be loyally supported and considered as the decisions of the whole government. If any member of the Council of Ministers is unable to support government policy in the Parliament or in the country at large, then that member is morally bound to resign from the Council of Ministers.

Even if the Council of Ministers is formed as a result of a coalition of various political parties, a minimum common programme becomes essential for maintaining the solidarity of the ministry, and the various political parties forming the coalition government have to stand behind that programme. Unless they do so the Cabinet cannot survive. Unity within Council of Ministers is not only essential for its very survival, but is also necessary for its

efficiency and efficacy, on the basis of which alone can it continue to enjoy the confidence of the people. Minister of State Mohan Dharia was dismissed from the Council of Ministers in 1975 because of public dissent from the government policy on how to handle the people's movement launched by Jayaprakash Narayan. Open bickering between members of the Janata government on matters of public policy was the prelude to the collapse of the government in 1979.

11. 5 THE CABINET AND THE PARLIAMENT

The core of the parliamentary government is the accountability of the Prime Minister and the Cabinet to the Parliament. The Parliament does not govern but critically examines the policies and acts of the government, and approves or disapproves of them as the representative of the people. The very existence and survival of the Prime Minister and the Council of Ministers depends upon the support they receive in the Parliament. As we observed, the Council of Ministers is collectively responsible to the Parliament. Thus, the general feeling is that the Parliament controls the Executive. But in reality, the Prime Minister with his majority support controls the very working of the Parliament.

11.5 1 Sources of Prime Minister's Power and influence

Though the constitution does not enumerate the powers and functions of the Prime Minister, the Prime Minister in practice enjoys a wide range of powers as a leader of the Council of Ministers and the Lok Sabha.

The Prime Minister's prerogative of constituting, reconstituting and reshuffling the ministry as well as chairing the meetings bestows the office with considerable influence over the members of Parliament. It must however be noted that the Prime Minister's freedom to select his colleagues is subjected to his/her own position within the party. For example, India's first Prime Minister, Nehru, could not ignore Sardar Patel who was very powerful in the Congress party. He was therefore appointed as the Deputy Prime Minister and Home Minister. Some of Patel's followers were also made members of the ministry. Similarly, Mrs Indira Gandhi in the early years of office has to accommodate powerful leaders in the party in her ministry. Emerging as an all-powerful leader after the 1971 mid-term elections, she had complete freedom in choosing and reshuffling ministers. In coalition governments, the Prime Ministers were did not have much choice in choosing ministerial colleagues. In the Janata government, Morarji Desai had many ministers whom he never knew before. In case of H.D.Deve Gowda and later

I.K. Gujral governments, the ministers were selected not by the Prime Minister but by the leaders of the 14 regional parties who formed the United Front.

The Prime Minister also derives power and influence from the fact that he/she is the leader of the majority party and sometimes even the leader of the parliamentary wing of the party. As a leader of the Lok Sabha, the Prime Minister has enormous control over parliamentary activities. The Prime Minister advises the President on summoning and prorogation of the sessions of Parliament. The Speaker consults the Prime Minister in finalising the agenda of the Lok Sabha. With the Council of Ministers sponsoring majority of the bills presented to the Parliament and with the Prime Ministers deciding on the strategies for presenting the bills before the Parliament, the Prime Minister's influence over the legislature gets reinforced. Moreover, the Prime Minister enjoys enormous legislative power in the form of recommending Ordinances to the President for promulgation when the Parliament is not in session. But the most important power of the Prime Minister with regard to Parliament is to recommend dissolution of Lok Sabha. The President has to accept the advice of the Prime Minister who is backed by the majority of the Lok Sabha. This is the power by which the Prime Minister controls even the opposition.

As the head of the government, the Prime Minister enjoys the power of patronage. All the major appointments of the Central government are made by the Prime Minister in the name of the President, which includes justices and judges of the Supreme Court and High Court, the Attorney-General, the Chiefs of the army, navy and air force, Governors, ambassadors and High Commissioners, the Chief and members of the Election Commission, etc. Further, the Prime Minister's control over the administration, including the intelligence agencies and other administrative wings of the government enhances his/her influence over other members of parliament and administration.

Apart from these structural factors, there are other factors that increase the power and authority of the Prime Minister. To begin with, in the post-Second World War period, the rise of executive has been a universal phenomenon, irrespective of the political system. Moreover, the general elections in most democratic systems have virtually become an election of the leader, and it is being interpreted as a popular mandate. Sometimes a leader derives strength from his/her charisma. Leaders like Jawaharlal Nehru and

Indira Gandhi had undisputed control over the party on account of their charisma. This enabled them to exercise enormous power and influence over national affairs, which were not clearly envisaged by the Constitution.. The cumulative effect of all these factors has undoubtedly contributed to the enhancement of the power and prestige of the office of the Prime Minister.

Check Your Progress Exercise-2

Note: Use the space below for your answer.

Check your answer with the model answer given at the end of this unit.

- 1) The three most important functions of a Cabinet are

.....

- 2) What is collective responsibility?

.....

- 3) Parliamentary system contains structural factors which contribute to the Prime Ministers power and influence. Identify these factors.

.....

11.6 THE PRESIDENT AND THE PRIME MINISTER

Article 78 enumerates the duties of the Prime Minister. The Prime Minister is to: a) communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation; b) furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for and; c) if the President so 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. These duties of the Prime Minister seem to suggest that the President is the real executive with vast powers. But as we saw, the President can exercise his powers only with the aid and advice of the Council of Ministers. The Prime Minister, heading the Council of Ministers, is therefore the real executive. The

President is a constitutional head performing a ceremonial role. However, there have been occasions when the President had differences of opinion with the Prime Minister on the policies of the government.

The first President of India, Rajendra Prasad, tried to break from the British convention that the head of the state is always bound by the advice of the Prime Minister and the Cabinet. For instance, he was unhappy with the Nehru government's attempt to reform Hindu personal law. Again in 1959, he declined to give his assent to the state emergency in Kerala. In these cases, he was prevailed upon in the end to accept the convention even in Indian conditions. On one occasion (28 November 1960, address to the India Law Institute, New Delhi) he remarked "there is no provision in the Constitution which in so many words lays down that the President shall be bound to act in accordance with the advice of the Council of Ministers". A few days later Prime Minister Nehru replied at a Press Conference "the President has always acted as a constitutional head. We have modelled our constitution on the parliamentary system and not a presidential system, although we have copied or rather adopted many provisions of the US Constitution, because ours is federal one. Essentially, our constitution is based on the UK parliamentary model. That is the basic thing. In fact, it is stated that whenever it does not expressly say anything, we should follow the practice of the House of Commons in UK".

In the 1960s, the theory of Independent Presidency gained some ground. KM Munshi who developed the theory argued that there is no provision in the constitution of India which expressly lays down that the President is bound by the advice of the Council of Ministers. Further, the President is elected by the Parliament as well as state legislatures. As such he is expected to protect the interests of the states. He also takes the oath to defend, protect and preserve the constitution. In other words, he safeguards the provisions of the constitution from violation and encroachment from any quarters including the government. As if to prevent such ideas from gaining ground, the 42nd Amendment act was passed which stipulated that the President shall be bound by the advice of the Council of Ministers. Thus, ended all misgivings about Independent Presidency. However, the 44th Amendment act, passed during the Janata government, restored the earlier position. Further, it also stated that the President is empowered to ask the Council of Ministers to reconsider its advice on any matter.

In 1987, a political stir was created when President Zail Singh withheld his assent to the Indian Postal (Amendment) Bill, despite its having been passed by both the Houses of Parliament. The President won public support for himself and for the office by open expression of displeasure over a bill which would expand enormously the government's power to tamper with private correspondence. The bill never came back for the reconsideration of the President.

One of the reasons for this tension was partially a reflection of bad personal relations. While all Prime Ministers have taken great care to observe protocol in being formally deferential to the President, for example, by keeping him informed of government matters regularly, Rajiv Gandhi failed to maintain such communication and caused offence to the President. While the Prime Minister maintained in the Rajya Sabha that he had kept the President informed of all important matters of the state, President Singh claimed that he had been ignored and slighted by Rajiv Gandhi and kept in the dark about many important state issues in violation of established constitutional conventions. When the Speaker refused to permit a discussion of the controversy in the Lok Sabha, opposition parties staged a walkout in March 1987. Though Rajiv Gandhi repaired his relations with Zail Singh and ended the controversy, such public constitutional crisis was quite a departure from the discrete attempts by President Rajendra Prasad and Prime Minister Nehru to define the roles and jurisdiction of their respective offices.

Though there have been differences between the President and the Prime Minister, these did not assume serious proportions culminating in any constitutional crisis. Whenever such differences arose they were attempted to be resolved informally or through the party functionaries. On the whole, the President has always worked only as constitutional head. As in Britain, some of the constitutional conventions and practices in India have been defined only as a result of tussles between different parts of the government.

Check Your Progress Exercise-3

Note: Use the space below for your answer.

Check your answer with the model answer given at the end of this unit.

- 1) Explain the doctrine of Independent President.

.....

11.7 LET US SUM UP

Following the pattern of British Westminster model, India evolved its own system of parliamentary form of government in which the executive is responsible to the legislature. The executive power of the government of India is vested in the President of India, who is both the formal head of the state and the symbol of the nation. The President is endowed with authority and dignity without adequate powers. The President can exercise his authority only with the aid and advice of the Council of Ministers headed by the Prime Minister. It is the Prime Minister who exercises real executive power in the Indian political system. As the head of the Council of Ministers, the leader of the majority party in the Lok Sabha and often the leader of the Parliament, the Prime Minister enjoys considerable power and authority. Though the Prime Minister is appointed by the President and holds office with the pleasure of the President, the Prime Minister is in reality responsible to the Parliament. The Council of Ministers and the informal cabinet headed by the Prime Minister work on the principle of collective responsibility. As we saw, there have been differences between the President and the Prime Minister, these did not assume serious proportions culminating in any constitutional crisis. The President on the whole, worked only as a constitutional head.

11.8 SOME USEFUL BOOKS

Das, BC, 1977, *The President of India*, RR Printers, New Delhi

Jennings, Sir, Ivor, 1969, *Cabinet Government*, Cambridge University Press, Cambridge.

Patnaik, Raghunath, 1996, *Powers of the President and Governors of India*, Deep and Deep, New Delhi.

Kashyap, Subhas, 1995, *History of the Parliament of India*, Vol. 2, Shipra Publications, New Delhi.

11.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise-1

1) The President is elected by the members of the Electoral College on the basis of proportional representation and by means of single transferable vote. The Electoral College comprises the elected members of the Union Parliament and State Assemblies.

2) To summon and prorogue the Parliament- To dissolve the Lok Sabha-power to promulgate Ordinances-summon and address the joint sitting of the two houses of Parliament-veto of non-money bills-powers to nominate members to the Parliament etc

3) The Parliament will have the power to make laws on all subjects including those in the state list- The Central government can issue directions to the state government- Fundamental rights can be suspended –Normal term of the Lok Sabha can be extend by one year, etc

Check Your Progress Excercise-2

- 1) To determine government policy for presentation to the Parliament; ii) Implement government policy; iii) Carry out inter-departmental co-ordination and co-operation.
- 2) The Council of Ministers functions on this principle. Each member accepts and agrees to share responsibility for all decisions of the cabinet. It's necessary for efficiency and efficacy but also for the very survival of the cabinet system of government.
- 3) In a parliamentary system, the Prime Minister is the head of the Council of Ministers, leader of the majority party in the Lower House and head of the government.

Check Your Progress-3

- 1) This doctrine was enunciated by KM Munshi. He argued that there is no provision in the Constitution that lays down that the President is bound by the advice of the Council of Ministers. Moreover, since the Parliaments as well as state legislatures elect the President, he is expected to protect the interests of the states. Also, the President takes oath to defend, protect and preserve the constitution.

Unit 12: JUDICIARY

Structure

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12.0 OBJECTIVES

This unit deals with the structure, composition, jurisdiction and functions of the Indian judiciary. After going through this unit, you should be able to:

- Trace the evolution of the judicial system in India;
- Describe the composition of the courts in India;
- Explain the functions and jurisdiction of the Supreme Court, High Court and the Subordinate Courts; and
- Explain the concept of judicial review and its importance in safeguarding fundamental rights.

12.1 INTRODUCTION

In a political system based on constitutional government, the functions of rule making, rule enforcement and rule interpretation are separated into the three institutions of the legislature, the executive and the judiciary. A judiciary that is independent of and acting as a check on the arbitrary exercise of legislative and executive power is an essential feature of a constitutional government. The judiciary is also the final arbiter on what that constitution itself means. In a federal system, the judiciary also serves as a tribunal for the final determination of disputes between the union and its constituent units. Given the tremendous importance of the role and functions of the Supreme Court and the High Courts, various measures have been adopted to ensure the independence of the judiciary. Let us first trace the evolution of the modern

judicial system in India and then examine the various constitutional provisions relating to its powers and functions.

12.2 EVOLUTION AND DEVELOPMENT OF JUDICIARY IN INDIA

The development of judiciary in general can be traced to the growth of modern nation-states. This was the stage when it was assumed that power and administration of justice was prerogative of the state.

During the ancient times, administration of justice was not considered a function of the state as it was based on religious law or dharma. Most of the king's courts dispensed justice according to dharma, 'a set of eternal laws rested upon the individual duty to be performed in four stages of life (ashrama) and status of individual according to his status (varna)'. The king had no true legislative power, the power to make ordinances "on his own initiative and pleasure". Even if a law has been enacted and royally recognised, an individual to whom custom applies may disobey it on the ground that it conflicts the precepts of dharma. At the village level, the local/village/popular courts dispensed justice according to the customary laws.

However, during the medieval times, the king arrogated to himself an important role in administering justice. He was the highest judge in the land.

With the advent of the British rule in India, judicial system on the basis of Anglo-Saxon jurisprudence was introduced in India. The Royal Charter of Charles II of the year 1661 gave the Governor and Council the power to adjudicate both civil and criminal cases according to the laws of England. But it was with the Regulating Act of 1773 that the first Supreme Court came to be established in India. Located at Calcutta, the Supreme Court consisted of Chief Justice and three judges (subsequently it was reduced to two judges) appointed by the Crown and it was made a King's court rather than a Company's court. The court held jurisdiction over "his majesty's subjects" wherever the Supreme Courts were established. Supreme Courts were established in Madras and in Bombay later.

Judicial system during this period consisted of two systems, the Supreme Courts in the Presidencies and the Sadr courts in the provinces. While the former followed the English law and procedure, the latter followed regulation laws and personal laws.

Subsequently, these two systems were merged under the High Courts Act of 1861. This Act replaced the Supreme Courts and the native courts (Sadr Dewani Adalat and Sadr Nizamat Adalat) in the presidency towns of Calcutta,

Bombay and Madras with High Courts. The highest court of appeal however was the judicial committee of the Privy Council.

At this stage of development of the Indian legal system, we see the beginning of a new era in the emergence of a unified court system.

The Federal Court of India was established in Delhi by the Act of 1935. This was to act as an intermediate appellant between the High Courts and the Privy Council in regard to matters involving the interpretation of the Indian constitution. In addition to this appellate jurisdiction, the Federal Court had advisory as well as original jurisdiction in certain other matters. This court continued to function until 26 January 1950, the day the independent India's constitution came into force.

12.3 THE SUPREME COURT

The entire judicature has been divided into three tiers. At the top there is a Supreme Court, below it is the High Court and the lowest rank is occupied by session's court.

The Supreme Court is the highest court of law. The Constitution says that the law declared by the Supreme Court shall be binding on all small courts within the territory of India. Below the Supreme Court, are the High Courts located in the states. Under each High Court there are District Sessions Courts, Subordinate Courts and Courts of Minor Jurisdiction called Small Cause Courts.

Given the importance of the judiciary in a federal system resting on limited government, the Supreme Court was designed to make it the final authority in the interpretation of the Constitution. While framing the judicial provisions, the Constituent Assembly gave a great deal of attention to such issues as the independence of the courts, the power of the Supreme Court and the issue of judicial review.

12.3.1 Composition and Appointments

The Supreme Court consists of the Chief Justice of India and such other number of other judges as is provided by the law. When the Supreme Court was inaugurated, it had only eight judges. Its strength has risen to twenty five judges. The President of India, who is the appointing authority, makes these appointments on the advice of the Prime Minister and the Council of Ministers.

The Constitution stipulates in Article 124 (2) that the President shall appoint judges of the Supreme Court under his hand and seal after consultation with such of the judges of the Supreme Court as the President

may deem necessary. In the case of the Chief Justice of the India, the President shall consult such judges of the Supreme Court and of the High Courts as he may deem necessary. In spite of this clear constitutional provision, the appointment of the Chief Justice of India has become a matter of political controversy. Here it may be worth recalling the issues that were raised in 1973 when the Government of India appointed Justice SS Ray as the Chief Justice of India superseding four other judges, against the recommendations of the outgoing Chief Justice, SM Sikri.

To eliminate politics in the appointment of judges, high minimum qualifications have been prescribed. For appointment to the Supreme Court, a person should be a citizen of India, a judge of the High Court for at least five years, or should have been an advocate of High Court for at least ten years or a distinguished jurist in the opinion of the President of India.

12.3.2 Tenure

Once appointed, a judge holds office until he attains 65 years. A judge of the Supreme Court may resign his office or may be removed in case of misbehaviour or incapacity. According to the procedure laid out in the Constitution, each house of the Parliament will have to pass a resolution supported by two third of the members present and voting. The motion of impeachment against a judge was tabled in Parliament for the first time in 1991. This involved Supreme Court Justice V Ramaswami. When an audit report revealed several irregularities committed by the judge during his tenure as the Chief Justice of the Punjab and Haryana High Court, a three man judicial committee was set up with a serving and a retired Supreme Court judge and the Chief Justice of the Bombay High Court. The Committee concluded that there had indeed been a wilful and gross misuse of official position and intentional and habitual extravagance at the cost of the public exchequer which amounted to ‘misbehaviour’. Justice Ramaswami, however, maintained that there were procedural irregularities in the notice of the motion, the constitution of the committee and its functioning. The impeachment motion moved in May 1993 failed with 196 out of 401 voting for it and the remaining 205 abstaining. But accepting reality, the judge subsequently resigned.

12.3.3 Salaries

A very important element that determines the independence of the judges is the remuneration received by them. The salaries and allowances of the judges are fixed high in order to secure their independence, efficiency and impartiality. Besides, the salary, every judge is entitled to a rent-free official

accommodation. The Constitution also provided that the salaries of the judges cannot be changed to their disadvantage, except in times of a Financial Emergency. The administrative expenses of the Supreme Court, the salaries, allowances, etc., of the judges are charged on the Consolidated Fund of India.

12.3.4 Immunities

To shield judges from political controversies, the Constitution grants them immunity from criticisms against decisions and actions made in their official capacity. The Court is empowered to initiate contempt proceedings against those who impute motives to the judges in the discharge of their official duties. Even the Parliament cannot discuss the conduct of the judge except when a resolution for his removal is before it.

Check Your Progress Exercise-1

Note: I) Use the space below for your answer.

ii) Check your answer with the model answer given at the end of this unit.

- 1) What are the qualifications required for appointment as a judge of the Supreme Court?

.....

- 2) What is the procedure for removing a judge of the Supreme Court.?

.....

12.4 JURISDICTION OF THE SUPREME COURT

Article 141 declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India. The different categories into which the jurisdiction of the Supreme Court is divided is as follows: 1) Original Jurisdiction, 2) Appellate Jurisdiction, 3) Advisory Jurisdiction, 4) and Review Jurisdiction.

12.4.1 Original Jurisdiction

The Supreme Court has original jurisdiction firstly as a federal court. In a federal system like that in India, both the Union and the State governments derive their powers from and are limited by the same constitution. Differences of interpretation of the Union-States distribution of powers, or conflicts between States governments require authoritative

resolution by a judicial organ independent of both levels of government. Under Article 131, the Supreme Court is given exclusive jurisdiction in a dispute between the Union and a State or between one State and another, or between a group of States and others. When we say that the Supreme Court has an exclusive jurisdiction, we mean that no other court in India has the power to entertain such disputes. Similarly, the original jurisdiction of the Supreme Court will mean that the parties to the dispute should be units of the federation. Unlike the Supreme Courts in Australia and the United States, the Indian Supreme Court does not have original jurisdiction to decide disputes between residents of different states or those between a State and the resident of another State.

The Supreme Court also has non-exclusive original jurisdiction as the protector of Fundamental Rights. Article 32 of the Constitution gives citizens the right to move the Supreme Court directly for the enforcement of any of the fundamental rights enumerated in Part III of the Constitution. As the guardian of Fundamental Rights the Supreme Court has the power to issue writs such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari, and Mandamus. Habeas Corpus is a writ issued by the court to bring before the court a person from illegal custody. The court can decide the legality of detention and release the person if detention is found to be illegal. By using the writ of Mandamus, the court may order the public officials to perform their legal duties. Prohibition is a writ to prevent a court or tribunal from doing something in excess of its authority. By the writ of Certiorari, the court may strike off an order passed by any official of the government, local body or a statutory body. Quo warranto is a writ issued to a person who authorisedly occupies a public office to step down from that office. In addition to issuing these writs, the Supreme Court is empowered to issue appropriate directions and orders to the executive.

12.4.2 Appellate Jurisdiction

The Supreme Court is the highest court of appeal from all courts in the territory of India. It has comprehensive appellant jurisdiction in cases involving constitutional issues; civil and criminal cases involving specified threshold values of property or a death sentence; and wide ranging powers of special appeals.

Article 132 of the Constitution provides for an appeal to the Supreme Court from any judgement or final order of a court in civil, criminal or other proceedings of a High Court, if it involves a substantial question of law as to

the interpretation of the Constitution. The appeal again depends upon whether the High Court certifies, and if does not, the Supreme Court may grant special leave to appeal.

Article 133 of the Constitution provides that an appeal in civil cases lies to the Supreme Court from any judgement, order or civil proceedings of a High Court. This appeal may be made if the case involves a substantial question of law of general importance or if in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Article 134 provides the Supreme Court with appellate jurisdiction in criminal matters from any judgement, final order, or sentence of a High Court. This jurisdiction can be invoked only in three different categories of cases: a) if the High Court on appeal reverses an order of acquittal of an accused person and sentenced to death. b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such a trial convicted the accused person and sentenced him to death, and c) if the High Court certifies that the case is fit for appeal to the Supreme Court.

Finally, the Supreme Court has the special appellate jurisdiction. It has the power to grant, in its discretion, special leave appeal from any judgment, decree sentence or order in any case or matter passed or made by any court or tribunal.

12.4.3 Advisory Jurisdiction

The Supreme Court is vested with the power to render advisory opinions on any question of fact or law that may be referred to it by the President. The advisory role of the Supreme Court is different from ordinary adjudication in three senses: first, there is no litigation between two parties; second, the advisory opinion of the Court is not binding on the government; finally, it is not executable as a judgement of the court. The practice of seeking advisory opinion of the Supreme Court helps the executive to arrive at a sound decision on important issues. At the same time, it gives a soft option to the Indian government on some politically difficult issues. A case in point is the controversy surrounding the Babri Masjid complex in Ayodhya. The government decided to refer aspects of the dispute to the Supreme Court for an opinion. Since there was no legal point at issue, the referral to the Supreme Court had had the potential for politicising the judiciary instead of resolving what was essentially a political problem.

12.4.4 Review Jurisdiction

The Supreme Court has the power to review any judgement pronounced or order made by it. This means that the Supreme Court may review its own judgement order.

From the above it is clear that the Supreme Court in India is far more powerful than its counterpart in the United States of America. The American Supreme Court deals primarily with cases arising out of the federal relationship or those relating to the constitutional validity of laws and treaties. The Indian Supreme Court apart from interpreting the Constitution, functions as the court of appeal in the country in matters of civil and criminal cases. It can entertain appeals without any limitation upon its discretion from the decisions not only of any court but also of any tribunal within the territory of India. The advisory jurisdiction of the Indian Supreme Court also is something absent from the purview of the American Supreme Court.

Despite these powers, the Indian Supreme Court is a creature of the Constitution and depends for the continuation of these powers on the Union legislature which can impose limitations on them by amending the Constitution. Moreover, all these powers can also be suspended or superseded whenever there is a declaration of emergency in the country.

12.5 THE HIGH COURT

The constitution provides for a High Court at the apex of the State judiciary. Chapter V of Part VI of the Constitution of India contains provisions regarding the organisation and functions of the High Court. By the provision of Article 125 which says “there shall be a High Court for each state”, every state in India has a High Court and these courts have a constitutional status.

The parliament has the power to establish a common High Court for two or more states. For instance, Punjab and Haryana have a common High Court. Similarly, there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

In case of Union Territories, the Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory. Thus, Delhi, a Union Territory, has a separate High Court of its own while, the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over Lakshadweep, the Mumbai High Court over Dadra and Nagar Haveli, the Kolkata High Court over Andaman and Nicobar Islands, the Punjab Haryana High Court over Chandigarh.

12.5.1 Composition of the High Court

Unlike the Supreme Court, there is no minimum number of judges for the High Court. The President, from time to time will fix the number of judges in each High Court. The Chief Justice of the High Court is appointed by the President of India in consultation with the Chief Justice of India and the Governor of the State, which in actual terms mean the real executive of the State. In appointing the judges, the President is required to consult the Chief Justice of the High Court. The Constitution also provides for the appointment of additional judges to cope with the work. However, these appointments are temporary not exceeding two years period.

A judge of a High Court normally holds office until he attains the age of 62 years. He can vacate the seat by resigning, by being appointed a judge of the Supreme Court or by being transferred to any other High Court by the President. A judge can be removed by the President on grounds of misbehaviour or incapacity in the same manner in which a judge of the Supreme Court is removed.

12.5.2 Jurisdiction

The original jurisdiction of a High Court includes enforcement of Fundamental Rights, settlement of disputes relating to the election to Union and State legislatures and jurisdiction over revenue matters. Its appellate jurisdiction extends to both civil and criminal matters. In civil matters, the High Court is either a first appeal or a second appeal court. In criminal matters, appeal from decisions of a session's judge or an additional sessions judge where sentence of imprisonment exceeds seven years and other specified cases other than petty crimes constitute the appellate jurisdiction of a High Court. In addition to these normal original and appellate jurisdictions, the Constituent vests the High Courts with four additional powers. These are:

- The power to issue writs or orders for the enforcement of the Fundamental Rights. Interestingly, the writ jurisdiction of a High Court is larger than that of the Supreme Court. It can not only issue writs not only in cases of infringement of Fundamental Rights but also in cases of an ordinary legal right.
- The power of superintendence over all other courts and tribunals except those dealing with the armed forces. It can frame rules and also issue instructions for guidance from time to time with directions for speedier and effective judicial remedy.

- The power to transfer cases to itself from subordinate courts concerning the interpretation of the constitution.
- The power to appoint officers and servants of the High Court.

In certain cases, the jurisdiction of High Courts is restricted. For instance, it has no jurisdiction over a tribunal and no power to invalidate a Central Act or even any rule, notification or orders made by any administrative authority of the Union, whether it is violative of Fundamental Rights are not.

Check Your Progress Exercise-2

Note: I) Use the space below for your answer.

ii) Check your answer with the model answer given at the end of this unit.

- 1) In what areas does the Supreme Court have original jurisdiction. Which area is an exclusive preserve of the Supreme Court?

.....

- 2) The writ jurisdiction of a High Courts is wider than that of the Supreme Court and can issue
writs.....

.....

12.6 SUBORDINATE COURTS

Under the High Court, there is a hierarchy of courts which are referred to in the Indian constitution as subordinate courts. Since these courts have come into existence because of enactments by the state government, their nomenclature and designation differs from state to state. However, broadly in terms of organisational structure there is uniformity.

The state is divided into districts and each district has a district court which has an appellate jurisdiction in the district. Under the district courts, there are the lower courts such as the Additional District Court, Sub-Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of the II Class, Court of Special Judicial Magistrate of I Class, Court of Special Munsiff Magistrate for Factories Act and Labour Laws, etc. At the bottom of the hierarchy of Subordinate Courts are the Panchayat Courts (Nyaya Panchayat,

Gram Panchayat, Panchayat Adalat etc). These are, however, not considered as courts under the purview of the criminal courts jurisdiction.

The principle function of the District Court is to hear appeals from the subordinate courts. However, the courts can also take cognisance of original matters under special status for instance, the Indian Succession Act, the Guardian Act and Wards Act and Land Acquisition Act.

The Constitution ensures independence of subordinate judiciary. Appointments to the District Courts are made by the Governor in consultation with the High Court. A person to be eligible for appointment should be either an advocate or a pleader of seven years standing, or an officer in the service of the Union or the State. Appointment of persons other than the District Judges to the judicial service of a State is made by the Governor in accordance with the rules made by him in that behalf after consultation with the High Court and the State Public Service Commission.

The High Court exercises control over the District Courts and the courts subordinate to them, in matters as posting, promotions and granting of leave to all persons belonging to the State judicial service.

12.7 JUDICIAL REVIEW

Literally the notion of judicial review means the revision of the decree or sentence of an inferior court by a superior court. Judicial review has a more technical significance in public law, particularly in countries having a written constitution, founded on the concept of limited government. Judicial review in this case means that Courts of law have the power of testing the validity of legislative as well as other governmental action with reference to the provisions of the constitution.

In England, there is no written constitution. Here the Parliament exercises supreme authority. The courts do not have the power to review laws passed by the sovereign parliament. However, English Courts review the legality of executive actions. In the United States, the judiciary assumed the power to scrutinise executive actions and examine the constitutional validity of legislation by the doctrine of 'due process'. By contrast, in India, the power of the court to declare legislative enactments invalid is expressly enacted in the constitution. Fundamental rights enumerated in the Constitution are made justiciable and the right to constitutional remedy has itself been made a Fundamental right.

The Supreme Court's power of judicial review extends to constitutional amendments as well as to other actions of the legislatures, the

executive and the other governmental agencies. However, judicial review has been particularly significant and contentious in regard to constitutional amendments. Under Article 368, constitutional amendments could be made by the Parliament. But Article 13 provides that the state shall not make any law which takes away or abridges fundamental rights and that any law made in contravention with this rule shall be void. The issue is, would the amendment of the constitution be a law made by the state? Can such a law infringing fundamental rights be declared unconstitutional? This was a riddle before the judiciary for about two decades after India became a republic.

In the early years, the courts held that a constitutional amendment is not law within the meaning of Article 13 and hence, would not be held void if it violated any fundamental right. But in 1967, in the famous Golak Nath Case, the Supreme Court adopted a contrary position. It was held that a constitutional amendment is law and if that amendment violated any of the fundamental rights, it can be declared unconstitutional. All former amendments that violated the fundamental rights to property were found to be unconstitutional. When a law remains in force for a long time, it establishes itself and is observed by the society. If all past amendments are declared invalid, the number of transactions that took place in pursuance of those amendments become unsettled. This will lead to chaos in the economic and political system. In order to avoid this situation and for the purpose of maintaining the transactions in fact, the past amendments were held valid. The Supreme Court clarified that no future transactions or amendments contrary to fundamental rights shall be valid. This technique of treating old transactions valid and future ones invalid is called prospective over-ruling. The Court also held that Article 368 with amendments does not contain the power to amend the constitution, but only prescribes the procedure to amend. This interpretation created difficulty. Even when there is a need to amend a particular provision of the constitution, it might be impossible to do so if the amendment had an impact on fundamental rights.

In 1970, when the Supreme Court struck down some of Mrs Indira Gandhi's populist measures, such as the abolition of the privy purses of the former princes and nationalisation of banks, the Prime Minister set about to assert the supremacy of the Parliament. She was able to give effect to her wishes after gaining two-thirds majority in the 1971 General Elections. In 1972, the Parliament passed the 25th Constitutional Amendment act which allowed the legislature to encroach on fundamental rights if it was said to be

done pursuant to giving effect to the Directive Principles of State Policy. No court was permitted to question such a declaration. The 28th Amendment act ended the recognition granted to former rulers of Indian states and their privy purses were abolished.

These amendments were challenged in the Supreme Court in the famous Kesavananda Barathi Case (otherwise known as the Fundamental Rights Case) of 1973. The Supreme Court ruled that while the parliament could amend even the fundamental rights guaranteed by the Constitution, it was not competent to alter the ‘basic structure’ or ‘framework’ of the constitution. Under the newly evolved doctrine of ‘basic structure’, a constitutional amendment is valid only when it does not affect the basic structure of the constitution. The second part of Article 31C (no law containing a declaration to implement the Directive Principles contained in Article 39 (b) and (c) shall be questioned) was held not valid because the amendment took away the opportunity for judicial review, which is one of the basic features of the constitution. The doctrine of basic features gave wide amplitude to the power of judicial review.

Later history shows the significant role played by this doctrine in the review of constitutional amendments. For challenging the election to Parliament of a person who holds the office of Prime Minister, the 39th Constitutional Amendment provided a different procedure. The election can be challenged only before an authority under special law made by Parliament and the validity of such a law shall not be called in question. The Supreme Court held that this amendment was invalid as it was against the basic structure of the Constitution. It argued that free and fair elections are essential in democracy and to exclude judicial examination of the fairness of the election of a particular candidate is not proper and goes against the democratic ideal that is the basis of our constitution.

In a later case, the Minerva Mill Case, the Supreme Court went a step ahead. The 42nd Constitutional Amendment of 1976, among other things, had added a clause to Article 368 placing a constitutional amendment beyond judicial review. The Court held that this was against the doctrine of judicial review, the basic feature of the constitution.

One of the limits on judicial review has been the principle of *locus standi*. This means that only a person aggrieved by an administrative action or by an unjust provision of law shall have the right to move the court for redressal. In 1982, however, the Supreme Court in a judgement on the

democratic rights of construction workers of the Asian Games granted the Peoples Union of Democratic Rights, the right of Public Interest Litigation (PIL). Taking recourse to epistolary jurisdiction under which the US Supreme Court treated a post card from a prisoner as petition, the Supreme Court of India stated that any ‘public spirited’ individual or organisation could move the court even by writing a letter. In 1988, the Supreme Court delineated the matters to be entertained as PIL. The categories are: matter concerning bonded labour, neglected children, petition from prisoners, petition against police, petition against atrocities on women, children, Scheduled Castes and Scheduled Tribes, environmental matters, adulteration of drugs and foods, maintenance of heritage and culture and other such matters of public interest.

Since the granting of the right to PIL, what some claim to be the only major democratic right of the people of India, and granted not by the Parliament but by the judiciary, the courts have been flooded by PILs. While the flood of such litigation indicates the widespread nature of the deprivation of democratic rights, they also pose the danger of adding to the pressure on the courts that are already overloaded.

12.8 JUDICIAL REFORMS

The most striking criticism against administration of justice is the large number of pending cases and the delay in the dispensation of justice. In the early 1990s, there were more than two crore cases pending in different courts. Reasons for the piling of a large number of cases can be attributed to structural and procedural flaws in the judiciary. The availability of multiple remedies at different rungs of the judicial ladder also enables dishonest and recalcitrant suitors to abuse the judicial system. This leads to the piling up of cases as well as delay in the dispensation of justice.

Another weakness of the judicial system is cumbersome procedures and forbidding cost of justice. Suggestions for judicial reforms have come up, to help achieve a new order and bring economic, political and social justice.

In fact, the Tenth Law Commission had invited suggestions for judicial reforms. One suggestion was to reduce the workload of the Supreme Court of India which accepts nearly one lakh cases every year (whereas the US Supreme Court accepts only 100 to 150 cases of the five thousand filed). Among the suggestions to reduce the load of the Supreme Court, one was to establish a Constitutional Court to deal exclusively with constitutional matters and another was to establish Zonal Courts of Appeal in the country.

Check Your Progress Exercise-3

- Note: I) Use the space below for your answer.
 ii) Check your answer with the model answer given at the end of this unit.

1) What is the significance of the Keshavananda Bharati Case of 1973?

.....

2) What is PIL?

.....

12.9 LET US SUM UP

As we saw, the existing judicature in India can be traced to the British period. The Royal Charter of the Charles II (1661), the Regulating Act of 1773, the Indian High Courts Act of 1861 and the Act of 1935 are the important milestones in the evolution of modern judicial system in India. The Constitution of India has designed the Supreme Court as the highest court of law. The law declared by the Supreme Court has been made binding on all small courts, that is, the High Courts and the Subordinate courts

Given the importance of judiciary as a federal court and as a guardian of fundamental rights of the citizen, the framers of the Indian Constitution gave great deal of thought to such issues as the independence of the courts and judicial review.

Judicial review is a technique by which the courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the constitution. The foundation of judicial review is (a) that the constitution is a legal instrument, and (b) that this law is superior in status to the laws made by the legislature that is itself set up by the constitution. It is now well established in India that judicial review constitutes the basic structure or feature of the Constitution of India.

12.10 SOME USEFUL BOOKS

- Kirpal B.N, Desai, Subramaniam, et al (eds.) (2002), *Supreme but not infallible: Essays in Honour of the Supreme Court of India*, Oxford University Press, New Delhi
- Baxi, Upendra, (1976), *Sociology of Law*, Satvahan,
- Babu, D.D., (1972), *Limited Government and Judicial Review*.
- Lingat, Robert (1973), *The Classical Law of India*, translated by JDM Derette, Thomson Press, New Delhi
- Stokes, Eric, (1959), *The English Utilitarian & India*, Cambridge, London.

12.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Excercise-1

- 1) A person to be appointment as a judge of the Supreme Court should be a citizen of India, should have been a High Court judge for at least five years, an advocate of High Court for at least ten years or a distinguished jurist.
- 2) A Supreme Court judge can be removed for misbehaviour or incapacity. Each house of the Parliament has to pass a resolution supported by two third of the members present and voting.

Check Your Progress Excercise-2

- 1) It has original jurisdiction as a guardian of Fundamental rights and as a federal court. As a federal court it has exclusive jurisdiction in disputes between the Union and a State or between one State and another, or between a group of States and others.
- 2) Not only to enforce fundamental rights but also any legal right.

Check Your Progress Excercise-3

- 1) The Supreme Court evolved the doctrine of basic structure or features of the constitution which gave wide amplitude to the power of judicial review.
- 2) PIL is a democratic right which allows any ‘public spirited’ individual or organisation to move the court to seek justice on behalf of the victims of state and societal forces.

UNIT 13 BUREAUCRACY IN INDIA

Structure

- 13.0 Objectives
 - 13.1 Introduction
 - 13.2 Meaning and Concept
 - 13.3 Features
 - 13.3.1 Hierarchy
 - 13.3.2 Chain of Command
 - 13.3.3 Adherence to Rules and Regulations
 - 13.3.4 Impersonal/Faceless and apolitical
 - 13.4 History
 - 13.4.1 India's Independence and Bureaucracy
 - 13.5 Statutory Bodies for Recruitment and Other Related Matters
 - 13.5.1 The Union Public Service Commission (UPSC)
 - 13.5.2 Special Provisions for Deprived Sections
 - 13.5.3 Controversy Over the Policy of Reservation
 - 13.5.4 State Public Service Commissions (SPSCs)
 - 13.6 Post-Independence Bureaucracy Up to the Commencement of Globalisation
 - 13.6.1 1967 State Assembly Elections: A Watershed
 - 13.6.2 Churning Within the Congress Party
 - 13.6.3 The Idea of a Committed Bureaucracy
 - 13.6.4 Bureaucrat-Politician-Businessmen Nexus
 - 13.7 Indian Bureaucracy in the Era of Globalisation
 - 13.7.1 Attitude of the Indian Bureaucracy
 - 13.8 Some Controversies/Problems Associated with the Bureaucracy
 - 13.8.1 Ministers Versus Civil Servants
 - 13.8.2 Generalists Versus Specialists
 - 13.8.3 Under-Representations of the Minorities
 - 13.9 Let Us Sum Up
 - 13.10 Some Useful References
 - 13.11 Answers to Check Your Progress Exercises
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13.0 OBJECTIVES

This unit deals with bureaucracy, particularly with reference to India. After going through this unit you will be able to:

- Explain the meaning of bureaucracy and discuss its salient features;
- Trace the evolution of bureaucracy in India;
- Discuss the composition, nature and functioning of statutory bodies of bureaucratic recruitment such as Union Public Service Commission (UPSC);
- Describe the nature and functioning of bureaucracy in the post-Independence India up to the commencement of globalisation; and,
- Discuss the impact of globalisation on bureaucracy.

13.1 INTRODUCTION

Bureaucracy is the executive arm of the government. In traditional classical literature on organs of government, one studied the legislature, the executive and the judiciary with bureaucracy being subsumed under the executive (which comprises the political establishment and the bureaucracy). Now, one finds that bureaucracy is being treated separately and this is indicative of its growing importance. In this unit, we shall be focussing on bureaucracy with special reference to India.

13.2 MEANING AND CONCEPT

Most of you must be familiar with the word ‘bureau’ which means office. Bureaucracy takes off from this only. In essence, bureaucracy is an organised body of persons who deal with office procedures, rules and regulations. Bureaucracy popularly refers to government officials. Generally, it should be mentioned here that when one talks of the bureaucracy, one refers to the **civilian** bureaucracy also known as the civil services (the sense in which bureaucracy is treated in this unit). This point is being mentioned because the military also has a bureaucracy and the corporate world too has one. Indeed, bureaucracy exists in every organisation. Therefore, it is important to remain focussed on the fact that in this lesson, when we mention bureaucracy, we have the civilian bureaucracy (civil services) in our mind.

13.3 FEATURES

Bureaucracy anywhere has certain, well-established features. Alternatively, an organisation is bureaucratic if it has these features. Some of the better known features are : (i) Hierarchy (ii) Chain of command (iii) Adherence to rules and regulations (iv) Impersonal/faceless and apolitical (v) Recruitment through statutory bodies specifically created for the purpose, etc. These features are briefly described below. We should mention here that these features are, by and large, not mutually exclusive but run into each other.

13.3.1 Hierarchy

Essentially, bureaucracy is hierarchical. It is based on rank. Each rank or position is subordinate to some and superior to some other. The bottom to the top, generally, makes

for a pyramidal structure with the lower ranks concentrated at the bottom and the higher ranks at the top.

13.3.2 Chain of Command

This feature is intimately linked with the one above. In any hierarchical body, there is a chain of command flowing from the top to the bottom. Normally, the command chain is not broken. To give an example from the Indian context, in a Department of the Central Government in Delhi, the chain of command is as follows:

Secretary → Additional Secretary → Joint Secretary → Deputy Secretary →
Under Secretary → Section Officer → other lower ranks.

13.3.3 Adherence to Rules and Regulations

A classic feature of bureaucracies all along has been their rigid adherence to rules and regulations. This has, in fact, led to the adjective “bureaucratic” being coined for any person/organisation insisting too much on rules, regulations and procedures.

13.3.4 Impersonal/Faceless and Apolitical

A bureaucracy is supposed to be impersonal. This basically means that a bureaucrat is expected to be guided by objective (as against subjective) considerations while following rules and regulations in the course of implementing various policy measures and directives. In other words, a bureaucrat or a civil servant or a government official—whatever name we choose to call him by—is not supposed to be guided by his personal whims and fancies, biases and prejudices in the discharge of his official duties.

As regards the ‘faceless’ aspect, you perhaps are aware of the fact that any civilian bureaucracy is subordinate to the political executive. The political leadership is the face of the administration, while the bureaucracy works behind the scenes. It of course does not always happen but that is how it has been envisaged.

Bureaucracy, strictly, is also supposed to be apolitical. This basically implies that a bureaucrat is not to have a political agenda of his own but rather, faithfully implement the policies of the government of the day. It also has another and possibly more important meaning and that is: a civil servant’s loyalty and commitment should be to the constitution of the land and not to any political party, politician, etc.

Check Your Progress Exercise 1

Note: (I) Use the space below for your answer.

(II) Check Your answers with the model answers given at the end of this unit.

1. What do you understand by bureaucracy?

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2. Enumerate the salient features of bureaucracy and describe any two features.
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13.4 HISTORY

Bureaucracy in some form or the other has existed from times immemorial. In ancient India when monarchy was the predominant form of government, the various categories of courtiers constituted the bureaucracy. Modern bureaucracy in the sense of a body of persons being recruited through an open public competitive examination conducted by an independent, statutory body is credited to People's Republic of China (PRC).

In India, Lord Cornwallis is credited with creating the bureaucracy, as we know it today. The Indian Civil Service (ICS) was the culmination of steps initiated by him. This service as well as branches of colonial bureaucracy, to start with, had Indians only in the lower echelons. They were, in fact, debarred from holding higher positions. From the 1850s onwards, the doors to higher ranks were opened for Indians and many of them made their mark. One can cite names such as that of Netaji Subhash Chandra Bose, K.P.S. Menon Senior, T. N. Kaul among others who distinguished themselves in the ICS. Some of them, in fact, went onto play a crucial role in post-independent India as well.

It should, however, be always remembered that the ICS was essentially a colonial creation designed to serve colonial ends. Though the Indians in the ICS were occasionally sympathetic to the 'natives' (the Indian masses), by and large they followed the line of their colonial masters. It was for this reason that the nationalist leadership fighting for independence from British rule was highly critical of the role played by the 'steel frame of the British Empire' – the popular name of the ICS (also known as the heaven born service). Jawaharlal Nehru, in particular, was its staunch critic.

The colonial bureaucracy in India largely performed what are called 'maintenance' functions, viz., maintaining law and order, collection of taxes/revenue, etc. The concept of developmental administration was not much heard of then. Fundamentally, the bureaucracy was a policing/tax collecting machinery and very far removed from being a citizen friendly administration. The colonial bureaucracy was time and again employed

by the British to crush the freedom movement. This was the broad scenario at the time of India's independence.

13.4.1 India's Independence and the Bureaucracy

The situation obtaining as, regards the bureaucracy in the period leading up to India's independence has been described above. After attaining freedom from the British rule, the major issue at hand was the type of civilian bureaucracy the newly independent country should have; viz. what kind of structure, method of recruitment and other related questions. There was also the prickly and thorny issue of the fate of the Indian officers in the erstwhile ICS. These matters were resolved the following way: despite their criticism of the ICS, the post-independent leadership decided to let those Indian officers continue in the civilian bureaucracy constituted after August 15, 1947 who still had service years left. However, instead of being absorbed in the newly created Indian Administrative Service (IAS) – the successor to the ICS – quite a few of these officers were directly drafted into the other newly created Central Government service, viz., the IFS (Indian Foreign Service) which was to implement India's non-aligned foreign policy. For instance, KPS Menon Senior and T.N. Kaul joined the foreign service and went onto render distinguished service.

Regarding recruitment, as before it was to be through an open competitive examination conducted by an independent, autonomous statutory body. This was to be the Union Public Service Commission (UPSC) headquartered in Delhi, the country's capital.

Check Your Progress Exercise 2

Note: (I) Use the space given below for your answers.

(ii) Check your answers with the model answers given at the end of this unit.

- 1) Discuss the nature of Indian bureaucracy during the colonial time.
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13.5 STATUTORY BODIES FOR RECRUITMENT AND OTHER RELATED MATTERS

13.5.1 The Union Public Service Commission (UPSC)

The Union Public Service Commission or the UPSC to use its popular abbreviated form is an autonomous body created by the Constitution to recruit – personnel (officer and other ranks) for the various Central Government services. Thus, it conducts not only the

annual civil services examination (for the IAS, IFS, IPS Allied Services Group A and B) but also other Central Government services such as the Indian Forest Service, the Indian Economic Service and the Indian Engineering Service. In fact, the UPSC conducts the recruitment of not only the civilian bureaucracy, but also of the defence services of the country. Thus, it conducts the examinations for the National Defence Academy (NDA) and the Indian Military Academy (IMA). The UPSC has been conducting the various examinations since 1947. It is, in fact, not only responsible for recruitment, but also acts as an advisory body regarding all career matters of the recruited personnel.

13.5.2 Special Provisions for Deprived Sections

It is important to note that as regards recruitment to bureaucratic positions in India, there is provision for reservation of a certain percentage of posts for deprived sections of society. Thus, from the onset of independence, 22.5% of post have been reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs). In addition, since the implementation of the Mandal Commission recommendations, an additional 27% of posts have been reserved for the Other Backward Castes (OBCs).

Also, the various state governments have their own state-wise quotas for government jobs. Some of the Southern Indian States – Karnataka and Tamil Nadu for instance – have always had very high quotas for which there have been historical and socio-political reasons.

13.5.3 Controversy over the Policy of Reservation

The policy of reservation which is based on the principle of affirmative action has been controversial from the beginning. While it has always found favour with the sections for whom it is meant, the others have not been too well disposed towards it. While this section somehow reconciled itself towards reservation for the Scheduled Castes and Scheduled Tribes, it found it difficult to accept a similar treatment to the OBCs after the announcement of the Mandal Commission recommendations. This is because it was felt that the OBCs really do not have a history of religion-sanctioned social oppression the way SCs and STs and especially, the SCs have. There is merit in this argument, but as of today the recommendations have come to stay and the possibility of a change in the status quo is extremely remote, if not impossible. In fact, since government jobs are increasingly being reduced in the wake of globalisation, there has been now talk of reserving jobs in the private/corporate sector for the marginalised sections of society. This demand, though not concretised as yet, has further widened the split between those benefited by reservation and those outside the reserved slot.

13.5.4 State Public Service Commissions (SPSCs)

Our point regarding the recruitment of the Indian Bureaucracy will not be complete without a reference to the State Public Service Commissions. As the very nomenclature indicates, a state public service commission is responsible for recruitment to government service at the state level. In terms of organisation and functioning, State Public Service Commissions correspond to the UPSC at the central level. However, in terms of credibility, a wide gulf exists between the State Public Service Commissions and the UPSC. In recent times, a lot of State Public Service Commissions have come under a cloud for their partisan, biased and politicised functioning. It, certainly, is a fact that the members of State Public Service Commissions are, generally, political appointees and therefore, susceptible to extraneous pressures.

After having examined aspects like recruitment, etc., we can go to an overview of the bureaucracy in India after independence up to the era of globalisation. The post-globalisation era has been treated separately for obvious reasons.

Check Your progress Exercise 3

Note: (I) Use the space below for your answers.

(ii) Check your answers with the model answers given at the end of the unit.

- 1) Write a short note on the Union Public Service Commission (UPSC).

- 2) What is the controversy regarding the policy of reservation?

13.6 POST-INDEPENDENCE BUREAUCRACY UPTO THE COMMENCEMENT OF GLOBALISATION

Bureaucracy after independence set about implementing the agenda of its political masters (as it is supposed to do). Following achievement of Independence, the Congress headed by prime minister Jawaharlal Nehru assumed the reigns of power. The Congress Party was broadly committed to democratic socialism, secularism and non-alignment (in its foreign policy). The bureaucracy set about implementing this. Since the country was a fresh, newly independent nation free after centuries of colonial rule, initially there was a lot of enthusiasm amongst the political leadership as well as the bureaucracy regarding nation-building. Barring some black sheep in their ranks, the bureaucrats, by and large,

exhibited high standards of professional and personal conduct. Of course, even then as now, they had ‘Burra Sahib’ attitude but rarely were they accused of professional and personal misconduct (unlike now). Though professionally, the desire to get ahead was there, the desire for personal aggrandisement was rare.

13.6.1 1967 State Assembly Elections: A Watershed

The year 1967 to be precise marked a watershed in Indian Politics and administration. This was the year in which the Congress Party’s hegemonic hold over India’s politics was broken. It lost power for the first time in several assembly elections to the non-right anti-Congress forces basically put together by the late Prime Minister Chaudhary Charan Singh. This had a tremendous impact on national politics and on the society. It was recognised by the political class as well as the common citizenry that the all powerful Congress Party which had spearheaded India’s fight against colonial rule could be defeated. It was not possible earlier. The recognition of this fact had far reaching implication for India’s politics, society and administration. The impact of 1967 can be felt in the times that we are passing through now.

The support base of the political forces that had dealt a massive electoral and psychological blow to the Congress and which was largely consolidated by Charan Singh comprised, essentially, the Other Backward Castes. These forces got a filip after the 1967 elections. Their fairly impressive representation in the bureaucracy today, an offshoot of the Mandal Commission Recommendations, can be traced back to the watershed elections of 1967. Indeed, the setting up of the Mandal Commission itself— which in the last decade has affected India’s polity so decisively was a recognition of the growing power of socio-political forces unleashed in the wake of the 1967 Vidhan Sabha elections.

13.6.2 Churning Within the Congress Party

There was a great churning within the Congress itself. The then prime minister Indira Gandhi who ever since assuming power in 1966 had been facing a tough time from the old guard (the Syndicate) within the Congress found her position further weakened. To reclaim her position as well as that of her party, she then undertook a series of steps that were to overwhelmingly change India’s political landscape as well as the world of civilian bureaucracy. The Congress Party split in 1969 with the Syndicate getting marginalised. The party’s official nominee in the presidential elections N. Sanjeeva Reddy was defeated after Mrs. Gandhi herself put her weight behind V.V. Giri. A series of populist radical measures endearing Indira Gandhi to the Indian Left, such as the nationalisation of banks and the abolition of privy purses of the Indian princes followed

which helped Mrs. Gandhi and her party to become popular once again. Later on, in 1971, her slogan of ‘Garibi Hatao’ and victory in the Indo-Pak war helped the Congress under Mrs. Gandhi to win the Lok Sabha elections by a landslide margin. Thus, the wheel had come full circle. However, the intervening four years led to new ideas such as the one of a committed bureaucracy emerging.

13.6.3 The Idea of a Committed Bureaucracy

The idea most fundamentally, entailed that a bureaucrat should be hundred percent committed to the policies and programmes of the political party in power. By extension, this also implied full commitment to the individual politicians holding power. A bureaucrat was not to be guided by any other consideration. This development was, essentially, a consequence of the belief in the Congress circles that the electoral debacle the party had suffered in 1967 was in no small measure due to the fact that the civil bureaucracy had not faithfully delivered on the party’s programmes, thus alienating the voters from the party. Whatever may be the merits of this argument, the idea of a committed bureaucracy gathered momentum and eventually, became a part and parcel of Indian public administration.

This had very far reaching and basically negative consequences. Once the idea gained legitimacy, bureaucrats began currying favours from their political masters. Plum postings were offered to those who did the bidding of their political bosses, while those who insisted on following an independent line based on professional opinion were punished. Punishment took the form of arbitrary transfers, postings to insignificant departments and in some cases, even suspension from service. A system of rewards and punishments got institutionalised in due course of time with civil servants being rewarded and punished on the basis of their loyalty and commitment to politicians or parties and not on the basis of their professional performance. As indicated above, over a period of time, the politician-bureaucrat nexus grew into a powerful force immensely benefitting both the parties, but spelling a blow to the concept of development and citizen friendly administration. This was, in fact, the ‘politicization of the bureaucracy’ about which we hear so much laments now.

13.6.4 Bureaucrat – Politician – Businessman Nexus

A parallel – though not always – development was the addition of the businessman to the unholy combine of the politician and the civil servant. In the democratic socialist or the Nehruvian Socialist to be more correct, framework of development that India followed after independence, government permission or licence was required for every small and big thing necessary for setting up a business. The discretionary power rested with the

bureaucrat who could grant the licence against favours granted by the concerned businessman or alternatively, withhold the permission on the concerned party's refusal to please the government official. Very often, the bureaucrat and the political boss to whom he reported shared in the spoils, as the ultimate sanctioning authority was the politician. This was the genesis of the notorious 'Licence-Permit-Quota Raj' which in about 20-30 years from independence completely derailed India's socialist pattern of development. The planning process, the mixed economy, all got off track because of the immensely powerful and corrupt troika of the officer-politician-businessman often contemptuously described as the "Babu-Neta-Bania" syndrome.

The ineffective and inefficient mixed economy brought about by the licence-permit-quota raj coupled with the politicisation of the bureaucracy remained the contexts of India's civilian bureaucracy till the onset of globalisation. The globalisation era going back to the 1990s marked another watershed in the world of Indian bureaucracy, just as the 1967 elections had done. It is to this that we turn our attention now.

Check Your Progress 4

Note: (i) Use the space given below your answer

(ii) Check your answers with the model answers given at the end of unit.

1. What is committed bureaucracy? What were its consequences?

2. Write a short note on the bureaucrat-politician-businessman nexus

13.7 INDIAN BUREAUCRACY IN THE ERA OF GLOBALISATION

The era of globalisation worldwide commenced about one and a half decades back; sometime around the mid to the late 1980s. What is accepted, generally, as globalisation today is actually the spread of the process of liberalisation of the economy on a global scale. By liberalisation of the economy is meant freeing a national economy from governmental control and letting it run as per the market forces. It is against this definitional context that we have discussed the bureaucracy in this section.

In India (as indeed in many other countries), it was increasingly felt that the democratic socialist model of development had failed to deliver the goods. Of course, it is **debatable** whether there was something **intrinsically** wrong with the democratic socialist framework or it had gone wrong as regards the implementation part. Whatever may be the truth, the fact was that liberalisation of the economy entailing a slackening, if not total elimination, of governmental regulation over the economy gained currency. This process

was of course actively encouraged by the US influenced bodies such as the IMF (International Monetary Fund) and the World Bank.

Once liberalisation of the economy was accepted, changes in the bureaucracy were inevitable. In India (as elsewhere) in the last more than ten years, there has been a slackening of governmental rules and regulations, which certainly has been a welcome development. We may mention here that in this unit, we are not debating the merits and demerits of globalisation. You will read about lobalisation in unit 29. In this unit, we are only concerned with the impact of globalisation on the bureaucracy and that too in the Indian context.

As already mentioned, in the era of globalisation or alternatively, Economic Reforms, there has been a doing away of the plethora of government rules and to this extent, the developmental process has been speeded up. However, it is still not clear if it has brought down corruption arising from the acts of commission and omission of the Bureaucrat – Politician-Businessman combine. Even as the process of economic reforms consequent to liberalisation has been on, there have been consistent reports of India continuing to be amongst the most corrupt countries of the world. This naturally raises questions about the very rationale of liberalising the economy. Be that as it may, the process of liberalisation is currently very much on in the country.

13.7.1 Attitude of the Bureaucracy

Subsequent to the structural adjustment of the economy consequent to liberalisation, there have been perceptible shifts in the attitude of the bureaucracy. When liberalisation first commenced, a lot of bureaucrats were openly hostile to it as they obviously felt that in a regime of slackening governmental control, the quantum of power wielded by them as well as their importance would come down. This has indeed happened. The ‘redeeming’ feature in that over the years, some bureaucrats have seen the writing on the wall, and become ‘facilitators’ rather than obstructers of development. The Indian media in the last few years has carried quite a few lead stories on the personal initiatives of the post-90s bureaucrats in the domain of citizen friendly administration. A lot of the comparatively younger bureaucrats have grown up in the new, liberalising India and are, therefore, more amenable to the new ideas of development. However, in so far as corruption is concerned, as we have already stated above, it is difficult to say whether it has gone down, up or remained at the pre-economic reforms level.

Check Your Progress 5

Note: (i) Use the space given below your answer

(ii) Check your answers with the model answers given at the end of unit

1. What has been the impact of globalisation on the Indian bureaucracy.

13.8 SOME CONTROVERSIES/PROBLEMS ASSOCIATED WITH THE BUREAUCACY

The Indian Bureaucracy has had some continuing problems/controversies associated with it from the very beginning. It may be mentioned that these problems are to be found in bureaucracies worldwide.

13.8.1 Minister Versus Civil Servants

The inter-relationship between the political (ministers) and the permanent (government officials) executive in India (as elsewhere) has been complex, to say the least. To a great extent, this is because of the inherent nature of the relationship between the ministers and the civil servants. In any form of government and more so in a democracy, such as India's, the civil servants are subordinate to the ministers. However, this is not always the case. Where the minister is ignorant and incompetent, the officers under him have a field day doing exactly as they please with the minister unable to do a thing. On the other hand, when the minister is powerful the officers are generally too willing to do the minister's bidding; often in contravention of all rules and regulations.

Also, as we have already pointed out, ministers and bureaucrats in India have often enjoyed a highly mutually beneficial relationship based on a quid pro quo basis; i.e. a relationship based on mutual exchange of favours. The net result of all this has been a highly politicized bureaucracy and this fact, has not changed much even in the post-globalisation era.

13.8.2 Generalists Versus Specialists

This again is a controversy that has plagued the bureaucracies the world over. Each country has tried to find its own solution to the problem.

In India, the genesis of the problem can be traced back to the days of Lord Cornwallis who is credited with laying the foundation of the civil services in India. The Britishers needed English knowing Indians and general awareness to man the lower ranks of the bureaucracy. No specialist knowledge was required. This set the precedent for Indians from the pure stream of Arts and Humanities and later on Sciences and Commerce (though not to the same extent) making it to the civil services. Professionals and Specialists (medicos, engineers, etc.) very rarely thought of a career in the bureaucracy. However, this has changed over the years. As governance has become more complex, need has been felt of 'candidates with a more specialised background. This is because civil servants with a generalist background have increasingly been found unequal to the task. The recruiting bodies such as the UPSC have also been encouraging aspirants with a specialist background, viz., medicos, engineers, lawyers, chartered accountants, etc.

The controversy is mainly centred on the fact that one school of opinion holds that a person with a general background (especially in Humanities/Social Sciences) is better suited for the task of civil administration as s/he can take an overall, macro view of the tasks and the issues at hand. The other school, however, holds that in the present globalised era with a lot of emphasis on I.T. (information technology) and on issues of economic and commercial significance, a specialized background is more conducive to effective and productive administration. The solution perhaps lies in effecting a grand mix of the two approaches and in India, this has been attempted. For instance, the department of science and technology has often been headed by professional scientists rather than career bureaucrats, even though one has to mention that the bureaucrats have resented this.

13.8.3 Under-representation of the Minorities

The minorities, especially, the Muslims-India's largest minority – have often complained of their poor representation in the country's premier civil services such as the IAS and the IPS. However, there is no hard core evidence to support that this has been deliberately the case. Poor levels of education and motivation have been a major cause. Solutions such as a separate quota for the minorities have been suggested, but it requires a consensus amongst the political class.

Check Your Progress 6

Note: (i) Use the space given below your answer

(ii) Check your answers with the model answers given at the end of unit

1. Discuss some of the controversies/problems associates with the bureaucracy in India.
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13.9 LET US SUM UP

In this unit, you have read about the bureaucracy in India. Some form of bureaucracy has existed from times immemorial. Modern bureaucracy is attributed to people's Republic of China which was the first country in the world to conduct on open, competitive examination for recruitment to the civil services. Bureaucracy basically means a body of government officials.

In India, bureaucracy as we know it today is traceable to Lord Cornwallis. Colonial bureaucracy which had the Indian Civil Service (ICS) at its top basically served the ends of India's colonial masters. After independence, in the early years there was a lot of enthusiasm amongst both the political leadership and the bureaucracy regarding nation building. However, over a period of time things went down. The politician-bureaucrat-businessman combine, the idea of a committed bureaucracy, all these spelled the doom of the civil services. Today, the bureaucracy is in the era of globalisation and trying to come to grips with a loss of power in a regime of slackening governmental control over the economy.

13.11 SOME USEFUL REFERENCES

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Crozier, Michael, *The Bureaucratic Phenomenon*, University of Chicago Press, Chicago, 1964

Downs, Anthorony, *Inside Bureaucracy*, Little Brocess & Co. Boston 1967

Nehru, Jawaharlal, *An Autobiography*, Badley Head, London, 1955

13.11 ANSWERS TO CHECK YOUR PLROGRESS EXERCIES

Check Your Progress Exercise 1

1. Your answer should include the following points:

- (a) Executive arm of the government
 - (b) Body of government officials
2. Your answer should comprise the following:
- (a) Features – hierarchy, chain of command, adherence to rules and regulations, impersonal/faceless and apolitical
 - (b) Any two features of your choice

Check Your Progress Exercise 2

1. Your answer should consist of the following:
- (a) Lower ranks largely of Indians; doors to the ICS opened later
 - (b) Created to serve colonial ends
 - (c) Nationalist leadership critical of the ICS
 - (d) Maintenance functions

Check Your Progress Exercise 3

1. Your answer should include:
- (a) Autonomous, statutory body created by the constitution
 - (b) Recruitment of civilian/military bureaucracy
 - (c) Advisory body for career matters
2. Your answer should comprise:
- (a) Reservation for SCs/STs versus that for OBCs
 - (b) Possibility of reservation in the private sector

Check Your Progress 4

1. Your answer should include:
- (a) Commitment to politicians/parties in power
 - (b) Politicisation of the bureaucracy
2. Your answer should comprise:
- (a) Result of licence permit requirement
 - (b) Relationship of mutual favours and in contravention of rules and regulations

Check Your Progress Exercise 5

1. Your answer should mention:
- (a) Comparatively less red tapism
 - (b) Level of corruption not significantly reduced
 - (c) Positive change among some bureaucrats

Check Your Progress Exercises 6

1. Your answer should include the following points:
- (a) Ministers Versus Bureaucrats
 - (b) Generalists Versus Specialists
 - (c) Under- representation of Minorities

UNIT 14 NATURE OF INDIAN FEDERALISM

Structure

- 14.0 Objectives
 - 14.1 Introduction
 - 14.2 Nature of a Federation
 - 14.3 Federalism in India
 - 14.3.1 The Structure of the Indian Federation
 - 14.3.2 Territories of the States
 - 14.3.3 Structure of Government
 - 14.3.4 Division of Powers
 - 14.4 The Union-state Relations
 - 14.4.1 The Financial Powers of the Union and the States
 - 14.4.2 The Finance Commission
 - 14.4.3 The Planning Commission and National Development Council
 - 14.5 The Union Territories
 - 14.6 Let Us Sum Up
 - 14.7 Some Useful Books
 - 14.8 Answers to Check Your Progress Exercises
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14.0 OBJECTIVES

This unit deals with the nature of Indian federalism. It explains the way in which the Indian federalism is different or similar to some major federations in other countries.

After reading this unit, you will able to:

- Explain the meaning of the concept of federalism;
 - Understand federalism in the light of polities in India;
 - Identify the issues which are related to federalism in India; and
 - Understand the relationships among different units of Indian federal system.
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14.1 INTRODUCTION

Federalism is a form of government in which the sovereign authority of political power is divided between the various units. This form of government is also called a “federation” or a “federal state” in the common parlance. These units are Centre, state and panchayats or the municipalities. The centre also is called union. The component units of the union are called variously as states (in the United States of America), Cantons (in Switzerland), Provinces (in Canada), Republics (in the former Union of Soviet Socialist Republic). Literally, the word ‘federal’ means contractual. A federal union is a contractual union. A federal state is a state brought into being through a contractual union of sovereign states. The union of states by conquest cannot be called a federal union.

14.2 NATURE OF A FEDERATION

A federation is basically formed on the basis of principles of a contract. It means that the sovereign units-union, states or local units, form a federation on the basis of mutual and voluntary agreement. This kind of voluntary union/ federation is possible

only in a democratic framework. It also means that the extent of union is limited. The contracting parties never surrender their complete authority/power. Thus, when two or more sovereign states unite voluntarily, they retain their internal/local autonomy and unite only on matters of common interest. More than a hundred years ago, therefore, James Bryce declared that 'A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights.'

In actual practice, however, not all-federal states have been born through union of sovereign states. Many of them have been products of devolution of powers by a centralized authority of a union government to the lower units. Indian federation is one such example.

14.3 FEDERALISM IN INDIA

Federalism in India has some similarities with that of U.S.A. The Constitution of India like the Constitution of U.S.A, which is the oldest federation, nowhere uses the term "federation" or "federal union". Both countries have dual polity - one for the Central / Union government, and another for the state government. But there are two main differences between them. A person in USA has dual citizenship, one of the states where he resides, and another the citizenship of his/her country U.S.A. There is no dual citizenship in India. An Indian citizen has only one citizenship - Indian. There is no separate citizenship for the state where a person resides. Besides, apart from the constitution for the USA, each state has its own constitution. But these are loosely interrelated. In India there is only single constitution for the whole country, with the exception of the state of Jammu and Kashmir.

The Article 1 of the Constitution of India describes India as a "Union of states" for Indian federalism. The word "Union" has been used because according to Ambedkar the "federation in India was not a result of an agreement between different states to join a Federation". As mentioned earlier, the federation in India is the result of the devolution of power, not the result of an agreement. This does not give a state the right to secede from India. But the pattern of division of power under the Constitution renders it a federal character. This federal character was given by the framers of the Constitution primarily for two reasons:

- 1) A federal state is more effective than a unitary one when the size of its territory is as large as India.
- 2) A federal state is more effective than a unitary one when diverse groups of its population live in a discrete territorial concentration as in India.

14.3.1 The Structure of the Indian Federation

The Constitution of India is written and relatively rigid. Several provisions of the Constitution can be amended only with the consent of a majority of the state legislatures. The Constitution divides power between the Union and the states. The Supreme Court of India has original jurisdiction to decide disputes between:

- a) The Union and a state or a group of states;
- b) One state and another state or a group of other states; and
- c) One group of states and another group of states.

14.3.2 Territories of the States

It is said that the USA is an 'indestructible union of indestructible states'. It means that the states of the USA cannot be split, merged or altered in size, but they may not leave the union. But in India boundaries of States can be altered by a law

enacted by parliament. It is in this context that in India territorial reorganisation has been going on till the year 2000 and further reorganisations are possible. In the year 2000 the number the number of states stands at 28, the number of Union territories at seven.

According to Article 3 of the Constitution of India, Parliament has power to separate territories from states and Union territories to create new states or Union territories, to merge two or more states or/and Union territories, split a state or a Union territory into two or more states or/and Union territories and to unite parts of states and Union territories to create new states or Union territories. The views of the concerned state legislatures will have to be taken beforehand but not necessarily respected.

14.3.3 Structure of Government

The Union and states have separate governments, both based on parliamentary systems. Like President at the Centre, the Institution head of government at State level is Governor. However, although the President is elected indirectly by the people, the Governors of the states are appointed by the President (i.e., the Union Government). Both the President and the Governors are advised by their Councils of Ministers.

But there is no strict division of public services in India. The Union and the state officials administer both the Union and state laws simultaneously. There are state civil services. But there are also All-India Services whose members serve both the Union and the state government.

The Indian judiciary is, however, integrated. It is headed by the Supreme Court of India, which is also the federal court.

14.3.4 Division of Powers

The Indian Constitution lays down an elaborate division of legislative powers between the Union and state government in the Seventh Schedule. The executive powers of the Union and state governments co-exist with their legislative powers. The powers of the Union and state governments are enlisted in three lists known as: The Union list, the State list and the Concurrent list.

In List I, the Union List, the powers of the Union government are mentioned; it contains 97 subjects; in List II, the State List, 61 subject are mentioned on which State legislatures will enact laws. In List III, the concurrent List are mentioned the powers that are to be concurrently exercised by the Union and the state governments and 47 subjects are mentioned in this. The residual powers, not mentioned in any of these lists, belong to the Union. There are, however, three conditions attached to this division:

- 1) If on a concurrent list subject the Union and a state's laws conflict, the Union law will prevail.
- 2) If the Council of States, or Rajya Sabha by a majority of two-thirds of its members, decide by a resolution that a certain subject belonging to the state list is of national importance the Parliament will be able to legislate on it.
- 3) When a proclamation of emergency is in operation the Parliament may legislate on any of the state subject. The force of such law will lapse six months after the proclamation ceases to operate.

Broadly speaking, all subjects relating to defence, security, external affairs, communication, currency, banking and insurance, inter-state river and river valleys,

inter-state trade and commerce, major industries, development and regulation of oilfields and mines declared by Parliament necessary to be controlled by it, census and universities and other institutions declared by Parliament to be of national importance are under the Union's control. Public order, police, prisons, local communication, land, agriculture, public health, local government, mines not under the Union's control, intoxicating liquor and betting and gambling are under the state's control.

The concurrent jurisdiction of the Union and the state extend to criminal law and criminal procedure, preventive detention, education, forests, inland shipping and navigation, factories, boilers, electricity, newspapers, books and printing presses, weights and measures and price control.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer

ii) Check your answers with the model answers given at the end of the unit.

- 1) Who exercises the residual power in Indian federation?

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- 2) Why is India referred to as a "Union of states" rather than federation?

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14.4 THE UNION-STATE RELATIONS

A federal state has often been described as a union without unity, meaning that there is division of power along with cooperation between the partners. This cooperation has been sought to be established by the Constitution in different ways:

- i) In the first place there is a directive of the Constitution that the states should legislate on subjects belonging to their jurisdiction and the Union can legislate on subjects belonging to its jurisdiction. But, as we have seen, Parliament may legislate on state subjects in some special cases (See 14.3.4. above).
- ii) The Governors, on the other hand, have been given the power to withhold assent to a bill and reserve it for the President's assent. The matter becomes complicated by the fact that the Governors are appointed by the President and hold office during the pleasure of the President (i.e., the Union government).
- iii) The Parliament may delegate power to legislate on any Union subject to a state legislature. Two or more states may also delegate the power to legislate on any of the state subjects. But this can be done only if these states request the

Rajya Sabha (the Council of States) to pass a resolution empowering the parliament to legislate on the matters in the state list. Even without the request of the two or more states, the Parliament can legislate on the state issue, if two third members present in Rajya Sabha pass resolution to this effect.

- iv) The states have been directed to exercise their executive power in compliance with the laws of the Parliament and any existing law in operation on the state. The Union has executive power to issue directions to the state to ensure such compliance.
- v) The Union has the power to issue directives to the state to exercise their executive power without prejudicing the executive power of the Union and the Union can issue directions to ensure this restriction.
- vi) The Union has power to protect the states from external aggression and internal disturbance
- vii) The failure of a state to give effect to any of the directives may lead to a declaration of constitutional breakdown in a state.

These generally healthy provisions, it should be noted, have sometimes been misused to the detriment to state autonomy.

14.4.1 The Financial Powers of the Union and the States

Like the legislative and the executive powers financial powers are divided between the Union and the states in such a detailed and complicated way that most commentators on the Indian federal system have chosen to use the phrase 'financial relations' rather than 'division of financial power'. This is mainly due to two reasons. Politically speaking the revenues of the Union are far greater than the revenues of the states making the states dependent on federal subsidies. Constitutionally, on the other hand, the Indian Constitution makes a distinction between the power to levy taxes and the power to appropriate them. There is no concurrent jurisdiction in the matter of taxation.

Further, the division of financial powers has been subjected to four amendments: the 3rd (in 1954), the 6th (in 1956), the 46th (in 1982) and the 80th (in 2000). These amendments have enhanced the Union's power to levy taxes but not necessarily to appropriate them. There are three kinds of taxes in the Constitution, as a result:

- 1) Taxes and duties collected and appropriated by the states.
- 2) Taxes and duties collected by the Union on behalf of the states and assigned to them.
- 3) Taxes and duties collected by the Union and distributed among the states according to principles laid down by the Parliament.

Besides these taxes and duties the Union has unlimited power to give grants-in-aid to the states.

The States impose land revenue, agricultural income tax, succession duties and estate duty on agricultural land, taxes on lands and buildings, taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development, excise duties on alcoholic liquors, opium, Indian hemp for non-medicinal purpose, taxes on entry of goods for consumption and sales, taxes on consumption and sale of electricity, sales tax on goods other than newspapers exchanged within the State, taxes on advertisements except those on newspapers, radio or television, taxes on goods transported by roads or inland waterways and vehicles on road, taxes on animals and boats, tolls, taxes on professions, trades, callings and employments, capitation taxes, taxes in luxuries, amusements, betting and gambling and fees in respect of any of the matters in the State List.

The net proceeds of taxes and duties that the Union levies, after being distributed among the states as above, all loans received by the Union and all its receipts in repayment of loans form the Consolidated Fund of India. All revenues, loans and receipts in repayment of loans by a state government form the Consolidated Fund of the State.

Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union list are levied by the Union government but collected and appropriated by the states (Art. 268).

Taxes on sale and purchase of goods other than newspapers and taxes on consignment of goods, where such sale or purchase or consignment takes place in course of inter-State trade and commerce, shall be levied and collected by the Union but assigned to the states according to the principles of distribution formulated by the Parliament (Art. 269).

The other taxes and duties allowed under the Union list-tax on non-agricultural incomes, customs including export duties, excise duty on tobacco and medicinal and toilet preparations containing alcohol, opium and narcotic drugs, corporation tax, taxes on capital value of non-agricultural assets of individuals and companies and capital of companies, estate and succession duties on property other than agricultural land, terminal taxes on goods or passengers carried by railways, sea or air, taxes on railway fares and freights, taxes other than stamp duties on transactions in stock exchanges and futures market — are levied and collected by the Union. A percentage of their proceeds will go to the Union government according to the order of the President (i.e., the Union government) after considering the recommendations of the Finance Commission. The rest will be distributed among the states according to the prescription of the President after considering the recommendations of the Finance Commission (Art. 270).

This leaves the Union with the power to charge fees on any matter relating to the subjects in the Union list for its wholesale appropriation. Stamp duties other than duties and fees collected by means of judicial stamps and fees imposed on the subjects included in the Concurrent List but not including fees taken in any court are collected concurrently. Taxes on the residual subjects are exclusively under the Union's jurisdiction.

At the same time, the property of the Union and the purchase and storage of water and electricity by the Union are free from taxation of a state. The property and income of a state is, on the other hand, free from Union taxation. Any tax imposed by a state on a Union property before the commencement of the Constitution would continue to be collected by the state until the Parliament otherwise provides. Further, Parliament, by law, may provide for imposition of tax on a trade or business carried on by a state.

There is a special provision for grant in lieu of export of jute to the states of Assam, Bihar, Orissa and West Bengal (Article 273). All other grants-in-aid are governed by Article 275.

14.4.2 The Finance Commission

Every five years the President appoints a Finance Commission. The Parliament by law determines the qualification required for appointment to the Commission (Art 280). The Commission recommends to the President:

- i) the distribution of the net proceeds of taxes between the Union and the states and the allocation of shares of such state proceeds among the states;
- ii) the principles which should govern the grants-in-aid of the states revenues from the Consolidated Fund of India; and

- iii) the measures needed to augment the Consolidated Fund of a state to supplement the resources of the panchayats in the states.

The President causes the recommendations to be presented to the Parliament (Art. 281). It should, however, be noted that the recommendations are not mandatory. The President, that is, the Union government, is the final authority to decide on such recommendations.

14.4.3 The Planning Commission and National Development Council

Unlike the Finance Commission, the Planning Commission is not a statutory body. It was set up by a formal resolution of the Union Cabinet in March 1950. The Planning Commission plays an important role in the formulation of India's economic policies. The Prime Minister is the chairman of the Planning Commission. Some of the important members of the Planning Commission are Union Council of Ministers, Cabinet Secretary and other distinguished persons. It is an extra - constitutional agency and works as an advisory body. It is responsible for the Five Year Plans of the country.

The plans finalised by the Planning Commission are discussed by the National Development Council (NDC). It is the highest reviewing and advisory body in the field of planning. It was constituted in 1952. The member of the NDC are Prime Minister, Chief Ministers of all states, members of Planning Commission and all Union cabinet ministers. It is an intermediary body between the Union, state and local government. Five Year Plans become operational after the approval of the NDC.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answers.

ii) Check your answers with the model answers at the end of the unit.

- 1) How many types of taxes are there in the Constitution of India?

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- 2) Discuss the functions of the Finance Commission.

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- 3) What is the relationship between the Planning Commission and the National Development Council?

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14.5 THE UNION TERRITORIES

The Union territories are small and special areas directly under the administrative control of the Union government. Many of the former Union territories have been promoted to the status of states.

The President appoints an administrator for a Union territory, sometimes designated as Lieutenant-Governor. The President may also appoint the Governor of an adjacent state as the administrator of a Union territory. Such Governors, while administering the Union territories, are not advised by the Council of Ministers of their own states.

In 1962 Parliament created a legislature and a Council of Minister for some Union territories. All of them, except Pondicherry, have by now become states. In 1991 Delhi was given a special status as a Union capital territory with a large autonomy.

14.6 LET US SUM UP

Federalism is a union without unity in political terms. In India this union is a result of devolution of power from the central government to the state governments. The Constitution divides legislative, executive and financial powers between the Union and the states with a tilt towards the Union. The Indian judiciary is integrated but the highest court is also the federal court of the country. The state boundaries are not firm and there are occasional Union-state and center-state tensions.

14.7 SOME USEFUL BOOKS

- D. Basu, *Introduction to the Constitution of India*, New Delhi, Prentice-Hall.
- Economic Reforms: The Role of States and the Future of Center-State Relations*, New Delhi, Observer Research Foundation, 1996
- Ian Copland and John Rickard (eds.), *Federalism: Comparative Perspectives from India and Australia*, New Delhi, Manohar, 1999.

14.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) The Union
- 2) Unlike in the federation, which is result of the agreement between the constituent units, in the "Union of States" the constituent units of the Indian union have no right to secede.

Check Your Progress Exercise 2

- 1) Three types of taxes; collected and appropriated by the states, collected by the Union on behalf of the states and assigned to them, and, collected by the union and distributed among the states according to the principles laid down by the constitution.
- 2) To recommend to the President distribution of taxes between the Union and states, principles governing the grant-in-aid of the state revenue from the Consolidated Fund of India, and measures to augment the Consolidated Fund of India.
- 3) Plans finalised by the Planning Commission are discussed by the National Development Council (NDC).

UNIT 15 SPECIAL PROVISIONS FOR NORTH-EAST, J & K, ETC.

Structure

- 15.0 Objectives
- 15.1 Introduction
- 15.2 Special Provisions
 - 15.2.1 Article 370 Regarding Jammu and Kashmir
 - 15.2.2 The Sixth Schedule for the North - East
 - 15.2.3 The Fifth Schedule for the Scheduled Areas
- 15.3 Why Special Provisions?
 - 15.3.1 Jammu and Kashmir
 - 15.3.2 The North - East
 - 15.3.3 The Scheduled Areas
 - 15.3.4 Special Category States (SCS)
- 15.4 Politics Relating to the Special Provisions
 - 15.4.1 Jammu and Kashmir
 - 15.4.2 North - East India
- 15.5 Let Us Sum Up
- 15.6 Key Words
- 15.7 Some Useful Books
- 15.8 Answers to Check Your Progress Exercises

15.0 OBJECTIVES

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

- Identify the areas which are distinct from most other parts of the country;
- Know the special constitutional provisions meant for these regions;
- Give reasons for introduction of the special provisions; and
- Understand the different perceptions of the special provisions within these regions.

15.1 INTRODUCTION

The Constitution of India provides for uniform rule over the whole country. But certain regions of the country are governed by special provisions. These provisions ensure the protection of cultural identities, customs and economic and political interests of the original inhabitants of these areas. These regions include the tribal hills of the North Eastern States, i.e., Assam, Arunachal Pradesh, Manipur, Nagaland, Mizoram, Meghalaya and Tripura, the state of Jammu and Kashmir and the regions known as the "Scheduled Areas".

"The Scheduled Areas" are those tribal inhabited areas which are located in other parts of the country than the North-East India. These areas are located in the states of Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Jharkhand, Maharashtra, Orissa and Rajasthan. Besides these areas, some other regions of the country also are governed by the special provisions.

Furthermore, some states have been clamouring to be accorded Special Category States (SCS), though there are no special provisions for them in the constitution. Placement in such category would entitle them to get special assistance to development - like increase in the grant-in-aid in comparison to the loan. While the loans have to be repaid to the lender, the grant-in-aid has not to be re-paid. Orissa, Bihar and the newly created state of Uttaranchal have demanded to be included in the SCS.

15.2 SPECIAL PROVISIONS

Our Constitution has the following special provisions:

15.2.1 Article 370 Regarding Jammu and Kashmir

No law passed by the Parliament regarding the state of Jammu and Kashmir can be applied to the state without the Order of President of India in concurrence of the state government. No such conditions exist in the case of other states. In the original Constitution of Jammu and Kashmir, the provisions of Article 370 were described as "temporary" measures. Under the agreement of 1975 signed between Shiekh Abdullah and Indira Gandhi it was agreed upon that Abdullah will give up the demand for plebiscite and special status of Jammu and Kashmir will continue; it would no longer remain a temporary measure. But the agreement could not be implemented owing to the differences and the Order of the President could not be issued. Jammu and Kashmir is the only state in the country having a Constitution of its own within the framework of Indian Union. The important provisions of the Constitution of Jammu and Kashmir can be summarised as follows :

- i) Territory of Jammu and Kashmir consists of all those areas which were under the sovereignty of erstwhile ruler. These areas include that territory which is at present under the occupation of Pakistan.
- ii) Out of 123 assembly seats of Jammu and Kashmir, 25 allotted to the Pakistan-occupied portion of Kashmir, remain vacant because the situation is unsuitable for the election there;
- iii) Though the executive and legislative powers of the State government cover the entire state, yet these powers do not apply to those areas which come under the jurisdiction of Parliament;
- iv) The "permanent residents" of Jammu and Kashmir enjoy all rights which are guaranteed in the Constitution of the Country.
- v) A majority of not less than two-thirds of the members of the house can amend the Constitution by passing a bill. But the bill can not make the changes in provisions relating to the relationship between the state and the Union.

15.2.2 The VI Schedule for the North - East

According to Article 244 of the Constitution the VI Schedule lays down special provisions for the protection of the interest and cultural identities of the hill tribes of North. The most important provision of the VI Schedule is creation of the Autonomous District Councils. While tribals of some of the North - Eastern states have the Autonomous District Councils, Arunachal Pradesh, Nagaland and greater part of Mizoram do not have this. The Inner Lines Regulation exist for three states, i. e., Arunachal Pradesh, Mizoram and Nagaland, and North Cachar district of Assam.

The modern institution of the Autonomous District Councils are elected bodies. They are controlled by the new generation which has benefited from modern means of education. This placed the new elite in confrontation with the traditional elite who have considered it as an encroachment on their position. In fact, they have been demanding its abrogation. Also a section of the non- tribals have been seeking the removal of the Autonomous District Councils. They argue that the VI Schedule was introduced to protect the interests of the tribals while they would be constituents of Assam. But with the formation of separate states there was no need for the Autonomous District Councils. Besides, there is no clear demarcation of the jurisdiction of the ADCs, which result in overlapping of the jurisdiction of the ADCs, state legislature and the village councils. This causes inconvenience to the people.

Since the British days a system of Inner Line was drawn up under the Bengal Eastern Frontier Regulation , 1873. It prohibits the travel of outsiders into the area beyond the Inner Line without the government's permission. Aimed primarily at protecting the people of the covered area from the exploitation of the plainsmen, this also preserved the British control there and hindered the integration of the people of the hills and plains. The Inner Line is a subject of hot controversy in northeast India.

15.2.3 The V Schedule for Scheduled Areas

For the protection of the interests and cultural identity of the tribals residing in parts of the country other than hills of the North-East, there are special provisions in the Constitution of India. These areas are known as the Scheduled areas and the provisions regarding them are enshrined in the V Schedule of our constitution. Parliament has powers to change these by ordinary legislation without amending the constitution. The main provisions are as follows:

- i) The executive power of the states extend to the scheduled areas;
- ii) The Governor of these states has to submit the report to the president regarding the administration of such areas on the annual basis or whenever required to do so;
- iii) Tribes Advisory Councils have to be constituted to advise the government on the matters relating to the welfare and advancement of the Schedules Tribes - these matters are those which may have been referred to the councils by the Governor;
- iv) The Governor is authorised to direct the state government not to apply in the Scheduled Areas any Act of Parliament or the state Legislature or apply it subject to exceptions or modifications;
- v) The Governor is authorised to make regulations to prohibit or restrict transfer of land by or among the members of Scheduled Tribes, to regulate the allotment of land and the business of money-lending. All such regulations made by the Governor must have the assent of the President;
- vi) The President may appoint a Commission to report on the administration of the Scheduled Areas and Scheduled Tribes in the state. As it was obligatory to appoint such Commission at the end of first ten years of the implementation of the Constitution, the first Commission was appointed in 1960. The Commission submitted its report in 1961.

Check Your Progress Exercise 1

- Note: i) Use the space given below for your answers.
ii) Check your answers with the model answers given at the end of the unit.
- 1) Mention the special provisions which are meant for the North - East India.

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15.3 WHY SPECIAL PROVISIONS?

15.3.1 Jammu and Kashmir

The whole state of Jammu and Kashmir enjoys special status among the states in India under Article 370 of the Constitution. This state enjoys special position because of the special circumstances under which it was brought under the governance of the Union of India. During the British period the state of Jammu and Kashmir was ruled by a hereditary king. Like many rulers Maharaja Hari Singh joined Dominion of India by signing the Instrument of Accession on October 26, 1947. India agreed to accept the accession of Jammu and Kashmir on the request of Maharaja, who had found it necessary following the attack of the Azad Kashmir forces in the wake of the formation of Pakistan. Accordingly the subjects of Defence, External Affairs and Communication in respect of Jammu and Kashmir like other states which joined India as per the Instrument came under the jurisdiction of Dominion of India. With the implementation of the Constitution in 1950, the state of Jammu and Kashmir was included in the Part B of the first Schedule.

Despite being a member of the Part B states, the part in which the erstwhile big Princely states were placed, special provisions were devised for the governance of the state of Jammu and Kashmir. These provisions were different from those meant for other states of the part B. These were incorporated in the Article 370 of the Constitution. According to the provisions of this article, the state of Jammu and Kashmir was given a separate Constituent Assembly. It consisted of the representatives of people of the state. The aim of the Constituent Assembly was to write the constitution of the state and demarcate the jurisdiction of Union of India over the state of Jammu and Kashmir. The provisions of the Constituent Assembly were applied as interim arrangements.

Even as in the cases of erstwhile princely states, the Government of India was empowered to exercise control over all issues mentioned in the Union List, in this case the Government of India had given public assurance that the Accession of this state to the Union of India would be subject to the confirmation by the people of Jammu and Kashmir. The Government of India in turn put the condition on the Maharaja that following the accession the Maharaja would introduce a popular government. It meant that he would abolish the hereditary rule. The accession was confirmed by the people of Jammu and Kashmir through their representatives in the Constituent Assembly of state. But it was done on the condition that Jammu and Kashmir would be governed by different rules to be framed by the Constituent Assembly. The suggestions of the Constituent Assembly of Jammu and Kashmir were incorporated in Article 370 of the Constitution of India. The continuation, amendment or the suspension of this article can not be done without support of a majority not less than two thirds of the membership of legislation Assembly of Jammu and Kashmir, which means people of the state. The President of India assented the recommendations of the Constituent Assembly by making Constitution (Application to Jammu and Kashmir) Order, 1950, in consultation with the Government of Jammu and Kashmir. This Order specified that the Parliament of India would be competent to make laws relating to three areas — Defence, Foreign Affairs, Communication, i.e., issues agreed upon in the Instrument of Accession. All other issues were to be administered according to the Constitution of Jammu and Kashmir.

Again, in 1952, an agreement was signed between the state government and the Union of India. This agreement brought all issues mentioned in the Union List, not only three issues of Defence, Foreign Affairs and Communication, under the jurisdiction of the Union Government, pending the decision of the Constituent Assembly of Jammu and Kashmir. In 1954, the Constituent Assembly of the Jammu and Kashmir ratified the Accession to India as well as the agreement between the

state government and the Union of India. The President in consultation with the state government made the Constitution (Application to Jammu and Kashmir) Order, 1954. This Order implemented the agreement of 1952 signed between the state government and the Union government and ratified the Constituent Assembly. This Order also superceded the earlier Order of 1950.

The Order of 1952 expanded the scope of jurisdiction of the centre from just three subjects of Defence, Foreign Affairs and Communication mentioned in the Instrument of Accession of Jammu and Kashmir to all subjects mentioned in the Union subjects in the Constitution of India. This Order was amended seven times between 1963 and 1974. The amended Order brings the entire constitutional position of the state of Jammu and Kashmir within the framework of the Constitution of India, excluding the Constitution of Jammu and Kashmir which was made by the Constituent Assembly of the state.

The state of Jammu and Kashmir is the only state in the country which has its own Constitution. It is also the only state, which had a Constituent Assembly, which drafted the constitution of the state. The Constituent Assembly of Jammu and Kashmir, was elected by the people of the state. The Constituent Assembly met for the first time on October 31, 1951.

The Constituent Assembly of Jammu and Kashmir performed two main functions:

- i) It abolished the hereditary rule of Maharaja and replaced it with the elected head, *Sadar-I-Riyasat*, this post later was changed into the governor's post. As per the conditions of the Instrument of Accession, the Maharaja introduced a popular interim government, after inviting Sheikh Abdulla, President of the All India Jammu and Kashmir Conference to form the interim government. Later the interim government changed into a full-fledged cabinet, and Sheikh Abdulla became its first Prime Minister. But Sheikh Abdullah was not satisfied with it. He wanted the Maharaja Hari Singh to resign. Since abolition of the hereditary post was one of the conditions of the Government of India in the Instrument of Accession, in June 1949, the Maharaja abdicated in favour of his young son Yuvaraj Karan Singh. The Constituent Assembly elected the Yuvraj as 'Sadar-I-Riyasat' on October 3, 1951. However, by the Constitution of Jammu and Kashmir, 6th Amendment Act, 1965, the post of *Sadar-I-Riyasat* was abolished.
- ii) It framed the Constitution of the state. The Draft Constitution of the Constituent Assembly for state was adopted on November 17, 1957 and given effect from January 26, 1957.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answers.

ii) Check your answer with the model answers given at the end of the unit.

- 1) Mention the subjects which fell under the jurisdiction of the Government of India following the signing Instrument of Accession.

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15.3.2 The North - East

The VI Schedule of the Constitution of India created Autonomous Districts within Assam in order to preserve tribal autonomy and protect the cultural and economic interests of the hill tribes. The hill regions of North - East India have a history of

being governed by different criterion in comparison to the rest of India. While most of India with the exception of the princely states was governed by the standard colonial administration, the hill regions of Assam were ruled by the British indirectly. The British did not interfere with their traditional system of authority. The issues relating to land, inheritance, forest, dispute resolutions, etc., were dealt with according to the customary laws, and through the arbitration of clan and tribal chiefs. They were declared "backward areas" according to the Government of India Act, 1919. The Government of India Act, 1935 turned them into, "excluded" and "partially excluded" areas. There was some difference between the "excluded" and "partially excluded" areas. The former were not represented in the legislature of Assam, though they were located in the province of Assam. The "partially excluded" areas were privileged to have some legislative experience within the state of Assam. The "excluded areas" were administered by the Governor -in- Council as his "reserved" jurisdiction. On the "partially excluded" areas there was some authority of the provincial legislature. Jurisdiction of the courts of British India was limited in such areas.

The British India government placed the hill region of Assam in the "excluded" category because of the expediency of their policy-orientation. Finding the cost of administration not being compensated by the revenue returns, the British found it more expedient not to spend on running the administration of this region. Rather the hills were left to be governed by their traditional rule, which did not cost them anything. Besides, the people in this area had been averse to the notion of any outsider ruling over them. Any intrusion or its apprehension into their affairs was met with opposition and hostility.

In order to retain their distinctness, the British mooted a plan to bring all areas of the North-East along with hills of Burma under a "Crown Colony". The plan to create a "Crown colony" was a secret plan and was known as the "Coupland Plan" named after Reginald Coupland. This suggestion was rejected by the Indian National Congress. But the need to retain the distinctness of this region was recognised by providing special provisions regarding their governance. These provisions were included on the basis of the recommendations of the North-East Frontier (Assam), Tribal and Excluded Area Sub- Committee of the Advisory Committee of the Constituent Assembly of India. The sub-committee was known as Bordoloi sub-committee named after its chairman Gopinath Bordoloi, a member of the Constituent Assembly, and the then Prime Minister of Assam.

The main recommendation of Bordoloi Sub-committee was establishment of the Autonomous District Councils and Regional Councils in for the tribal areas within the state of Assam. With the commencement of the Constitution on January 26, 1950, Autonomous District Councils came into existence in the hill districts of Assam except the Naga Hills (suffering from the separatist violence) and extremely backward Frontier Tracts. After the reorganisation of North-East India there was a restructuring of the District Councils. In 1984 the VI Schedule was extended to Tripura (You will read about the story of reorganisation of North-East India in Unit 17.6.4)

Check Your Progress Exercise 3

Note: i) Use the space given below for your answers.

ii) Check Your answer with the model answers given at the end of the unit.

- I) What were the reasons for introducing the special provisions for the hill areas of North-East India?
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15.3.3 The Scheduled Areas

As you have seen in this unit earlier the “Scheduled Areas” are those tribal-inhabited areas which are located in states other than those of North - East India. Like the tribals of the hills of the North - East, they are also protected by the Special Provisions as enshrined in the V Schedule of our Constitution. This Schedule provides the safeguards to their cultural identity and economic interests.

15.3.4 Special Category States (SCS)

The Special Category States are a purely administrative category and not the constitutional ones. The states which are backward in terms of the development of the infra-structure or which have suffered due to the national disasters like drought or flood demand to be categorised as the Special Category States. Acceptance or rejection of such demands also depends on the political factors.

15.4 POLITICS RELATING TO THE SPECIAL PROVISIONS

Despite the existence of special provisions for different areas, there has been dissatisfaction on their relevance or inefficiency in almost all such regions of the country where such provisions exist. Some oppose these provisions describing them to be inadequate, others oppose them as unnecessary and violative of the minority rights.

15.4.1 Jammu and Kashmir

The accession of Jammu and Kashmir was opposed by the pro-Pakistan forces known as the “Plebiscite Front”. Sheikh Abdullah also joined the movement of “Plebiscite Front”. He was incarcerated from 1955 and released in 1964. But he was arrested again in 1965, and exiled from the state in 1971. He was released in 1975 following an agreement between Sheikh Abdullah and Indira Gandhi, the “Plebiscite Front” and the Union government. The National Conference led by his son Farooq Abdullah has been demanding that in case of Jammu and Kashmir the pre - 1953 position be restored. That means the central government should have jurisdiction on only three subjects which were mentioned in the Instrument of Accession- Defence, Communication and Foreign Affairs. Recently the Jammu and Kashmir Legislative Assembly passed a resolution demanding autonomy of the state. This resolution has been rejected by the central government led by the NDA, of which the BJP is the largest party and National Conference is a partner. The BJP is opposed to the continuance of the Article 370.

15.4.2 North-East India

Similarly there are reservations on the VI Schedule from various quarters. In fact, Naga separatists had refused to accept the VI Schedule, as they thought that the VI Schedule was an instrument of the integration of their district with India and Assam.

The introduction of the Autonomous District Councils weakened the position of the erstwhile ruling chiefs of the tribal society. The District Councils are controlled by the new generation of leadership. Therefore, the opposition to the Councils came from them. Thirdly, there are people who feel that the Autonomous District Councils are constrained by limitations; their position should be strengthened. There is overlapping of the jurisdiction of the District Councils, village Councils and the state government. These bodies are also being accused as breeding ground for corruption. Autonomous District Councils are primarily representative bodies, which have legislative power over certain issues like management of unreserved forests, inheritance of property, marriage and social customs, and Governor may confer

upon these Councils power to try certain suits or offences. The Councils have power to assess and collect land revenue and to impose certain taxes which are specified. It is obligatory to get the assent of the Governor for the laws made by the Councils. The non-tribals consider these bodies to be unnecessary. They allege that these are being used by the tribal vested interests to harass them. A large section of them want their abrogation.

15.5 LET US SUM UP

After reading this unit you must have come to know that there are certain regions in India, which are governed by special provisions under the Constitution. These areas are the hill regions of the North-East India, Jammu and Kashmir, and the Scheduled areas hill areas other than the North-East. The VI Schedule, article 370 and the V Schedule of our Constitutions are embodied with the Special Provisions for the hill area of North-East India, Jammu and Kashmir and the regions within the Scheduled areas respectively. The hill regions of the North - East which fall within the jurisdiction of the VI Schedule in the states of Assam, Arunachal Pradesh, Manipur, Nagaland, Mizoram, Meghalaya and Tripura. "The Scheduled Areas" are located in the states of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The Special Provisions are meant to protect the cultural identities and rights of the residents of the concerned regions, especially from the encroachment of outsiders. According to these provisions, outsiders can not sell or purchase the property of their residents, their affairs are governed by their customary laws. In case of the North-East India, the Autonomous District Councils and The Inner Lines Regulations are promulgated on the basis of the VI Schedule. Jammu and Kashmir is the only state in the country, which has its own Constitution. Any Act passed by India parliament which is related to Jammu and Kashmir can not become a law unless it is passed by the President of India in consultation with the state assembly. However, there are some controversies regarding the need and efficiency raised by both the supporters and opponents of the Special Provisions from every concerned region. Nevertheless, these provisions have helped in serving the purpose they were meant for.

15.6 KEY WORDS

Special Provisions	: Special provisions enshrined in the Constitution of India which are meant for the certain regions of the country on account of cultural, historical, economic and political consideration.
Autonomous District Councils	: District councils set up in the tribal regions of North - East India under the VI Schedule of the Constitution for the protection of cultural identities and political interests of the tribals inhabiting these regions.
Sadar - I- Riyasat	: An elected head of the state of Jammu and Kashmir which had replaced the hereditary rule of the Maharaja. Later on it changed into the governor's post.

15.7 SOME USEFUL BOOKS

Chabe, S.K., *Hill Politics in North-East India*, Orient Longmen, New Delhi 1999.

Basu, D.D., *Introduction to the Constitution of India*, Printice Hall, New Delhi, 1985.

Bakshi, P.M, *The Constitution of India* (with selective comments by the author).

Universal Law Publishing Company, Delhi, 1999.

15.6 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) The VI Schedule : Autonomous District Councils; Inner Lines Regulations.

Check Your Progress Exercise 2

- 1) Defence, External Affairs and Communication.

Check Your Progress Exercise 3

- 1) Preservation of identities of the inhabitants of these regions — cultural, social and historical, and protection of their political and economic interests.