
UNIT 6 BASIC FEATURES

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6.0 OBJECTIVES

In this Unit we shall discuss the salient features of the Indian Constitution in the backdrop of the relevant events that preceded the coming into force of the Constitution. After going through this unit you should be able to:

- List out the essential features of the Indian Constitution; and
- Highlight the significance of the salient features.

6.1 INTRODUCTION

The Constitution of India is the will of the people of the country. It sets the broad functional parameters of governance. The Constitution was prepared after lengthy deliberations in the Constituent Assembly, which began on 6 December 1946 and came into force on 26 January 1950.

6.2 GOVERNMENT OF INDIA ACT, 1935

The precursor to the Indian Constitution was the Government of India Act of 1935, usually referred to as the 1935 Act. The Indian Independence Act, 1947 held that until a new Constitution came into force, the 1935 Act would be the Constitutional Law of India.

The 1935 Act was the product of the Report of a Joint Select Committee that was discussed in the British Parliament before finally receiving the assent of the Queen, on 2 August 1935. Some of the features of the 1935 Act, with modifications though, were later incorporated in the Constitution of India. These include a federal structure

in the form of a Union government and State government(s) [Centre and State(s)] and the division of powers between them [Union List, State List and Concurrent List] bicameral Legislature—the Lower House and the Upper House [Lok Sabha and Rajya Sabha at the Union level; and State Legislative Assembly and State Legislative Council, at the State level], Federal Court [the Supreme Court].

6.3 CONSTITUENT ASSEMBLY

For the purpose of writing a constitution, a Constituent Assembly was convened. Constitution making was no easy task. The Constitution had to live up to the aspirations of the people who had been exposed to several centuries of injustice, social exploitation and discrimination, as well as two centuries of colonial dominance. Moreover, if it were to be applicable and acceptable to diverse religious, political and regional sections, it had to embody their interests. The motto with which the constitution-making exercise was undertaken was ‘consensus’, rather than the ‘majority principle’. In this, representatives from diverse ideological backgrounds, and several of them with a legal background, worked together. At the head of the exercise was Dr. Rajendra Prasad, a veteran of the freedom movement who was later to hold the office of the President of India for two successive terms, and the leading light was the first Prime Minister of Independent India, Jawaharlal Nehru. Renowned members of the Assembly included T T Krishnamachari, Dr. B R Ambedkar, Alladi Krishna Swami Iyer and Gopalaswami Aiyangar, Shyama Prasad Mukherji, J B Kriplani, Vallabhai Patel and Pattabhi Sitaramayya.

There were to be 381 members in the Constituent Assembly. They represented the various political parties and belonged to the Congress Party, Communist Party of India, Praja Party, Krishak Praja Party, Scheduled Castes Federation, Non-Congress Sikhs, Unionist Muslims and the Muslim League. Besides, independent Members and representatives from the Governor’s Provinces and the Princely States were also represented in the Assembly. There never was this full strength of the Assembly.

The provisions of the Constitution were extensively debated upon in the several Committees that were formed for the purpose before being presented to the Assembly for its consideration. On the basis of the deliberations in the Assembly, the Drafting Committee, which was constituted on 29 August 1947, prepared the draft text of the Constitution. Dr. B R Ambedkar was the chairman of the Drafting Committee. The final document, after making amendments to the draft Constitution, was signed on 26 November 1949, and two months later it came into force. We have examined the constitution-making exercise in greater detail in Unit 5 of Block 2.

It is, indeed, creditable that the Members of the Constituent Assembly completed the exercise of preparing a Constitution within a period of three years and appended their signatures to the document while it took many more years for other countries to have their first Constitution. Also, it goes to the credit of the country and is a testimony to the broad vision of the Constitution makers that the Constitution of India was never abrogated, and a new one introduced. The Indian Constitution was never seriously questioned since the time it came into force. The changing requirements were attended to through effecting amendments to the Constitution while its essential features were retained; they occasionally came under strain, though.

6.4 ESSENTIAL FEATURES

The essential features of the Constitution of India are as follows: The Constitution is supreme; The sovereignty of India cannot be surrendered or pledged; India is a Republic and cannot be turned into a monarchy; Democracy is a way of life than merely providing for adult franchise; Secularism and independent judiciary are two

pedestals of this democracy. Amendments to the Constitution can be made without altering its essentials. We shall discuss some of these features.

6.4.1 Sovereign, Democratic, Republic

The ‘Preamble’ to the Constitution declares that the people of the country are the sovereigns. In other words, ‘sovereignty’ rests in the people and is exercised through the institutions that have been created for that purpose. The sovereignty of the country can not be pledged, i.e., India can not be turned into a colony or a dependency of another country. The entire course of the Freedom Movement was on this quintessential principle of sovereignty.

In the Preamble it is also stated that the country shall be a Republic and shall adhere to a democratic form of government. In a Republic there is no scope for a Monarch to reign over the people, but the people themselves rule the country through their elected representatives.

6.4.2 Union of States

An important feature of the Constitution is that it has constituted India as a Union of States (Art 1). There is also scope in the Constitution to create new States as well as to admit new ones. Notable examples of these are the formation of States, for the first time after in 1956 by bifurcating some of the then existing States on a linguistic basis—Andhra Pradesh, Tamil Nadu, Karnataka and Kerala. Through the bifurcation of the Bombay State Maharashtra and Gujarat were formed. More recently, in the year 2000, three new States—Uttaranchal, Chhattisgarh and Jharkhand- were created. An example of the admission of new States into the Indian Union is the admission of Sikkim, in 1975, till then a protectorate of India, into the Union. The provision for admitting new States should also be understood in the context that some of the Princely States were yet not ready by the time the Constitution would come into force to become part of India. The Nizam’s State of Hyderabad is one such example. And, besides, there were French and Portuguese colonies—Pondicherry and Goa that remained to be integrated with India.

The Constitution, thus, provides for creating new States and admitting new territories. Once they become part of India they do not have the right to secede.

Check Your Progress Exercise 1

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

ii) Try to write the answers in your own words.

- 1) What was the principle that formed the constitution making exercise in India.

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- 2) Which was the state admitted into the Indian Union in 1975?

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- 3) Republic is a form of government in which

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6.4.3 Fundamental Rights

The Fundamental Rights provided for in the Constitution could be summarised as Right to Equality, Right to Freedom, Right Against Exploitation, Right to Religion, Cultural and Educational Rights and the Right to Constitutional Remedies. The Right to Property was made a legal right through the Forty Fourth Constitutional Amendment Act, and is hence, not a Fundamental Right now. In the larger interests of the country, the property belonging to any person can be acquired by paying a ‘compensation’.

The Fundamental Rights are enshrined in Part III of the Constitution, and their implementation is guaranteed by the Supreme Court. In other words, Fundamental Rights are justiciable. Indeed, some of the Fundamental Rights, it might be noted, are applicable only to the citizens of the country and not to foreigners. Article 20, Article 21 and Article 22 are, however, applicable to all. At the same time, it should also be borne in mind that what is applicable is the ‘restriction’ on the Right.

Except during an ‘Emergency’, Fundamental Rights cannot be suspended. However, even during an Emergency Article 20 Article 21 cannot be withheld. The Constitution was amended by the Forty Fourth Amendment Act and through Article 359-1A it was stated that Article 20 and Article 21 cannot be suspended even when a proclamation of Emergency is in operation.

Right to Freedom

The Constitution also ensures the Right to Freedom under Articles 19 to 22. Article 19 guarantees the right to freedom of speech and expression, right to peaceful assembly, right to form associations, right to visit and reside in any part of the country and the right to profess and practice ones religion. These rights too, are subject to any reasonable restrictions that can be imposed by the state under clauses 2 to 6 of Article 19.

Article 20 guarantees that no person shall be punished on the basis of laws that are enacted after a crime has been committed (protection from *ex post facto* laws), protection from being punished more than once for the same offence (protection from double jeopardy) and protection from standing trial against oneself (protection from self-incrimination). Article 21 ensures the protection of ‘personal life and liberty’. In other words, the state does not have the right to take away the life of a person, except through the procedure established by law. Article 22 prohibits detention of person’s without trial. However, preventive detention of a person up to three months and, in some cases, beyond that is permitted.

Right to Equality

Article 14, guarantees the Right to Equality before the Law and the Right to Equal Protection of the Laws. In other words, this article ensures that all persons can be tried in a court of law and every person can approach the courts for justice and that no person shall be discriminated against in the application of laws, nor can any person claim special privileges and favouritism.

Article 15 guarantees protection from discrimination on the basis of ‘religion, race, caste, sex or place of birth’, and provides for equal access and thus the Right against Discrimination. It also, however, states clearly that the state can make special provisions for the uplift of certain categories of people like socially and culturally backward classes and Scheduled Castes and Scheduled Tribes. An example in this context is the reservation provided in educational institutions and in the public services to the disadvantaged sections of the society. As one commentator observed, “the framers of the Indian Constitution sought to shape an overarching Indian identity even as they acknowledged the reality of pluralism by guaranteeing fundamental rights, in some cases through specific provisions for the protection of minorities.”

Article 16 provides for the Right to Equality of Opportunity in employment. Continuing with its desire to ensure equality of all citizens, the Constitution also abolished 'Untouchability' whose practice is a crime under Art 17, while Article 18 abolished Tittles.

6.4.4 Directive Principles of State Policy

The Directive Principles of State Policy (DPSP) are an adaptation from the Irish Constitution. These are broad guidelines which have to be borne in mind while enacting laws and in implementing them. Unlike the Fundamental Rights, the DPSP are not justiciable. Simplistically understood the DPSP have a 'welfare' connotation. The Constitution does not provide for their guarantee and, therefore, their enforcement can not be questioned in a court of law.

Fundamental Rights and the DPSP "together, not individually" form the core of the Constitution; "the true conscience". The DPSP prescribes that the state shall ensure (a) adequate means of livelihood for all, (b) distribution of wealth and control over it, rather than concentration, in the common good, (c) equal pay for equal work for both men and women (d) non-abuse of the health of all workers and (e) the protection of the children of the country from exploitation and their growth in an atmosphere of freedom and dignity.

6.4.5 Fundamental Duties

The Fundamental Duties enshrined in the Constitution are intended to obligate all the citizens to strive for the common benefit of all. They are expected to accord respect to the Constitution, the National Tri-colour and the Anthem. They are called upon to strive for upholding the unity and integrity of the country and work for a harmonious society setting aside all divisive tendencies. The citizens of the country have a duty to protect its resources both natural and material and work towards higher levels of achievement.

6.4.6 The Union: Executive, Legislature and Judiciary

There are, as all students of Political Science know, three organs or branches of government, i.e., legislature, executive and judiciary. A harmonious functioning among the three is vital for the furtherance of a country.

Legislature

At its Independence, India chose to adopt a parliamentary form of government. In such a form of government, the President is the Head of the State while real executive power is exercised by the Head of Government, the Prime Minister, in association with his Council of Ministers, all of whom are collectively responsible to Parliament.

Executive

In India, the legislature and the executive are drawn from one another, while the judiciary is an independent body. The legislature comprises of the House of People (Lok Sabha), Council of States and the President of India. A member of the Union Council of Ministers has necessarily to be a member of either of the lower house, the Lok Sabha or the Upper house, the Rajya Sabha.

President

Both the houses of Parliament and the legislatures in the States elect the President by means of a 'single transferable vote'. The Office of the President, its functions, powers tenure, method of election and re-election, impeachment, and the qualifications

required to hold the office are enunciated in Articles 52 to 62. All activities of the state are carried out in the name of the President as the executive power is vested in the President (Art 52). As in the United States, in India, too, the President is the Supreme Commander of the Armed Forces. The President summons both the houses of Parliament and addresses its joint sessions. He has the power to remit sentences and grant reprieve. He appoints all the important functionaries of the state such as the Prime Minister and the Council of Ministers, Judges of the Supreme Court and High Courts, the Attorney General, Governors of States, Chairpersons of Commissions like the Election Commission of India and heads of organisations like the Comptroller and Auditor General of India (C&AG).

Prime Minister and Council of Ministers

The Prime Minister is the Head of Government and presides over the meeting of the Union Council of Ministers. It needs to be kept in mind that there is a difference between the Cabinet and the Council of Ministers; the Cabinet is composed of Ministers of Cabinet rank and Ministers of State, while the Council also includes the Deputy Ministers. The Council of Ministers is collectively responsible to Parliament. Activities of the Ministries are brought under scrutiny by the opposition during the two-hour long Question Hour at the beginning of each day of the Session in Parliament. The Council of Ministers makes recommendations to the President, in what is called ‘aids and advises’, in the affairs of the country. Important among the recommendations that we should be aware are those relating to dissolution of the Lok Sabha, declaring war or declaring a ‘state of Emergency’.

Legislature/Parliament

The Indian Parliament is the supreme law-making body of the country. It is a bicameral legislature as in the United Kingdom, the United States and several other countries. The upper house is known in Hindi as the Rajya Sabha and in English as the Council of States. It comprises the Chairman, who is also the Vice-President of India, the elected members and 12 nominated members, each holding a term of six years, with one-third of its membership retiring every two years.

A significant aspect and point of difference between the Rajya Sabha and its equivalent, the American Senate is that the membership of each State in it is proportional to its population, whose legislative assembly elects the members of the Rajya Sabha. Thus, all States of the Indian Union do not send an equal number of representatives. The lower house of Parliament is the House of the People, better known as the Lok Sabha. Its members are elected for single term of five years or less directly by all eligible voters by means of ‘universal adult suffrage’ from territorially delimited constituencies.

The Rajya Sabha has little power over money bills. These can not be introduced in the Rajya Sabha. It has to return such bills to the Lok Sabha with its recommendations within 14 days, and it is for the Lok Sabha to accept or reject any of its recommendations. In case of a deadlock over a non-money bill between the Lok Sabha and the Rajya Sabha, the President convenes a joint sitting of the two houses to debate and vote on the bill.

A bill takes the form of an Act only after the President gives his assent to the same. The President is empowered to withhold assent to a bill passed by both houses of Parliament or refer it to Parliament with his suggestions. There have been very few occasions when the President withheld his assent, but of course, on the premise that the bill ran in contradiction with ‘public opinion’. One such instance was the Postal Bill that was thought to be infringing on the privacy of the people.

Check Your Progress Exercise 2

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

ii) Try to write the answers in your own words.

- 1) What rights do Article 20 and 21 deal with? Can these rights be restricted or temporarily suspended?

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- 2) What are the Fundamental Duties enshrined in the Indian constitution?

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- 3) The Union Cabinet consists of

- a) The Prime Minister, Ministers of Cabinet rank and Ministers of State.
- b) Cabinet rank Ministers and Ministers of State
- c) Prime Minister and Cabinet rank Ministers

Judiciary

The third and very important organ of the government is the Judiciary. The highest court of appeal is the Supreme Court. The Supreme Court has both appellate and original jurisdiction, as do the High Courts in the respective States.

The Supreme Court is the custodian of the Constitution. Laws enacted by the legislature can be declared invalid by the Supreme Court, if it is of the opinion that they are not in conformity with the provisions of the Constitution. This power is known as the power of 'judicial review'. Besides, the Supreme Court and the High Courts can also issue writs to the government and its agencies. A well-known example is the Writ of Habeas Corpus. By pleading for the issuance of such a writ an applicant asks the Supreme Court to direct the concerned police authorities to present before the court a person who is missing and is believed to be under their custody.

The President of India appoints all Judges of the Supreme Court and High Courts and the Chief Justices. The Constitution also clearly lays down the procedure for impeaching the Judges and Parliament alone can impeach a Judge of the Supreme Court. The instance of initiating the impeachment of a Supreme Court Judge occurred just once, when Justice K Ramaswamy was sought to be impeached, but the motion failed to succeed.

The Supreme Court and Parliament have on occasion entered into a tug. This was finally resolved with the Constitution Amendment Act stating that the Supreme Court has the power only to state whether an Act was in contravention of the provisions of the Constitution or not.

6.5 EMERGENCY PROVISIONS

Emergency Provisions are enshrined in Part XVIII of the Constitution under Articles 352 to 360. There are three types of Emergency that can be declared.

6.5.1 General Emergency

An emergency can be proclaimed when the security of the country is under threat or is under the danger of a threat from hostile countries during times of war or

external aggression or armed rebellion. (Article 352). Emergency was declared under this provision for the first time in the wake of the war with China on October 26, 1962. It continued upto January 10, 1968. Another proclamation of emergency took place on December 3, 1971, in the wake of the India-Pakistan war. During its continuation, a third Emergency was declared was on June 25, 1975. It was revoked in 1977. Critics argue that the third emergency was intended more to retain Mrs. Indira Gandhi in power than there was the actual threat. It was the darkest period for Indian democracy as there were arbitrary detentions for a prolonged period of time and accusations of widespread infringement of Fundamental Rights.

6.5.2 Declaration of Constitutional Emergency

The most contentious and abused emergency provision is Article 356. If the President receives a report from the Governor of a State stating that the constitutional machinery has broken down or that the administration of the State can no longer be carried out in accordance with the provisions laid down in the Constitution of India, an emergency can be declared in that State. The President may do so even if he is otherwise satisfied of a constitutional breakdown in a state. The provision allows dismissing the State government and bringing it under President's Rule or Central Rule. Under such a condition, the Governor of the State assumes all functions and carries out the administration in the State, on behalf of the President, i.e. the Centre, with the aid of his advisors appointed by the President upon the recommendation of the Union Council of Ministers.

There were several instances when Article 356 was brought into force in various States. The first instance of dismissing a State government by invoking Article 356 even while it continued to enjoy the confidence of the State Legislature occurred in 1959, in Kerala, when the Communist government of the day was dismissed. It generated a major controversy and it was argued that it was a wrong decision as the government commanded a majority on the State Assembly. On the other hand, the supporters of the decision held that public dissatisfaction manifest in the form of agitation against the government and its policies was reason enough to conclude that there, indeed, was a break down of law and order, and, hence, it was correct to impose President's Rule.

Other instances include the dismissal of State governments en masse twice, in 1977 after the Janata Party swept the general elections and subsequently in 1979 when the Congress Party returned to power. Other contentious occasions on which invoking the provision was resorted are in 1984 in Andhra Pradesh and later in Karnataka when the S R Bommai government was dismissed, and the court later subsequently held that the decision was incorrect.

6.5.3 Financial Emergency

Financial emergency can be declared under Article 360 in conditions in which the financial stability or credit of the country or any part of the country is threatened. However, as provided for in the Forty Fourth Constitutional Amendment Act of 1979, such a proclamation needs to be approved by the both the Lok Sabha and the Rajya Sabha within two months from the date of its proclamation, or, if the Lok Sabha is at that time dissolved, within 30 days from the date it (the new house) is reconstituted.

6.6 FEDERALISM

At the time of Independence the diversity of the country was such that the Constitution makers thought it fit to have a strong Union government (Centre) within a federal framework. Provisions relating to Centre-State relations are enumerated in Part XI

of the Constitution. The Indian Constitution provides for governments with specified powers in the various States, too. India's Constitution thus has both centralising and de-centralising features.

For more than a decade and a half after Independence, the Centre and the States had almost no problems. Scholars attribute this to the existence of Congress governments in most of the States in the country as well as at the Centre, the towering personality of the then Prime Minister, Jawaharlal Nehru, and also the leadership in the States as well as at the Centre that was less prone to schism, but guided more by idealism. The balance in relations tilted more in favour of the Centre when Indira Gandhi was the Prime Minister of the country. This was due not only to the Emergency that was imposed in 1975, but also because of weak leaders at the State-level whose survival in political power was dependent on the clout that they could wield at the Central level.

By the 1990s, at least a few of the States came to exercise greater leverage vis-a-vis the Centre. A Central government that lacked an absolute majority in Parliament had to depend on the support of its regional allies—the Dravida Munnetra Kazhagam and the All-India Anna Dravida Munnetra Kazhagam in Tamil Nadu, the Telugu Desam in Andhra Pradesh, Shiv Sena in Maharashtra, National Conference in Jammu and Kashmir, the Asom Gana Parishad in Assam, and the more recent splinter groups of the erstwhile Janata Party that have established themselves in the different States.

6.6.1 • Centre-State Relations

Problems in Centre-State relations came to the fore after non-Congress governments came to power in several States—Orissa, West Bengal, Kerala, Punjab, Uttar Pradesh and Bihar in the late 1960s.

Financial Relations

Another contentious issue is the sharing of financial resources between the Centre and the States and allocation of Central grants to various States. While States have since long been demanding the allocation of larger portions, a new proposition suggested is allocation on the ‘basis of performance’.

Governor's Rule

Yet another point of difference is the ‘imposition of Governor's Rule on a State and his/her role while in office, besides that of his/her abrupt removal. Governors are generally appointed with the concurrence of the Chief Minister of the concerned State, and the Sarkaria Commission, too, in 1988, recommended the same. The recommendation, however, has not always been adhered to, as. The Sarkaria Commission sought to herald co-operative federalism. However, most of its recommendations await implementation.

6.7 RELATIVE FLEXIBILITY

The Indian Constitution provides room for amendment. In this sense, the Constitution is not rigid unlike that in some other countries. As has been noted by several scholars, a Constitution is a living document and, hence, it has to reflect the changing times. An amendment to the Preamble made the principle of secularism an integral feature of the Constitution.

When a Constitution is amended it is expected that it would bring a change for the better. In other words, it would ‘give more’ than ‘take away any’. Article 368, together with other articles, empowers Parliament to make amendments to the Constitution. In fact, the occasion for debate, on what the fundamental features of the

Constitution are, was created when certain amendments were made to the Constitution. The amendment procedure laid down in the Constitution is both rigid and soft for different articles. While some need only a simple majority, most need a majority of two-thirds present and voting in both the Houses of Parliament and the assent of the President. The toughest amendment procedure prescribed requires, besides the two-thirds present and voting requirement, also the consent of at least half the number of Legislatures in States in the country. And further more, it also requires the assent of the President.

Two of the most vehemently contested aspects were one, on the authority of Parliament to effect amendment itself to any article of the Constitution and two, on who holds supremacy of decision over an amendment.

While the Indian Parliament held that it was the supreme authority and had, therefore the right to amend any article in the Constitution, its critics said it was the Constitution that is supreme and not Parliament, whose creation Parliament was as much as any other institution. It was, in the final analysis, resolved that Parliament is rightfully authorised to amend the Constitution, but only so long as it did not amend the 'basic features of the Constitution. Besides, the Supreme Court has the power to decide whether an amendment to the Constitution, indeed, were against the basic features of the Constitution or not.

Check Your Progress Exercise 3

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

ii) Try to write the answers in your own words.

1) What is habeas corpus?

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2) Examine the Parliaments powers to amend the Constitution of India.

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3) Can the Indian Parliament amend the basic structure of the Constitution?

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6.8 LET US SUM UP

The Indian Constitution is a successful document and it has sought to foster the best democratic tradition. The tradition that it had established had the resilience to correct occasional anomalies, which itself is proof of its success. The Constitution incorporates federalism, guarantees the fundamental rights of the people of the country, a system of checks and balances through the institutions of President, Council of Ministers, Parliament and the Supreme Court.

6.9 KEY WORDS

Constitutional guarantee of Rights : The protection that the Constitution explicitly offers from being violated by the state.

Council of Ministers : It comprises of the Prime Minister, Cabinet Ministers, Ministers of State and Deputy Ministers.

Amendment	: A definitive and formal process of Constitution change
Bicameral	: A Parliament that has two Houses (an Upper House and a Lower House).
Enactment	: The point at which a Law, as expressed in an Act of Parliament, comes into force.
Executive	: Those from within the Government who define and implement policy, and who are answerable to Parliament for their administration.
Ex post facto	: From or by an after act, or thing done afterward; in consequence of a subsequent act; retrospective.

6.10 SOME USEFUL BOOKS

Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1996.

Bakshi, P. M., *The Constitution of India (with special comments by the author)* University Law Publishing House, 1999.

6.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Decisions based on consensus.
- 2) Sikkim.
- 3) People themselves rule through their elected representatives.

Check Your Progress Exercise 2

- 1) Article 20 guarantees fair trial and Article 21 protects an individual's life and liberty. While restrictions can be placed on most Fundamental Rights under certain circumstances, the 44th Amendment stated that Article 20 and Article 21 cannot be restricted even during an Emergency.
- 2) Citizens are obligated to strive for the common benefit of all, uphold the unity and integrity of the country, work for a harmonious society and protect the country's resources.
- 3) A.

Check Your Progress Exercise 3

- 1) It's a writ issued by the court to the state authorities to 'produce the body' or person before the court.
- 2) Parliament can amend some articles of the Constitution with a simple majority, but most amendments require the approval of two-thirds of the members sitting and voting and the assent of the President. A few even require the additional consent of at least half of state legislatures.
- 3) Since the Constitution is supreme, the Parliament cannot amend or alter the basic feature of the Constitution.

UNIT 7 VISION OF SOCIAL TRANSFORMATION

Structure

- 7.0 Objectives
 - 7.1 Introduction
 - 7.2 Significance of a Written Constitution
 - 7.2.1 Constitution as a Positive Law
 - 7.2.2 Its Contractual Nature
 - 7.2.3 Philosophy of a Constitution
 - 7.2.4 Constitution and Justice
 - 7.3 Preamble to a Constitution
 - 7.4 The Indian Vision
 - 7.4.1 The Anti-Imperialist Legacy
 - 7.4.2 Movements for Social Justice
 - 7.4.3 The Nationalist Programme
 - 7.5 Rights as the Core of the Nationalist Programme
 - 7.5.1 Influence of Socialism
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 - 7.5.3 Role of the Leftist Groups
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 - 7.6 Ideological Limitations
 - 7.6.1 Class Character of the Indian National Congress
 - 7.6.2 Stress on Politics
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 - 7.9 The Congress Resolution on the Objectives of the Constitution
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 - 7.11 Structural Limitations
 - 7.12 Let Us Sum Up
 - 7.13 Some Useful Books
 - 7.14 Answers to Check Your Progress Exercises
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7.0 OBJECTIVES

The leaders of the Indian National movement had a vision of social transformation. The Constituent Assembly, representing various groups of the society incorporated this vision in the Constitution of India. After going through this unit, you will be able to understand:

- the outlook and the philosophy of the Indian Constitution;
 - the ideas and the dreams of the leaders of the Indian freedom movement;
 - the way they were articulated; and
 - the extent of consensus as well as conflict that worked behind the making of the Indian Constitution.
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7.1 INTRODUCTION

In the unit 6 we have seen the evolution of the idea of a Constituent Assembly in India during the freedom movement and the way the leaders of India framed

Constitution. That Constitution is not only the world's largest Constitution, it also reflects a great vision for the future of India as a sovereign democratic republic where justice, liberty and equality will build a firm unity and integrity of the nation.

7.2 SIGNIFICANCE OF A WRITTEN CONSTITUTION

There are four points about a written Constitutions:

7.2.1 Constitution as a Positive Law

A constitution derives its authority from itself. It is, therefore, *future - oriented*. As a body of supreme laws the Constitution takes precedence not only over all other laws but also over all customs, traditions and faiths. Such customs and traditions, etc., are valid as long as they do not conflict with the Constitution. In other words, no provision of the Constitution can be challenged on the plea that it is inconsistent with the tradition, belief and faith inherited from the past.

7.2.2 Its Contractual Nature

Further, a democratic Constitution is a kind of contract among the people or, at least, the bulk of the people. It is based on consensus — a product of bargain among several persons and groups. Such a contract cannot satisfy all persons fully. But it does satisfy most of them partly. In other words, it is a kind of common minimum programme of a majority of the people which does not harm the minority interests.

7.2.3 Philosophy of a Constitution

Every democratic Constitution has a philosophy and a vision which can be summed up as *growth* with *stability*. These two concepts are inter-related. Without growth no stability can be ensured and without stability no growth can be achieved.

7.2.4 Constitution and Justice

Integral connected with the concept of growth with stability is the concept of justice. No unjust system can make people happy. And an unhappy people cannot work either for stability or for growth of a country.

7.3 PREAMBLE IS A CONSTITUTION: ITS PURPOSE

In all the written democratic constitutions one finds a Preamble which presents a vision for the future. All such visions tend to reject the shortcomings and prejudices of the past social and political order and promise to build a future that is just, happy and dignified. Democracy is essentially transformational. The vision of social transformation is reflected in the preamble of the Constitution of India is given below:

"We the people of India, having solemnly resolved to
Constitute India into a Sovereign Socialist Secular
Democratic Republic and to secure to all its citizens;
Justice, social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among
Them all..
Fraternity assuring the dignity of individuals and the unity
and integrity of the Nation.

In our Constituent Assembly; this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give to Ourselves This Constitution."

7.4 THE INDIAN VISION

Such a vision of transformation is embedded in popular aspirations. It develops historically. The vision of the Constitution of the United States of America, for instance, developed out of the War of Independence of 1776 which, in turn, sprang from the liberal democratic environment of the eighteenth century.

7.4.1 The Anti-Imperialist Legacy

In India this vision developed out of her struggle against the British empire and was nourished by the liberal democratic thinking in the developed world. It was first expressed by the critiques of colonial rule in the late nineteenth century by people like Dadabhai Naoroji, M.G. Ranade and R.C. Dutt. End of imperialism was seen to be the basic pre-condition of India's progress. In the twentieth century such critiques grew into the freedom movement.

7.4.2 Movements for Social Justice

Side by side with this broad anti-imperialist struggle grew the demands for social justice. Jyotiba Phule enlarged the social reform agenda of the earlier nineteenth century thinkers and activists like Rammohan Roy, Iswar Chandra Vidyasagar and Dayananda Saraswati.

7.4.3 The Nationalist Programme

The Indian National Congress was born through a moderate effort to unify all sections of Indians though, initially, it was elitist. In the twentieth century its anti-imperialist content was gradually unfolded. Simultaneously, it tried to stress not only communal unity but also the need for social and economic justice in the Indian nation, Indian nationalism was a product of all these forces.

7.5 RIGHTS AS THE CORE OF THE NATIONALIST PROGRAMME

The resolution on Fundamental Rights that was passed at the Karachi session of the Indian National Congress in 1931 was the first comprehensive, though not complete, statement of the social and economic goals of the freedom movement.

7.5.1 Influence of Socialism

Since the Bolshevik Revolution (1917) the idea of socialism was catching the imagination of the Indians. Within the Congress its strongest advocate was Jawaharlal Nehru who, however, did not approve of the authoritarian trend of the Soviet polity. Gandhiji did not approve of the socialist doctrine of class conflict but worked for social and economic justice.

7.5.2 Poverty Relief and Planning

After the passage of the Government of India Act, 1935, several provincial governments granted relief to the poor peasants. The Congress President appointed a National Planning Committee. After World War II the Congress adopted the programme of land reform including the abolition of Zamindari system.

7.5.3 Role of the Leftist Groups

In the 1930s leftist parties and groups arose within the Congress and outside it. They were strong advocates of socialism and land reform. Even the Krishak Proja Party of Bengal and a section of the All-India Muslim League were supporters of socialism and land reform.

7.5.4 Opposition to Caste Oppression

Dr. B.R. Ambedkar shared the belief in socialism and land reform but was more concerned with the welfare and progress of the people oppressed by the caste system.

In short, by the time of Independence, in India the outlines of the principles of growth with justice had become fairly visible.

Check Your Progress Exercise 1

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

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

- 1) How did the vision of social transformation develop in India?

.....

- 2) What was the first comprehensive statement on the vision of social transformation?

.....

- 3) Comment on the influence of socialism on Indian imagination.

.....

7.6 IDEOLOGICAL LIMITATIONS

In the realisation of such a vision, however, there were two limitations.

7.6.1 Class Character of the Indian National Congress

The Indian National Congress which dominated the Constituent Assembly of India was not a socialist party. Nor was it a party of social reform devoted to the abolition of caste system. Such ideas were subsidiary to the primary concern of the Indian National Congress which was political freedom.

7.6.2 Stress on Politics

The Constituent Assembly of India was engaged in preparing a Constitution for the governance of India. That Constitution, essentially, was to be a political document. In fact, when two members of the Constituent Assembly (Syed Hasrat Mohani, a Muslim Leaguer, and K.T. Shah, a Congressman) moved for incorporation of the term 'socialist' in the Preamble to the Indian Constitution, the Drafting Committee turned it down on the plea that a Constitution need not enshrine a social philosophy. Dr. B.R. Ambedkar, Chairman of the Drafting Committee, voiced the same opinion on the floor of the Constituent Assembly.

7.7 THE CONGRESS CONSENSUS

The broad ideas of the Indian National Congress about the Constitution could be summed up as :

- a) a parliamentary government;
- b) a politically centralised but culturally diversified federal state; and
- c) a dynamic social order.

7.7.1 The Parliamentary Tradition

The tradition of parliamentary government had been developing ever since the introduction of the Montague-Chelmsford reforms in 1919. Though the Congress did not take part in it, the Liberals did. There was even an indirect participation in them by the Congress through the Swarajya Party in 1923 even though the Swarajya Party never accepted office. The Muslim League had similar experience with the 1919 reforms. Both the Congress and the Muslim League of course accepted office under the Government of India Act, 1935. By that time the Liberals had lost their influence and mostly joined the Congress. In the Constituent Assembly very few members desired a presidential system of government.

7.7.2 Federalism

The idea of a federation sprang from the devolution of powers by the Government of India Act, 1935, too. The All-Parties Conference of 1928 had earlier suggested a federal form of government to manage the religious and linguistic diversities of the country. The Partition weakened the case of federalism on religious ground. But the Congress was committed to linguistic provincialism since at least 1920. The federal idea, therefore, was not given up.

7.7.3 Welfarism

The Indian freedom movement was a mass movement and required the participation of the broadest section of the masses that were made up of poor, uneducated and backward people. The idea of a mass welfare, however, varied from person to person and section to section of the political leadership. Here lay the major ideological differences.

7.8 UNFOLDING OF THE SOCIO-ECONOMIC PROGRAMME

There was a common realisation that freedom would be the threshold of socio-economic prosperity. The manifesto of the Congress Party for the Provincial Assembly elections of early 1946 promised the following:

Industry and agriculture, the social services and public utilities must be encouraged, modernised and rapidly extended.

7.8.1 The Strategy

For this purpose the Congress suggested necessary strategy which aimed:

- a) to plan and co-ordinate social advance in all fields,
- b) to prevent concentration of wealth and power in few hands,
- c) to prevent vested interests inimical to society from growing, and
- d) to have social control of the mineral resources, means of transport and principal methods of production and distribution in land, industry and in other departments of national activity.

7.8.2 The Specific Objectives

The specific objectives mentioned in the Congress manifesto were:

- a) Reform of land system in order to remove intermediaries between the state and the peasants — on payment of equitable compensation - was urgently necessary.
- b) Promotion of educational opportunities and health services was needed.
- c) Improvement of the workers' condition in industry and removal of rural indebtedness were promised.
- d) The party looked forward to international cooperation and friendship.

7.9 THE CONGRESS RESOLUTION ON THE OBJECTIVES OF THE CONSTITUTION

This broad humanitarian and welfarist programme with the flavour of democratic socialism - was concretised step by step. The Congress leaders were aware that the Constitution was primarily a political document. So it must state the political structure first. The broadest outline of this structure was spelt out in the Congress resolution on the objectives of the Constitution passed on November 20, 1946, twenty days before the Constituent Assembly met.

According to this resolution the Congress stood for an independent sovereign republic wherein all powers and authority are derived from the people. It further wanted a Constitution wherein social objectives are laid down to promote freedom, progress and equal opportunity for all the people of India. It would enable this ancient land attain its rightful and honoured place in the world and make its full contribution to the promotion of world peace and the progress and welfare of mankind.

7.10 THE “OBJECTIVES RESOLUTION” OF THE CONSTITUENT ASSEMBLY

The ‘Objectives Resolution’ that was moved by Jawaharlal Nehru in the Constituent Assembly on December 13, 1946, spelt out the goal of social transformation further: According to this resolution the Constitution would guarantee to all the people of India:

- 1) justice, social, economic, and political;
- 2) equality of status, of opportunity and before the law;
- 3) freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- 4) adequate safeguards for minorities, backward and tribal areas, and depressed and other backward classes.

In course of the nearly three years of its working the Constituent Assembly worked out a Constitution in which these objectives of social transformation were sought to be enshrined in the Preamble, in the Fundamental Rights, in the Directive Principles of State Policy and several special provisions for the backward and underprivileged sections of the people. The process did not stop at the making of the Constitution. Amendments have been made and are foreseen for the furthering of these objectives.

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) Identify the limitation in the realisation of the vision of social transformation.

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.....

- 2) What is the relationship of the idea of federalism with the Government of India Act, 1935?

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.....

- 3) What were the goals mentioned in the "Objectives Resolution"?

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7.11 STRUCTURAL LIMITATIONS

A Constituent Assembly can only give shape to a transformation that has been brought about by a social or political revolution. A Constituent Assembly cannot make a revolution.

Besides, a liberal democratic constitution cannot itself provide for radical social transformation. It merely provides for a democratic political structure

Neither was it in the powers of the Constituent Assembly nor was it its intention to set up a socialist state. It was argued that a Constitution does not lay down an economic system. But it could permit the creation of a certain socio-economic order. In fact, it was realised by the leadership that the social objectives of the Constitution remained unfulfilled. Dr. Rajendra Prasad, Dr. B.R. Ambedkar and others warned that if these objectives were not soon achieved the political structure created by the Constituent Assembly would not be stable.

7.12 LET US SUM UP

A Constitution is a positive law which is future-oriented. It dictates the future affairs of the country and is above all other laws, customs and beliefs. It is also a contract

among the multitude of the people. It partly satisfies every one. There is a vision for every democratic constitution — to ensure freedom, growth and justice. The Indian freedom movement was long committed to such goals. The primary business of the Constitution is political. Yet, it sets up such goals for a polity in the Preamble and the body of fundamental rights. The Indian Constitution laid down both, rather elaborately. It, further, included the Directive Principles of State Policy.

7.13 SOME USEFUL BOOKS

Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1966.

Chabe, Shibani Kinkar, *Constituent Assembly of India: Springboard of Revolution*, New Delhi, People's Publishing House, 1973.

Chabe, Shibani Kinkar, *Colonialism, Freedom Struggle and Nationalism in India*, Delhi, Book Land, 1996.

7.14 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) It developed out of her struggle against the British empire, which was nourished by the liberal democratic thinking developed in the world.
- 2) It was first expressed by the critique of colonial rule by people like Dadabhai Naoroji, M G Pandae and R. C. Dutt.
- 3) As a result of its impact there developed a socialist bloc within the Congress.

Check Your Progress Exercise 2

- 1) Class character of the Indian National Congress and stress on politics.
- 2) It sprang from the devolution of powers enshrined in the Government of India Act, 1935.
- 3) Mainly justice, equality, freedom of all section of society.

Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 What is Citizenship?
 - 8.2.1 Citizenship and Individualism
 - 8.2.2 Citizenship and Multiculturalism
- 8.3 Citizenship and Rights in the Indian Constitution
 - 8.3.1 Who are the Citizens of India?
 - 8.3.2 Recognition of Community in Indian Citizenship
 - 8.3.3 Directive Principles of State Policy
 - 8.3.4 Rights and Franchise
 - 8.3.5 Duties of Citizenship
- 8.4 Tensions in Citizenship
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8.0 OBJECTIVES

The constitution of India is a comprehensive document giving details about the rights and citizenship. When you finish reading this unit you should be able to understand the legal-formal aspects of citizenship as incorporated in Part II of the Constitution of India. Reading it with Part III, IV and IVA of the Constitution on Fundamental Rights, Directive Principles and Fundamental Duties respectively, you should also be able to comprehend the nature of citizenship as envisaged by the constitution makers. After going through this unit you should be able to explain:

- the meaning of citizenship
- the specific nature of citizenship in India
- citizenship and rights in the constitution of India
- the elements of citizenship
- pathways to citizenship
- paradoxes / tensions and criticisms of citizenship

8.1 INTRODUCTION

Citizenship presents a range of issues and questions viz., what is citizenship? Is it a legal status allowing the enjoyment of certain rights or does it involve also duties and responsibilities? What are the elements of citizenship? Who is a citizen? What is the relationship between the citizen and the state? These and other questions have been at the core of what may be called a 'theory of citizenship'. It must be borne in mind that while citizenship aims to assure equality, socio-economic categories of gender, class, caste, race, nationality etc., determine the extent to which we enjoy our rights of citizenship, have access to the various conditions essential for the full development of our personalities, or even the extent to which we can exercise our duties of citizenship. While technological advances and globalisation have brought peoples of the world and within states closer, there is also a growing awareness of cultural differences among them. Important questions pertaining to inequalities among

nation-states in the world and within them along lines of gender, class, caste, ethnicity, nationality etc., have been raised. While one may have grown up thinking that citizenship has to do with individual rights and duties, there has been a growing realisation that cultural / religious communities, while participating in the common national life, have also the right to maintain their own cultures. Rights of citizenship therefore, also have to cater to the needs of specific cultural groups. Issues of community rights have thus acquired much significance in recent scholarship and policy decisions. When we proceed to the other sections we must keep in mind the issues raised here viz., issues of individual and community rights and the various factors which determine the enjoyment of citizenship rights, in other words, citizenship's relationship to caste, class, gender, ethnicity and national identity.

8.2 WHAT IS CITIZENSHIP?

Perhaps the most widely accepted definition of citizenship is 'full and equal membership in a political community'. This definition was given by the English Sociologist T. H. Marshall in his work *Citizenship and Social Class* written in 1949. The philosophical roots of this definition can be traced to the Greek and Roman conceptions of *man as a political being* and citizenship as *the capacity to govern and to be governed*. While the former is indicative of the primacy accorded to a man's identity as citizen (restricted only to free native-born men) requiring active participation in the political community (city-states), the Roman tradition brought in the idea of citizenship as a legal / juridical status implying equality before the law. The *janapadas* of ancient India with their unique system of participatory decision-making in popular assemblies of the people (the *sabhas* and *samitis*) which in some instances also elected the king, draw affinity with elements of Greek citizenship in that both are associated with autonomous, self-governing communities requiring active participation of citizens in the governance of the community.

8.2.1 Citizenship and Individualism

It was, however, the French Revolution and the 'Declaration of the Rights of Man and Citizens' that established the notion of the citizen as a 'free and autonomous individual' entitled to take part in making decisions that all are required to obey, combining thereby the classical notions of citizenship with individualism. With the development of capitalist market relations and the growing influence of liberalism in the nineteenth century, the notion of the citizens as individuals with private and conflicting interests gradually gained primacy. The ideas of citizenship as a primarily civic activity, public spiritedness and active political participation in a community of equals were now being seen as belonging to the past.

8.2.2 Citizenship and Multi-culturalism

In much of liberal theory till most of the twentieth century, the bias in favour of the individual citizen continued and citizenship was seen as a legal status indicating the possession of rights which an individual citizen held equally with others. The dominant liberal model of citizenship has, however, been criticised precisely on these grounds. The idea that the (individual) citizen can enjoy rights independent of the community to which he/she belongs, has been questioned. Given that modern societies are multicultural, the specific contexts, cultural, religious, ethnic, linguistic, etc., of citizens are being seen as determining citizenship in significant ways. In most western societies ethnic, religious and racial communities have pressed for rights which would look at their special needs and would thereby substantiate the formal equality of citizenship. There is a growing effort to redefine citizenship by giving due importance to cultural differences among individuals and strike a balance between the numerous cultural, religious, ethnic, linguistic identities while constructing a common political

identity of the citizen of the nation. A notion of ‘differentiated citizenship’ has therefore gained currency to accommodate the needs of specific cultural groups.

8.3 CITIZENSHIP AND RIGHTS IN THE INDIAN CONSTITUTION

In this section we shall study the definition, nature and scope of citizenship in India. The enforcement of the Constitution on 26th January 1950 made an important difference to the status of the people of India. They were no longer British subjects, but citizens of the Republic of India and derived their status as such from the Constitution, which they, in their collective capacity as the ‘people’ of India (through their ‘representatives’ in the Constituent Assembly) enacted, adopted and gave to themselves. Implicit in the Preamble is the commitment to ‘secure’ to all its citizens, justice, liberty, equality and fraternity — ideals, which set the grounds for giving substance to citizenship.

8.3.1 Who are the Citizens of India?

Part II of the Constitution (Articles 5 to 11), titled *Citizenship*, answers the question ‘Who is a citizen of India?’ at the time of the commencement of the Constitution on 26 November 1949, i.e. the date on which the Constitution was *adopted* by the Constituent Assembly. While the Constitution came into full force only on 26 January 1950, provisions dealing with citizenship (Articles 5 to 9), became operative on the date of its commencement. The distinction between the Indian citizen and the non-citizen (alien) thus became effective on this date. While a citizen enjoys certain rights and performs duties which distinguish him/her from an alien, the latter has certain rights of ‘personhood’ which s/he possesses irrespective of the fact that s/he is not a citizen. Under Articles 5 to 8 of the Constitution the following categories of persons became the citizens of India at the date of the commencement of Constitution:

- a) those domiciled and born in India;
- b) those domiciled, not born in India but either of whose parents was born in India;
- c) those domiciled, not born in India, but ordinarily resident in India for more than five years;
- d) those resident in India, who migrated to Pakistan after 1 March 1947 and returned later on resettlement permits;
- e) those resident in Pakistan, who migrated to India before 19 July 1948 or those who came afterwards but stayed on for more than 6 months and got registered;
- f) those whose parents and grandparents were born in India but were residing outside India.

Through Article 11 the Constitution authorised the Parliament to make laws pertaining to acquisition and termination of citizenship subsequent to the commencement of the Constitution. The Citizenship Act (LVI of 1955) made elaborate provisions specifying how citizenship could be acquired by birth, descent, registration, naturalisation or through incorporation of territory. The Act was amended in 1986 to deal with large-scale migration from Bangladesh, Sri Lanka and some African countries. Unlike the United States of America (U.S.A.) where citizens have dual citizenship, national citizenship and that of the federal unit (states), Indians do not have separate citizenship of the states. Unlike some countries which allow its citizens to hold simultaneously the citizenship of two countries (e.g., multiple citizenship is permitted in Italy), an Indian citizen loses her/his citizenship if s/he acquires the citizenship of another country.

8.3.2 Recognition of Community in India's Citizenship

We mentioned in the previous section that the notion of citizenship as prevalent in the nineteenth century and understood thereafter, was largely a system of rights and obligations that defined the relationship between nation-states and their individual members. The defining parameters of this relationship was constituted by equality and freedom. Equality hinted at an identity and sameness as against iniquitous systems based on ascriptive hierarchies of race and caste. Freedom read with equality would then imply a freedom to pursue individual aims and aspirations to the best of one's capacities in conditions where social differences have been negated or minimised. The citizen in liberal theory was thus the 'floating individual' shorn of all characteristics of his / her social context. It may be pointed out, however, that these defining principles of citizenship were not seen as commensurate with the kind of social relations which existed in non-western societies e.g., India, where religion and caste were seen as the basis of social life. This so called 'difference' in the organisation of the social structures in the West and East was sought by the colonisers as a justification for subjecting the colonised population(s) to imperial rule. We also saw that liberal theory in the eighties is increasingly seeking ways to accommodate itself to multicultural societies in the West and the realisation that community membership forms a significant determining factor of the individual member's needs and capacities.

If one reads carefully Part III of the Constitution of India enumerating the Fundamental Rights of the citizens of India, one notices that both the individual and the community have been made the subjects of these rights. One can say therefore, that there exists two languages of rights in the constitution, one catering to the individual citizen and the other to the community. By and large Articles 14 to 24 appear to give to individual citizens the various rights of equality and freedom while Articles 25 to 30, seem to cater to the specific needs of religious-cultural communities. A closer reading of the Articles would, however, show that there is in fact no compartmentalisation and some seemingly individual-catering rights are interwoven with a commitment to community rights. If, for example, one looks at Articles 14 and 15, one sees that they assure equality before the law for every citizen and seek to substantiate this equality by prohibiting discrimination based on caste, religion, race etc., thus mitigating differences provided by social contexts. The articles, however, also reserve for the state a commitment to community-ship, in other words, allowing for certain rights in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. Thus Article 15 lays down that 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them' and then in clause (4) reserves for the state the right to make 'any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes'. Similarly Article 16 which guarantees equality of opportunity for all citizens in matters of public employment, also provides for compensatory discrimination in favour of certain communities. Article 17 abolishes untouchability, a debilitating condition imposed on the Scheduled Castes. Articles 25 to 30 concern themselves with freedom of religion and minority rights assuring freedom of conscience, the freedom to religious communities to establish and maintain religious institutions and to 'manage their own affairs in matters of religion', to acquire and administer property, impart religious education, preserve their language, script, culture etc. This cluster of rights deals explicitly with the rights of religious and cultural communities and minority groups and also forms the basis of the rights of religious communities to administer themselves in civil matters by their own 'personal laws'. A significant factor in this cluster of rights is the scope given to the Indian state to regulate, reform and in some cases administer these communities and institutions. Thus, while the (individual) citizen of liberal theory persists as a subject of rights, the Constitution gives significance to the community as a relevant collective unit determining the circumstances of the lives of individuals. The Indian Constitution has thus made community membership a relevant consideration for differentiation among citizens, so

that equality among citizens could be made more substantive. It has introduced thus a 'differentiated-citizenship' to assure that Communities (e.g. Scheduled Castes or Dalits) which had in the past been victims of social discrimination and continue to be disadvantaged, were able to compete on equal terms with the rest of society. Social equality was also substantiated by assuring that while the claims of each community to be culturally different could be preserved, there would at the same time be an assurance of sameness or equality among communities. The rights of the various communities to preserve their cultural heritage was therefore recognised in the Constitution and the state was to assure non-discrimination. Thus, social and religious communities were given the right to be culturally different and the state was to assist them in preserving their difference. At the same time, the notion of social equality also required that historical disabilities were compensated and equality was made substantive by assuring equality of opportunities. Thus caste communities were compensated for past discriminations and segregation by including them in the body politic as equal citizens. This equality was assured by giving them special provisions to overcome circumstantial disabilities. A policy of reservations in public employment was therefore envisaged. (Gurpreet Mahajan, *Identities and Rights, Aspects of Liberal Democracy in India*, OUP, Delhi, 1998, Chapter: Introduction: Negotiating Differences Within Liberalism).

8.3.3 Directive Principles of State Policy

Part IV of the Constitution, titled Directive Principles of State Policy, contains certain non-justiciable rights. These rights, unlike the ones in the preceding section, are not enforceable by courts, but are in the nature of reminders or directives for lawmaking, to usher in conditions in which the rights enumerated in the previous section become more meaningful. Like the previous section, however, the rights in this section too, show a 'simultaneous commitment' to both 'community-ship' and 'citizen-ship', in other words to both the community and the individual citizen. Article 38 for example directs the State to commit itself to 'promote the welfare of the people' by promoting a 'social order' in which 'justice, social, economic and political, shall inform all the institutions of the national life'. To achieve this the state is asked to 'strive to minimise inequalities of income' and also 'eliminate inequalities in status, facilities and opportunities'. The significant reminder, however, is that this justice and equality is to be achieved 'not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations'. Article 46 likewise instructs the States to 'promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the scheduled Castes and Tribes' and 'protect them from social injustice and all forms of exploitation'. By and large the Directive Principles envisage an active role of the state in providing a range of socially ameliorative or welfare rights ranging from access to an adequate means of livelihood, equal pay for equal work, health and strength of workers, living wage for workers, provision of just and humane conditions of work, right to work, to education, to public assistance, to equal justice and free legal aid, to adequate nutrition and health etc.

Article 44 of the Directive Principles enjoins the State to 'secure for all its citizens a uniform civil code throughout the territory of India'. This article needs special attention because it encapsulates what we earlier mentioned as the Constitution's 'simultaneous commitment' to individual and community rights. It moreover, provides a window into the tensions which inform citizenship, and its criticism from some quarters, especially the feminists. We shall take the article and its implications in detail in the following section.

8.3.4 Rights and Franchise

Apart from the provisions in these Parts, other sections of the Constitution, are also interspersed with provisions which give substance to citizenship. Provisions pertaining

to 'elections' and 'franchise' are especially important in the context of the long history of deprivation of political rights under colonial rule. It is significant that the Constitution made 'universal adult franchise' the basis of elections to the Lok Sabha and the Legislative Assembly of States. Article 326 of the Constitution conferred voting rights to all citizens above the age of 21 (changed to 18 by the Constitution 61st Amendment Act of 1988, with effect from 1 April 1989). It is crucial that the Constitution did not lay down any property and education criteria. Women, who in most western countries were enfranchised only in the present century, were also enfranchised on equal footing with men.

8.3.5 Duties of Citizenship

The constitutional provisions of citizenship and rights discussed so far might lead one to believe that citizenship is only about a legal status, defining who are the citizens of India and what are their rights or the conditions in which these rights might be enjoyed. A growing body of scholarship believes, however, that such a legal-formal conceptualisation of citizenship as status, is at best a passive notion, answering the question, who is a citizen, only partially. They would want us to move beyond these 'basic structures' (of equality and social justice) which the Constitution seeks to establish, to concentrate also on the notion of citizenship as a function of 'responsible' participation. Citizenship then, would transcend its passive connotation to become also a measure of activity. The basis of a citizen's sense of belonging to the national community, would come then from the attitudes and qualities of responsibility and virtues which distinguish her/him as a 'good' citizen. Responsible participation would manifest itself in diverse social situations viz., how citizens view or act amidst potentially competing forms of national, regional, ethnic, or religious identities; their ability to tolerate and work together with others who are different from themselves; their desire to participate in the political process in order to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility in their economic demands and personal choices which affect their health and environment etc. Such citizenship qualities, it is said, make a democracy stable and governable. Various voluntary institutions and organisations within society including schools, environmental groups, unions and associations are regarded as inculcating these virtues of citizenship. By an amendment (42nd Amendment Act, 1976) a list of Fundamental Duties of Citizens of India was inserted in the Constitution in the form of Article 51A in Part IVA. The legal status of Fundamental Duties, which are addressed to the citizens is quite like the Directive Principles, which are addressed to the State, in the sense that there are no provisions for their direct enforcement. It may be pointed out here, however, that the Supreme Court has held the Fundamental Duties to be obligatory in nature and although there is no provision in the constitution for their enforcement, any law seeking to implement them may be 'reasonable' under the law. The list of duties, which are 10 in number, nonetheless, gives an insight into what might be seen as constituting 'good' citizenship. Some of them enjoining citizens to strive towards 'excellence' and developing 'scientific temper' or safeguarding 'public property' appear generally to instill sincerity and responsibility. A general slant is, however, towards imbibing a sense of national commonality. It is thus a duty of every citizen of India to respect symbols of national unity like the national flag, the Constitution and the National Anthem and sources of common heritage like the 'national struggle for freedom' and the tradition of 'composite culture'. Citizens are also expected to preserve the 'sovereignty' and 'unity' of the country not only by pledging to 'defend' the country and offer 'national service' but also by spreading a feeling of 'common brotherhood'.

Check Your Progress Exercise 1

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

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

- 1) What is citizenship? Describe modern notion of citizenship.

.....

- 2) How has the constitution sought to balance individual and community rights?

.....

- 3) What are the “non-justiciable” rights?

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8.4 TENSIONS IN CITIZENSHIP

It has often been pointed out that the Preamble, Fundamental Rights and Directive Principles embody the value of freedom and equality, made complete and substantive by ideals of economic and social justice. Criticisms coming from various quarters point out, however, that the nature of citizenship in the Indian Constitution and the manner in which it has unfolded over the years, have shown that the values of freedom and equality have been largely elusive. Studying the nature of empowerment of citizens within the Constitution, A.R.Desai, a Marxist scholar points out the precarious nature of rights in the Constitution. He emphasises that not only are rights not reserved to the people, there is no preservation of the Fundamental Rights already guaranteed to them. The Constitution itself permits and provides the procedure for their amendment and over-riding by the State. Further, the Directive Principles are not addressed to the people, which means that the people cannot move the courts to instruct the government to provide conditions in which their rights could be made more meaningful. Again, asserts Desai, while there does not appear to be any explicit system of accountability for the State, the people are given some ‘fundamental duties’. Desai feels that in the absence of any similar obligations for the State, the provisions relating to Fundamental Duties could be used to abridge the basic rights of citizens. Finally, the fact that certain basic rights such as the rights to work, shelter, education and medical amenities are not Fundamental Rights indicates the class and gender biases of the Constitution-makers. Under such conditions large sections of ‘toiling’ citizens i.e. the socially and economically underprivileged, including women, are forced to live in conditions in which their empowerment as citizens remains unrealised.

8.4.1 Citizenship and Gender

A major lacuna relating to the citizenship rights of women lies in the fact that a crucial provision relating to the removal of discrimination against women, conditions in which substantive citizenship rights can be enjoyed by women are listed only as Directive Principles. Article 39 for example provides that the State shall ‘direct its policies towards securing’, (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; and (c) that there is equal pay for equal work for both

men and women. Although the courts have in certain cases intervened to provide equal pay for equal work, substantive economic equality for women remains elusive.

Legally too, women face numerous disabilities. The provisions of Article 44 of the Directive Principles advising the State to ‘secure for the citizens a uniform civil code throughout the territory of India’ has been particularly in focus in recent years. Various women’s groups have demanded that this directive be implemented to rectify women’s subordinate position in matters pertaining to marriage, dowry, divorce, parentage, guardianship, maintenance, inheritance, succession etc., which are presently determined by the ‘personal laws’ of specific religious communities. While there is a diversity of opinion among women’s groups, they have by and large, demanded a system of gender-just laws which would help them realise their potential as citizens.

8.5 PATHWAYS TO CITIZENSHIP

Towards the beginning, we defined citizenship as ‘full’ and ‘equal’ membership in a community, understood in the modern context as the nation-state. We have seen that social / economic contexts (caste, gender, class, religion) are important factors determining the extent to which a person is able to realize this ‘full’ and ‘equal’ membership. The Constitution, as we have seen, holds out the promise of assuring this realisation for all sections of people, by removing debilitating circumstances or providing enabling conditions. The previous section, however, also shows us that at any given moment, the realisation of citizenship is mediated by class, gender, religion, caste etc., in mutually incompatible or even antagonistic set of alignments. The State itself may fail in its promise of providing the resources for the realisation of citizenship and alternatively, it may, through its institutions even become an aggressor and violator of citizens’ rights. This, however, does not mean that citizenship is a static category. The history of the origins of citizenship as a system of equality against hierarchical and ascriptive inequalities has shown that citizenship has always been a mosaic of struggles. People’s movements have historically been conducive to the enhancement of citizenship rights. The suffrage movements in western countries succeeded in getting the right to vote for women. Workers movements worldwide have contributed towards the regulation of work hours, amelioration of work conditions and welfare measures for industrial workers. A range of popular movements and struggles seeking to redefine or enlarge the frontiers of citizenship have also occurred in India. Almost all of them had roots in local situations but the issues they raised stranded up with similar issues raised elsewhere, and agitated the minds of a wider public. The women’s movement, the dalit movement, the environmental movement, the peasant movement etc., not only highlight the manner in which citizenship is eroded but also have important bearings on the definition of the nature and substance of citizenship rights. The struggles by the people of Narmada valley against the building of Sardar Sarovar Dam, for example, highlights the claims of the people of the Narmada valley to the right to protest against their marginalisation at the hands of the government. At the very basis of the struggle, however, is also the consistent refusal of the people of the valley to give up their identity, their history, their culture and means of livelihood, which they derived from generations of living as a self-sustaining community in the region. The struggle thus aspires to check the erosion of the rights of people by the developmental policies of the State and also demands the provision of social conditions which would make their rights substantive.

Over the years a number of governmental institutions have also contributed towards the broadening of the scope of citizens’ rights. In recent years the Supreme Court has positively responded to the Social Action Litigation (SAL) / Public Interest Litigations (PIL) brought by Non Governmental Organisations (NGOs) or concerned individuals, adding facets to citizen’s rights. In several ways decisions by courts have also

augmented the notion of citizen to bring certain marginalised sections into the orbit of rights. From the late 1970s, for instance, the Supreme Court reversed the existing legal attitude towards prisoners to give them 'all rights enjoyed by free citizens except those which explicitly taken away by the terms of their sentence'. (Charles Sobraj vs. Superintendent, Central Jail, Tihar, AIR, 1978, SC, 1514).

Similarly, the National Commission for Women, set up in 1992, under a Parliamentary Act (The National Commission for Women Act, 1990) has, through wide ranging investigative and recommendatory powers, concerned itself with matters relating to women's rights under the constitution and issues of women's socio-economic conditions, health and violence against them. Over the years the Commission has taken up cases of violence, torture and harassment of women (including molestation, rape, dowry related violence, custodial rape and death, torture and harassment within family, in the workplace, and issues of women's legal and political rights for investigation and redemption. The National Human Rights Commission is another institution established by an Act of Parliament (The National Human Rights Act, 1993) to inquire into violations of people's rights. Institutions like the National Commission for Women and National Human Rights Commission, when effectively used or pressurised by the people, could contribute towards substantiating citizenship.

Check Your Progress Exercise 2

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

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

- 1) What are the major limitations of Indian Constitution concerning citizenship rights of women and other under privileged sections?

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- 2) In what way do the institutions, like National Commission for Woman and the National Human Rights Commission help us enhance our citizenship rights?

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8.6 LET US SUM UP

The Indian Constitution gives rights to both the individual citizen and the community. It creates thus the free and equal (individual) citizen and also attempts to preserve the identity of cultural communities. Frequently, however, community rights may actually

restrict citizenship rights of some sections primarily that of women. The particular contexts of individual citizens (caste, class, gender etc.) greatly condition the extent to which rights may be enjoyed by people. Citizenship is, however, not a static category and there are various ways in which the scope and substance of these rights can be enhanced, through popular / individual initiative and struggle or through recourse to courts and institutions catering to public grievances.

8.7 KEY WORDS

- Ascriptive Hierarchies** : A hierarchy denotes a pyramidal system of inequality - a vertically organised structure — where those at the top dominate the rest. Ascriptive hierarchies would refer to systems where conditions of birth would determine the hierarchical organisation of people. Caste system is an example of ascriptive hierarchy.
- Citizens** : Citizens are full and equal members of a political community which in the present dominant global form of political structure is the nation-state.
- Citizenship** : A relationship between the individual and the state based on reciprocal rights, duties and responsibilities.
- Community** : A collection of people or social group distinguished by a strong collective identity based on bonds of comradeship, loyalty, duty as well as by ties of emotion and kinship.
- Differentiated citizenship** : The concept advocates the incorporation of members of certain (cultural) groups not only as individuals but also as members of groups, their rights depending in part on this group membership catering to their special needs.
- Domicile** : Domicile refers ordinarily to a persons residence, generally of a fixed and legally recognised nature. The Indian Constitution does not define domicile. A Supreme Court decision in 1966 (Md. Raza vs State of Bombay, AIR, 1966 SC 1436) has established that a permanent residence and the intention to reside there indefinitely are two important constituents of domicile.
- Ethnicity** : Ethnicity is commonly understood as a form of distinctive cultural identity encompassing values and traditions. It involves a sentiment of loyalty towards a population, cultural groups or territorial area.
- Gender** : Unlike sex which points at biological difference, gender refers to social and cultural distinction between men and women. According to feminists gender discriminations take place when biological differences become the basis for different, dependent and subservient social roles and positions for women.

Globalisation

: It refers to the web of interconnections / interdependence between the local, regional, national and international events, processes and decisions which conditions the lives of individuals worldwide.

Rights and Citizenship**Janapadas**

: Territorially determined communities of people in ancient India formed on the basis of ethnicity, dialect, social customs, geographical location and socio-political status. According to Puranic sources 165 janapadas distributed over seven regions existed in ancient India.

Political community

: A political community emphasises political allegiances and civic loyalties within the community rather than cultural/emotional identity. Citizenship has frequently been seen as a manifestation of this allegiance which holds people together in a shared identity as citizens.

Preamble (to the Constitution):

A document setting out the ideals, aims and objects which the Constitution makers intended to realise through the constitution.

Race

: A scientifically and politically controversial category, race refers to biological (genetic) differences which supposedly distinguish one group of people from another. For long, race has been used to explain cultural differences among people, and the attribution of civilisational inferiority and backwardness to some and superiority to others.

Suffrage

: The right to vote, or the exercising of that right.

8.8 SOME USEFUL BOOKS AND ARTICLES

D.D.Basu, *Introduction to the Constitution of India*, Wadhwa and Company, Nagpur, latest edition (chapters dealing with Citizenship, Fundamental Rights and Directive Principles).

A.R.Desai, 'Empowering the Sovereign Citizens of India: Some Constitutional Obstacles' in Abha Avasthi ed. *Social and Cultural Diversities*, D.P. Mukerji in Memorium, Rawat Publications, Jaipur, 1997.

Niraja Gopal Jayal, *Democracy and the State*, OUP, Delhi, 1999, (Chapter 4, Section IV: Citizenship in the Narmada Valley).

Subhash Kashyap, *Citizens and the Constitution*, Publications Division, Government of India, Delhi, 1997.

Gurpreet Mahajan, *Identities and Rights, Aspects of Liberal Democracy in India*, OUP, Delhi, 1998, (Chapter: Introduction: Negotiating Differences Within Liberalism).

8.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1)
 - The ability to govern and be governed
 - Free and autonomous individual entitled to take part in the decision-making.
- 2) By giving provisions for the protection of rights of the individuals and of the specific religious and cultural communities.
- 3) The Directive Principles of state policy.

Check Your Progress Exercise 2

- 1) The constitutional rights given to the citizens, especially the under-privileged are not properly guaranteed.
- 2) They raise the issues relating to the rights of women and other citizens through various means including the public Interest litigation and social Action Litigation.

Structure

- 9.0 Objectives
 - 9.1 Introduction
 - 9.2 Evolution
 - 9.2.1 Features of Parliamentary System of Government
 - 9.3 Parliamentary System in India
 - 9.4 Let Us Sum Up
 - 9.5 Some Useful Books
 - 9.6 Answers to Check Your Progress Exercises
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9.0 OBJECTIVES

The parliamentary system-institutions and practices-evolved in Britain and have been adopted with modifications by many countries. This unit examines the features of a parliamentary system with particular reference to India. After going through this unit, you should be able to:

- Explain the meaning of a parliamentary democracy,
 - Trace the evolution of parliamentary system of government,
 - Identify the features of parliamentary system of government, and
 - Evaluate the parliamentary system prevailing in India.
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9.1 INTRODUCTION

The term parliamentary system is used in two main senses. In a broad sense, it denotes all political systems where there exists an assembly of elected representatives of people having the responsibility for legislation, including finance. The word ‘parliament’ is derived from the French expression ‘parle’ which means to speak or parley. This term was also used to describe conferences such as those held between the King of France and the Pope in 1245. Gradually, the term began to be applied to the body of persons who gathered to discuss and approve government policies and finances. Nearer to the people and public opinion than the other two organs of the government, the parliament has claimed to represent the sovereign will of the people. More commonly, the term parliamentary system or ‘parliamentary government’ refers to a system which is distinguished from the presidential system of government. Unlike the presidential system of government, which is based on the principle of separation of powers, the parliamentary system involves the fusion of the executive and legislative organs of the government. Before we examine the features of a parliamentary

government, let us see how parliamentary system evolved in Britain.

9.2 EVOLUTION

The origins of the British parliament can be traced to thirteenth century when King John of Great Britain called together a few discreet knights and other nobles to advice him on the necessity and methods for tax collection. These meetings were also used to advice the king on particular issues of public importance. These meetings were called *parliament*. During the reign of Edward I, a model parliament was summoned. It was termed as model because it gave representation to across section of the British society. In their struggle against the Pope and the Spanish kings, the Tudor dynasty sought the approval of the Parliament to legitimise their actions. In the process, the practice of seeking Parliament's approval for laws, taxes, religious and foreign policies gained wide acceptance. During the Stuart rule, there ensured a tussle between the kings and the parliament over religious and foreign policies that led to a civil war resulting in the execution of King Charles (1649) for treason and the disposing of King James II in the Bloodless Revolution (1688). The monarchs had to accept that no law can be passed or tax imposed without the consent of the Parliament and that the king owned his crown to the Parliament.

During the reign of King George I in the early eighteenth century, the institution of cabinet began to take shape. Being of German origin, King George could not speak English and was disinterested in British politics. He was inclined to turn the actual tasks of governing over to his chief ministers or administrators who began to meet regularly to advise the king. These ministers were chosen from the members of parliament so that they would manage the body and get the necessary laws or proposals for taxes passed. They collected themselves into what is today known as the Cabinet, a kind of collegial executive group. The members of parliament were instructed and advised by the Cabinet, and soon the parliament and Cabinet together became the government of Britain. King George II, also of German origin continued this practice. When King George III, a British born and English speaking monarch ascended the throne, the parliamentary system was well established.

Within the Cabinet, the king had begun to rely on one individual called the Prime Minister, to preside over the cabinet meetings and conveyed its decisions to

him. Sir Robert Walpole (1721-42) was the first to be designated as the Prime Minister. The pre-eminence of the post was consolidated by the abilities of Prime Ministers like Pitt the elder, Pitt the Young, Disraeli and Gladstone. With the rise of Liberal and Conservative parties following the realignment of political forces after the 1832 Reforms on the one hand and the extension of franchise on the other, the position of the Prime Minister got strengthened. The Prime Minister became the leader of the nation and the head of the government.

The British parliamentary system, also known as the Westminster government (as the Parliament is located in Westminster in London) has some unique features. First, there is no single document referred to as the constitution. The institutions and practices have developed through conventions. Secondly, in the absence of a written constitution there are no special amending procedures. The British parliament enjoys great flexibility. Often described as parliamentary supremacy, the British parliament has an unlimited authority, recognised by the judiciary, to make any law or to amend any law already made. No other body or court has the right to overrule or set aside its legislation. However, very few of the world's legislatures, including those that have been modelled after the British system, are free in this sense of all constitutional limitations. What are the features of parliamentary democracies modelled after the Westminster government? What does it mean to be a parliamentary democracy?

9.2.1 Features of Parliamentary System of Government

What does it mean to be a parliamentary democracy or parliamentary system? What are the important features of this system of government? Parliamentary democracy is characterised by the fusion of executive and legislative powers into a single body. The executive, the cabinet ministers, sit as members of parliament and play a double role in the fusion of executive and legislative powers. Those who recommend legislation as members of the cabinet also vote on the same legislation as members of the governing legislature. Typically, the government is the Cabinet and the rest of the members of the majority party or coalition of parties in the parliament. The government, in a sense, has an automatic majority and most decisions are made from among these groups. Since the executive is selected on the basis of majority support in the parliament and not directly elected, the government is accountable only to the

parliament.

Secondly, the executive branch of government is divided into a largely formal head of state (the monarch) and the head of the government (the Prime Minister) who exercises most of the executive powers and is responsible to the parliament. The function of the head of the state is not to govern but to see that there is a government. When a crisis occurs, either through the break down of a coalition government or through some national emergency, the head of the state has the responsibility to select an individual to form a government and get on with the business of governing. The Prime Minister is the head of the government, whose function is to make policy and suggest laws through his or her subordinates. The Prime Minister leads the Cabinet and therefore the government. The head of the state ‘reigns but does not rule’.

Parliamentary democracy means collegial executive. Although the Prime Minister is the chief executive, he or she is not a singular executive. The collegial executive is a collection of ministers (Cabinet) who must make decisions as a group and must be in general agreement before legislation is recommended or policies are proposed. The ministers are both individually and collectively responsible to the parliament for their actions.

Parliamentary democracy also means a democracy based on party responsibility. As we saw, the majority party or a coalition of parties commanding majority in the parliament forms the government. The political parties in a parliamentary system have a clearly defined platform and on which the position of the party with regard to a wide variety of issues is stated. The party platform is adhered to with as much consistency as possible. When the cabinet suggests a piece of legislation that would fulfil a pledge made in the party platform, all members of the majority platform must vote for that particular law. Not to do so is to invite the wrath of the party and the subsequent failure to be nominated in next election to run under that party’s ticket. The government in a parliamentary system, therefore, has a built-in majority on most issues and its will generally prevail. The minority party may debate the issues, the laws and the proposals, and they may even succeed in causing minor changes through suggested amendments. However, the minority can never defeat a bill initiated by the majority so long as the rule of party responsibility holds.

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 is the single most important feature of a parliamentary system of government?

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- 2) What the term collegial executive mean?

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PARLIAMENTARY SYSTEM IN INDIA

As India was preparing to become an independent democratic republic forsaking all relations with colonialism, there began, almost simultaneously the search for a model of polity upon which our institutional structures were to be based and political processes made to function. The search was made difficult by the complex nature of our social reality reflecting different classes, caste groups, ethnic and religious minorities—all having diverse interests and aspirations.

Almost all thinkers and activists of the time were keen on evolving a polity that suited the interests and aspirations of all sections of the Indian society. Jaya Prakash Narayan, for example, while articulating a plea for reconstruction of the Indian polity emphasised the need for a rational and scientific model that suited Indian conditions and realities. In other words, he argued for a syncretic model that would give due consideration to the practices of the ancient Indian polity that, unlike the pure western model, was organised in tune with the social nature of man and the scientific organisation of the society. He argued for a social and political life that would assure the preservation of human values.

Disapproving big state structures, Mahatma Gandhi favoured the establishment of decentralised structures whose social and political rules are informed by ethics. He felt that what we consider the Mother of Parliaments is morally impotent to do any good to the English society at large. The parliament, according to Gandhi, remains under the control of ministers who constantly change. Furthermore, for Gandhi, the development of the party system and the assessment of issues by party members guided by a mob-psychology rhetorically

called party discipline have led to the ruin of the parliament. However, this derision of English Parliament does not indicate Gandhi's apathy towards the institution of Parliament *per se*. He wanted the people to choose a parliament with fullest power over finance, armed forces, courts and educational institutions. In short, he aspired for parliamentary *swaraj* in accordance with the wishes and needs of the people of India.

However, the compulsions of economic development, coupled with the need to ensure political integration of varied elements and interests under a corporate collectivity of "*The People*" our leaders set upon an agenda of building a big modern state with elaborate structures, institutions and political processes. In their search for a democratic government that would remain accountable to the wishes of the people and duly represent their diverse aspirations, the builders of our modern state chose to look to various countries and their political experiments. The choice of a federal parliamentary system was the result of a colonial legacy and experience. The legislative experience since the colonial rule began in the early eighteenth century, with modifications in the method and nature of representation in subsequent years, had a profound influence in articulating the normative structure of our post-independent system of governance.

In independent India, a parliamentary form of government was adopted as the institutional device through which the democratic spirit was sought to be realised. The institutional set up is headed by the President who is the head of the state and the executive, functioned through the Prime Minister, who is the head of the government, and the judiciary, by the Supreme Court, while the Parliament is entrusted with the exercise of legislative powers. These institutions function within the framework of parliamentary government based on the union of the legislative and the executive wings of the government. The executive, the Council of Ministers headed by the Prime Minister, comes from the legislature and is collectively responsible to it. In other worlds, it is through the members of parliament that the people of India exercise control over the executive.

The main principles of this form of democracy was the presence of a popular check upon the government through periodic elections based on adult franchise; granting of liberties to its citizens; and the presence of an independent judiciary to safeguard those liberties. The government is not irremovable and is periodically open for anybody who gets the support of the people and enters it as

an individual or as a member of some party. The method of election is affected through persuasion, conversion, and change of mind, change of opinion performed through secret ballot. Moreover, the underlying assumption of our parliamentary democracy is the faith on liberal democratic and individualistic principles.

The process of making this elaborate parliamentary structure functional depends upon the political parties, which constitute the crucial elements in any parliamentary form of government. However, the presence of political parties of all hues and ideologies in the polity, sometimes with antagonistic and diverse conceptions of socio-economic order, renders the functioning of our parliamentary processes difficult. Thus, questions about the feasibility of parliamentary democracy in a country with no stable conventions or rules to regulate the relationship between the various offices created by the constitution and the inability to function as a welfare state under conditions of economic depravity are being increasingly raised. These questions are being buttressed with proposals for alternative forms of government like the presidential system replacing the cabinet form of government. However, we must remember that in choosing the ‘Westminster model’ with some modifications, the framers of the constitution were motivated by the need for a responsible government to that of a stable government to be found in the Presidential system of government.

Though ideally any democratic executive must satisfy the conditions of stability and responsibility, in practical circumstances a balancing of both has been difficult. A non-parliamentary government is not dictated by its dependence on a parliamentary majority for continuing in office. By assuring a fixed tenure, a non-parliamentary system tends to value stability rather than responsibility. The government’s dependence on parliamentary majority makes it incumbent upon the parliamentary government to be responsible in its functions. In our parliamentary democracy, the parliament plays a vital deliberative role as a forum for national debate thereby constituting a popular check upon governmental authority and functions. The individual members of parliament and the opposition during question hour, amendment processes and general debates, have amply demonstrated the deliberative importance of the parliament. Furthermore, the restraint upon government activities and policies is maintained through the introduction of no-confidence motions, cut motions, adjournment motions and

calling attentions. Thus, a popular authority of the parliament in our political system is reinforced both through the continuous and periodic assessment of governmental responsibility. It is continuously assessed by the members of the parliament and periodically by the people during general elections. This is unlike the feature in presidential systems where this assessment is only periodic and is limited by the tenure of the executive, making the legislature literally ineffective during normal times. Thus, any assessment of the effectiveness of our parliamentary system must take cognisance of the wishes of the framers to value responsibility over stability.

The parliamentary structure has also been replicated at the level of the states that respects their autonomy and the federal spirit that legitimises the unity of the Union. Consequently, at the level of the states we have elaborate structures that pursue the parliamentary spirit in choosing their leaders and administering government activities. The adoption of parliamentary system to the requirements of large federal states means that the legislative powers of the parliament are limited. Since the federal and the state governments have separate law-making authority that is derived from the constitution, the Indian situation is characterised by constitutional supremacy rather than parliamentary supremacy. The supremacy of the constitution is further reinforced by constitutional provision of guaranteeing fundamental rights and empowering the judiciary with the power to act as a custodian of these rights.

In short, in our parliamentary democracy, the legitimacy to rule is vested in the parliament, which it derives from the willing consent of the '*people*' who make up the electorate. It is the collective personality of the parliament that imposes a code upon the conduct of both, individuals and political parties; the parliament is the protector of individual liberty and the foundation of Indian laws.

An important feature of our parliamentary system, like other parliamentary democracies, is that it clearly demarcates the position and powers of the head of the state and the head of the government, thereby, in a sense establishing dual executives. The head of the government is appointed from the party or a coalition of parties that enjoys majority in parliamentary seats. This Council of Ministers, headed by the Prime Minister is collectively responsible to the Parliament. This principle of collective responsibility puts the idea of accountability in the government and restricts governments from taking decisions that it cannot justify before the Parliament. This not only indicates that the

hallmark of parliamentary system is a government that is collective but also implies that executive powers are collegiate in nature helping the maintenance of pluralism of opinions that forms the bulwark against authoritarianism. Moreover, unlike the Westminster model, the head of the state in India is elected and exercises his powers within the express provisions of the constitution. He is also not merely a titular head. The constitution empowers the parliament to impeach the President for the violation of the constitution. This implies that the President is empowered to discharge certain functions on his own for which he is liable. The President is also an integral part of the Parliament and is vested with powers by the constitution that helps to check parliamentary impropriety in case of the inability of political parties to secure parliamentary majority or its loss at any given time. The importance of presidential authority was exhibited on numerous instances of crisis that was confronted by the Parliament. For example in 1979, the President rejected the request of Morarji Desai to form a government after having resigned as Prime Minister. It was in 1979 that the President insisted that Charan Singh, the successor to Desai seek confidence of the Parliament. The failure of Charan Singh to gain that confidence subsequently resulted in elections. Though these acts of the President were mired in controversies, it is asserted by eminent jurists and writers that the President acted in a manner consistent with parliamentary conventions. Similarly in 1987, the President used his constitutional authority to return the Indian Post Office (amendment) bill to the Parliament. Thus, the President of India is a potential political counterweight to the Prime Minister, the Council of Ministers and the elected leadership.

In the Indian parliamentary system, as in other parliamentary systems, the government governs in and through the Parliament thereby fusing the legislative and executive branches. The Indian constitution in Article 75(5) emphasises this peculiar fusion by maintaining that if a minister is not a member of any house within a period of six months he shall cease to be a minister. In other words, only a member of the Parliament, which is the legislative body, can become a minister of the government or a member of the executive. The Council of Ministers is, therefore, said to be the hyphen that links the legislative branch of the state to the executive branch.

In a parliamentary system, which is sometimes referred to as the ‘Prime Ministerial form’ or ‘Cabinet form’ of government, the Cabinet comprising of a

few leading ministers headed by the Prime Minister makes all important policy decisions. The members of the Cabinet are allowed to play important political roles in rendering policy directives but under the overall supervision and authority of the Prime Minister. However, since the time of Lal Bahadur Shastri, the Prime Minister's Office or the PMO has emerged as an important alternative source to the power of the Cabinet. The authority of the PMO was subsequently re-enforced under Mrs. Indira Gandhi and its role enlarged in actual decision-making. This authority of the Cabinet or the PMO has to some extent encroached upon parliamentary prerogatives and its legislative process most notably through the frequent passage of legislation by Ordinance issued in the name of the President. Today the PMO is a significant centre of authority in the political structure, which not only emphasises its authority in actual decision-making but also in monitoring and co-ordinating policy implementation by the other ministries of the government.

However, governance is not merely dictated by the institutional structure that is established but is dialectic of the interaction of the institutions and the political culture with each having an impact on the other. Immediately after independence, the presence of a single dominant political party with very little opposition had undercut the principle of political pluralism that formed the basis of any parliamentary structure. In a situation where the government had majority control in the Parliament, the legislature was reduced to little more than a 'talking shop'. Parliamentary processes were clouded by the charisma of Jawaharlal Nehru who according to Ashish Nandy had himself become the opposition criticising his ministers for lapses or extolling them to implement policies for development. Though, during this period the authority of the Prime Minister attained supremacy and position of primacy in the Indian political system, the essence of parliamentary democracy and needs of a federation functioned well with state and central politics remaining largely autonomous. During this period, according to political scientist Paul Brass, a strong central government coexisted with strong states in a mutually bargaining situation. Furthermore, during this phase, the firm grip of civilian control over the military was strongly asserted and a political executive responsible to the Parliament provided clear and effective policy guidance.

After the death of Nehru and the power struggles within the Congress, a party enjoying pre-eminent dominance in Indian politics, there was erosion in the

values associated with parliamentary democracy and the federal spirit was undermined. The Congress party's efforts to retain that dominant position led to centralising tendencies within the party and even to the imposition of what may be termed as 'elective dictatorship' under the government of Mrs. Indira Gandhi. However, during this period as well the importance and need of the parliament was demonstrably justified. The crisis and power struggle in the Congress party resulted in a vertical split of the party in 1969 over the Congress nominee for the Presidency of India and the election of Mrs Gandhi's candidate, V.V.Giri, as President. Mrs. Gandhi was expelled from the Congress party, but this expulsion did not effect her position as the Prime Minister since she retained her support in and among the members of the parliament. Thus, a leadership crisis in the party having majority in the parliament did not affect the functioning of the government effectively reflecting the importance of the parliamentary processes. This importance of the parliamentary process was again demonstrated in 1979, when a section of the Janata Party members in the parliament expressed dissatisfaction with Morarji Desai, resulting in his resignation.

However, parliamentary legitimacy and sanctity suffered tremendous challenges during the regime of Mrs Gandhi. In 1973-74, for example, food shortages, rising prices coupled with the highly personalised and authoritarian style of functioning by Mrs Gandhi resulted in major political demonstrations in many parts of the country. This was precipitated by a court verdict holding Mrs Gandhi's 1971 election as invalid. Mrs Gandhi responded in a manner that undermined parliamentary democracy. The fundamental principles of parliamentary democracy like freedom of expression, enjoyment of civil liberties, a free press and opposition were gagged through the imposition of emergency under Article 352. Furthermore, the argument of parliamentary supremacy was used to justify the undermining of parliamentary norms and procedures. This was done through the passing of new electoral laws superseding the laws under which the Allahabad High Court declared Mrs. Gandhi's election as invalid. This act of the Parliament had the effect of undermining the process of judicial review that was meant to act as a bulwark against parliamentary authoritarianism. This excessive executive power and undermining of judicial independence continued during this period with the choice of Chief Justices and Judges committed to the ruling political party without respect for established norms and procedures.

In fact, the electoral reversals suffered by the Congress party led by Mrs. Gandhi in the 1977 general elections reflected the firm and deep roots of parliamentary democracy in India. The '*people*' of India have reflected enough maturity in exercising their franchise periodically by reversing their mandate and trust vested in a particular party. For example, Rajiv Gandhi, who led the Congress party to a massive victory, securing nearly 80 per cent of the seats in the Parliament in 1985, suffered a humiliating defeat in 1989.

The Indian parliamentary system saw its breakdown for a brief interregnum in 1975, restored in 1977, survived the fall of the Janata government in 1979 and the return to power of Mrs. Gandhi. The unprecedented majority won by Rajiv Gandhi in 1985 was followed by the defeat of the Congress and the installation of the V.P.Singh government in 1989 and later that of Chandrasekhar in 1990. The 1991 general elections saw the return of the Congress government under P.V.Narasimha Rao, which survived its term through methods that are now being examined by the judiciary. The consequent bribery trial has thrown up challenges for our parliamentary processes with questions as to whether acts within the parliament are subject to judicial interpretation or not.

The fractured verdict of the 1996 general elections led initially to the installation of a 13 days government of Atal Bihari Vajpayee, the 13 months government of Devegowda and the installation of I.K.Gujral government in 1997. The general elections in 1998 again resulted in a fractured verdict, leading to the formation of the Vajpayee government that lost its majority soon, after a coalition member withdrew support. In the event where no other political party was able to stake claim for the formation of the government, parliament was dissolved and general elections were notified. The 1999 general elections reflected the polarised psyche of the electorate and the inability of any party to secure absolute majority in the parliament. This led to the formation of the National Democratic Alliance (NDA), a coalition of thirteen different parties under the leadership of Vajpayee and its claim to form the government.

However, though all these instances lead to instability in governmental functioning, it did not have any negative affect upon the transition of political power. The instability in government functioning did not lead to instability or assertion of radical political claims for the usurpation of parliamentary authority by the other organs of the government or the imposition of any form authoritarianism. This shows that the parliamentary spirit has been deeply

embedded in the political consciousness of all the actors in our polity thereby enhancing the necessity and importance of our parliamentary democracy.

The Indian parliamentary structure thus matured through these trials and tribulations, from being an institution dominated by a single party to the emergence of a fractured polity with highly polarised political opinions and mandate. Though, we as a parliamentary polity underwent numerous crises with unstable and frequently changing governments, the authority and legitimacy of our parliamentary structures have only matured in the process. Though demands for restructuring the political structure have gained momentum due to these unstable moments, it has been met with immense opposition. This opposition is justified on the basis of claims that any change in the political set up might augment the process of authoritarianism, which will not only harm the effective functioning of political pluralism but will affect the basis of our tolerance respecting diverse religions, ethnic, tribal or other affiliations.

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) The parliamentary government is more a responsible government than a stable government. Explain.

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- 2) What are the two factors that establish constitutional supremacy rather than parliamentary supremacy in India?

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LET US SUM UP

The parliamentary system, also known as the Cabinet form or Prime Ministerial form of government, historically led the struggle against the kings for

popular rights. We saw that although parliamentary government evolved in Britain, it has been adopted by many countries, both in the developing and developed nations with suitable modifications. Some of the fundamental features of parliamentary system in India are as follows:

- A government formed as a result of parliamentary elections based upon the strength of party representation or a coalition in the parliament;
- The fundamental feature of the system is political pluralism that allows the presence of competing political parties with diverse ideologies and goals reflecting the interests and aspirations of a heterogeneous polity;
- Ministers or the members of the real executive (government) are drawn from parties in the parliament that have majorities in the parliament or are party to the coalition;
- The government is responsible and accountable to the parliament, in the sense that it rests upon the parliament's confidence and can be removed in case of loss of that confidence;
- The government can recommend dissolution of the parliament and call a general election in case no party is in a position to form the government , meaning that electoral terms are usually flexible within a maximum limit;
- The parliamentary executive is collective and the nature of power diffusion is collegial;
- The posts of the head of the government and the head of the state are separate with the President being the constitutional figurehead and the Prime Minister, leading the Council of Ministers, the real executive.

SOME USEFUL BOOKS

Jaya Prakash Narayan, 'A Plea for reconstruction of Indian Polity' in Bimal Prasad (Ed) *A Revolutionary's Quest: Selected Writings of J.P.Narayan*, , by, Delhi. OUP. 1980.

Anthony J.Parel (Ed), *Gandhi—Hind Swaraj and other Writings*, Cambridge Texts in Modern Politics, N.Delhi. Cambridge University Press. 1997.

Paul Brass, *The Politics of India since Independence*, Cambridge University Press, first corrected Indian edition .1992.

A.R.Desai, *State and Society in India: Essays in Dissent*, Popular Prakashan, Bombay 1975.

Andrew Heywood, *Key Concepts in Politics*, Macmillan Press Ltd. Great Britain 2000.

ANSWERS TO CHECK YOUR PROGRESS EXCERSESSES

Check Your Progress Exercise-1

- 1) The parliamentary system involves the fusion of the executive and legislative organs of the government whereas the presidential system of government is based on the principle of separation of powers among the three organs of the government.
- 2) It means that the executive is plural. The Prime Minister may be the head of the Cabinet, but the decisions taken should have the collective backing of the Cabinet as the ministers are not merely individually, but collectively responsible to the legislature.

Check Your Progress Exercise-2

- 1) The parliament plays a deliberative role as a forum for national debate. This itself checks governmental authority, though the government being part of the legislature is held directly accountable through various parliamentary devices. This ensures a responsible government, though not necessarily a stable government. Non parliamentary system may not be responsible, the executive being assured of a fixed tenure. Further, it is difficult to ensure the accountability of the executive to the people except at the polls.
- 2) One is the federal division of law-making powers between the Central and state governments and the other is the provisions in the constitution that guarantee fundamental rights.

Structure

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Indian legislature historical background
- 10.3 Union Legislature
 - 10.3.1 The President
 - 10.3.2 The Parliament: Lok Sabha
 - 10.3.3 The Parliament: Rajya Sabha
 - 10.3.4 Special Powers of Rajya Sabha
- 10.4 The Presiding Officers
 - 10.4.1 The Speaker
 - 10.4.2 The Chairperson of Rajya Sabha
- 10.5 Legislative Procedure
 - 10.5.1 Money Bills
- 10.6 Parliamentary privileges
- 10.7 parliamentary devices to control the executive
 - 10.7.1 Parliamentary Committees
- 10.8 State Legislature
- 10.9 Decline of Legislature
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- 10.11 Some Useful Books
- 10.12. Answers to Check Your Progress Exercises

10.0 OBJECTIVES

This unit examines the evolution, structure and functioning of the Indian Parliament. After going through this unit, you should be able to:

- Trace the evolution of modern legislature in India;
- Discuss the organisation and functions of the Parliament; and
- Explain parliamentary procedures

10.1 INTRODUCTION

The term legislature has been derived from the Latin word *lex*, which means a distinct kind of legal rule mainly of general application. This rule is named legislation, and the institution, which enacts it on behalf of the people, is known as legislature. Essentially, there are two models of legislative structure: the Parliamentary and the Presidential. In the parliamentary model, the executive is selected by the legislature from among its own members. Therefore, the executive is responsible to the legislature. The Presidential system is based on the theory of separation of powers and does not permit any person to serve simultaneously in both executive and legislature.

The Parliament of India, which is the creation of the Constitution, is the supreme representative authority of the people. It is the highest legislative organ. It is the national forum for the articulation of public opinion.

Indian Parliament did not emerge overnight; it evolved gradually during the British rule, particularly since 1858 when the British Crown assumed sovereignty over India from the East India Company. By the Government of India Act of 1858 the powers of the Crown were to be exercised by the Secretary of State for India assisted by a Council of India. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor-General, assisted by an Executive Council consisting of high government officials. There was no separation of powers; all the powers--legislative, executive, military and civil-- were vested in this Governor-General in Council.

The Indian Council Act of 1861 introduced little bit of popular element as it included some additional *non-official* members in the Executive Council and allowed them to participate in the transaction of legislative business. The Legislative Council was neither deliberative nor representative. Its members were nominated and their role was limited only to the consideration of legislative proposals placed by the Governor-General.

Indian Councils Act of 1892 made two important improvements. First, non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provincial Councils were to be nominated by certain local bodies such as universities, district boards, municipalities. Secondly, the Councils were empowered to discuss the budget and address questions to the Executive.

Indian Councils Act of 1909, based on Morley-Minto Reforms, for the first time, introduced both representative as well as popular features. At the Centre, election was introduced in the Legislative Council though the officials still retained the majority. But in the Provinces, the size of the Provincial Legislative Council was increased by including elected non-official members so that the officials no longer constituted the majority. This Act enhanced the deliberative functions of the Legislative Councils and provided them opportunity to move resolutions on the Budget and any other matter of public interest barring certain specified subjects, such as the Armed Forces, Foreign Affairs and the

India States. The Government of India Act of 1915 consolidated all the previous Acts so that the executive, legislative and judicial functions could be derived from a single Act.

The next phase of legislative reforms emerged out of the Government of India Act of 1919 brought further legislative reforms in the form of responsible government in the Provinces. At the Centre, the legislature was made bicameral and elected majority was introduced in both the Houses. However, no element of responsible government was introduced at the Centre. The Governor General in Council continued to be responsible as before to the British Parliament through the Secretary of State.

The Government of India Act of 1935 came into being after several parleys between the Indian national leaders and Britain. It contemplated a federation consisting of British Indian Provinces and native states. It introduced bicameral legislatures in six Provinces. It demarcated legislative power of the Centre and the Provinces through three lists: the Central List, the Provincial List and the Concurrent List. However, the Central Executive was not made responsible to the legislature. The Governor General as well as the Crown could veto bills passed by the Central Legislature. The Governor-General besides the Ordinance-making powers had independent powers of legislation or permanent Acts. Similar limitations existed in case of Provincial Legislatures existed as well.

The international political scene and the conditions in India and Britain led the British government to an unequivocal acceptance of India's claim to freedom. The Indian Independence Act of 1947 was passed setting up two independent dominions, India and Pakistan. The legislature of each dominion was to have full legislative sovereignty. The powers of the legislature of the dominion were exercisable without any limitations whatsoever by the Constituent Assembly formed in 1946. This Constituent Assembly adopted the Constitution of India, which received the signature of the President on 26th November 1950.

Check Your Progress Exercise-I

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) The important legislative reforms introduced by the Government of

India	Act	of	1919
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2) Division of powers between the Centre and component unit was first introduced by

10.3 UNION LEGISLATURE

Under the provision of Article 79, the Parliament of India consists of the President and the two Houses - the Lower House or Lok Sabha (House of the People) and the Upper House or Rajya Sabha (Council of States). While the Lok Sabha is subject to dissolution, the Rajya Sabha is a permanent chamber which cannot be dissolved. The office of the President also never remains vacant.

10.3.1 The President

While the American President is not a part of the Legislature (Congress), the President of India is an integral part of the Indian Parliament. However, he cannot sit and participate in the deliberations in any of the two Houses.

The President of India performs certain important role vis-à-vis the Parliament. The President summons and prorogues the House from one session to another and has the power to dissolve the Lok Sabha. No bill passed by both the Houses can become a law without the President's assent. Further certain bills can be introduced only after the recommendation of the President has been obtained. The President also has the power to promulgate Ordinances when both the Houses are not in session. These Ordinances, though temporary in nature, have the same force and power as a law passed by Parliament. In Unit 12, we will examine the position and powers of the President of India in detail.

10.3.2 The Lok Sabha

The Lower House or the House of the People is popularly known as Lok Sabha. Its members are directly elected by the people. The maximum number of members to be elected which was fixed by the Constitution at 500. It was raised to 520 members by the Seventh Constitutional Amendment (1956) and to 545 members by the 42nd Constitutional Amendment (1976). This includes not more than 525 members chosen by direct election from territorial constituencies in the States and not more 20 members to represent the Union Territories. In addition,

the President may nominate two members of the Anglo-Indian community if he is of the opinion that the community is not adequately represented in the Lok Sabha.

The distribution of seats among the States is based on the principle of territorial representation which means each State is allotted seats on the basis of its population in proportion to the total population of all the States. For election purpose, each state is divided into territorial units called constituencies which are more or less of the same size with regard to the population.

The election to the Lok Sabha is conducted on the basis of adult franchise; every adult who has attained 18 years of age is eligible to vote. The candidate who secures the largest number of votes gets elected. The Constitution provides for an independent organisation known as the Election Commission to conduct elections. The normal life of the Lower House is five years, though it can be dissolved earlier by the President.

To be a member of the Lok Sabha, a person should be an Indian citizen, must have completed 25 years of age and must possess all other qualifications that are prescribed by a law of the Parliament. A candidate seeking election to the Lok Sabha can contest from any parliamentary constituency from any of the States in India.

The Constitution has laid down certain disqualifications for membership. No person can be member of both Houses of Parliament or member both of Parliament and of a State legislature. The candidate may contest from several seats, but if elected from more than one, he has to vacate all except one according to his choice. If a person is elected both to the State legislature and the Parliament and if he does not resign from the State legislature within the specified time period, he will forfeit his seat in Parliament. A member should not hold any office of profit under the Central or State government except those that are exempted by a law of Parliament, and should not have been declared as an insolvent or of unsound mind by a competent court. A member also gets disqualified when he remains absent from the meetings of the House for a period of sixty days without prior permission or when he voluntarily acquires the citizenship of another country or is under any acknowledgement of allegiance to a foreign state.

10.3.3 The Rajya Sabha

The Rajya Sabha or Council of States consists of not more than 250 members of which 12 members are nominated by the President from amongst persons having 'special knowledge or practical experience in literature, science,

art, and social service.' The remaining members are elected by the members of the State Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote. Thus, unlike Lok Sabha, Rajya Sabha adopts the method of indirect election. For the purpose of this election, each State is allotted a number of seats, mainly on the basis of their population. The Rajya Sabha, thus reflects the federal character by representing the States or the units of the federation. However, it does not follow the American principle of equality of State representation in the Second Chamber. Whereas every State of the United States sends two representatives to the Senate, in India, the number of representatives of the States to the Rajya Sabha varies from one (Nagaland) to 34 (Uttar Pradesh) depending upon the population of a state.

Rajya Sabha is a continuing chamber as it is a permanent body not subject to dissolution. One third of its members retire at the end of every two years and elections are held for the vacant positions. A member of Rajya Sabha has a six-year term, unless he resigns or is disqualified.

10.3.4 Special Powers of Rajya Sabha:

The Rajya Sabha has hardly any control over the ministers who are individually and jointly responsible to the Lok Sabha. Though it has every right to seek information on all matters which are exclusively in the domain of Lok Sabha, it has no power to pass a vote of no-confidence in the Council of Ministers. Moreover, the Rajya Sabha has not much say in matters of money bills.

Nevertheless, the Constitution grants certain special powers to the Rajya Sabha. As the sole representative of the States, the Rajya Sabha enjoys two exclusive powers which are of considerable importance.

First, under Article 249, the Rajya Sabha has the power to declare that, in the national interest, the Parliament should make laws with respect to a matter enumerated in the State List. If by a two-thirds majority, Rajya Sabha passes a resolution to this effect, the Union Parliament can make laws for the whole or any part of India for a period of one year.

The second exclusive power of the Rajya Sabha is with regard to the setting up of All-India Services. If the Rajya Sabha passes a resolution by not less than two-thirds of the members present and voting, the parliament is empowered to make laws providing for creation of one or more All-India Services common to the Union and the States.

Thus, these special provisions make the Rajya Sabha an important component of Indian Legislature rather than just being an ornamental second chamber like the House of Lords of England. The constitution makers have designed it not just to check any hasty legislation, but also to play the role of an important influential advisor. Its compact composition and permanent character provides it continuity and stability. As many of its members are "elder statesmen" the Rajya Sabha commands respectability.

10.4 PRESIDING OFFICERS

Each house of Parliament has its own presiding officers. The Lok Sabha has a Speaker as its principal presiding officer and a deputy speaker to assist him and officiates as presiding officer in his absence. The Rajya Sabha is presided over by the Chairperson, assisted by a deputy chairperson. The latter performs all the duties and functions of the former in case of his/her absence.

10.4.1 The Speaker

The position of the Speaker of the Lok Sabha is more or less similar to the Speaker of the English House of Commons. The office of the Speaker is symbol of high dignity and authority. Once elected to the office, the speaker severs his party affiliation and starts functioning in an impartial manner. He acts as the guardian of the rights and privileges of the members.

The Speaker is conferred with a number of powers to ensure an orderly and efficient conduct of the business of the House. He conducts the proceedings of the house, maintains order and decorum in the house and decides points of order, interprets and applies rules of the house. The Speaker's decision is final in all such matters. The Speaker certifies whether a bill is money bill or not and his decision is final. The Speaker authenticates that the house has passed the bill before it is presented to the other house or the President of India for his assent. The Speaker in consultation with the leader of the house determines the order of business. He decides on the admissibility of questions, motions and resolutions. The Speaker will not vote in the first instance, but can exercise a casting vote in case of a tie. The Speaker appoints the chairpersons of all the Committees of the house and exercises control over the Secretarial staff of the house.

The Speaker's conduct cannot be discussed in the house except in a substantive motion. His salary and allowances are charged to the Consolidated Fund of India so that the independent character of the office is maintained.

A special feature of the Speaker's office is that even when the House is dissolved, the Speaker does not vacate his office. He continues in office until the new House elects another Speaker. In the absence of the Speaker, the Deputy Speaker presides over the House.

10.4.2 Chairperson of Rajya Sabha

The Vice-President of India is the ex-officio chairperson of the Rajya Sabha; but during any period when the Vice President acts as a President or discharges the functions of the President, he does not perform the duties as a presiding officer of the Rajya Sabha. The Vice-President is elected by the members of both the houses of Parliament assembled at a joint meeting, in accordance with the system of proportional representation by means of single transferable vote and the voting at such elections is by secret ballot. The Vice President is not a member of either house of Parliament or of a house of legislature of any State. He holds office for a term of five years from the date on which he enters upon his office or until he resigns his office or is removed from his office by a resolution passed by a majority of members of the Rajya Sabha and agreed to by the Lok Sabha. The functions and duties of the Chairperson of the Rajya Sabha are the same as those of the Speaker of the Lok Sabha.

Check Your Progress-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) What are the qualifications and disqualification for a member of Indian Parliament?

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- 2) The powers of the Speaker of Lok Sabha are.....

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10.5 LEGISLATIVE PROCEDURE

Law making is the primary function of the legislature. As modern society is very complex in nature, law making also becomes a complex process. The Constitution of India prescribes the following stages of legislative procedure.

The first stage of legislation is introduction of a bill which embodies the proposed law and is accompanied by the "Statement of Objects and Reasons". The introduction of the bill is also called the first reading of the bill. There are two types of bills: ordinary bills and money bills. A bill other than money or financial bill may be introduced in either House of Parliament and requires passage in both the Houses before it can be presented for the President's assent. A bill may be introduced either by a Minister or a private member. Every bill that is introduced in the House has to be published in the Gazette. Normally, there is no debate at the time of introduction of a bill. The member who introduces the bill may make a brief statement indicating broadly the aims and objects of the bill. If the bill is opposed at this stage, one of the members opposing the bill may be permitted to give his reasons. After this the question is put to vote. If the House is in favour of the introduction of the bill, then it goes to the next stage.

In the second stage, there are four alternative courses. After its introduction, a bill (I) may be taken into consideration; (II) may be referred to a Select Committee of the House; (III) may be referred to a Joint Committee of both the Houses; (IV) may be circulated for the purpose of soliciting public opinion. While the first three options are generally adopted in case of routine legislation, the last option is resorted to only when the proposed legislation is likely to arouse public controversy and agitation.

The day one of these motions is carried out, the principles of the bill and its general provisions may be discussed. If the bill is taken into consideration, Amendments to the bill and clause by clause consideration of the provisions of the bill is undertaken. If the bill is referred to the Select Committee of the House, it considers the bill and submits its report to the House. Then the clauses of the bill are open to consideration and amendments are admissible. This is the most

time-consuming stage. Once the clause by clause consideration is over and every clause is voted, the second reading of the bill comes to an end.

In the third stage the member in charge moves that "the bill be passed". At the third reading, the progress of the bill is quick as normally only verbal or purely formal amendments are moved and discussion is very brief. Once all the amendments are disposed off, the bill is finally passed in the House where it was introduced. Thereafter, it is transmitted to the other House for its consideration.

When the bill comes up for considered by the other House, it has to undergo all the stages as in the originating House. There are three options before the House (I) it may finally pass the bill as sent by the originating House; (II) it may reject the bill altogether or amend it and return to the originating House; (III) it may not take any action on the bill and if more than six months pass after the date of receipt of the bill, this means rejection.

The originating House now considers the returned bill in the light of the amendments. If it accepts these amendments, it sends a message to the other House to this effect. If it does not accept these amendments, then the bill is returned to the other House with a message to that effect. In case both the Houses do not come to an agreement, the President convenes a joint-sitting of the two Houses. The disputed provision is finally adopted or rejected by a simple majority of vote of those who are present and voting.

A bill that is finally passed by both the Houses is presented with the signature of the Speaker to the President for his assent. This is normally the last stage. If the President gives the assent, the bill becomes an Act and is placed in the Statute Book. If the President withholds his assent, there is an end to the bill. The President may also return the bill for the reconsideration of the Houses with a message requesting them to reconsider it. If, however, the Houses pass the bill again with or without amendments and the bill is presented to the President for his assent for the second time, the President has no power to withhold his assent.

Thus, law-making is a long, cumbersome and time-consuming process; it becomes difficult to pass a bill within a short time. Proper drafting of the bill saves time and skillful soliciting of opposition support makes the task easier.

10.5.1 Money Bills

Financial bill may be said to be any bill which relates to revenue and expenditure. But the financial bill is not a money bill. Art. 110 states that no bill is a money bill unless it is certified by the Speaker of the Lok Sabha. A money

bill cannot be introduced in the Rajya Sabha. Once a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha. The Rajya Sabha cannot reject a money bill. It must, within a period of fourteen days from the date of receipt of the bill, return the bill to the Lok Sabha which may thereupon either accept or reject all or any of the recommendations. If the Lok Sabha accepts any of the recommendations, the money bill is deemed to have been passed by both Houses. Even if the Lok Sabha does not accept any of the recommendations, the money bill is deemed to have been passed by both the Houses without any amendments. If a money bill passed by the Lok Sabha and transmitted to the Rajya Sabha for its recommendations is not returned to it within fourteen days, it is deemed to have been passed by both the Houses at the expiry of the said period in the original form.

10.6 PARLIAMENTARY PRIVILEGES

For free and efficient functioning of the members of Parliament it is important that they are granted some privileges. There are two types of privileges for the members of Parliament: enumerated and unenumerated. The important privileges a member enjoys under the enumerated category are: I) Freedom of speech in each House of the parliament; ii) Immunity from proceedings in any Court in respect of anything said or any vote cast; iii) Immunity of liability in respect of publication by or under the authority of either house of Parliament of any report, paper, votes or proceedings; iv) Freedom from arrest in civil cases for duration of the session for a period of 40 days before and after the session; and v) Exemption from attending as a witness in a Court.

In the unenumerated category fall similar privileges and immunities which are granted to the members of the House of Commons of British Parliament. Like the House of Commons, the Indian Parliament has power to punish a person, whether a member or a non-member, in case of contempt of Parliament.

10.7 PARLIAMENTARY DEVICES TO CONTROL THE EXECUTIVE

As observed, one of the important functions of the Parliament is to control the executive. A number of mechanisms are available to it for this purpose.

The rules of procedure and conduct of business in parliament provide that unless the presiding officers otherwise direct, every sitting begins with the Question Hour, which is available for asking and answering questions. Asking of questions is an inherent parliamentary right of all the members, irrespective of their party affiliations. The real object of the member in asking the question is to point out the shortcomings of the administration, to ascertain the thinking of the government in formulating its policy and where the policy already exists, in making suitable modifications in that policy.

In case the answer given to a question does not satisfy the member who raised it and if he feels the need for detailed ‘explanation in public interest’ he may request the presiding officer for a discussion. The presiding office can allow discussion, usually in the last half an hour of a sitting.

Members can, with the prior permission of the presiding officer, call the attention of a Minister to any matter of public importance and request the Minister to make a statement on the subject. The Minister may either make a brief statement immediately or may ask for time to make the statement at a later hour or date.

Members can take the government to task for a recent act of omission or commission having serious consequence by resorting to adjournment motion. This motion is intended to draw the attention of the house to a recent matter of urgent public importance having serious consequences for the country and in regard to which a motion or a resolution in the proper notice will be too late. Adjournment motion is an extraordinary procedure which, if admitted, leads to setting aside the normal business of the house for discussing a definite matter of public importance. Adoption of an adjournment motion amounts to the censure of the government.

Besides these devices, Parliament exercises control over the executive through various house committees.

10.7.1 Parliamentary Committees

The accountability of the executive to the Parliament and the Parliament’s right to oversee and scrutinise the way in which the executive functions are accepted as axiomatic. But in practice due to some unavoidable factors, such as the pressure on Parliament and its operational procedures, it is difficult for parliament as a body to undertake thorough scrutiny of the multifaceted and complex details of day to day administration and its financial transactions.

Parliament has solved the problem by establishing a series of committees with necessary powers to scrutinise the working of the different departments of the government.

Among the important Committees, which scrutinise the government's works, particularly in the area of public finances, two committees need special mention: Public Accounts Committee and Estimates Committee. These and other Committees are expected to keep the executive on its toes. They ensure an effective and comprehensive examination of all the proposed policies. Often, Committees provide an ideal context for discussing controversial and sensitive matters in a non-partisan manner, away the glare of publicity. They provide a useful forum for the utilisation of experience and ability that may otherwise remain untapped. They also constitute a valuable training ground for future ministers and presiding officers.

10.8 STATE LEGISLATURE

In most respects, state legislatures are similar to the Parliament of India. However, the choice of unicameralism or bicameralism was left to the states, depending on how they weighed the functions of the second chamber compared to the costs involved in running it. Very few states have opted to have bicameral legislature consisting of the Legislative Assembly (Vidhan Sabha) and the Legislative Council (Vidhan Parishad).

The Legislative Assembly of each State is composed of members chosen by direct election on the basis of adult suffrage from territorial constituencies. The size of the Assembly varies from a minimum of 40 to no more than 500. The duration of the Legislative Assembly is for five years.

The membership of the Legislative Council shall not be less than 40 but not more than one-third of the total membership of the Assembly. The House is composed of partly elected and partly nominated members. Normally, 1/6 of total members are nominated by the Governor and the rest are indirectly elected on a complicated formula involving graduates, educators and members of the Assembly.

The position of the Council is inferior to that of the Assembly so much so that it may well be considered as unnecessary. A) The very nature of composition

of the Legislative Council makes its position weak, being partly elected and partly nominated, and representing various interests. B) Its survival depends on the will of the Assembly, as the latter has the power to abolish the Second Chamber by passing a resolution. C) The Council of Ministers are responsible only to the Assembly and not to the Council. D) As regard any ordinary bill originating in the Assembly, the Council's position is very weak for it can only delay its passage for a limited period. Hence, the second chamber of the State legislature is not a revising body, but a mere dilatory body.

The legislative process in the State Assembly is similar to that in the Parliament with one significant exception. The Governor can reserve any bill passed by the State legislature for the consideration of the President. Particularly in one case, it is obligatory on the Governor to reserve the bill, i.e., when the bill is derogatory to the powers of the High Court. If the President directs the Governor to return the bill for reconsideration, the Legislature must reconsider the bill within six months and if it is passed again, the bill is presented to the President again. But it shall not be obligatory on the President to give his assent. Thus, it is clear that once the Governor reserves a bill for the President, its subsequent enactment remains with the President and the Governor has no further role in it. Since the Constitution does not put any time limit upon the President either to declare his assent or withhold, the President can keep the bill in cold storage for an indefinite period without revealing his intention.

10.9 DECLINE OF LEGISLATURE:

At present there exists a strong tendency indicating decline of legislature and corresponding enhancement of power of the executive. Several factors have contributed to this decline of the prestige and functioning of the Parliament.

Parliament is simply not able to devote its entire time to the details of the legislative measures. It could at best lay down broad policy and leave the rest to be taken up by the executive. Hence all bills contain a clause empowering the government to frame necessary regulations and bye laws. Thus, delegated legislation robs the Parliament to a great extent, the law making power, resulting in the decline in the prestige of the Parliament.

The ever-changing political and moral conditions in India are also responsible for the decline of the prestige of the Parliament. Dominance by the

party, the lack of party organisation, the malaise of political defections, corruption and the decline of the morale of politician have all contributed to the erosion of the prestige of the Parliament. A major threat to Parliament in India is posed by the growth of diverse and divisive forces in all the political parties. Both the ruling and opposition parties are prompted more by considerations of expediency and political motives than ideology. The ineffectiveness of the opposition and the lack of a strongly articulated public opinion have added to the erosion of Parliaments position vis a vis the executive headed by the Prime Minister. In theory, we have a parliamentary system where the executive is controlled by the legislature, but in reality, the powers of the legislature have passed into the hands of the executive.

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 Question Hour?

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2) Bring out the significance of adjournment motion.

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10.10 LET US SUM UP

The Parliament of India, the supreme legislative organ in the country, has a long historical background. While legislature in some form came into being during the days of the East India Company, it was only when the Company rule was replaced by that of the Crown that the powers of the Union Legislature as well as its democratic base began to gradually grow.

The Parliament consists of the President, the Lok Sabha and the Rajya Sabha. To get elected to the Parliament, one has to fulfil certain qualifications prescribed by the Constitution and the Parliament. Members of the Parliament have certain privileges to enable them to function better. Each house has its own presiding officer to conduct the meetings of the House and to protect the dignity and honour of the House.

The primary function of the Parliament is to enact laws. In addition, it holds the Council of Ministers responsible for its policies and criticises the policies wherever necessary. It also has the powers to amend the constitution and to impeach the President. There are several Committees appointed from among its members for effective functioning. Devices like the question hour, adjournment motion, calling attention motion, etc. are available for Parliament to check the government. Passing of the budget, an important function of the Parliament, provides it with an opportunity to scrutinise the activities of the government.

There is a declining trend in the position of the legislature all over the world. Delegated legislation, ascendancy of the executive over the other organs of the government, emergence of strong party system, etc. are some of the reasons for such a trend. Despite these trends, the Parliament still commands respect and is able to maintain its position vis a vis the other organs of the government.

10.10 SOME USEFUL BOOKS

Basu, Durga Das, 1983, *Commentary on the Constitution of India*, Prentice Hall, New Delhi.

Granville Austin 1964, *India's Constitution-Cornerstone of a Nation*, Mukherjee, Hiren, 1978, *Portrait of Parliament: Reflections and Recollections*, Vikas, New Delhi.

ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise-I

- 1) Bicameral legislature at the Centre- For the first time, elected majority was established in legislature.
- 2) The Government of India Act of 1935 which introduced federalism in India.

Check Your Progress Exercise-2

- 1) To be a member, the person should be 25 years (for Lok Sabha) or 30 years (for Rajya Sabha) and other qualifications prescribed by the Parliament. A member disqualifies if absent from meetings for more than 60 days without permission, if he holds a office of profit under Government of India, if found to be of unsound mind, if declared insolvent or acquires citizenship of another country or is under any acknowledgement of allegiance to a foreign state. A member elected to the State Assembly, forfeits his membership of Parliament if he does not resign from the State Assembly within a specified period.
- 2) Has wide and extensive powers-presides over the sitting of Lok Sabha, conducts proceedings, maintains order in the house and determines the order of business in the house- acts as spokesperson of the house-interprets and applies rules of the house-authenticates bills- certifies money bills- etc

Check Your Progress Exercise-3

- 1) The first hour of the sitting of a house which is available for asking and answering of questions.
- 2) It is an extraordinary procedure to call the attention of the house to a matter of grave importance and affecting the whole country. Normal business is set aside to discuss the motion. And adoption of this motion amounts to censure of the government.