State have been delimited, the constituencies to be reserved for STs will be those where the percentage of the ST population to the total population of the constituencies is the largest, in descending order equal to the number of constituencies to be reserved for STs.

Under the same Act, the constituencies for SCs are to be distributed in different parts of the State and seats are to be reserved for SCs in those constituencies where the percentage of their population to the total population is comparatively large.

The population of SCs in India, as per the 1971 Census, was 14.6 per cent of the
total population of the country; the 2001 Census puts the figures at 16.2 per cent.
Thus, on an all India basis, there is a rise of 1.6 per cent in the population of SCs between 1971 and 2001. After the 1971 Census, 79 LS seats (14.6 per cent) were
reserved for the SCs. When the 2001 Census figures are considered for the reservation of seats, 16.2 per cent seats should go to them. Similarly, the ST population in India, as per the 1971 Census was 38 million i e, 6.9 per
cent of the total population of the country; the 2001 Census puts the figures at 8.2 per cent. Thus on an all India basis, there is a rise of 1.3 per cent in the population of the STs between 1971 and 2001. After the 1971 Census, 41 LS seats were reserved for the STs; when 2001 Census figures are made the basis for the determination of the reserved seats for the STs, 8.2 per cent seats are required to be reserved for them. The Delimitation Commission is entrusted with the work of allocation of these extra reserved seats among several states.

Gerrymandering

It has been observed that boundaries of constituencies are drawn and redrawn in such a manner as to favour a particular party or a candidate and influence electoral results. Thus, vested interest can be the basis for delimitation in certain pockets. It is known as gerrymandering, an American expression. The origin of the term is as follows:

In 1812, the governor of Massachusetts, Mr. Gerry, created an electoral district of such an "elongated and squiggly shape" that it resembled the salamander. His family name of Gerry was combined with the noun salamander to create the term gerrymandering.

from contiguity, geographical features, better connectivity, means of communication, public convenience will also be kept in view and areas divided by rivers or hilly ranges or forests or ravines and other such natural barriers will not be put in the same constituency.

No assembly constituency shall extend to more than one parliamentary constituency.

Under the Delimitation Act 2002, seats for the SC/STs are to be reserved in the constituencies in which the percentage of their population to the total population is the largest.

DC

The duty of delimitation is assigned to a high power Body called the Delimitation Commissio . Its orders have the force of law and cannot be called in question before any court. These orders come into force on a date to be specified by the President of India in this behalf. The copies of its orders are laid before the House of the People and the State Legislative Assembly concerned, but no modifications are permissible in them. So far, Delimitation Commissions have been constituted 4 times – in 1952, 1963, 1973 and in 2002.

Composition

Delimitation Commission is headed by the Chairman who is a sitting or former Judge of the Supreme Court. Chief Election Commissioner or an Election Commissioner is an ex-officio member. The DC will have the State Election Commissioner of the State concerned as another ex-officio member. There will also be 10 associate members in each State: five will be the Members of the Lok Sabha (representing the State) and five will be Members of the State Assembly. The Centre will appoint the chairperson, while the Lok Sabha Speaker and the Speakers of the State Assemblies concerned will choose the associate members.

Reservation for the SCs and STs

Seats have to be reserved for the scheduled castes and scheduled tribes in proportion to their population to the total population of the State.
This allocation of seats for the SCs and STs is to be worked out separately both for the assembly and parliamentary constituencies in each State, on the basis of 2001 Census.

Under the Delimitation Act 2002, seats for the STs are to be reserved in the constituencies in which the percentage of their population to the total population is the largest. Therefore, after all the assembly constituencies in the

States as fixed on the basis of 1971 census shall also remain unaltered till the first census to be taken after the year 2026;

- the number of seats to be reserved for the Scheduled Castes (SCs) and Scheduled Tribes (STs) in the House of the People and State Legislative Assemblies shall be re-worked out(increase/decrease) on the basis of 2001 census;
- each State shall be redelimited into territorial parliamentary and assembly constituencies on the basis of 2001 census and the extent of such constituencies as delimited now shall remain frozen till the first census to be taken after the year 2026; and
- the constituencies shall be so re-delimited that population (on the basis of 2001 census) of each parliamentary and assembly constituency in a State shall, so far as practicable, be the same throughout the State. ('State' here does not include the State of Jammu and Kashmir, but includes the National Capital Territory of Delhi and Union Territory of Pondicherry)

Methodological issues

Delimitation needs to be undertaken in a way as to be integrated with development of the constituency. Therefore, administrative, social and geographical dimensions need to be kept in mind.

All constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to the physical features, existing boundaries of administrative units, facilities of communication and public convenience.

Each constituency in a State shall be so delimited that the population of all constituencies shall, so far as practicable, be the same throughout the State.

Constituencies shall be delimited having regard to the administrative units, *i.e.*, district/sub divisions/ tehsils/patwar circles, panchayat samitis/panchayats. So far as practicable, all assembly constituencies in a district shall be confined within the territorial limits of that district. In other words, an assembly constituency shall not ordinarily extend to more than one district. The aim is to ensure that there is proper coordination of administrative, revenue and developmental work.

In delimiting the assembly constituencies, efforts will be made to ensure that, as far as practicable, sub-divisions/tehsils are kept intact and not unnecessarily broken. While delimiting the assembly constituencies on the basis of the administrative units as mentioned above, the contiguity of such administrative units will be the basic requirement, so that no constituency has an enclave/island within it of certain areas belonging to another constituency and having no contiguity to the other areas of that latter constituency. Further, apart

42nd, 84th and 87th Amendment Acts

42nd Amendment Act

42nd Amendment Act laid down that there would be no delimitation till after the 2001 census- neither re-demarcation of boundaries nor re-working of numbers due to increase in population, except for the SC/STs. The reason is that some states – especially in southern India, effectively controlled population while some others had neglected the same. The former would lose and the latter would gain if there is allocation of seats on the basis of population after every census.

84th and the 87th Amendment Acts extended the freeze on seats till 2031 census which is the first census after the year 2026 when the population is expected to stabilize. Reasons for freeze on the number of seats have been already explained.

The difference between the 84th and the 87th Amendment Acts is that the former took 1991 census as the basis while the latter replaced it with 2001 census.

The ban till the year 2026 had been imposed as the population planners have projected that by that year the population of India would stabilise (addition to population and loss equal, that is, there will be demographic equilibrium with a couple being replaced by a little more than 2 children and the net replacement rate is about 1) After the demographic stability is achieved, if the number is adjusted according to the changes in population, there are no undue gains made by any state nor any undue losses by others. In short, the number of seats in the Lok Sabha / State Legislative Assemblies would not change till 2031.

84th and 87th Amendment Acts

In order to facilitate delimitation for the reasons cited above, two Constitution Amendment Acts were made

- Constitution (Eighty-fourth Amendment) Act, 2001 and
- Constitution (Eighty-seventh Amendment) Act, 2003

These two Acts have amended Articles 81, 82, 170, 330 and 332 of the Constitution of India to the following effect:

- the total number of existing seats as allocated to various States in the House of the People on the basis of 1971 census shall remain unaltered till the first census to be taken after the year 2026;
- the total number of existing seats in the Legislative Assemblies of all

Delimitation of Constituencies

Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country or a province having a legislative body. The need for periodical delimitation is the rise in population and the migration of people. The rise in the population has caused an enormous growth in the electorate. Urban constituencies facing constant pressure of population migration had witnessed a faster rate of increase in the electorate as compared to other constituencies. It is to be noted that Lok Sabha constituencies such as Outer Delhi and East Delhi had an electorate of 31 lakhs and 23 lakhs, while the average electorate for a Lok Sabha constituency was about 13 lakhs upto the 14th Lok Sabha elections in 2004. In Delhi, Chandini Chowk Lok Sabha constituency had less than four lakhs electorate.

With the huge discrepancy in these Lok Sabha constituencies, the ` value `of the vote in the Outer Delhi and Chandini Chowk constituencies is not the same. It is not right to have same number of campaigning days for these two constituencies nor same amount of development fund .

Constitutional and legal provisions

- Article 81 . Composition of the House of the People(each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State)
- Article 82 Readjustment after each census(Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine; the allocation of seats in the House of People to the States should be on the basis of the 1971 census; redrawing the boundaries should be on the basis of the 2001 census; number of constituencies will be adjusted on the basis of 2031 census- that is the first census after the demographic stabilization in 2026)
- Article 170. Composition of the Legislative assemblies
- Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People
- Article 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

- National Defence Academy & Naval Academy Examination
- Combined Defence Services Examination
- Combined Medical Services Examination
- Indian Economic Service/Indian Statistical Service Examination
- Section Officers/Stenographers (Grade-B/Grade-I) Limited Departmental Competitive Examination
- Central Police Forces (Assistant Commandants) Examination

Recruitment Rules

In accordance with the provisions contained in Article 320 of the Constitution read with the provisions of Union Public Service Commission (Exemption from Consultation) Regulations 1958, Recruitment Rules of all Group 'A' and Group 'B" posts in various Ministries/Departments of Government of India are required to be framed in Consultation with the Commission. Consultation with the Commission is also necessary for framing/amending Recruitment Rules for certain categories of posts under the Employees State Insurance Corporation, The Delhi Municipal Corporation, The New Delhi Municipal Council, Employees Provident Fund Organisation etc. under the relevant Acts made by Parliament in pursuance of the provisions of Article 321.

the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament. Similarly the State Public Service Commission has the duty to present annually to the Governor of the State a report as to the work done by the Commission. It shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor, shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

Independence of the Commission

Being an important Constitutional authority with the duty to recruit for the higher echelons of the bureaucracy, the Commission needs to be kept independent. The Constitutional provisions in this regard are

- appointment is beyond politics as President appoints
- Removal , in certain circumstances is on the basis of the inquiry conducted by the Supreme Court judge
- Salary etc and conditions of service can not be altered to their disadvantage after appointment
- Expenses of the Commission including any salaries etc of the members or staff of the Commission, are charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.
- There are restrictions on post-retirement engagement as mentioned above
- The annual report is presented to the President who causes it to be tabled in the Parliament explaining why certain recommendations are not accepted, if they are not accepted.

The annual list of competitive exams is:

- Civil Services (Preliminary) Examination
- Civil Services (Main) Examination
- Indian Forest Service Examination
- Indian Engineering Services Examination
- Geologist Examination
- Special Class Railway Apprentices Examination

All regulations made by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

An Act made by Parliament or, as the case may be, the Legislature of a State may impose additional functions on the Union Public Service Commission or the State Public Service Commission towards

- any local authority or
- other body corporate(public sector unit) or
- any public institution.

In short, the functions are

Functions of the UPSC are to conduct examinations for appointment to the services of the Union.

- **Recruitment to services & posts** under the Union through conduct of competitive examinations;
- **Recruitment to services & posts** under the Central Government by selection through Interviews;
- **Advising** on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
- **Advising the Government** on all matters relating to methods of Recruitment to various services and posts;
- **Disciplinary cases** relating to different civil services; and
- **Miscellaneous matters** relating to grant of extra ordinary pensions, reimbursement of legal expenses etc. ..

Annual report

Constitution imposes on the UPSC the duty to present annually to the President a report about the work done by the Commission. The President shall cause a copy of it together with a memorandum explaining, as respects the cases, if any, where

The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

- on all matters relating to methods of recruitment to civil services and for civil posts
- on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity
- on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;
- on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award and
- it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them.

The President, for all-India services and Central services, and the Governor for State Services , can exempt matters on which Public Service Commission need not be consulted.

Public Service Commission need not be consulted with regard to Article 16- reservation in public employment or Art. 335- striking balance between reservation and administrative efficiency.

On ceasing to hold office by way of retirement, resignation or removal

- the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Functions of Public Service Commissions

To conduct examinations

It is the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

To be consulted

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Misbehaviour is:if the Chairman or any other member of a Public Service Commission is interested in any contract related to Government or participates in any way in the profit thereof or in any benefit or emolument arising from it otherwise than as a member and in common with the other members of an incorporated company, the member is considered to be guilty of misbehaviour.

Suspension

The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

In the following cases, the President may by order remove from office the Chairman or any other member of a Public Service Commission

- is adjudged an insolvent; or
- engages during his term of office in any paid employment outside the duties of his office; or
- is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

Strength of the Commission

In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State fixes

- the number of members of the Commission and
- their conditions of service

Conditions of service of a member of a Public Service Commission can not be varied to his disadvantage after his appointment.

After retirement, resignation or removal

by the President, and in the case of a State Commission, by the Governor of the State:

As nearly as one-half of the members of every Public Service Commission shall be persons who have held office for at least ten years either under the Government of India or under the Government of a State.

Vacancy and absence

If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed to the vacant office has entered on the duties or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier.

A member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office.

A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Removal

Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President had held an inquiry and recommended removal.

Union Public Service Commission, State Public Service Commission, Joint Public Service Commission

The Union Public Service Commission (UPSC) is a Constitutional body in India authorized to conduct examinations for appointment to the various civil services of the Union. The Indian Constitution (Part XIV - Services Under the Union and the states - Articles. 315 - 323) provides for a Public Service Commission for the Union and a Public Service Commission for each state. There can be a Commission for two or more states as we shall see ahead.

The first Public Service Commission was set up in 1926 by the then British Indian Government.

By the beginning of 2009, the Commission is headed by Professor D.P. Agrawal. In addition to the chairman there are ten other members.

Constitutional provisions related to Public Service Commission

Art. 315 says that there shall be Public Service Commissions for the Union and for the States.

The Union Public Service Commission, if requested by the Governor of a State may, with the approval of the President, agree to serve all or any of the needs of the State.

Joint Public Service Commission

Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to as Joint Commission) to serve the needs of those States.

Chairman and Members

The Chairman and other members of a Public Service Commission are appointed, in the case of the Union Commission or a Joint Commission.

President Pratibha Patil, in her address to the joint sitting of Parliament on June 4,2009 had said a Constitutional amendment would be brought in to provide 50 per cent quota for women in Panchayats and urban local bodies.

She had said, since women suffer multiple deprivations of class, caste and gender, enhancing reservation in Panchayats and urban local bodies would lead to more women entering the public sphere.

Supreme Court upholds quota in local bodies

The Supreme Court in mid-2010 upheld the constitutional validity of Articles 243 D (6) and T (6), providing for reservation of seats in any panchayat or offices of Chairpersons in panchayats and municipalities in favour of backward classes.

A five-judge Constitution Bench comprising Chief Justice K.G. Balakrishnan, and Justices R.V. Raveendran, D.K. Jain, P. Sathasivam and J.M. Panchal also upheld Articles 243 D (4) and 243 T (4) reserving chairpersons' posts in local bodies, irrespective of whether the beneficiaries are SCs, STs and women and even if it is a single post. These Articles were inserted by way of Constitution 73 and 74 Amendments. The Bench, however, made it clear that the ceiling of 50 per cent vertical reservation in favour of SC/ST/OBCs should not be breached in the context of local self-government. "Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas."

On the contention that the 'creamy layer' should be excluded, the Bench said, "there cannot be an exclusion of the 'creamy layer' in the context of political representation. There are bound to be disparities in socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies."

The Bench noted that though exclusion of the 'creamy layer' might be feasible as well as desirable in the context of reservation for education and employment, the same principle could not be extended to the context of local self government. "It is quite likely that such persons may be better equipped to represent and protect the interests of their respective communities."

The Bench said social and economic backwardness did not necessarily coincide with political backwardness. The Bench said, "It would be safe to say that not all of the groups which have been given reservation benefits in the domain of education and employment need reservation in the sphere of local self government. This is because the barriers to political participation are not all the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policymaking with regard to reservation in local self government."

Local self Government Institutions 2010

50% Reservation for Women in Panchayats

In a path-breaking move to empower women at the grassroots level, government introduced a Bill to amend the Constitution- Art.243D- with a proposal to increase reservation for them in panchayats to 50 per cent.

The enhanced reservation would be applicable to the total number of seats to be filled by direct elections, the offices of Chairpersons, and the seats and offices of Chairpersons reserved for scheduled castes and tribes.

Enhancing reservation for women in panchayats will facilitate more women to enter public sphere. This would lead to further empowerment of women and make panchayats more inclusive institutions, improve governance and public service delivery.

At present, out of the total elected representatives of panchayats numbering approximately 28.1 lakhs, 36.87 per cent are women.

With the proposed constitutional amendment, the number of elected women representatives is expected to rise to more than 14 lakhs.

The amendment would cover all states and union territories except Nagaland, Meghalaya, Mizoram, tribal areas of Assam, Tripura and hill areas of Manipur.

States like Bihar, Uttarakhand, Himachal Pradesh and Madhya Pradesh have already implemented 50 per cent quota for women in the panchayati raj institutions.

Women's Reservation in Urban Local Bodies

Bill for enhancing of reservation for women in urban local bodies from one third to fifty per cent was introduced in the Parliament- by amending Art.243T.

This provision will apply to the total number of seats to be filled by direct election, offices of chairpersons and seats and offices of chairpersons reserved for SCs and STs.

Increased representation of women is likely to yield significant benefits in terms of higher priority to women's issues in critical areas of urban governance and service delivery such as water supply, sanitation, education and health.

The proposed amendment will cover all states and Union Territories.

19	Ludhiana	14.0
20	Kochi	13.5
21	Visakhapatnam	13.3
22	Agra	13.2
23	Varanasi	12.1
24	Madurai	11.9
25	Meerut	11.7
26	Nashik	11.5
27	Jabalpur	11.2
28	Jamshedpur	11.0
29	Asansol	10.9
30	Dhanbad	10.6
31	Faridabad	10.5
32	Allahabad	10.5
33	Amritsar	10.1
34	Vijaywada	10.1
35	Rajkot	10.0
	Total	1078.8

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.".

The number of metropolitan cities in India (Population in 2001) :

Rank	City	Population (Lacs)
1	Greater Mumbai	163.7
2	Kolkata	132.2
3	Delhi	127.9
4	Chennai	64.2
5	Bangalore	56.9
6	Hyderabad	55.3
7	Ahmedabad	45.2
8	Pune	37.5
9	Surat	28.1
10	Kanpur	26.9
11	Jaipur	23.2
12	Lucknow	22.7
13	Nagpur	21.2
14	Patna	17.1
15	Indore	16.4
16	Vadodara	14.9
17	Bhopal	14.5
18	Coimbatore	14.5

*a minimum population of 5000
*a density of at least 400 people per sq. km., and
*at least 75 per cent of their male labour force in non-agricultural occupation.

Megacity is one that has a population of one crore.There are three mega cities as can be seen in the Table. Urban population is 285m. Metropolitan areas are 35(Table)

- City (E): Large towns in common parlance. In the urban planning definition, towns with a population of one hundred thousand or more.
- Ganj (H): A market centre which has not grown into a fully-fledged town.
- Kasba (P): A subdivision town, next in hierarchy to a district headquarter.
- Lal Dora (H): Literally red thread; used in the past for demarcating the jurisdiction of a village. Presently implies the boundary of the territory of village within which norms and controls of a municipality or urban development authority are not applicable.

"TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.

Independence during British days. 6 cantonments were established after Independence. Thus, there are 62 Cantonments in India . These are located in 16 States and the National Capital Territory of Delhi. The Cantonment Boards are autonomous bodies functioning under the overall control of the Central Government (Ministry of Defence) under the provisions of Cantonments Act. 1924. CBs comprise elected representatives besides ex-officio and nominated members with the Station Commander as the President of the Board. The resources of the Cantonment Boards are limited as the bulk of the property in the Cantonment is Government owned on which no tax can be levied. The Central Government provides financial assistance by way of grant-in-aid . CBs are responsible for discharging the mandatory civic duties like provision of public health, sanitation, primary education and street lighting etc.
The 2006 Act has kept 8 nominated members and 8 elected members in these Boards. Reservation for the Scheduled Castes, Scheduled Tribes and women has been provided in clause 31 of the Act. .

Certain Concepts and Definitions

Urban agglomerations . An urban agglomeration forms a continuous urban spread and consists of a city or town and its urban outgrowth outside the statutory limits. Or, an urban agglomerate may be two or more adjoining cities or towns and their outgrowths. A university campus or military base located on the outskirts of a city or town. which often increases the actual urban area of that city or town. is an example of an urban agglomeration. In India urban agglomerations with a population of 1 million or more--there were 35 in 2001--are referred to as metropolitan areas. Places with a population of 100,000 or more are termed "cities" as compared with "towns," which have a population of less than 100,000. These large urban agglomerations are designated as Class I urban units. There were five other classes of urban agglomerations. towns. and villages based on the size of their populations:

- Class II (50,000 to 99,999)
- Class III (20,000 to 49,999)
- Class IV (10,000 to 19,999)
- Class V (5,000 to 9,999) and
- Class VI (villages of less than 5,000)

Urban area

Definition of urban area

Somnath Chatterjee, Lok Sabha Speaker advocated this political tool.

Some other types of municipal structures

Notified area committee

In urban planning, a notified area is any land area earmarked by legal provision for future development. It is set up by government notification and not a legislative Act and is so called a notified area committee. All its members and chairman are appointed by the State Government and not elected. It is constituted for an area which does not meet the requirements for setting up a municipality but has potential for fast development.

Hyderabad International Airport Limited (HIAL) was recently gazetted as a NAC(2008)

It usually, includes a settlement with a population between 10,000 and 20,000. A community of over 20,000 is considered a town under Indian law.

Town area committee

TAC is set up by an act of the state legislature for small towns. It can have either nominated or elected members or both. It is a quasi-municipality with limikted number of municipal functions like street lighting, sanitation etc. Maximum number of TACs are there in Uttar Pradesh.

Cantonment Board

The meaning of 'cantonment' given in the dictionary is 'the temporary quarters of the troops.' Later on those temporary quarters of the troops became permanent quarters. The first cantonment was created in 1758 in Barrackpore, in Bengal.

About 200 or 300 years ago, it was thought that certain civic amenities should be provided to the troops so that they are fit for fighting. Housing was provided initially. In due passage of time housing itself attracted the civil population to reside in the Cantonments and the economic spin-offs attracted more people .Thus, many people who were not connected with military, also started living there. Cantonment is basically meant for the location of the troops. Therefore, the predominance of the military interest was recognized and the bodies were under the command and control of the Station Officer.

With the dawn of Independence, aspirations for democratization and decentralization were recognized.56 cantonments were established before the

In 2001, people in Madhya Pradesh exercised their democratic power in the Anuppur Nagar Panchayat where an elected woman president was compelled to step down in a democratic manner.

In 2008, recall of presidents of three nagar palikas- municipal corporations ((Rajpur, Nawagarh and Gunderdehi in Chhattisgarh) , in Chhattisgarh through voting under the Chhattisgarh Nagar Palika Act took place.

This Act, adopted by Chhattisgarh from Madhya Pradesh, provides for recall of Mayor of a Corporation if a majority of the votes cast in a secret ballot are in favour of it. The proposal for recall has to be moved by not less than three-fourth of the total number of the elected Councillors. It cannot be initiated "within a period of two years from the date on which such Mayor is elected and enters office," and "if half of the period of tenure of the Mayor elected in a by-election has not expired." The Act further provides that the process for recall of a mayor can be initiated "once in his whole term".

The last wellknown instance was when then governor of California Gray Davis was recalled in 2003, to be replaced by Arnold Schwarzenegger.

Right to recall, a direct democracy devise, has been favoured as it keeps the elected representatives accountable to the voters. His/her performance will improve. Voters feel a continuous sense of participation. It will check corruption. Non-performing representatives can be recalled.

However, much as its availability at the lower levels of governance- local level- is welcome, there are objections to it being adopted at higher levels- state assemblies and the Lok Sabha. The reasons arfe

- judging the local representative's performance is relatively simple but at the higher level, it is complex.
- based on experience of other countries—that only 18 states of the US permit recall of state-level officials whereas 36 states permit recall of local-level officials; recall is applicable only to mayors in Germany and not to any state-level officials; and criteria for recall of state-level officials are very difficult to fulfil so that attempts to recall state governors in the US have succeeded very infrequently
- such a provision will make elections more frequent, making the process much more complicated, thus increasing the cost of democracy.
- According to Dr.MS Gill, " it will complicate the functioning of our electoral democracy as about 15-20 lakh parliamentary voters are spread over every 100-200 km."

Municipalities. Even Greater Mumbai though it is called by that name does not cover all of the Mumbai Metropolitan area. Thane, Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. The Calcutta Metropolitan area comprises three Corporations and thirty-four Municipalities. The metropolitan areas of Chennai, Bangalore, Mumbai and Hyderabad cover ten to thirty Municipalities. In Delhi, there is the Cantonment Board, the New Delhi Municipal Council and the Delhi Municipal Corporation (MCD). The sheer size of the cities, the scale of economic activity together with its complexity of problems pose a herculean task to its managers. It is this complex nature of the metropolitan city needs a metropolitan wide perspective, planning, advocacy and action. Sources of water, disposal of waste, traffic and transport, drainage, abatement of air pollution, etc., are examples of items where one Municipal Corporation or the Municipality alone cannot achieve much in isolation. The Metropolitan Planning Committee is thus envisaged as an inter-institutional platform for similar purposes. Metropolitan areas are also the main engines of growth and economy in the country. Urban transport,water supply, waste management., police, public health, etc., require metropolitan level planning, implementation and co-ordination. Besides the scale of services needed in these metropolitan areas is huge.

In light of the above, article 243ZE in the Constitution provides for the setting up of Metropolitan Planning Committee. As far as the states are concerned, the Metropolitan Planning Committee is a constitutional requirement. The Metropolitan Planning Committee is expected to be a high level, democratically set up body, which will bring a constitutional mandate to the whole exercise of metropolitan development planning. The development authorities could serve these Metropolitan Planning Committees as their technical secretariat. In the composition for Metropolitan Planning Committee it is envisaged that two-third of its members are to be chosen from amongst the elected representatives of urban and rural local bodies in the metropolitan areas. The others are to be nominated from central government agencies and various state government agencies, other organizations and institutions responsible for various services in the metropolitan areas. In preparing the draft development plan the Metropolitan Planning Committee should have due regard to the plan prepared by the Municipalities and the Panchayat, matters of common interest to them, objectives and priorities of the Government of India and the State Government, available financial and other resources for integrated development of infrastructure, environmental conservation, etc.

Right to recall

planning for urban and rural areas in the district. The draft development plan to be prepared by District Planning Committees has to address critical matters of common interest such as sharing of water and natural resources etc.

Composition

The composition of the DPC has been left to the discretion of the States. Article 243ZD of the Constitution stipulates that four-fifths of the total number of members of DPC will be chosen by and from the elected members of the Panchayat and Nagarapalikas at the district level . Their numbers will be in proportion to the ratio between the population of the rural areas and of the urban areas in the district.. The rest are to be nominated.

While most States have made laws to constitute District Planning Committees, some have not actually constituted them. The provisions to constitute DPC are in the 74th rather than the 73rd Constitutional Amendment. Rural Development departments have traditionally been performing district level planning functions. But now they find that the provisions for the DPC are a part of the 74th Constitution Amendment.

Another issue has been the relationship between the Zilla Parishad and the DPC. In Assam, Karnataka, Kerala, Rajasthan and West Bengal the Chairperson of the Zilla Parishad is also designated as Chairperson of the DPC. In Madhya Pradesh, a Minister of the State Government is the Chairperson of the DPC.

The designation of a Minister as the Chairman of the DPC virtually makes it an extension of the State Government and goes against the intent of the Constitution. It also defeats the principle of decentralisation.

Till recently most state governments had formed DPCs mainly because it is a constitutional requirement and this body has remained largely defunct. There is also a need to build capacities within the district for the DPC to be able to function as an independent planning body of the district. The representation of MPs and MLAs is a related issue. Both the 73rd and the 74th Amendments specifically enable State Legislatures to provide for their representation in Municipalities and Panchayats. The role of MPs and MLAs is crucial in district planning. For this purpose, either MPs and MLAs become honoured invitees of the DPC and contribute to its deliberations or are formally coopted in the DPC.

Metropolitan Planning Committee

According to the 2001 Census, there are 35 metropolitan areas or cities with a population of 10 lakhs or more. These cities are administered by several

Municipalities in Kerala is planning and implementation of various developmental projects in the productive, infrastructure and social service sectors.
Other states have also amended their acts to transfer functions to local bodies. However, changes in the laws alone do not ensure the transfer of functions and responsibilities. Although functions have been assigned to the Municipality, there could still be several restrictions in the exercise of that function.
It would interesting to note that in Kerala a function can be transferred to the local body in any form through an Act, notification or government order, but once a function is transferred it can be taken back only with the consent of the legislature. Even if functions are assigned to the local bodies through an act of the legislature, it is impossible for the Municipality to discharge the function satisfactorily since the state governments have not transferred the requisite manpower and finances required to perform the functions. Functions, functionaries and funds should go together. It has also been felt that just as the Constitution has a union list, state list and concurrent list, there is a need to have a municipal or local body list in which both the 11th and 12th Schedules of the Constitution find place.

Financial Domain

The dismal state of finances in Municipalities across the country is a very common feature. The Constitution, even after the 74th Amendment does not provide for an independent set of taxes that the Municipalities can raise. They continue to be determined and regulated by the State Governments.

Article 243X states that a state may by law authorise a Municipality to levy and collect property taxes, duties, tolls and fees. And also that the state may lay down the procedure and ceiling for the same.

The Constitution has made it mandatory for every state to constitute a State Finance Commission (SFC). The SFC is to review the financial position of the Municipalities and make recommendations regarding distribution of taxes between the States and the Municipalities. It is also expected to look into the criteria for grants-in-aid and suggest measures needed to improve the financial position of the Municipalities.

DPCs and MPCs

District Planning Committees (DPC)

The constitution of District Planning Committees (DPCs) is mandatory under article 243ZD of the Constitution and is a common item for both Panchayats and Municipalities. The District Planning Committees are to take up integrated

identifying beneficiaries for the implementation of welfare and development schemes related to the Ward. This is besides assisting in timely collection of taxes, fees and rents. The duration of the Wards Committee shall be for five years.
The Madhya Pradesh, Haryana & Tamil Nadu legislations only specify that Wards Committee shall be constituted for Municipalities with a population of not less than 3 lakh. In the Greater Mumbai Corporation, 16 Wards Committees have been formed out of 221 municipal wards. The wards have been grouped similarly in Pune, Navi Mumbai and Pimpri Chinchwad. It comprises all the councilors from the concerned wards and one to three representatives of NGOs in the area as nominated by the Corporation. In West Bengal and Kerala, Wards Committees have been set up for each municipal ward Since in Calcutta every municipal ward has a Ward Committee, another committee comprising of a group of municipal wards known as Borrough Committees have also been formed. Calcutta thus has a three tier set up. In Chennai, the 155 municipal wards are grouped into ten Wards Committees. Bangalore's Wards Committees cover an average population of about two lakhs. A major objective of providing for Wards Committees in the 74th Constitution Amendment is that it enables closer interaction between the people and their elected representatives.

Functional and financial domain

Functional Domain

The functional domain basically relates to the functions that have been assigned to the Municipalities to perform. During the pre-independence era, almost all the functions in the city such as water supply, drainage, sanitation, building control, municipal road and street lighting, municipal markets etc., were performed by the Municipality. In the period after independence, however, there has been a steady diversion of municipal functions to other bodies like development authorities such as Delhi Development Authority, Ghaziabad Development Authority etc., and para-statal organisations such as Jal Nigam in Uttar Pradesh. State level water and sanitation boards as in Uttar Pradesh, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh had come into existence. City development or special authorities were also established in most large cities of the country. The Municipalities were only left to performing functions like sanitation and garbage removal. Articles 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities "with such powers and authority as may be necessary to enable them to function as Institutions of self-government". The 11th and the 12th Schedules listing 29 and 18 items respectively were added to the Constitution. They are broad headings signifying a whole variety of functions. It was left to the state governments to assign functions and also commensurate finance and human resource. In Kerala , a major function entrusted to the

procedure similar to that for removal of a Judge of a High Court. The office of the State Election Commissioner is on the lines of the Chief Election Commissioner. Both are Constitutional Authorities. Articles 243K and 243ZA have kept the Election Commission of India as a model.

Since the elections to both Panchayats and Municipalities elects more than three million representatives, the elections to these bodies is a fairly large exercise. It is, therefore, essential that the office of the State Election is adequately strengthened. Regarding the appointment of the State Election Commissioner, the Governor of the concerned State has been made the appointing authority. To make the selection impartial, it is felt that a group consisting of the state Chief Minister, Speaker of the legislature and the leader of Opposition recommend a suitable person with adequate administrative experience to the Governor for appointment. The state legislature is to make provisions by law regarding the conditions of service and tenure of office of the State Election Commissioner.
The responsibility of issuing notification of local body elections wrests with the State Election Commission in Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat. While in Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa, the State Government issues the notification on the recommendation of the State Election Commission.

Wards Committees and Proximity to Citizens

The provision to constitute Wards Committee came from the idea that there is a need for bridging the gap between the elected representative and his electorate so that activity in any area reflects the aspirations of the people and the elected representative is directly accountable to the people. The need for effective participation of the people themselves in the governance of their cities has become imperative.

In large municipal bodies,citizens do not have access to their elected representatives and therefore Wards Committees should be set up in Municipal Corporations with a population of more than three lakhs.. The structure and composition of the Wards Committee is left for the state governments to decide. In Kerala, there is a Ward Committee for every Ward. The elected councillor of the ward concerned is the Chairman of the Wards Committee. The Committee consists of not more than 50 persons nominated by the Chairperson of the Municipality in consultation with the councillor. The members of the Ward Committee are drawn from various categories such as residents associations, doctors, teachers, etc., and these categories are mentioned in the Act. The Ward Committee will meet at least once in three months. The Committee will prepare and supervise the development schemes for the ward, encourage harmony and unity among various groups, mobilise voluntary labour for social welfare programmes, give assistance for

the state from holding timely elections. It is therefore important that both the state government and the central government (in case of Panchayats and Municipalities located in Union Territories) ensure the completion of elections before the expiry of the five year term of the Municipality as desired by the Constitution. Also the State Election Commissioner in the event of a delay in elections should send a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfil the requirements of the Constitution.

Delimitation of Constituencies

Delimitation basically means drawing up of boundaries of wards or territorial constituencies. In Haryana, Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the task of delimitation of territorial constituencies rests with the State Government, while in Gujarat, Maharashtra, Kerala and West Bengal, the responsibility lies with the State Election Commission. Delimitation orders have been passed by most State Governments wherein the parameters for delimitation have been prescribed.

Electoral Rolls

Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). In some states the electoral rolls of the Lok Sabha and the Vidhan Sabha elections are disaggregated and used in the local body polls. While in other states separate rolls are prepared.

Reservation

The responsibility of reservation of Wards for municipal election vests in the State Government in Madhya Pradesh, Rajasthan, Andhra Pradesh, Uttar Pradesh, Tamil Nadu, Karnataka, Haryana, and Punjab, the State Election Commission has no role to play in it. In Maharashtra, Gujarat, Kerala & West Bengal the State Election Commission is responsible for reservation. In all the states rotation of reserved seats takes place during every election; therefore, it is seldom that a member elected on the reserved seat gets an opportunity of contesting the same seat for a second term.

State Election Commissions

Articles 243K and 243ZA stipulate that the "superintendence, direction and control for the preparation of electoral rolls and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner (SEC) to be appointed by the Governor." These articles further State that the SEC shall not be removed from his office except by

Article 243V of the Constitution provides that the criteria for disqualification for being chosen or for being a member of a Municipality shall be the same as in the case of Vidhan Sabha election. A state government can stipulate other qualifications also. All the States have made provisions in their respective Acts. Most States specify 21 years as the minimum age, name in the electoral rolls etc. Although, the rules in this regard, prescribed by some states, such as the two child norm (a person having more than two children cannot stand for elections) has evoked mixed reactions and their effect needs to be studied in detail before applying it to all the Municipalities. In Haryana and Himachal Pradesh, licensed architects, town planners, surveyors, etc., (basically those who are licensed to take up works contracts of the Municipality) cannot contest elections. Failure to submit accounts of election expenditure is a disqualification in some States. In Kerala, this resulted in the disqualification of more than 12,000 candidates in the Panchayat polls. The State Election Commissions have prescribed various norms in this regard.

Regularity of Elections

The Constitution makes elections to the Municipalities mandatory every five years. All the states have held elections to the local bodies. There are no Municipalities in the Union Territories of Dadra & Nagar Haveli and Lakshadweep. Though elections have been held in most states, the problem arises with regard to holding them regularly. In Uttar Pradesh, since the state government claimed that the delimitation process had not been carried out, it promulgated an ordinance postponing elections. This ordinance was then challenged in the High Court arguing that if elections are not held every five years then it is a violation of the Constitution. The ordinance was quashed by the High Court and the Supreme Court upheld the judgement of the lower court. Similarly, in Haryana, elections due in 2000 were postponed due to the announcement of
Assembly polls. The Supreme Court had to intervene and direct the State Government to hold elections within a specific time. In Andhra Pradesh also elections have been postponed either due to delay in delimitation of wards or complications in the procedure of reservation of seats for elections. In
all cases the courts have had to intervene in response to writs or PILs to ensure timely elections.
Although the Constitution makes timely elections mandatory, issues relating to reservation and delimitation have often been cited as reasons for postponing elections. It is interesting to note here that the constitutional provision of holding timely elections has withstood judicial scrutiny also. The Supreme Court clearly stated that articles 243E and 243U on Panchayat and Municipal elections respectively are mandatory and not discretionary. It stated that postponement of elections is a violation of the Constitution unless there are 'supervening difficulties' such as natural calamities like floods, earthquakes etc., which prevent

or experience in municipal administration) with or without the right to vote in the proceedings of the Municipality.

The total number of members in a Municipality varies from state to state. Most states have tried to determine the number of members by keeping in mind the total population of the Municipality. The range in Uttar Pradesh is from 60 to 110 members, in Madhya Pradesh it is 40 to 70, it is 30 to 100 members in Karnataka, while it is 60 to 70 in Rajasthan. In Maharashtra, the average population per ward is 45,000 in Mumbai, 22,000 in Nagpur and 14,000 in Pune. Similarly, in West Bengal, it is 31,000 in Kolkata, 19,000 in Howrah and 8,000 in Siliguri. As far as nominated members are concerned, Andhra Pradesh is the only state which has a provision to nominate one person belonging to the minority community.

Election and Removal of Mayor / Chairpersons

The mode of election of Mayors / Chairpersons is left to the discretion of the State Governments by the Constitution -- Mayors in the case of Municipal Corporations and Chairpersons or Presidents in the case of Municipal Council or Nagar Panchayat. In Rajasthan, Himachal Pradesh, Haryana, Karnataka, Kerala, West Bengal, Maharashtra and Gujarat, the Mayors/Chairpersons are elected from amongst the elected Councillors i.e., indirectly elected. In Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Tamil Nadu, Mayors/Chairpersons are elected directly by the people. Their term of office also varies from state to state. Uttar Pradesh, West Bengal, Tamil Nadu, Rajasthan, Andhra Pradesh, Kerala and Madhya Pradesh have provided for a five-year term, while Assam, Delhi, Himachal Pradesh, Orissa and Karnataka have provided for a one-year term. Maharashtra and Gujarat have provided for a two and a half year term.

The provisions in State laws for removing a Mayor/Chairperson is through a no-confidence motion.

Right to Recall

A significant and revolutionary development in the last few years is with regard to people's awareness of their rights as citizens. This is best exemplified in the provision of the right to recall elected representatives, which has been granted to the people in Madhya Pradesh and Tamil Nadu. Under this law, the people of a ward have the right to recall their elected representative through a 'referendum'. In Madhya Pradesh, this power has already been exercised in a few Municipalities.

Qualifications and Disqualifications for Membership in Municipalities

243ZG bars interference by courts in electoral matters. It says that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court.

Also, no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Amendment of article 280 is made to the following effect:

"the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State".

After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-

Analysis of inter-state variation

Article 243Q of the Constitution states that a Municipal Corporation shall be constituted for a larger urban area, a Municipal Council for a smaller urban and a Nagar Panchayat for an area, which is in the process of transition from rural to urban. The Act does not define larger or smaller urban area or an area of transition from rural to urban. It has been left to the state governments to fix their own criteria. The Article says that size of population, density of population, percentage of male working population in non-agricultural employment, annual revenue generation etc., may be taken into account by the states.

Since 1994, many states have made the relevant Nagarapalika Acts. But apart from total population, very few states have taken into account the other criteria. Only Andhra Pradesh, Himachal Pradesh, Tamil Nadu and Karnataka have prescribed the criterion of annual revenue generation.

Article 243R of the Constitution states that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies or wards (similar to constituencies of the Lok Sabha or Vidhan Sabha). This means that a Municipal body would comprise mainly of directly elected representatives or that it is an elected body. It also states that certain members may be nominated by the state government (local MPs/MLAs and persons having special knowledge

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

Every Metropolitan Planning Committee shall, in preparing the draft development plan,

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF says that notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of Seventy-fourth Amendment Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify
in the notification.

243ZC says that this Part shall not apply to the Scheduled Areas (Fifth Schedule) and the tribal areas(Sixth Schedule) of article 244.

Further, nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

However, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD deals with the Committee for district planning which is discussed in the Chapter on Panchayats.

243ZE relates to Committee for Metropolitan planning

It says that there shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole. The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled.Not less than two-thirds of the members of such Committee shall be drawn from the elected members of the Municipalities and the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area.

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(a) the principles which should govern-

- the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;
- the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
- the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

The Governor shall cause every recommendation made by the Commission under this Article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z speaks of audit of accounts of Municipalities.The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA relates to the State Election Commission. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K dealing with the Panchayats.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB says that the provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly.However, the President may,

243W deals with powers, authority and responsibilities of Municipalities.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

- the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

Powers etc may similarly be devolved to the Committees to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X deals with the financial provisions: power to impose taxes by, and Funds of, the Municipalities. The Legislature of a State may, by law-

- authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
- provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom.

243Y has provisions related to the State Finance Commission.

It says that the Finance Commission constituted under article 243-I(dealing with the Panchayats) shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

The reservation of seats mentioned above shall cease to have effect on the expiration of the period specified in article 334 as is the case for the state assemblies and Lok Sabha.

It is the discretion of the Legislature of a State to make any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U talks of the duration of Municipalities.

Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.A Municipality shall be given a reasonable opportunity of being heard before its dissolution.

An election to constitute a Municipality shall be completed before the expiration of a period of six months from the date of its dissolution. However, where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election for constituting the Municipality for such period.

A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued had it not been so dissolved.

243V relates to disqualifications for membership. It says that a person shall be disqualified for being chosen as, and for being, a member of a Municipality-

- if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;
- if he is so disqualified by or under any law made by the Legislature of the State.

If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications ,the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

The Legislature of a State may, by law, make provision with respect to-

- the composition and the territorial area of a Wards Committee;
- the manner in which the seats in a Wards Committee shall be filled.

A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

Where a Wards Committee consists of one ward, the member representing that ward in the Municipality; or where it consists of two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

Legislature of a State may also make provision for the constitution of Committees in addition to the Wards Committees.

243T has provisions related to reservation of seats.

Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

Not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to the Scheduled Castes/ Scheduled Tribes.

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

The officers of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

"Municipal area" means the territorial area of a Municipality as is notified by the Governor.

"Municipality" means an institution of self-government constituted under article 243Q

"Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities

243R speaks of composition of Municipalities

It says that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

The Legislature of a State may, by law, provide for the representation in a Municipality of-

- persons having special knowledge or experience in Municipal administration;
- the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area:
- the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- the Chairpersons of the Ward Committees

Such persons shall not have the right to vote in the meetings of the Municipality.

The Legislature of a State may, by law, provide for the manner of election of the Chairperson of a Municipality.

243 has provisions related to constitution and composition of Wards Committees.

It says that there shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

The tenure of the Municipal Council varies from three to five years. The council elects, from among the councilors, a President whose term may be co-terminus with that of the council. In certain states Presidents are elected directly by the citizens. In a number of states the term of the President varies from one to three years and is not co-terminus with that of the council. The President occupies an important position in the municipal administration and enjoys considerable authority and power both in the deliberative and executive organs of the municipality. He convenes and presides over the meetings of the council and gives his rulings on all controversial matters. He also holds the power to take disciplinary action against offending councilors and can suspend or adjourn any meeting in case of pandemonium. The President not only guides the deliberation of the council but also executes its decision as its chief Executive Officer.

There is provision in the municipal act for setting up of committees to assist the parent body to perform its tasks. The Standing Committee is the most important of all committees. The powers and functions of the Municipal Council Committees are the same as those of the Municipal Corporation. The elected President being dependent on the council, the Chief Executive Officers face a lot of pressure and influences in exercizing their executive authority. In most states the state government appoints the Executive Officer. In some states the council makes the appointment, but his or her independence has been confirmed by making it difficult his removal from office - generally by a three-fourth-majority vote.

Nagar Panchayat

A Nagar Panchayat is one form of urban body in India.

An urban centre with more than 30,000 and less than 100,000 inhabitants is usually classified as a Nagar Panchayat. However, there are some exceptions. All the previous Town Area Committees (Urban centres with a total population of more than 5,000 and less than 20,000) are reclassified as Nagar Panchayat. Nagar Panchayat have a chairman with ward members. It consists of a minimum of 10 elected ward members and three nominated members.

74th Act in detail

243P gives definitions . Metropolitan area means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor.

indirect election of the Mayor combined with his short term makes him more a figurehead than an active functionary.

Committees

Various Statutory and Non-Statutory Committees that are set up by the council do most of the work of the corporation. A Statutory Committee is set up by the statute which constitutes the Corporation, such as executive committee, standing committee, planning committee, health committee and education committee. Non-Statutory Committees include transport committee, women and child welfare committee etc. The number and composition of the committees vary from state to state. The most important committee, both regarding power and range of functions allotted is the Standing Committee of the Corporation. It acts as the steering committee exercizing executive, supervisory, financial and personnel power. The Standing Committee consists of elected members varying between seven and sixteen through a system of proportional representation of councilors.

Executive wing

The Municipal Commissioner is the chief Executive Officer and head of the executive wing of the Municipal Corporation. All executive powers are vested in the Municipal Commissioner. Although the Municipal Corporation is the legislative body laying down policies for civic governance of the city, it is the Commissioner who is responsible for execution of the policies. The Commissioner is appointed for a fixed term that is mentioned in the respective state's statutes. However, his tenure in a corporation may get either extended or reduced. The Commissioner's powers are classified into two broad categories: those listed in the statute creating the corporation and those delegated by the Corporation or the Standing Committee.

Municipal Councils

Normally, Municipal Councils cover smaller areas than the Municipal Corporations. The municipal acts of the states govern the Municipal Councils. The State Government can, by notification, propose an area, except a military cantonment to be a municipality, define its territorial limits and make alterations in them. The Municipal Council, President, the Committees and the Executive/Chief Officer constitute the main components of the structure of municipal government. The Municipal Council makes laws that are called by-laws within the framework of the municipal act for the civic governance of the city or town. The size of every Municipal Council varies from state to state; the municipal acts prescribe both the maximum and the minimum number of councilors.

services;

- Municipal Councils for smaller urban areas;
- Municipal Corporations for larger urban areas.

Urban local government is not hierarchical. However, the Municipal Corporation, as an institution, enjoys a greater measure of autonomy than other forms of local government. It enjoys the power of dealing directly with the state government whereas the municipalities have no direct access to the state government and are answerable to the District Collector and Divisional Commissioner.

Municipalities and Corporations have deliberative and executive wings. In general, deliberative wings of Municipal Corporations comprise the Corporation Council, the Standing Committee and the Mayor, whereas the executive wings comprise the Municipal Commissioner, the Deputy/Assistant Municipal Commissioner, the Municipal Engineer and subordinate administrative staff.

Deliberative wing

This is the General Body of the Municipal Corporation, comprising of elected members (councilors). Councilors are elected for a term varying between three and five years. The new Constitutional Amendment Act provides that every Municipal Corporation and every Municipal Council shall have the following two categories of councilors:

- Directly elected councilors;
- Nominated councilors.

The number of elected councilors is to vary according to the size of the population of the territorial area of the Municipal Corporation or the Municipal Council concerned. Nominated councilors are to be nominated by the elected councilors of the Municipal Corporations/Councils concerned. The nominated councilors shall be persons having special knowledge or experience in municipal administration.

Mayor

The Mayor in the Municipal Corporation is either directly elected or is a representative elected by the councilors from amongst themselves for a term of one year, which is renewable. The Mayor exercises administrative control over the secretariat of the corporation. The Mayor in India has no executive authority. The

Nagarapalikas

The 73rd and 74th Constitution Amendment Acts are sister legislations passed by the Parliament in 1992. They contain similar provisions .The 73rd Constitution Amendment Act provided directions for the creation of Panchayats in the rural areas and the 74th Constitution Amendment Act provided for the creation of Municipalities in urban areas. The two legislations laid a broad framework for the setting up of Panchayats and Municipalities by the states. The legislations also stipulated a time limit within which the state governments were to enact conforming legislations to enable setting up of Panchayats and Municipalities, that is by the 1st of July 1994.

Prior to the enactment of these Constitutional amendments, , the functioning of the local bodies was at the discretion of the state governments. There was no constitutional obligation to enable them to function well. The supersession of the local bodies was common . Entities like District Planning Committee. Metropolitan Planning Committee, Wards Committee, State Election Commission, State Finance Commission being absent, the Nagarapalikas suffered .

The 74th Amendment Act sought to remove these basic weaknesses and lay down a framework with broad guidelines for constitution, composition of Municipalities, elections/removal of Mayor or Chairpersons, qualification/disqualification of membership, setting up of State Election Commission etc.

Municipal bodies are the local self governing bodies consisting of political and administrative wings. The political wing is an elected body of councillors headed by a Mayor/President(Chairperson). The Commissioner from the IAS cadre heads the administrative wing. The Commissioner implements the decisions taken by the elective body.

Municipal structure

Municipality is a generic name for any organized local government, usually in an urban area- town, city etc.The structure and composition of the municipalities vary widely. The 74th CAA sought to bring some uniformity in the constitution of the municipal bodies by classifying them as follows:

- Nagar Panchayat, to be constituted in rural-urban transition areas. These have been conceived to properly channelize the growth impulses in such settlements and also to bring order in their growth and provision of

19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Madhya Pradesh	Shahdol, Mandla, Dhar, Khargone, East Nimar (Khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Essentially, the Fifth Schedule is a historic guarantee to indigenous people on the right over the land that hthey live in .

ELEVENTH SCHEDULE
(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.

referred as *micro* Planning as the unit of planning is a localized administrative unit. It also is called grass roots planning as it covers an area that includes a cluster of villages and is closer to people unlike State level and national level planning which is understood as macro planning or central planning. The objectives is economic efficiency and administrative feasibility.

The need for micro planning also arises from the following: Functions of government have grown enormously as the welfare State assumes more responsibilities. Unless the administrative arrangements and the political process is suitably designed and operated, most activities prove economically unviable. Expected results are difficult to achieve and the gap between outlays and outcomes widens . Inclusive growth becomes unattainable.

Poor implementation largely explains unbalanced regional development and general sub- optimal plan performance with respect to rural development.

Micro planning is needed to make plan implementation efficient at the local level which would result in better plan performance, better resource use; improvement in human development, involving poverty alleviation and health care, child care and nutrition status etc. Top- down planning is costly; wasteful; causes corruption; and erodes accountability.

Moreover, political instability has made synergetic functioning between the Planning Commission, the Finance Commission and the government difficult. Given the constraints of coalition politics, an alternate arrangement by way of continuity and stability in local administration is being considered, which explains the emphasis on institutionalisation of local level development planning proposes to provide an alternate stability mechanism.

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad,Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Devgarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district

Gram Nyayalayas will be set up in every panchayat throughout the country except in J&K, Nagaland, Arunachal Pradesh, Sikkim.

Decentralization

Decentralization is the transfer of political, administrative and fiscal responsibilities to locally elected bodies in urban and rural areas, and the empowerment of communities to exert control over these bodies. Decentralisation of socioeconomic planning process and plan implementation to the grass root levels has been a matter of continuing concern. Decentralization has two important uses

- decentralised institutions have the capacity to understand the needs of the areas, interact with the governmental agencies in order to draw need based local plans and to implement those plans in close cooperation with the administration
- being accountable to the community. these institutions are better placed to improve the delivery systems in administering schemes , responding to the felt needs of the people, to optimise the benefits reaching those and to whom they are meant.

Therefore, Administrative Reforms Commission(1966-1970) highlighted the need for District Planning and to relate it to local variations- geographic, cultural, social and so on.

The issues relating to the question of decentralisation of planning and implementation of schemes could be broadly classified under three heads namely:

- Institutional aspects;
- Allocations of sectoral and sub-sectoral functions falling exclusively in the mandate of PRIs; and
- Planning and implementation aspects.

There is a consensus that strengthening of the PRIs and Nagarapalikas is the solution for giving decentralized planning a strong and vibrant base.

Microlevel planning

In recent decades, the emphasis has shifted in development planning, from top-down to a bottom-up approach. Bottom- up approach is a crucial shift from earlier approaches based on central planning . Bottom- up planning is also

Union Ministry of Panchayatraj set up

2004 Ramachandran Committee

2006 Devolution index constructed by NCAER

Ramachandran Committee

An Expert Group on Grassroots Level Planning was set up by the Union Ministry of Panchayatraj under the chairmanship of Shri V. Ramachandran to study and set out the steps by which grassroots planning can be made a reality in time for the Eleventh Five-Year Plan (2007-12)..It submitted the report in 2006.

The Group gave its recommendations in the context of Article 243G of the Constitution, which envisage Panchayats as local self-governments planning for economic development and social justice.Participatory planning is central to inclusive growth strategy.

It suggested a practical action programme for local level planning in the Eleventh Plan. It suggested in detail the manner in which national programmes of importance in education, health, employment, poverty alleviation, housing and rural infrastructure could achieve their objectives better if centrality is given to Panchayats in working out details and in implementation.

Nyaya Panchayats

Nyaya Panchayats are village courts, where disputes are settled between villagers. The Nyaya Panchayats help in settlement of disputes at the local level thus sppeding up justice and decongesting mainstream courts.

After the 73rd Constitutional Amendment Act (CAA), few states in India provided for Nyaya Panchayats in their new Panchayati Raj Acts or in confirmatory amendments to old Acts, including Bihar, Himachal Pradesh, Punjab, U.P. and West Bengal. West Bengal Act provides for election of a five member separate Nyaya Panchayat elected by the gram panchayat.

To reduce pendancy and speed up justice in rural India, the Union Cabinet approved the Gram Nyayalayas Bill, 2007. The legislation involves appointment of about 6,000 trained first-class judicial magistrates all over the country. It provides for the establishment of Gram Nyayalayas for the purpose of providing access to justice — both civil and criminal — to citizens at the grassroots level and to operationalise Art.39A -opportunities to secure justice are not denied to any citizen for reasons of vulnerability.

1986	Andhra Pradesh follows West Bengal and Karnataka Panchayati Raj model
1987	The Sarkaria Commission on Centre-State relations highlighted the need for participation of people's representatives in the planning and administrative machinery at the local level. A notable recommendation was the creation of a body like Finance Commission at the State level for devolution or transfer of resources to the districts .
1990-92	Panchayats are dissolved and brought under administrators in Karnataka

Panchayati Raj with Constitutional Status

1986	L.M. Singhvi Committee submits its report; recommends constitutional status for panchayats
1988	Parliament Consultative Committee appoints a sub-committee under chairpersonship of P.K. Thungan to consider Constitution Amendment
1989	64th Constitution Amendment Bill is introduced in Parliament; is defeated in Rajya Sabha
1991	73rd (Panchayats) and 74th (Municipalities) Amendment Bills are introduced in Parliament; referred to the Parliamentary Committee September
1992	Parliament passes both the Bills in December;
1993	73rd Amendment Act, 1992 comes into force
1993-94	All state governments pass conformity Acts
1994	Madhya Pradesh holds panchayat elections under the 73rd Amendment dispensation on 30 May
1996	Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, extending 73rd Amendment Act to Scheduled Areas, comes into force on 24 December
	Kerala launches People's Plan Campaign on 16 August
2001	Bihar holds panchayat elections after 23 years (11-30 April)
2001	83rd Constitution Amendment Act, 2000 amends Art. 243-M to dispense with reservations for Scheduled Castes in Arunachal Pradesh (the state has no caste system)— paving way for panchayat elections in the only state yet to hold them under the new dispensation

- Representation of members of parliament and state legislatures in the PRIs is a contentious issue . The is clash of interest between the legislatures and PR representatives.
- The elite control over the system is a fact even today
- state level leaders still see PRI leadership as a challenge to their power , to a great extent.

Some Basic Facts about Panchayati Raj in India

TIME LINE

Milestones in the Evolution of Local Government since Independence

First generation panchayats

1950	The Constitution of India comes into force on 26 January; Directive Principles of State Policy mention village panchayats as 'units of self-government' (Art.40)
1952	Community Development Programme starts on 2 October
1957	Balwantrai Mehta Committee, appointed in January, submits its report in November
1958-60	Several state governments enact new Panchayat Acts
1959	Jawaharlal Nehru inaugurates the first generation panchayat at Nagaur in Rajasthan on 2 October
1964-77	Decline of first generation Panchayati Raj Institutions

Second generation panchayats

1978	Asoka Mehta Committee on working of panchayats, appointed on December 1977, submits its report August 1978
1983	Karnataka government enacts new PR Act
1984	Hanumantha Rao Committee on district level planning, appointed by Planning Commission in 1982 submitted its report
1985	Karnataka PR Act receives President's assent; comes into force
	G.V.K. Rao Committee on administrative aspects of rural development, appointed by Planning Commission in March, submits its report in

Comptroller and Auditor General of India audits the release and use of the local bodies grants. Government of India may take appropriate decision about withholding grants of a State if the Comptroller and Auditor General of India reports that the State has

- either not transferred the grants to the local bodies or has
- diverted the funds or
- that local bodies have not been able to give priority to water supply and sanitation for the rural areas and on schemes of solid waste management in the urban areas.

Critical analysis

Panchayati Raj in India, in terms of the size of the electorate, the number of grassroots institutions (about 2.4 lakh), the number of persons elected – 36 lakh in the Panchayats and Nagarpalikas, higher than the entire population of Norway – and in terms of the empowerment at the grassroots of women, is the greatest experiment in democracy ever undertaken anywhere in the world.No less than 10 lakh women have been elected to our Panchayati Raj Institutions, constituting some 37 per cent of all those elected and rising to as high as 54 per cent in Bihar which has 50 per cent reservations for women.

While many women have benefited because of the caste and other reservations, 'as many as 50,000 women have been elected without any reservation or quota provisions. They have contested elections against menfolk and won . SC/ST/OBC groups have been given reservation. Elections gave been held in all the states; State Finance Commissions have been constituted. However, there are problems

- Powers have not been devolved adequately as the Devolution Index shows
- lack of adequate financial resources to carry out the administration. Grant-in-aids is the major component of the PRIs revenue. This need to be supplemented with the adequate collection of taxes by the PRIs and a compulsory transfer of some of the state government's revenue on the recommendation of the state finance commission

- lack of training programmes for the participants of the PRIs
- domination of the bureaucracy over the PRIs. Bureaucracy continues to be the vehicle for implementation of various development schemes..
- Various parallel bodies such as the DRDA have undermined the importance of the PRIs. Either they have to be disbanded or made accountable to the PRIs
- professionalization of audit functions is another area where the PRIs lack.

- Finances (funds devolved)
- Functionaries (manpower available)

(*Three Fs*)

The index is a first attempt at quantifying the environment for effective decentralization.Each of the three dimensions is equally important in achieving effective decentralization of governance in rural India. It identifies the 'mandatory' elements of devolution and assigns a score of zero when they are not complied with. Based on the values of various indicators for any given state, it is possible to calculate a score for each sub-index as well as for an overall Devolution Index. The value of each state will indicate how far away the state is from an ideal performance.

TFC

TFC recommendations of local body grants and inter-state distribution

The Twelfth Finance Commission (TFC) was required to make recommendations on the measures needed to augment the Consolidated Funds of the States to supplement the resources of the Panchayats and Municipalities on the basis of the recommendations of the State Finance Commissions (SFCs). TFC has given recommendations on this term of reference, which have been accepted by the Union Government.

The Twelfth Finance Commission (TFC) has recommended grants amounting to Rs.25,000 crores payable during the period 2005-10 (Rs. 20,000 crores for Panchayats and Rs.5,000 crores for Municipalities) to States for Rural and Urban Local Bodies. The **inter-State allocation** recommended by TFC for Panchayati Raj Institutions (PRIs) and for Urban Local Bodies (ULBs) is based on factors and weights assigned by the TFC as under:

Criterion	Weight (per cent)
i) Population	40
ii) Geographical area	10
iii) Distance from highest per capita income	20
iv) Index of deprivation	10
v) Revenue effort	20
of which (a) with respect to own revenue of states	10
(b) with respect to GSDP	10

TFC felt that grants for PRIs should be used to improve the service delivery by the Panchayats in respect of water supply and sanitation.

State have been delimited, the constituencies to be reserved for STs will be those where the percentage of the ST population to the total population of the constituencies is the largest, in descending order equal to the number of constituencies to be reserved for STs.

Under the same Act, the constituencies for SCs are to be distributed in different parts of the State and seats are to be reserved for SCs in those constituencies where the percentage of their population to the total population is comparatively large.

The population of SCs in India, as per the 1971 Census, was 14.6 per cent of the
total population of the country; the 2001 Census puts the figures at 16.2 per cent.
Thus, on an all India basis, there is a rise of 1.6 per cent in the population of SCs between 1971 and 2001. After the 1971 Census, 79 LS seats (14.6 per cent) were
reserved for the SCs. When the 2001 Census figures are considered for the reservation of seats, 16.2 per cent seats should go to them. Similarly, the ST population in India, as per the 1971 Census was 38 million i e, 6.9 per
cent of the total population of the country; the 2001 Census puts the figures at 8.2 per cent. Thus on an all India basis, there is a rise of 1.3 per cent in the population of the STs between 1971 and 2001. After the 1971 Census, 41 LS seats were reserved for the STs; when 2001 Census figures are made the basis for the determination of the reserved seats for the STs, 8.2 per cent seats are required to be reserved for them. The Delimitation Commission is entrusted with the work of allocation of these extra reserved seats among several states.

Gerrymandering

It has been observed that boundaries of constituencies are drawn and redrawn in such a manner as to favour a particular party or a candidate and influence electoral results. Thus, vested interest can be the basis for delimitation in certain pockets. It is known as gerrymandering, an American expression. The origin of the term is as follows:

In 1812, the governor of Massachusetts, Mr. Gerry, created an electoral district of such an "elongated and squiggly shape" that it resembled the salamander. His family name of Gerry was combined with the noun salamander to create the term gerrymandering.

from contiguity, geographical features, better connectivity, means of communication, public convenience will also be kept in view and areas divided by rivers or hilly ranges or forests or ravines and other such natural barriers will not be put in the same constituency.

No assembly constituency shall extend to more than one parliamentary constituency.

Under the Delimitation Act 2002, seats for the SC/STs are to be reserved in the constituencies in which the percentage of their population to the total population is the largest.

DC

The duty of delimitation is assigned to a high power Body called the Delimitation Commissio . Its orders have the force of law and cannot be called in question before any court. These orders come into force on a date to be specified by the President of India in this behalf. The copies of its orders are laid before the House of the People and the State Legislative Assembly concerned, but no modifications are permissible in them. So far, Delimitation Commissions have been constituted 4 times – in 1952, 1963, 1973 and in 2002.

Composition

Delimitation Commission is headed by the Chairman who is a sitting or former Judge of the Supreme Court. Chief Election Commissioner or an Election Commissioner is an ex-officio member. The DC will have the State Election Commissioner of the State concerned as another ex-officio member. There will also be 10 associate members in each State: five will be the Members of the Lok Sabha (representing the State) and five will be Members of the State Assembly. The Centre will appoint the chairperson, while the Lok Sabha Speaker and the Speakers of the State Assemblies concerned will choose the associate members.

Reservation for the SCs and STs

Seats have to be reserved for the scheduled castes and scheduled tribes in proportion to their population to the total population of the State.
This allocation of seats for the SCs and STs is to be worked out separately both for the assembly and parliamentary constituencies in each State, on the basis of 2001 Census.

Under the Delimitation Act 2002, seats for the STs are to be reserved in the constituencies in which the percentage of their population to the total population is the largest. Therefore, after all the assembly constituencies in the

States as fixed on the basis of 1971 census shall also remain unaltered till the first census to be taken after the year 2026;

- the number of seats to be reserved for the Scheduled Castes (SCs) and Scheduled Tribes (STs) in the House of the People and State Legislative Assemblies shall be re-worked out(increase/decrease) on the basis of 2001 census;
- each State shall be redelimited into territorial parliamentary and assembly constituencies on the basis of 2001 census and the extent of such constituencies as delimited now shall remain frozen till the first census to be taken after the year 2026; and
- the constituencies shall be so re-delimited that population (on the basis of 2001 census) of each parliamentary and assembly constituency in a State shall, so far as practicable, be the same throughout the State. ('State' here does not include the State of Jammu and Kashmir, but includes the National Capital Territory of Delhi and Union Territory of Pondicherry)

Methodological issues

Delimitation needs to be undertaken in a way as to be integrated with development of the constituency. Therefore, administrative, social and geographical dimensions need to be kept in mind.

All constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to the physical features, existing boundaries of administrative units, facilities of communication and public convenience.

Each constituency in a State shall be so delimited that the population of all constituencies shall, so far as practicable, be the same throughout the State.

Constituencies shall be delimited having regard to the administrative units, *i.e.*, district/sub divisions/ tehsils/patwar circles, panchayat samitis/panchayats. So far as practicable, all assembly constituencies in a district shall be confined within the territorial limits of that district. In other words, an assembly constituency shall not ordinarily extend to more than one district. The aim is to ensure that there is proper coordination of administrative, revenue and developmental work.

In delimiting the assembly constituencies, efforts will be made to ensure that, as far as practicable, sub-divisions/tehsils are kept intact and not unnecessarily broken. While delimiting the assembly constituencies on the basis of the administrative units as mentioned above, the contiguity of such administrative units will be the basic requirement, so that no constituency has an enclave/island within it of certain areas belonging to another constituency and having no contiguity to the other areas of that latter constituency. Further, apart

42nd, 84th and 87th Amendment Acts

42nd Amendment Act

42nd Amendment Act laid down that there would be no delimitation till after the 2001 census- neither re-demarcation of boundaries nor re-working of numbers due to increase in population, except for the SC/STs. The reason is that some states – especially in southern India, effectively controlled population while some others had neglected the same. The former would lose and the latter would gain if there is allocation of seats on the basis of population after every census.

84th and the 87th Amendment Acts extended the freeze on seats till 2031 census which is the first census after the year 2026 when the population is expected to stabilize. Reasons for freeze on the number of seats have been already explained.

The difference between the 84th and the 87th Amendment Acts is that the former took 1991 census as the basis while the latter replaced it with 2001 census.

The ban till the year 2026 had been imposed as the population planners have projected that by that year the population of India would stabilise (addition to population and loss equal, that is, there will be demographic equilibrium with a couple being replaced by a little more than 2 children and the net replacement rate is about 1) After the demographic stability is achieved, if the number is adjusted according to the changes in population, there are no undue gains made by any state nor any undue losses by others. In short, the number of seats in the Lok Sabha / State Legislative Assemblies would not change till 2031.

84th and 87th Amendment Acts

In order to facilitate delimitation for the reasons cited above, two Constitution Amendment Acts were made

- Constitution (Eighty-fourth Amendment) Act, 2001 and
- Constitution (Eighty-seventh Amendment) Act, 2003

These two Acts have amended Articles 81, 82, 170, 330 and 332 of the Constitution of India to the following effect:

- the total number of existing seats as allocated to various States in the House of the People on the basis of 1971 census shall remain unaltered till the first census to be taken after the year 2026;
- the total number of existing seats in the Legislative Assemblies of all

Delimitation of Constituencies

Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country or a province having a legislative body. The need for periodical delimitation is the rise in population and the migration of people. The rise in the population has caused an enormous growth in the electorate. Urban constituencies facing constant pressure of population migration had witnessed a faster rate of increase in the electorate as compared to other constituencies. It is to be noted that Lok Sabha constituencies such as Outer Delhi and East Delhi had an electorate of 31 lakhs and 23 lakhs, while the average electorate for a Lok Sabha constituency was about 13 lakhs upto the 14th Lok Sabha elections in 2004. In Delhi, Chandini Chowk Lok Sabha constituency had less than four lakhs electorate.

With the huge discrepancy in these Lok Sabha constituencies, the ` value `of the vote in the Outer Delhi and Chandini Chowk constituencies is not the same. It is not right to have same number of campaigning days for these two constituencies nor same amount of development fund .

Constitutional and legal provisions

- Article 81 . Composition of the House of the People(each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State)
- Article 82 Readjustment after each census(Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine; the allocation of seats in the House of People to the States should be on the basis of the 1971 census; redrawing the boundaries should be on the basis of the 2001 census; number of constituencies will be adjusted on the basis of 2031 census- that is the first census after the demographic stabilization in 2026)
- Article 170. Composition of the Legislative assemblies
- Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People
- Article 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

- National Defence Academy & Naval Academy Examination
- Combined Defence Services Examination
- Combined Medical Services Examination
- Indian Economic Service/Indian Statistical Service Examination
- Section Officers/Stenographers (Grade-B/Grade-I) Limited Departmental Competitive Examination
- Central Police Forces (Assistant Commandants) Examination

Recruitment Rules

In accordance with the provisions contained in Article 320 of the Constitution read with the provisions of Union Public Service Commission (Exemption from Consultation) Regulations 1958, Recruitment Rules of all Group 'A' and Group 'B" posts in various Ministries/Departments of Government of India are required to be framed in Consultation with the Commission. Consultation with the Commission is also necessary for framing/amending Recruitment Rules for certain categories of posts under the Employees State Insurance Corporation, The Delhi Municipal Corporation, The New Delhi Municipal Council, Employees Provident Fund Organisation etc. under the relevant Acts made by Parliament in pursuance of the provisions of Article 321.

the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament. Similarly the State Public Service Commission has the duty to present annually to the Governor of the State a report as to the work done by the Commission. It shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor, shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

Independence of the Commission

Being an important Constitutional authority with the duty to recruit for the higher echelons of the bureaucracy, the Commission needs to be kept independent. The Constitutional provisions in this regard are

- appointment is beyond politics as President appoints
- Removal , in certain circumstances is on the basis of the inquiry conducted by the Supreme Court judge
- Salary etc and conditions of service can not be altered to their disadvantage after appointment
- Expenses of the Commission including any salaries etc of the members or staff of the Commission, are charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.
- There are restrictions on post-retirement engagement as mentioned above
- The annual report is presented to the President who causes it to be tabled in the Parliament explaining why certain recommendations are not accepted, if they are not accepted.

The annual list of competitive exams is:

- Civil Services (Preliminary) Examination
- Civil Services (Main) Examination
- Indian Forest Service Examination
- Indian Engineering Services Examination
- Geologist Examination
- Special Class Railway Apprentices Examination

All regulations made by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

An Act made by Parliament or, as the case may be, the Legislature of a State may impose additional functions on the Union Public Service Commission or the State Public Service Commission towards

- any local authority or
- other body corporate(public sector unit) or
- any public institution.

In short, the functions are

Functions of the UPSC are to conduct examinations for appointment to the services of the Union.

- **Recruitment to services & posts** under the Union through conduct of competitive examinations;
- **Recruitment to services & posts** under the Central Government by selection through Interviews;
- **Advising** on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
- **Advising the Government** on all matters relating to methods of Recruitment to various services and posts;
- **Disciplinary cases** relating to different civil services; and
- **Miscellaneous matters** relating to grant of extra ordinary pensions, reimbursement of legal expenses etc. ..

Annual report

Constitution imposes on the UPSC the duty to present annually to the President a report about the work done by the Commission. The President shall cause a copy of it together with a memorandum explaining, as respects the cases, if any, where

The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

- on all matters relating to methods of recruitment to civil services and for civil posts
- on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity
- on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;
- on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award and
- it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them.

The President, for all-India services and Central services, and the Governor for State Services , can exempt matters on which Public Service Commission need not be consulted.

Public Service Commission need not be consulted with regard to Article 16- reservation in public employment or Art. 335- striking balance between reservation and administrative efficiency.

On ceasing to hold office by way of retirement, resignation or removal

- the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Functions of Public Service Commissions

To conduct examinations

It is the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

To be consulted

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Misbehaviour is:if the Chairman or any other member of a Public Service Commission is interested in any contract related to Government or participates in any way in the profit thereof or in any benefit or emolument arising from it otherwise than as a member and in common with the other members of an incorporated company, the member is considered to be guilty of misbehaviour.

Suspension

The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

In the following cases, the President may by order remove from office the Chairman or any other member of a Public Service Commission

- is adjudged an insolvent; or
- engages during his term of office in any paid employment outside the duties of his office; or
- is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

Strength of the Commission

In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State fixes

- the number of members of the Commission and
- their conditions of service

Conditions of service of a member of a Public Service Commission can not be varied to his disadvantage after his appointment.

After retirement, resignation or removal

by the President, and in the case of a State Commission, by the Governor of the State:

As nearly as one-half of the members of every Public Service Commission shall be persons who have held office for at least ten years either under the Government of India or under the Government of a State.

Vacancy and absence

If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed to the vacant office has entered on the duties or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier.

A member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office.

A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Removal

Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President had held an inquiry and recommended removal.

Union Public Service Commission, State Public Service Commission, Joint Public Service Commission

The Union Public Service Commission (UPSC) is a Constitutional body in India authorized to conduct examinations for appointment to the various civil services of the Union. The Indian Constitution (Part XIV - Services Under the Union and the states - Articles. 315 - 323) provides for a Public Service Commission for the Union and a Public Service Commission for each state. There can be a Commission for two or more states as we shall see ahead.

The first Public Service Commission was set up in 1926 by the then British Indian Government.

By the beginning of 2009, the Commission is headed by Professor D.P. Agrawal. In addition to the chairman there are ten other members.

Constitutional provisions related to Public Service Commission

Art. 315 says that there shall be Public Service Commissions for the Union and for the States.

The Union Public Service Commission, if requested by the Governor of a State may, with the approval of the President, agree to serve all or any of the needs of the State.

Joint Public Service Commission

Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to as Joint Commission) to serve the needs of those States.

Chairman and Members

The Chairman and other members of a Public Service Commission are appointed, in the case of the Union Commission or a Joint Commission.

President Pratibha Patil, in her address to the joint sitting of Parliament on June 4,2009 had said a Constitutional amendment would be brought in to provide 50 per cent quota for women in Panchayats and urban local bodies.

She had said, since women suffer multiple deprivations of class, caste and gender, enhancing reservation in Panchayats and urban local bodies would lead to more women entering the public sphere.

Supreme Court upholds quota in local bodies

The Supreme Court in mid-2010 upheld the constitutional validity of Articles 243 D (6) and T (6), providing for reservation of seats in any panchayat or offices of Chairpersons in panchayats and municipalities in favour of backward classes.

A five-judge Constitution Bench comprising Chief Justice K.G. Balakrishnan, and Justices R.V. Raveendran, D.K. Jain, P. Sathasivam and J.M. Panchal also upheld Articles 243 D (4) and 243 T (4) reserving chairpersons' posts in local bodies, irrespective of whether the beneficiaries are SCs, STs and women and even if it is a single post. These Articles were inserted by way of Constitution 73 and 74 Amendments. The Bench, however, made it clear that the ceiling of 50 per cent vertical reservation in favour of SC/ST/OBCs should not be breached in the context of local self-government. "Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas."

On the contention that the 'creamy layer' should be excluded, the Bench said, "there cannot be an exclusion of the 'creamy layer' in the context of political representation. There are bound to be disparities in socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies."

The Bench noted that though exclusion of the 'creamy layer' might be feasible as well as desirable in the context of reservation for education and employment, the same principle could not be extended to the context of local self government. "It is quite likely that such persons may be better equipped to represent and protect the interests of their respective communities."

The Bench said social and economic backwardness did not necessarily coincide with political backwardness. The Bench said, "It would be safe to say that not all of the groups which have been given reservation benefits in the domain of education and employment need reservation in the sphere of local self government. This is because the barriers to political participation are not all the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policymaking with regard to reservation in local self government."

Local self Government Institutions 2010

50% Reservation for Women in Panchayats

In a path-breaking move to empower women at the grassroots level, government introduced a Bill to amend the Constitution- Art.243D- with a proposal to increase reservation for them in panchayats to 50 per cent.

The enhanced reservation would be applicable to the total number of seats to be filled by direct elections, the offices of Chairpersons, and the seats and offices of Chairpersons reserved for scheduled castes and tribes.

Enhancing reservation for women in panchayats will facilitate more women to enter public sphere. This would lead to further empowerment of women and make panchayats more inclusive institutions, improve governance and public service delivery.

At present, out of the total elected representatives of panchayats numbering approximately 28.1 lakhs, 36.87 per cent are women.

With the proposed constitutional amendment, the number of elected women representatives is expected to rise to more than 14 lakhs.

The amendment would cover all states and union territories except Nagaland, Meghalaya, Mizoram, tribal areas of Assam, Tripura and hill areas of Manipur.

States like Bihar, Uttarakhand, Himachal Pradesh and Madhya Pradesh have already implemented 50 per cent quota for women in the panchayati raj institutions.

Women's Reservation in Urban Local Bodies

Bill for enhancing of reservation for women in urban local bodies from one third to fifty per cent was introduced in the Parliament- by amending Art.243T.

This provision will apply to the total number of seats to be filled by direct election, offices of chairpersons and seats and offices of chairpersons reserved for SCs and STs.

Increased representation of women is likely to yield significant benefits in terms of higher priority to women's issues in critical areas of urban governance and service delivery such as water supply, sanitation, education and health.

The proposed amendment will cover all states and Union Territories.

19	Ludhiana	14.0
20	Kochi	13.5
21	Visakhapatnam	13.3
22	Agra	13.2
23	Varanasi	12.1
24	Madurai	11.9
25	Meerut	11.7
26	Nashik	11.5
27	Jabalpur	11.2
28	Jamshedpur	11.0
29	Asansol	10.9
30	Dhanbad	10.6
31	Faridabad	10.5
32	Allahabad	10.5
33	Amritsar	10.1
34	Vijaywada	10.1
35	Rajkot	10.0
	Total	1078.8

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.".

The number of metropolitan cities in India (Population in 2001) :

Rank	City	Population (Lacs)
1	Greater Mumbai	163.7
2	Kolkata	132.2
3	Delhi	127.9
4	Chennai	64.2
5	Bangalore	56.9
6	Hyderabad	55.3
7	Ahmedabad	45.2
8	Pune	37.5
9	Surat	28.1
10	Kanpur	26.9
11	Jaipur	23.2
12	Lucknow	22.7
13	Nagpur	21.2
14	Patna	17.1
15	Indore	16.4
16	Vadodara	14.9
17	Bhopal	14.5
18	Coimbatore	14.5

*a minimum population of 5000
*a density of at least 400 people per sq. km., and
*at least 75 per cent of their male labour force in non-agricultural occupation.

Megacity is one that has a population of one crore.There are three mega cities as can be seen in the Table. Urban population is 285m. Metropolitan areas are 35(Table)

- City (E): Large towns in common parlance. In the urban planning definition, towns with a population of one hundred thousand or more.
- Ganj (H): A market centre which has not grown into a fully-fledged town.
- Kasba (P): A subdivision town, next in hierarchy to a district headquarter.
- Lal Dora (H): Literally red thread; used in the past for demarcating the jurisdiction of a village. Presently implies the boundary of the territory of village within which norms and controls of a municipality or urban development authority are not applicable.

"TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.

Independence during British days. 6 cantonments were established after Independence. Thus, there are 62 Cantonments in India . These are located in 16 States and the National Capital Territory of Delhi. The Cantonment Boards are autonomous bodies functioning under the overall control of the Central Government (Ministry of Defence) under the provisions of Cantonments Act. 1924. CBs comprise elected representatives besides ex-officio and nominated members with the Station Commander as the President of the Board. The resources of the Cantonment Boards are limited as the bulk of the property in the Cantonment is Government owned on which no tax can be levied. The Central Government provides financial assistance by way of grant-in-aid . CBs are responsible for discharging the mandatory civic duties like provision of public health, sanitation, primary education and street lighting etc.
The 2006 Act has kept 8 nominated members and 8 elected members in these Boards. Reservation for the Scheduled Castes, Scheduled Tribes and women has been provided in clause 31 of the Act.

Certain Concepts and Definitions

Urban agglomerations . An urban agglomeration forms a continuous urban spread and consists of a city or town and its urban outgrowth outside the statutory limits. Or, an urban agglomerate may be two or more adjoining cities or towns and their outgrowths. A university campus or military base located on the outskirts of a city or town. which often increases the actual urban area of that city or town. is an example of an urban agglomeration. In India urban agglomerations with a population of 1 million or more--there were 35 in 2001--are referred to as metropolitan areas. Places with a population of 100,000 or more are termed "cities" as compared with "towns," which have a population of less than 100,000. These large urban agglomerations are designated as Class I urban units. There were five other classes of urban agglomerations. towns. and villages based on the size of their populations:

- Class II (50,000 to 99,999)
- Class III (20,000 to 49,999)
- Class IV (10,000 to 19,999)
- Class V (5,000 to 9,999) and
- Class VI (villages of less than 5,000)

Urban area

Definition of urban area

Somnath Chatterjee, Lok Sabha Speaker advocated this political tool.

Some other types of municipal structures

Notified area committee

In urban planning, a notified area is any land area earmarked by legal provision for future development. It is set up by government notification and not a legislative Act and is so called a notified area committee. All its members and chairman are appointed by the State Government and not elected. It is constituted for an area which does not meet the requirements for setting up a municipality but has potential for fast development.

Hyderabad International Airport Limited (HIAL) was recently gazetted as a NAC(2008)

It usually, includes a settlement with a population between 10,000 and 20,000. A community of over 20,000 is considered a town under Indian law.

Town area committee

TAC is set up by an act of the state legislature for small towns. It can have either nominated or elected members or both. It is a quasi-municipality with limikted number of municipal functions like street lighting, sanitation etc. Maximum number of TACs are there in Uttar Pradesh.

Cantonment Board

The meaning of 'cantonment' given in the dictionary is 'the temporary quarters of the troops.' Later on those temporary quarters of the troops became permanent quarters. The first cantonment was created in 1758 in Barrackpore, in Bengal.

About 200 or 300 years ago, it was thought that certain civic amenities should be provided to the troops so that they are fit for fighting. Housing was provided initially. In due passage of time housing itself attracted the civil population to reside in the Cantonments and the economic spin-offs attracted more people .Thus, many people who were not connected with military, also started living there. Cantonment is basically meant for the location of the troops. Therefore, the predominance of the military interest was recognized and the bodies were under the command and control of the Station Officer.

With the dawn of Independence, aspirations for democratization and decentralization were recognized.56 cantonments were established before the

In 2001, people in Madhya Pradesh exercised their democratic power in the Anuppur Nagar Panchayat where an elected woman president was compelled to step down in a democratic manner.

In 2008, recall of presidents of three nagar palikas- municipal corporations ((Rajpur, Nawagarh and Gunderdehi in Chhattisgarh) , in Chhattisgarh through voting under the Chhattisgarh Nagar Palika Act took place.

This Act, adopted by Chhattisgarh from Madhya Pradesh, provides for recall of Mayor of a Corporation if a majority of the votes cast in a secret ballot are in favour of it. The proposal for recall has to be moved by not less than three-fourth of the total number of the elected Councillors. It cannot be initiated "within a period of two years from the date on which such Mayor is elected and enters office," and "if half of the period of tenure of the Mayor elected in a by-election has not expired." The Act further provides that the process for recall of a mayor can be initiated "once in his whole term".

The last wellknown instance was when then governor of California Gray Davis was recalled in 2003, to be replaced by Arnold Schwarzenegger.

Right to recall, a direct democracy devise, has been favoured as it keeps the elected representatives accountable to the voters. His/her performance will improve. Voters feel a continuous sense of participation. It will check corruption. Non-performing representatives can be recalled.

However, much as its availability at the lower levels of governance- local level- is welcome, there are objections to it being adopted at higher levels- state assemblies and the Lok Sabha. The reasons arfe

- judging the local representative's performance is relatively simple but at the higher level, it is complex.
- based on experience of other countries—that only 18 states of the US permit recall of state-level officials whereas 36 states permit recall of local-level officials; recall is applicable only to mayors in Germany and not to any state-level officials; and criteria for recall of state-level officials are very difficult to fulfil so that attempts to recall state governors in the US have succeeded very infrequently
- such a provision will make elections more frequent, making the process much more complicated, thus increasing the cost of democracy.
- According to Dr.MS Gill, " it will complicate the functioning of our electoral democracy as about 15-20 lakh parliamentary voters are spread over every 100-200 km."

Municipalities. Even Greater Mumbai though it is called by that name does not cover all of the Mumbai Metropolitan area. Thane, Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. The Calcutta Metropolitan area comprises three Corporations and thirty-four Municipalities. The metropolitan areas of Chennai, Bangalore, Mumbai and Hyderabad cover ten to thirty Municipalities. In Delhi, there is the Cantonment Board, the New Delhi Municipal Council and the Delhi Municipal Corporation (MCD). The sheer size of the cities, the scale of economic activity together with its complexity of problems pose a herculean task to its managers. It is this complex nature of the metropolitan city needs a metropolitan wide perspective, planning, advocacy and action. Sources of water, disposal of waste, traffic and transport, drainage, abatement of air pollution, etc., are examples of items where one Municipal Corporation or the Municipality alone cannot achieve much in isolation. The Metropolitan Planning Committee is thus envisaged as an inter-institutional platform for similar purposes. Metropolitan areas are also the main engines of growth and economy in the country. Urban transport,water supply, waste management., police, public health, etc., require metropolitan level planning, implementation and co-ordination. Besides the scale of services needed in these metropolitan areas is huge.

In light of the above, article 243ZE in the Constitution provides for the setting up of Metropolitan Planning Committee. As far as the states are concerned, the Metropolitan Planning Committee is a constitutional requirement. The Metropolitan Planning Committee is expected to be a high level, democratically set up body, which will bring a constitutional mandate to the whole exercise of metropolitan development planning. The development authorities could serve these Metropolitan Planning Committees as their technical secretariat. In the composition for Metropolitan Planning Committee it is envisaged that two-third of its members are to be chosen from amongst the elected representatives of urban and rural local bodies in the metropolitan areas. The others are to be nominated from central government agencies and various state government agencies, other organizations and institutions responsible for various services in the metropolitan areas. In preparing the draft development plan the Metropolitan Planning Committee should have due regard to the plan prepared by the Municipalities and the Panchayat, matters of common interest to them, objectives and priorities of the Government of India and the State Government, available financial and other resources for integrated development of infrastructure, environmental conservation, etc.

Right to recall

planning for urban and rural areas in the district. The draft development plan to be prepared by District Planning Committees has to address critical matters of common interest such as sharing of water and natural resources etc.

Composition

The composition of the DPC has been left to the discretion of the States. Article 243ZD of the Constitution stipulates that four-fifths of the total number of members of DPC will be chosen by and from the elected members of the Panchayat and Nagarapalikas at the district level . Their numbers will be in proportion to the ratio between the population of the rural areas and of the urban areas in the district.. The rest are to be nominated.

While most States have made laws to constitute District Planning Committees, some have not actually constituted them. The provisions to constitute DPC are in the 74th rather than the 73rd Constitutional Amendment. Rural Development departments have traditionally been performing district level planning functions. But now they find that the provisions for the DPC are a part of the 74th Constitution Amendment.

Another issue has been the relationship between the Zilla Parishad and the DPC. In Assam, Karnataka, Kerala, Rajasthan and West Bengal the Chairperson of the Zilla Parishad is also designated as Chairperson of the DPC. In Madhya Pradesh, a Minister of the State Government is the Chairperson of the DPC.

The designation of a Minister as the Chairman of the DPC virtually makes it an extension of the State Government and goes against the intent of the Constitution. It also defeats the principle of decentralisation.

Till recently most state governments had formed DPCs mainly because it is a constitutional requirement and this body has remained largely defunct. There is also a need to build capacities within the district for the DPC to be able to function as an independent planning body of the district. The representation of MPs and MLAs is a related issue. Both the 73rd and the 74th Amendments specifically enable State Legislatures to provide for their representation in Municipalities and Panchayats. The role of MPs and MLAs is crucial in district planning. For this purpose, either MPs and MLAs become honoured invitees of the DPC and contribute to its deliberations or are formally coopted in the DPC.

Metropolitan Planning Committee

According to the 2001 Census, there are 35 metropolitan areas or cities with a population of 10 lakhs or more. These cities are administered by several

Municipalities in Kerala is planning and implementation of various developmental projects in the productive, infrastructure and social service sectors.
Other states have also amended their acts to transfer functions to local bodies. However, changes in the laws alone do not ensure the transfer of functions and responsibilities. Although functions have been assigned to the Municipality, there could still be several restrictions in the exercise of that function.
It would interesting to note that in Kerala a function can be transferred to the local body in any form through an Act, notification or government order, but once a function is transferred it can be taken back only with the consent of the legislature. Even if functions are assigned to the local bodies through an act of the legislature, it is impossible for the Municipality to discharge the function satisfactorily since the state governments have not transferred the requisite manpower and finances required to perform the functions. Functions, functionaries and funds should go together. It has also been felt that just as the Constitution has a union list, state list and concurrent list, there is a need to have a municipal or local body list in which both the 11th and 12th Schedules of the Constitution find place.

Financial Domain

The dismal state of finances in Municipalities across the country is a very common feature. The Constitution, even after the 74th Amendment does not provide for an independent set of taxes that the Municipalities can raise. They continue to be determined and regulated by the State Governments.

Article 243X states that a state may by law authorise a Municipality to levy and collect property taxes, duties, tolls and fees. And also that the state may lay down the procedure and ceiling for the same.

The Constitution has made it mandatory for every state to constitute a State Finance Commission (SFC). The SFC is to review the financial position of the Municipalities and make recommendations regarding distribution of taxes between the States and the Municipalities. It is also expected to look into the criteria for grants-in-aid and suggest measures needed to improve the financial position of the Municipalities.

DPCs and MPCs

District Planning Committees (DPC)

The constitution of District Planning Committees (DPCs) is mandatory under article 243ZD of the Constitution and is a common item for both Panchayats and Municipalities. The District Planning Committees are to take up integrated

identifying beneficiaries for the implementation of welfare and development schemes related to the Ward. This is besides assisting in timely collection of taxes, fees and rents. The duration of the Wards Committee shall be for five years.
The Madhya Pradesh, Haryana & Tamil Nadu legislations only specify that Wards Committee shall be constituted for Municipalities with a population of not less than 3 lakh. In the Greater Mumbai Corporation, 16 Wards Committees have been formed out of 221 municipal wards. The wards have been grouped similarly in Pune, Navi Mumbai and Pimpri Chinchwad. It comprises all the councilors from the concerned wards and one to three representatives of NGOs in the area as nominated by the Corporation. In West Bengal and Kerala, Wards Committees have been set up for each municipal ward Since in Calcutta every municipal ward has a Ward Committee, another committee comprising of a group of municipal wards known as Borrough Committees have also been formed. Calcutta thus has a three tier set up. In Chennai, the 155 municipal wards are grouped into ten Wards Committees. Bangalore's Wards Committees cover an average population of about two lakhs. A major objective of providing for Wards Committees in the 74th Constitution Amendment is that it enables closer interaction between the people and their elected representatives.

Functional and financial domain

Functional Domain

The functional domain basically relates to the functions that have been assigned to the Municipalities to perform. During the pre-independence era, almost all the functions in the city such as water supply, drainage, sanitation, building control, municipal road and street lighting, municipal markets etc., were performed by the Municipality. In the period after independence, however, there has been a steady diversion of municipal functions to other bodies like development authorities such as Delhi Development Authority, Ghaziabad Development Authority etc., and para-statal organisations such as Jal Nigam in Uttar Pradesh. State level water and sanitation boards as in Uttar Pradesh, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh had come into existence. City development or special authorities were also established in most large cities of the country. The Municipalities were only left to performing functions like sanitation and garbage removal. Articles 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities "with such powers and authority as may be necessary to enable them to function as Institutions of self-government". The 11th and the 12th Schedules listing 29 and 18 items respectively were added to the Constitution. They are broad headings signifying a whole variety of functions. It was left to the state governments to assign functions and also commensurate finance and human resource. In Kerala , a major function entrusted to the

procedure similar to that for removal of a Judge of a High Court. The office of the State Election Commissioner is on the lines of the Chief Election Commissioner. Both are Constitutional Authorities. Articles 243K and 243ZA have kept the Election Commission of India as a model.

Since the elections to both Panchayats and Municipalities elects more than three million representatives, the elections to these bodies is a fairly large exercise. It is, therefore, essential that the office of the State Election is adequately strengthened. Regarding the appointment of the State Election Commissioner, the Governor of the concerned State has been made the appointing authority. To make the selection impartial, it is felt that a group consisting of the state Chief Minister, Speaker of the legislature and the leader of Opposition recommend a suitable person with adequate administrative experience to the Governor for appointment. The state legislature is to make provisions by law regarding the conditions of service and tenure of office of the State Election Commissioner.
The responsibility of issuing notification of local body elections wrests with the State Election Commission in Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat. While in Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa, the State Government issues the notification on the recommendation of the State Election Commission.

Wards Committees and Proximity to Citizens

The provision to constitute Wards Committee came from the idea that there is a need for bridging the gap between the elected representative and his electorate so that activity in any area reflects the aspirations of the people and the elected representative is directly accountable to the people. The need for effective participation of the people themselves in the governance of their cities has become imperative.

In large municipal bodies,citizens do not have access to their elected representatives and therefore Wards Committees should be set up in Municipal Corporations with a population of more than three lakhs.. The structure and composition of the Wards Committee is left for the state governments to decide. In Kerala, there is a Ward Committee for every Ward. The elected councillor of the ward concerned is the Chairman of the Wards Committee. The Committee consists of not more than 50 persons nominated by the Chairperson of the Municipality in consultation with the councillor. The members of the Ward Committee are drawn from various categories such as residents associations, doctors, teachers, etc., and these categories are mentioned in the Act. The Ward Committee will meet at least once in three months. The Committee will prepare and supervise the development schemes for the ward, encourage harmony and unity among various groups, mobilise voluntary labour for social welfare programmes, give assistance for

the state from holding timely elections. It is therefore important that both the state government and the central government (in case of Panchayats and Municipalities located in Union Territories) ensure the completion of elections before the expiry of the five year term of the Municipality as desired by the Constitution. Also the State Election Commissioner in the event of a delay in elections should send a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfil the requirements of the Constitution.

Delimitation of Constituencies

Delimitation basically means drawing up of boundaries of wards or territorial constituencies. In Haryana, Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the task of delimitation of territorial constituencies rests with the State Government, while in Gujarat, Maharashtra, Kerala and West Bengal, the responsibility lies with the State Election Commission. Delimitation orders have been passed by most State Governments wherein the parameters for delimitation have been prescribed.

Electoral Rolls

Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). In some states the electoral rolls of the Lok Sabha and the Vidhan Sabha elections are disaggregated and used in the local body polls. While in other states separate rolls are prepared.

Reservation

The responsibility of reservation of Wards for municipal election vests in the State Government in Madhya Pradesh, Rajasthan, Andhra Pradesh, Uttar Pradesh, Tamil Nadu, Karnataka, Haryana, and Punjab, the State Election Commission has no role to play in it. In Maharashtra, Gujarat, Kerala & West Bengal the State Election Commission is responsible for reservation. In all the states rotation of reserved seats takes place during every election; therefore, it is seldom that a member elected on the reserved seat gets an opportunity of contesting the same seat for a second term.

State Election Commissions

Articles 243K and 243ZA stipulate that the "superintendence, direction and control for the preparation of electoral rolls and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner (SEC) to be appointed by the Governor." These articles further State that the SEC shall not be removed from his office except by

Article 243V of the Constitution provides that the criteria for disqualification for being chosen or for being a member of a Municipality shall be the same as in the case of Vidhan Sabha election. A state government can stipulate other qualifications also. All the States have made provisions in their respective Acts. Most States specify 21 years as the minimum age, name in the electoral rolls etc. Although, the rules in this regard, prescribed by some states, such as the two child norm (a person having more than two children cannot stand for elections) has evoked mixed reactions and their effect needs to be studied in detail before applying it to all the Municipalities. In Haryana and Himachal Pradesh, licensed architects, town planners, surveyors, etc., (basically those who are licensed to take up works contracts of the Municipality) cannot contest elections. Failure to submit accounts of election expenditure is a disqualification in some States. In Kerala, this resulted in the disqualification of more than 12,000 candidates in the Panchayat polls. The State Election Commissions have prescribed various norms in this regard.

Regularity of Elections

The Constitution makes elections to the Municipalities mandatory every five years. All the states have held elections to the local bodies. There are no Municipalities in the Union Territories of Dadra & Nagar Haveli and Lakshadweep. Though elections have been held in most states, the problem arises with regard to holding them regularly. In Uttar Pradesh, since the state government claimed that the delimitation process had not been carried out, it promulgated an ordinance postponing elections. This ordinance was then challenged in the High Court arguing that if elections are not held every five years then it is a violation of the Constitution. The ordinance was quashed by the High Court and the Supreme Court upheld the judgement of the lower court. Similarly, in Haryana, elections due in 2000 were postponed due to the announcement of
Assembly polls. The Supreme Court had to intervene and direct the State Government to hold elections within a specific time. In Andhra Pradesh also elections have been postponed either due to delay in delimitation of wards or complications in the procedure of reservation of seats for elections. In
all cases the courts have had to intervene in response to writs or PILs to ensure timely elections.
Although the Constitution makes timely elections mandatory, issues relating to reservation and delimitation have often been cited as reasons for postponing elections. It is interesting to note here that the constitutional provision of holding timely elections has withstood judicial scrutiny also. The Supreme Court clearly stated that articles 243E and 243U on Panchayat and Municipal elections respectively are mandatory and not discretionary. It stated that postponement of elections is a violation of the Constitution unless there are 'supervening difficulties' such as natural calamities like floods, earthquakes etc., which prevent

or experience in municipal administration) with or without the right to vote in the proceedings of the Municipality.

The total number of members in a Municipality varies from state to state. Most states have tried to determine the number of members by keeping in mind the total population of the Municipality. The range in Uttar Pradesh is from 60 to 110 members, in Madhya Pradesh it is 40 to 70, it is 30 to 100 members in Karnataka, while it is 60 to 70 in Rajasthan. In Maharashtra, the average population per ward is 45,000 in Mumbai, 22,000 in Nagpur and 14,000 in Pune. Similarly, in West Bengal, it is 31,000 in Kolkata, 19,000 in Howrah and 8,000 in Siliguri. As far as nominated members are concerned, Andhra Pradesh is the only state which has a provision to nominate one person belonging to the minority community.

Election and Removal of Mayor / Chairpersons

The mode of election of Mayors / Chairpersons is left to the discretion of the State Governments by the Constitution -- Mayors in the case of Municipal Corporations and Chairpersons or Presidents in the case of Municipal Council or Nagar Panchayat. In Rajasthan, Himachal Pradesh, Haryana, Karnataka, Kerala, West Bengal, Maharashtra and Gujarat, the Mayors/Chairpersons are elected from amongst the elected Councillors i.e., indirectly elected. In Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Tamil Nadu, Mayors/Chairpersons are elected directly by the people. Their term of office also varies from state to state. Uttar Pradesh, West Bengal, Tamil Nadu, Rajasthan, Andhra Pradesh, Kerala and Madhya Pradesh have provided for a five-year term, while Assam, Delhi, Himachal Pradesh, Orissa and Karnataka have provided for a one-year term. Maharashtra and Gujarat have provided for a two and a half year term.

The provisions in State laws for removing a Mayor/Chairperson is through a no-confidence motion.

Right to Recall

A significant and revolutionary development in the last few years is with regard to people's awareness of their rights as citizens. This is best exemplified in the provision of the right to recall elected representatives, which has been granted to the people in Madhya Pradesh and Tamil Nadu. Under this law, the people of a ward have the right to recall their elected representative through a 'referendum'. In Madhya Pradesh, this power has already been exercised in a few Municipalities.

Qualifications and Disqualifications for Membership in Municipalities

243ZG bars interference by courts in electoral matters. It says that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court.

Also, no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Amendment of article 280 is made to the following effect:

"the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State".

After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-

Analysis of inter-state variation

Article 243Q of the Constitution states that a Municipal Corporation shall be constituted for a larger urban area, a Municipal Council for a smaller urban and a Nagar Panchayat for an area, which is in the process of transition from rural to urban. The Act does not define larger or smaller urban area or an area of transition from rural to urban. It has been left to the state governments to fix their own criteria. The Article says that size of population, density of population, percentage of male working population in non-agricultural employment, annual revenue generation etc., may be taken into account by the states.

Since 1994, many states have made the relevant Nagarapalika Acts. But apart from total population, very few states have taken into account the other criteria. Only Andhra Pradesh, Himachal Pradesh, Tamil Nadu and Karnataka have prescribed the criterion of annual revenue generation.

Article 243R of the Constitution states that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies or wards (similar to constituencies of the Lok Sabha or Vidhan Sabha). This means that a Municipal body would comprise mainly of directly elected representatives or that it is an elected body. It also states that certain members may be nominated by the state government (local MPs/MLAs and persons having special knowledge

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

Every Metropolitan Planning Committee shall, in preparing the draft development plan,

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF says that notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of Seventy-fourth Amendment Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify
in the notification.

243ZC says that this Part shall not apply to the Scheduled Areas (Fifth Schedule) and the tribal areas(Sixth Schedule) of article 244.

Further, nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

However, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD deals with the Committee for district planning which is discussed in the Chapter on Panchayats.

243ZE relates to Committee for Metropolitan planning

It says that there shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole. The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled.Not less than two-thirds of the members of such Committee shall be drawn from the elected members of the Municipalities and the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area.

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(a) the principles which should govern-

- the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;
- the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
- the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

The Governor shall cause every recommendation made by the Commission under this Article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z speaks of audit of accounts of Municipalities.The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA relates to the State Election Commission. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K dealing with the Panchayats.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB says that the provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly.However, the President may,

243W deals with powers, authority and responsibilities of Municipalities.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

- the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

Powers etc may similarly be devolved to the Committees to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X deals with the financial provisions: power to impose taxes by, and Funds of, the Municipalities. The Legislature of a State may, by law-

- authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
- provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom.

243Y has provisions related to the State Finance Commission.

It says that the Finance Commission constituted under article 243-I(dealing with the Panchayats) shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

The reservation of seats mentioned above shall cease to have effect on the expiration of the period specified in article 334 as is the case for the state assemblies and Lok Sabha.

It is the discretion of the Legislature of a State to make any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U talks of the duration of Municipalities.

Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. A Municipality shall be given a reasonable opportunity of being heard before its dissolution.

An election to constitute a Municipality shall be completed before the expiration of a period of six months from the date of its dissolution. However, where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election for constituting the Municipality for such period.

A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued had it not been so dissolved.

243V relates to disqualifications for membership. It says that a person shall be disqualified for being chosen as, and for being, a member of a Municipality-

- if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;
- if he is so disqualified by or under any law made by the Legislature of the State.

If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications ,the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

The Legislature of a State may, by law, make provision with respect to-

- the composition and the territorial area of a Wards Committee;
- the manner in which the seats in a Wards Committee shall be filled.

A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

Where a Wards Committee consists of one ward, the member representing that ward in the Municipality; or where it consists of two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

Legislature of a State may also make provision for the constitution of Committees in addition to the Wards Committees.

243T has provisions related to reservation of seats.

Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

Not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to the Scheduled Castes/ Scheduled Tribes.

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

The officers of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

"Municipal area" means the territorial area of a Municipality as is notified by the Governor.

"Municipality" means an institution of self-government constituted under article 243Q

"Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities

243R speaks of composition of Municipalities

It says that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

The Legislature of a State may, by law, provide for the representation in a Municipality of-

- persons having special knowledge or experience in Municipal administration;
- the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area:
- the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- the Chairpersons of the Ward Committees

Such persons shall not have the right to vote in the meetings of the Municipality.

The Legislature of a State may, by law, provide for the manner of election of the Chairperson of a Municipality.

243 has provisions related to constitution and composition of Wards Committees.

It says that there shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

The tenure of the Municipal Council varies from three to five years. The council elects, from among the councilors, a President whose term may be co-terminus with that of the council. In certain states Presidents are elected directly by the citizens. In a number of states the term of the President varies from one to three years and is not co-terminus with that of the council. The President occupies an important position in the municipal administration and enjoys considerable authority and power both in the deliberative and executive organs of the municipality. He convenes and presides over the meetings of the council and gives his rulings on all controversial matters. He also holds the power to take disciplinary action against offending councilors and can suspend or adjourn any meeting in case of pandemonium. The President not only guides the deliberation of the council but also executes its decision as its chief Executive Officer.

There is provision in the municipal act for setting up of committees to assist the parent body to perform its tasks. The Standing Committee is the most important of all committees. The powers and functions of the Municipal Council Committees are the same as those of the Municipal Corporation. The elected President being dependent on the council, the Chief Executive Officers face a lot of pressure and influences in exercizing their executive authority. In most states the state government appoints the Executive Officer. In some states the council makes the appointment, but his or her independence has been confirmed by making it difficult his removal from office - generally by a three-fourth-majority vote.

Nagar Panchayat

A Nagar Panchayat is one form of urban body in India.

An urban centre with more than 30,000 and less than 100,000 inhabitants is usually classified as a Nagar Panchayat. However, there are some exceptions. All the previous Town Area Committees (Urban centres with a total population of more than 5,000 and less than 20,000) are reclassified as Nagar Panchayat. Nagar Panchayat have a chairman with ward members. It consists of a minimum of 10 elected ward members and three nominated members.

74th Act in detail

243P gives definitions . Metropolitan area means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor.

indirect election of the Mayor combined with his short term makes him more a figurehead than an active functionary.

Committees

Various Statutory and Non-Statutory Committees that are set up by the council do most of the work of the corporation. A Statutory Committee is set up by the statute which constitutes the Corporation, such as executive committee, standing committee, planning committee, health committee and education committee. Non-Statutory Committees include transport committee, women and child welfare committee etc. The number and composition of the committees vary from state to state. The most important committee, both regarding power and range of functions allotted is the Standing Committee of the Corporation. It acts as the steering committee exercizing executive, supervisory, financial and personnel power. The Standing Committee consists of elected members varying between seven and sixteen through a system of proportional representation of councilors.

Executive wing

The Municipal Commissioner is the chief Executive Officer and head of the executive wing of the Municipal Corporation. All executive powers are vested in the Municipal Commissioner. Although the Municipal Corporation is the legislative body laying down policies for civic governance of the city, it is the Commissioner who is responsible for execution of the policies. The Commissioner is appointed for a fixed term that is mentioned in the respective state's statutes. However, his tenure in a corporation may get either extended or reduced. The Commissioner's powers are classified into two broad categories: those listed in the statute creating the corporation and those delegated by the Corporation or the Standing Committee.

Municipal Councils

Normally, Municipal Councils cover smaller areas than the Municipal Corporations. The municipal acts of the states govern the Municipal Councils. The State Government can, by notification, propose an area, except a military cantonment to be a municipality, define its territorial limits and make alterations in them. The Municipal Council, President, the Committees and the Executive/Chief Officer constitute the main components of the structure of municipal government. The Municipal Council makes laws that are called by-laws within the framework of the municipal act for the civic governance of the city or town. The size of every Municipal Council varies from state to state; the municipal acts prescribe both the maximum and the minimum number of councilors.

services;

- Municipal Councils for smaller urban areas;
- Municipal Corporations for larger urban areas.

Urban local government is not hierarchical. However, the Municipal Corporation, as an institution, enjoys a greater measure of autonomy than other forms of local government. It enjoys the power of dealing directly with the state government whereas the municipalities have no direct access to the state government and are answerable to the District Collector and Divisional Commissioner.

Municipalities and Corporations have deliberative and executive wings. In general, deliberative wings of Municipal Corporations comprise the Corporation Council, the Standing Committee and the Mayor, whereas the executive wings comprise the Municipal Commissioner, the Deputy/Assistant Municipal Commissioner, the Municipal Engineer and subordinate administrative staff.

Deliberative wing

This is the General Body of the Municipal Corporation, comprising of elected members (councilors). Councilors are elected for a term varying between three and five years. The new Constitutional Amendment Act provides that every Municipal Corporation and every Municipal Council shall have the following two categories of councilors:

- Directly elected councilors;
- Nominated councilors.

The number of elected councilors is to vary according to the size of the population of the territorial area of the Municipal Corporation or the Municipal Council concerned. Nominated councilors are to be nominated by the elected councilors of the Municipal Corporations/Councils concerned. The nominated councilors shall be persons having special knowledge or experience in municipal administration.

Mayor

The Mayor in the Municipal Corporation is either directly elected or is a representative elected by the councilors from amongst themselves for a term of one year, which is renewable. The Mayor exercises administrative control over the secretariat of the corporation. The Mayor in India has no executive authority. The

Nagarapalikas

The 73rd and 74th Constitution Amendment Acts are sister legislations passed by the Parliament in 1992. They contain similar provisions .The 73rd Constitution Amendment Act provided directions for the creation of Panchayats in the rural areas and the 74th Constitution Amendment Act provided for the creation of Municipalities in urban areas. The two legislations laid a broad framework for the setting up of Panchayats and Municipalities by the states. The legislations also stipulated a time limit within which the state governments were to enact conforming legislations to enable setting up of Panchayats and Municipalities, that is by the 1st of July 1994.

Prior to the enactment of these Constitutional amendments, , the functioning of the local bodies was at the discretion of the state governments. There was no constitutional obligation to enable them to function well. The supersession of the local bodies was common . Entities like District Planning Committee. Metropolitan Planning Committee, Wards Committee, State Election Commission, State Finance Commission being absent, the Nagarapalikas suffered .

The 74th Amendment Act sought to remove these basic weaknesses and lay down a framework with broad guidelines for constitution, composition of Municipalities, elections/removal of Mayor or Chairpersons, qualification/disqualification of membership, setting up of State Election Commission etc.

Municipal bodies are the local self governing bodies consisting of political and administrative wings. The political wing is an elected body of councillors headed by a Mayor/President(Chairperson). The Commissioner from the IAS cadre heads the administrative wing. The Commissioner implements the decisions taken by the elective body.

Municipal structure

Municipality is a generic name for any organized local government, usually in an urban area- town, city etc.The structure and composition of the municipalities vary widely. The 74th CAA sought to bring some uniformity in the constitution of the municipal bodies by classifying them as follows:

- Nagar Panchayat, to be constituted in rural-urban transition areas. These have been conceived to properly channelize the growth impulses in such settlements and also to bring order in their growth and provision of

19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (Khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Essentially, the Fifth Schedule is a historic guarantee to indigenous people on the right over the land that hthey live in .

ELEVENTH SCHEDULE
(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.

referred as *micro* Planning as the unit of planning is a localized administrative unit. It also is called grass roots planning as it covers an area that includes a cluster of villages and is closer to people unlike State level and national level planning which is understood as macro planning or central planning. The objectives is economic efficiency and administrative feasibility.

The need for micro planning also arises from the following: Functions of government have grown enormously as the welfare State assumes more responsibilities. Unless the administrative arrangements and the political process is suitably designed and operated, most activities prove economically unviable. Expected results are difficult to achieve and the gap between outlays and outcomes widens . Inclusive growth becomes unattainable.

Poor implementation largely explains unbalanced regional development and general sub- optimal plan performance with respect to rural development.

Micro planning is needed to make plan implementation efficient at the local level which would result in better plan performance, better resource use; improvement in human development, involving poverty alleviation and health care, child care and nutrition status etc. Top- down planning is costly; wasteful; causes corruption; and erodes accountability.

Moreover, political instability has made synergetic functioning between the Planning Commission, the Finance Commission and the government difficult. Given the constraints of coalition politics, an alternate arrangement by way of continuity and stability in local administration is being considered, which explains the emphasis on institutionalisation of local level development planning proposes to provide an alternate stability mechanism.

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad,Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Devgarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district

Gram Nyayalayas will be set up in every panchayat throughout the country except in J&K, Nagaland, Arunachal Pradesh, Sikkim.

Decentralization

Decentralization is the transfer of political, administrative and fiscal responsibilities to locally elected bodies in urban and rural areas, and the empowerment of communities to exert control over these bodies. Decentralisation of socioeconomic planning process and plan implementation to the grass root levels has been a matter of continuing concern. Decentralization has two important uses

- decentralised institutions have the capacity to understand the needs of the areas, interact with the governmental agencies in order to draw need based local plans and to implement those plans in close cooperation with the administration
- being accountable to the community. these institutions are better placed to improve the delivery systems in administering schemes , responding to the felt needs of the people, to optimise the benefits reaching those and to whom they are meant.

Therefore, Administrative Reforms Commission(1966-1970) highlighted the need for District Planning and to relate it to local variations- geographic, cultural, social and so on.

The issues relating to the question of decentralisation of planning and implementation of schemes could be broadly classified under three heads namely:

- Institutional aspects;
- Allocations of sectoral and sub-sectoral functions falling exclusively in the mandate of PRIs; and
- Planning and implementation aspects.

There is a consensus that strengthening of the PRIs and Nagarapalikas is the solution for giving decentralized planning a strong and vibrant base.

Microlevel planning

In recent decades, the emphasis has shifted in development planning, from top-down to a bottom-up approach. Bottom- up approach is a crucial shift from earlier approaches based on central planning . Bottom- up planning is also

Union Ministry of Panchayatraj set up

2004 Ramachandran Committee

2006 Devolution index constructed by NCAER

Ramachandran Committee

An Expert Group on Grassroots Level Planning was set up by the Union Ministry of Panchayatraj under the chairmanship of Shri V. Ramachandran to study and set out the steps by which grassroots planning can be made a reality in time for the Eleventh Five-Year Plan (2007-12)..It submitted the report in 2006.

The Group gave its recommendations in the context of Article 243G of the Constitution, which envisage Panchayats as local self-governments planning for economic development and social justice.Participatory planning is central to inclusive growth strategy.

It suggested a practical action programme for local level planning in the Eleventh Plan. It suggested in detail the manner in which national programmes of importance in education, health, employment, poverty alleviation, housing and rural infrastructure could achieve their objectives better if centrality is given to Panchayats in working out details and in implementation.

Nyaya Panchayats

Nyaya Panchayats are village courts, where disputes are settled between villagers. The Nyaya Panchayats help in settlement of disputes at the local level thus sppeding up justice and decongesting mainstream courts.

After the 73rd Constitutional Amendment Act (CAA), few states in India provided for Nyaya Panchayats in their new Panchayati Raj Acts or in confirmatory amendments to old Acts, including Bihar, Himachal Pradesh, Punjab, U.P. and West Bengal. West Bengal Act provides for election of a five member separate Nyaya Panchayat elected by the gram panchayat.

To reduce pendancy and speed up justice in rural India, the Union Cabinet approved the Gram Nyayalayas Bill, 2007. The legislation involves appointment of about 6,000 trained first-class judicial magistrates all over the country. It provides for the establishment of Gram Nyayalayas for the purpose of providing access to justice — both civil and criminal — to citizens at the grassroots level and to operationalise Art.39A -opportunities to secure justice are not denied to any citizen for reasons of vulnerability.

December

1986 Andhra Pradesh follows West Bengal and Karnataka Panchayati Raj model

1987 The Sarkaria Commission on Centre-State relations highlighted the need for participation of people's representatives in the planning and administrative machinery at the local level. A notable recommendation was the creation of a body like Finance Commission at the State level for devolution or transfer of resources to the districts .

1990-92 Panchayats are dissolved and brought under administrators in Karnataka

Panchayati Raj with Constitutional Status

1986 L.M. Singhvi Committee submits its report; recommends constitutional status for panchayats

1988 Parliament Consultative Committee appoints a sub-committee under chairpersonship of P.K. Thungan to consider Constitution Amendment

1989 64th Constitution Amendment Bill is introduced in Parliament; is defeated in Rajya Sabha

1991 73rd (Panchayats) and 74th (Municipalities) Amendment Bills are introduced in Parliament; referred to the Parliamentary Committee September

1992 Parliament passes both the Bills in December;

1993 73rd Amendment Act, 1992 comes into force

1993-94 All state governments pass conformity Acts

1994 Madhya Pradesh holds panchayat elections under the 73rd Amendment dispensation on 30 May

1996 Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, extending 73rd Amendment Act to Scheduled Areas, comes into force on 24 December

Kerala launches People's Plan Campaign on 16 August

2001 Bihar holds panchayat elections after 23 years (11-30 April)

2001 83rd Constitution Amendment Act, 2000 amends Art. 243-M to dispense with reservations for Scheduled Castes in Arunachal Pradesh (the state has no caste system)— paving way for panchayat elections in the only state yet to hold them under the new dispensation

- Representation of members of parliament and state legislatures in the PRIs is a contentious issue . The is clash of interest between the legislatures and PR representatives.
- The elite control over the system is a fact even today
- state level leaders still see PRI leadership as a challenge to their power , to a great extent.

Some Basic Facts about Panchayati Raj in India

TIME LINE

Milestones in the Evolution of Local Government since Independence

First generation panchayats

1950	The Constitution of India comes into force on 26 January; Directive Principles of State Policy mention village panchayats as 'units of self-government' (Art.40)
1952	Community Development Programme starts on 2 October
1957	Balwantrai Mehta Committee, appointed in January, submits its report in November
1958-60	Several state governments enact new Panchayat Acts
1959	Jawaharlal Nehru inaugurates the first generation panchayat at Nagaur in Rajasthan on 2 October
1964-77	Decline of first generation Panchayati Raj Institutions

Second generation panchayats

1978	Asoka Mehta Committee on working of panchayats, appointed on December 1977, submits its report August 1978
1983	Karnataka government enacts new PR Act
1984	Hanumantha Rao Committee on district level planning, appointed by Planning Commission in 1982 submitted its report
1985	Karnataka PR Act receives President's assent; comes into force
	G.V.K. Rao Committee on administrative aspects of rural development, appointed by Planning Commission in March, submits its report in

Comptroller and Auditor General of India audits the release and use of the local bodies grants. Government of India may take appropriate decision about withholding grants of a State if the Comptroller and Auditor General of India reports that the State has

- either not transferred the grants to the local bodies or has
- diverted the funds or
- that local bodies have not been able to give priority to water supply and sanitation for the rural areas and on schemes of solid waste management in the urban areas.

Critical analysis

Panchayati Raj in India, in terms of the size of the electorate, the number of grassroots institutions (about 2.4 lakh), the number of persons elected – 36 lakh in the Panchayats and Nagarpalikas, higher than the entire population of Norway – and in terms of the empowerment at the grassroots of women, is the greatest experiment in democracy ever undertaken anywhere in the world.No less than 10 lakh women have been elected to our Panchayati Raj Institutions, constituting some 37 per cent of all those elected and rising to as high as 54 per cent in Bihar which has 50 per cent reservations for women.

While many women have benefited because of the caste and other reservations, 'as many as 50,000 women have been elected without any reservation or quota provisions. They have contested elections against menfolk and won . SC/ST/OBC groups have been given reservation. Elections gave been held in all the states; State Finance Commissions have been constituted. However, there are problems

- Powers have not been devolved adequately as the Devolution Index shows
- lack of adequate financial resources to carry out the administration. Grant-in-aids is the major component of the PRIs revenue. This need to be supplemented with the adequate collection of taxes by the PRIs and a compulsory transfer of some of the state government's revenue on the recommendation of the state finance commission

- lack of training programmes for the participants of the PRIs
- domination of the bureaucracy over the PRIs. Bureaucracy continues to be the vehicle for implementation of various development schemes..
- Various parallel bodies such as the DRDA have undermined the importance of the PRIs. Either they have to be disbanded or made accountable to the PRIs
- professionalization of audit functions is another area where the PRIs lack.

- Finances (funds devolved)
- Functionaries (manpower available)

(*Three Fs*)

The index is a first attempt at quantifying the environment for effective decentralization.Each of the three dimensions is equally important in achieving effective decentralization of governance in rural India. It identifies the 'mandatory' elements of devolution and assigns a score of zero when they are not complied with. Based on the values of various indicators for any given state, it is possible to calculate a score for each sub-index as well as for an overall Devolution Index. The value of each state will indicate how far away the state is from an ideal performance.

TFC

TFC recommendations of local body grants and inter-state distribution

The Twelfth Finance Commission (TFC) was required to make recommendations on the measures needed to augment the Consolidated Funds of the States to supplement the resources of the Panchayats and Municipalities on the basis of the recommendations of the State Finance Commissions (SFCs). TFC has given recommendations on this term of reference, which have been accepted by the Union Government.

The Twelfth Finance Commission (TFC) has recommended grants amounting to Rs.25,000 crores payable during the period 2005-10 (Rs. 20,000 crores for Panchayats and Rs.5,000 crores for Municipalities) to States for Rural and Urban Local Bodies. The **inter-State allocation** recommended by TFC for Panchayati Raj Institutions (PRIs) and for Urban Local Bodies (ULBs) is based on factors and weights assigned by the TFC as under:

Criterion	Weight (per cent)
i) Population	40
ii) Geographical area	10
iii) Distance from highest per capita income	20
iv) Index of deprivation	10
v) Revenue effort	20
of which (a) with respect to own revenue of states	10
(b) with respect to GSDP	10

TFC felt that grants for PRIs should be used to improve the service delivery by the Panchayats in respect of water supply and sanitation.

j. Control money lending to STs
k. Control institutions and functionaries in all social sector.

PESA recognizes the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources – land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas and ushers them in a new phase of self governance.

Panchayatraj and Rural Development

PRIs which are local self government institutions enable rural development planning in an effective way. The momentum to empowers PRIs and give them Constitutional status began after the JRY programme was started. Greater involvement of Panchayats was institutionalized with the launching of the Jawahar Rozgar Yojana (JRY) in 1989-90, under which there was a substantial flow of funds to village Panchayats. In addition, Village Panchayats were required to prepare an inventory of assets and give details of the projects taken up under JRY. The works to be taken up were decided in the meetings of the Gram Sabha.

NREGA is being implemented by the Panchayats. Panchayats have a critical role in the operationalization of the NRHM. PRI participation can be achieved through the following stages.

- Participation in decision making
- Participation in implementation of development programmes and projects;
- Participation in monitoring and evaluation of development programmes;
- Participation in sharing the benefits of development
- Participation in the popularization of the programme

Devolution index

The progress in effective decentralisation of governance under the Panchayati Raj Act is not uniform across the states. The Union Ministry of Panchayati raj (MoPR) asked the National Council for Applied Economic Research (NCAER) to develop a working Devolution Index to measure how states are performing in devolution of governance. The index ranks the performance of individual states on identified basic action points.

NCAER submitted an interim index in 2006 which has since been subject to further refinement.
The Devolution Index essentially assesses three dimensions

- Functions (types of work under Schedule XI of the constitution)

- DPC compiles information from ZP and ULBs to form Draft Development plan (DDP)

DPCs play an integrative role between Panchayats and ULBs. They help provide the common platform for integrating rural and urban plans. They help identify planning projects of common interest and spread across both rural and urban areas, which can be jointly planned and funded. This may include extending link roads from rural areas to urban markets, or extending water supply and sewerage infrastructure to urban areas.

Thus, DPCs have a crucial role in district planning. In fact, the role is becoming more important. For example, in the Backward Region Grants Fund (BRGF) scheme. BRGF was approved by the Union Cabinet in 2006. It is a fund available to 250 selected backward districts with the purpose of catalysing development by providing infrastructure, promoting good governance and agrarian reforms, and capacity building for participatory district planning. In order to avail BRGF funds, states are required to establish DPCs as per article 243ZD, which will consolidate plans prepared by PRIs and ULBs in the district.

PESA

The Parliament passed Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. The Fifth Schedule covers Tribal areas(scheduled areas) in 9 states of India namely Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chattisgarh, Orissa and Rajasthan.(Bihar had Scheduled Areas before the formation of Jharkhand but after the bifurcation, the tribal population in Bihar is insignificant)

PESA came into force in 1996. Under the Act, the Gram Sabha has been vested with powers for :-

a. Ownership of minor forest produce
b. Development plans approval
c. Selection of beneficiaries under various programmes
d. Consultation on land acquisition
e. Manage minor water bodies
f. Control mineral leases
g. Regulate/prohibit sale of intoxicants
h. Prevent alienation of land and restore unlawfully alienated land of STs
i. Manage village markets

- In some states the Chairperson / President / CEO of Zila Parishad or District Panchayat is the Chairperson of the DPC as well, for example, Kerala, Bihar, Karnataka, Andhra Pradesh, Rajasthan, Tamil Nadu and West Bengal.
- In some states the Minister-in-charge of the district or any other State Minister is the Chairperson, for example in Orissa, Gujarat, Madhya Pradesh, Chhattisgarh and Maharashtra. In Himachal Pradesh Cabinet Ministers of the State Government have been nominated as members and Chairpersons of DPCs.
- In Haryana the Deputy Commissioner (DC) of the District is the Chairperson of the DPC.

Functions, Role and Responsibilities of DPCs

The DPC is envisaged to play a nodal role in the district planning process by consolidating rural and urban plans prepared by the villages and towns in the district and then preparing a draft development plan for the district on the basis of the plans so received from within the district. DPC is thus crucial to the function of 'planning for economic and social justice'. DPC provides the vital link between rural and urban plans as well as sectoral plans.

As per Article 243 ZD, DPCs should also pay special regard to issues of common interest between Panchayats and municipalities, such as spatial planning, sharing of physical and natural resources, infrastructure development and environmental conservation.

Consolidation of rural and urban plans

Consolidation of rural and urban plans is one of the key tasks of the DPC and is also of great significance in the light of urban expansion into rural areas. The sequence to be followed in consolidation of rural and urban plans is broadly as follows:

- Gram Panchayats prepare Participatory Plans and communicate them to Intermediate Panchayat(Taluk, Mandal etc)
- Intermediate Panchayat compiles information sent by the GPs in the block and

along with its own information, prepares a Block Plan and sends to ZP

- ZP compiles information from Block Panchayats and along with its own information, sends to the DPC
- Urban Local Bodies send their plans to DPC

The amendment Act has not yet been extended to J&K

It further says that parliament may extend the provisions of this Part to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified, and no such law shall be `deemed ' to be an amendment of this Constitution for the purposes of article 368.

243-O bars interference by courts in electoral matters. It says that

- the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any court
- no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

DPCs district planning commission

DPCs should be constituted as per Article 243 ZD in all states except Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and the NCT of Delhi. All states must accordingly enact legislations for constitution of the DPCs and issue notifications bringing them into effect.

Composition

The DPC is generally composed of elected members of the local bodies within the district, both rural and urban, as well as some nominated members. The number of members varies with the population size of the districts- larger the population, more the members.. The ratio of members from Panchayats and ULBs is based on the ratio in which the population of the district is divided between rural and urban areas

The DPCs are to have at least four-fifths elected members as per Article 243 ZD. Members should be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district. The actual pattern, however, varies across states. Nominated members usually represent the State & Central Government agencies

Chairpersons

Three different patterns are observed among states:

- the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayat;
- the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

State Finance Commission - its composition, qualifications of its members and the manner in which they shall be selected ; and functions of the Commission are laid down by law by the State Legislature.

The Commission presents the report to the Governor who shall cause the recommendation together with an explanatory memorandum as to the action taken thereon ,to be laid before the Legislature of the State.

243J says that audit of accounts of Panchayats are done according to the law made by the Legislature of a State .

243K relates to elections to the Panchayats

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine.

The State Election Commissioner is removed like and on the like grounds as a Judge of a High Court . The conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission .

The provisions of this Part shall apply to the Union territories . President may, however, direct that it be applied with exceptions and modifications as he may specify.

243M says that the Act does not apply to Schedule VI Areas of Assam, Tripura, Meghalaya and Mizoram, State of Nagaland, hill areas of the State of Manipur for which District Councils exist and the District of Darjeeling in the State of West Bengal.

shall be referred for the decision settled in such manner as the Legislature of a State may, provide.

243G says that the Legislature of a State may confer the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level- Zilla, Taluk or Gram , subject to such conditions as may be specified therein, with respect to-

- the preparation of plans for economic development and social justice;
- the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H and 243-I. deal with the financial provisions. 243H says that the Legislature of a State may:

- Authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

243-I. deals with Constitution of Finance Commission to review financial position of the Panchayats. The Governor of a State shall, within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to-

(a) the principles which should govern-

- the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

It leaves it to the Legislature of the State as to how the Chairperson of a Panchayat at the village level shall be elected - direct or indirect election by the members of the Panchayat. However, the Chairperson of a Panchayat at the intermediate level or district level shall be elected by, and from among, the elected members the Panchayats- indirect election.

243D makes reservation compulsory for the Scheduled Castes and the Scheduled Tribes in every Panchayat in proportion to their population in the Panchayat. Such seats may be allotted by rotation to different constituencies in a Panchayat.

There should be reservation within reservation- that is, not less than one-third of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of seats in every Panchayat shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.

There is similar reservation for the posts of Chairpersons of Panchayats also.

Legislature of a State is free to provide for reservation in Panchayat or offices of Chairpersons in the Panchayats in favour of other backward classes. It is a discretionary power of the Legislature while reservation for women, AC and ST is mandatory.

243E relates to the duration of Panchayats, etc. It says that every Panchayat has a term of five years from the date appointed for its first meeting. It may be dissolved before the expiry of five years but a new Panchayat should be constituted before the expiration of a period of six months from the date of its dissolution on one condition: if the prematurely dissolved Panchayat has a remainder of life that is less than six months it is not necessary to hold any election for the dissolved panchayat to complete its original life term.

A Panchayat that is prematurely dissolved and reconstituted will last for the remainder of the term and not for the full five year term.

243F contains disqualifications for membership. It says that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified for the purposes the State Legislature . However, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.If any question arises as to whether a member of a Panchayat has become subject to any of the disqualification,, the question

- reservation of one-third of all seats in all panchayats at all levels for women, with the reservation for women applying to the seats reserved for SC/STs (Article 243D)
- indirect elections to the position of panchayat chairperson at the intermediate and district levels (Article 243C)
- reservation of the position of panchayat chairperson at all levels for SC/STs in proportion to their share in the state population (Article 243D)
- reservation of one-third of the positions of chairperson at all three levels for women (Article 243D)

Following are the discretionary provisions

- Transfer of powers and functions to Gram Sabha.
- Mode of election of chairperson of a panchayat at village level.
- Reservation of OBCs.
- To decide the taxes, duties, tolls and fees for which a panchayat shall be authorised.
- To make provision for maintenance of accounts and auditing of panchayats.

Details of the 73rd Act

Art.243 gives certain definitions

- Gram Sabha means a body consisting of the electorate of the village
- Intermediate level means a level between the village and district levels specified by the Governor of a State by public notification
- Population means the population as ascertained at the last preceding census of which the relevant figures have been published;
- Village means a village specified by the Governor by public notification

243A. says that the powers exercised by and the functions performed by Gram Sabha are devolved to them by State Legislature. Gram Sabha has the responsibility to take decisions in common public interest, and to monitor the performance of elected representatives and government officials.

243C which talks of the Composition of Panchayats gives State Legislature power to make laws on the association of the following in the Panchayat bodies:

- members of the House of the People and the members of the Legislative Assembly of the State in the area
- members of the Council of States and the members of the Legislative Council of the State

State in the constitution and composition of Panchayats at various levels starting from the village upto the district in different states, as also the manner of election of the office-bearers. Even in terms of functions entrusted to the PRIs at different levels, the position varied considerably. One important feature to be noted was the association or MPs and MLAs with these institutions and whether they had or did not have voting rights etc. Therefore, a national model legislation was needed

It lays down a broad national pattern with sufficient regional flexibility; and there was federal consensus on such an initiative. This Act added Part - IX to the Constitution of India. It is entitled as 'The Panchayats' and consists of provisions from articles 243 to 243-o. The Act gave Constitutional shape and teeth to Article 40 of the Constitution .

Giving the PRIs Constitutional status meant that in case the States did not comply with the provisions, judicial enforcement would be an option.

Since local self government is a State List item, states had to enact the PRI legislation for the 73rd Amendment Act to come into force. Local variation was permitted. In the 73rd Act . States were given one year in which to conform to the Act- one year from the date when the 73rd Amendment act was made. All states either introduced new legislation or amended existing legislation, to bring the state laws into line with the provisions of the 73rd Act.

Mandatory and discretionary powers

The Act mandatory(compulsory) and discretionary(voluntary) provisions. The distinction between the two is that mandatory provisions contain the word "shall. In the discretionary provisions, on the other hand, the word "may" is used.

Important mandatory provisions are

- the establishment in every state (except those with populations below 2 million) of panchayats at the village, intermediate and district levels (Article 243B)
- direct elections to all seats in the panchayats(lowest elective tier) at all levels (Article 243C)
- compulsory elections to panchayats every five years
- If a panchayat is dissolved prematurely, elections must be held within six months, with the newly elected members serving the remainder of the five year term (Article 243E)
- reservation of seats in all panchayats at all levels for SC/ST (Article 243D)

- The Hanumantha Rao Committee (1984) on District Planning has enumerated the following factors for peoples participation at local level:
- To take note of the felt needs of population;
- To mobilise local resources for plan implementation;
- To decrease the level of conflict during the planning the implementation stages;
- To increase the speed of implementation by securing the co-operation of the people;

Committee to Review the Existing Administration Arrangments for Rural Development and Poverty Alleviation Programmes -G.V.K. Rao Committee- was set up by the Planning Commission in 1985. It recommended for the revival of Panchayati Raj institutitons and highlighted the need to transfer powers to democratic bodies at the local level . The two important suggestions that this committee made were:

- That the 'district' should be the basic unit of planning and programme implementation and
- Zilla Parishad could, therefore, become the principal body for the management of all development programmes which can be handled at that level.

The Government of India set up in 1986 L.M. Singhvi Committee to prepare a concept paper on the revitalisation of the Panchayati Raj institutions. It recommended that the Panchayati Raj should be constitutionally recognised, protected and preserved by the inclusion of a new chapter in the Constitution.It also suggested a constitutional provision to ensure regular, free and fair elections for Panchayati Raj institutions.Accepting these recommendations, the Union Government headed by late Rajiv Gandhi brought in the Constitution 64th amendment Bill which was passed by the Lok Sabha in 1989. It could not be enacted as it was not approved by the Rajya Sabha.

Panchayati Raj under the 73rd Constitution Amendment Act

P.V. Narasimha Rao government enacted the 73rd Constitution Amendment Act , which was passed by Parliament in 1992 and became effective on 24th April 1993 after the required number of State Legislatures ratified the same. The need for ratification was felt as local self Government is a State List item and the legislation of the Union parliament was vulnerable to judicial challenge even though the item is a Directive principle of State Policy.

The need for model national legislation is as follows:Legislations were passed by different States setting up PRIs. There was considerable variation from State to

However, by the mid-sixties , Panchayati Raj Institutions (PRIs) lost steam as they fell victim to a growing tendency of centralization. One reason for the weakness of the local self government institutions was that state governments saw them as rivals, rather than complements. Hence, Panchayats were not empowered with adequate functions and finances. These bodies were frequently superseded for long periods by state governments. But the need for the PRIs as a mechanism for democratic self-government and provider of services to local communities and as is undeniable and universally accepted. As the developmental interventions of the Government increased, the urgency to reform the PRIs and strengthen them was felt equally.

Therefore, in 1977, the Janata Government set up Ashok Mehta Committee to review and report on the PRIs. It suggested change in the Balwant Rai Mehta pattern of PRIs. The three- tier system of PRIs was to be replaced by a two- tier i.e. Zilla Parishad at the district level and Mandal Panchayat (consisting of a number of villages) below it; five year term should not be cut short; district should be the first point of decentralization; political parties should be allowed to participate as they are ubiquitous; social audit should be provided for; compulsory powers of taxation for the panchayats so that they become truly autonomous creation of Nyaya Panchayats; reservation for SC/STs;state minister for panchayats; significant role for the NGOs; training for the elected representatives;

The panchayti raj institutions, which came into being in certain states after the Ashok Mehta Committee's recommendations, could be considered the second generation Panchayats.The second generation Panchayats raj institutions can be said to have started when the west Bengal Govt. took the imitative in 1978 to give a new life to it's Panchayats on the lines of the Ashok Mehta Committee's recommendations, west Bengal, Karnataka, Andhra Pradesh and Jammu & Kashmir either revised their existing panchayat raj acts or passed new acts based on Ashok Mehta Committee report. These states adopted the recommendations to suit their conditions

Dantwala Committee

The Working Group on Block level Planning headed by Prof. M.L.Dantwala submitted a report in 1978. It identified the remoteness of planning agencies at the District Level from the grassroots as the major weakness of local area planning.. Dantwala committee made the recommendation that Block level planning, (the same area which was covered by Community Development Blocks) should be the appropriate sub- state planning level for proper appreciation of the felt needs of the people.

Balwantrai Mehta Committee (1957) was set up to review the working of the CD programme. It observed that lack of people's participation stands at the root of the failure of the CD programme.

The Committee suggested that a 'set of institutional arrangements' was required not only to secure people's participation but also to make it effective and meaningful. It suggested 'democratic decentralization' and village reconstruction through the introduction of a three tier system of panchayats. The committee felt that democratic government composed of, controlled and directed by popular representation of the local areas is necessary at the local level.The Report strongly recommended that training requirements of Panchayat personnel should be given high priority.

As per the Balwant Rai Mehta Committee recommendations, Panchayati Raj was launched on 2nd October 1959 in Nagaur district of Rajasthan.Andhra Pradesh and many state governments followed Rajasthan.

Due to the interest generated by the panchayati raj institutions several states set up committees to assess their working and to recommend measures for improvement. The states and committees were:

- Andhra Pradesh

Purushottam Pai Committee, 1964
Raachandra Reddy Committee, 1965
Narasimhan Committee, 1972

- Karnataka

Basappa Committee, 1963

- Maharashtra

Naik Committee 1961
Bongiwar Committee, 1963

- Rajasthan

Mathur Committee 1963
Sadiq Ali Committee 1964
G.L.Vyas Committee 1973

- Uttar Pradesh

Govind Sahai Committee 1959
Murti Committee, 1965.

But, the Panchayats formed under these Acts were not democratic institutions as the government nominated most of their members.

Gandhiji and Dr.Ambedkar

Mahatma Gandhi and Dr.BR Ambedkar differed on the issue of panchayats. Dr.Ambedkar argued in the Constituent Assembly that caste oppression through the hierarchical order would not be weakened by Panchayats. Gandhian members in the Assembly differed with him, predictably.Dr. B.R. Ambedkar however accepted the ideal of Gram Swaraj through Panchayati Raj institutions to be placed in the Constitution of India in Part IV through Directive Principles of State Policy.

Reflecting the long history of Panchayats in India, the framers of the Constitution provided for Village Panchayats under the Directive Principles of the Constitution in Article 40 requiring that "the State shall take steps to organise village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government".

After Independence (1947), Prime Minister Nehru introduced the Community Development Programme (CDP) on the birth anniversary of Mahatma Gandhi (October 2) in 1952. The CDP was followed by the National Extension Service in 1953. NES blocks represented the lowest rung of administration- closest to the people. The two programmes did not succeed as they were controlled by bureaucracy and participative development was not possible. Union Government set up Balwant Rai Mehta Committee in 1957 to review the functioning of the CD and NES Programmes.

CD Programme and Balwant Rai Mehta Committee

Community development programme was introduced in 1952 in India. Under community development, people of a community organize themselves for planning and action; define their individual needs and solve their problems; execute their plans with a maximum reliance upon community resources; and supplement these resources, when necessary with services and material from Governmental and non-Governmental agencies outside the community. CD programmes are the essence of decentralization which refers to ensuring the participation of people at the lowest level in self-governance and socio-economic development. It is an example of all around and multi- level democratization of governance.

1957

Panchayatraj Institutions

The institution of village Panchayat was developed earliest and preserved perhaps longest in India. The word Panchayat is derived from the word "pancha" literally means assembly (*yat*) of five(*panch*) elders of the village who enjoy a respectable position in the village. They are chosen to be members of assemblies to settle village problems , disputes and so on according to village customs

India's federal democratic structure has three levels of governance - national or federal, state or regional and the grassroots level called the Panchayati Raj and Nagar Palika systems. Panchayati Raj system covers the village, the tehsil and the district,;and the Nagar Palika system serves towns and cities.

Panchayati Raj is a three-tier structure of democratic institutions at district, block and village levels namely, Zila Prishad, Panchayat Samiti and Village Panchayats respectively; is a system of local self government aimed at securing gramswaraj; is based on the philosophy of decentralization ; enables participative governance;is a suitable institutional arrangement for achieving rural development through people's initiative.

Panchayats as local self government institutions and vehicles of development have been part of the Indian system of governance since ancient times.In ancient India, Panchayati Raj system was in vogue during the Chola period. During the British rule, local self-government was given a statutory base.

In the modern period, Lord Mayo's Resolution of 1870 initiated a the political and administrative process of decentralization by attempting to enlarge the powers and responsibilities of local self government institutions.

Lord Ripon's Resolution on local self-government laid the foundation of local self-government in rural India. The 1882 Resolution was important for two reasons

- it set out general principles for development of local institutions in the future and
- provided the rationale behind functions of local bodies.

The Ripon Resolution was passed in 1885 as the Bengal Local Self-Government .C.E.H. Hobhouse, Chairman of the Royal Commission on Decentralization(1907) , viewed that the local governance should begin at the village level and not district. Montague-Chelmsford Reforms 1919 made local self-governance a part of the 'transferred subject' via the newly enacted scheme of Dyarchy. Various provinces passed the village Panchayat Acts particularly in 1919 and thereafter.

In 2011, the government notified the Intermediary Guideline Rules which required all intermediaries to declare certain terms and conditions of use. Users are required to agree not to post or transmit content that violated certain norms and so on. The Rules, according to critics, may have exceeded the remit provided by the Act in its delegated powers.

The Civil Liability for Nuclear Damage Rules 2011

The principal Act was passed in 2010, and limited the liability of operators of nuclear power plants in case of an incident causing damage. Operators also had the right to recourse- sue the supplier , under three conditions: if there was a contract providing such right; if there was a clear defect in the material supplied; if the damage was intentional. Rules, it is held, dilute the liability of the supplier.

The Airport Authority of India (Major Airports) Development Fees Rules

The Act permits AAI to levy development fees in order to upgrade or develop new airports. In 2009, the central government had approved a development fee to be levied by the Delhi International Airport Limited to levy a development fee but this permission had been struck down by the Supreme Court. The Court ruled that the Act permitted such a fee only if it was determined by the Regulatory Authority (and not by the government). These Rules, issued in 2011, permit the AAI to authorise any person to collect such fees if they are approved by the Airports Economic Regulatory Authority.

There are statutory motions to either annul or amend these rules.

The Role of Parliament

The Parliament, while delegating the power to make Rules, has the duty to examine them and ensure that they further the objectives of the Act. Now that some MPs have moved motions on these three Rules, the Parliament should have detailed discussion and careful examination of their implications. For example, other Rules notified under the Information Technology Act have implications for the protection of data kept in a fiduciary capacity, as well as privacy of cybercafé users. Standing committees which examined Bills before they were passed may be in a good position to review the Rules and Regulations related to each Act. It is only by exercising these oversight functions that Parliament can ensure that the final law (including Rules) reflect its intent.

Criticism

The criticism is that delegated legislation erodes parliamentary authority as it is law made by the executive.

Also, it may potentially be used by the Government in ways which Parliament has not intended when it conferred the power. This is particularly the case where an Act empowers Ministers to use delegated legislation to amend mother laws.

Delegated legislation may also be abused to remove controversial matters (for example, immigration rules) from the purview of Parliament and putting them under the control of the Government.

However, to minimise any risk that delegating powers to the executive might undermine the authority of Parliament, such powers are normally only delegated to authorities directly accountable to Parliament.

In order to understand how delegated legislation actually fits into an Act of the Parliament, the folloing illustration will help.

Recent controversies 2012

The Rajya Sabha admitted motions to amend Rules prescribed under three Acts of Parliament: Information Technology (Intermediary) Rules 2011, Civil Liability for Nuclear Damage Act 2010 and the rules framed in 2011 and Rules on airport development fee issued under the Airports Authority of India Act.

Act and Rules

What are 'Rules'? Parliament and state legislatures pass Acts, which provide the broad framework for regulating any activity. Some details may require frequent fine-tuning, and it may be impractical to amend the Act each time such changes need to be made. For this purpose, the Act has provisions that may authorise the central and state governments (and regulators such as SEBI and TRAI) to prescribe certain details through Rules and Regulations. These are called subordinate legislation. Parliament has the authority to review these Rules and modify or repeal them. Indeed, each House of Parliament has a committee to examine subordinate legislation.

Information Technology (Intermediaries) Rules 2011

The Information Technology Act was passed in 2000 in order to create a framework for e-commerce. In 2008, this Act was amended. Among other things, the Amendment Act exempted intermediaries (such as ISPs, website hosts, ecommerce portals, email providers etc.) from liability for any material that was hosted or transmitted using their resources if they did not exercise any control over the content. They were also required to remove any illegal content if it was brought to their attention.

- whether the order involves expenditure from the Consolidated Fund of India or the public revenues;
- whether the order appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- whether there appears to have been unjustifiable delay in its publication or laying the order before Parliament

In case any order is found not to be in accord with the provisions of the Constitution or of the Act under which it is made, the Committee recommends that the respective rules and regulations be suitably amended.

Advantages and disadvantages

Delegated legislation has a number of benefits.

Firstly, it saves time of Parliamentary so that the august body can focus more on the broader policy aspects.

Secondly, it enables technical matters to be addressed by experts professionally: detail of a public sector pension scheme, precise design of traffic signs etc

Delegating legislation allows law to be made more quickly than parliament, which is vital for times of emergency. Parliament takes longer as it does not sit all the time and its procedures is generally complex due to the several stages each Bill has to pass through.

Delegated legislation can also be amended or revoked relatively easily, so that the law can be kept up to date and so that the law can meet future needs that arise such as areas concerning welfare benefits, illustrating a great deal of flexibility in the system.

Besides, delegated legislation is useful for a range of purposes: fees payable for a government service; setting the date an Act of Parliament will come into force and other similar details which require administrative discretion

Thus, delegated legislation makes the law apply flexibly to dynamically changing circumstances .

Control of legislature on delegated legislation

While subordinate legislation is unavoidable, it is equally important to see how it can be reconciled with the democratic principles or parliamentary control. Legislation is an inherent and inalienable right of Parliament and it has to be seen that this power is not usurped nor transgressed under the guise of what is called subordinate legislation.

Committee on Subordinate Legislation

Amongst the mechanisms evolved by the legislature to exercise control over the delegated legislation, the most important is the constitution of the Committee on Subordinate Legislation. Lok Sabha and Rajya Saha committees on Sub-ordinate Legislation function as the watchdog committees over administrative legislation.

The Committee keeps a watch on the executive so that it does not exercise arbitrary, unguided and unspecified discretion under any rule. The Committee seeks to ensure that the jurisdiction of the courts is not compromised by the application of rules and regulations and that no fees are levied which are not duly authorized by law. The Committee insists that whenever discretionary powers have been conferred on an authority, guidelines for the exercise of those powers should be laid down in the rules. Where the rules seek to arm the authorities with powers which are of a substantive character, the Committee makes sure that such powers originate from the statute rather than from subordinate legislation.

Functions of the Committee on Subordinate Legislation of the Indian Parliament are very comprehensive as seen under:

It scrutinizes each rule, regulation, bye-law, scheme or other statutory instrument (referred to as the 'order') to consider:

- whether the order is in accord with the provisions of the Constitution or the Act based on which it is made;
- whether the order contains matter which in the opinion of the Committee should more properly be dealt within an Act of Parliament;
- whether the order contains imposition of taxation;
- whether the order directly or indirectly bars the jurisdiction of the court;
- whether the order gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;

Most of the enactments provide for the powers for making rules, regulations, bye-laws or other statutory instruments which are exercised by the specified subordinate authorities.

- Orders are usually made by Ministers. An Order is an exercise of executive powers, for example to create or dissolve a public body. Regulations are also usually made by Ministers. Rules set out procedures, for example rules governing court procedures, or the way in which the government office deals with applications. Rules may be made by Ministers or, if specified in the parent Act, a senior official. Directions are a means by which Ministers give legally binding instructions to a public body about the way it exercises its functions.
- By-laws are laws of limited application (usually restricted to certain places) made by local authorities .

Controls over delegated legislation

Limitations on subordinate legislation are that it can not impose any taxation; bar judicial review; can not grant retrospective application; can not authorize expenditure from the Consolidated Fund of India and public revenues.In order to see that these limitations are not transgressed, there are judicial as well as legislative controls.

Judicial Control over delegated legislation is on the basis of two grounds

- Substantive ultravires
- Procedural ultravires

Substantive ultravires is where the delegating statute itself is unconstitutional, for example, being violative of a fundamental right.

Sometimes, the Parliamentary Act may be constitutional but the subordinate legislation may be unconstitutional as it has overstepped the jurisdiction granted to it by the parent Act.

Procedural ultravires

Where the executive authority does not comply with the rules, for example, 'previous publication' or laying the rules made before parliament etc. Also, if the state Government is required to make rules with the concurrence of the Central Government, if it does not do so, it is ultra vires procedurally.

Delegated Legislation

It is also called subordinate ,ancillary, delegated , administrative ,secondary or Quasi-legislation. In modern times, it is not always possible for the legislatures to make laws providing every detail. In view of newer areas emerging, law-making today has become not only time consuming but also an increasingly complex and technical affair. Legislature can lay down the policy and purpose of the legislation and leave it to the executive, experts and technocrats to provide for working details within the framework of the enactment by way of rules, regulations, bye-laws or other statutory instruments.Provisions made for delegated legislation aim at flexibility, elasticity, speed, and opportunity for experimentation. Emergence of modern welfare State and the complexity of law making are the primary causes for the delegated legislation. Subordinate legislation contains details necessary to ensure that the Act will operate successfully.

'Subordinateness' in subordinate legislation has two dimensions:

- Executive which is subordinate to the legislature and
- nature of the legislation itself.

Delegated legislation is ancillary and cannot replace or modify the parent law nor can it lay down details which are contradictory to substantive law. If subordinate legislation tends to replace or modify the provisions of the basic law or attempts to lay down new law , it is struck down as ultra vires.

Factors Responsible for the Growth of Delegated Legislation

a. In India, legislature meets for about 100 days in a year. There is pressure on its time. Therefore, it legislates on the broad principles and leaves marginal and minor details- essentially operational- to the Executive
b. Legislation is increasingly becoming technical Intellectual Property Law, biotechnology, genetically modified organisms, tax laws etc. Parliament is not expected to have knowledge over these matters

b. Democratisation of rule-making process by providing for "consultation with affected interests".
c. Further, socio-economic schemes being experimental in the initial stages, practical difficulties cannot be foreseen by the broad law. For example, NREGA
d. It can help in adaptability of the law for future conditions without formal legislative amendments.

Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Note: The North Eastern states such as Assam, Meghalaya, Tripura and Mizoram are covered by the Sixth Schedule and not included in the Fifth schedule.

Sixth Schedule

The Sixth Schedule lays down details of the mechanism and institutions necessary for governing the autonomous districts' in Assam, Meghalaya, Tripura and Mizoram. They are directly under the control of the Governor who is responsible for their administration. The Schedule provides for constitution, powers and functions of District Councils and Regional Councils in these autonomous districts.

The Councils are vested with legislative powers on specified subjects and are allotted certain sources of taxation. They have also been given powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc. Autonomous District Councils (ADCs) are now in existence in the states of Assam, Mizoram, Tripura and Meghalaya. For example, the three sister Councils of Meghalaya viz. Khasi Hills Autonomous District Council, Jaiñtia Hills Autonomous District Council and Garo Hills Autonomous District Council.

For the purpose of promoting the welfare of schedule tribes or raising the level of administration of scheduled areas, Indian constitution provides funds under. Article 275 (1).

The autonomous districts are the mechanism to safeguard their traditional heritage, customs, practices usages and economic security while conferring on them Executive, Legislative and Judicial powers along with development and financial powers and functions.

Sixth schedule envisage the powers of the ADCs within the autonomous areas, to make laws of land, management of forests, except reserved forests, regulation on trade by persons not being local schedule tribes, appointment of traditional chiefs and headmen, inheritance of property, marriage, divorce, social customs, establishments and maintenance of primary schools, markets, taxation, issue of lease for extraction of minerals etc.The District Councils in Khasi and Jaiñtia Hills have their own rules for the administration of justice under which certain classes of courts have been provided .

List of States with Schedule V Areas in India

1. Andhra Pradesh
2. Jharkhand
3. Gujarat
4. Himachal Pradesh
5. Madhya Pradesh
6. Chhatisgarh
7. Maharashtra
8. Orissa
9. Rajasthan

List of States with Scheduled Tribes but not Fifth Schedule Areas [*Excluding Sixth Schedule States*]

1. Bihar
2. Goa
3. Jammu and Kashmir
4. Karnataka
5. Kerala
6. Sikkim
7. Tamil Nadu
8. Uttar Pradesh
9. West Bengal
10. Andaman and Nicobar Islands
11. Dadra and Nagar Haweli
12. Daman and Diu
13. Lakshdweep

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad,Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Devgarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena

The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Such regulations may, as mentioned above, prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; regulate the allotment of land to members of the Scheduled Tribes in such area; regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

In making any such regulation as said above, the Governor may repeal or amend any Union or State law.

Governor can make such regulations only after consulting the Tribes Advisory Council for the State.

All such regulations will have effect only after being submitted to and accepted by the President of India.

President of India and Scheduled Areas

"Scheduled Areas" means such areas as the President may declare to be Scheduled Areas. The President may at any time direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area. He may increase the area of any Scheduled Area in a State after consultation with the Governor of that State. He may alter boundaries of any Scheduled Area.

The regulations made by the Governor come into effect only when they are accepted by the President.

Governor, annually or earlier has to submit reports to the President of India as to the administration of the Areas.

Amendment of the Schedule

Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule. No such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Similarly, the Sixth Schedule deals with constitution of autonomous district councils and autonomous regions specifying for them legislative, judicial, executive, developmental and financial powers and functions.

Under Art. 275, grants in-aid is provided to o specified States covered under *Fifth and Sixth* Schedules of the *Constitution*.

Fifth Schedule and the powers of the Governor

The Fifth Schedule empowers the Governor of the concerned State to modify, annul or limit the application of any law made by Parliament or the State legislature to these Tribal areas. The Governor is empowered to make regulations for the good governance of these areas. He may also make regulations

- Prohibiting or restricting transfer of land by or among members of STs;
- Regulate allotment of land to members of the STs and
- Regulate business such as money lending in such areas.

To do this he can repeal or amend Central or State laws and make regulations along the guidelines mentioned above.

The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas

Tribes Advisory Council

There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State : Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

The duty of the Tribes Advisory Council is to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor

The Governor may make rules prescribing or regulating, as the case may be the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council etc.

Laws applicable to Scheduled Areas

The Governor may direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

Fifth and Sixth Schedules

The Fifth and Sixth Schedules of the Indian Constitution provide protection to tribal populations on account of their cultural distinctness and economic disadvantages. The Fifth Schedule designates 'Scheduled Areas' in large parts of India in which the interests of the 'Scheduled Tribes' are to be protected. The " scheduled" or "agency" areas have more than 50 percent tribal population. The Sixth Schedule applies to the administration of the states of Assam, Meghalaya, Tripura and Mizoram in the North-east. This schedule provides for the creation of autonomous districts, and autonomous regions within districts as there are different Scheduled Tribes within the districts.

Fifth Schedule of Indian Constitution

It has provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes .

The major features of the Fifth Schedule are

- Provides for Tribes Advisory Council
- Governor's powers to adapt laws passed by Parliament and State Legislatures to suit these areas
- making regulations for Scheduled Areas, and
- extension of the executive power of the Union Government to the giving of directions to a State for administration of Scheduled Areas.

Under the Fifth Schedule, the important part is the institution of Tribes Advisory Council . The TAC consists of three-fourths members who are Scheduled Tribe MLAs in the State. TAC is a constitutional body, being a part of the Fifth Schedule.

The State Governor can make special provisions for the administration of Scheduled Areas besides waiving or amending any existing law considered detrimental to tribal interests or in conflict with their traditional values and culture.

The Schedule also makes the states responsible for promoting the educational and economic interests of the tribals and to protect them from social injustice and exploitation.

The Central Government provides special financial assistance to the states under Article 275 for implementing schemes for the development of scheduled tribes.

high as 80 per cent in some projects. Governments have little insight into the financial details of these projects, as they are implemented by private companies.In many infrastructure projects, private companies increase user charges, but the logic behind the increase is never shared with the Government. The new powers will help in unravelling the reasons behind the hike.

Another significant step is the CAG's move to audit the District Rural Development Agency (DRDA), a State government body present in all districts.

The financial dealings of the DRDA have always been outside the purview of CAG audit, as DRDA is registered as a society under the Indian Societies Registration Act of 1860. Now, the CAG is keen on auditing the books of DRDAs as very large sums of money for rural development are sent to them.

Separation of accounts from audit

Compiling accounts and auditing the same are related but usually the two functions are combined under a single department primarily due to reasons like the two functions are related and also to save money.

From time to time, however, attempts have been made to separate accounting from auditing as in the case of railways, defence etc. In 1971, the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act was passed, which visualised the need for separating accounts from audit.It empowered the President, after consultation with the CAG to divest the Comptroller and Auditor General of the responsibility of compiling the accounts of any department of the Union Government. A scheme for the separation of accounts from audit was approved by the Government of India in 1975. Parliament amended the Comptroller and Auditor General's (DPC) Act 1971 to relieve the CAG of the responsibility of compiling accounts of Ministries Departments of Government of India. He, however, still performs the accounts and audit functions in each state.

The justification to combine the two functions of audit and accounts is two fold-accounting and audit functions are interrelated and the economy that it results in. The need to separate the two is to ensure greater efficiency and specialization.

administrative audit. Some departments like police, customs etc have some money authorized for secret service.

- CAG conducts audit as per the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. At the time of this legislation, concepts like public private partnership (PPP) were non-existent. Rules have not undergone significant change and CAG does not have the power to audit public-private-partnership (PPP) investments
- The Act governing the CAG does not provide for auditing funds that are given to an NGO or elected local bodies. CAG can seek the direction and permission of the Governor of a state to audit the local bodies and panchayatiraj institutions. Thus, CAG does not have full authority to audit them.

Articles 243J and 243Z of the Constitution state that the State Legislature "may, by law, make provisions with respect to the maintenance of accounts by the Panchayats/Municipalities, and the auditing of such accounts." However, states have not responded well to this statutory provision. In most of the States, the Examiners (Local Funds Accounts), functioning under the Finance Department, audit the accounts.

Need for more powers to CAG and the Reasons

Since the 1971 Act was passed, many changes have taken place. 73rd and 74th amendments to the Constitution have been adopted, adding a layer of decentralised governance — and hence expenditure management — to the institutions of the state. Liberalisation of Indian economy is another development and has meant public money is increasingly utilised in joint ventures and public-private partnerships. Because of lack of mandate, the CAG feels unable adequately to audit this vast area of public economic activity. Civil society is gaining space and the role of NGOs is increasing.

Comptroller and Auditor General of India (CAG) has written to the Centre seeking to bring non-governmental organisations (NGOs), public-private partnership (PPP) projects and the District Rural Development Agency (DRDA) under its purview.

Some NGOs get funding from the Government and therefore, they should be open to audit by the CAG.The Government knows nothing about their fund utilisation yet they continue to get money from the government. Plus they get money from foreign sources, whose identity is unclear. The stalling of Koodanmulam nuclear power plant in Tamil Nadu recently by NGOs brought the question to the fore once again.

The CAG also wants to audit of projects which are being built on the PPP model . In these projects, the Government's equity is less that 49 per cent. But if the value of land provided by the Government for the project is added, then it can shoot up to as

conserve and protect this scarce resource more effectively. CAG has done EA for Mumbai Port Trust, Tiger Parks etc.

CAG and Internal Audit

Internal auditing is an independent, objective evaluation of a body designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve an organization's effectiveness and efficiency. Many organization engage internal auditors.

In recent years, there has been a debate that the CAG should go in for the internal audit in a rigorous way as it employs many thousands of people and has huhe budget annually.The importance of its work also means that it be effective and efficient.

The government wants the audit CAG's expenditure. Currently, there is no independent audit."

CAG needs to be audited, but that doesn't mean loss of ndependence of the institution is lost. Supreme Court and Parliament are audited by the finance ministry, but they are independent institutions.

Recently, former comptroller and auditor general V.K. Shunglu, who headed the committee that investigated alleged irregularities in the 2010 New Delhi Commonwealth Games, raised the issue of auditing CAG. Shunglu had recommended an external audit of the auditor under the supervision of Parliament's public accounts committee.

CAG currently does not have a dedicated internal wing to audit its functioning. However, it conducts an annual audit by a senior officer and is currently undergoing an external audit by the Australian National Audit Office.CAG had undergone a similar exercise in 2003, which was conducted by the UK's National Audit Office. The findings of these reports are not available in the public domain.

There is a need for a performance audit of CAG, in terms of the internal guidelines, audit mechanism, etc., according to experts.

There are following limitations on the powers of CAG

- its report is post-facto- that is, after the expenditure is incurred and has only prospective value in improving systems and procedures
- secret service expenditure is outside its audit purview(which is incurred in cultivating informers and on collecting data on intelligence, etc. on duty evasion, anti social activities, smuggling activities, etc) and comes within

the prescribed procedures and disregarded "canons of financial propriety" leading to loss of precious money that would otherwise have gone into government coffers.

Efficiency Audit

Efficiency audit is a the audit, which ensures that money invested yields optimum results. The main purpose of efficiency audit is to ensure that

- that investment is properly prioritized and channeled into most profitable lines
- there is most profitable utilization of investment

Performance Audit

Performance audit is to see that Government programmes have achieved the desired objectives at lowest cost and given the intended benefits. The Comptroller and Auditor General is asked to carry out performance audit of implementation and expenditure incurred in schemes under the NREGA in 11 states.The 11 states that would be covered under special performance audit include Uttar Pradesh, Bihar, Assam, Rajasthan, Andhra Pradesh and Orissa.Ministry of Rural Development, GOI asked CAG to take up an audit of the Indira Awas Yojna.

The ministry issued orders to make it compulsory for all gram panchayat accounts related the rural employment guarantee programme to be certified by chartered accountants. To this end, CAG will create a panel of chartered accountants for each district. There will also be a random check of the gram panchayat accounts by CAG.

The Comptroller and Auditor General of India (CAG) took up auditing bank accounts relating to the Rs71,000-crore farm debt waiver scheme announced by the UPA government CAG examined how effectively that scheme was implemented.The report did not look into the merits or demerits of the debt-waiver scheme but the implementation of the scheme by public sector banks.CAG does not audit RBI and banks- the latter being audited by the RBI.

Environmental audit

In recent years, environmental audit is gaining momentum. Over the last decade, the office of the CAG of India has increased its focus on audit of Audit of environmental issues, keeping in mind the challenges facing India today with respect to management and conservation of the environment. More than 100 audits on diverse environmental issues like biodiversity, pollution of rivers, waste management etc., have been conducted by the CAG. In 2010, CAG of India undertook an environmental audit on water pollution in India wherein issues, causes and mitigation methods relating to rivers, lakes and groundwater in India were addressed. The aim of this audit was to identify critical issues and suggest solutions which would help the government to

Internationally, there are Auditors General, Comptrollers General, Audit Commissions, and other forms of what are known as Supreme Audit Institutions (SAIs) not only in democratic countries, but even in authoritarian systems. In India, the CAG is the SAI. There are professional organisations such as the International Association of Supreme Audit Institutions (INTOSAI) and the Asian counterpart (ASOSAI) in which the Indian SAI plays an important part. CAG performs the audit function like the other SAIs.

Nature of Audit

While fulfilling his Constitutional obligations, the Comptroller & Auditor General examines various aspects of Government expenditure. The audit done by C&A G is broadly classified into the following types:

Regularity Audit (Compliance or Financial)

It is an audit to ascertain whether the moneys spent were authorised for the purpose for which they were spent. Also, it is an audit to see that the expenditure incurred was in conformity with the laws, rules and regulations

Supplementary audit

The Comptroller and Auditor General of India (CAG) takes up supplementary audits in PSUs even after the commercial audits are done by the auditors appointed by the CAG as it generates much revenue for the Government through detection of leakages etc.

Propriety audit

The term 'propriety ' means the rightness and moral quality of a course of action Propriety audit thus focuses on whether the expenditure made is in public interest Propriety audit focuses on aspects like whether public money is misused for the benefit of a particular person or section of community.

It extends beyond scrutinising the mere formality of expenditure to it wisdom and economy and to bring to light cases of improper expenditure or waste of public money. It is conducted to report whether all the expenditure sanctioned and incurred are need- based and all the revenues due to Government have been realized in time and credited to the government account. It is "Value for Money audit ".

CAG's report in 2012 regarding land allotment in Andhra Pradesh brought out the fact that in a large number of cases of land allotment, the State Government ignored

Public Accounts Committee (PAC) takes up the Audit Report for examination. The CAG acts as the "friend, philosopher and guide" for the PAC. Based on the Audit Report, the PAC frames its recommendations which are placed before both the Houses of Parliament/Legislatures. The Government sends Action Taken Notes(ATNs) on the recommendations of PAC. PAC prepares the final report taking into account the ATNs.

In India the institution of CAG only audits the accounts after the expenditure is committed. It does not have control over the withdrawal of moneys as in Britain where the name Comptroller is justified.

CAG and Policy

Should the CAG question policy decisions? The answer is based on the following

- the financial implications of a policy were not gone into at all before the decision was made
- the assessment of financial implications was quite clearly wrong
- the numbers were correct but the reasoning behind the decision was questionable

In such cases, it is within the CAG's mandate, as the instrument of accountability, to comment on such a policy. Be it underselling government shares in PSEs or not adopting auction process of selling natural resources or adopting tax amnesty schemes with a moral hazard- CAG's audit on these matters contributes to public policy.

Further, CAG is bound by his (or her) oath of office to uphold the Constitution. He has to comment on policy matters that *prima facie* seems unconstitutional. If the government were to formulate a scheme or policy that selectively confers benefits from public funds on an individual or group to the exclusion of others on no stated grounds, or on grounds which seem questionable, it is CAG's duty to point this out.

CAG has been undertaking many types of audit such as propriety audit, performance evaluations, and so on, and they are all well within his ambit, as different modalities of ensuring accountability. Moreover, there are two other grounds for this understanding: century-old traditions, and international consensus.

Even during British rule there was an Auditor General, and traditions of the independence and objectivity of that office were fairly strong. Propriety audit was in vogue then.

CAG. The CAG gives directions to the Chartered Accountants on the manner in which the audit should be conducted. He is also empowered to comment on or supplement the reports of the primary auditors. In addition, he has the right to conduct audit of accounts of such companies and report the results of audit to Parliament and State Legislatures.

A special feature of the audit of such Government companies and Public Sector Undertakings is the periodic comprehensive appraisal of their working by the Audit Boards constituted by the CAG. Experts in disciplines relevant to the operations of a PSU are appointed as members of these Audit Boards. The Audit Boards undertake comprehensive appraisals in the form of Audit Reviews of a few selected undertakings each year which are incorporated in the CAG's Commercial Audit Reports. Similar Audit Boards have also been set up in a few States for audit of PSUs of the State Governments.

Audit Reports on Public Sector Undertakings and Autonomous Bodies are sent to the concerned Ministries or Departments for being laid before the Parliament or the State Legislatures.

As laid down in the Constitution of India, the Audit Reports, after approval of the Comptroller and Auditor General of India, are presented to the President of India or Governors of the States for laying before the Parliament or the State Legislatures as the case may be.

CAG audits both the appropriation and financial accounts prepared by the Controller General of Accounts .

The annual accounts of the Government, comprising the Union Government Finance Accounts and the Appropriation Accounts, are prepared by the Controller General of Accounts. These documents are presented before the Parliament after their statutory audit by the Comptroller and Auditor General of India.

Appropriation Accounts show the expenditure incurred against the expenditure authorized by the parliament in the previous financial year. All the expenditures are duly audited and excesses or savings in the expenditure are explained.
The Finance Accounts show the details of receipts and expenditure for all the three funds.

Audit covers both the voted and charged expenditures.

After the Appropriation Accounts and the Finance Accounts and the Audit Reports thereon are presented in the Parliament, they shall stand referred to the Committee on Public Accounts for examination and report.

- He is appointed by the President of India by warrant under his hand and seal and his oath of office requires him to uphold the Constitution of India and the laws made thereunder
- He can be removed from office only on grounds of proven misbehavior or incapacity after an address by both Houses of Parliament supported by a two-thirds majority
- His salary and conditions of service cannot be varied to his disadvantage after appointment.
- He shall not be eligible for further office under the Government of India or of any State after retirement
- His administrative powers and the conditions of service of persons serving in the Indian Audit and Accounts Department shall be prescribed by rules made by the President only after consulting him.
- The administrative expenses of his office are charged upon the Consolidated Fund of India and are not subject to being voted by Parliament.

Audit Duties

The duties, powers and conditions of service of the Comptroller and Auditor General are laid down in the CAG's (Duties, Powers and Conditions of Service) Act, 1971.

The statutory duties of the CAG include audit of

• Receipts and expenditure of the Union and the State Governments accounted for in the respective Consolidated Funds.
• Transactions relating to the Contingency Fund and the Public Accounts .
• Trading, manufacturing, profit and loss accounts and balance sheets and other subsidiary accounts kept in any Government Department.
• Accounts of stores and stock kept in Government organisations, Government companies and Government corporations whose statutes provide for audit by the CAG
. • Authorities and bodies "substantially financed "from the Consolidated Funds of the Union and the States(Where the grant or loan is not less than rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority, such body or authority is considered to be "substantially financed ")
• Any body or authority even though not substantially financed from the Consolidated Fund, at the request of the President or the Governor.
• Accounts of bodies and authorities receiving loans and grants from the Government for specific purposes.

There is special arrangement for the audit of Government companies i.e. where equity participation is 51 per cent or more. The primary auditors of these companies are Chartered Accountants, appointed by the Union Government on the advice of the

- About 1200 public commercial enterprises owned by the Union and State governments, i.e. government companies and corporations.
- Around 400 non-commercial autonomous bodies and authorities owned or controlled by the Union or the States.
- Over 4400 authorities and bodies substantially financed from Union or State revenues

Although India has a federal setup, the Constitution provides for a unitary audit by the Comptroller & Auditor General, who conducts audit of the accounts of both the Union and State Governments.

Importance of CAG

Cag helps the parliament/state legislatures hold their respective governments accountable. The CAG is the institution through which the *accountability* of the government and other public authorities — all those who spend public funds — to Parliament and State Legislatures and through them to the people is ensured. Accountability is not the same thing as accounting, though the latter may be a part of the former; the word 'accountability' means answerability. We are of course talking about *financial* answerability. The Executive is answerable to Parliament and to the people for all its decisions, but that answerability is enforced through the CAG where it involves finance and accounts.

Parliament votes funds to the Executive and those funds have to be accounted for. Financial accountability is important. However, answerability is more than that: it also means exercising prudence, avoiding waste, not incurring unnecessary expenditure, showing results for moneys spent, and achieving those results at least cost. If the CAG is our prime accountability-ensuring institution, that institution must go into all these matters.

That is is the reason why CAG , according to Dr. B.R. Ambedkar, during the debates in the Constituent Assembly, was described as the most important functionary in the Constitution. Also, the oath administered to CAG according to the Constitution ,is identical with that prescribed for the Chief Justice and Judges of the Supreme Court, including the words "I will uphold the Constitution and the laws" while a Minister of the Union swears or solemnly affirms only that he will act "in accordance with the Constitution".

Independence

The importance of the Institution of CAG is such that it needs to be ensured independence for effective functioning. There are several provisions enshrined in the Constitution to safeguard his independence

Comptroller and Auditor General of India

Public audit is a vital instrument of ensuring supremacy of Parliament over executive and enforcing public accountability. Public audit institutions developed over time to help legislatures to implement the power of the purse. This power had two essential elements: the granting of the moneys and supervision of the expenditure. Public audit is necessary to ensure that money of the people is raised well and spent for the purpose for which the parliament authorised it.

State audit in its present form was introduced first time in Great Britain by a Parliamentary Act as an integral part of parliamentary control over national finance in 1866.The Act required all departments for the first time, to produce annual accounts known as appropriation accounts. (appropriation is legally authorized money being drawn and spent for a specific purpose) The Act also established the position of Comptroller and Auditor General (C&AG) The results of C&AG's investigations were considered by a dedicated parliamentary committee called the Committee on Public Accounts thus establishing a system of parliamentary financial control.

The system of Government accounting and auditing and the organisational structure of the Indian Audit and Accounts department (IAAD) as it exists today in our country is patterned similarly and is, thus, the legacy of British rule.

Constitutional and Statutory Position of CAG

We have to go back to 15th century to find the origin of the word "comptroller," which means "financial officer."

The Constitution gives special status to Comptroller & Auditor General (C&AG) as laid down in Articles 148 to 151. The Act gives authority to C&AG to audit all expenditure from and receipts into the Consolidated fund of India and the States. It also authorises C&AG to audit the receipts and expenditure of bodies or authorities substantially financed by loans or grants from government. Article 151 of the Constitution prescribes that Audit Reports on the accounts of Union and the States be submitted to President and the Governor of the State respectively who shall cause them to be laid in the Parliament and respective State Legislatures.

The organisations subject to the audit of the Comptroller and Auditor General of India are:

- All the Union and State Government departments and offices including the Indian Railways and Posts and Telecommunications.

In 1996, before the introduction of electronic voting machines, 8,000 metric tonnes of paper were used to print ballots.

A quarter of the 543 lower house elected MPs have criminal cases pending against them. More than half the cases are for serious offences including murder, rape and corruption.

SYMBOLS

Symbols range from an elephant, a hand, or a hammer, sickle ,bicycle, a bow-and-arrow, a pair of spectacles or a telephone.

Free symbols made available by Election Commission to independents and unrecognized parties included bangles, a cricketer, a coat hanger and a ceiling fan.

Polling station No. 29 (Dharampur) in the remote Arunachal Pradesh state that borders China had just one voter in 2004.

Four thousand six hundred and seventeen candidates from over 300 political parties and Independents competed for 543 parliamentary seats..

Voter turnout was a little less than 60% in 2009.

Assembly elections in 2012 also saw huge turnout and it held the lesson that regionalist parties are on the rise. Same is the message with the AP by polls in 2012 June.

over in the event of multi-phase elections.

The EC's move comes against the backdrop of the Supreme Court leaving it to the discretion of the EC to decide on laying down guidelines on opinion and exit polls till the government frames regulation on the issue.The government had in 2008 amended the Representation of the People Act (RPA), 1951 to curb publication of exit polls during elections till the conclusion of the final phase of voting so that it does not "influence" the voters.Government's move to amend the RPA is seen as an effort to ensure that polls, which are generally spread over several phases, are free and fair.

Shorter election process

There is still a case for a shorter election process. While the counting process is now quickened with the introduction of Electronic Voting Machines, the multi-phase polling process virtually brings the government to a standstill for close to three months. The election itself is held within the space of a month, but from the time the election is announced, which is when the Model Code of Conduct comes into effect , to the time the new Lok Sabha is constituted, it is about three months. No major policy decision can be taken, and welfare schemes and development works are suspended till after the new government takes office. The shorter the period of a lame-duck government, the better it is for governance. True, security considerations, geographical conditions and manpower requirements necessitate the staggering of the election. But the Election Commission in recent years has been quick to make good use of technology and devise efficient ways of human resources management. Even under the existing constraints, a shorter election process will be within the realms of possibility and in the interest of all.

2009 Elections: Snapshot

714 million people -- more than twice the population of the United States -- are eligible to vote in the world's biggest democratic exercise.420 millions voted – about 60% of turnout.

More than 800,000 polling stations are set up for a five-phased vote over several weeks, watched over by 2.1 million security personnel.

Around 1.1 million electronic voting machines were used across the nation. These were first introduced for a general election in 2004, when millions of illiterate voters pressed a button next to a symbol of the party of their choice.

Ballot boxes were also used -- some were transported by elephants and camels to remote voters.

Adjudication of Election Disputes

Section 80 and 80-A of the Representation of Peoples Act, 1951, provide that election petitions be filed only in the respective High Courts. Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.
The concern is that the High Courts, given their backlog of cases, take too long to deal with election petitions, final disposition often not happening till after the term of the elected representative is over. This phenomenon is so rampant that the Second Administrative Reforms Commission, in its report —Ethics in Governance□ (2007) observed, —such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petitions infructuous.The NCRWC, the Election Commission, and the Second Administrative Reforms Commission, all have recommended setting up of —Special Election Benches for fast disposal of election related cases.

Proxy Voting

The word proxy means "to act on behalf of another. It is allowed in India for defence personnel since 2003.The need for proxy voting arises from the fact that the campaigning period is reduced to 14 days. Ballot papers can be printed only after withdrawal of the nominations before being dispatched to the far off locations. For example, a soldier from Kerala posted to Tripura has to be sent the ballot postally and must mail it to the returning officer in Kerala within less than a fortnight which very often is found impossible.

Representation of the People Act 1951, says that the voting shall be secret ballot but section 60 of RPA permits special provisions for certain classes of people. Thus, on the strength of Section 60, proxy voting is permitted.Proxy voting is when a soldier in the Indian armed forces authorizes another person to vote on his behalf. He can nominate any eligible voter from his constituency . A soldier's proxy nomination is done only once in his service period. However, if he is unhappy with the proxy, or the proxy dies, the nomination can be revoked.One person can be the proxy for two soldiers.If a soldier does not want to nominate someone as his proxy, he can opt for postal ballot. There are 2.5 m defence personnel who benefit from proxy voting. IFS officers do not have this facility. They vote by postal ballot if they are posted abroad.

Exit polls banned

The Election Commission (EC) banned dissemination of results of opinion polls during 48 hours before the poll and put a blanket ban on exit polls till the last phase is

six years from the date of release

4 Section 8(4) applies to sitting legislators. A sitting legislator who is convicted is not barred from contesting for a period of three months from the date of conviction during which time he can appeal; or if an appeal is made in three months, till such time that the appeal is disposed off.

The EC interpreted the Section stringently in 1997. The effect is: earlier during the pendancy of appeal, the nomination of the convicted person was accepted while it is not so since 1997. After the High Court convicted and sentenced a person for at least 2 years, the person in question is disqualified from contesting even while an appeal is pending in the Supreme Court. He can only contest if the Supreme Court finds him innocent. The interpretation is found to be necessary to minimize criminals in the political system.

Section 8 of the RP Act quoted above discriminates between a sitting legislator and others in the sense that the former, even if convicted can contest while the appeal is pending, and others can not. According to the EC and other experts , the discrepancy needs to be removed.

ADR case

Reports of the Law Commission(1999) and Vohra Committee(1995) recommended that citizens should have information related to their representatives which is best made available while the candidate files his nomination papers in a election to Lok Sabha or Legislative Assembly. .

A Public Interest Litigation (PIL) was filed by ADR(Association for Democratic Rights) in 1999 in the apex court for implementation of the said reports and for a direction to the Election Commission to make mandatory for every candidate to provide information regarding

- criminal antecedents, if any
- educational qualifications
- asset-liability details of himself and his family.

It led to a landmark Supreme Court Judgement in 2002 endorsing the prayer of the ADR. Parliament made an Act in this regard in 2002 but diluted the verdict of the Supreme Court- requiring disclosure of criminal background, but not of financial and educational background. The Act was challenged .

The Supreme Court in a second landmark Judgement in 2003 declared the Act unconstitutional and restored its earlier order. Subsequently, the Election Commission issued orders implementing the judgement

Inner party democracy

Political parties in India are influenced by dynastic politics. No regular periodical elections are held to elect the organizational office bearers. Polls are postponed. Information regarding crucial party stand is not disseminated among cadres. Decisions are taken by a handful of top leaders.This does not augur well for democracy.Therefore, there needs to be amendments to RPA 1951 for regular elections.

Criminalization of Politics

Criminalization of politics refers to persons with criminal record entering legislature at national, state and local levels through the electoral process by money and muscle power. When law breakers become law makers the adverse consequences are in the form of corruption; demoralization of bureaucracy; loss of faith in the democratic system by the common man; weakening of rule of law and so on..

The reasons for increasing criminalization of politics is the poverty and illiteracy of people; pressure on courts and the consequent delay in settlement of disputes; political parties prefer winnability to ethics and so criminals are given tickets as they can mobilize money and muscle power to intimidate the voters for votes.

Politicisation of crime is related to it. It means justification of crime for political reasons. It has many shades. Crime justified for communal reasons- if it is used against rival group. Similarly, for ethnic reasons, crime is justified. For example, many caste groups set up militias. Political parties safeguard their criminals and pressurize and oppose those of the opponents. State machinery is used to protect some criminals and foist cases against others depending upon their loyalties.

Section 8 of RP Act

The section relates to disqualification of candidates from contesting in an election to Parliament or State Legislature for specified offences.

1 Section 8 (1) relates to various offences like under the Prevention of Insults to National Honour Act. 1971 and if a person is convicted under these laws, six years of disqualification from contesting from date of conviction will be in force. It is not considered as to what is the quantum of punishment.
2 Section 8(2) deals with some economic crimes and also dowry and sati for which the same punishment as above is given if the person is sentenced for not less than six months.
3 Section 8(3) covers all other offences (for example, offences under Prevention of Corruption Act) and says that if a sentence is for a period of atleast 2 years , the convicted person is disqualified to contest for a period of

- multi-party parliamentary committee under the chairmanship of Indrajit Gupta(1998) was set up to look into the question of state funding of elections.

Indrajit Gupta Committee on State Funding of elections

The committee said that state funding of elections would bring in an element of equality to electoral contests, particularly because it would help remove the disadvantage faced by parties which represent the socially and economically weaker sections and which often have limited access to big donors.

Indrajit Gupta Committee Recommendations

- State funding should be confined to recognized national and state parties.
- State should meet some essential expenses of political parties during election campaigns and provide them administrative support during the period between elections
- It should be in kind and take the following form of materials and other facilities for fighting elections like: a specified quantity of petrol or diesel to run vehicles during an election campaign; a specified quantity of paper to prepare election literature and voter identity slips; postal stamps for a specified sum of money; copies of the electoral roll in a constituency; electronic media time; rent-free accommodation for party headquarters in New Delhi and every recognised State party may be provided the same facility in the respective state capitals; one rent-free telephone with subscriber trunk dialling facility etc.
- A separate Election Fund should be created with an annual contribution of Rs.600 crores (at the rate of Rs.10 a voter, for the total electorate of about 60 crores) by the Centre and a matching amount contributed by all State governments together.
- in order to be eligible for state funding, political parties and their candidates should have submitted their income tax returns up
- political parties should accept all donations above Rs.10,000 in the form of cheques or drafts and disclose the names of the donors.

How to reduce election expenditure

- the State and Parliamentary level elections should be held at the same time
- the campaign period should be reduced considerably
- candidates should not be allowed to contest election simultaneously for the same office from more than one constituency

Simultaneous Polls for State Assemblies and Parliament
None of the Above Option

(Discussed in the Class)

Election and Other Related Laws (Amendment) Act 2003

The Election and Other Related Laws (Amendment) Act 2003 was made to reform the law related poll funding and party finances.

It provides a strong incentive for open contributions to political parties.In the absence of tax incentives, most companies preferred to fund parties clandestinely for a variety of reasons — on account of the ubiquitous black economy, for fear of retribution from rival parties etc. For the first time, the law now provides for full tax exemption to individuals and corporates for all contributions to recognised political parties. All contributions of Rs 20,000 and above must be disclosed by the party to the Election Commission, and such information will be in the public domain.

State funding is now available to registered parties in the form of allocation of time on the electronic media.

State Funding of elections

State funding of elections has been under consideration in India for more than three decades. It is advocated on the following grounds

- Money is required for the political parties to communicate to the people and educate them and mobilize them on various public issues
- If state funding is absent, corruption can creep into the political system and the integrity of the candidates may be seriously compromised even before he is elected
- the amount of money needed to run a successful election campaign is substantial and prevents smaller parties from exerting their small proportion of influence on the outcome. Smaller parties are a vital part of a democracy, as they ensure that a complete spectrum of opinions is represented. Thus, state funding is required to establish level playing field among the parties
- it prevents the influence of foreign money from influencing the parties

It is , however, opposed on the ground that public money need not be used to fund political parties when there are urgent challenges like public health, education etc.

The following committees recommended state funding of elections

- Joint Parliamentary Committee (1971-1972)
- Tarakunde committee set up by Jaiprakash Narayan (1974)
- Dinesh Goswami committee (1990).

recommendation is made to classify it as a crime.

Umlesh Yadav

The Election Commission of India's disqualification of Umlesh Yadav, sitting MLA from Bisauli in Uttar Pradesh, is a landmark order . Ms Yadav was disqualified under Section 10-A of the Representation of the People Act 1951 for a period of three years for failing to provide a "true and correct account" of her election expenses. She had failed to include in her official poll accounts the amount she spent on advertisements, shown as news, in two Hindi dailies, *Dainik Jagran* and *Amar Ujala*, during her 2007 election campaign. She should have shown it in her election expenditure under Section 78 of the Representation of the People Act. EC therefore disqualified her after auditing her election expenses statements.

It must be clarified that she did not lose her seat and face disqualification for paid news. It was a case of improper accounts.

Political parties and their finances

Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. It should be made *mandatory under law*. The Election Commission has reiterated this proposal. 2nd ARC advocated that *this needs to be acted upon early. The audited accounts should be available for information of the public* domain. Although in an amendment made vide the Election and Other Related Laws (Amendment) Act, 2003, a provision has been made regarding preparation of a report of contributions received by political parties in excess of Rs.20,000/-, *this is not sufficient for ensuring transparency and accountability in the financial management of political parties.*

Election Commission has recently got the Institute of Chartered Accountants of India (ICAI) to draw up guidelines concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties.

The Law Commissionrecommended the insertion of a new section 78A for maintenance, audit and publication of accounts by political parties in the Representation of the People Act, 1951.

Political parties do not pay income tax as they are not commercial entities and are `public authorities` as declared by the EC in 2008. Being public authorities, they submitted detailed balance sheets indicating the availability of funds, income and expenditure incurred by them.

The limit of election expenditure for an assembly constituency in the above bigger states is Rs. 16 lakhs.

The maximum limits of election expenditure vary from State to State. The lowest limit at present for a parliamentary constituency is Rs. 10 lakhs for the constituency of Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.

Under section 77 of the R.P.Act, 1951, every candidate at an election to the House of the People or State Legislative Assembly is required to keep, either by himself or by his election agent, a separate and correct account of all expenditure in connection with the selection incurred or authorised by him or his election agent between the date on which he has been nominated and the date of declaration of result, both dates inclusive. Every contesting candidate has to lodge a true copy of the said account within 30 days of result of the election.

In every state the account of election expenses shall be lodged by a contesting candidate with the District Election Officer of the district in which the constituency from which he contested lies. In the case of Union Territories, such accounts are to be lodged with the Returning Officer Concerned.

If a candidate is contesting from more than one constituency, he has to lodge a separate return of election expenses for every election which he has contested. The election for each constituency is a separate election.

Under section 10A of the RP Act, 1951, if the Election Commission is satisfied that a person has failed to lodge an account of election expenses with the time and in the manner required by or under that Act and he has no good reason or justification for the failure, it has the power to disqualify him for a period of 3 years for being chosen as, and for being, a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State.

Acceptance of money to vote for a candidate is a corrupt practice of bribery under Section 123 (1) of R. P. Act, 1951. It is also an offence under section 171-B of Indian Penal Code and is punishable with imprisonment of either description for a term which may extend to one year or with fine or both.

Paid news

Candidates contesting an election have limits of permissible election expenditure within which publicity is difficult to pay for. Therefore, they resort to bribing the newspapers and other electronic media to print about them. These stories are paid for though it costs far less than an advertisement and carry more value. However, it is a violation of journalistic and representative ethics. It misleads the readers too and viewers too. But it is not an offence under RPA 1951. Therefore, the EC

Model Code of Conduct comes into force on the date of announcement of election schedule by the Election Commission.

Critics believe the code obstructs government initiatives for too long a period.

Elections and money power

Contesting elections requires enormous financial resources . Political communication and mobilization in a vast and populous country like ours is very expensive .National political parties contest upto 543 seats to the Lok Sabha. On average, a person contesting for the seat of a member of parliament spends five rupees on a voter and the average MP constituency has 15 lakh voters in it, bringing the total minimum necessary funds to Rs. 75 lakh. Such huge money can not be raised from public at large and so the party depends on other sources like corporate funding which can be inimical to democracy and the integrity of the candidate.

Since smaller parties find it difficult to contest if the role of money in elections is excessive, there needs to be regulation of money power.

Following steps have been taken

- fixing the expenditure limits
- making bribery a corrupt practice for the giver and taker
- making donations transparent
- 5% of the profits of the companies(other than government companies) are permitted for the donation to parties.

Steps that are suggested are .

- Holding of simultaneous elections for LS and Legislative Assemblies, logistics permitting.
- Reduction of campaign period
- State funding of elections

A candidate is not free to spend as much as he likes on his election. The law prescribes that the total election expenditure shall not exceed the maximum limit prescribed under Conduct of Election Rules, 1961. Limit are set by the Union Government. EC is only an advisory body. If limits are exceeded, it would also amount to a corrupt practice under R. P. Act, 1951.

The limit for expenditure is fixed by the Government and is revised from time to time. At present the limit of expenditure for a parliamentary constituency in bigger states like U. P, Bihar, Andhra Pradesh, Madhya Pradesh is Rs. 40 lakhs.

like in Kerala by Achutanandan govt; dynasty issues as in Tamil Nadu with DMK party.

Model Code of Conduct

The model code of conduct was brought into force in 1967 after the political parties, in discussion with the EC , unanimously agreed to the contents. For example: ministers should not sanction from the discretionary fund once elections are announced. EC can take action against a party that violates the model code after the party is given reasonable time to defend itself. The Code was issued by the EC in 1991 and has since been amended many times.

The objective of the code is to ensure that political parties do not misuse official resources when they are in power. The code seeks to establish a level playing field among the parties. The code comes into effect immediately after the announcement of the elections by the EC and will cease with the declaration of the result.

EC is given the power to conduct free and fair elections under Art. 324 and thus has the implied authority to enforce the Code.

The code prescribes broad guidelines about the conduct of the parties, particularly for the ruling parties at the Centre and the States. Some points of the Code are:

- No party or candidate shall cause tension between different castes and communities, religious or linguistic
- criticism of other political parties, when made, shall be confined to their policies and programme, past record and work.
- Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties
- the party in power whether at the Centre or in the State shall not use its official position for the purposes of its election campaign
- issue of advertisement at the cost of public exchequer shall be scrupulously avoided
- Ministers and other authorities shall not sanction grants/payments out of discretionary funds

If a recognized political party violates the model code, EC has the power to suspend or withdraw recognition of the party

The Code is not given a statutory status as there is a voluntary desire on the part of the parties to obey the same.

Moily Commission on electoral reforms

The six-member Commission headed by the former Chief Minister of Karnataka, Veerappa Moily made the following suggestions in its report titled " Ethics in Governance' (2007)

- partial state funding of elections should be available
- tightening of anti-defection law. Power of disqualification of MPs and MLAs on grounds of defection should be taken away from the Presiding Officers and be vested with President and Governors on the advice of the Election Commission. Such an amendment to the law is said to be necessary in the light of the long delays seen in some recent cases
- a collegium should be given the power of appointment of Chief Election Commissioner and other Commissioners. Collegium should be headed by Prime Minister and should consist of Lok Sabha Speaker, Leader of Opposition in Lok Sabha, Law Minister and Rajya Sabha Deputy Chairperson
- Special Election Tribunals should be constituted at the regional level to ensure speedy disposal of election petitions and disputes within a stipulated period of six months. Each Tribunal should comprise a High Court judge and a senior civil servant with at least five years of experience in the conduct of elections. Its mandate should be to ensure that all election petitions are decided within a period of six months as provided by the law. The Tribunals should normally be set up for a term of one year only, extendable for a period of six months in exceptional circumstances
- Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the EC.

Some electoral reforms conducted in the last decade

The introduction of electoral Identity Cards and preparation of photo voter rolls, stricter enforcement of the Model Code of Conduct, large-scale deployment of central paramilitary forces, the appointment of general and expenditure observers, clear and strict directions of the Election Commission regarding the conduct of party meetings, gradual introduction of Electronic Voting Machines and use of technology in various administrative matters such as videography of elections and secret cameras in sensitive polling stations are some of the salient features introduced by the Election Commission since the '90s.Enhancing voter awareness by declaring January 25, the day the EC came into force in 1950, as the voter awareness day.

These reforms have paid off as can be seen from the high voter turnout in the 2011 and 2012 assembly elections- 75-80%. The reasons for the same are- increasing awareness; fearless voters due to better security that the EC ensured by videography etc; simple voting through EVMs; gravity of issues like corruption; good performance

polled.

- Statutory backing for important provisions of model code of conduct.The recommendation is not acted upon as statutory backing will open it for judicial review which is time consuming and so is not advisable during elections
- Bye-elections should be held within a period of six months of the occurrence of the vacancy.
- Lowering the age of candidates contesting elections to the Legislative Assembly and Lok Sabha from 25 years to 21 years and in case of elections to the Legislative Councils and Councils of States from 30 years to 25 years.
- Change of present electoral system to Mixed system(semi-proportional system like the additional member constituencies) Making voting compulsory.
- Amendment of Anti-Defection Law to make the President and the Governor in consultation with the EC the authority to disqualify for defection.
- proliferation of parties needs to be stopped with the EC given the power to deregister a party which it does not have now. For example, a communal party . Although canvassing of votes in the name of religion had been barred, political parties, including the recognised ones, continue to play the communal card.
- If a person contests election from two constituencies .and wins from both. In such a situation he vacates the seat in one of the .two constituencies. The consequence is that a bye-election would be required from one constituency involving avoidable labour and expenditure on the conduct of that bye-election. Law should be amended to provide that a person cannot contest from more than one constituency at a time or he should bear the expenditure of the bye election.
- restrictions on exit polls and opinion polls
- prohibition of surrogate advertisements in print media. Many bodies emerge before elections and give huge advertisements in newspapers with false identities to influence electoral behavuiour in the name of secularism, socialism and so on, They are not genuine bodies and it constitutes surrogate advertisement.
- negative / neutral voting in the form of a provision enabling a voter to reject all the candidates in the constituency if he does not find them suitable.
- government sponsored advertisements should be outlawed
- composition of election commission and constitutional protection of all members of the commission. Same protection should be given to the ECs as the CEC.
- expenses of election commission to be treated as .charged on Consolidated Fund o India

following reasons

- Make all constituencies have more or less the same number of electorate for representative justice
- Help electorate vote fearlessly
- De-criminalise the polity
- Use new technologies like ICE for more genuine participation by voters
- Establish level playing field among political parties

The Government reformed the electoral system in many ways in the last few decades as given below

- Lowering the voting age to 18 years by amending Art.326
- Introduction of voter identity cards
- Introduction of electronic voting machines
- Making the EC a multi member body as provided by Art.324
- Limited introduction of state finding of elections by making suitable laws like the Election and Other Related Laws (Amendment) Act 2003
- No candidate can contest to Lok Sabha from more than two constituencies
- Delimitation of constituencies for Lok Sabha and Assemblies on the basis of 2001 census
- Section 8 of the RPA 1951 has been interpreted by the EC in such a way as to debar a convicted person from contesting even while an appeal is pending in the apex court

Many committees have studied and reported on electoral reforms with important recommendations. The Joint Parliamentary Committee on Amendments to Election Law headed by Shri Jagannath Rao (1971), the Tarkunde committee set up by Lok Nayak Jai Prakash Narayan(1974), Dinesh Goswami committee (1990), V R Krishna Iyer committee (1994), Indrajit Gupta committee (1998) are some such committees. The 15th Law Commission recommended amendments to Constitution and the Representation of People Act, 1951 in its 170th report (1999).

Some more electoral reforms that are recommended and are under consideration are

- None of the above option
- Recall
- Inner party democracy
- Paid news
- Strengthening the EC
- Non-serious candidates to be discouraged.
- Forfeiture of security deposit for failure to secure less than 1/4th of the votes

36.2 per cent. In 2004, both the Congress and the BJP together polled only 40 per cent. If democracy is the rule of the majority, then that has not yet been established.

This merits a serious consideration of the proportional representation system where people vote for parties, which, in turn, send to Parliament the number of MPs on the basis of the vote they get- 10% vote means 10% of the total membership in terms of seats.

When a party or alliance rules on the basis of majority vote and not just seat, its moral authority is more. This issue was debated in the Constituent Assembly, but in its wisdom, it adopted the British 'first past the post' system. The 1928 Motilal Nehru Committee report had recommended the system of proportional representation as the best answer to reflect India's diversity.

On the debit side, however, critics show the example of Italy's governmental instability, as a result of proportional representation. But it can be amended to suit India conditions and render stability.

In the Indian context, therefore, a combination of proportional representation with the present form may be ideal as recommended by the Law Commission in 1999.

Electoral/political reforms for Stable Government

- Bonus seats as in the case of Greece where the largest single party gets 50 bonus seats .For example, the New Democracy Party that was marginally ahead of the Syriza party got 50 more seats as bonus and was able to form the government with other parties like Pasok in the 300 member Greek Parliament. Otherwise, there would be another round of election
- Constructive vote of no confidence in the LS where the ruling party loses only if there is an alternative. Otherwise, it continues even after losing the vote. However, even as it guarantees stability, it is against Art.75.3. It can create strange and quarelling coalitions without any policy convergences.
- Presidential system with a security of tenure is a systemic change that may not be warranted because parliamentary system has been functioning well.

Electoral reforms

The success of Indian democracy has been globally applauded but loopholes in the foundation- the electoral system , remain. Since good governance begins with elections in a parliamentary democracy like ours, the need for a completely free and fair election process. needs emphasis. The need for electoral reforms arises from the

Voters may vote directly for the party, as in Israel, or they may vote for candidates and that vote will add up to the party, as in Turkey and Finland.

List system is of two types

- closed list where the list is decided by party leadership. It may encourage sycophancy and representative-voter link may suffer
- open list order of candidates in the list is determined by the voters at large

PR system may be based on single transferable vote (STV) as seen in the Presidential elections in India which is designed to minimize wastage of votes and provide results without further rounds of elections.

Semi proportional system

There may be a semi-proportional system as recommended by the Law Commission in the 170th report in 1999. It may also be called the AMS.The Additional Member System (AMS) is a branch of voting systems in which some representatives are elected from territorial constituencies and others are elected under list system. Voters have two votes, one for the party and the second for the candidate in a constituency. The constituency representatives are elected under the first-past-the-post voting system. The party representatives are elected by a party vote. As explained above, where the party gets 20% of the vote, it gets 20% of the seats from the seats specially meant to be filled under the list system in addition to the normal seats filled by the FPTP. For example, in the case of India, LS has a total membership of elected members at 543. In addition, 250 members may be filled by the List system.

Law Commission recommended that 25% of the number of members in Lok Sabha or Legislative Assemblies of the States should be filled on the basis of list system, Accordingly, in the Lok Sabha as well as in the State Legislative Assemblies, the present strength should be increased by 25% of the existing strength . The increased strength should be filled on the basis of list system. The list system should be confined only to recognised political parties (RPP).

In support of semi-proportional system in India

Not a single party , since the first general elections in 1952, formed government by commanding over 50 per cent of the polled votes. All the governments at the Centre had more people voting against them than supporting them. The closest to reach the majority mark was the Rajiv Gandhi government in 1984 that polled 48.1 per cent with 415 seats. The lowest was the 1998, the NDA government whose alliance polled

- There are certain States in India where there are three or four recognized political parties, more or less evenly balanced. In such a situation , the winning candidate in many constituencies secures no more than 30% or less of the valid votes polled. Those who cast the remaining 70% of the vote are unrepresented. 145 MPs were elected to the 15th LS in 2009 with less than 20% votes
- The first-past-the-post (FPP) system creates a distortion between the votes polled by a party and the eats it secures in the legislature. The votes polled by the ruling party may be marginally more than the nearest rival but the seats secured by the ruling party may be substantially more.
- another situation is also evidenced where a political party polling a substantial portion of votes in a general election is not able to get a single seat in the Parliament/state legislature in the State .

The remedies are the form of PR and semi PR systems

Proportional system of representation

Proportional system of representation has been discussed in the chapters on RS and President and VP elections: a quota is set for a candidate to win the election. Quota depends on the number of candidates to be elected- the more the number the less the quota. It means that

- in a single member constituency, quota is 50% plus one which is fair as the candidate with majority of votes is elected
- in a constituency with more than one candidate to be elected, quota is proportionally less. Thus, it facilitates the election of those candidates who may never be able to obtain a majority of votes as they are in a minority . But they are in sufficiently adequate numbers to have their candidates elected as the quota is far less than 50% of the vote polled.

In the PR system, as indicated above, there are advantages like minorities, women, regional and caste groups can have their representatives which can be progressive and at the same time be divisive also.The disadvantages can be that there will be greater social divisions and polarization. Criminalization of politics can become worse as the threshold is lower and can be achieved with money and muscle power.

A variant of PR system is list proportional representation system. Every party puts up a list and contests elections. It is allotted seats according to the votes it polls. If it gets 25% of votes, it is allotted 25% of seats. Thus, an important lacuna of the FPTP is filled- the vote-seat mismatch.

Supreme Court and Symbols

The Supreme Court in 2012 upheld the Election Commission rule mandating a state political party to garner at least six percent of votes in assembly election and win at least two seats for getting recognition.By a majority 2-1 verdict, a three-judge bench said the bench-mark laid down by the Commission is not "unreasonable" and dismissed a bunch of petitions filed by various unrecognised political paries in several states."The Election Commission has set down a bench-mark which is not unreasonable. In order to gain recognition as a political party, a party has to prove itself and to establish its credibility as a serious player in the political arena of the State."Once it succeeds in doing so, it will become entitled to all the benefits of recognition, including the allotment of a common symbol," the majority verdict of Justices Altamas Kabir and S S Nijjar said.

Models of Representation

FPTP system

FPTP system is one where there are single member territorial constituencies contested usually by two or more candidates.. The winner is one who gets the largest number of votes- more votes than the nearest rival- called plurality of votes . It is in contrast to the term `majority ' of votes which is one vote more than 50% of the total valid votes polled.

The plurality voting system which is in vogue in India, UK, Canada and the USA, is is also called winner-takes-all system . An extended type of the FPTP is one prevailing in France where there are two rounds. The second round of elections is held when the first round does not produce a winner who collects simple majority of votes polled- 50% plus . In the next round, the two highest vote getting contestants fight for 50% plus vote. Whoever polls the majority is declared the winner.It is also called the "two-ballot" or "runoff election" system-the second round being called the run off round.Francois Hollande won such run off in 2012 to become the President of France. In the run ff election, evils like caste based and religion based voting can not succeed. However, minorities have less chance of getting 50% plus 1 of the vote.

FPTP system is adopted for the following reasons:

- simple to administer
- country being huge and the electorate being largely not very literate, it is the most convenient and suitable system
- relatively inexpensive

However, the `first-past-the-post' system prevailing in our country is found to be distorted for the following reasons

are state parties. Inevitably, it led to disputes.They resolved the dispute over the use of the elephant as their election symbol as follows:

The elephant will serve as the BSP's symbol in all states and Union territories except Assam, Puducherry and Sikkim -- while the AGP, PMK and SSP will have its use in their respective states. If BSP contests in these states, it will have the elephant symbol.

YSR Congress and Fan symbol

The party chose ceiling fan symbol. It contested bypolls in 18 assembly constituencies and 1 Lok Sabha constituency in June 2012- they fell vacant as the MLAs from these constituencies revolted against their parties and were either disqualified under anti defection law or resigned. However, YSRC was not a state party according to the definition of EC and so there was an apprehension that all candidates of the party would not get the same symbol. But all YSR Congress contestants could get the same symbol as EC made the rule that sitting members could choose the symbol of their choice.

Common symbol

National parties and state parties could have the symbol of their choice in all the constituencies where they are contesting. However, the registered but unrecognised parties can not have such a common symbol till 2011 when the EC changed the rule

Hitherto those parties were given symbols by draw of lots in individual constituencies if more than one candidate asked for a particular symbol. Consequently, these parties were unable to get uniform symbols in all the constituencies they contested.

To avail themselves of the concession, under the revised provisions of the Election Symbols (Reservation and Allotment) Order, 1968, such parties will have to contest the general elections from at least 10 per cent of the constituencies in a State, subject to a minimum of 5 Assembly constituencies in a State having less than 50 Assembly Constituencies, and two Parliamentary Constituencies in a State having less than 20 Parliamentary constituencies.

They should intimate the choice of 10 symbols from the list of free symbols.

This concession will be only a one-time facility for the Lok Sabha or the Assembly elections.

- it wins at least three percent (3%) of the total number of seats in the Legislative Assembly of the State, or at least three seats in the Assembly, whichever is more.

OR

- In a general election to the LS in the State, it should win at least one seat for every 25 Lok Sabha seats, or any fraction thereof, allotted to that State

OR

- In a Lok Sabha general election from the State concerned, the candidates set up by the party should secure at least 6 per cent of the total valid votes polled in the State, and in addition, the party should win at least one seat in the Lok Sabha from that State in the said general election. (added in 2005).

OR

At the last general election to the House of the People or the Legislative Assembly of the State, the candidates set up by the Party have secured not less than eight percent of the total valid votes polled in the State(In 2011, the last one was a new definition added for the State Party as some parties complained that even after winning 8% or more of vote, they are still denied the status of State party.This is the only definition where votes matter irrespective of seats)

National political parties are seven: INC, BJP, Nationalist Congress Party, BSP, CPI and CPI(M). There are about 50 state parties. RJD lost its status recently.

A party, that loses its recognition, shall not lose its symbol immediately, but shall be given the facility to use that symbol for some time to try and retrieve its status. However, the grant of such facility to the party to use its symbol will not mean the extension of other facilities to it, as are available to recognised parties, like, free time on Doordarshan/AIR, free supply of copies of electoral rolls, etc.

Elephant symbol

AGP, BSP, PMK and SSP to share 'elephant' as election symbol

The Asom Gana Parishad, Bahujan Samaj Party, Pattali Makkal Katchi and Sikkim Sangram Parishad have elephant as their symbol. BSP is a national party while others

- all such functions concerning the Secretariat of the Election Commission, consisting of officers and staff at various levels, such as their appointments, promotions, etc., be exclusively vested in the Election Commission on the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts etc., and

- EC budget be Charged on the Consolidated Fund of India.

Recognition and Reservation of Symbols

The Election Symbols (Reservation and Allotment) Order 1968

EC is responsible for allotment of symbols to the political parties based on whether a political party is recognized -as national or state party – or unrecognized and is merely a registered party. EC lays down the definition of national and state party.

Following is the definition of a national political party

- it secures at least six percent(6%) of the valid votes polled in any four or more states, at a general election to the House of the People or, to the State Legislative Assembly; and
- in addition, it wins at least four seats in the House of the People from any State or States.

OR

- it wins at least two percent (2%) seats in the House of the People (i.e., 11 seats in the existing House having 543 members), and these members are elected from at least three different States.

OR

- A party recognised as a State party in a minimum of four States (added in 2005)

State party is one that

- secures at least six percent (6%) of the valid votes polled in the State in a general election to the Legislative Assembly of the State concerned; and
- in addition, it wins at least two seats in the Legislative Assembly of the State concerned.

OR

separate date for counting is fixed and the results are declared for each constituency by the Returning Officer. The Commission announces list of Members elected and issues Notification for the due Constitution of the House. With such notification, the process of elections is complete and the President, in case of the Lok Sabha, and the Governors of the concerned States, in case of Vidhan Sabhas, can then convene the respective Houses to hold their sessions. The process takes 5-to 8 weeks for the national elections, 4 - 5 weeks for separate elections only for Legislative Assemblies.

Independence of the EC

Independence of Election Commission and its insulation from executive interference is guaranteed by the following provisions

- The term of office of the Chief Election Commissioner and other Election Commissioners is six years from the date he assumes office or till the day he attains the age of 65 years, whichever is earlier.
- Art. 324(5) says that Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a judge of the Supreme Court and conditions of his service shall not be varied to his disadvantage after his appointment. The other Election Commissioners cannot be removed from office except on recommendation by the Chief Election Commissioner.
- The Chief Election Commissioner and Election Commissioners are entitled to the same salary and other facilities, like rent free accommodation, as are provided to a judge of the Supreme Court
- Conditions of service of the CEC and ECs can not be altered to their disadvantage after their appointment.

It must be stated that unlike the judges of SC and HCs; CAG and the members of the UPSC, the administrative expenditure of the EC or the salaries , allowances and pensions of the CEC and ECs are not charged on the Consolidated Fund of India.

Recommendations to make the EC more independent and effective

- Moily Commission (SAR)(2007) recommends that there should be a collegium for appointment of Chief Election Commissioner and other Commissioners. It should be headed by Prime Minister consisting of Lok Sabha Speaker, Leader of Opposition in Lok Sabha, Law Minister and Rajya Sabha Deputy Chairperson.Same was earlier recommended by the NCRWC

- The same constitutional protection to all Election Commissioners as is available to the Chief Election Commissioner

Commission. They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure.

At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government. He is, in most of the States, a full time officer and has a team of supporting staff.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers perform election work. They all perform their functions relating to elections in addition to their other responsibilities.

The workforce for conducting a countrywide general election to Lok Sabha consists of nearly five million polling personnel and civil police forces so that about 70 crore electorate can vote in about 8 lakh polling booths. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and half to two months.

The Secretariat of the Commission has an independent budget, which is finalised directly in consultation between the Commission and the Finance Ministry of the Union Government.

For parliament elections, Central Government bears the expenditure . State Government pays for the elections to State Legislature. In case of simultaneous elections to the Parliament and State Legislature, the expenditure is shared equally between the Union and the State Governments. For Capital Equipment, expenditure related to preparation for electoral rolls and for Electors' Identity Cards too, the expenditure is shared equally.

Election Process

The Commission announces the schedule of elections before the formal process begins. With the announcement of schedule, the Model Code of Conduct for guidance of candidates and Political Parties comes into effect. The formal process for the elections starts with the notification calling upon the electorate to elect Members of a House. As soon as notification is issued, candidates can start filing their nominations in the constituencies from where they decide to contest. These are scrutinised by the Returning Officer of the constituency concerned after the last date for nomination is over. The validly nominated candidates can withdraw from the contest within two days from the date of scrutiny.

At least two weeks are given for political campaign before the actual date of poll. A

Advisory Jurisdiction

Under the Constitution, the Commission also has advisory jurisdiction in the matter of

- post election disqualification of sitting members of Parliament and State Legislatures. For example, for holding office of profit.
- cases of persons found guilty of corrupt practices at elections which are dealt with by Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period.

The opinion of the Commission is given to the President or the Governor as the case may be and is binding.

Quasi-Judicial jurisdiction

The Commission has the power to disqualify a candidate who has not lodged an account of his election expenses within the time and in the manner prescribed by law. The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

Political Parties & the Election Commission

The Election Commission of India is the authority to register political parties under Sec.29A of the Registration of People Act. All political parties are registered with the Election Commission under the law. Some parties are merely registered and some are recognized as national and state parties if they comply with the criteria that the EC lays down. The EC may enforce inner party democracy in their functioning by making it compulsory to hold organizational elections at stated intervals.

It has quasi-judicial jurisdiction :settlement of disputes between the splinter groups of a recognised party based on which symbol may be attached or frozen.

The Model Code of Conduct is voluntarily agreed to by the parties who have given power to the EC to enforce the same so that there is level playing field among them-among the big and small parties and also the ruling and opposition parties. EC's power to enforce the MCC is recognized by the courts and also acquires force by precedent.

Election Machinery

The Commission has a separate Secretariat at New Delhi. Two Deputy Election Commissioners who are the senior most officers in the Secretariat assist the

EC appoints the officer of State or local government as Electoral Registration Officer (ERO).The Electoral Registration officer is responsible for the preparation of electoral rolls for a parliamentary / assembly constituency.

Under the Representation of the People Act 1951, the Election Commission of India nominates officers of Government as Observers (General Observers and Election Expenditure Observers) for parliamentary and assembly constituencies. They perform such functions as are entrusted to them by the Commission. The amendments made to the Representation of the People Act, 1951 in 1996 make the observers statutory appointments. They report directly to the Commission.

EC's other administrative functions are

- Under Art.324, EC is made responsible for the free and fair elections in the country for elections to Parliament, State Legislature, President and Vice President of India
- Under Art.324, EC has the duty to prepare and revise the electoral rolls
- Political parties have to be registered with the Election Commission.
- Election Commission decides the election schedules for the conduct of elections, general elections or bye-elections; location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.
- EC enforces the Model Code of Electoral Conduct that is mutually agreed upon by the political parties
- Defines the national political party and State political party and accords recognition .EC declares other parties as registered-unrecognised parties.
- in case of a dispute as to which party is to be given a particular symbol, it is the Election Commission that decides
- it enforces limits on expenditure on elections
- it postpones(for any reason like floods, cyclone etc) or orders repoll or countermands elections
- if President's rule is to be extended beyond one year, EC should certify that elections can not be held in the State(44th Amendment Act)
- During the elections, vast powers are assigned to the election commission enabling it to work as a civil court. According to Art.329b, courts do not intervene in election matters after the electoral process has begun
- either the CEC or an EC nominated by the CEC is an ex officio member of the Delimitation Commission

Administrative functions

Under Article 324(1) of the Constitution of India, the Election Commission of India, interalia, is vested with the power of superintendence, direction and control of conducting the elections to the offices of the President and Vice-President of India. Detailed provisions are made under the Presidential and Vice Presidential Elections Act, 1952 and the rules made thereunder.

The same Article 324 also vests in the Commission the powers of uperintendence, direction and control of the elections to both Houses of Parliament. Detailed provisions are made under the Representation of the People Act, 1951 and the rules made thereunder.

Article 324 (1) also vests in the Commission the powers of superintendence, direction and control of the elections to both Houses of the State Legislature. Detailed provisions are made under the Representation of the People Act, 1951 and the rules made thereunder.

EC appoints the following :

The Election Commission of India nominates or designates an Officer of the Government of the State/Union Territory as the Chief Electoral Officer in consultation with that State Government/Union Territory Administration. the Chief Electoral Officer of a State/ Union Territory is authorised to supervise the election work in the State/Union Territory subject to the overall superintendence, direction and control of the Election Commission.

The Election Commission of India designates an Officer of the State Government as the District Election Officer in consultation with the State Government. The District Election Officer supervises the election work of a district.

The Election Commission of India nominates or designates an officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government/Union Territory Administration. In addition, the Election Commission of India also appoints one or more Assistant Returning Officers for each of the assembly and parliamentary constituencies to assist the Returning Officer in the performance of his functions in connection with the conduct of elections.

The Returning Officer of a parliamentary or assembly constituency is responsible for the conduct of elections in the parliamentary or assembly constituency concerned

member body from the beginning. It was a single - member body when it was first set up in 1950 till 1993 except for a brief period between 1989 October and 1990 January. In 1993 it became a three-member Commission and has remained so since then.

Article 324(2) empowers the President of India to fix from time to time the number of Election Commissioners other than the Chief Election Commissioner.

The Chief Election Commissioner and the two Election Commissioners draw salaries and allowances at par with those of the Judges of the Supreme Court of India .

The Chief Election Commissioner or an Election Commissioner holds office for a term of six years from the date on which he assumes his office or till he attains the age of 65 years, whichever is earlier.

The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Act, 1991, as amended, provides that if the CEC and his colleagues differ in opinion on any matter, such matter shall be decided by the opinion of the majority. CEC has no special role in decision making.

Are the commissioners and the CEC equal?

Former CEC N. Gopalaswami's suo motu recommendation to the President to remove Mr Navin Chawla from the post of Election Commissioner in 2009 raised legal questions as to whether he is Constitutionally competent to do so.

In *S.S. Dhanoa vs Union of India* (1991), the Supreme Court held: "The Chief Election Commissioner does not... appear to be primus inter pares, i.e. first among the equals, but is intended to be placed in a distinctly higher position ."

The position of the apex court evolved in the case of *T.N. Seshan vs Union of India(1995)*. It held that the CEC and the ECs are equal. CEC is given the power of recommending the removal of ECs and it is intended to shield them and not use it against them. He can not use it suo moto as he is an equal of them.

While functioning as the CEC, he acts as the Chairman which means he presides over the meetings, conduct the business of the day, ensure that precise decisions are taken and correctly recorded and do all that is necessary for smooth transaction of business.

Functions of Election Commission

It has administrative, advisory and quasi-judicial functions.

1. non-residence
2. unsoundness of mind
3. crime or
4. corrupt or illegal practice.

However, right to vote is not implied in Art.326. It is a statutory right under the RPA 1950.

Art. 327 confers on Parliament the power to make provision with respect to elections to federal and state Legislatures, subject to the provisions of the Constitution, on all matters relating to elections to Parliament or Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies etc.

Art. 328 confers on the State Legislature power to make laws with respect to elections to such Legislature, subject to the provisions of the Constitution and any law made in that respect by Parliament. Such powers include the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

Art.329 bars interference by courts in electoral matters.—Notwithstanding anything in the Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Any elector or candidate can file an election petition on grounds of malpractice during the election An election petition can only be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

Election Commission

Since 1993, the Election Commission of India is a three-member body, with one Chief Election Commissioner and two Election Commissioners. It was not a multi

When any Election Commissioner is appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission.

Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint, after consultation with the Election Commission, such Regional Commissioners as he may consider necessary to assist the Election Commission .

President determines the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners, subject to the provisions of any law made by Parliament.

The manner of removal of the CEC and the ground for removal are the same as the Supreme Court judge- parliamentary vote followed by the Presidential decision. The conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff that is necessary for the conduct of the elections

Art. 325 says that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament and State Legislature. It establishes equality among citizens for being enrolled as voters by affirming that no person shall be ineligible for inclusion in the electoral roll on grounds of religion, race, caste or sex.

326 lays down adult suffrage as the basis for elections to the House of the People and to the Legislative Assemblies of States .The following are the qualifications to vote

- Should be a citizen of India
- Should be not less than eighteen years of age.
- is not disqualified under this Constitution or any law made by the appropriate Legislature on the grounds of

Electoral System in India

India is the most populous democracy in the world with about 75 cores of voters. Being a three-tiered democracy- central, state and local layers of governance-, the depth of democracy is great. India is a great example of representative democracy where periodical elections that are free and fair in which people vote without any coercion or fear, is the norm.All social groups are free to participate in elections without any discrimination.

Constitutional provisions ., supplemented by laws made by Parliament and the Rules made by the Election Commission are the basis for the conduct of elections.

Part XV of the Constitution(Art.324-329) contains provisions related to elections. There are two RPAs:

- Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls and
- Representation of the People Act, 1951 which deals, in detail, with all aspects of conduct of elections and post election disputes.

Other laws that confer powers on the EC are Presidential and Vice-Presidential Elections Acts, 1952, Government of Union Territories Act, 1963, Government of the National Capital Territory of Delhi Act, 1991 and the Rules and Orders under them.

Further, the Supreme Court of India held that where the enacted laws are silent or inadequate, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner.

Constitutional provisions

Art. 324 broadly speaks of the functions of the Election Commission and its composition. It confers the power of superintendence, direction and control of elections in the Election Commission. It includes the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and State Legislature; and elections to the offices of President and Vice-President of India.

The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. President appoints the Chief Election Commissioner and other Election Commissioners subject to any law made by Parliament.

Supreme Court interim verdict

Independent MLAs joining the Cabinet does not mean that they have merged with the ruling party and thus cannot be held guilty under the anti-defection law if they subsequently withdraw support to the Government, the Supreme Court has ruled.

The apex court passed the significant interim ruling while dealing with the appeal filed by five Independent legislators challenging their disqualification by the Karnataka Speaker for withdrawing support to the B.S. Yeddyuruppa government.

The apex court had quashed their disqualification on the ground that they were not given sufficient opportunity by the Speaker to present their case before the action was taken against them.

The apex court rejected the Speaker's contention that by joining the Cabinet the Independent MLAs have sacrificed their individual identities.

Andhra case 2012

In an unprecedented action in state legislature history, Andhra Pradesh Assembly Speaker Nadendla Manohar disqualified 16 MLAs of ruling Congress who had voted against the government during a no-trust motion in December 2011 taking sides with expelled Congress leader YS Jaganmohan Reddy.

Prajarajyam Party merger 2012

The party of film actor Chiranjeevi merged with the Congress in 2012.

Odisha 2012

NCP(Nationalist Congress Party) Legislature Party comprising four MLAs merged with the ruling BJD in 2012.

The limitation is necessary for balancing the conscience of the legislator with the need to be true to the electorate.

The Kihoto verdict resulted when the anti defection was challenged as invalid for restricting the freedom of the legislators by making the directions of the Chief Whip of the party binding

Karnataka HC upholds MLAs disqualification

The Karnataka High Court upheld the Legislative Assembly Speaker's order disqualifying five independent MLAs.The five independent MLAs were ministers in the Karnataka government before they submitted their memorandum along with 11 other BJP MLAs to the Governor expressing lack of confidence in the chief ministership of BS Yeddyurappa.11 BJP MLAs and 5 independents were disqualified on eve of a trust vote in October 2010.

The High Courts said that when an independent member of a legislative assembly becomes a part of the ministry in a government dominated by a single party, he loses his independent character and becomes liable to disqualification on the ground of defection.

Five independent members of the Karnataka Legislative Assembly who had declared their support to the BJP government, and were inducted into the Council of Ministers, were disqualified by the Speaker of the Assembly under Paragraph 2(2) of the Tenth Schedule to the constitution.

The question was whether the five petitioners in this case had "joined" the BJP. If they did, they would be liable to be disqualified. The court held that they had joined , for the following reasons:

(1) Becoming Ministers:
(2) Attending Party Meetings Otherwise than as Independent Members:
(3) Receiving the Whip sent by the Chief Whip of a Party:
(4) Participating in Rallies:

The High court held that voters can file complaints against defection despite Rule 6(2) of the Rules, since: "The voters of [a] constituency should not be placed in a helpless situation if none of the members of the House complains about the illegal defection. Therefore, every voter of the constituency should have an opportunity to oppose the illegal defection by bringing it to the notice of the Speaker."

remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and States and this practice had to be prohibited by law and that a ceiling on the number of Ministers in a State or the Union Government be fixed. In the light of the above, the 93rd Amendment Act was made with the following changes

- Split is not valid
- Article 361A was amended to the following effect: A member disqualified for defection is disallowed to hold any remunerative political post for rest of the life of the House or till he is reelected which ever is earlier.The expression "remunerative political post" means any office that is wholly or partly owned by Government and the salary for such office is paid out of the public revenue
- Size of the Council of Ministers should not be more than 15% of the strength Lower House. Art.75 and 164 have been amended to this effect. However, in case of smaller States like Sikkim,Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of 12 Ministers is proposed.

Kihoto Hollohan

In 1992, the Supreme Court, in its majority judgment in Kihoto Hollohan vs Zachillha and others, upheld the validity of the Tenth Schedule but declared as invalid paragraph 7, which excluded judicial review . The basis for nullification of Para 7 is that the Bill was not ratified by half the state legislatures which was necessary to restrict judicial review under Art.368. Doctrine of severability was applied and rest of the Act was declared valid.

In the same verdict, the apex court ruled that the Speaker/Chairman acted as a 'tribunal' while adjudicating on the issue of disqualification for defection.

The Supreme Court observed that the anti defection law strengthened democracy and the representative functions. It did not stifle the freedom of the legislators. However, the orders of the Chief Whip that are binding on the legislator pertain only to the following

- Confidence or no-confidence motion and
- On a policy matter that is a core of the party manifesto.

- The provisions of disqualification, under the Tenth Schedule, do not apply to a member who on his election as the Speaker or the Deputy Speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha, or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly voluntarily gives up his membership of the political party to which he belonged immediately before his election or rejoins such political party after he ceases to hold such office.

The Chairman/Speaker has been given the final authority to decide questions of disqualification of a member of a House under the provisions of the Tenth Schedule to the Constitution.

There is a category of members that has no place in the law. The law does not talk of consequences of expulsion of a member from the party. The ruling of the Speaker is that he should be considered 'unattached' member. He however, can not join a political party.

There is another grey area in the law. It talks of members. One becomes a member only after he is sworn in. The moot point is whether the law applies to him from the time of the declaration of the result till he is sworn in.

With the addition of Tenth Schedule to the Constitution by the Anti-Defection Law, political parties received Constitutional recognition which they did not have earlier. They had no Constitutional identity before. Chief Whip also receives Constitutional recognition.

Over the years, it was observed that these provisions have been circumvented by the legislators to avert disqualification. The provision of split has been grossly misused to engineer multiple divisions in the party, as a result of which the evil of defection has not been checked in the right earnest. Further it is also observed that the lure of office of profit plays dominant part in the political horse-trading resulting in spate of defections and counter defections. Therefore it was outlawed in 2003 as mentioned above.

91st Amendment Act

The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170 Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have recommended outlawing split. The NCRWC is also of the view that a defector should be penalised for his action by debarring him from holding any public office as a Minister or any other

Anti-defection law

Defections are a source of political instability; breach or representative faith and indicate power-hunger among legislators. Therefore, they need to be prevented and punished.

The Anti-defection Law made by the Constitution (Fifty-Second Amendment) Act, 1985 aims to do that. It amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and State legislatures respectively and inserted a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions regarding disqualification from membership of Parliament and the State Legislatures on the ground of defection, from the political party to which the Member belongs.

Anti-Defection Law details the grounds of defection and also prescribes disqualification for the defectors for being Members of the House. The grounds of defection are as under:

- If a member of the House belonging to a political party voluntarily gives up his/her membership of that political party.
- If he/she abstains from the voting or votes contrary to the direction issued by the political party to which he/she belongs in the House.
- If he/she defects from his/her party to any party after elections.
- If the nominated member joins any political party after six months after taking his seat.
- An independent Member who joins a political party after his/her election.
- Member who acts in defiance of party direction (Party Whip) and if such defiant action is not condoned by the Chief Whip within 15 days. The Chief Whip may condone the same and recommend to the Speaker/Chairman that the member should not be disqualified
- Originally, the law protected ` bulk defections' in the nature of split (one-third of legislature party).However, Constitution (Ninety-first Amendment) Act, 2003 made splits illegal too..

Exemptions

Disqualification on ground of defection does not apply in case of merger of political parties. A party may merge with another or the two may form a new party. If 2/3rds of the members of the legislature party decide to merge with another party, neither the 2/3rds nor the remaining 1/3rd lose membership. The 1/3rd exist as a separate group. ("Legislature party" means members of the party in the legislature)

House, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister).

Thus, a seven Judges' Bench of the Supreme Court has held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. However, in the case of Madhya Pradesh Special

Police Establishment v. State of Madhya Pradesh & Ors., (2004) SC held that there may be situations where to safeguard democracy, Governor may have to act independently of the Council of Ministers. For example, if he apprehends the bias of the Council. If Governor does not use his discretion in such areas like sanctioning prosecution, there will be break down of rule of law;democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted."

Governor: Does he have more powers than the President?

Discussed in the Class

Punchi Commission further says the following: Governors should be given a fixed tenure of five years and their removal should not be at the will of the Government at the Centre. The phrase "during the pleasure of the President" in Article 156(i) should be substituted by an appropriate procedure under which a Governor who is to be reprimanded or removed for whatever reasons is given an opportunity to defend his position and the decision is taken in a fair and dignified manner befitting a Constitutional office.

It is necessary to provide for impeachment of the Governor on the same lines as provided for impeachment of the President in Article 61 of the Constitution. The dignity and independence of the office warrants such a procedure. The "pleasure doctrine" coupled with the lack of an appropriate procedure for the removal of Governors is inimical to the idea of Constitutionalism and fairness. Given the politics of the day, it can lead to unsavory situations and arbitrariness in the exercise of power. The procedure laid down for impeachment of President can be made applicable for impeachment of Governors as well.

Sanction of the Governor for Prosecution of Ministers

In terms of Section 197 of the Criminal Procedure Code, only with the accord and consent of the Governor can criminal prosecution be commenced against a Minister of a State. The question which arises is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Indian Penal Code. The recent controversy surrounding the Lavlin case in Kerala where the Governor accorded sanction to proceed with prosecution despite advice to the contrary by the council of ministers is a case in question.

Article 163 of the Constitution of India binds the Governor to the advice of the CM heading the Council but gives hi discretionary powers.

In the case of Samsher Singh v. State of Punjab, [1975] Supreme Court held that "We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. These situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House, (b) the dismissal of a Government which has lost its majority in the House; but refuses to quit office; (c) the dissolution of the

line with the policy of the Union Ministry. The removal of the Governor under such circumstances would otherwise mean that the Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution".

Supreme Court on Governor term 2010: B P Singhal case

A five-judge constitution bench of the Supreme Court objected to the removal of four NDA-appointed governors in 2004 by the UPA immediately after coming to power.

The reason given for removal was that they were not in sync with the policies and ideologies of the UPA government. The court held that if the reasons for removal were irrelevant, malafide or whimsical, they could invite judicial intervention.

Justice Raveendran, writing the unanimous 56-page judgment, said: "Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union government or the party in power at the Centre. Nor can he be removed on the ground that the Union government has lost confidence in him."

The Bench felt that no reasons need to be ascribed for the summary dismissal of governors as they continue in their post as long as they enjoyed the pleasure of the President.But, it sounded a caution. "Having regard to the nature of functions of the governor in maintaining Centre-state relations, and the flexibility available to the government in such matters, it is needless to say that there will be no interference unless a very strong case is made out," it said and ruled that where the apex court feels the power to dismiss a governor had been exercised arbitrarily, it would intervene.

Punchi Commission on governor

Given the status and importance conferred by the Constitution on the office of the Governor and taking into account his key role in maintaining Constitutional governance in the State, it is important that the Constitution lays down explicitly the qualifications or eligibility for being considered for appointment. Presently Article 157 only says that the person should be a citizen of India and has completed 35 years of age.

The Sarkaria Commission recommendations in this regard are endorsed.

The Punchi Commission is of the view that the Central Government should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit lest appointments to the high Constitutional office should become a constant irritant in Centre-State relations and sometimes embarrassment to the Government itself.

However, the norms of appointment and the credibility of the office of Governor deteriorated fast to become a major cause of disharmony in Centre-State relations. The Study Team (October 1967) of the Administrative Reforms Commission on Centre-State Relationship stated: "The post came to be treated as a sinecure for mediocrities or as a consolation prize for what are sometimes referred to as 'burnt out' politicians. Instead of these being treated as sinecures, they should be given due recognition as vital offices in the federal fabric of Indian Administration".

The Committee of Governors appointed by President V.V. Giri affirmed in its report (1971): "Moreover, under the Constitution, just as a State is a unit of the Federation and exercises its executive powers and functions through a Council of Ministers responsible to the Legislature and none else, the Governor, as the Head of the State, has his functions laid down in the Constitution itself, and is in no sense an agent of the President" (page 8).

The Rajamannar Committee Report (1971) recommended: "He (the Governor) should not be liable to be removed except under proved misbehaviour or incapacity after inquiry by the Supreme Court."

The Sarkaria Commission Report on Centre-State Relations (1988) noted: "Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office. Criticism has been levelled that the Union government utilises the Governors for its own political ends. Many Governors looking forward to further office under the Union or active role in politics after their tenure came to regard themselves as agents of the Union" .

In Hargovind Pant v Dr. Raghukul Tilak (AIR 1979, SC), a Constitution Bench comprising five Judges of the Supreme Court observed: "Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot be regarded as an employee or servant of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office, which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State".

In his monumental work, Constitutional Law of India, eminent jurist H.M. Seervai said: "As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because in the honest discharge of his duty, the Governor takes action which does not fall in

Governors and Founding Fathers

Krishnamachari unequivocally stated in the Constituent Assembly that "we do not want ... to make the governor of a province an agent of the Centre at all".

Professor K.T. Shah, in the course of the debates, stressed that "we must not leave the governor to be entirely at the mercy or pleasure of the president and so long as he acts in accordance with the advice of the constitutional advisers of the province he should, I think, be irremovable during his term of office".

Shibbanlal Saksena apprehended that in the absence of safeguards "he (the governor) will be purely a creature of the president, that is to say, the prime minister and the party in power at the Centre. When once a governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the president at his whim...Such a governor will have no independence..."

B.R. Ambedkar's answer to these criticisms is highly significant. He emphasised that it was "quite unnecessary to burden the Constitution with all these limitations stated in express terms...I therefore think that it is unnecessary to categorise the conditions under which the president may undertake the removal of the governor". Thus Dr Ambedkar clearly visualised that the power of removal of a governor was conditional, not absolute.

The power of removal, although apparently absolute, is subject to an implied limitation, namely, that it can be exercised only in cases of violation of the Constitution or for the commission or omission of acts by the governor which render him or her unfit to occupy the gubernatorial office. The doctrine of implied limitation has been recognised by our Supreme Court.

Biswanath Das (Congress, Orissa) was forthright: "If I were to have my leaders in office continuously, if I were to have men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel, I have absolutely no complaint... there is no knowing which party will be in power (in the future). It may be that a party absolutely different from that in the Centre may be functioning in office in a province. What would then be the position? The Governor, who is the constitutional head under the Act, has to be appointed on the advice of the Prime Minister of India, leader of another party. I would have cited how the Governor, who was the agent of the British Imperialism, had all along been attempting to smash my Party. What was being done by the British Imperialism may also be repeated by the Party (at the Centre)" (Constituent Assembly Debates, May 31, 1948).

Dr. B.R. Ambedkar, the chairman of the drafting committee, said: "Under the parliamentary system of government, there are only two prerogatives which the King or the Head of the State may exercise. One of them is the appointment of the Prime Minister and the other is the dissolution of the House. With reference to the Prime Minister, it is not possible to avoid vesting the discretion in the President." To a query about the position of the Governor in a State, Ambedkar said: "The position of the Governor is exactly the same as the position of the President."

4 If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

(i) an alliance of parties that was formed prior to the Elections.
(ii) the largest single party staking a claim to form the government with the support of others, including 'independents'.
(iii) a post-electoral coalition of parties, with all the partners in the coalition joining the government.
(iv) a post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents' supporting the government from outside.
(v) The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.

It was also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

The other recommendations made by the Sarkaria Commission are that the issue of majority support should be allowed/directed to be tested only on the floor of the House and nowhere else and that in the matter of summoning and proroguing the Legislative Assembly, he must normally go by the advice of Council of Ministers but where a no confidence motion is moved and the Chief Minister advises proroguing the Assembly, he should not accept it straightaway and advise him to face the House. The Report also recommended certain measures in the matter of dissolution of the Assembly. The Report recommended that while sending *ad hoc* or fortnightly reports to the President, the Governor should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

The discretionary power of the Governor as provided in Article 163, it was recommended, should be left untouched.

In 1979, a Constitution Bench of the Supreme Court categorically ruled in *Hargovind vs Raghukul Tilak* that the governor cannot be "regarded as an employee of the Government of India...He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India".

All the above principles are being followed at the Union level too where coalitions have been recurring for about two decades and there are no Constitutional rules to follow in this regard.

356(1)]. Sarkaria Commission took note of the criticism with respect to the role of the Governor and also set out the matters in which the Governor has to act in his discretion- as mentioned above .

The Commission says that the role of Governor is of vital importance having multi-faceted role, that Governor is linchpin of constitutional apparatus, that Governor's office assures continuity of Government and that it should not be dispensed with. Recommendations of the Sarkaria Commission in regard to the institution of Governor are briefly the following:-The person to be appointed as a Governor –

1 should be an eminent person;
2 must be a person from outside the State;
3 must not have participated in active politics at least for some time before his appointment;
4 he should be a detached person and not too intimately connected with the local politics of the State;
5 he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
6 His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a statement explaining the circumstances leading to such removal or resignation, as the case may be;
7 After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be; and
8 At the end of his tenure, reasonable post-retirement benefits should be provided.

Sarkaria Commission further recommended that in choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

1 The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
2 The Governor's task is to see that a government is formed and not to try to form a government which pursue policies which he approves.
3 If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minster.

Though the Governor is the executive head of the State and a part of the State Legislature and the administration of the State is carried on in his name, the people of the State or their representatives have no say in the matter of his appointment. While the President is elected by the representatives of the people, namely, the Members of Parliament and the Members of the State Legislatures, the Governor is merely appointed by the President which really means, by the Union Council of Ministers. In as much as the Governor holds office during the pleasure of the President, there is no security of his tenure. He can be removed by the President at any time. There is no provision for impeaching the Governor by the State Legislature.

Today the situation is different as coalitions at the centre are the norm and regional parties make up a huge part of the coalition. National parties need them. Thus, Regional parties are shielded against the arbitrary politics of the national parties.

Governor: Some perspectives

Sri M.C. Setalvad, the first Attorney General of India, pointed out when he was consulted by Dr. Rajendra Prasad (in connection with the Hindu Code Bill controversy): "Governor's discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor... For a centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly – these are unconstitutional acts and run counter to parliamentary system. In all his constitutional 'functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammeled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions".

Recommendations of Sarkaria Commission

The Commission headed by Justice R.S. Sarkaria, a former Judge of the Supreme Court, was constituted to "examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate". Commission first examined the historical background to the institution of Governor, the constitutional provisions concerning the Governor and the scope of these provisions and then pointed out the three main facets of Governor's role. The three facets so pointed out are: (a) as the constitutional head of the State operating normally under a system of Parliamentary democracy; (b) as a vital link between the Union Government and the State Government; and (c) as a representative of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article

oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Role of Governor

Governor's role is largely similar to that of the President of India, Constitutionally. Politically, historically, so long as one party formed the Government at the centre and also in the states the functions of the Governors remained ceremonial. When different parties headed the Government at the Centre and in States, some Governors acted in partisan manner and as agents of the Union Government. It all started in 1952 when in Madras C. Rajagopalachari was asked by Governor Sri Prakash to form the Government though the Congress lacked a clear majority. In 1959 the communist government of Kerala led by E.M.S. Namboodripad was dismissed on the report of the Governor, though the ministry commanded majority in the legislature, on the flimsy ground that it had lost the confidence of the people.

In 1967, new political era started with the formation of SVD Governments which were Coalition Governments in most northern States. Central Government used the governor to dismiss the state governments though there were no reasons other than political ones: Ajoy Mukharji's Government in Bengal(1967), Charan Singh's Government in UP(1969), Mahamaya Prasad Sinha's Government in Bihar , Govind Narayan Singh Government in MP; RN Singh Dev Government in Orissa . West Bengal Governor Dharm Vira dismissed the Ajoy Mukherjee Government on the belief that the United Front ministry of Ajoy Mukherjee lost its majority as some of legislators defected. He proposed to the Chief Minister to call a session of the Assembly to test majority which the Chief Minster refused and so the ministry was dismissed.

In 1969, Charan Singh ministry was dismissed by Governor Gopal Reddy without offering the CM a chance to prove his majority even as the Assembly was in session.

Governor of UP Romesh Bhandari did not invite the largest single party in 1997 and imposed the President's rule which the Allahabad High Court found objectionable.

In 1998, Kalyan Singh Ministry in UP was dismissed and Jadadambika Pal ministry was sworn in . Justice was done when the SC ordered that a special session of the Assembly be held and majority ascertained.

In Andhra Pradesh, in 1984 Governor Ramlal dismissed the Ministry of N.T. Rama Rao which later won the confidence of the Assembly. In Goa the Governor dismissed the D'Souza ministry and installed Ravi Naik as the Chief Minister in 1994 with hardly any justification for his act.

concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion. It has to be noted that these Articles themselves do not expressly provide for the exercise of discretion by the concerned Governors. Thus, these presidential Orders are instances of a Governor being required to act in his discretion "under" the Constitution.

Development Boards

There are three Development Boards constituted in Maharashtra State:

1. The Vidarbha Development Board
2. The Marathwada Development Board
3. The Rest of Maharashtra Development Board.

The special responsibility entrusted with the Governor of Maharashtra under the Constitution is for ensuring :-

- equitable allocation of funds for development in the three regions and
- equitable arrangements for providing adequate facilities for technical education and vocational training and adequate opportunities for employment in the services under the control of the State Government in the three regions

The responsibility of the Governor under Article 371(2) has been stated in the Development Boards Order 1994.

Governor and the CM

Article 164(1) says "The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and shall hold office during the pleasure of the Governor".

Art.164 says the following:

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minster, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the

g. returning a Bill for re-passage to the Legislature

In the second class are the Constitutional powers where Governor's discretion is required in the exercise of the powers.. The Constitution of India contains certain provisions expressly providing for the Governor to act—

- in his discretion; or
- in his individual judgement
- special responsibility or
- independently of the State Council of Ministers

a. Discretionary powers

- Governors of all states- Reservation for the consideration of the President of any Bill which, in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill (Art. 200).
- The Governors of Arunchal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim,and Tripura have been entrusted with some specific functions to be exercised by them in their discretion(Articles 371A, 371F and 371H and in Sixth Schedule).

b. Individual judgement:

- The Governors of Arunachal Pradesh and Nagaland have been entrusted with a responsibility with respect to law and order in their respective states. In the discharge of this responsibility, they are required to exercise "individual judgement" after consulting their Council of Ministers.

c. Independently of the Council of Ministers

- Governors as Administrators of Union Territories(U.T) — Any Governor, on being appointed by the President as the administrator of an adjoining UT, has to exercise his functions as administrator, independently of the State Council of Ministers.

d. Special responsibility

- Similarly, the Special Responsibility Powers of Governor are as follow:Articles 371(2) And 371C(1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively. The presidential Orders so far issued under these Articles have provided that the

Judicial or Pardoning Powers:

Article 161 confers on the Governor the power to grant pardon, reprieve, respite or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matters to which the executive power of the state extends. It is largely equal and parallel to the powers of the President. The latter's powers relate to laws made by the Parliament. The difference however is that the President can pardon a death sentence while the Governor can only commute it to life term. Governor can not entertain cases of court martial. The clemency granted or not granted by Governor can not be appealed against to the President. But courts can intervene- High Court and Supreme Court.

Governor's Discretionary Powers

Following are the provisions of Art.163 which contains the discretionary powers.

Art.163. Council of Ministers to aid and advise Governor.-

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Art.163 explicitly recognizes Governor's discretionary powers- that there are situations in which the Governor has to act without the aid and advice of the Council of Ministers. There are two types of such situations:

1. circumstances thrown up in the functioning and process of legislative democracy
2. where the Constitution confers such powers.

In the first class are the following situations as mentioned in the Sarkaria Commission report

a. choosing the Chief Minister
b. testing majority
c. dismissal of the Chief Minister
d. dissolving the Assembly
e. recommendation of the President's Rule(Art.356)
f. reserving the Bill for Presidential consideration (Art.200)

Presidential consideration.It need not be assented to by the President and he may return it again and again. Thus, it is an absolute veto. Also, there is no time limit within which the President should take a decision.

There have been instances where Bills have been pending with the President for periods up to six years or more. It may be mentioned here that a careful reading of Article 201 shows that even a Money Bill can be reserved for the assent of the President.

Governor's suspensive veto

The Gujarat Local Authorities Laws (Amendment) Bill, 2009, which offers 50 percent reservation for women along with making voting in local bodies compulsory was repassed by the assembly in 2011 after the Governor returned it for reconsideration and repassage.The bill was first introduced in the Assembly in December 2009 and passed by majority vote.It was however, returned by the governor in April 2010 with remarks that "forcing voter to vote is against the principles of individual liberty".

Governor Kamla had returned the bill to the government for reconsideration with her comments."The present bill violates the freedom which a citizen is entitled to enjoy under Article 21 (personal liberty) of the Constitution.She had also asked the government to separate the issue of women's reservation in local body polls from it.The options for the Governor now are to sign or keep it for Presidential consideration.

President's absolute veto

President Pratibha Patil withheld her assent to the controversial Gujarat Control of Terrorism and Organised Crime Bill, 2003 (GUJCOC) following state government's refusal to make amendments to it."The President has withheld her assent from the Bill on January 22, 2012 as the state government had not made any amendments in the said Bill as per the directives contained in Presidential message to the earlier Bill."

Gujarat Control of Terrorism and Organised Crime Bill, 2003, as passed by the State Legislature was reserved by the Gujarat Governor for consideration of the President.The proposed law was earlier rejected by the Centre on the ground that it was not in line with its new legislation dealing with terrorism like Unlawful Activities (Prevention) Amendment Act- it allows or disallows bail by the judge only if Public Prosecutor agrees to it.

The Governor appoints the Council of Ministers, Advocate General, Chairman and the members of the State Public Service Commission. The Governor appoints the Chief Minister and other ministers are appointed by him on the advice of the Chief Minister. The Governor has the power to nominate one member from the Anglo-Indian Community, if he is of the opinion that the community needs representation in the Assembly. The Governor has the power to nominate one-sixth of the members of the Legislative Council of State. The persons to be nominated are require to have special knowledge and practical experience in respect of Literature, Science and Arts etc.

Legislative Powers: The Governor is the part of the legislature (Art.168). According to this Article, the Legislature of a State shall consist of the Governor and the Legislative Assembly. Where, however, the Legislature consists of two Houses, the upper House too is a part of the Legislature.The Governor has the right to address the legislature and to send messages to it. The Governor may from time to time summon, prorogue or dissolve the Legislative Assembly. The Governor has the power of causing to be laid before the legislature, the Annual Financial Statement(Budget). Without his recommendation no demand for grant can be made by the legislature. The Governor reserve Bills for the assent of the President made by the Legislature. In this regard, Art. 200 and 201 are very important and they are as follows:

Art. "200:Assent to Bills – When a Bill has been passed by the Legislature of a State , it shall be presented to the Governor who may accept or reject the Bill.In the case of Bills other than Money Bills, he may return to the Legislature for reconsideration. He may also reserve the Bill for the consideration of the President.

When a Bill is returned to state legislature by the Governor, the Bill must be repassed to be accepted by the Governor.

Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, derogate the powers of the High Court. In essence as per the Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options, namely, (a) he assents to the Bill; (b) he withholds assent; (c) he reserves the Bill for the consideration of the President; or (d) he returns the Bill to the Legislature for reconsideration.

Art.201. Bills reserved for consideration

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent in case of a Money Bill. In other Bills, he may return the Bill for repassage. Once it is returned, the state legislature should consider it within 6 months and sent for

Art. 157 lays down two qualifications for the office of the Governor:

- he should be a citizen of India and
- must have completed the age of thirty-five years.

Art.158 stipulates the conditions of Governor's office as the following:

- Governor shall not be a member of either House of Parliament or State Legislature, and if such a member is appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- The Governor shall not hold any other office of profit.
- The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
- The emoluments and allowances of the Governor shall not be diminished during his term of office.

In 2010, the salary of Governor was raised to Rs.1,10,000 a month. It has also been decided to award pensions, for the first time, to former Governors.

Art.159 prescribes the oath/affirmation which a Governor has to take before entering upon his office, in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available to faithfully discharge the functions of the Governor of .....*(name of the State)* and will to the best of his ability preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of .....*(name of the State)* "

Executive Powers: The executive power of the state is vested in the Governor. He exercises it either directly or through officers subordinate to him. It has been held that ministers are officers subordinate to him. The executive power of the state extends to all matters with respect to which the State Legislature has power to make laws. All executive action is expressed to be taken in the name of the Governor. All orders, instruments, etc. are authenticated in the manner specified in the rules made by the Governor.

his duties involving security of the state from internal and external threats

- Jawaharlal Nehru explained to the Constituent Assembly that two more reasons can be cited to ignore the idea of a elected Governor: it may lead to provincial separatist tendencies ;and there will be far fewer common links with the centre.

Art.153 to 167 of Part VI deal with the State Executive of which Governor is the titular head and the Chief Minister heading the Council of Ministers is the political and real head.

Article 153 of the Constitution requires that there shall be a Governor for each State. It means that there shall not be a vacancy in the office of the Governor. Thus, the incumbent Governor of the State continues even after the five year tenure is over till a new Governor is appointed by the President as the Art.156 mandates. The Constitution (Seventh Amendment) Act, 1956 made a change in the Art.153 to the effect that one person can be appointed as Governor for two or more States. The need for it was felt in the wake of the reorganization of states in 1956 which in turn made many amendments to the Constitution necessary in the areas **relating to the High Courts and High Court Judges, the executive power of the Union and the States etc.**

Article 154 vests the executive power of the State in the Governor.

Article 155 says that "The Governor of a State shall be appointed by the President by warrant under his hand and seal".

Article 156 provides that "The Governor shall hold office during the pleasure of the President". The term of the Governor is prescribed as five years. There is a controversy about whether the five year term is more important that the reference to the pleasure of the President of India. In order to understand the debate clearly, the contents of Art.156 are to be followed as they are available in the Constitution:

156. Term of office of Governor

(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

As can be seen from above contents of Art.156, the meaning of the sequence of the above provisions is that President's pleasure is more important that the five year term.

GOVERNOR

The pattern of Government provided for the states is similar to that of the Central Government. The reason for the similarity is that at both the levels of government, there is parliamentary system of government in which a ceremonial head and a real head constitute the executive. For the Union Government, Presidency is ceremonial and the effective head of the government being the Prime Minister heading the Council of Ministers. For the State Government, Governor is the counterpart of the President of India and the Chief Minister heading the Council of Ministers is the mirror image of the Prime Minister.

Historical background

The Government of India Act 1858 transferred the responsibility of administration of India from the East India Company to the British Crown. It made the Governor of the province an agent of the Crown working through the Governor General. The Montagu-Chelmsford reforms (1919) made small changes in the provincial government with insignificant level of responsible government being introduced. The Government of India Act 1935 gave provincial autonomy with the Governor being required to act on the advice of the Council of Ministers. However, the Governor continued to exercise substantial discretion for which he was accountable only to the Governor General.

After India achieved Independence, The GOI Act 1935 was adapted and enforced till the new Constitution was drafted and adopted. The Adaptation Order 1947 dropped all references to the discretionary powers and made the Governor function completely according to the advice of the Council of Ministers.

Constituent Assembly(1947-49) debated various aspects related to the institution of Governor which essentially can be grouped under two heads

- Whether the Governor should be elected or nominated and
- Discretionary powers of the Governor.

The idea of elected Governor is discarded for the following reasons

- It defeats the very purpose of the institution of Governor as it should be an independent Constitutional office which is not possible if the Governor is a political office
- Political deadlock between the offices of the Governor and that of the Chief Minister which can paralyse the Government
- In case the Governor and the Chief Minister belong to the same political party, Governor can not perform his discretionary powers honestly and impartially
- Governor can develop his own populist vested interest which can compromise

reasonableness of such restrictions and declare those that are unreasonable in its view invalid.

(5) Finally, under Article 307, Parliament is empowered to appoint such authority as it considers appropriate for carrying out the purposes of Articles 301 to 304 and to confer on that authority such powers and duties as it thinks necessary.

Speaking on this provision, Ambedkar said, "(It) is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the U.S.A.

Regulation of Borrowing

Art.292 says that the Union Parliament can regulate and restrict the borrowing of the Union Government on the security of the Consolidated Fund of India. The FRBM Act 2003 was enacted partly on the basis of Art.292 – restriction of fiscal deficit and zero-level of revenue deficit.

Article 293:- Borrowing by States

- States can not borrow from outside the country
- States can borrow from within the country on the security of the Consolidated Fund of the State
- State Legislature may lay down conditions
- If the Centre gave a loan to the State and such a loan not repaid , the Centre's permission is required to borrow.
- similarly, if the Centre stood guarantee to a loan to the State and the loan is not repaid, Centre's permission is required.
- States borrow from the following sources :

1. small savings that they mobilize are totally onlent to them by the center
2. from the market through the RBI

Since the mid-nineties, the Centre is actively involving the States in taking project aid from the international multilateral institutions like WB and ADB for various reforms like power sector, agriculture to introduce state-specificity.

from scarcity of goods in one part of the territory of India, and in the case of the States it must be justified on the ground of public interest."

Article 301 is general in scope and enacts that "subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free". After having stated the general nature of the freedom of trade and commerce, the Constitution details the limitations to this freedom. There are five such limitations:

(1) Parliament may impose restrictions in any part of the territory of India in the public interest (Art. 302). The purpose of this provision is to allow the Government of India to restrict the movement of goods so as to safeguard a well-balanced economy and the proper organisation and ordering of supplies of goods and services.

Famine may be raging in one part of the country while there is plenty in another part, as has been the experience of the country in regard to food during the last several decades.

If Parliament has no effective powers to check such abnormal situations, freedom of trade and commerce, instead of a blessing, will become a menace to the freedom of life itself.

(2) Although Parliament is empowered to restrict the free movement or articles of trade and commerce, normally the laws passed by Parliament in this context ought to be non-discriminatory in character. In other words, it should not prefer one State to another. But when any part of the country is suffering from scarcity of goods, Parliament may, meet such a situation; pass even a discriminatory law (Art. 303).

(3) A State Legislature may impose on goods imported from other States any tax if similar goods produced in that State also are taxed in a like manner. A State Legislature is also authorised to impose reasonable restrictions on the freedom of trade and commerce with or within that State as may be required in the public interest (Art. 304).

But this is subject to Central control. According to this, any Bill who seeks to introduce such restrictions can be introduced in the State Legislative only with the previous sanction of the President.

The President will have the opportunity to see that the legislation is in the public interest and the restriction imposed is reasonable.

The fact that every restriction should be reasonable in relation to its objective leaves the Supreme Court with adequate power to examine and adjudicate upon the

The NIC held its first meeting in 1962. The council has held 15 meetings so far, with the last meeting in 2011 focused on communal harmony.

In 2010 the government established a standing committee of the National Integration Council. Home Minister P. Chidambaram was appointed chairman and four Union Ministers and nine Chief Ministers were appointed members. The committee would decide on agenda items for future council meetings.

The NIC meetings discuss various issues relating to national integration and communal harmony in the context of the various disputes, regionalism, communalism, role of educational institutions and responsibility of the mass media, among others.

Inter state trade and commerce

The free flow of trade, without geographical barriers, is a *sine qua non* for economic prosperity. Our federal constitution guarantees it. We have an arrangement that aims to harmonize and facilitate inter-State trade and commerce without hindrances. Hence, inter-State trade and commerce and some elements of intra-State trade and commerce are a Central responsibility. For example, Part XIII (Articles 301 through 307) is devoted exclusively to trade and commerce. Several other matters, incidental or necessary to trade and commerce, are also a Central responsibility, through exclusive or concurrent jurisdiction. Article 19 guarantees to every citizen the right to carry on any trade, business or profession, subject to reasonable restrictions, which may be imposed in the interest of the general public..While there is a general declaration in the Indian Constitution that trade and commerce should be free, the Centre and the States (especially the former) have the power to regulate.

Articles 301 to 307 deal with inter state trade and commerce which is a core feature of a federation like ours.

The objective behind the principle of freedom of inter-State commerce is that within the country trade and commerce should develop to the largest possible extent and it should not be hindered by artificial barriers and restrictions imposed by the various States of the federation.

Accordingly, the Constitution has taken national interest as a whole as well as the interests of particular States and the wide geography of this country in which the interests of one region differ from those of another.

The freedom of trade and commerce is subject to certain limitations which may be imposed by Parliament or by the Legislatures of the various States, subject to the fact that the limitations contained in the power of Parliament is confined to cases arising

Nagaland and Tripura. The NEC started functioning in the year 1972 . In 2003 Sikkim became the 8th member of the Council. The members of the NEC consist of the Governors and the Chief Ministers of the eight Member States.

Functions

The North Eastern Council was constituted for performing the following functions

- To discuss any matter in which some or all of the States represented in the Council have common interest and advise the Central Government and the Governments of the States concerned as to the action to be taken on any such matter, particularly with regard to any matter of common interest in the field of economic and social planning; inter-State Transport and Communications; Power or Flood-control projects of common interest.
- To formulate and forward proposals for securing the balanced development of the North Eastern Areas
- To review, from time to time, the implementation of the projects and schemes included in the Regional Plan
- To review progress of expenditure and recommend to the Central Government the quantum of financial assistance to be given to the States entrusted with implementation of any project included in the Regional Plan.
- To review, from time to time, the measures taken by the States represented in the Council for the maintenance of security and public order and recommend to the concerned State Governments further measures necessary in this regard

The Council acts as a funding agency as well as a planning agency.

National Integration Council

The government reconstituted the National Integration Council (NIC).

The 147-member NIC, headed by the prime minister, has union ministers, chief ministers of states and union territories, heads of political parties, eminent media persons, public figures, representatives of business and women's representatives as members.

The NIC was set up in 1961 by the then prime minister Jawaharlal Nehru following a National Integration Conference to find ways and means to combat the evils of communalism, casteism, regionalism linguism and to formulate definite conclusions in order to give a lead to the country.

(ii) balancing regionalism with federalism

(iii) Enabling the Centre and the States to co-operate and exchange ideas and experiences; and

(iv) Establishing a climate of co-operation amongst the States for successful and speedy execution of development projects.

Broadly these Councils are expected to :

(i) Promote a cooperative approach to facilitate economic and social planning and the execution of development schemes particularly inter-State projects;

(ii) Deal with matters arising out of the re-organisation of States such as border problems, integration of services, linguistic minorities, inter-State transport, roads, etc.;

(iii) Initiate measures of common interest in the field of social and economic planning, and exchange of information, statistics and experience available with each State to the best common advantage;

(iv) Tackle common law and order problems and devise uniform policies regarding administration of civil and criminal law; and

(v) Deal with common problems like floods, drought, scarcity, local cess, etc.

The scope of functions of these Zonal Councils is very wide, as they can discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest. These Councils have been set up with the objective to provide a common meeting ground in each zone for ensuring resolution of Inter-State problems, fostering balanced regional development and building harmonious Centre-State Relations.

The issues that were discussed in the meetings of the Zonal Councils included internal security, police modernization, communal harmony and disaster management,**coastal security, narcotics control,**naxalism, river water sharing, woman and child trafficking and farmers' suicides .

The criticism is that the Zonal Councils do not meet as frequently as it may be required. .

ANURAG

NEC

The North Eastern Council (NEC) came into being by an Act of Parliament, the North Eastern Council Act, 1971 to act as advisory body in respect of socio-economic development and balanced development of the North Eastern Areas consisting of the present States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram,

Zonal Councils and their special problems are looked after by the North Eastern Council, set up under the North Eastern Council Act, 1972. Sikkim was added to the NEC recently.

The Zonal Council for each zone consists of the following members :

(a) the Chief Minister of each of the States included in the zone and two other Ministers of each such State nominated by the Governor;

(b) where any Union Territory is included in the zone, two members from each such territory nominated by the President;

Further the Zonal Council for each zone has the following persons as Advisers to assist the Council in the performance of its duties :

(a) one person nominated by the Planning Commission;
(b) Chief Secretaries of the States included in the Zone;
(c) Development Commissioners of States included in the zone.

Union Ministers are also invited to participate in the meetings of the Zonal Councils depending upon necessity. The union home minister is the chairman of each of these councils. The Chief Ministers of the States included in each zone act as Vice Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.

Each Zonal Council has set up a Standing Committee consisting of Chief Secretaries of the member States of their respective Zonal Councils. These Standing Committees meet from time to time to resolve the issues or to do necessary ground work for further meetings of the Zonal Councils. Senior Officers of the Planning Commission and other Central Ministries are also associated with the meetings depending.upon necessity. The Secretariat explores centre-State, inter-State and zonal issues which are to be deliberated by the Councils or the Standing Committees.

The Zonal Councils provide an excellent forum where irritants between Centre and States and amongst States can be resolved through discussions and consultations. Being advisory bodies, there is full scope for free exchange of views in their meetings. Though there are a large number of other fora like the National Development Council, Inter State Council, Governor's/Chief Minister's Conference and other periodical high level conferences held under the auspices of the Union Government, the Zonal Councils are different, both in content and character. They are regional fora of cooperative endeavour for States linked with each other economically, politically and culturally. Being small and high level bodies, specially meant for looking after the interests of respective zones, they are capable of focussing attention on specific issues taking into account regional factors while keeping the national perspective in view.

The main objectives of setting up of Zonal Councils are as under :

(i) national integration;

Taxes to States as recommended by the Standing Committee.

b)Articles 355 and 356 of the Constitution of India was another matter

c) The Council decided that on the subject of delay in State Bills referred for President's consideration, there should be time-bound clearance of Bills referred. The Bills should not be reserved for President's consideration in a routine manner

d) The Council decided that the issue regarding the use of articles 256, 257 and 365 of the Constitution should be remitted to the Sub-Committee deliberating on the issues of article 356.

The Ninth ISC meet was held in mid-2005 with the theme of good governance and last meeting was in 2006.

ISC is the only Constitutional body to deal with federal issues and disputes, apart from the Supreme Court and the river water dispute panels set up under Art.262.

Zonal Councils

The idea of creation of Zonal Councils was mooted by the first Prime Minister of India, Pandit Jawahar Lal Nehru in 1956 when during the course of debate on the report of the States Re-organisation Commission, he suggested that the States proposed to be reorganised may be grouped into four or five zones having an Advisory Council "to develop cooperative working" among these States. This suggestion was made by Pandit Nehru at a time when linguistic reorganization led to bitterness and hostilities.As a remedy to this situation, it was suggested that a high level advisory forum should be set up to minimise the impact of these hostilities and to create healthy inter-State and Centre-State environment with a view to solving inter-State problems and fostering balanced socio economic development of the respective zones. There are five zonal councils

i. The Northern Zonal Council, comprising the States of Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, NCT of Delhi and U.T. of Chandigarh;

ii. The Central Zonal Council, comprising the States of Chhatisgarh, Uttaranchal, Uttar Pradesh and Madhya Pradesh;

iii. The Eastern Zonal Council, comprising the States of Bihar, Jharkhand, Orissa, Sikkim and West Bengal;

iv. The Western Zonal Council, comprising the States of Goa, Gujarat, Maharashtra and the Union Territories of Daman & Diu and Dadra & Nagar Haveli; and

v. The Southern Zonal Council, comprising the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territory of Pondicherry.

The seven North Eastern States i.e. (i) Assam (ii) Arunachal Pradesh (iii) Manipur (iv) Tripura (v) Mizoram (vi) Meghalaya and (vii) Nagaland are not included in the

The Mahadayi Water Disputes Tribunal would adjudicate the water dispute between the State of Goa and Karnataka.

Inter State Council

The Inter-State Council was set up under Article 263 of the Constitution of India vide Presidential Order dated the May 28, 1990.

Prime Minister is the head of the ISC and the composition includes the Chief Ministers of all States, Chief Ministers of Union territories having Legislative Assemblies and Administrators of Union territories not having Legislative Assemblies, Governors of States under President's Rule, six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister and two Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister as permanent invitees.

Art.263 reads as follows:

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of -
(a) inquiring into and advising upon disputes which may have arisen between States;
(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,
it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

The Council in its first meeting in 1990 had considered the recommendations made by the Sarkaria Commission on Centre-State Relations. Keeping in view the complexities of the issues involved and their wider implications, it was decided by the Council that the recommendations would be first examined by a Sub-committee of the Council and thereafter considered by the Council. In its second meeting, the Council broadly endorsed the recommendations of the Sarkaria Commission as finalised by the Sub-committee. In the same meeting, the Inter-State Council decided to set up a Standing Committee for having continuous consultation and processing of all matters for consideration of the Inter-State Council. Accordingly the Standing Committee was set up in 1996.

The Inter-State Council has held ten meetings so far and has taken important decisions on 171 of the 247 recommendations of the Sarkaria Commission. Some of the major decisions of the Council are as follows

a) The Council approved the Alternative Scheme of Devolution of Share in Central

Godavari flows from Nanded into the Sriramsagar project in Nizamabad district of Andhra Pradesh. The distance between Babhli and Sriramsagar is just 10 km and because of the proximity, unless Babhli releases water, Sriramsagar, which is the lifeline of north Telangana, will dry up.

Babhli Dam: A history of controversy

- The Babhli Project was cleared in 1995, but the construction only began in 2004.
- In 2005, Andhra Pradesh complained to the Centre that Babhli would deny the state its due share of water. The Centre appointed a technical committee to investigate.
- In 2006, Andhra went to the Supreme Court to stop Maharashtra from constructing the barrage.
- The next year, the court said Maharashtra could continue with the construction but, not install the 13 gates, which are the most crucial part of the dam as their height determines how much water can be stored.

Mahadayi Water Disputes Tribunal

Mahadayi (Mandovi) river originates in Karnataka state, flows 29 km through the State and passes through Maharashtra and Goa where its length is 52 km, before reaching the Arabian Sea.Karnataka had planned to utilise 7.6 tmc feet of water from Kalasa and Banduri tributaries of Mahadayi to meeting drinking water scarcity in around 100 areas of northern Karnataka, including Hubli and Dharwad.Objection from Goa is the basis of the controversy. Goa had opposed the project claiming that Mahadayi was a deficit basin and water diversion would impact on the environment in the basin.

Article 262 and Inter-State Water Disputes Act (ISWDA), 1956 provide a legal and constitutional mechanism for adjudication of water disputes between the states in India.

The Government of Goa requested for setting up of an Inter-State Water Disputes Tribunal under the Inter-State Water Disputes Act, 1956 for resolution of the dispute.

The Union Government in 2009 approved the proposal for constitution of Mahadayi Water Disputes Tribunal consisting of a Chairman and two Members nominated in this behalf by the Chief Justice of India from among the persons who at the time of such nomination are Judges of the Supreme Court or High Court.

award, is published by the government of India in the official gazette. Once it is published, the award is binding on all the parties and it is deemed equivalent to an order or decree of the Supreme Court. The act also empowers the central government to make schemes and constitute an authority to implement the tribunal's award.

So far, five Inter-state water disputes tribunals have been constituted

- Krishna Water Disputes Tribunal (1969- 1976)
- Narmada Water Disputes Tribunal (1969- 1979)
- Godavari Water Disputes Tribunal (1969- 1980)
- Ravi and Beas Waters Tribunal (1986 and report is still to be submitted)
- Cauvery Water Disputes Tribunal (1990-2007).

Changes in the 1956 Act made in 2002 by Parliament

The following provisions were introduced through an amendment to the 1956 Act in 2002

- the limit of one year from the date of receipt of a request by government of India to constitution of a tribunal
- the requirement for the tribunal to give its award within three years (with a proviso that government of India can extend this by another two years)
- the provision for central government to appoint two assessors to assist the tribunal

River Boards Act, 1956.

In order to promote integrated and optimum development of waters of inter-state rivers and river valleys, under Entry 56 of List-I of the Constitution(Union List), Parliament enacted the River Boards Act, 1956. The Act contemplated the appointment of river boards by the central government in consultation with the state governments. These boards are expected to promote development of irrigation, drainage, water supply, flood control and hydro-electric power.

Babhli barrage

The Babhli barrage, built over River Godavri, stands in Maharashtra's Nanded district And it has become the flashpoint of the water wars between Maharashtra and Andhra Pradesh.

The Babhli dam will help irrigate 8000 hectares in Nanded, and provide drinking water to nearly 60 villages and towns. Maharashtra's gain will come at a cost, argues the Andhra Pradesh government. It says six districts will turn into a desert. The

affected by internal disturbances are at the nation's frontiers, and external support and sanctuaries in neighbouring countries have exacerbated the internal challenge. Also, increasingly, there is a pernicious nexus between domestic miscreants and international criminal networks.

National security has internal security as a dimension .Therefore, the close co-operation between the Centre and the States has been provided under the Constitution as it is a vital subject with multiple challenges.

River Water Disputes India

The Seventh Schedule to the Constitution contains the legislative powers of federal and state governments. Water is a state subject and is included as entry 17 in list 2 (i.e., subject matters for state legislation). This entry reads: "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I". The role of federal government is stipulated in entry 56 of List 1: ""Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

When a "Water dispute" arises between two or more state governments , the following is the procedure to resolve the same:

Article 262 of the constitution empowers the Parliament to make laws for the adjudication of inter-state water disputes. That article also permits the Parliament to exclude such disputes from being referred to the Supreme Court.

The Inter States Water Disputes (ISWD) Act, 1956, was enacted by the Parliament to deal with inter-state water disputes. Government of India can set up a tribunal to settle such a dispute when one or more riparian states of an inter-state is/are of the opinion that their interests are (or are likely to be) affected by actions or plans of other states, they can request the government of India to constitute a tribunal under the Act. Within one year of receiving such a request and when convinced that such dispute cannot be resolved through negotiations, the government of India shall constitute a tribunal to hear the disputes concerning claims of water sharing and adjudicate an award. Such a tribunal should have three members who should be judges of the supreme court or the high court and are appointed by the Chief Justice of India; the government of India can appoint up to two assessors to assist the tribunal; after considering all the aspects as may be necessary, the tribunal gives its report to the government of India; if the riparian states or the government of India need any clarification, they can apply seeking such clarification from the tribunal within 90 days; the tribunal may give further clarifications. Then the report, called

criminals, hot pursuit of extremists even across the border of the State, general information sharing, police modernization and fortification of Police Stations etc. The deployment of Central Para Military Forces has also been increased substantially in the affected areas. Creation of joint local resistance groups against Naxalite movement with adequate security cover.

Centre pays salaries of the SPOs.

Unmanned aerial vehicles(UAVs) are being used.

Unified commands for streamlining anti-Naxal operations in four Maoist-affected states of the country are in place.The commands, based in capitals of the four states of Chhattisgarh, Jharkhand, Orrisa and West Bengal, are headed by their respective chief secretaries. The other members are state DGP,CRPF, Intelligence Bureau (IB) along with a retired major general rank officer of the Army.

Naxal issues are being discussed in the Zonal Council meetings.

National Investigating Agency (NIA) may also proble naxal acts of violence, if necessary

Federal polity and internal security

Under the Constitutional scheme, 'National Security' is not a subject specifically listed in any of the three Lists i.e the Union, the State or the Concurrent List.The subject of Security under the Article 352 and under the Emergency Provisions in Part XVIII of the Constitution has been assigned to the Union Government. However, 'Security'is a subject in which the States and the Union have a common interest and are expected to act in a co-ordinated manner.

Under the co-operative relationship, the duties and obligations of the Union and the States are covered primarily in Article 256 (Union Government's directions to the states), 355, 356 and 365 and also under relevant provisions. Entries pertaining to Defence of India and control and deployment of the armed forces of the Union are covered in List-I of the Seventh Schedule.

Public order and Police feature as Entries 1 and 2 in the List II.

Criminal law, Criminal procedure and Administration of Justice are covered in List III as Entries 1, 2 and 11A.

Problems of internal security have conspicuous external dimensions. Several States

intelligence inputs, monitoring of the situation and for providing para-military forces support at the specific request of the States for enabling the State Governments to bring the situation under control at the earliest. Centre's support to the State Governments would be of paramount importance in the relief and rehabilitation efforts.

Centre's responsibility to act under Article 355 was well recognized. Enlarging the provisions of Article 256 so that the Union Government may give appropriate and time-bound direction to the States. Thus,while maintenance of Law and Order is in the domain of States, maintenance of communal harmony is a joint responsibility of the Centre and States.

Punchi Commission suggests that National Integration Council (NIC) could be utilized as a forum for preparing a comprehensive strategy involving all political parties for fighting communal conflicts in the society. The Liberhan Commission recommended that NIC be conferred with statutory powers in this regard for it to play proactive and effective role.

Naxalism and centre state relations

The most important Internal Security problem which needs extensive Centre- State co-operation and coordintion to ensure effective handling is Naxal issue. The process of effective implementation of land reforms and extending Panchayati Raj to the Scheduled Areas (PESA) has already been initiated by State Governments. Similarly, under the ForestRights Act, 2006, the vesting of forest rights of the scheduled tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded a framework has been provided for recording the forest rights so vested. Special schemes for development of states and districts affected by left wing extremism are also in place.A positive aspect is that most of these schemes are being implemented at the Panchayat level.

Since the Naxal problem has spread over a large geographical area in the country, covering several States, a collective approach and coordinated action will be a pre-requisite as response mechanism. In respect of improving the Centre-State and InterState coordination in containing Naxal violence, as such, several measures have been adopted by the Centre in co-operation with the affected States. Inter-State coordination is being ensured through joint action by neighbouring States. The initiatives includeregular security reviews, more frequent and intensified joint anti-Naxal operations, intelligence sharing on Naxal activities and activities of other

amend the relevant provisions of the Act to permit deployment of this force in other parts of the territory (hinterland) as well.The major objections raised by the CMs are related to conferring of powers of arrest, search and seizure to BSF, when deployed in hinterland as states believe that such powers may be in conflict with functions of the local police. The states have also argued that such powers given to the BSF would weaken the federal structure as it would violate the 'rights' of states. Chidambaram had explained that such powers are already available in Section 139 of the BSF Act, 1968, when deployed in the local limits of such area adjoining the border.

Minerals

In the federal structure of India, the State Governments are the owners of minerals located within their respective boundaries. The Central Government is the owner of the minerals underlying the ocean within the territorial waters or the Exclusive Economic Zone of India.

In this context, the entry at serial No. 23 of List II (State, list) to the Constitution of India states, 'Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.'

The entry at serial No. 54 of List I (Central list) to the Constitution of India states, 'Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.'

Communalism and federalism: Punchi Commission

Maintenance of communal harmony in the country is one of the key responsibilities of both the Union and the State Governments. It is the duty of the States under the Constitution, to maintain public order (List II, entry 1, Schedule 7) and thus prevent communalism. However, if such violence gets prolonged, and threatens to cause internal disturbances in a large area of the State, or which has potential for escalation in other parts of the country, then it becomes the duty of the Union under Article 355 to protect all its citizens and the property and bring the situation back to normal as quickly as possible. As in the case of communal incidents, violence is also quite common in caste, sectarian, ethnic or other social conflicts. Such incidents have the potential of assuming evil proportions. As such, the Government has the responsibility to nip in the bud the problems threatening communal, caste, sectarian, ethnic and social harmony.

The Centre's role should generally include issue of timely advisories and

Dwelling upon the Constitutional provisions, experts point out that in List II, law and order is the responsibility of the State governments. In Article 355, it is the responsibility of the Central Government to protect every State against external aggression and internal threat.

Another objection of the Chief Ministers pertains to the proposed NCTC being part of the Intelligence Bureau (IB), which is controlled by the Home Ministry. Some of the Chief Ministers have suggested giving an independent status to it.Some suggested that it be accountable directly to the Parliament if such a procedure is feasible.

NCTC will work as an "integral" part of IB, and its director will report to the IB chief, the Home Minister. Some CMs say NCTC shouldn't be given wide powers to search, seize and arrest anyone from the States as such powers are not given to IB anywhere in the world.

RPF Act Amendments

The proposed amendment in 2012 is meant to make the Railway Protection Force (RPF) more effective, since the central force deployed on moving trains and railways premises has to take up cases in various states.The RPF has to take the help of local police in each state when offences take place. To ensure that the force is more effective, the railway ministry had proposed that it be given powers to register cases against offenders and move against them. But this proposal ran into trouble with some states.

However, it has become a bone of contention in the Indian federal system. Some CMs have criticized it as RPF is unwarranted, violation of the constitutional spirit and blow to federal structure of India. It also usurps power of the state legislature.

"Public order" and "police" are state subjects and proposing an amendment on these subjects under entry 22, 30 and 93 of Union List with entry 2 of the concurrent list in schedule VII of the Constitution of India is, not only a step to infringe upon powers of the state but also a serious blow to the federal structure of the Country- some critics hold.

BSF Act Amendments

BSF (Amendment) Bill 2012 wants the BSF that is deployed in the hinterland like Jharkhand and Chattisgarh to have some powers additionally. As per the present legal position, BSF can be deployed only along or adjoining the borders of India. However in recent times, BSF has been deployed in the hinterland, especially in Chhattisgarh and Odisha. The said deployments have been questioned.Government has proposed to

One of the challenges of Indian federation would be how best these mechanisms of cooperative federalism can be strengthened further to promote better coordination and cooperation between the Centre and the States.

Federal Flashpoints

NCTC

National Counter Terrorism Center(NCTC) India is federal anti-terror organisation which gained urgency after the26/11 attacks as it was strongly felt that India lacked a federal agency with real time intelligence inputs of actionable value specifically with respect to terrorism. Much blame had been on the states which failed to act on intelligence inputs provided prior to the Mumbai attacks.

The NCTC's function will include drawing up of plans and coordinating all actions and integrating all intelligence pertaining to counter-terrorism. It will coordinate with relevant investigation and intelligence agencies to make sure that the perpetrators of terror are brought to justice, besides maintaining a comprehensive database of terrorists, their associates and supporters.

The agency derives its powers from the Unlawful Activities Prevention Act, 1967. It include among other things, the power to carry out searches and issue arrest warrants throughout India in the interest of preventing terror attacks.

The UAPA Act was amended in December 2008, and the Lok Sabha added Section 43 (a) to 43 (f). Section 43 (a) refers to designated agency, saying "designated agency may, under certain circumstances, counter terrorism, arrest and seize articles."

The "moment arrest is made, the accused must be handed over to the nearest police station. This is a law made by Parliament and thus any criticism that it is unfederal is answered."

States till say that it is antagonistic toward the federal structure of India and violate certain rights of the states- police and law and order.

The anti-terror body, which was to come into existence on March 1, was kept on hold because of objections raised by the Chief Ministers.

Union Home Ministry has assured the States that "in normal course, arrest/search/seizure shall be carried out by the ATS or police units of the State concerned."

Experts stress on the shared responsibility of the Centre and the States in dealing with crucial issues of internal security and terrorism.

on the executive power of the Union within the States. Governors are appointed by the Central government to oversee the States. The Centre can even take over the executive of the States on the issues of national security or breakdown of constitutional machinery of the State.

Considering the overriding powers given to the Central government, Indian federation has often been described as 'quasi-federation', 'semi-federation', 'pragmatic federation'or a 'federation with strong unitary features'.

Indian federation should be seen in the context of its democratic system of governance at the national, state and local levels and the pluralities of its culture in terms of ethnic, linguistic, religious and other diversities which cut through the States. India is the largest democratic country as also the largest federal and the largest pluralist country of the world. While democracy provides freedom to everybody, federation ensures that governance is distributed spatially and a strong central government enables that the 'unity amidst diversity' is maintained and the country mobilizes all its resources to maintain its harmony and integrity and marches ahead to progress.

A strong Centre in India is therefore necessary for strong States and vice versa. Since the seventies when different political parties are in power in the centre and the states and more recently when national parties were eroded and coalition governments became the norm in the Centre, there are signs of stresses and tensions in intergovernmental relations between the Centre and the States.

The federal challenges in the country today requiring cooperation include national security(NCTC etc), food security, inflation management, education, land acquisition and so on.

Article 263 of the Constitution has provided for the setting up of an Inter-State Council for investigation, discussion and recommendation for better coordination of relation between the Centre and the States. The Zonal Councils set up under the State Reorganization Act 1956 provide another institutional mechanism for centre-state and inter-state cooperation to resolve the differences and strengthen the framework of cooperation. The National Development Council and the National Integration Council are the two other important forums that provide opportunities for discussion to resolve differences of opinion. Central councils have been set up by various ministries to strengthen cooperation. Besides Chief Ministers, Finance and other Ministers have their annual conferences in addition to the regular meetings and discussions of the officials of the Centre and the States to share mutual concerns on various issues.

The major sources of revenue allocated to the States, on the other hand, are: land revenue; taxes on agricultural income; succession duty in respect of agricultural land; estate duty in respect of agriculture land; taxes on land and buildings; taxes on mineral rights; excise duties on alcoholic liquors for human consumption; sales tax; professional taxes; taxes on the consumption of electricity; taxes on advertisements; etc.

While the resources of the States are limited, they have larger responsibilities for social, educational and economic development of the people. Further there are wide differences in the level of development of the States. In order to address the issues of this vertical and horizontal imbalance in the Centre-State and inter-State relations, the Constitution of India has provided for inter-governmental transfers through the mechanism of Finance Commission which is constituted once in five years to recommend transfers of central revenue to the States for a five yearly fiscal cycle. Thirteen such Finance Commissions have been set up so far.

Further such transfers also take place through the Planning Commission. There are three main channels of Central transfers to States; the finance commission transfers, plan transfers and assistance for central sector and centrally sponsored schemes. Today such transfers constitute about 44 per cent of state's total revenues, 42 per cent of the state's current expenditure; and almost 36 per cent of the revenues collected by the central government.

The figures show that the transfers have grown at a faster rate than the revenues collected by both the centre and the States. Still the resources available to the States have not been found adequate for discharging the responsibilities of the State governments.

Cooperative Federalism

Although the Constitution of India has nowhere used the term 'federal', it has provided for a structure of governance which is essentially federal in nature. First of all, Constitution has provided separate governments at the Union and the States with separate legislative, executive and judicial wings of governance. Secondly, Constitution has clearly demarcated the jurisdictions, powers and functions of the Union and the State Governments. Third, Constitution has spelt out in detail the legislative, administrative and financial relations between the Union and the States.

Within this basic framework of federalism, the Constitution has given overriding powers to the Central government. States must exercise their executive power in compliance with the laws made by the Central government and must not impede

Constitution made separate arrangements for resolving inter-State disputes on sharing of river water among the States. The 42nd Constitution (Amendment) Act 1976 amended the Seventh Schedule to include 'Forests' and 'protection of wild animals and birds' in the Concurrent List, thereby enabling a formal role of the central government on the subject.

The Ministry of Environment and Forests came into existence in 1980 and starting with the Forest Conservation Act, 1980, several measures have since been initiated by the Government to protect and manage the environment. These include the Environmental (Protection) Act, 1986; Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control) Act, 1974; as well as certain rules viz. Hazardous Wastes (Management and Handling) Amendment Rules, 2003 and Ozone Depleting Substances (Regulation and Control) Rules, 2000. These powers were exercised by the Parliament under Art.253.

It is felt that the Central government should have more definite and coordinating role on environmental issues. The Commission on Centre-State Relations headed by Punchi has recommended that the Constitution needs to be amended again to provide a specific Entry in List 1 - Union List of the Seventh Schedule empowering the Union on matters concerning 'Environment, Ecology and Climate Change'.

Apart from the jurisdictional issues there are larger issues of governance, research, resources and capacity building to deal with the complex issues of environment management, which cannot be handled by just one layer of government, but requires sustained efforts of all the three layers of governance - national, state and local - and involvement of all relevant stakeholders in the process. 'Green Federalism' refers to the holistic management of all these issues of environmental matters. Federal countries around the world are facing new challenges and opportunities to deal with the issues of environment and therefore sharing of knowledge and experiences among the federal countries shall be mutually useful and beneficial.

Fiscal Federalism

The fiscal relations between the Centre and the States have been defined under the Constitutional provisions of distribution of revenues between the Union and the States.

Under the scheme of distribution of taxing powers, the major sources of revenue assigned to the Union are: taxes on income other than agricultural income; customs duties including export duties; excise duties on goods manufactured in India except alcohol and liquors for human consumption; taxes on capital value of the assets, exclusive of agriculture land, of individuals and companies; taxes on the capital of companies; estate duty and succession duty in respect of property other than agricultural land; etc.

every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State. The costs incurred by the States in the process are borne by the Union Government.

Union can give directions in matters related to the following as well:

- Designing and implementing schemes for the welfare of the tribals
- Primary education to the linguistic minorities in their mother tongue(Art.351a) and Promotion of Hindi(Art.351)

In normal times, these are the aspects of administration on which directions can be given. During national emergency, any matter of administration can be the subject of such directions. If a state does not follow the directions given by the centre on the above matters, Art.365 gives power to the centre to dismiss the state by invoking Art.356(President's rule)

Concurrent List and implementation

Union laws on Concurrent items are generally enforced through States. But there can be different ways of implementation:

Forest (Conservation) Act 1980 is implemented by the Centre
Essential Commodities Act is jointly implemented
Electricity (Supply) Act 1959 is mostly delegated to the States.

Green Federalism

The Constitution of India has generally remained silent on the environmental issues in Indian federal system. In the original Seventh Schedule of the Constitution, all the natural resources - land, water, forests and minerals - were assigned to the States, while the central government was given the responsibilities to regulate the development of mines and mineral resources.

Federal System-II
Union-State Relations

FC and Performing states

FC has so far taken into consideration regional equality and the need to bridge it , as one of the objectives of the recommendations. The criteria of per capita income and Grants in aid(Art.275) used to assist the economically backward states. Developed states have made the following three arguments against it

- It punishes performance and laggards are helped at their expense
- The moral hazard is that it incentivizes backwardness
- Such FC recommendations have not helped and inequalities and imbalances persist and have become worse.

The answer of the FC is: Indian federation can be stable and be sustained only if all regions and states enjoy an element of regional balance for which FC has an obligation. Secondly, if regional imbalances persist, it is because of other structural factors like not attracting investment etc.

It must also be recognized that the leading states develop when the savings of the laggards are used for the trade and industrial development of the leaders. Also, cheap labour from all over the country fuels development of the so called performing states.

Finally, the criterion of fiscal discipline encourages better performance and has no bias.

FC and Planning Commission

(Discussed in the class)

Administrative Relations

Art.256-263 in Part XI contain administrative relations.

Art.256 talks of the obligation of States and the Union in these words: The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State.

Art. 257 talks about control of the Union over States in certain cases:The executive power of

reduction and spelt out a combined debt target of 68 per cent of GDP, against 75 per cent in 2009-10. It has stressed the need for achieving and maintaining revenue account in balance and containing the fiscal deficit to 3 per cent of Gross State Domestic Product (GSDP) for the respective States by 2014-15.

An important recommendation that might satisfy the interests of States relates to its proposal allocating revenues arising from the 'fiscal commons' such as 'profit petroleum, profit gas and revenue shares from spectrum'. Since these are national resources and must perforce be the collective disposal of the Central and all States, there is a case to view such non-tax revenues that were predominantly in the domain of the Centre "as being sharable between the Centre and the States collectively". In order to execute this proposal it needs to be included as a part of the divisible pool which entails Constitutional amendment.

At a time when coalition governance has become a rule rather than an exception in national politics, the whole recommendations of the 13th Finance Commission, most of which have been accepted by the Government, would go a long way in reducing the federal trust deficit and bring about good governance and national welfare.

Any FC adopts certain criteria with respective weights for giving to the states and the UTs their individual share from the total quantum that they are accorded from the net proceeds. For example, the TFC under Vijay Kelkar recommended for the states and UTs 32% of the total. The issue is which state gets how much. That is decided by the criteria and weights. Fiscal capacity distance is the criterion that replaces the earlier criterion of per capita income- the state that has the least per capita income is given the maximum share. Therefore, it is called the `inverse of per capita`- the lower the per capita the more the share. Fiscal discipline measures the improvement in the financial performance of each State during during a certain period over a selected base year in terms of the ratio of its own revenue receipts to total revenue expenditure- essentially how effective is its tax effort; how much is its borrowing and how wasteful or otherwise its expenditures.

Criteria and Weights adopted by the TFC

- Population in 1971- 25.0%
- Area -10.0%
- Fiscal Capacity Distance -47.5%
- Fiscal Discipline- 17.5%

prescribed transfer of 30.5 per cent, an increase of 1.5 per cent. It has also said that the total transfers to the States , inclusive of grants, be subjected to an indicative ceiling of 39.5 per cent of the gross tax revenues of the Centre.

The Commission has recommended a grant of Rs 51,800 crore for eight States that have a revenue deficit chronically(Art.275).

With elementary education at State level remaining a problem area, the Commission has accorded a grant, based on the Sarva Shiksha Abhiyan norms, of Rs 24,068 crore.

In a bid to de-carbonize development in line with growing interests in promoting green growth, the Commission favoured a grant of Rs 15,000 crore, each Rs 5000 crore for forest grant, promotion of renewable energy and for water sector. As there remains a gap between outlay and outcome due to deficiency in delivery mechanism or designing of proper schemes to help the needy, the Commission recommended six grants for improving outcomes, amounting to Rs 14,446 crore over the award period. An incentive grant for reduction in infant mortality of Rs 5000 crore is to be released to States starting 2012-13 depending on the reduction in infant mortality rate (IMR) achieved by the States with reference to the baseline level of 2009-10 figures. Grant of Rs 5000 crore for improved delivery of justice has been proposed for Lok Adalats and Legal Aid, Alternate Dispute Resolution Centre, Heritage Court Buildings, State Judicial Academy and training of judicial officers and public prosecutors. With legal cost becoming dearer and lakhs of poor people denied access to justice, this move would help address the aberrations and anomalies in the system. Other components under this include, Rs 2989.10 crore for the Unique Identification (UID) programme based on the number of people covered under the UDI database, two grants of Rs 616 crore each for District Innovation Funds and improving statistical systems at district and State levels and a grant of Rs 225 crore for setting up database of employees and pensioners. There are also grants for the requirement of roads in a State amounting to Rs 19930 crore for four years of the award period beginning 2011-12. Finally, under grants, the Commission has provided Rs 27,945 crore for various State-specific needs of the States.

On the Goods and Services Tax (GST), the Commission has put in place a model GST structure that includes features such as single rate of 12 per cent of goods and service tax, zero rating of exports, inclusion of various indirect taxes at the Central and State level in GST ambit, major rationalization of the exemption structure. It has recommended a grant of Rs 50,000 crore for implementation as per the recommended model.

On fiscal consolidation, the Commission has drawn a roadmap for fiscal deficit

levels in Indian States are very sharp. In an explicit recognition of vertical and horizontal imbalances, the Indian Constitution embodies the following enabling and mandatory provisions to address them through the transfer of resources from the Centre to the States.

1. Levy of duties by the Centre but collected and retained by the States (Article 268)
2. Taxes and duties levied and collected by the Centre but assigned in whole to the States (Article 269).
3. Sharing of the proceeds of all Union taxes between the Centre and the States under Article 270. (Effective from April 1, 1996, following the eightieth amendment to the Constitution replacing the earlier provisions relating to mandatory sharing of income tax under Article 270 and permissive sharing of Union excise duties under Article 272).
4. Statutory grants-in-aid of the revenues of States (Article 275)
5. Grants for any public purpose (Article 282).
6. Loans for any public purpose (Article 293).

Vertical imbalances are taken care of by the FC with tax devolution. It was further consolidated with the ASD since 2000 when all central taxes and duties became shareable.

Horizontal imbalances are rectified by tax devolution and the criteria adopted for the distribution among the states and UTs(each UT counts for a State for the FC and each UT gets its own funds); and the grants under Art.275.

In addition to provisions enabling transfer of resources from the Centre to the States, a distinguishing feature of the Indian Constitution is that it provides for an institutional mechanism to facilitate such transfers. The institution assigned with such a task under Article 280 of the Constitution is the Finance Commission. There is Planning Commission working on the guidelines of the NDC. Inter State Council under Art.263 can advise on such matters.

TFC

The five member team, headed by economist Dr.Vijay L Kelkar submitted report of the Thirteenth Finance Commission to the Government and was tabled in the Parliament during the Budget session 2010. It focused on three key objectives of inclusive and 'green' growth, macro economic stability and fiscal consolidation for both the Centre and the States particularly in view of the global recession since 2009 when the economy had to undertake fiscal expansion in response to domestic economic slowdown.

On sharing of Union taxes, the Commission recommended the share of States in the net proceeds of Union Taxes be fixed at 32 per cent, against the 12th FC

them have the common characteristics of hilly and difficult terrain and very low level of infrastructural development. Most of them have significant tribal population. Almost all of them are border States with considerable international borders.

- Central ministries provide finances for some central schemes in the areas of irrigation, power, health etc
- Miscellaneous transfers like the transfers from the National Investment Fund(NIF)

Finance Commission and Fiscal federalism

FC has a crucial role in the following areas

- Cooperative financial relations between centre and states
- Level the inequality among the states- bridge horizontal imbalances by giving more to the backward states(read ahead) as a part of the mandate to create equity
- Bridge the vertical imbalances between the centre and the states by recommending adequate devolution to the states
- Promote state fiscal autonomy and efficiency
- Various reforms, on being refered by the President of India, for infrastructure and good governance.

The above role can be comprehended by looking into the recommendations of the 13th FC(2010-15) and the basis of the recommendations.

Federalism and Fiscal and Economic Imbalances

Vertical and horizontal imbalances are common features of most federations and India is no exception to this. The Constitution assigned taxes with a nation-wide base to the Union to make the country one common economic space unhindered by internal barriers to the extent possible. States being closer to people and more sensitive to the local needs, have been assigned functional responsibilities involving expenditure disproportionate to their assigned sources of revenue resulting in vertical imbalances. Horizontal imbalances across States are on account of factors, which include historical backgrounds, differential endowment of resources, and capacity to raise resources. Unlike in most other federations, differences in the developmental

Short Notes on Art.275:Grants from the Union to certain States.

After the devolution of the taxes and duties from the divisible pool , if some States still face revenue deficits, the Finance Commission recommends `gap-filling grants' to such states. They are meant to even out the `horizontal imbalances`, among the states to an extent. They are the grants in aid of the revenues of the States. Not all states get them . Nor is the amount same to all states.

Generally, gap-filling grants are interpreted to mean only revenue grants and not for plan purposes.

Central fiscal transfers to the states

They are of the following types:

- The Central tax devolution through the FC which constitutes about one-third of the total tax revenues of the states.
- A second channel of resource flow from the Centre to the states is central assistance for state plans. State plans are financed partially by states' own resources and the balance by central plan assistance. Plan assistance is by way of grants and loans. In the case of fiscally weak states (called Special Category States) the grant component is 90 percent and loan is 10%. These states are the hill, border and weak-infrastructure states and can not repay the loan. For other states, it is 70% loan and 30% grant. The distribution of Plan assistance to the states is governed by the "Gadgil formula", so called after the Deputy Chairman of the Planning Commission which prepared the Fourth Five Year Plan (1969-74). National development council (NDC) approved the formula in 1991 and it is called the Gadgil-Mukherjee formula since then as Shri.Pranab Mukherjee was the Deputy Chairman of the PC then. :

  1. Eleven Special Category states - Arunachal Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand are given preference. Their needs should first be met out of the total pool of Central assistance.

  2. The remaining balance of the Central assistance should be distributed among the remaining States on the basis of the following criteria: (i) 60 per cent on the basis of population; (ii) 25% on per capita income (iii) 7.5% for performance in Tax Effort, Fiscal Management and Progress in respect of National objectives and (iv)7.5% on the basis of special problems like: all of

Constitution Amendment Act 2000) came into force , all taxes and duties that were exclusive to the Union Government are also made divisible . For example, customs duties, corporate tax , service tax etc. Only surcharges go to the Union exclusively.

Tenth Finance Commission(TFC) and Alternative Scheme of Devolution(ASD)

The Constitution (Eightieth Amendment) Act, 2000, which seeks to provide an alternative scheme for sharing taxes between the Union and the States, is based on the recommendations of the Tenth Finance Commission.

Constitution was amended to give it legal effect. Under the provisions of the Act, amendments have been made in Article. 270 .ASD essentially means making all Union taxes and duties shareable with States unlike earlier when the Union had some taxes and duties exclusively to it.

The advantages of the system are

- States will be able to share the buoyancy of Central taxes
- The Central Government can pursue tax reforms and expect states to cooperate
- Economic reforms in general will have wider consensus
- Creates conditions for Cooperative federalism in other spheres

Background to ASD

The Constitution of India specified the taxes whose revenues were to be shared between the Union and the state governments, but did not mention the formula for such division, leaving it to the Finance Commission. Over the years, it was observed that the Union government concentrated in improving the elasticity of non-sharable taxes such as corporate income tax and Union Customs duty, and similar effort was not visible in shareable taxes like personal income tax and Union excise duty. Regional parties became a force to reckon with since 1967 and particularly since the eighties. They demanded that more fiscal resources be made available to them . With Coalition government becoming the norm and the regional parties being influential players, center yielded.

Need for rapid tax reforms to make the country a common market and bring in foreign investment is another reason. Economic reforms and political developments thus made it necessary to move towards ASD.

- the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State
- any other matter referred to the Commission by the President in the interests of sound finance.

The recommendations are presented to the President in the FC report and the President causes the same to be tabled in the Parliament. They are not binding but are conventionally accepted by the Government. They fall into three categories

- Implemented by an Order of the President- relating to Art.270(income tax etc that is divisible) and Art.275(grants in aid)
- Those to be implemented by executive orders(relief grants etc)
- Those to be examined further.

Art.280 says that the Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected. Parliament made the Finance Commission (Miscellaneous Provisions) Act, 1951 in pursuit of Art.280.The Finance Commission is headed by one who has wide experience in public affairs. There are four other members including a High Court judge- one who is qualified to be a judge or who is or retired as a judge. Other three are distinguished with special knowledge in economics and two members with experience and special knowledge in government finances and accounts respectively.

Art. 270

Taxes levied and collected by the Union and distributed between the Union and the States.

There are many taxes and duties that are levied and collected by the Union and are shared with the states. In fact, there are no taxes and duties that go only to the centre except the cesses and surcharge on taxes. Surcharges are temporay and additional taxes on taxes. The difference between cess and surcharge is that the purpose for the levy of the former is made explicit while the latter is general purpose additional levy. Surcharges and cesses are not shareable as they are temporary(Art.271). Originally, income tax other than agricultural income tax and Union Excise duties were in the divisible pool . But since the Tenth Finance Commission recommendations (80th

275. Grants from the Union to certain States. Parliament may provide grants-in-aid of the revenues of some States if they are in need of assistance, and different sums may be fixed for different States. Such sums are charged on the CFI.

276. Taxes on professions, trades, callings and employments. It is a tax that the States impose, collect and appropriate but the annual limit is set by the Parliament. Presently the limit is Rs.2,500 per annum. There is no **profession tax** in **Union Territories.**The power of the Legislature of a State to make laws with respect to taxes on professions, trades, callings and employments shall not be seen as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

279. Calculation of "net proceds", etc. (from the gross collections of taxes, when the amount spent on collection is deducted, net amount is arrived at: gross minus collection expenditure= net).

280. Finance Commission.

Finance Commission: Constitutional provisions

Article 280

The President sets up every five years, or at such earlier time as the President considers necessary, a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President. Duties of the FC involve making recommendations to the President as to

- the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation between the States of the respective shares of such proceeds
- the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
- the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State

All the taxes and duties can be grouped under the following broad categories:

- Taxes and duties imposed, collected and enjoyed by the states. For example, sales tax
- Duties levied by the Union but collected and appropriated by the States(Art.268) Stamp duties on bills of exchange, cheques, promissory notes etc
- Taxes levied and collected by the Union but assigned to the States(Art.269)- central sales tax on goods produced in one state where they are bought so as to sell them in another state. The latter state gains in the form of sales tax while the former (producing state) gets the CST. However, CST is being phased out as it has to be made a part of the GST which is due.
- Taxes levied and collected by the Union but shared with the states on the recommendations of the Finance Commission(Art.270)- all central taxes and duties except cess and surcharges(Art.271)

Following are the important Articles in the fiscal federal relations:

268. Taxes and duties levied by the Union but collected and appropriated by the States. Ex:medicinal preparation with alcohol in them

269. Taxes levied and collected by the Union but assigned to the States- CST as mentioned above

270. Taxes levied and collected by the Union and distributed between the Union and the States. Income tax, corporation tax etc (see ahead)

271. Surcharge on certain duties and taxes for purposes of the Union. Surcharges are not shareable

Art.274: Prior permission of President for the introduction of certain Bills. Art.274 No Bill or amendment which imposes or varies any tax or duty in which States are interested, or varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or affects the principles on which moneys are or may be distributable to States, shall be introduced or moved in either House of Parliament except on the recommendation of the President.This is to protect the interests of the States.

on Centre-State relations, which submitted its report in 1987, wanted the residuary powers in taxation to be retained with the centre and not transferred to the States, even though it endorsed the Supreme Court's interpretation that these powers cannot be so expansively interpreted as to dilute the power of the State legislatures.
The Sarkaria Commission reasoned that the Constitution-makers did not include any entry relating to taxation in the Concurrent List so as to avoid Union-State frictions, double taxation and frustrating litigation.The Commission said that the power to tax might be used not only to raise resources but also to regulate economic activity and giving the power to states may prejudice national interest.As mentioned above, states demand that the residuary powers, including those of taxation, be vested in the States. The States argue that they need taxation powers in order to mobilise resources to meet their developmental needs.

Centre's control over state laws

Centre's control over State legislation is covered by the following

- Governor can reserve a Bill for President's consent over which the President has absolute veto (Art 200 and 201)
- President's prior permission is required for the introduction of state Bill restricting freedom of trade and commerce
- During financial emergency(Art.360), President may direct the State government to send for his consideration Money Bills and related Bills
- During Emergency (Art.352), Parliament can legislate on any State subject.
- The Concurrent List items are subject to the doctrine of federal supremacy. That is, in case of repugnancy between the central and state laws, federal law prevails.

Fiscal Federal Relations

Art.268 to 293 in Part XII deal with the financial relations. The Constitution contains fixed as well as dynamic parts for ensuring adequate finances to the States and the Union. The static part relates to some sources of finance being entirely given to the states- taxes and duties specified as such in the Constitution like sales tax.

The dynamic portion consists of making revenues from central taxes and duties divisible between centre and the states- respective shares of the divisible pool being determined every five years by a Finance Commission(Art.282)

Legislative Assembly is either suspended(suspended animation) or dissolved and the Parliament can make laws for the State concerned

- President's rule when the Assembly does not operate as mentioned above and so the Parliament makes laws for the state. Such laws may be repealed, retained or amended by the Assembly after a new democratic government resumes in the state.
- Art.249 says that Rajya Sabha can empower the Parliament to legislate on an item in the State List in national interest by passing the relevant resolution by two thirds majority of the members present and voting. In other words, Rajya Sabha authorizes Parliament to legislate on a subject in the State List. The resolution has a life of one year but can be extended by year at a time. The law made by the parliament can be in force for a maximum of 6 months after the resolution has expired.Such a law can be made for the whole or part of the country. The need for empowering the Parliament in such a manner as shown above is because routing it through the Rajya Sabha makes it federal
- When two or more States request the parliament to do so by passing a resolution to that effect. For example, Wild Life (Protection) Act 1972; Water (Prevention and Control of Pollution) Act; Urban Land (Ceiling and Regulation) Act; Transplantation of Human Organs Act 1994 and its amendment in 2011; Clinical Establishments (Registration and Regulation) Act, 2010.Other states may later resolve to come under such a law. (Art.252)
- In the implementation of international treaties and agreements, Parliament can legislate on a State List item. For example, WTO. There is no Constitutional validity to the States challenging the Central policies made under WTO agreements.(Art.253). Lokpal and Lokayuktas Bill 2011 has provisions relating to state government officials. Two justifications were made for the inclusion of these provisions: first that the law was on criminal justice which is a concurrent list item, and second that India's obligations under the UN Convention Against Corruption meant that Parliament had jurisdiction to enact such a law. The latter falls under Art.253.

Residuary Power and Taxation

All residuary powers are with the Union Parliament. Service taxes are still imposed and collected by the Union government by virtue of this power even though the 88th Amendment Act was passed in 2002 because it has not been notified. States demand that the power be transferred to the Concurrent List. However, Sarkaria Commission

Recent developments 2012

Right to Free and Compulsory Education Act was passed by Parliament in 2009. The implementation of this Act would require large capital as well as revenue outlays. The Act has a provision for sharing of costs between the centre and the states.

There is another challenge. Land Acquisition and Rehabilitation and Resettlement Bill has been introduced in Parliament. Land is a State List item while land acquisition is a concurrent list subject. States may also make laws on this topic as long as those laws do not contradict the central enactment. This leaves open the question of the level of detail to be included in the central law. A higher degree of detail ensures uniformity across the country and provides the same level of protection and rights to land owners and displaced persons. However, it reduces the flexibility for states to tailor the law for their local (and possibly very different) conditions. For example, the Bill lists 25 facilities that need to be provided in any area being developed for rehabilitation and resettlement. If people in some states prefer a higher level of an item being guaranteed and are willing to take a lower level of another item in return, such a compromise would not be possible under the current Bill. Such a state Bill, however, can be reserved for the President by the Governor under Art.200 and the President may assent to it.

Food is in the Concurrent List. The National Food Security Bill also raises these two issues. It requires states to implement a number of initiatives, and to provide for the funds for the purpose. It also prescribes a uniform system for implementation across states.

Parliament can make laws on State List items under certain special circumstances.

Exceptions

Though states have exclusive powers to legislate with regards to items on the states list, articles 249, 250, 252, and 253 state situations in which the federal government can legislate on these items.Under the following five circumstances, Parliament can legislate on an item in the State List

- when national emergency is in force. The law made by the Parliament during emergency can last a maximum of 6 months after the emergency has been ended. It needs to be emphasized that when there is national emergency(Art.352), State Legislative Assembly continues to exist but the Constitution gives power to parliament as well to legislate on an item in the State List unlike when the President's rule is proclaimed when the State

restricted to its own territory, State Legislature can not assure such uniformity. On the other hand, problems vary from state to state and may require diverse remedies suited to the peculiarities of the state. For example, education. In such situations , State laws are more relevant though the centre can give the broad policy framework. Therefore, there is a need for the Concurrent List to enable the best policy response under all circumstances.

There are three reasons for the Concurrent List

* To secure uniformity in the main principles of law
* To guide and encourage local efforts
* For flexibility in public policy

It can be explained with the help of education as a subject of legislation.

Education, which was originally distributed in its various aspects into all the three Lists, was subsequently transferred to the Concurrent List by means of 42nd Constitution amendment in 1976. It enables the Union Government to accept a larger responsibility to reinforce the national and integrative character of education, to maintain quality and standards (including those of the teaching profession at all levels) etc.

NCRWC report(2002) expresses the need and significance of the Concurrent List in the following words: "The framers of the Constitution recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union. Nonetheless, a broad uniformity of approach in legislative policy was essential to combine specific requirements of different States with the articulation of a common national policy objective. Conceived thus, harmonious operation of the Concurrent List could well be considered to be creative federalism at its best."

Government accepted Sarkaria Commission's recommendation that laws in respect of subjects in the Concurrent List should be made, as a matter of convention, only after active consultation with the State governments except in cases of extreme urgency. This is because laws enacted by the Union, particularly those relating to matters in the Concurrent List, are enforced through the machinery of the States and consultation is essential to secure uniformity.

and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press, stamp duties.

Subjects of common importance are in the Concurrent List, matters that can be legislated upon by both the union and state legislatures - socio economic planning, education, forests, protection of wild animals and birds; ports other than major ports; marriage and divorce; adoption; price control; criminal law; preventive detention; labour etc.

Matters that do not figure in any of the three Lists are the residuary items and are given to the Union Parliament. Which item is residuary is determined by the Supreme Court. (Art.248, entry 97 in the Union List), including items related to residuary matters in taxation. For example, service tax was in the residuary category till the 88th amendment act made it explicit .

Parliament has the exclusive jurisdiction over List I items. State legislatures have exclusive jurisdiction over List II items except under five circumstances when the Union parliament is empowered to legislate on them. Regarding the Concurrent List, the following are the relevant facts

- Union and State legislatures can legislate on these items.
- Rule of federal supremacy operates in this List- if there is a clash between the Union and State laws, the Union law prevails. However, in the following case, the State law is valid even if there is a clash: if the State law is reserved for the assent of the President by the Governor and such assent is already received. But at the same time, the Parliament can legislate to overrule the State law subsequently.Thus, the Union power is seen in case of conflict or inconsistency when the rule of repugnancy, as contained in article 254, comes into play.

Art.245 says that parliament can legislate for the whole nation while the State Legislatures can legislate for the whole or part of the State.

Rationale for the Concurrent List

Concurrent List items fall in the common territory. Both Centre and states have a common interest in them. On these items , depending on the circumstances, Centre or the States or both can make the relevant law. Uniformity of law throughout the country is necessary in national interest and so the Parliament legislates. Being

The Constitution framers opted for a mix of strong Central control with adequate provincial autonomy . In their concern for the unity and integrity of the country in the face of partition of the country, a strong centre was preferred. Strong centre is found to be necessary to coordinate policy and action among the federal units. At the same time, there is enough scope for autonomy of States in the Indian Constitution

Union-State relations in India: Constitutional Framework

Legislative Sphere

The framework for division of legislative powers in the Indian Constitution is contained in Chapter I in Part XI. It comprises 11 articles- 245 to 255. It should be read with Seventh Schedule. Three fold distribution of the subjects of legislative power is adopted- Union List(List I); State List(List II); and Concurrent List(List III).

Union list

Union list consists of 99 items on which the parliament has exclusive power to legislate with including: defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organisation of the Supreme Court, High Courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty, terminal taxes.

State list

The state list consists of 61 items and individual states have exclusive authority to legislate on items included in this list: Public order, police, administration of justice, prisons, local government, public health and sanitation, agriculture, animal husbandry, water supplies and irrigation, land rights, forests, fisheries, money lending, state public services and state Public Service Commission, land revenue, taxes on agricultural income, taxes on lands on buildings, estate duty, taxes on electricity, taxes on vehicles, taxes on luxuries.

Concurrent list

Concurrent list consists of 52 items. Uniformity is desirable but not essential on items in this list: Marriage and divorce, transfer of property other than agricultural land,education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic

Federal System in India

India is essentially a federation though in our case the provinces did not join together voluntarily. Federalism is a prescription for our multi-diverse country to pursue pluralist polity.

While the core of federalism is seen in the Indian polity, there are some features that are unfederal, which are seen to be necessary for national security, integration and development, particularly in the light of the experience of partition. They are

- States can be created and abolished without their consent. States are not indestructible
- Residuary powers are with the Union parliament
- There is no dual citizenship- of province(state) and the country unlike in the USA
  There is a unified system of audit which is under Union control
- Unified and hierarchical judiciary
- Elections are held for assemblies under the authority of the Election Commission that is appointed by the Union government
- The role of Governor is pro-Centre
- President's rule is a threat to the existence of democratically elected state governments.

However, all the basic features of federalism are found in the Indian Constitution . Since there are strong unitary features as well, it is called quasi-federation. It must be clarified that the fact that in Art.1 of the Constitution India is described as a `Union of States' only stresses the unity among the provinces and not have any unitary implications for our polity. Dr. Ambedkar explained that the expression " India is a union of states' in Art.1 is chosen to mean that we are a union at the time of Independence and that it is not a result of the voluntary coming together of the provinces.

No particular significance need be attached to the word 'Union', since it is used in the Preamble to the Constitution of the United States of America, which is a federation. During the Constituent Assembly discussions, B.R. Ambedkar mentioned the above examples and stated that 'the description of India as a Union of States, though its Constitution is federal, does no violence to usage'.

There is no model federal State. One can only determine whether a constitution is basically federal or unitary. The Indian Constitution is basically federal, but with strong unitary features. Therefore it is described as 'quasi-federal' _ 'unitary with subsidiary federal features', 'a federation with a strong centralizing tendency', etc.

`Coming together' and ` Holding together' Federations

When independent states `come together' voluntarily to form a larger nation where they retain their cultural identity and Constitutional powers of legislation and administration while having their security ensured by a central government, it is called `coming together' type of federation. For example, the USA. In this case, constituent units tend to enjoy more powers than the federal government.

When a large country decides to establish provincial governments with which it is willing to share Constitutional powers in a written manner so that the country can `hold together', it is called `holding together' federation. For example, India.In this case, states are not given co-equal powers on par with the federal government.

Motives of federating units

There is a range of expectations on the part of the federating units to come together.

The political motives are

- security from external and internal threats
- additional central assistance when required
- political stability while keeping a separate cultural and ethnic identity .

In the economic sphere, the federating state can expect

- access to a larger national market
- financial assistance from federal government
- transfer of resources from other states in case of underdeveloped states etc

The case of India

In India, `holding together ' federation formed differently from the American experience of coming together . `Holding together' federations as in India is a framework that is adopted for the sake of unity of the country and national integration. It is a response to a specific historic situation. Constituent Assembly prescribed federalist model so that the country can be `held together' in the face of the challenges in the form of centrifugal forces; rapid and balanced development; reorganization of states etc. Therefore, compared to `coming together' federation like the UAS, Indian federation does not confer high level autonomy on the states.

States did not bargain and create a federation as in the USA. There were only three states at the time of Independence and the others were created according to the Constitutional provisions.

Federal System-I
Union-State Relations

On the basis of distribution of power between centre and states, Governments can be classified into three types

- Unitary
- Federation and
- Confederation

Unitary system

In a unitary government, the central government possesses preponderant authority and decision-making power. Provincial governments are the administrative arms of the central government. They do not have any constitutionally conferred powers. The powers enjoyed by them are 'devolved' to them by the unitary government at its will and these powers are subject to withdrawal- partly or wholly. In fact, the provinces can be abiolished altogether. Examples, Britain, France and China

Federations

Federation is a system of constitutional governance brought about by the voluntary agreement among states that join together into a new federal union in which power is divided between the Union Government at the centre(federal government) and states(provinces) . A written Constitution divides powers. Constitution is rigid and can be amended only when the centre and states accept the amendment. Thus, there is a dual government with their respective jurisdictions . In case of a conflict, there is an independent judiciary to resolve the differences. Examples, India, USA, Canada, Australia, Belgium and Switzerland. Each level of government has its own resources as conferred by the Constitution.

Federal system is adopted so that states and their diversity can flourish with autonomy and their security is assured by the central government.

Confederations

They are nations where the provinces have maximum autonomy so much so that they can become members of international organizations, have flag and may even secede.For instance, the former USSR and Yugoslavia that broke up in the 1990's.

Parliamentary Forums: FAQ

- Question What are Parliamentary Forums and what are their objectives?
- Answer. The Parliamentary Forums have been constituted with the objective of equipping members with information and knowledge on specific issues of national concern and in assisting them to adopt a result-oriented approach towards related issues. These Forums provide a platform to members to have interaction with the Ministers concerned, experts and key officials from the nodal Ministries with a view to have a focused discussion on critical issues facing the country so as to enable them to effectively raise these issues on the floor of the House and in the meetings of the Departmentally Related Standing Committees.
- Question When were the Parliamentary Forums constituted?
- Answer. The first Parliamentary Forum on Water Conservation and Management was constituted by the Hon'ble Speaker, Lok Sabha, in August, 2005: Subsequently, the following four Parliamentary Forums were constituted:Parliamentary Forum on Youth ;Parliamentary Forum on Children;Parliamentary Forum on Population and Public Health and Parliamentary Forum on Global Warming and Climate Change.
- Question. What is the composition of the Parliamentary Forums?
- Answer. The Hon'ble Speaker, Lok Sabha is the President of all the Forums except the Parliamentary Forum on Population and Public Health wherein the Hon'ble Chairman, Rajya Sabha is the President and Hon'ble Speaker, Lok Sabha is the Co-President. Ministers and Chairmen of Departmentally Related Standing Committees are the ex-officio Vice-Presidents of the respective Forums. Each Forum consists of 31 Members (excluding the President and the ex-officio Vice-Presidents) out of whom not more than 21 are from Lok Sabha and not more than 10 are from Rajya Sabha. Secretary-General, Lok Sabha is the Secretary to the Forums.
- Question : What is the term of the members of the Parliamentary Forums?
- Answer: The term of the office of members of the Forums is co-terminus with their membership of the House.
- Question : How often do the Forums meet?
- Answer: The meetings of the Forums are held from time to time, as may be necessary during Parliament Sessions.

Sense of House

The debate conducted under Rule 193 of the *Rules of Procedure and Conduct of Business in the House of People (Lok Sabha)* (**"the Lok Sabha Rules"**), and under Rule 176 of the *Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)* (**"the Rajya Sabha Rules"**) in August 2011 on Lokpal Bill has come to be known as the 'sense of the House' debate. It was erroneously referred to as a resolution.

Rule 193

Rule 193 is the first rule under Chapter XV titled "Short Duration Discussions" in the Lok Sabha Rules."Any member desirous of raising discussion on a matter of urgent public importance may give notice in writing to the Secretary-General specifying clearly and precisely the matter to be raised:Provided that the notice shall be accompanied by an explanatory note stating reasons for raising discussion on the matter in question:Provided further that the notice shall be supported by the signatures of at least two other members."
Chapter XV contains three more rules. Rule 195 is the penultimate one:"There *shall* be no formal motion before the House *nor voting*. The member who has given notice may make a short statement and the Minister shall reply shortly. Any member who has previously intimated to the Speaker may be permitted to take part in the discussion."

Rule 176

Similarly, Rule 176 is the first rule under Chapter XIII titled "Short Duration Discussion" in the Rajya Sabha Rules, and is almost identically worded.

'Sense of the house' resolution

There is no such thing or type of resolution as a "sense of the house resolution." Chapter XIII of the Lok Sabha Rules and Chapter XI of the Rajya Sabha Rules, both titled "Resolutions," do not define, describe, or deal with a "sense of the house resolution" either.

'Sense of house-' or 'sense of Congress-' -resolutions are quite frequently used parliamentary tools in the U.K. and the U.S.A., used when members of the House, Senate, or Congress want to "send a message", or state an opinion. Application of the phrase to describe the outcomes of the debates of August 27 in the Parliament was not correct according to Rules.

A large number of notices are rejected, with penal action recommended in only a few. In the 14th Lok Sabha, former Lok Sabha secretary general Subhash Kashyap was found guilty of breach of privilege and reprimanded by the House for an article that was judged to lower the dignity of the Speaker. However, given that he was a former secretary general, Kashyap was exempted from being present and reprimanded in absentia.

The most significant case was in 1978 when Indira Gandhi, who had just won the Lok Sabha elections from Chikmaglur, was expelled from the House. Then home minister Charan Singh moved a resolution of breach of privilege against her following observations made by the Justice Shah Commission which probed excesses during the Emergency.

Another case was expulsion of Subramanian Swamy from the Rajya Sabha in 1976. Swamy was charged with bringing disrepute to Parliament by his activities through interviews in foreign publications that were construed as anti-India propaganda.

In another instance, Blitz editor R K Karanjia was held guilty of gross breach of privilege of the House in 1961. Blitz had published an article that lampooned veteran leader J B Kripalani. He was summoned to the bar of the Lok Sabha and reprimanded, while the Lok Sabha gallery pass of his correspondent, R K Raghavan, was cancelled.

On December 23, 2005, 11 "tainted" MPs, who were caught in a sting over the cash for query scandal, were expelled from the House.

What is the privileges committee?

In the Lok Sabha, the Speaker nominates a committee of privileges consisting of 15 members as per respective party strengths. A report is then presented to the House for its consideration. The Speaker may permit a half-hour debate while considering the report. The Speaker may then pass final orders or direct that the report be tabled before the House. A resolution may then be moved relating to the breach of privilege that has to be unanimously passed. In the Rajya Sabha, the deputy chairperson heads the committee of privileges, that consists of 10 members.

(Read along with the Polity Book)

Privilege Motion

What is a privilege motion? Who can move it? How?

Parliamentary privileges are certain rights and immunities enjoyed by members of Parliament, individually and collectively, so that they can "effectively discharge their functions". When any of these rights and immunities are disregarded, the offence is called a breach of privilege and is punishable under law of Parliament. A notice is moved in the form of a motion by any member of either House against those being held guilty of breach of privilege. Each House also claims the right to punish as contempt actions which, while not breach of any specific privilege, are offences against its authority and dignity.

What are the rules governing privilege?

Rule No 222 in Chapter 20 of the Lok Sabha Rule Book and correspondingly Rule 187 in Chapter 16 of the Rajya Sabha rule book governs privilege. It says that a member may, with the consent of the Speaker or the Chairperson, raise a question involving a breach of privilege either of a member or of the House or of a committee thereof. The rules however mandate that any notice should be relating to an incident of recent occurrence and should need the intervention of the House.

On an average, how many privilege notices are moved in each session?

A number of privilege notices are given in each session. For instance, every time an MPA is arrested or "prevented from doing his duty", members do give notices to the Speaker. In the latest episode relating to the WikiLeaks revelations, Leader of Opposition Sushma Swaraj moved a privilege motion against the Prime Minister charging that he misled the House when he said that a parliamentary panel that looked into the charges of cash for votes during the 2008 vote of confidence "found insufficient evidence to reach any conclusion".

To counter the BJP, Congress members Manish Tiwari, Jagdambika Pal and Sandeep Dikshit too gave notices to the Speaker charging the Leader of Opposition with breach of privilege. They alleged that Swaraj questioned the authority of the Speaker last week and subverted rules of Parliament when the Prime Minister made a statement on the WikiLeaks episode. Additionally, the CPI's Gurudas Dasgupta has given a privilege notice against The Hindu newspaper for publishing the cash for votes story.

What is the role of the Speaker/Rajya Sabha Chair?

The Speaker/RS chairperson is the first level of scrutiny of a privilege motion. The Speaker/Chair can decide on the privilege motion himself or herself or refer it to the privileges committee of Parliament. If the Speaker/Chair gives consent under Rule 222, the member concerned is given an opportunity to make a short statement.

What percentage of privilege notices are rejected?

Private Member's Bill

Private Members are those members of the Parliament who are not ministers. They may also move a legislative proposal or Bill.

In Lok Sabha, the last two and a half hours of a sitting on every Friday are generally allotted for transaction of "Private Members' Business", i.e., Private Members' Bills and Private Members' Resolutions.

If there is no sitting of the House on a Friday, the Speaker may direct that two and a half hours on any other day in the week may be allotted for the transaction of Private Members' Business.

A member who wants to introduce a Bill has to give prior notice thereof. The period of notice for introduction of a Bill is one month unless the Speaker allows introduction at a shorter notice. President's recommendation, if necessary, for introduction and/or consideration of the Bill should also be applied for by the member. Where a Bill, if enacted, is likely to involve expenditure from the Consolidated Fund of India, a financial memorandum giving an estimate of the expenditure involved has to be appended to the Bill by the member. In case the Bill contains proposals for delegated legislation, a memorandum regarding delegated legislation is also required to be appended to the Bill.

The primary responsibility for drafting of Private Members' Bills is that of the members concerned. The Lok Sabha Secretariat nevertheless renders necessary assistance in putting the Bill in proper form so that it is not rejected on technical grounds.

A member cannot introduce more than four Bills during a session.

When a Bill originating in the Lok Sabha is transmitted to the Rajya Sabha, in case of a Private Members' Bill, a member of Rajya Sabha authorized by the Lok Sabha Member in charge of the Bill introduces the Bill.

Bills seeking to amend the Constitution, apart from being subject to the normal rules applicable to Private Members' Bills, have also to be examined by the Committee on Private Members' Bills and Resolutions and only those Bills which have been recommended by the Committee are put down in the List of Business for introduction.

The Lok Sabha Privileges Committee headed by Kishore Chandra Deo (2008) in their report on 'Parliamentary Privileges – Codification and related matters,' said that there is no need to codify the privileges as the existing framework did well : there had been only one case of admonition, two cases of reprimand and one case of expulsion for commission of breach of privilege and contempt of the House.

Miscellany

Whip

The Concise Oxford Dictionary describes a 'Whip' as an "official appointed to maintain discipline among, secure attendance of, and give necessary information to, members of his party." He is central to the working of Parliament is the Whip. Though not officially recognised in the Rules of Procedure of the House, the efficient and smooth running of the parliamentary system depends largely upon the Whips.

Each party has a whip or a number of whips depending on its numerical strength in the House. Government Chief Whip has the main function to ensure that the Government business is transacted in accordance with the planned programme. In managing the smooth passage of Government business, the Government Chief Whip has to ensure majority in every vote. He also has to ensure that there is always sufficient attendance of members to form a quorum and more particularly to give support to their own chosen speakers.

In Indian Parliament the Minister of Parliamentary Affairs is the Chief Whip of Government. He is assisted by a few Ministers of State drawn from both the Houses. In the Rajya Sabha the Minister(s) of State in the Ministry of Parliamentary Affairs holds (hold) the position of the Government Whip. Under the Constitution (Fifty-second Amendment) Act, a member who votes or abstains from voting contrary to the whip (called 'Direction' in the Act), runs the risk of losing his seat in the House. Thus, the written notice which a whip sends to members has assumed a constitutional status.

Secretary-General

Next to the Chairman and the Deputy Chairman, the third important officer in the Lok Sabha/ Rajya Sabha is the Secretary-General. He discharges all administrative and executive functions on behalf of and in the name of the Presiding Officer. The Secretary-General is a permanent officer of the House and is appointed by the Presiding Officer.

Parliament sits on an average 80-90 days in a year.

concluded that it had the power to review warrants issued by the Legislature for compliance with the due process requirements under Article 21, among others, thereby asserting the supremacy of the Constitution in general, and Art.21 in particular, over the exercise of the privileges powers.

The Supreme Court verdict in a Presidential Reference under article 143 essentially held that the powers and privileges conferred on State legislatures by article 194(3) were subject to the fundamental rights. The Supreme Court in another case held that article 19(1)(a) would not apply and article 21 would. The Court further held : In dealing with the effect of Article 194 and the conflict pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction – that is to reconcile the two.

JMM case

The case relates to certain MPs belonging to the Jharkhand Mukti Morcha and others allegedly taking bribes to vote for the Rao Government to save it from defeat in a no confidence motion in 1993.

Supreme Court upheld Art.105 which says that MPs can not be questioned for what they say or the manner of their vote in the Parliament by the judiciary.In the same judgement, Supreme Court had also ruled that MPs were public servants under the Prevention of Corruption Act.

The Hindu case 2003

The Tamil Nadu Assembly passed resolutions in 2003 sentencing the publisher and four journalists of The Hindu to 15 days' simple imprisonment for breach of privilege of the House after the Privileges Committee of the House pronounced them guilty.

Codification of Privileges

Constitution says(Art.105) that powers, privileges and immunities of each House of Parliament and of the members and committees thereof shall be such as may from time to time be defined by Parliament. Constitution (Forty-fourth Amendment) Act, 1978 dropped the reference to the House of Commons that was originally there. The original reference was that where the privileges are not defined , they are similar to those of the House of Commons. However, no law defining the privileges has been made by Parliament so far.

Consequential powers of the House

Each House enjoys powers necessary for the protection of its privileges and immunities. These powers are

- to commit persons, whether they are members or not, for breach of privilege or contempt of the House
- to regulate its procedure and the conduct of its business
- to prohibit the publication of its debates and proceedings and
- to exclude strangers.

Penal powers of the House

The House has the power to determine as to what constitutes breach of privilege and contempt. A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment, or by admonition (warning) or reprimand. Two other punishments may also be awarded to the members for contempt, namely, 'suspension' and 'expulsion' from the House.

In 2005, Parliament expelled 11 members — 10 from the Lok Sabha and one from the Rajya Sabha — whose conduct was found to be "unethical and unbecoming" of Members of Parliament. For the first time in the annals of Parliament, the membership of the 11 MPs was terminated by voice vote, following the sting operation on the cash -for-questions scandal . The Rajya Sabha agreed with the recommendation of its Ethics Committee while the Lok Sabha endorsed the report of the Pawan Kumar Bansal Committee set up to go into the allegations.

Keshav Singh case 1964

Keshav Singh had published a pamphlet maligning a member of the State Legislative Assembly. The House found him guilty of contempt and sentenced him to prison for seven days. He challenged this order before the High Court, which granted him interim bail. The House declared that the judges who issued interim orders were themselves guilty of contempt of the House and liable to be punished. The judges moved petitions before the High Court, which sat in a full bench and stayed the orders of the House. As this confrontation seemed to be spiraling out of control, the Union government requested the President to refer the matter to the Supreme Court under Art.143. The key argument before the Supreme Court was about the scope and nature of the power of legislative privileges. While the State Legislative Assembly contended that this power was independent of the other provisions, the petitioners argued that the power, like all others in the constitution, was subject to the fundamental rights of citizens The court

'Contempt of the House' . The difference between the two is the following:

When any of the privileges either of the Members individually or of the House in its collective capacity are disregarded or attacked by any individual or authority, the offence is called a breach of privilege. Any obstruction or impediment put before Houses or its Members in due discharge of their duties, or which have a tendency of producing such result, may amount to contempt of the House. Thus, breach refers to specific privilege being breached. Contempt is a general expression. Both are by and large synonymous

Constitutional provisions

The Constitution specifies some of the privileges in Art.105 . They are

- freedom of speech in Parliament where the restrictions under Art.19.2 do not apply but the Parliament may prescribe its own rules. (Art.105.2) However, members can not discuss the personal conduct of a judge of Supreme Court or High Court unless proceedings for impeachment are being held(Art.121)
- immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof
- Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure(Art.122)

Statutory provisions

Apart from the privileges specified in the Constitution(Art.105), the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion. However, the protection does not apply in criminal and preventive detention cases.

Privileges based on Rules of Procedure and precedents

The House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House.

Constitution

The Committee on Public Undertakings is a Parliamentary Committee consisting of 22 Members, fifteen elected by the Lok Sabha and seven by the Rajya Sabha, from amongst their Members according to the principle of proportional representation by means of a single transferable vote. The Chairman is appointed by the Speaker from amongst the Members of the Committee. A Minister is not eligible to become a Member of the Committee. If a Member after his election to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The term of the Committee does not exceed one year.

Functions

The functions of the Committee on Public Undertakings are :-

- to examine the reports and accounts of Public Undertakings specified in the Fourth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha
- to examine the reports, if any, of the Comptroller and Auditor General of India on the Public Undertakings
- to examine, in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.

The Committee selects from time to time for examination such Public Undertakings or such subjects as they may deem fit and as fall within their terms of reference.

Parliamentary Privileges

Privilege is an exemption from the general law. It is a special right. Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members possess to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament would be correspondingly diminished. Members enjoy some of the privileges and immunities while the session is on and other all the time while they remain as members Privileges are contained in Articles 105 and 194- for Parliament and state legislatures respectively.

There are two related expressions in this context-'Breach of Privilege' and

The Comptroller and Auditor General is the "friend, philosopher and guide" of the Committee. He attends the sittings of the Committee and assists it in its labours.

Since the Committee became a Parliamentary Committee under the control of the Speaker 1950, it has presented more than 1250 Reports till today. PAC is one of the watchdog committees of the Parliament.

Government takes action on the recommendations of the Committee. The Committee watches the implementation of its recommendations. In case where the Government has reasons to disagree with a recommendation of the Committee, the latter may, if it thinks fit, present a further report after considering the view of the Government.

Committee on Estimates

The Estimates Committee, constituted for the first time in 1950, is a Parliamentary Committee consisting of 30 Members, elected every year by the Lok Sabha from amongst its Members. The Chairman of the Committee is appointed by the Speaker from amongst its members. A Minister cannot be elected as a member of the Committee and if a member after his election to the Committee, is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment. The term of office of the Committee is one year.

Functions

The functions of the Estimates Committee are

- to report what economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates may be effected;
- to suggest alternative policies in order to bring about efficiency and economy in administration;
- to examine whether the money is well laid out within the limits of the policy implied in the estimates; and
- to suggest the form in which the estimates shall be presented to Parliament.

The Committee does not exercise its functions in relation to such Public Undertakings as are allotted to the Committee on Public Undertakings. It is called the `continuous economy committee' as it reports throughout the year on what savings can be made with what administrative reforms.

Committee on Public Undertakings

of Rajya Sabha elected by that House in like manner are associated with the Committee. The Chairman is appointed by the Speaker from amongst its members. The Speaker, for the first time, appointed a member of the Opposition as the Chairman of the Committee for 1967- 68. This practice has been continued since then. A Minister is not eligible to be elected as a member of the Committee. If a member after his election to the Committee is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment.

Functions

The Appropriation Accounts relating to the Railways, Defence Services, P&T Department and other Civil Ministries of the Government of India and Reports of the Comptroller and Auditor General of India mainly form the basis of the deliberation of the Committee. In scrutinising the Appropriation Accounts and the Reports of the Comptroller and Auditor General, it is the duty of the Committee to satisfy itself:

- that the money shown in the accounts as having been disbursed were legally available for and, applicable to the service or purpose to which they have been granted
- that the expenditure conforms to the authority which governs it; and
- that every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

One of the duties of the Committee is to ascertain that money granted by Parliament has been spent by Government within the scope of the demand.. If any money has been spent on a service in excess of the amount granted by the House for the purpose, the Committee examines with reference to the facts and circumstances leading to such an excess and makes such recommendations as it may deem fit. If it recommends retrospective authorization by Parliament of such grants, they are called `excess grants'(Art.115)

The functions of the Committee extend however, "beyond, the formality of expenditure to its wisdom, faithfulness and economy". The Committee thus examines cases involving losses, nugatory expenditure and financial irregularities.

While scrutinising the Reports of the Comptroller and Auditor General on Revenue Receipts, the Committee examines various aspects of Government's tax administration. The Committee, thus examines cases involving under-assessments, tax-evasion, non-levy of duties, misclassifications etc., identifies the loopholes in the taxation laws and procedures and makes recommendations in order to check leakage of revenue .

exceptional (G)

It is agreed that there should be a separate Committee for the Ministry of Labour and Welfare and two separate Committees for the Ministry of Commerce and Industry.

It may be noted that a Minister is barred from being nominated as a member of a Standing Committee, and if a member after his nomination to the Committee becomes a Minister, he ceases to be a member of the Committee from the date of his appointment.

The Reports of the Committees have persuasive value . In respect of reports on Demands for Grants and other subjects, the Ministry or the Department concerned is required take action on the recommendations and observations contained in the report and Action Taken Reports are presented to House.

The biggest achievement of these Standing Committees would be that the Demands for Grants of most of all Ministries/Departments of the Government would be scrutinised by members of Parliament. It will ensure greater participation of Members. Previously, because of paucity of time, the Parliament was able to discuss. the Demands for Grants of only a few Ministries every year and the rest were guillotined.

Now, after the general discussion on the Budget is over, the Parliament shall adjourn for a fixed period- about a month and the Committees shall consider the Demands for Grants during this recess. The Demands for Grants shall thereafter be considered by the Lok Sabha in the light of the Reports of these Committees.

The Standing Committees system is the latest innovation in the ever evolving process of Parliamentary surveillance over the Executive to ensure its accountability to the common man.

Criticism is that the reports of the committees are not being paid due attention. Guillotine process still continues.

Public Accounts Committee

The Committee on Public Accounts is constituted by Parliament each year for examination of accounts showing the appropriation of sums granted by Parliament for expenditure of Government of India .

It is the oldest committee being in existence from 1921.The Committee consists of not more than 22 members comprising 15 members elected by Lok Sabha every year from amongst its members according to the principle of proportional representation by means of single transferable vote and not more than 7 members

Committee on Public Undertakings and DRSCs play an important role in exercising a check over governmental expenditure and Policy formulation. For subordinate legislation , see ahead.

Select and Joint Committees

After a Bill is introduced in the House, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the two Houses. A motion has to be moved and adopted to this effect in the House. The decision is conveyed to the other House requesting them to nominate members of the other House to serve on the Committee.

The Select or Joint Committee considers the Bill clause by clause. Amendments can be made by the Committee.. After the Bill has thus been considered the Committee submits its report to the House. The report of the committee is not binding but only guides the legislative process .

Departmentally Related Standing Committees

To make the parliamentary control more effective and focused , particularly in financial matters and public policy, and to make the Executive more accountable to the Parliament, Departmentally related Standing Committees were set up first in 1993. They cover under their jurisdiction all the Ministries/Departments of the Union Government- each committee being given one or more ministries.

Similar system of Departmentally Related Select Committees was in existence in the United Kingdom Unlike the Consultative Committees attached to various ministries which are informal in nature and are presided over by the Ministers concerned, the meetings of the Standing Committees under consideration are presided over by private members..

There are 24 DRSCs with 31 members each- 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker and Chairman respectively. The term of the Members of these Committees shall not exceed one year.

The functions of these Committees would broadly include:

- consideration of Demands for Grants.
- examination of Bills referred to them Presiding Officers
- consideration of Annual Reports.
- consideration of national basic long term policy documents tabled in the Parliament and referred to the Committee by the Chairman or the Speaker .

(v) Committees concerned with the provision of facilities to members

- General Purposes Committee considers and advises Speaker/ Chairman on matters concerning affairs of the House, which do not appropriately fall within the purview of any other Parliamentary Committee
- House Committee deals with residential accommodation and other amenities for members

(vi) Joint Committee on Salaries and Allowances of Members of Parliament, constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954, apart from framing rules for regulating payment of salary, allowances and pension to Members of Parliament, also frames rules in respect of amenities like medical, housing, telephone, postal, constituency and secretarial facility

(vii) Joint Committee on Offices of Profit examines the composition and character of committees and other bodies appointed by the Central and State governments and Union Territories Administrations and recommends what offices ought to or ought not to disqualify a person from being chosen as a member of either House of Parliament

(viii) The Library Committee consisting of members from both Houses, considers matters concerning the Library of Parliament

(ix) In 1997, a Committee on Empowerment of Women with members from both the Houses was constituted with a view to securing, among other things, status, dignity and equality for women in all fields

(x) In 1997, the Ethics Committee of the Rajya Sabha was constituted. The Ethics Committee of the Lok Sabha was constituted in 2000.

Watchdog committees

Of special importance is a class of Committees which act as Parliament's 'Watch Dogs' over the executive. These are the

- Committees on Subordinate Legislation
- Committee on Government Assurances
- Committee on Estimates
- Committee on Public Accounts
- Committee on Public Undertakings and
- Departmentally Related Standing Committees (DRSCs).

The Committee on Estimates, the Committee on Public Accounts and the

members of the Rajya Sabha are associated with Committees on Public Accounts and Public Undertakings, the members of the Committee on Estimates are drawn entirely from the Lok Sabha

Other Standing Committees in each House, divided in terms of their functions, are

(i) Committees to Inquire

- Committee on Petitions examines petitions on bills and on matters of general public interest and also entertains representations on matters concerning subjects in the Union List; and
- Committee of Privileges examines any question of privilege referred to it by the House or Speaker/Chairman

(ii) Committees to Scrutinise

- Committee on Government Assurances keeps track of all the assurances, promises, undertakings, etc., given by Ministers in the House and pursues them till they are implemented
- Committee on Subordinate Legislation scrutinises and reports to the House whether the power to make regulations, rules, sub-rules, bye-laws, etc., conferred by the Constitution or Statutes is being properly exercised by the delegated authorities

(iii) Committees relating to the day-today business of the House

- Business Advisory Committee recommends allocation of time for items of Government and other business to be brought before the Houses
- Committee on Private Members' Bills and Resolutions of the Lok Sabha classifies and allocates time to Bills introduced by private members, recommends allocation of time for discussion on private members' resolutions and examines Constitution amendment bills before their introduction by private members in the Lok Sabha. The Rajya Sabha does not have such a committee.
- Rules Committee considers matters of procedure and conduct of business in the House and recommends amendments or additions to the Rules
- Committee on Absence of Members from the Sittings of the House of the Lok Sabha considers all applications from members for leave or absence from sittings of the House. There is no such Committee in the Rajya Sabha.
- Committee on the Welfare of Scheduled Castes and Scheduled Tribes, on which members from both Houses serve, considers all matters relating to the welfare of Scheduled Castes and Scheduled Tribes which come within the purview of the Union Government and keeps a watch whether constitutional safeguards in respect of these classes are properly implemented

The joint sitting, sanctioned under Article 108 of the Constitution, was intended by the Constitution-makers as a way to resolve disagreements between the two Houses in matters of legislation. It gives another chance for the two Houses to reconcile their differences in national interest.

Parliamentary Committees

The Parliament work is increasingly becoming more technical and voluminous. It cannot, therefore, give close consideration to all the legislative and other matters before it. I is one of the reasons for setting up Parliamentary committees that do some of the parliamentary work. Committees also provide greater focus and expertise to the parliamentary work. Parliamentary Committees are of two kinds:

- Ad hoc Committees and
- Standing Committees

Ad hoc Committees

Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit report. Ad hoc Committees are of two types

- committees which are constituted from time to time to inquire into and report on specific subjects, (for example, Committee on Members of Parliament Local Area Development Scheme, Joint Committee on Bofors Contracts, Joint Committee to enquire into irregularities in securities and banking transactions, Joint Committee on Stock Market Scam etc)
- Select or Joint Committees on Bills which are appointed to consider and report on a particular Bill. These Committees are distinguishable from the other ad hoc committees inasmuch as they are concerned with Bills and the procedure to be followed by them as laid down in the Rules of Procedure and Directions by the Speaker/Chairman.

Standing Committees

Apart from the Ad hoc committees, each House of Parliament has Standing Committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee etc. They are elected or appointed every year or periodically and their work goes on, more or less, on a continuous basis.

Among the Standing Committees, the three Financial Committees—Committees on Estimates, Public Accounts and Public Undertakings—constitute a distinct group as they keep vigil over Government expenditure and performance. While

by reason of dissolution of the Lok Sabha, notify to the Houses by message, if they are sitting, or by public notification, if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill.

The Speaker and in his absence the Deputy Speaker of the Lok Sabha or if he is also absent, the Deputy Chairman of the Rajya Sabha or if, he/she too is absent, such other person as may be determined by the members present at the sitting, presides over the joint sitting. Chairman can not preside as he is not a member of Rajya Sabha.

The procedure of the Lok Sabha applies at a joint sitting .The quorum to constitute a joint sitting is one-tenth of the total number of members of the two Houses.

If at a joint sitting, the Bill referred to it, with such amendments, if any, as are agreed to in the joint sifting, is passed by a majority of the total number of members of both Houses present and voting, it is deemed to have been passed by both Houses.

At a joint sitting no amendment can be proposed to the Bill, other than such amendments, if any, as become necessary by the delay in its passage and such other amendments as relate to matters with respect to which the Houses have not agreed in their individual capacity. The decision of the presiding officer as to the admissibility of amendments is final. At a joint sitting, the Speaker or the person presiding as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of equality of votes.

Joint sittings held so far

So far joint sittings have been held thrice in 1961, 1978 and 2002.

- The first joint sitting was held in 1961 to consider amendments to the Dowry Prohibition Bill 1959. Members of both Houses were united in their support for the Bill, but differed over specific nuances.

- The second joint sitting was held in 1978 , after the Rajya Sabha rejected the Banking Service Commission (Repeal) Ordinance, 1977. The Bill was passed.

- The third joint sitting was held to make POTO into an Act in 2002 - Prevention of Terrorism Bill. It became necessary as the Bill was rejected by the Rajya Sabha .

- more than six months elapse from the date of the receipt of the Bill by the other House without the Bill being passed by it

the President may call a joint sitting of the two Houses to resolve the deadlock. If, at the joint sitting of the Houses, the Bill is passed by a majority of the total number of members of both the Houses present and voting, with the amendments, if any, accepted by them, the Bill is deemed to have been passed by both the Houses.

Assent of the President

When a Bill is passed by both Houses, the Bill is sent for the assent of the President.

The President may give his assent or withhold his assent to a Bill. The President may also return the Bill (except a Money Bill) with his recommendations to the Houses for reconsideration, and if the Houses pass the Bill again with or without amendments by a simple majority, the President cannot withhold his assent to the Bill(suspensive veto). For example, the Parliament (Prevention of Disqualification) Amendment Bill, 2006 that is popularly refered to as the 'Office of Profit Bill' was returned for repassage by the President in 2006 after it was passed by the parliament. When repassed and sent again, the President gave his assent to the Office of Profit Bill.

The President, however, is bound to give his assent to a Constitution Amendment Bill passed by the Houses of Parliament by the requisite special majority and, where necessary, ratified by the States(24th Amendment Act 1971)

Presidential veto powers are discussed in detail in the Chapter on President.

Joint sitting of the Houses

The Constitution of India envisages a mechanism for resolving disagreement between the two Houses in respect of a Bill, other than a Money Bill or a Constitution Amendment Bill. In case of a Money Bill, the powers of the Rajya Sabha are limited to retaining or delaying the Bill passed by the Lok Sabha for a period of fourteen days only and recommending an amendment or amendments in the Bill which may or may not be accepted by the Lok Sabha. In case of a Constitution Amendment Bill, if both Houses do not pass such a Bill in identical terms, in accordance with article 368, there is an end of that Bill. It will have to be reintroduced.

When any other Bill is deadlocked , the President may, unless the Bill has lapsed

If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee.

If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move motion for consideration of the Bill.

Second Stage: The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussions take place on each clause of the Bill and amendments to clauses can be moved at this stage.

Third Reading or voting

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill or voting . At this stage debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage.

In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, called special majority is necessary.

Bill in the other House

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

Consideration of the Bill at a Joint Sitting(Art.108)

If a Bill passed by one House is

- rejected by the other House, or
- the Houses have finally disagreed as to the amendments to be made in the Bill, or

It is necessary for a member-in-charge of the Bill to ask for leave to introduce the Bill. A Minister has to give notice of 7 days and a private member 30 days for seeking leave of the House for introduction. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker/Chairman may, in his discretion, allow brief explanatory statements to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker/Chairman may permit a full discussion. Thereafter the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.

Publication in Gazette

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill may , with the permission of the Presiding Officer , be published in the Gazette. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

Reference of Bill to Standing Committee

After a Bill has been introduced, Presiding Officer of the concerned House can refer the Bill to concerned Standing Committee for examination and make report . If a Bill is referred to Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make report . The Committee can also take expert opinion or the public opinion who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee has persuasive value.

Second Reading or Consideration

The Second Reading consists of consideration of the Bill which is in two stages.

First Stage: The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to

- refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or
- to circulate it for the purpose of eliciting opinion or
- to straightaway take it into consideration.

A question may also be addressed to a Private Member provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the business of the House for which that Member is responsible.

Half-an-Hour Discussion

A Half-an-Hour Discussion can be raised on a matter of sufficient public importance which has been the subject of a recent question .

During the discussion, the member makes a short statement and not more than four members are permitted to ask a question each for further clarity. Thereafter, the Minister concerned replies. There is no formal motion before the House nor voting.

Rule 377

Under Rule 377 of the Rules of Procedure and Conduct of Business in the Lok Sabha, members are allowed to raise matters which are not points of order or which cannot be raised under any other Rule.

Legislation or How a Bill becomes an Act

A Bill is the draft of a legislative proposal. It has to pass through three stages and receive the assent of the President before it becomes an Act of Parliament. It will come into effect after it has been notified by the Government. The Bills initiated by Ministers are called Government Bills and those introduced by Members who are not Ministers, are known as Private Members' Bills. Depending on their contents, Bills may further be classified broadly into

- Ordinary Bills
- Constitution Amendment Bills
- Money Bills .
- Financial Bills A and B
- Other Bills where the procedure for passing of the Bill may be marginally different- for example, requiring the prior assent of the President(Art.3)

Process of passage of a Bill in each House is as follows.

First Reading

The legislative process starts with the introduction of a Bill in either House of Parliament--Lok Sabha or Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the later case it is known as a Private Member's Bill.

should be one of urgent public importance and the notice of the member to raise the issue should be supported by at least two other members. In the Lok Sabha in the winter session Nov-Dec 2007, four Short Duration discussions under Rule 193 were held on the following issues:-

- Proposal to set up Special Economic Zone in Nandigram, West Bengal and consequent large scale violence.
- Indo-US nuclear agreement
- Need for harmonious functioning of three organs of the State i.e. Legislature, judiciary and executive.
- Internal Security

In the Rajya Sabha, debate under Rules 167 and 170 ends in voting while Rule 191 does not need voting.

However, censure motion of the Lok Sabha type does not exist in Rajya Sabha .

Question Hour

The first hour of every sitting of Lok Sabha is called the Question hour. Questions are of three types

- Starred
- Unstarred and
- Short Notice.

A Starred Question is one to which a member wants an oral answer in the House and which is distinguished by an asterisk mark. To a starred question, members can put supplementaries because the Minister is orally answering the question..

An unstarred Quesion is one which is answered in writing and no supplementary questions can be asked.

Minimum period of notice for starred/ unstarred question is 10 clear days(that is, excluding holidays) .

Short Notice Questions

They do not require the normal period of notice of 10 days. They relate to matters of urgent public importance. A Short Notice Question may only be admitted if permitted by the Speaker. A Short Notice Question is taken up for answer immediately after the Question Hour.

this regard, such Motions of Confidence have been entertained under the category of motions stipulated in Rule 184 which are meant for raising discussions on matters of public interest in Lok Sabha.

In the case of a Confidence Motion, there is no requirement for seeking leave of the House. The one line notice of motion under Rule 184 that "This House expresses its confidence in the Council of Ministers" is given by the Prime Minister at the behest of a Presidential direction. When admitted by the Speaker, it is bulletined. The date and time for its discussion is fixed in consultation with the Business Advisory Committee.

Confidence Motion and No-Confidence Motion have the same purpose: the government has to demonstrate its majority in Lok Sabha. The former is a Government initiative when called upon to do so by the President and the latter is moved by the opposition party member.

The notice of the first ever Motion of Confidence was given by the then Prime Minister Ch. Charan Singh in 1979. This motion could not be moved as Ch. Charan Singh tendered the resignation. The first Motion of Confidence was moved by Shri V.P. Singh, the then Prime Minister in December, 1989 in the Lok Sabha which was adopted by the House by the voice vote on the same day. Since then ten Motions of Confidence have been moved(2008).

Censure motion

Censure motion can be moved only in Lok Sabha under Rule 184. Speaker can disallow a censure motion. Grounds need to be mentioned unlike the NCM. It can be moved against an individual minister or a group of ministers unlike the NCM. The censured minister/s need not resign, unlike the NCM. Under Rule 184, voting takes place at the end of the debate. Rule 184 is a way of parliament enforcing accountability of the executive.

Rule 184 and Rule 193 in Lok Sabha

Rule 184 is a censure motion as the debate ends with vote. It is classified as No Day Yet Named Motion in the Rules. It relates to any matter of general public interest. Speaker decides the admissibility of the motion. If the Government loses for any reason, it has to come forward with a confidence motion to establish its numerical majority. In 2002, in relation to the developments of Gujarat, opposition moved a censure motion under Rule 184 and the Deputy Speaker allowed the same. The Government won the motion.

Rule 193 allows a short duration discussion and is not followed by vote. The matter

raising the matter for discussion.The motion shall not deal with any matter which is under adjudication by a court of law.

No-confidence Motion

Art.75(3) says that the Council of Ministers is collectively responsible to the Lok Sabha. The Council of Ministers is in power only as long as it enjoys the numerical majority of the Lok Sabha. The opposition parties have an instrument in the form of `no confidence motion' to remove the Government . The procedure for the NCM is not a part of the Constitution but is given in the Rules of Procedure and Conduct of Business of Lok Sabha.Rule 198 says that an NCM may be moved subject to the following conditions: Leave to make the motion shall be asked for by the member when called by the Speaker;Speaker reads the motion to the House and if 50 members support it, it should be taken up on such day, not being more than ten days from the date on which the leave is asked for as he may appoint.

If leave is granted, the Speaker may allot time for the discussion of the motion. After members speak for and against the motion, Prime Minister replies before vote is taken. If the motion carries majority vote, the Government has to resign.

Following needs to be noted regarding the NCM

- No grounds need be mentioned to move the motion
- No conditions of admissibility are mentioned.

`Motion of Confidence ` in the Council of Ministers

An essential tenet of the Westminster system is that the Government must be collectively responsible to the representative House. In India, the doctrine of collective responsibility of the Union Executive to the House of the People is specifically enshrined in the Constitution(Art.75.3).Loss of confidence of the popular House requires the Government to resign and facilitate installation of an alternative Government, if possible or the President dissolves the LS and general election to LS is held. The usual procedure to express want of confidence in the Council of Ministers is through a motion of no confidence under Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha.(as detailed above)

The device of confidence motion is of recent origin. There is no rule in the Rules of Procedure relating to Motion of Confidence in the Council of Ministers. The need of raising debate through such a motion arose in the late seventies with the advent of minority Governments and later , by mid-1990s, formation of coalition Governments as a result of hung Parliaments. In the absence of any specific rule in

Other than the Constitutional provisions ,mentioned above, the following are the statutory and other developments that make the Parliamentary control over government finance effective

- Outcome budget is being presented from 2004-05 onwards where for a given outlay the expected impact ij socio-economic terms is quantified and declared. Parliament can hold the government answerable for the achievement of the outcomes
- Similarly, 54 gender budget cells are set up by the ministries in the Union Government (2008). Parliament can seek explanation from the government as to how far it has progressed in adopting a gender perspective in public policy.
- Parliamentary financial committees- PAC, Estimates Committee and CPU exercise control on the executive by ensuring that the moneys spent are not wasted and are well targeted
- Under parliamentary pressure, government is presenting the Tax Expenditure Statement since 2006 showing revenue foregone through tax breaks. In course of time, there will be greater parliamentary control on such losses of revenue through exemptions.

Thus, the control that the Parliament can exercise on public finance is enormous. Some controls are provided in the Constitution(Art.112,265,266,292 etc). Others are derived from statute and rules as shown above.

Parliamentary Control over the executive

Art.75.3 says that the Council of Ministers enjoys power till it has support in the Lok Sabha. Parliament controls the executive through a variety of means and instruments in order to enable people to have responsible and accountable government. It takes place through the following instruments :

- Motions like confidence motion, adjournment motion etc
- Questions of various types

Adjournment motion

An adjournment motion is moved to discuss a matter of urgent public importance and is available only in Lok Sabha and not in Rajya Sabha as it means severe criticism of the Government and is used to express dissatisfaction with the Government policies. Speaker's consent is necessary for moving the motion. After the motion is moved, it can be proceeded with only if 50 members endorse it. Speaker may not admit the motion in case there are other means of

The fund constituted under Article 266 (1) of the Constitution of India into which all receipts, revenues and loans flow. All expenditure from the CFI is by appropriation Bill.

Public Account of India

It includes those moneys where the Government acts as a banker. For example, PF, small savings etc -Article 266 (2) of the Constitution of India. These funds do not belong to the government. They have to be paid back at some time to their rightful owners. Therefore, expenditure from it is not required to be approved by the Parliament. Some dedicated funds are also part of PAI. For example:Reserve Funds bearing interest (railway funds, telecommunication funds) and Reserve Funds not bearing an interest (the Central Road Fund, Sugar Development Fund).

Contingency Fund of India

Parliament has by law established a Contingency Fund placed at the disposal of the President to enable advances to be made by him out of it for the purpose of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law(Art.267). Earlier contingency fund was of Rs 50 Crore but was recently raised to Rs 500 crore by parliament.

Parliamentary control over public finance Nfc→

The instruments of control that the Parliament has over the public finance are the following

- Art.265 says that no tax can be levied and collected except by the authority of law
- Art.266 says that money can be drawn from the Consolidated Fund of india only by an Appropriation Bill passed by the Parliament
- Parliament ,under Art.292 , can regulate the borrowing power of the Executive on the security of the Consolidated Fund of India
- Based on Art.292 partly, FRBM Act was made in 2003 to bring public finance under parliamentary accountability- setting limits to borrowing and the FM having to explain to the Parliament on a quarterly basis the budgetary trends
- Cut motions available to Lok Sabha members during the passage of demands for grants can lead to compelling the Government to take up or drop any policy. However, cut motions have never been passed so far
- Budget under Art.112 is a socio-economic statement . Parliament can alter the priorities as it has to be approved by it to take effect

PM WBI lead - development

Bills which exclusively contain provisions for

- the imposition, abolition, remission, alteration or regulation of any tax;
- the regulation of the borrowing of money or the giving of any guarantee by the Government of India
- the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund
- the appropriation of moneys out of the Consolidated Fund of India;
- the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- any matter incidental to any of the matters specified above.

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Money Bill can be introduced only in Lok Sabha and on President's recommendation. Rajya Sabha cannot make amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommend amendments in a Money Bill, but must return all Money Bills to Lok Sabha within fourteen days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha is not returned to Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

President can assent to or reject a Money Bill but can not return it for repassage.

Consolidated Fund of India

Financial Bill B is an ordinary Bill with the difference that, when it is passed, it entails expenditure from the CFI. As far as procedure is concerned, it is passed like a Money Bill but before the commencement of the second reading (Consideration, stage two) in Both the Houses, the recommendation of the President is necessary.

Supplementary, additional, toke, excess and exceptional grants

Art.115 contains provisions related to Supplementary, additional, and excess grants

- Supplementary grant may be made by the Parliament if the amount authorised in the budget passed originally for a particular service for the current financial year is found to be insufficient
- Additional grant may be made by Parliament for expenditure on some new service not contemplated in the annual financial statement for that year
- Excess grant is made by Parliament if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year.In other words, it is a grant to retrospectively authorise excess of expenditure committed by the executive. CAG detects it while auditing the appropriation accounts and is satisfied that it is justified and.the PAC , on the basis of the CAG report, recommends such retrospective regularization.

Token grant is one where the Department /ministry has the money to spend on a new service. The availability of money is by way of reappropriation- spending money sanctioned for one head on another head within the same ministry with the permission of the Finance Ministry. But it seeks a token sum of Rs.1 from Lok Sabha.

Exceptional grant is seeking money for a service that is not part of the current service of any financial year

Budget of a State under President's Rule

Budget of a State under President's rule is presented to Lok Sabha. The procedure followed in regard to the Budget of the Union Government is followed in the case of State Budget also with such variations or modifications, as the Speaker may make.

Money Bill(Art.110)

- Token cut i.e., a motion "that the amount of the Demand be reduced by Rs. 100" in order to express a specific grievance

It is generally the opposition party member who may seek to move a cut motion. Admissibility of the cut motion is entirely the discretion of the Speaker. There is speculation as to what will happen if the cut motion is moved. It is the consensus opinion that in such a situation, the Government needs to show that it has majority by bringing forward a `confidence motion' under Rule 184 of the Lok Sabha.

Appropriation Bill

After the Voting on Demands for Grants have been completed by late April or early May, Government introduces the Appropriation Bill. The Appropriation Bill is intended to give authority to Government to incur expenditure from the Consolidated Fund of India. The appropriation Bill will appropriate the sums that the Lok Sabha granted by voting demands for grants. It also includes the charged expenditure. The procedure for passing this Bill is the same as in the case of other money Bills.

Finance Bill

The Finance Bill(one that contains taxation proposals and is presented as a part of the budget) is introduced in Lok Sabha immediately after the presentation of the General Budget. Certain provisions in the Bill relating to levy and collection of fresh duties or variations in the existing duties come into effect immediately on the expiry of the day on which the Bill is introduced by virtue of a declaration under the Provisional Collection of Taxes Act.
Parliament shall pass the Finance Bill within 75 days of its introduction.

Budget is an important tool of legislative control over the executive. It is also an instrument of economic and social policies in line with the five year plan. .

Financial Bills
They are contained in Art.117. There are two types:
Financial Bill 1 which is a Bill in which there are provisions related to a Money Bill but also those of an ordinary Bill. It has two features in common with the Money Bill:

- President's prior recommendations is necessary and
- It can be introduced only in the Lok Sabha

Other provisions are similar to the ordinary Bill.

wise. The time for discussion and Voting of Demands for Grants is allocated by Speaker in consultation with the Leader of the House. On the last day of the allotted period, the Speaker puts all the outstanding Demands to the Vote of the House. This device is popularly known as 'guillotine'. Guillotine, in other words, is passing the demands for grants without discussion . It is done for want of time.

Lok Sabha has the power to assent to or refuse to give assent to any Demand or even to reduce the amount of Grant sought by Government. Introduction and voting on demands is confined only to Lok Sabha. In Rajya Sabha there is only a General Discussion on the Budget. It does not vote on the Demands for Grants.

Expenditure is of two types:

- Charged expenditure. It includes the emoluments of the President and the salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha and the Speaker and Deputy Speaker of Lok Sabha, Judges of Supreme Court, Comptroller and Auditor General of India and certain other items specified in the Constitution of India. Discussion in Parliament on 'charged' expenditure is permissible but such expenditure is not voted.
- Non-charged expenditure. It is the votable expenditure. Only so much of the amount is subject to the vote of Lok Sabha as is not a "charged" expenditure on the Consolidated Fund of India. The votable part is the demands for grants.

Cut Motions

Motions for reduction to various Demands for Grants are made in the form of Cut Motions seeking to reduce the sums sought by Government on grounds of

- economy or
- difference of opinion on matters of policy or
- to voice a grievance.

Cut Motions are divided into following three categories:

- Disapproval of Policy cut i.e., a motion "that the amount of the demand be reduced to Re. 1" representing disapproval of policy underlying the Demand. A member giving notice of such a Cut Motion should indicate in precise terms, the particulars of the policy which he proposes to discuss. It is open to the member to advocate an alternative Policy

- Economy cut i.e., a motion "that the amount of the Demand be reduced by a specific amount" representing the economy that can be effected. And

amount for 2 months.

The General Budget is presented in Lok Sabha by the Minister of Finance. He makes a speech introducing the Budget and it is only in the concluding part of his speech that the taxation proposals are made. The 'Annual Financial Statement' is laid on the Table of Rajya Sabha at the conclusion of the speech of the Finance Minister in Lok Sabha.

The Finance Bill which deals with the taxation proposals made by Government is introduced immediately after the presentation of Budget. It is accompanied by a memorandum explaining the provisions of the Bill and their effect on the finances of the country.

Vote on Account

The general discussion on the Budget begins a few days after its presentation. Since Parliament will pass the budget only by mid-May, there is a need to sanction an amount to the Government to maintain itself after the new year sets in. A special provision is, therefore, made for "Vote on Account" by which Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year(Art.116). It is generally 2 months worth of expenditure. But during election year , the Vote on Account may be for a period exceeding two months- normally four months.

Discussion

The Budget is discussed in two stages in Lok Sabha. First, there is the General Discussion on the Budget as a whole. This lasts for about 4 to 5 days. Only the broad outlines of the Budget and the principles and policies underlying it are discussed at this stage.

Consideration of the Demands by Standing Committees of Parliament

After the first stage of General Discussion on both Railway as well as General Budget is over, the House is adjourned for a fixed period- usually a month. During this period, the Demands for Grants of various Ministries/Departments including Railways are considered by concerned Standing Committees . These Committees submit reports to the House. The report of the Standing Committees are of persuasive nature .The report shall not suggest anything of the nature of cut motions. There are 24 such committees since 2004.

After the reports of the Standing Committees are presented to the House, the House proceeds to the discussion and Voting on Demands for Grants, Ministry-

- passing of appropriation bills
- passing of finance bill.

The powers of Parliament in respect of enactment of budget are enshrined in the Constitution under Article 112 to 117. As per these, no demand for a grant or proposal for expenditure can be made except on the recommendation of the President. Parliament cannot increase tax though it can either reduce or abolish it.Charged expenditure is not to be subjected to Parliament's voting. Powers of Rajya Sabha is quite restricted in financial matters.

Along with the Annual Financial Statement, the finance Minister submits the following 5 documents to the Parliament

- key to the budget document(various definitions and the Constitutional provisions)
- budget at a glance(receipts and expenditure shown with various deifics and break ups)
- receipt budget
- expenditure budget
- memorandum explaining the process in the financial bill(impact of tax proposals on government finance)

There is a proposal that the Govt. take a look at the recommendation of Administrative Reforms Commission of 1967 which suggested changing of the financial year from April 1 to 31st March to October 1 to 30th Sept. The reason is that the Govt. can have a more realistic estimate based on the impact of Monsoon. Moreover, the financial year for the business class starts from the time of Diwali.

Presentation

In India, the Budget is presented to Parliament on such date as is fixed by the President. The Budget speech of the Finance Minister is in two parts. Part A deals with general economic condition of the country while Part B relates to taxation proposals. The General Budget is usually presented on the last working day of February i.e. about a month before the commencement of the financial year except in the year when General Elections to Lok Sabha are held. In an election year, Budget may be presented twice--first to secure Vote on Account for a four months conventionally and later in full. The election year budget is called interim budget . It is presented only if the elections are held in the first half of the calendar year. Since the incumbent government does not have the moral propriety to present a full budget, it presents interim budget which is nothing but the vote on account with the difference that period for which money is sanctioned by the Parliament in the interim budget is 4 months while normally the vote on account sanctions the

- President shall, in respect of every financial year, cause to be laid before Parliament, Annual Financial Statement (article 112).

These provisions of our Constitution make the Government accountable to Parliament.

With the emergence of Welfare State, role of Government expanded to provide social services to citizens like education, health, employment and housing. Government requires adequate financial resources to do so. Given the huge welfare role that the Government takes on and the security functions it has to perform, resources are necessarily scare,The need for budgeting arises to allocate scarce resources to various Governmental activities.

The Budget Gender Budgeting* (Google*)

The 'Annual Financial Statement', laid before both the Houses of Parliament constitutes the Budget of the Union Government. President is responsible for having the Budget presented to the Lok Sabha (Art.112). But, according to Article 77 (3), the finance Minister has been made responsible by the President of India to prepare the Annual Financial Statement and pilot it through the Parliament This statement takes into account a period of one financial year. The financial year commences on the 1 st April each year. The statement embodies the estimated receipts and expenditure of the Government of India for the financial year.

There is no single budget for the entire country as the states have their own budgets. Even the budget of Government of India is divided into the Railway and the General Budget.

Railway Budget

The Budget of the Indian Railways is presented separately to Parliament and dealt with separately, although the receipts and expenditure of the Railways form part of the Consolidated Fund of India and the figures relating to them are included in the 'Annual Financial Statement'.

Stages of Budget in the Parliament

In Parliament, the budget goes through five stages

- presentation of budget with Finance Minister's speech
- general discussion, after which there is adjournment of the Houses so that the Standing Committees can scrutinize the demands for grants for a month
- voting on demand for grants in Lok Sabha

- Bills originating in the Rajya Sabha and returned to that House by the Lok Sabha with amendments and still pending there on the date of its dissolution, lapse.
- A Bill passed by the two Houses of Parliament and sent to the President for assent does not lapse.
- A Bill returned by the President to the Rajya Sabha for reconsideration of the Houses does not lapse if the dissolution of the Lok Sabha takes place without the Houses having reconsidered the Bill. The Indian Post Office (Amendment) Bill, 1986, as passed by the Houses of Parliament was submitted to the President for his assent. The Bill remained pending before him till the dissolution of the Eighth Lok Sabha in 1989. The President returned the Bill to the Rajya Sabha later for reconsideration of the Houses and it survived Lok Sabha dissolutions till it was withdrawn in 2002

- On the dissolution of the Lok Sabha, Joint Committees become defunct except the Statutory Joint Committees . Members of the Rajya Sabha elected to serve on the Committee on Official Language which consists of members of both Houses continue to remain on that Committee notwithstanding the dissolution of the Lok Sabha. Only the members of the Lok Sabha on that Committee cease to be members of the Committee on the dissolution of that House. The reason for this position is that the Official Language Committee derives its authority from an Act of Parliament and the term of the members on that Committee is co-terminus with their term as members of the House.

Parliamentary Control over Finance

Ours is a Parliamentary system of Government based on Westminster model. The Constitution respects the principle 'no taxation without representation'.

Principles of the system of Parliamentary control over finance

- Legislative prerogative over taxation
- legislative control over expenditure and
- executive initiative in financial matters

There are specific provisions in the Constitution of India containing thse principles:

- Article 265 provides that 'no tax shall be levied or collected except by authority of law'
- no expenditure can be incurred except with the authorisation of the Legislature (article 266)

"Prorogation means the end of a session." "A prorogation terminates a session; an adjournment is an interruption in the course of session." . Usually prorogation follows the adjournment of the House sine die. The time-lag between the adjournment of the House sine die and its prorogation varies between 2 and 10 days. It is not necessary that both Houses should be prorogued simultaneously.

The prorogation affects different categories of business pending before the House as follows:

Bills

Article 107(3) of the Constitution expressly provides that a Bill pending in Parliament shall not lapse by reason of the prorogation of the House. This saving also covers Bills pending before a Select or Joint Committee of the House(s). Notices of intention to move for leave to introduce Bills also do not lapse on prorogation and no fresh notice is necessary in the next session for that purpose.

Motions and Resolutions

On the prorogation, all pending notices except those relating to introduction of Bills as mentioned above, lapse and fresh notices must be given for the next session. This covers notices of motions, calling attention, resolutions, amendments, etc.

Effect of dissolution of Lok Sabha

All business pending before Lok Sabha lapses on its dissolution. However, the dissolution of LS also affects the business pending before the Rajya Sabha to a certain extent, as indicated below:

- Bill pending in the Rajya Sabha which has not been passed by the Lok Sabha shall not lapse
- Bill which is pending in the Lok Sabha lapses
- Bill passed by the Lok Sabha and is pending in the Rajya Sabha lapses
- Under Article 108(5), a Joint Sitting of both Houses to resolve a deadlock on a Bill will be held notwithstanding the fact that a dissolution of the Lok Sabha has intervened since the President has notified his intention to summon the Houses to meet in a Joint Sitting.
- Bills originating in the Rajya Sabha which are still pending in that House do not lapse.
- Bills originating in the Rajya Sabha which having been passed by the House and transmitted to the Lok Sabha and pending there lapse

House, then all the seats become vacant, unless he resigns within fourteen days all but one of the seats.

If a member does not attend the House for 60 days consecutively without the permission of the Presiding Officer , his seat may be declared vacant. Following reasons also can cause vacancy

- he holds any office of profit
- declared to be of unsound mind or undischarged insolvent
- voluntarily acquires citizenship of another country
- his election is declared invalid by the court
- he is expelled by the House
- he becomes President, Vice President etc.
- disqualified for defection by the Presiding Officer

Sessions of Parliament

The Rajya Sabha is not subject to dissolution unlike the Lok Sabha which, unless sooner dissolved, continues for five years from the date appointed for its first meeting.

The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The President may from time to time prorogue the Parliament or either House-prorogation means the termination of a session and normally follows the adjournment sine die of the House by the Presiding Officer.

A session is the period of time between the meeting of a Parliament and its prorogation. During the course of a session, either House may be adjourned for a few hours,days or weeks by the Presiding Officer for any reason. The period between the prorogation of Parliament and its reassembly in a new session is termed as a 'recess'. Normally Parliament meets in three sessions in a year, namely Budget session in the months of February-March, April and May; Monsoon session in the months of July-August and Winter session in the months of November-December.

Since 1994, the Budget session runs like this: after the general discussion on the Budget in the Houses is over and vote on account is passed(Art.116) by the third week of March, the Houses are to be adjourned for a fixed period (about a month) and the committees have to consider the Demands for Grants of the assigned Ministries during one month period.

Prorogation and its effects

Except the above, there is equality between the two Houses:

- The Constitution requires the laying of a number of papers on the Table in both the Houses, notably amongst them are the Budget, supplementary demands for grants, Ordinances and Proclamations issued by the President, reports of Constitutional and statutory functionaries such as the Comptroller and Auditor-General, the Finance Commission, the Commissioners for the Scheduled Castes and Scheduled Tribes, the Backward Classes Commission, the Commissioner for Linguistic Minorities and the Union Finance Commission
- Both Houses also participate in matters of elections of the President and the Vice-President
- Both participate in impeachment of the President, a Judge of the Supreme Court or of a High Court and CAG.

Differences between Lok Sabha and Rajya Sabha

The following are the differences

- Members of Lok Sabha are directly elected on the basis of universal adult franchise. Members of Rajya Sabha are elected by the elected members of State Assemblies in accordance with the system of proportional representation by means of the single transferable vote
- The normal life of every Lok Sabha is 5 years while Rajya Sabha is a permanent body
- Rajya Sabha has a nominated component- 12 members of intelligentia- which Lok Sabha does not have

Vacation of seats

If a member of one House becomes a member of the other House, his seat in the first House becomes vacant from the date on which he is elected to the other House. If he is elected a member of the state Legislature , he ceases to remain a member of Parliament, unless he resigns his membership from the State Legislature within a period of 14 days from the date of publication of the result in the State Gazette. If a person is chosen a member of both the Houses but has not taken his seat in either of them, then he has to intimate in writing to the Election Commission, within ten days of the publication of the result as to in which House he wishes to serve and thereupon his seat in the other House becomes vacant. If he fails to give such intimation, his seat in the Rajya Sabha becomes vacant after the expiration of that period. If a person is elected to more than one seat in the

Relative position of the two Houses

The Constitution envisages that both Lok Sabha and Rajya Sabha have equal status and position. The two houses, at the same time enjoy special powers as given below

The Lok Sabha has the following special or exclusive powers

- Union Council of Ministers is collectively responsible to Lok Sabha(Art.75.3)
- Budget is presented in Lok Sabha(Art.112)
- demands for grants can be introduced only in the Lok Sabha
- Money Bill (Art.110)or a Financial Bill (Art.117.1) can be introduced only in the Lok Sabha.
- Speaker's decision about whether a Bill is a Money Bill or not is final
- Prime Minister generally comes from the Lok Sabha
- Estimates Committee has its entire 30 members drawn from the Lok Sabha.
- Lok Sabha has 545 members which is substantially more than that of Rajya Sabha . Its numerical superiority helps in the joint session of the Parliament which is presided over by the Speaker
- A joint session is presided over by the Speaker and in his absence the deputy Speaker of Lok Sabha
- Lok Sabha has the power of moving a resolution for the discontinuation of national emergency as provided by the 44th Amendment Act (Art.352)

The Rajya Sabha has special or exclusive powers which are contained in Articles 249, 312, 352, 356 and 360.

- Under article 249, the Rajya Sabha can enable he Parliament , by passing a resolution supported by two- thirds of the members present and voting , that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, in national interest.
- resolution can be passed by the Rajya Sabha by a majority of 2/3rds of the members present and voting , under article 312, for the creation of one or more all-India services by the Parliament ,if it is deemed to serve the national interest. The services such as the Indian Administrative Service, Indian Police Service, Indian Forest service and All-India Judicial Service are the All India Services.
- Under articles 352, 356 and 360, the Rajya Sabha can approve the Proclamations of emergency- national, state and financial respectively- initially or extend them subsequently while the Lok Sabha is not in session or under dissolution.

'Motion': Process of passage and Different types of Motions

A motion is a proposal for eliciting decision or expressing the opinion of the House on a matter of public importance. Every question to be decided by the House must be proposed as 'Motion'. The consent of the Presiding Officer is essential to initiate a motion. A motion is so called as it sets the House in motion- the business of the House essentially takes place on the basis of motions.

Government motions involve seeking approval of the House for a policy of the government. Private members' motions focus on eliciting opinion of the House on a particular matter.

Motions fall into three principal categories:

- Substantive Motions
- Substitute Motions
- Subsidiary Motions.

A substantive motion is a self-contained independent proposal. It is drafted in such a way as to be capable of expressing a decision of the House. Some examples of a substantive motion are: the motion of thanks on the President's Address, motion of no-confidence, motions for elections, motion for impeachment of persons in high authority.

A substitute motion is moved in the place of the original motion. It proposes an alternative to the original motion.

Resolutions

A Resolution is a procedural means to initiate a discussion on any matters of general public interest. A Resolution is actually a Substantive Motion .

Resolutions may be classified as private members' resolutions, government resolutions and statutory resolutions(provision in the Constitution or an Act of Parliament). Government resolutions are initiated by ministers. Statutory resolutions may be moved either by a minister or by a private member.

Difference between a motion and a resolution

All Resolutions fall in the category of Substantive Motions . But all motions need not necessarily be substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon. For example, the resolution to impeach the President of India.

Protem speaker

Speaker pro Tempore or temporary Speaker The seniormost member of the Lok Sabha is appointed and sworn in as the Protem Speaker by the President so that the newly elected members are administered oath by him. They in turn elect the Speaker. Protem Speaker continues till the new Speaker is elected. The Constitution does not specify any functions for the Pro tem Speaker.

Somnath Chatterjee who is the senior.most MP of the 14th Lok Sabha was administered oath as protem Speaker by President A P J Abdul Kalam in June 2004 , enabling him to preside over the proceedings of the first two days of the House when new members took oath. He was later elected Speaker of the House when he ceased to be the pro tem Speaker.

Procedure in the House

The Rules of Procedure and Conduct of Business in Lok Sabha and Directions issued by the Speaker from time to time regulate the procedure in Lok Sabha. For various items of business to be taken up in the House the time is allotted on the recommendations of the Business Advisory Committee.

Time of Sittings

When in session, Lok Sabha holds its sittings usually from 11 A.M. to 1 P.M. and from 2 P.M. to 6 P.M.

Question hour

It is the beginning hour of the Parliament on

Zero hour

Zero hour has no basis in the Parliamentary rules. It developed by convention to enable members to raise matters of public importance on the floor of the House. Zero Hour immediately follows question hour . It begins at 12 o'clock after Question Hour which is from 11.00 a.m. to 12.00 noon. Though called Although euphemistically called Zero Hour, it may last for more or less than an hour.

Zero hour is observed in both the Houses of the Parliament.

Motions and Resolutions

At the commencement of the House or from time to time, the Speaker shall nominate from amongst the members a panel of not more than ten Chairmen, anyone of whom may preside over the House in the absence of the Speaker and the Deputy Speaker.

The Speaker has extensive functions to perform in matters administrative, judicial and regulatory. His decisions are final and binding.

Under the Constitution, the Speaker enjoys a special position

- he certifies Money Bills and it is final(Art.110)
- presides over joint sittings which are summoned to resolve a disagreement between the two Houses
- decides on granting recognition to the Leader of the Opposition in the Lok Sabha
- Following the 52nd Constitution amendment 1985, the Speaker is vested with the power relating to the disqualification of a member of the Lok Sabha on grounds of defection.

Though himself a member of the House, the Speaker does not vote in the House except on those rare occasions when there is a tie- equality of votes . Till date, the Speaker of the Lok Sabha has not been called upon to exercise this unique casting vote.

Speaker and the Committees

The Committees , constituted by him or by the House, function under the overall direction of the Speaker. The Chairmen of most Parliamentary Committees are nominated by him. Committees like the Business Advisory Committee, the General Purposes Committee and the Rules Committee work directly under his Chairmanship.

He is the ex officio President of the Indian Parliamentary Group (IPG), set up in 1949, which functions as the National Group of the Inter-Parliamentary Union (IPU) and the Main Branch of the Commonwealth Parliamentary Association (CPA).

It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. He symbolises the dignity and power of the House. His unique position is illustrated by the fact that he is placed very high in the Warrant of Precedence in our country, standing next only to the President, the Vice-President and the Prime Minister. Speaker's salary and allowances are charged on the Consolidated Fund of India.

first elected Parliament came into being in April, 1952, the Second Lok Sabha in April,1957, the Third Lok Sabha in April,1962, the Fourth Lok Sabha in March, 1967, the Fifth Lok Sabha in March, 1971, the Sixth Lok Sabha in March, 1977, the Seventh Lok Sabha in January,1980, the Eighth Lok Sabha in December, 1984, the Ninth Lok Sabha in December, 1989, and the Tenth Lok Sabha in June, 1991, the Eleventh Lok Sabha in May, 1996, the Twelfth Lok Sabha in March, 1998 ,the 13th Lok Sabha in late 1999 and the 14th Lok Sabha elections were held in 2004.

Presiding Officers

Lok Sabha elects one of its own members as its Presiding Officer and he is called the Speaker. He is assisted by the Deputy Speaker who is also elected by Lok Sabha. The conduct of business in Lok Sabha is the responsibility of the Speaker.

The Speaker

In the Lok Sabha, both Presiding Officers—the Speaker and the Deputy Speaker-are elected from among its members by a simple majority of members present and voting in the House. No specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that he should be a member of the House. One of the first acts of a newly constituted House is to elect the Speaker. Usually, a member belonging to the ruling party is elected the Speaker. But in times of coalition governments , as in India since 1996, a member of a party other than the ruling coalition can be elected the Speaker. For example, Somnath Chatterjee of CPI(M), who belongs to a party that only gives `outside' support to the coalition.

The Speaker pro tem(sworn in by the President to swear in the newly elected members of House) presides over the sitting in which the Speaker is elected, if it is a newly constituted House. If the election falls later in the life of a Lok Sabha the Deputy Speaker presides.

Term of Office

The Speaker holds office from the date of his election till immediately before the first meeting of the Lok Sabha which is newly constituted after the dissolution of the one to which he was elected. He is eligible for re-election. On the dissolution of the Lok Sabha, although the Speaker ceases to be a member of the House, he does not vacate his office. The Speaker may, at any time, resign from office by writing under his hand to the Deputy Speaker. The Speaker can be removed from office only on a resolution of the House passed by a majority of all the then members of the House. It is mandatory to give a minimum of 14 days' notice of the intention to move the resolution.

Special mention

Under the Rules of Procedures and Conduct of Business in the Council of States, members are allowed to make special Mentions in Rajya Sabha. If a Minister so desires, he may make a statement on the subject with the permission of the Presiding Officer. The main advantage of this device is to bring to the notice of the House and the Government the matters and happenings of urgent public importance which take place in or outside the country

Motion for papers

There is no provision for adjournment motion in Rajya Sabha as the Council of Ministers is responsible only to the Lok Sabha(Art.75.3). But there is a " motion for papers", like in the House of Lords in Britain. Adjournment motion sets aside the announced business of the House in preference for discussion on a matter of urgent public importance which in the end is voted upon.

Under a " motion for papers ", the Council could discuss any matter of real public importance and the right of the reply is given to the member moving the motion..

LOKSABHA

Lok Sabha is composed of representatives of the people chosen by direct election on the basis of universal adult suffrage. The maximum strength of the House envisaged by the Constitution is 552-upto 530 members to represent the States, up to 20 members to represent the Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the President, if, in his opinion, the community is not adequately represented in the House. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

The actual strength of the Lok Sabha at present is 545 members including the Speaker and two nominated members- referred to as the total membership.

Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting . However, while a Proclamation of Emergency is in operation, this period may be extended by Parliament for a period not exceeding one year at a time and not extending beyond a period of six months after the proclamation has ceased to operate.

The Constitution of India came into force on January 26, 1950. The first general elections under the new Constitution were held during the year 1951-52 and the

while passing the resolution thus denying equality to states

Vote in the House

In Rajya Sabha, as in Lok Sabha generally four methods of voting are adopted

- Voice vote
- Counting
- Division by going into the Lobbies.
- Division by automatic vote recorder

Voice vote

On the conclusion of a debate, the Chairman puts the question before the House and invites those who are in favour of the motion to say "Aye" and those against the motion to say "No". Then the Chairman says: "I think the Ayes or the Noes, (as the case may be) have it".

Count

If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit, ask the members who are for "Aye" and those for "No" respectively to rise in their places and, on a count being taken, he may declare the determination of the House. In this case, also, the names of the voters are not recorded.

Division

A division is one of the forms in which the decision of the House is ascertained. As mentioned above, normally, when a motion is put to the House members for and against it indicate their opinion by saying "Aye" or "No" from their seats. The Chair goes by the voices and declares that the motion is either accepted or negatived by the House. If a member challenges the decision, the Chair orders that the lobbies be cleared. Then the division bell is rung. After the bell stops, all the doors to the Chamber are closed and nobody can enter or leave the Chamber till the division is over. Then the Chair puts the question for second time and declares whether in its opinion the "Ayes" or the "Noes", have it.

When a division is about to be taken, only members of the House have the right to be present . In other words, the lobby has to be cleared for a division..

If the opinion so declared is again challenged, the Chair asks the votes to be recorded by operating the Automatic Vote Recording Equipment.

leader of Rajya Sabha while the former Union Minister, Jaswant Singh is the leader of Opposition.

Casting vote

Casting vote is the vote cast to break a tie- when there is equality of votes. Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes. However, if at any sitting of the House a resolution for the removal of the Chairman from his office is under consideration, he is not to preside at that sitting. He cannot also vote at all on such resolution or on any other matter during such proceedings. While the former(casting vote being given) helps in the conduct of business and legislation, the latter(casting vote being denied) is a moral imperative.

Utility of Rajya Sabha

- It is the permanent House and so has benefits like it can ratify proclamation of Emergency when the Lok Sabha is not in session and can not be called into session immediately. It means the proclamation can continue
- At the same time, it can ensure that emergency provisions are not misused- particularly the President's rule. Unless Rajya Sabha ratifies the proclamation of President's rule, it does not come into force. Thus, the interests of the States can be protected
- Constitution can not be amended unless Rajya Sabha, sitting independently of the Lok Sabha passes the Bill. That is, there is no joint session in case of deadlock. Thus, the national and states' interests are protected
- It has 12 nominated members who add to the quality of parliamentary proceedings and policy making
- It enables law making to become more sober when the representatives of the people are carried away by emotional issues

Thus, Rajya Sabha has enormous utility in the Parliamentary democracy of ours.

Non-federal features of Rajya Sabha

The non-federal features of the Rajya Sabha are

- All states do not have same number of representatives in the Rajya Sabha like in the US Senate
- Rajya Sabha has no special powers with regard to creation of states(Art.3) and thus can not defend the principel of `indistructibility' of the state concerned
- Art.249 is also unfederal as the big 10 states can over run the rest

When the offices of both the Chairman and the Deputy Chairman are vacant, the duties of the office of the Chairman are performed by such member of the Rajya Sabha as the President may appoint for the purpose(Art.91). The member so appointed is known as the Chairman pro tem. For the first time in the Rajya Sabha when the Vice-President (Shri B. D. Jatti) was acting as the President and the post of Deputy Chairman held by Shri Godey Murahari having fallen vacant in 1977 as the latter was elected to the Lok Sabha, the Vice-President acting as President appointed Shri Banarsi Das, a member of Rajya Sabha , as Chairman pro tem until the Deputy Chairman was chosen.The election of the Deputy Chairman took place soon after and the pro tem Chairman vacated the office.

Leader of the Opposition is the Leader in the Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Rajya Sabha

Panel of Vice-Chairmen

The Chairman, from time to time, nominates from amongst the members of the House, a panel of not more than six Vice-Chairmen. In the absence of the Chairman and the Deputy Chairman, one of them presides over the House.

The Vice-Chairman, when presiding over a sitting of the House, has the same powers as the Chairman when so presiding. He is, however, free to participate fully in all discussions in the House. A Vice-Chairman while presiding cannot vote in the first instance, and has to exercise a casting vote in the case of an equality of votes.

Non-panel member presiding

When neither the Chairman nor the Deputy Chairman nor a Vice-Chairman is present to preside, such other member as may be determined by the House acts as the Chairman. The practice is that the outgoing presiding officer requests a member to take the Chair with the approval of the House.

Leader of the House

The Leader of the House is an important parliamentary functionary who assists the Presiding Officer in the conduct of the business. Leader of Rajya Sabha is the Prime Minister, if he is a member of the House, or a Minister who is the member of the House and nominated by the Prime Minister to function as the Leader of the House.

The Prime Minister, Manmohan Singh, who is a Rajya Sabha member, is the

Maintenance of order in the House is a fundamental duty of the Chairman and he has disciplinary powers like suspension of member ; and may also adjourn the sitting of the House in case of grave disorder.

Some statutes also confer duties on the Chairman

- rules made under the Salary, Allowances and Pension of Members of Parliament Act, 1954, do not take effect until they are approved and confirmed by the Chairman and the Speaker
- Under the Judges (inquiry) Act, 1968, the Chairman has to constitute a Committee, upon receipt of a motion for the removal of a Judge of the Supreme Court or of a High Court, for investigation into the grounds on which the removal of a Judge is prayed for.

The Rajya Sabha Secretariat functions under the control and direction of the Chairman.

Deputy Chairman

The Deputy Chairman is elected by the members of Rajya Sabha from among themselves. While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the President, the duties of the office of the Chairman are performed by the Deputy Chairman. He/She has the same powers as the Chairman when presiding over a sitting of the House.

The Deputy Chairman can speak in the House, take part in its deliberations and vote as a member on any question before the House, but he/she can do so only when the Chairman is presiding. When the Deputy Chairman himself/herself is presiding, he/she cannot vote except in the event of equality of votes-casting vote to break the tie.

The Deputy Chairman holds office from the date of his/her election and vacates the office if he/she ceases to be a member of the House. He/She may resign his/her addressing the letter to the Chairman. The Deputy Chairman may also be removed from his/her office by a resolution of the House passed by a majority of all the then members of the House. Fourteen days' notice is required of the intention to move such a resolution.

The salary of the Deputy Chairman is charged on the Consolidated Fund of India and is not subject to the vote of the House.

Chairman pro tem

As the Presiding Officer, the Chairman of the Rajya Sabha is the guardian of the prestige and dignity of the House. He safeguards the privileges and immunities of the members individually and the House collectively. He issues warrants to execute the orders of the House, where necessary. For example, to punish any one who commits contempt of House.

Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes(Art.100.1) However, during proceedings for his removal, he does not preside at that sifting. He cannot also vote at all on such resolution.

The Constitution also lays down certain powers and duties of the Chairman

- he is empowered to adjourn the House or to suspend its sitting in the event of absence of quorum
- In case of resignation of a member from the House, the Chairman is required not to accept the resignation, if he is satisfied that such resignation is not voluntary or genuine
- under the Tenth Schedule to the Constitution, the Chairman determines the question as to disqualification of a member of the Rajya Sabha on ground of defection. He also makes rules for giving effect to the provisions of that Schedule
- enforce respect for privileges and
- the Chairman may permit a member who is unable to express himself in Hindi or in English, to address the House in his mother tongue.

Various powers are conferred on the Chairman under the Rules of Procedure of the Rajya Sabha in connection admissibility of motions etc. The Chairman's consent is required to raise a question of breach of privilege in the House.

Parliamentary Committees where members are drawn from Rajya Sabha , whether set up by the Chairman or by the House, work under his guidance. He appoints Chairmen and nominates members to 8 Departmentally related Standing Committees and they are under his administrative control. He himself is the Chairman of the Business Advisory Committee, Rules Committee and the General Purposes Committee.

The Chairman's rulings cannot be questioned or criticised and to protest against the ruling of the Chairman is a contempt of the House and the Chairman.

The Chairman does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer. However, on a point of order raised or on his own, he may address the House at any time on a matter under consideration with a view to assisting members in their deliberations.

various States in Rajya Sabha were those who traditionally were not resident in that State, but for the purposes of election to the Rajya Sabha, got enrolled as voters in that particular State by acquiring property or otherwise.. The residency clause was flouted frequently by many.

Regarding adoption of open ballot, the reason is: in the context of the growing money power in RS elections, secrecy was thought to conceal corruption and so open ballot was introduced.

The amendments were challenged in the Supreme Court on the ground that `basic structure' of the Constitution is violated as federalism is a basic feature. It is argued that only those belonging to a State can represent it well.

In 2006, a five-judge Constitution bench of the apex court in the Kuldip Nayyar Vs Union of India (2006) case gave the following verdict

- residence is not a constitutional requirement but a matter of qualification prescribed by Parliament in exercise of its power under Article 84 and so the question of violation of basic structure does not arise
- as long as the state has a right to be represented in the council of states by its chosen representative, who is a citizen of the country, it cannot be said that federalism is affected.
- Constitution does not provide that voting for an election to the Council of States shall be by secret ballot. The manner of voting in the election to the Council of States can be regulated by the statute.

The court said that since the amendments have been brought in to avoid cross-voting, to wipe out the evil of corruption and to maintain the integrity of the democratic set-up, they can be justified by the State as a reasonable restriction under Article-19(2) of the Constitution on the assumption that voting in such an election amounts to freedom of expression under Article 19(1)-A.

Chairman

The Vice-President is the ex officio Chairman of Rajya Sabha(Art.64). In fact, the Vice President draws his salary as the Chairman of the Rajya Sabha which is his ex-officio role- that is, by virtue of being the Vice president of India, he functions as the Chairman of Rajya Sabha. The Vice-President is elected by the members of an electoral college consisting of all the members of both Houses of Parliament - both elected and nominated-in accordance with the system of proportional representation by means of the single transferable vote. The Vice-President holds office for a term of five years from the date on which he enters upon his office.

Eligibility

A candidate for election to Rajya Sabha

- should be a citizen of India
- above 30 years of age and
- possessing such other qualifications as may be prescribed by law of Parliament

Rajya Sabha is not subject to dissolution; one-third of its members retire every two years. Thus, it is a permanent body. Normally a member is elected for six years; but a member elected against a mid-term vacancy(casual vacancy), serves only for the remaining period.

Rajya Sabha, when it was constituted in 1952, had 216 members-12 nominated by the President and the remaining 204 elected to represent States. President, after consultation with the Election Commission made an Order in 1952 for curtailing the term of office of some of the members so that as nearly as one-third of the members retire after every two years. Election Commission by drawing of lots decided who should retire and when. That is how the initial order was established.

Rajya Sabha Reforms

In 2003, Parliament made an amendment to the Representation of People's Act, 1951 to make two crucial changes

- to do away with the domicile/ residency condition
- to replace secret ballot with open ballot.

Section 3 of the Representation of the People Act said that a candidate seeking election to Rajya Sabha should be "ordinarily resident" in the State that he wants to represent. By amending this Section of the RPA, the Government opens the contest for a resident "anywhere in the country".

Government explained that the purpose of the first change was to remove the anomaly in the eligibility criteria for both the Houses of Parliament- a candidate for Lok Sabha can contest from anywhere in the country but it is not so for Rajya Sabha.

The residency rule for the Rajya Sabha became controversial when the Election Commission questioned the genuineness of the domiciliary credentials of some members of Rajya Sabha. In a large number of cases, representatives from

serving Chairman (1952-62).Currently(2008) there are 28 women members in Rajya Sabha.

The allocation of seats to be filled by the representatives of the States/Union Territories as laid down in the Fourth Schedule to the Constitution is as follows:

1.	Andhra Pradesh	18
2.	Arunachal Pradesh	1
3.	Assam	7
4.	Bihar	16
5.	Chhattisgarh	5
6.	Goa	1
7.	Gujarat	11
8.	Haryana	5
9.	Himachal Pradesh	3
10.	Jammu and Kashmir	4
11.	Jharkhand	6
12.	Karnataka	12
13.	Kerala	9
14.	Madhya Pradesh	11
15.	Maharashtra	19
16.	Manipur	1
17.	Meghalaya	1
18.	Mizoram	1
19.	Nagaland	1
20.	Orissa	10
21.	Punjab	7
22.	Rajasthan	10
23.	Sikkim	1
24.	Tamil Nadu	18
25.	Tripura	1
26.	Uttaranchal	3
27.	Uttar Pradesh	31
28.	West Bengal	16
29.	The National Capital Territory of Delhi	3
30.	Puducheri	1
	Total:	233

- If the Houses are not in session, the President can promulgate Ordinances having the same validity as a law passed in Parliament.
- The President has the right to address either or both Houses of Parliament.
- The President has the power to call both Houses for a joint sitting in case a dispute arises over passing a Bill.
- He nominates 12 members of the Rajya Sabha and has the right to nominate two members from the Anglo Indian community to the Lok Sabha if they are under-represented.

Thus, President is a constituent part of the Parliament.

Rajya Sabha

It is the federal house representing the States.

Maximum strength(sanctioned strength) of Rajya Sabha is two hundred and fifty (250), of which 238 are to be elected and 12 are nominated by the President of India. The actual strength of Rajya Sabha is two hundred and forty five (245), of which 233 are elected and 12 are nominated by the President. The actual strength is also known as total membership. Each State and the two Union Territories of Delhi and Puducheri are represented in the Rajya Sabha. The allocation of seats in Rajya Sabha is contained in the Fourth Schedule to the Constitution.

Article 80 provides that the Rajya Sabha shall consist of :

- twelve members nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as literature. science, art and social service; and
- not more than two hundred and thirty-eight representatives of the States and of the Union Territories.

The elected members of the (233 Members) Rajya Sabha are elected by the elected members of the Assemblies of States and the two Union Territories of Delhi and Puducheri in accordance with the system of proportional representation by means of the single trasnferable vote. Of the UTs, only NCT of Delhi and Puducheri are represented in the Rajya Sabha. No other UT has an assembly and so has any representation in the Rajya Sabha.

While the nominated members of Rajya Sabha have a right to vote in the election of the Vice-President of India, they are not entitled to vote in the election of the President of India.

The Council of States was set up under the Constitution in 1952. Dr.Radhakrishnan was the first Chairman of Rajya Sabha. He was the longest

PARLIAMENT OF INDIA

Indian democracy is based on the Westminster model(British model of democracy is referred to as the Westminster model.) where the importance of Parliament in the political system is central. Preamble to the Indian Constitution begins with "We , the people.." which confers sovereignty on the Parliament as `people' in an indirect democracy means the representative body.

Art.79. says that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known as the Rajya Sabha or the federal chamber or Council of States or Upper House and the Lok Sabha or the popular chamber or Lower House or House of the People.

Even though the President of India is not a member of the parliament, he is a part of the Parliament for the following reasons

- In a parliamentary system, the Executive is a part of the Legislature unlike the Presidential form of democracy where there is a strict separation between the two institutions.
- Bills passed by the Parliament need Presidential assent before they become laws
- President performs certain other legislative duties like summoning and proroguing the Parliament; recommending the introduction of certain Bills in the Parliament etc

The term in Constitutional law, President-in-Parliament, is used to refer to the President in his legislative role, acting with the advice and consent of the two Houses of Parliament. It is similar to Crown-in-Parliament which means the Crown acting with the advice and consent of the British Parliament.

Role of the President of India with regard to Parliament

The President is the constitutional head of Republic of India. He is elected by an electoral college that includes elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. The President performs the following constitutional functions vis a vis Parliament

- He invites the leader of the majority party to form the Government after a new Lok Sabha is duly elected.
- He summons the two Houses of Parliament to meet from time to time.
- He has the power to prorogue a session in the two Houses and dissolve the Lok Sabha.
- The President has to assent to a Bill before it can become a law.

- If the Houses are not in session, the President can promulgate Ordinances having the same validity as a law passed in Parliament.
- The President has the right to address either or both Houses of Parliament.
- The President has the power to call both Houses for a joint sitting in case a dispute arises over passing a Bill.
- He nominates 12 members of the Rajya Sabha and has the right to nominate two members from the Anglo Indian community to the Lok Sabha if they are under-represented.

Thus, President is a constituent part of the Parliament.

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Articles 121 and 211 bar the legislature from discussing the conduct of any judge in discharge of his duties except when impeachment proceedings are being take up, Articles 122 and 212 on the other hand preclude the courts from interfering in the internal proceedings of the legislature. Article 105 (2) and 194 (2) privileges protect the legislators from interference of the Courts with regards to freedom of speech and freedom to vote.

However, in recent years, the phenomenon of 'judicial encroachment' was seen to disturb the delicate balance and the judiciary was seen to have overstepped into the domain of the legislature.

For example, in 1998, when there was contention for the Chief Ministership of Uttar Pradesh - Jagadambika Pal and Kalyan Singh - , the apex court directed the Speaker to conduct the Composite Floor Test in the State Assembly. A similar situation in 2005 in the case of the Jharkhand Assembly, the apex court directed the Protem Speaker to conduct a Composite Floor Test to ascertain the majority in the House. The 2005 case of expulsion of MPs from Parliament is another such instance

Comments on judicial over-reach :

- In the Conference of Presiding Officers of Legislative Bodies convened by the Speaker of the Lok Sabha, Somnath Chatterjee in 2005, the Presiding Officers expressed concern over court orders that disturbed "the delicate balance of power" between the legislature and the judiciary. They drew attention to the gradual ascendancy of the judiciary at the expense the other two other branches.
- Former Attorney General of India Soli Sorabjee said "judges must not instill in themselves that the judiciary can solve all problems".
- In the conference of Chief Ministers and Chief Justices held in New Delhi recently the Prime Minister cautioned the Courts not to cross their limits.

concerned authority in this connection;

While Justice Katju voices his reservations against judicial legislation Justice Ganguly voices his praise for judicial intervention. But both the judges agree that confusion exists and there is a need to resolve it.

In 2009, the two-member bench of Justices Markandey Katju and Asok Kumar Ganguly raised a basic Constitutional issue of the judiciary's competence to make executive orders or frame laws while hearing a petition of some Jawaharlal Nehru University students. The petitioners questioned a September 2006 apex court order for implementation of the J M Lyngdoh Committee recommendations on reforming students' union polls in colleges and universities. Honourable judges observed:"Today there are high prices and large-scale unemployment. These are pressing social needs. But can we pass orders on these to the government because we do not have the expertise though we are also affected by the price rise."

Earlier in 2012, Supreme Court directed the Centre to constitute a 'special committee' for inter-linking of rivers. A Bench headed by Chief Justice S.J. Kapadia directed the committee to take firm steps and fix a definite time frame for laying down the guidelines for completion of feasibility or other reports and to ensure completion of projects, so that the benefits could be obtained in a reasonable time and cost.The court directed the Central and State governments to participate in the programme and render all financial, administrative and executive help for completing these projects effectively.

It is a fact that the intervention of the judiciary in policy making has evoked mixed response. It role in food policy, education policy, land acquisition policy and various aspects of environmental regulation has been praised. In electoral reforms, too(ADR case) 2003). Its empowerment of the civil society(PIL) is a paradigm shifting instance of enabling a dynamic policy milieu.At the same time, its order in the inter linking of rivers etc have been criticized.

Judiciary is very much conscious of its duty under the Constitution to enable good governance and establishment o welfare society(DPSPs).

Parliament and the Judiciary

Indian Constitution provides for a parliamentary democracy and the essential features of federalism. Separation of powers among the three organs of the government is a basic feature. There is a clear and delicate balance of power between the three organs. In their respective jurisdiction, the three organs are independent and the Constitution bars any interference.

The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the pre-existing law .

Under the Indian Constitution , as in the case of all parliamentary democracies unlike the Presidential systems, the doctrine of separation of powers has not been rigidly stated as in the constitution of the United States or Australia .
India has followed a liberal approach, resorting to the doctrine of checks and balances. According to the Supreme Court in Asif Hameed v. State of Jammu & Kashmir [3]:

"Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein."

The doctrine came under pressure in recent years when the apex court is said to have encroached into the domain of the legislature. Supreme Court in the case of Vishakha v. State of Rajasthan ruled that in the absence of legislative and executive action, the judiciary may step in to fill the gap. The court gave certain directives in the said case for guarding women employees in all organizations against sexual harassment.. It was clarified that the Court was acting under Article 32 of the Constitution and the directions "would be treated as the law declared by the Court under Article 141 of the Constitution."

Supreme Court gave the ADR case verdict in continuation of the same basis: since there is legislative vacuum, the apex court ordered the contestants in the MLA and NP elections to furnish details about their education,assets and liabilities and criminal antecedents, if any(2003).

Article 142 confers the court with the power to do complete justice and under this power, the court makes law.

Recently in 2009 a division bench of the Supreme Court in University of Kerala v. Council, Principals', Colleges, Kerala and Ors referred the following questions regarding judicial legislation to a constitution bench:

- Whether under our Constitution the judiciary can legislate, and if so, what is the permissible limit of judicial legislation.
- Will judicial legislation not violate the principle of separation of powers broadly envisaged by our Constitution;
- Whether the judiciary can legislate when in its opinion there is a pressing social problem of public interest or it can only make a recommendation to the legislature or

There are many cases in which the SC and the HCs ruled for popular welfare tightening norms for the blood banks ; coming to the rescue of the under-trials who were imprisoned without trial for unduly long periods, setting guidelines for introduction of CNG based buses etc in Delhi; cleaning Yamuna etc; directing Delhi industrial units to take care of the child labourers; release of bonded labourers; CVC case and black money case along with the Salwa judum case where the under paid, under trained and under equipped Special Police Officers were declared unconstitutional by the apex court (2011)

Public Interest Litigation is the power given to the public by courts through judicial activism. It is a case of judicial activism as the judiciary activates the public to approach the courts in social interest.
PIL can be moved against the government for its inaction or wrong action or any company for flouting norms like environmental rules etc.

While the PIL instrument has great potential to help the ordinary people,there is concern about misuse of PIL

- it is being used for publicity; private interest is being projected as public interest
- individuals and organizations are trivializing and politicizing the PIL by questioning various government decisions without justification
- has led to loss of precious court time
- It has become a tool for obstruction, delay and sometimes, harassment.

CJI Kapadia in 2010 observed: "PIL petitioners have been moving the courts straightaway without even bringing the problem to the notice of the authorities. And the courts have been entertaining these PILs, virtually taking over the function of the authorities. We will not allow such bypassing of the authorities to take place any more."

The Supreme Court ruled that PIL was not a fundamental right implying that the courts had the right to reject appeals on the basis of public interest.

A two judge Bench of the apex court(2008) observed that frivolous PIL cases should be imposed a penalty of Rs.1 lakh. There is a wing in the apex court that screens out frivolous PILs. Some frivolous PILs are: India should be renamed Hindustan; the Arabian Sea should be called Sindhu Sagar; the national anthem Jana Gana Mana should be replaced by the one offered by the petitioner (and partly sung before the Chief Justice); scrap the Indo-US nuclear deal etc.

Judicial legislation and Policy making

Judiciary: judicial legislation "...there is no liberty, if the judicial power be not separated from the legislative and executive."(Montesquieu in his book- Spirit of Laws)

According to French political philosopher Montesquieu , to safeguard democracy it is necessary that there is a separation of power between the three different organs of the State.

- Judiciary has no resources to monitor the tasks it assigns to the executive
- It upsets the delicate balance among the three organs of the government
- It disturbs the normal chain of command
- Judiciary making the law, implementing it and adjudicating it means concentration of power which is inimical to democratic rights
- Judiciary must turn its attention to solving its own problems like arrears.

Overreach is justified as a response to the underreach of the other two organs where it exists- as in black money case.

Public Interest Litigation

Justice Krishna Iyer , in Mumbai Kamgar Sabha v Abdulbhai Faizullabhai (1976) used the expression PIL for the first time. Justice Bhagavathi added momentum to PIL in the late seventies.

PIL must be differentiated from private litigation. In private litigation, courts are approached for the redressal of wrong or injustice of a private person (or a company which is a legal person). He has to show that he has locus standi- that he is connected to the case and has the right to act or be heard. No one can approach the court without locus standi.

But in PIL, the victims of violation of constitution and law may be weak, vulnerable and illiterate. There are many cases where public interest is violated- for example, child labour, bonder labour; criminals in election process; environmental damage, pollution, children not being able to go to school, people in high places being corrupt and so on. In such a case involving public interest, Supreme Court since late 1970s, allowed the principle of locus standi to be set aside. Any socially spirited individual is allowed to bring it to the notice of the court. Procedural rigidities have not been insisted on. The reason is that the victims are weak and illiterate and can not approach the courts themselves. The aim is to bring justice to the doorstep of the weak. It is called public interest litigation or social interest litigation.

PIL means a legal action initiated in a court of law for the enforcement of public interest in which the public as against private individuals have interest in the form of protection/restoration of their rights.

It is meant to catalyse progressive socio-economic change; make administration responsive; lead to better environmental practices ; make civil society active; and so on.

In the famous Asiad Labour case 1982, the apex court accepted a letter written by an NGO as writ petition and ruled in favor of workers. Newspaper reports can also be the basis for initiation of action. Affidavits have not been asked for.

disincentivise delays, fast tracking of procedures, appointment of court managers and Alternative Dispute Resolution.

Judicial Accountability

In a Constitutional democracy, every institution is subject to accountability, including the judiciary. There are three dimensions to judiciary and its accountability- judicial, administrative and ethical standards.

Accountability of the judiciary in respect of its judicial functions and orders is provided for by an appeal and review of orders.

The mechanism for accountability for serious judicial misconduct , for disciplining errant judges is removal, in the Indian Constitution (Art.124). It is so difficult that it is not practical and so does not function as a deterrent. Therefore, National Judicial Council is being considered for minor offences. The Judges Inquiry Bill 2006 introduced in the Parliament is an important step in this direction as it seeks to set up NJC. The National Commission to Review the Working of the Constitution (NCRWC) made similar recommendations in the matter in its report in 2002.

Administrative accountability is via the RTI.

The judicial accountability question has the following dimensions:Judicial accountability under which the lower court verdicts are open to challenge and nullification by the higher court.Within the High Court and Supreme Court, there is an appeal to.a larger bench.

After review petition has been disposed off, if there is any natural justice issue involved, there is curative petition.

Finally, in matters of mercy, the President and Governor are the arbiters(Art.72 and 161 respectively), after which there is judicial review once again.

Thus, there is a multilayered judicial accountability in the country.

Where the judicial members suffer from misbehavior or incapacity, Art.124 prescribes removal by Parliamentary address and Presidential order.

The Judicial Standards and Accountability Bill, 2010

The Judicial Standards and Accountability Bill tries to lay down enforceable standards of conduct for judges. It also requires judges to declare details of their and their family members' assets and liabilities. Importantly, it creates mechanisms to allow any person to

with judgment, the entire processing must take place electronically. This will enable easy search, retrieval, grouping, information processing, judicial record processing and disposal of the cases. COURTIS project undertaken by NIC has streamlined registries at various courts. With the implementation of the system the number of pending cases in the Supreme Court has come down.COURTNIC is an information system designed to provide the information on the status of cases in the Apex Court to a wide variety of users, from anywhere in the country. Computerisation of all 21 High Courts and 10 Benches on the lines of Apex Court's Computerisation has been done. All High Courts' Cause List are also available on Internet.NIC took up the computerisation of all 430 District Courts in the country on the lines of High Courts Computerisation Project. NIC brought out Judgement Information System (JUDIS) on CD-Rom consisting of complete text of all reported judgement of Supreme Court of India from 1950 to 2000. The Judgements of 2001 onwards are available on Internet. Causelists contain information on the scheduling of cases to be heard by the courts on the following day. The daily orders of Supreme Court, Delhi High Court are available on the web, immediately after they are signed by the Judges.

National Mission for Justice Delivery and Legal Reforms 2011

The Union Government in 2011 approved an ambitious programme that would usher in radical legal reforms aimed at, among other goals, disposal of pending cases in three years, from the current average of 15 years, and establishment of an All India Judicial Service.

Known as the "National Mission for Justice Delivery and Legal Reforms," it seeks to operationalise a number of plans to ensure expeditious and quality justice. The Centre is committed to spending Rs. 5,510 crore in the next five years for the Mission.

The Mission has been conceived on the basis of a "Vision Document" adopted at the conference of Chief Ministers and Chief Justices in October 2009. The broad areas under it are: policy and legislative changes, re-engineering of procedures, human resource development, leveraging information technology and improvement of physical infrastructure of subordinate courts.

The Mission would comprise an Advisory Council, a Governing Council, a National Mission Leader and a Mission Directorate. The Advisory Council will advise on the goals, objectives and strategies and an action plan. The Governing Council will facilitate implementation, give policy directions and oversee the work of the Mission. The Mission Directorate will monitor the Mission's various initiatives.

Action plan worked out by the Ministry of Law and Justice focuses on initiatives such as an All India Judicial Service, a Litigation Policy, Judicial Impact Assessment, reforms in Arbitration & Conciliation Act and Legal Education Reforms. It seeks re-engineering of the procedures and alternative methods of dispute resolution such as identification of bottlenecks, procedural changes in court processes, statutory changes to reduce and

It recommended the following:

Empower the court to summon and examine as witness any person it considers appropriate.

The right of the accused to silence (the right not to be compelled to be a witness against oneself) must also be amended with the court given the right to draw adverse inferences if he refuses to answer the questions put to him by the court.

The committee also concluded that the current standard of proof — "beyond reasonable doubt" — put a "very unreasonable burden" on the prosecution. It has suggested that the standard of proof be set midway between the current standard in India and the much lower standard current in continental Europe, namely "preponderance of probabilities", at "clear and convincing" proof.

It recommended amendments to Section 125 of the Criminal Procedure Code (CrPC) so that "a woman living with a man like his wife for a reasonably long period is also entitled to the benefit of maintenance".

It further suggested life sentence for the rapist and it should not be commuted;lenient law for women and child convicts.

Special Courts

Special courts may be set up under various acts to expedite justice like Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989; Immoral Traffic Prevention Act 1956 provides for special courts. The National Investigation Agency set up in 2008 after the Bombay terror attacks in November 2008 allows special courts to be set up and function continuously. Evening courts in Gujarat and Fast Track courts are also special courts.In Bihar Special Courts Act, 2009 against corruption by public servants.Special courts essentially speed up justice.

Advocates on Record

Only these Advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

E Governance in Judiciary

E-judiciary

The e-Judiciary initiative is taken up- computerization and connectivity- to help in meeting the needs of the citizens in a transparent manner and enable quicker disposal of cases.

The Supreme Court took up the "e-courts" project under the National e-Governance Plan (NeGEP) for linking courts in the country. From the time the case is filed till it is disposed of

In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. The Lok Adalats have delivered inexpensive and expeditious justice and need to be extended further.

Judicial Impact Assessment

JIS means assessing the extra load that the passing of a Bill or making of a certain rule basd on an Act will create for the courts.

The Task Force constituted by Government to study the feasibility of Judicial Impact Assessment in India under chairmanship of Shri Justice M. Jagannadaha Rao submitted its report in 2008. Mandatory judicial impact assessment of every bill will have a fair estimate of extra caseload, judges/staff, infrastructure and financial needs a new law is likely to generate.

The committee recommended that Judicial Impact Assessments must be made on a scientific basis for the purpose of estimating the extra case-load which any new Bill or Legislation may add to the burden of the Courts and the expenditure required for adjudication of such cases must be estimated by the Government and adequate budgetary provision must be made therefore.

Such impact assessments must be made in respect of Bills that are introduced in Parliament as well as Bills introduced in the State legislatures.
If implemented, it will be for the first time that India follows a system that is in vogue in the USA.

The expenditure on fresh cases likely to be added to the Supreme Court and high courts by new laws must be reflected in the Financial Memoranda attached to the Central/ State Bills. The panel proposed setting up of a judicial impact office in Delhi and similar offices in states to carry out the assessment by involving social scientists, legal experts and NGOs.

Indian courts are disposing of 1.5 crore cases annually and there were 2.5 crore cases still pending in lower courts.

Malimath Committee and Criminal Justice System

Criminal justice system involves the police, prosecution, judiciary and the jails along with the witnesses. If it functions well- efficiently, crime rate will decline and conviction rate increases. Otherwise, the country faces the risk of erosion of people's faith with the increase in the crime rate. The Malimath Committee, constituted in 2000 to recommend revamping of the criminal justice system in the country gave its report in 2003.The two volume report makes 158 recommendations with regard to the police, prosecution, the judiciary and criminal jurisprudence. It has, to a large extent, incorporated the recommendations made by in various reports of the Law Commission and the National Police Commission.

Lok Adalat

Lok Adalat literally means "peoples" court". It is an alternative dispute settlement mechanism which settles disputes through conciliation and mediation. It helps in quick disposal of cases and the process is simple and carries no fees. Lok Adalats are statutory forums since the enactment of Legal Services Authorities Act, 1987.

All legal disputes pending in civil, criminal, revenue courts or a tribunal can be taken to Lok Adalat for amicable settlement except criminal cases which are non-compoundable (that is, serious offences where charges cannot be dropped without the consent of the judge).

Legal disputes can be taken up and settled by Lok adalats at pre-litigative stage also i.e. before the parties have entered into litigation by filling a case in a regular court.

Lok Adalats, generally, consist of a judicial member, a legal practitioner and a social worker (generally, a woman). They follow their own procedure. They have the power of a Civil Court, in respect of summoning of evidence and, examination of witnesses, requisitioning of public records, etc. No lawyers are involved in the process. The procedure, followed in the Lok Adalats for the settlement of cases, is simple, informal and flexible.

In 2008, the Supreme Court ruled that the Lok Adalats set up under the Legal Services Authority Act have no adjudicatory or judicial functions since they do not 'hear' arguments. They suggest a solution subject to the litigants accepting the same. If it is accepted, it is binding. If it is not acceptable and one/both the parties reject it, the recourse is to the main courts. Thus, Lok Adalats are not courts, in this sense.

A Bench comprising Chief Justice K.G. Balakrishnan and Justices G.P. Mathur and R.V. Raveendran said that Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance and puts its seal of confirmation by making an award in terms of the compromise or settlement."

If the case is settled in the Lok Adalat, that is, if the litigants agree to a settlement in the Lok Adalat, it will have to be complied with, within a month. It is enforceable like the decrees of a civil court and are binding on the parties to the dispute. It is final as there does not lie any appeal against it .

Lok Adalats are monitored by the State Legal Aid and Advisory Boards.

Parliament in 2002 made the Legal Services Authorities (Amendment) Act 2002, which provides for the constitution of permanent Lok Adalats with maximum monetary jurisdiction of Rs. 10 lakhs for conciliation and settlement of cases relating to public utility services like electricity boards, transport corporations etc.

Alternative Dispute Resolution

Alternative dispute resolution encompasses a range of means to resolve conflicts short of formal litigation. The modern ADR movement seeks to reduce cost and delay and avoid adversarial nature of litigation. The interest in ADR essnentially centres around Lok Adalats.

ADR today falls into two broad categories

- court-driven options and
- community-based dispute resolution mechanisms(Lok Adalats).

Court-driven ADR includes mediation/conciliation—the classic method where a neutral third party assists disputants in reaching a mutually acceptable solution. Supporters argue that such methods decrease the cost and time of litigation, improving aecess to justice and reducing pressure on courts, while at the same time preserving important social relationships for disputants.Community-based ADR is often designed to be independent of a formal court system that may be expensive and inaccessible. India set up lok adalats in the 1980s.

Arbitration, conciliation and negotiation:

Conciliation

Conciliation is an informal process designed to create an environment where negotiations can take place. If the parties fail to reach and agreement, the case is referred to mediation.

Mediation

Mediation is a voluntary and confidential process where a neutral third party assists negotiation. The parties are responsible for reaching an agreement and the mediator cannot impose a settlement. The mediator's role is to facilitate communication, promote understanding, and use problems solving techniques with the goal of assisting the parties to reach their own agreement. If the mediation fails to reach agreement, the case is referred to arbitration.

Arbitration

Arbitration is a form of private adjudication where a mutually acceptable third party hears arguments from either side in a dispute, and renders a judgment. The judgment, known as an award, is confidential and binding.

Critics of the system point out that it puts strong pressure on defendants to plead guilty to crimes that they know that they did not commit. Furthermore, the system encourages lawyers to overcharge.

Gram Nyayalayas Act 2008

Gram Nyayalaya Act 2008 aims at providing inexpensive justice to people in rural areas on their doorstep. It provides for first class judicial magistrates dispensing justice-Nyaya Adhikaris will be appointed by the states in consultation with the high courts. Gram Nyayalayas will try criminal cases, civil suits, claims or disputes concerning all the offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Theft, receiving or retaining stolen property, assisting in the concealment or disposal of stolen property — where the value of property does not exceed Rs 20,000 —, dispute relating to purchase of property, cultivation of land, right to draw water from a tubewell or well are some of the offences which could be tried in the Nyayalayas. An appeal from the judgment of the Gram Nyaylaya will lie with the sessions court which will be heard and disposed of within six months from the date of filing of the appeal.

For the Gram Nyayalayas, the Centre will bear the full cost on capital account. These courts will sit at the district headquarters and in taluks. They will go in a bus or jeep to the village, work there and dispose of the cases. The cost of litigation would be borne by the state and not by the litigant.

Tribal areas are not covered .

State Governments need to notify the Gram Nyayalayas in consultation with the respective High Courts as the Gram Nyayalayas Act, 2008 had come into force from 2.10.2009.Six State Governments have notified 159 Gram Nyayalayas. Out of these, 151 are operational.

Fast Track Courts

Fast track courts were set up , on the recommendation of the 11th Finance Commission to deal with criminal cases involving undertrials – those in jail facing trial for the alleged offences and have spent long periods , sometimes well ahead of the punishment that the alleged crime may get; and other cases pending for more than two years. The aim is to set up five fast track courts in each district. FTCs across the country disposed of lakhs of cases so far. Government decided to disband them in phases- the last state to do so by 2016 is Haryana. Apex court accepted the government decision in 2012.

CPC Amendments 2002

In a move to speed up justice delivery, the Centre amended the Civil Procedure Code which provide for time-bound disposal of civil cases. The following amendments make for speedier disposal of cases

- Only three adjournments are permitted.
- The court is also empowered to fix a time limit for oral arguments and to avoid delay, it may ask the parties to file written submissions.
- a judgment is to be pronounced within 60 days from the date on which the hearing concludes
- ADR- conciliation and arbitration- should be encouraged

Code of Criminal Procedure (Amendment) Act, 2005

- It introduced plea bargaining to reform the criminal justice system .
- prohibits arrest of a woman after sunset and before sunrise except under rare circumstances
- It entitles an undertrial, other than those accused of an offence for which death penalty is prescribed, to be released with or without surety if he/she has been under detention for more than half the prescribed period of imprisonment. It also provides for release of undertrials who are detained beyond the maximum period of imprisonment provided for the alleged offence.

The amended Act would tone up the investigating machinery and process, strengthen the prosecution machinery, tackle problems of undertrials, safeguard the interests of women and stipulate bail conditions.

Plea Bargain

It is was introduced in India by amendment of the Code of Criminal Procedure.Under plea bargain, criminal defendant and prosecutor reach an agreement subject to court approval. The accused admits guilt without a trail , and in return is given a lighter punishment.

This is allowed for cases in which the maximum punishment is imprisonment for seven years. However, offences in socio-economic area like sati are not covered and offences committed against a woman or a child below the age of fourteen are also excluded.

The rules say the court would examine the accused in-camera to determine if he has willingly opted for plea bargaining

consideration. The plan proposes new initiatives such as fast track courts, second shift in existing courts, etc for speedy disposal of cases

Moily Commission

Second Administrative Reforms Commission (ARC) headed by Veerappa Moily made the following recommendations

- fixing a time limit for various stages of trial by suitable amendments to the Criminal Procedure Code
- cases under the Prevention of Corruption Act are held on a day-to-day basis for quick disposal
- guidelines to avoid unwarranted adjournments
- endorsement of Malimath Committee proposal for increasing the working days of High Courts.

Judicial reforms

- pendancy must be drastically pruned
- Computerization of the courts
- fill up vacancies in High Courts and subordinate courts.
- competent and able members of bar are to be 'attracted' to the judicial posts
- the high level of court fees prescribed by many state governments must be reduced as it adds to the cost of justice
- judicial accountability needs to be strengthened
- witness protection
- Laws need to be modernized as some of them are more than 100 years old
- Judicial impact assessment(read ahead)

Many reforms have already been initiated and are in progress. Some have already taken effect as shown below:

- CrPC amendments 2008- gender sensitivity
- Lok Adalats
- Gram Nyayalayas Act 2008
- E-judiciary
- It is suggested that the jury system like in the US should be adopted where the common public can be asked to work as jurors (judges) and decide cases on the basis of facts. It will reduce pressure on courts.

court judges, there are only 12,524 judges available leaving a shortfall of 3,393 judges(2008)

- Judicial infrastructure is inadequate- both in terms of courts or adoption of new technology(IT etc)
- Procedures permit unwarranted adjournments (postponements)

Chief Justice K G Balakrishnan suggested higher budgetary allocation to set up new courts like evening courts and special magistrate courts to combat pendancy of cases. 59 lakh petty cases are pending and they can be disposed off in a short time if special magistrates could be appointed. In Andhra Pradesh, morning courts are functioning before the normal office hours.In Gujarat, 'evening courts' are functioning. The have disposed off lakhs of cases.

Gram Nyayalayas Act is one solution.Pendency can also be reduced through alternative settlement of disputes- mediation and conciliation. Lok Adalats have proved to be useful in mass disposal of cases and quickly.

State governments should set up more family courts – one family court should be set up in every district as it means adoption of a conciliatory approach in such cases, giving preference to mutual settlement over adjudication by court. The country now has only 190 family courts.

The judiciary has recently adopted some measures, including increase of the working hours of High Court judges.

Government allocated an amount of Rs. 1,470 crore for the Eleventh Five Year Plan period for development and modernisation of judicial infrastructure and improving access to justice.The amount will be used for setting up of Gram Nyayalayas, computerisation of District and Subordinate Courts in the country and for upgradation of ICT infrastructure of the Supreme Court and the High Courts.

Government accepted the recommendations of the Thirteenth Finance Commission to provide a grant of Rs. 5,000 crore to the States for improving the justice delivery system in the country- to organise more Lok Adalats and strengthen mediation with a view to reduce court pendencies.

Video-conferencing should be allowed in the judicial process.It is common for the criminal cases getting adjourned on account of inability of the police or jail authorities to produce the accused in court. Sometimes the witnesses are residing at far off places or even abroad. It is not convenient for them to attend the court. Video conferencing is a convenient, secure and less expensive option and can speed up the trial, among other advantages.

National Judicial Infrastructure Plan prepared by the National Judicial Academy, Bhopal for upgrading judicial infrastructure to enable access to justice for common man is under

judiciary and distinguished jurists involved in the process for the process to be transparent and broad-based. Another issue related to higher judiciary is to ensure its accountability in matters of conduct.To address the twin issues, National Judicial Commission has been under consideration

Two attempts at passing a Bill were made- 1990 and 2003. Both failed.

National Commission to Review the Working of the Constitution (NCRWC) (2002) recommended it.

National Judicial Council

The Judges (Inquiry) Bill, 2006 sought to establish a National Judicial Council (NJC) to conduct inquiries intominor allegations of incapacity or misbehaviour by High Court and Supreme Court judges.

The NJC was proposed to be an all- judge body headed by the Chief Justice of India. Any one could complain. NJC would investigate and give penalty.

Its aim was to punish minor misconduct because removal is the only punishment that higher judiciary has as a deterrent and there is a need for dealing with minor misdeeds as well as the former is the `nuclear option' and is not useful.

The Bill was not passed.

Pendancy and Judicial Reforms

Supreme Court ruled that speedy trial is a part of right to life(Art.21).Judicial delays and huge backlog have the effect of emboldening anti-social elements ; common man loses faith in the judicial system; loss of important evidence is possible-because of fading of memory or death of witnesses.

By 2012, over 25 million cases were pending in trial courts, while the number of cases pending in 21 High Courts stood at 3.7 million . Backlog is increasing for many reasons like

- Increasing number of laws and increasing levels of literacy lead to mounting litigation
- judicial impact assessment(JIA) is inadequate.That is, it is not estimated for every Bill passed as to the impact on caseload, judges/staff, infrastructure and financial needs.
- Judge –population ratio is low at 13 judges per 1 million.Law Commission recommended to raise it 5-fold Approved strength of High Courts is 877(2008) but there are about 300 vacancies.Similarly, against a sanctioned strength of 15,917 trial

is not to be deemed to be an amendment of the Constitution within the meaning of Article 368.

The advantages with AIJS are that the best talent at a young age can be tapped. It helps to fill the strength in High Courts after the AIJS recruits become eligible and thus vacancies may not plague the higher judiciary. Near uniform standards prevail in the country in judicial matters. Finally, national integration is another benefit.

Three main objections are raised in this matter

- inadequate knowledge of regional language would dampen judicial efficiency
- promotional opportunities of the members of the State judiciary would be severely hurt
- erosion of control of the High Court over subordinate judiciary would impair independence of the judiciary.

The objections have been answered effectively by, among others, the Law Commission. Learning the regional language has never been a problem as seen in our experience with the IAS and IPS. It also furthers cultural integration.

With respect to the second objection, only a portion of the total vacancies are to be filled through the All India competitive examination while the remaining are open to be filled by promotion from the lower cadres.

Control of the High Court will remain as , on allotment to a State, the allottees (members of AIJS) would become members of the State Judicial Service for all practical purposes.

At present, almost all states have a system of selecting members of the subordinate judiciary. But, judiciary continues to be the only service that does not boast of a national service.Says E M Sudarsana Natchiappan, Chairman, Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, "There is certainly a need to have an all-India judicial service as it would take care of the problem of shortage of judges. It would also ensure that the process of appointing judges to the higher judiciary becomes more transparent." Supreme Court has sought the views of the High Courts on the possibility of entrusting recruitment of 25 per cent posts in the higher judiciary — Additional Sessions Judges and above — to a national authority.

National Judicial Commission

The process of appointment to the higher judiciary and transfer of High Court judges has been a point of national discussion in the last many years , particularly since the Second Judges case in 1993 when the primacy was given to the Collegium of judges in this matter. Power of the President was reduced to formalizing the recommendations of the collegiums. There is a large section of opinion that there should be NJC with members of the executive

appoints Supreme Court and High Court judges in consultation with the CJI and such other judges of the SC and HCs as he deems necessary

- Removal is possible on grounds of proved misbehaviour or incapacity and the parliament should vote with special majority followed by Presidential Order of removal
- Salaries etc are charged on the Consolidated Fund of India and are non-votable
- Administrative expenses of the Supreme Court are charged on the Consolidated Fund of India
- Conditions of service can not be varied to the disadvantage of judges after their appointment
- After retirement , Supreme Court judge can not practise in any court in the country and a High Court judge can not practise in the High Court where he retires
- Parliament can only enhance the powers of the Supreme Court and can not reduce the same
- Art.141 says that the SC judgements are binding on all courts in the country

All – India Judicial Service

The subordinate courts/subordinate judiciary is a State subject(an item in State List (List II). The appointment of the members of the subordinate judiciary is made by the Governor. Such appointment is to be made in the case of district judge, in consultation with the High Court and in the case of other posts, in consultation with the Public Service Commission and the High Court. There has been a suggestion for many decades that an AIJS should be constituted to attract the best young talent that can improve the efficiency of the subordinate judiciary. Law Commission recommended that AIJS should be constituted, essentially for manning the higher services in the subordinate judiciary.The Supreme Court endorsed the recommendation .

Article 312 deals with the All-India Services. Constitution (Forty-second Amendment) Act, 1976 inserted All-India Judicial Service into the Article. The Amendment Act says that the All-India Judicial Service shall not include any post inferior to that of a district judge as defined in article 236.

The process of creation of an All India Service needs to be noted. If the Council of States (Rajya Sabha) declares by resolution supported by not less than two-third of members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for creation of an All-India Judicial Service (AIJS) common to the Union and the States and also to regulate the recruitment and conditions of service of persons appointed to such All-India service(Art.312). Law of the Parliament to create AIJS

When a person defies the orders of a High Court in a place that is outside the Court's normal jurisdiction, the High Court's powers extend beyond the normal territorial limits to punish for contempt.

Court of record

Under Art. 129 of the Constitution the Supreme Court is a court of record. It means it has the following attributes

- its proceedings are recorded and can be quoted as evidence in any court in the country
- it can punish for contempt of court including contempt of itself.

Curative petition

The concept of Curative petition was evolved by the Hon'ble Supreme court in the matter of Rupa Ashok Hurra vs.Ashok Hurra(2002) where the question was whether an aggreived person is entitled to any relief against the final judgement/order of the Supreme Court,after dismissal of a review petition.The Supreme Court in the said case held that in order to prevent abuse of its process and to cure gross miscarriage of justice,it may reconsider its judgements in exercise of its inherent powers.For this purpose the Court has devised what has been termed as a "curative" petition.In the Curative petition has to be certified by a senior advocate.The Curative petition is then circulated to the three senior most judges and the judges who delivered the impugned judgement,if available.No time limit is given for filing Curative petition.

Green benches

India is facing a growing backlog of environmental cases with rapid industrialization leading to disputes with traditional stakeholders.Land acquisition has become a huge problem with industries and mining interests facing increasing protests from farmers and fishermen.The may not be able to balance different interests.Recognizing this fact India's Chief Justice has decided to restructure the "Green Bench" to expedite the cased before it.There will be 2 benches which will deal with environmental matters,one bench will deal with norms while the other will focus on their implementation.Adjournments are not allowed.The Bench would hear only one case at a time.

Independence of the Judiciary

An independent judiciary is essential for the strength of a federal democracy like ours. Our Constitution establishes it on the basis of the following

- Appointment of judges of Supreme Court is kept above politics as the President

"Civil contempt" means willful disobedience to any judgement, direction, order, writ etc of a court or willful breach of an undertaking given to a court. Civil Contempt normally attracts a fine and not imprisonment unless there are special circumstances.

"Criminal contempt" means saying or doing anything that

- scandalizes or lowers the authority of court, or
- interferes with the due course of any judicial proceeding , or
- obstructs the administration of justice in any other manner.

Willfulness is necessary to constitute contempt. Mere disobedience without a willful element is not sufficient to constitute contempt. Partial non-compliance of a court order also amounts to contempt. Supreme Court has inherent power under Article-129 of the constitution to take suo motu action to proceed against contempt

- Of itself
- Of High Court and
- of a subordinate court.

High Court being a court of record has inherent power in respect of contempt

- of itself as well as
- of subordinate courts.

High Courts have power to punish for contempt of subordinate courts under Article-215 but that does not affect or abridge the inherent power of Supreme Court under Article-129. The Supreme Court and High Court both exercise concurrent jurisdiction under the constitutional scheme of punishing for contempt of any subordinate court and contempt of High Court. Generally, cases relating to contempt of subordinate courts are matters for High Courts. However, under rare circumstances affecting the entire judiciary, Supreme Court may directly take cognizance of contempt of subordinate courts.

Defence

Contemnor may defend himself on the basis of truth and public interest.

Under the contempt law, to protect principles of natural justice, it is necessary that the

- procedure is fair
- that the contemnor(one who commits contempt of court) is made aware of the charge against him and is
- given a fair and reasonable opportunity to defend himself.

Judiciary-II

Miscellaneous powers: Election disputes

Article 71 of the Constitution, provides that all doubts and disputes relating to election of a President or Vice-resident are required to be enquired into and decided by the Supreme Court.

Public service commission member's removal

Article 317 of the Constitution, provides that the Chairman or any other member of a Public Service Commission can be removed from his office by order of the President, on the ground of misbehavior, after the Supreme Court on reference being made by the President, has on enquiry reported that he ought, on such ground, to be removed from his office.

Contempt powers

Contempt of Court

Acts which willfully seek to disrupt the normal judicial process constitute contempt of court. In India, Supreme Court and High Courts are given the power to punish contempt of court as shown below:

Article 129 : "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

Article 215: Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Need for contempt of court powers

Effective discharge of Constitutional and other legal duties demands that the majesty of law and the dignity and authority of the courts should be respected and protected. It in turn helps uphold the rule of law and Constitutional governance. Contempt powers are necessary for the higher courts to enforce rule of law and judicial orders, prevent corruption, insubordination and defiance. Contempt powers are a balance between the right of an individual to criticize the judiciary and the need of the judiciary to enforce respect for the law.

Civil and criminal contempt

Contempt of court may be civil contempt or criminal contempt

2012 , including whether auctioning of natural resources across all sectors is mandatory and the verdict be given retrospective effect for licenses granted since 1994.

Eight questions have been raised, including whether there could be judicial interference in policy matters, whether the court holds that within the permissible scope of judicial review that the policy is flawed, is the court not obliged to take into account investment made under the said policy including the investment made by foreign investors under the multi and bilateral agreements.

The apex court had observed that auction was best suited route for allocating natural resources like telecom spectrum because the policy of first-come-first-serve was flawed.

Art.144

Art.144 says that it is the duty of every person and authority in the country to act in aid of and render necessary assistance for the enforcement of the orders of the Supreme Court.

the President of India may seek the advice of the Supreme Court on such a matter. The Supreme Court may render its advice or it may decline to do so. But in one case such advice is to be mandatorily given: pre-Independence agreements and accords that India entered into.

If the apex courts accepts the reference, it sets up a Constitution bench and hears the arguments where the Government's case is argued by the AG.

The Article is titled : Power of President to consult Supreme Court.

Under the Art.143, what the President seeks and what the court gives is opinion and therefore, it is not binding. But it has the value of a judgement for all courts and other bodies.

The power to reject a reference by the apex court is given as all references may not be amenable to judicial clarification- a reference made whether there was a temple in the place where the mosque was built five centuries back(1993).

But if the SC answers the questions raised in a presidential reference, would its advice be binding? The question came up in the Cauvery Waters inter-state river water dispute of 1991- a 5 judge bench held that 'the advisory opinion is entitled to due weight and respect and normally, it will be followed.'

The question that was raised in the 2G reference was whether it was correct to take the route of Art.143 while the route of appeal to a larger bench was open. The answer however is that the verdict raises certain fundamental questions that go beyond the verdict itself and so reference route is appropriate.

The advisory powers of the Supreme Court have been of enormous value so far in clarifying on various matters Constitutional and legal matters as can be seen from the list of references given below. There have been 14 references to the Supreme court so far including the 2G reference in 2012.

Presidential references in the last two decades

- 2012 2G verdict of the Supreme Court
- 2004 SYL canal and unilateral termination of all agreements by Punjab
- 2002 Gujarat Assembly and Art.174
- 1998 Judges appointment
- 1993 Rama Janma Bhoomi(declined)
- 1991 Interim Order of Cauvery Water Disputes Tribunal

2G Reference 2012

The government in April moved the Supreme Court with a Presidential Reference for its opinion on issues arising out of its 2G spectrum judgment delivered earlier in

Power to transfer a case

Article 139A(1) of the Constitution provides that where cases involving the same or substantially the same question of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and Supreme Court is satisfied, on its own motion, or on an application made by the Attorney General of India or by a party to any such case, that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases and dispose of all cases itself.

Article 139A(2) of the Constitution provides that the Supreme Court may, in pursuit of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court

Code of Civil Procedure and Code of Criminal Procedure provide that Supreme Court may transfer any case from a High Court or other subordinate Court in one State to a High Court or other subordinate Court in any other State.

Art.140

It enables Parliament to confer ancillary powers on Supreme Court consistent with Constitution to make the Court more effectively discharge its Constitutional duties.

Art.141

It says that the law declared by Supreme Court is binding on all courts within the territory of India.

Art.142

It says that the Supreme Court , in the exercise of its jurisdiction, may pass such decree or make such order as is necessary for doing complete justice in any cause pending before it, and it shall be enforceable throughout the territory of India

Advisory jurisdiction: Art.143

The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution.

According to Art.143, if it appears to the President that

- a question of law or fact has arisen, or is likely to arise
- which is of public importance and that
- it is necessary to take the opinion and advice of the Supreme Court on it

some HCs and some others differed. Since retrospective laws of a criminal nature are not allowed under Art.20, it becomes a Constitutional case of substantial importance.

Civil cases

Appeals lie to the Supreme Court in civil matters (Art.133)if the High Court concerned certifies

(a) that the case involves a substantial question of law of general importance, and

(b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

The term `general importance' means that the case holds interest for a wider section of the society other than the litigants.

Criminal cases

According to Art.134 and Criminal Procedure Code provisions, an appeal lies to the Supreme Court if the High Court

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or

(b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or

(c) certifies that the case is a fit one for appeal to the Supreme Court.

Earlier, life imprisonment meant an imprisonment of 14 to 20 years, but of late, the courts are interpreting it as 'imprisonment until the end of the natural life of the convict', unless remitted.

Parliament is authorised to confer on the Supreme Court any further powers in criminal jurisdiction, under Art.134.

SLP

The Supreme Court has a very wide appellate jurisdiction over all Courts and Tribunals in India as it may, in its discretion, grant special leave to appeal under Art. 136 of the Constitution from any judgment or order – interim or final-in any matter from any Court or Tribunal in the territory of India. However, SLP is not available for military courts constituted under any law relating the Armed Forces.

Art.138

Art.138 says that the powers of the Supreme Court can be enlarged by the Parliament.

Original jurisdiction

Original jurisdiction means that a case originates in the court. It may be exclusive or otherwise.

Under Art.131, exclusive original jurisdiction of the Supreme Court is one where no other court in the country enjoys the same power. It extends to all federal disputes- any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States.

It also involves clarification as to whether a certain item is in the `residuary ' category or not. To explain, the Constitution distributes legislative powers to the Union parliament and State Legislature in the VII Schedule. Any item that comes up subsequently and is not covered by the three Lists- Union, State and Concurrent is in the `residuary ' category and belongs to the Union Parliament.

The writ jurisdiction of the Supreme Court is original but not exclusive as the power is also available to the High Courts(Art.226). Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.

Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court is given in Art. 132, 133 and 134 for Constitutional, civil and criminal cases respectively. While Constitutional cases involve deviation from the Constitution, civil and criminal cases are different in the following ways: Civil cases are generally brought by private individuals or corporations seeking to collect money owed or monetary damages. A criminal case is brought by the local, state or federal government in response to a suspected violation of law and seeks a fine or a jail sentence or both. Criminal cases are generally initiated by the Government as crimes are a threat to the whole society and not only to a particular individual.

Constitutional cases

Art.132 of the Constitution provides for an appeal to the Supreme Court from any judgment of a High Court , whether in civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the constitution.A substantial question of law means a question on which two or more High Courts have differed. For example, the Domestic Violence Act 2006 has been interpreted to have retrospective value for the aggrieved women

In the 2nd Judges case 1993, it was said that the collegium headed by the CJI would recommend the names of judges for appointment to HCs and SC and also transfer and appointment of HC judges.

Once appointed, the Chief Justice remains in office until his or her retirement or death, unless removed by impeachment.

CJI is administered oath by the President while the CJI administers oath to all other judges of the apex court.

Acting CJI

Art.126 says that when the office of the Chief Justice of India is vacant or when he is not in a position to perform his duties, they are performed by such other judge of the Supreme Court that the President may appoint.

Benches of Supreme Court

To dispose of the cases before Supreme Court the matters are placed before various Benches of Supreme Court.

The Bail applications in appeals are heard by single-Judge (also known as Chamber Judge)

Most of the matters are decided by Division Benches of the Supreme Court- two judges. If the two judges disagree- which is rare- the view of the senior judge prevails.Or a third judge may be appointed by the CJI for the case.

Three-Judge Bench - Matters placed before three-Judge Bench are considered priority matters.CVC case(2011) and Vodafone case(2012).

All cases involving Constitutional Interpretation and Presidential references are placed before a five-Judge Bench, popularly known as a Constitution Bench.

The largest Bench so far was the 13-judge bench that delivered the Kesavananda Bharati case verdict in 1973. There has not been a 13 judge bench since then or till then.

Another landmark verdict – Golaknath case(1967) was determined by eleven-Judge Bench .

Jurisdiction

The Supreme Court has original, appellate and advisory jurisdiction.

jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court. His consent is necessary for attendance as the acting judge.

Seat of Supreme Court

Art.130 says that the Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Chief Justice of India

The **Chief Justice of India** is the highest-ranking judge in the Supreme Court of India, and thus holds the highest judicial position in India. As well as presiding in the Supreme Court, the Chief Justice also head its administrative functions.

The current Chief Justice is S. H. Kapadia, who has held the office since May 2010.

According to Art.124, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted

As the chief judge, the Chief Justice is responsible for the allocation of cases and appointment of constitutional benches which deal with important matters of Constitutional law and Presidential references under Art.143. In accordance with Article 145 of the Constitution of India and the Supreme Court Rules of Procedure of 1966, the Chief Justice allocates work to the other judges, who are bound to refer the matter back to him or her in case they require the matter to be looked into by a bench of higher strength.

On the administrative side, the Chief Justice carries out the following functions:

- appointment of court officials;
- matters relating to the supervision and functioning of the Supreme Court.

Article 124 of the Constitution of India provides for the manner of appointing judges to the Supreme Court. However, no specific provision is made as to the appointment of the Chief Justice; as a result, the latter is appointed in the same manner as for the other judges to the Supreme Court.

the Supreme Court declared (in the constitutional bench S.P. Gupta case) that the Government of India would be bound to nominate only the most senior judge of the Supreme Court for the position of Chief Justice, thereby removing a potential source for Government influence over the judiciary. In the appointment of the Chief Justice of the Supreme Court of India, both the 1993 decision and the 1998 opinion lay down that the senior-most judge should always be appointed.

the Judges (Inquiry) Act, 1968. The Judges (Inquiry) Rules, 1969 lay down the details of procedure for investigation and inquiry into the allegations against a judge.

Judges (Inquiry) Act, 1968 regulates the procedure for the inquiry into an allegation of misbehaviour or incapacity of a Judge of the Supreme Court or High Court and for the presentation of an address by Parliament to the President for removing him from office , if charges have been proved.

The Act authorizes the constitution of a three-member committee once a motion for presenting an address to the President seeking the removal of a Judge is admitted in Parliament. The motion can be admitted only if 100 Lok Sabha or 50 Rajya Sabha members propose it to their respective Houses. The committee includes the Chief Justice or one of the Judges of the Supreme Court, aChief Justice of one of the High Courts, and one distinguished jurist.

The committee, after giving reasonable opportunity to the Judge concerned to defend himself/herself, has to submit its report to the Parliament. If the committee finds the Judge guilty- fully or partly, then its report, along with the motion, has to be considered by Parliament. The motion should be adopted by each House of Parliament by a majority of that House and by a majority of not less than two-thirds of the members of that House present and voting. The address shall be presented to the President during the same session of Parliament for the removal of the judge. The guilty Judge is removed from office by Presidential Order.

Justice Soumitra Sen of the Calcutta High Court tendered his resignation letter to the President to avoid being the first judge to be impeached by the Parliament. Justice Sen was due to face the impeachment proceedings in Lok Sabha in September 2011 after the Rajya Sabha passed the impeachment motion earlier successfully.

Adhoc and Acting Judges

Art.127 says that if there is no quorum of the Supreme Court judges to hold or continue any session of the Court , the CJI , with the previous consent of the President and in consultation with the Chief Justice of the High Court concerned can request in writing a judge of the high Court who is qualified to be a judge of the Supreme Court, to function as ad hoc judge of the Supreme Court. While so attending as the judge of the Supreme Court he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

Art.128 says that retired High Court and Supreme Court judges may be requested by the CJI, with prior consent of the President to sit and function as the judge of the Supreme Court. Every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the

In 1993, a nine-Judge Constitution Bench of the Supreme Court in the Advocates-on-Record Association case ,over-ruled the decision given in S.P.Gupta. The Supreme Court observed that when the President consulted the judges of the Supreme Court and the High Courts, the advice received by him is binding on him- `consultation' is concurrence'. It held that the recommendation for appointment should be made by the Chief Justice of India in consultation with his two senior-most colleagues and that such recommendation should be followed by the President. In case of any divergence between the judicial advice and the Presidential opinion, the former will prevail. Art 50 is quoted to give substance to the verdict- divesting the executive of its judicial powers.

It is known as the Second Judges Case.

The 1993 decision was reaffirmed with minor modifications in 1998 , on a reference made by the President under Article 143 of the Constitution. It was held that the recommendation for appointment etc should be made by the Chief Justice of India and his four senior-most colleagues (instead of the Chief Justice of India and his two senior-most colleagues in the earlier verdict in 1993)- referred to as the 'Collegium' for the purpose of appointment of Judges to the Supreme Court.

It is known as the Third Judges Case.

So far as the appointment of the Chief Justice of the Supreme Court of India is concerned, both the 1993 decision and the 1998 opinion lay down that the senior-most judge should always be appointed as the Chief Justice of India.The Constitution also provides for the appointment of a Judge of a High Court as an ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

Retirement, resignation and removal

Supreme Court judge retires when he attains the age of 65 years. He may resign addressing the letter to the President of India. He may be removed by an order of the President based on parliamentary vote.

Removal of Supreme Court Judge

Supreme Court Judge may be removed from his office by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting on the ground of proved misbehaviour or incapacity. Article 124(5) specifically lays down that Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity. In pursuance of Article 124 (5), Parliament passed

THE JUDICIARY-I

Supreme Court

The Supreme Court of India was constituted under Article 124 of the Constitution. It commenced its sittings on January 28, 1950.

The original Constitution of 1950 provided for a Supreme Court with a Chief Justice and 7 puisne Judges –(" puisne judge " is a judge of the Supreme Court other than the Chief Justice). Parliament is given the power to increase this number.There was progressive increase in the total strength of the apex court to 26 in 1986. Supreme Court (Number of Judges) Amendment Act, 2008 increased the number of judges to 31 including the Chief Justice of India.They are appointed by the President of India.The proceedings of the Supreme Court are mainly in English and the procedure is regulated by the Supreme Court Rules, 1966.

Qualifications

In order to be appointed as a Judge of the Supreme Court,a person

- must be a citizen of India and must have been:
- For at least five years, a Judge of a High Court or of two or more such Courts in succession, or
- An advocate of a High Court or of two or more such Courts in succession for at least 10 years, or
- in the opinion of the President, a distinguished jurist.

Appointment of Judges to the Supreme Court: Details

Art. 124 of the Constitution of India deals with the appointment of Supreme Court Judges .

Art 124(2) says that every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary . In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted. However, the actual process of appointment has gone through changes due to apex court verdicts.

Collegium of Judges

In the SP Gupta case (1982) a seven-judge Constitution Bench held that the President is the final authority to appoint judges. He need not follow the advice of the judges whom he consults. In other words, `consultation' is not `concurrence'.

It is known as the First Judges case.

The Vice-President as Chairperson (ex-officio) of the Rajya Sabha(Art.64)

The Vice-President is the ex-officio Chairperson of the Council of States (Rajya Sabha) and does not hold any other office of profit. During any period when the Vice-President acts as, or discharges the functions of the President, he does not perform the duties of the office of the Chairperson of the Council of States (Rajya Sabha) and, is not entitled to any salary or allowances payable to the Chairperson, Rajya Sabha.

The Vice-President as Acting President (Art.65.1)

- The Vice-President acts as President during casual vacancy in the office of the President by reason of death, resignation or removal or otherwise, until a new President is elected as soon as practicable and, in no case, later than six months from the date of occurrence of the vacancy. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President discharges the Presidential functions till the President resumes office(Art.65.2).During this period, the Vice-President has all the powers, immunities and privileges of the President and receives emoluments and allowances payable to the President.

Removal

The Vice-President can be removed from office by a resolution of the Council of States (Rajya Sabha), passed by a majority of its members at that time and agreed to by the House of the People (Lok Sabha). A resolution for this purpose may be moved only after a notice of at least a minimum of 14 days has been given of such an intention.

It may be noted that for Impeachment of the President, the cause or reason is "violation of the Constitution". But for the removal of Vice-President, no cause or reason has been mentioned in the Constitution.

Vacancy

An election to fill a vacancy caused by the expiry of the term of office of Vice-President is completed before the expiry of the term. In case a vacancy arises by reasons of death, resignation or removal or otherwise, the election to fill that vacancy is held as soon as possible after the occurrence. In contrast, the Constitution provides an outer limit of six months (Article 62) for election to the office of the President of India under these circumstances. The person so elected is entitled to hold office for a full term of 5 years from the date he enters office.

The Constitution is silent on who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term, or when the Vice-President acts as the President of India. The only provision in the Constitution is with regard to the Vice-President's function as the Chairperson of the Council of States (Rajya Sabha), which is performed, during the period of such vacancy, by the Deputy Chairperson of the Rajya Sabha, or any other member of the Rajya Sabha authorised by the President of India(Protem Chairman).

Emoluments

There is no specific provision of salary/pension for the Vice President, per se. He/she receives the salary of the Chairman of the Rajya Sabha, which is currently Rs. 1,25,000 per month. There are no additional emoluments for the office.

The constitution provides that when the Vice President acts as the President or discharges the duties of the President, he/she is entitled to the salary and privileges of the President of India.

The pension is 50% of the salary.

Emoluments of the President is Rs.1,50,000 per month.

If at the end of any count, no candidate can be declared elected, then, second preference votes of the candidate with the least number of first preference of votes , are transferred to the candidates left in the fight. The process continues till a candidate attains the quota.

After the election has been held and the votes have been counted, the Returning Officer declares the result of the election. Thereafter, he reports the result to the Central Government (Ministry of Law & Justice) and the Election Commission of India and the Central Government publishes the name of the person elected as Vice-President, in the Official Gazette.

Disputes regarding Election of the Vice-President

An election petition calling in question an election to the office of Vice-President may be presented by any candidate at such election or by any ten or more electors joined together as petitioners.

According to Article 71 of the Constitution, all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court. Further, according to Presidential and Vice-Presidential Elections Act, 1952, an election petition can be filed only before the Supreme Court.

A petition challenging the election of the Vice-President is heard by a five-judge bench of the Supreme Court of India.

The petition has necessarily to be accompanied by a security deposit of Rs. 20,000/-.

An election petition may be presented within 30 days from the date of publication of the declaration containing the name of the returned candidate.

Oath of the Vice President

Text of Oath of Affirmation by the Vice-President:

"I, _____ do swear in the name of God that I will bear true faith and allegiance to solemnly affirm the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

Term of office

It is five years from the date of assumption of office. Even after the expiration of the term, the vice-President shall continue in office until his successor assumes office. Art 67(c). The Vice-President may resign his office by writing to the President. The resignation becomes effective from the day it is accepted.

Superintendence of the Election of the Vice-President

The Election Commission of India conducts the election to the office of the Vice-President.

Important Provisions relating to the Election of the Vice-President are:

The election of the next Vice-President is to be held within 60 days of the expiry of the term of office of the outgoing Vice-President.The Returning Officer appointed to conduct the Vice-Presidential elections is the Secretary-General of either House of the Parliament, by rotation. Any person qualified to be elected and intending to stand for election as Vice-President is required to be nominated by at least 20 MPs as proposers and at least 20 MPs as seconders. A candidate seeking election as Vice-President is required to make a security deposit of Rs.15,000/-. He loss the security deposit if he does not secure $1/6^{th}$ of the valid votes.

Proportional system

In the election an elector has as many preferences as there are candidates. In casting his vote, an elector is required to record on his ballot paper the figure 1 at the space opposite the name of the candidate whom he chooses as his first preference and may, in addition, record as many subsequent preferences as he/she wishes by recording on his ballot paper the figures 2,3,4, and so on, in the space opposite the names of other candidates. Each elector shall have as many preferences as there are candidates but no ballot paper shall be considered invalid solely on the ground that all such preferences are not marked.The procedure for counting votes consists of the following steps:

- The number of first preference votes secured by each candidate is ascertained.
- The numbers so ascertained are added up - the total is divided by two(number of candidates to be elected and add the number to one) and one is added to the quotient . The resulting number is the quota sufficient for a candidate to secure his return at the election. For example, assuming the total of valid votes polled by all candidates is 789, the quota required for getting elected is:

789

----- +1 = 394.5 + 1 (Ignore 0.5)

2

Quota = 394 + 1 = 395

After ascertaining the quota, the Returning Officer has to see whether any candidate secured the quota for being declared as elected on the basis of the total of first preference votes polled by him/her.

Vice-President

The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office.

Art. 63 declares: "There shall be a Vice-President of India." That is, the office can not remain vacant.

Election :Qualifications

A person cannot be elected as Vice-President unless he

- is a citizen of India
- has completed the age of 35 years, and
- is qualified for election as a member of the Council of States (Rajya Sabha).

Under Article. 102, a person cannot become a Member of Lok Sabha or Rajya Sabha if he is of unsound mind and a competent court has declared so, an undischarged insolvent, has voluntarily acquired the citizenship of a foreign state or if he has been disqualified under any parliamentary law.

A person is not eligible if he holds any office of profit under the Government of India or a State Government or any subordinate local authority(Art.66.4).

The Vice-President is not a member of either House of Parliament or of a House of a Legislature of any state. If a member of either House of Parliament or of a House of a Legislature of any state is elected as Vice-President, he is deemed to have vacated his seat in that House on the date he/she enters his office as Vice-President (Art.66.2).

Manner of election

The Vice-President is elected by an electoral college consisting of members of both Houses of Parliament, in accordance with the system of proportional representation by means of the single transferable vote and the voting in such election is by secret ballot. The Electoral College to elect a person to the office of the Vice-President consists of all members of both Houses of Parliament unlike that of the President of India where nominated members of the Parliament have no role.

Advocate General of a State government is the counterpart of Attorney General for India.The current Attorney General is Goolam Essaji Vahanvati.

Solicitor General for India

The Solicitor General for India is subordinate to the Attorney General of India. The Solicitor General for India is the second law officer of the country, assists the Attorney General, and is himself assisted by four Additional Solicitors General for India. Unlike the Attorney General, Solicitor General does not tender legal advice to the Government of India. His functions are confined to appearing is courts on behalf of the Union of India. It is not a Constitutional post unlike the A-G.

Attorney-General of India

The Attorney General for India is appointed by the President of India under Article 76 of the Constitution of India and holds office during the pleasure of the President. He is the Indian government's chief legal advisor.

He must be a person qualified to be appointed as a Judge of the Supreme Court.

The Attorney General is responsible for giving advice to the Government of India upon such legal matters and to perform such other duties of legal character as may be referred or assigned to him by the President. The Attorney-General holds office during the pleasure of the President, and shall receive such remuneration as the President may determine.

The Attorney General has the right of audience in all Courts in India as well as the right to participate in the proceedings of the Parliament, though not to vote. The Attorney General is assisted by a Solicitor General and four Additional Solicitors General. The Attorney General of India does not have any executive authority- these functions are performed by the Law Minister of India.

The Attorney General is the highest law officer in the country.

Functions of AG can be broadly classified under the following heads

- Legal advice: The Attorney General is the Government's chief legal adviser.
- Litigation: The Attorney General is the government's primary lawyer in the Supreme Court and High Courts.
- Parliament: The Attorney General has the right to participate in the proceedings of the Parliament and its committees but has no right to vote. He may be invited by the parliament to clarify on any legal matter.

The Attorney General appears on behalf of Government of India in all cases (including suits, appeals and other proceedings) in the Supreme Court in which Government of India is concerned. He/She also represents the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution. For example, the Presidential reference regarding the 2G case verdict of the Supreme court that was given in 2012. The Attorney General is to be consulted only after the Ministry of Law has been consulted. All references to the Attorney General are made by the Ministry of Law.

The Attorney General can accept briefs but cannot appear against the Government. He/She cannot defend an accused in the criminal proceedings and accept the directorship of a company without the permission of the Government.

Prime ministerial government

It is a government where the prime minister is dominant in terms of the executive. As the prime minister is, by definition, a member of a cabinet - this form of government is often a development from cabinet government. In true cabinet government the prime minister is *primus inter pares* (first among equals) but in post-war era, PM acquired enormous powers , partly because of the trend of the executive gaining at the expense of parliament. With charismatic PMs like Nehru and Mrs.Gandhi the trend was accentuated.Similarly, in the UK- leaders such as Margaret Thatcher and Tony Blair. Thatcher used bilateral meetings with individual ministers to determine policy areas using cabinet to simply announce these decisions. Due to the extent of her victory, and her control over cabinet positions, ministers were not as ready to question her as they may have otherwise been.

It is a fact too that the Constitution, statute and convention confer on the PM many important powers like:

- He is the head of the government(Art.74)
- He/she can keep the portfolios of their choice
- Other ministers' portfolios are also decided by the PM
- He is the leader of the House of which he is the member
- His resignation means the resignation of the entire Ministry
- He presides over the cabinet meetings and nominates a senior minister to do so in his absence

This suggests that the PM can act like a virtual autocrat. In fact, the term `presidentialisation of the cabinet government' was used to describe it.However, this is not so as there are constraints on his power- he has to accommodate all social groups, ideological streams, geographical considerations matter and so on. In a coalition government, the pressure are very high as the PM is the leader of only one of the constituent parties, though the largest one. Leaders of other constituent parties are also tall men and women and demand that decisions be collectively taken and not thrust on them. Portfolio allocation is based on tough bargaining and not based on PM's prerogative.

advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

74.2 The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

President and the Prime Minister

Art.78 says that It shall be the duty of the Prime Minister:

- to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

The third aspect of the duty as given above confers on the president to alert the Prime Minister to enforce collective responsibility.

Collective responsibility

Cabinet collective responsibility (Art.75) is constitutional convention in governments using the Westminster System that members of the Cabinet must publicly support all governmental decisions made in Cabinet, even if they do not privately agree with them. This support includes voting for the government in the legislature.

It is related to the fact that, if the decision is defeated in the Parliament, the entire government is responsible collectively, and thus the entire government resigns. Cabinet collective responsibility is not the same as individual ministerial responsibility, which states that ministers are responsible to the Head of State(President of India) and hold office during his pleasure.

Collective responsibility means the cabinet takes decisions collectively. Ministers expresss their opinion freely and frankly. Each one may support or oppose the proposal. But once the decision is taken, it binds the entire Cabinet. They own upto it in public and in the parliament.

In the parliamentary system, where there is a collective political executive, without collective responsibility, there is no coherence in policy making. Nor can the integrity of the executive be maintained.

Constitutional role of the President

President of India, the Head of the State , is a formal position. Real power rests with the Prime Minister heading the Council of Ministers – called Head of the Government. Article 74 of the Indian Constitution says that the President shall act on the aid and advice of the Council of Ministers .The role of the Head of State is to 'reign and not rule'- similar to the British Crown.

British Constitutional expert Walter Bagehot said that a "constitutional monarch" has the right to be consulted, to encourage, and to warn".It applies to the President of India as well since the roles are almost identical.

The powers of the President are interpreted in different ways by different scholars- some say that he has only a ceremonial role while few others say that his role is substantive. However, the consensus opinion is that the President of India almost always acts on the aid and advice of the Council of Ministers except under the following circumstances.

- In selecting the Prime Minster from among the contenders when general elections result in a hung parliament.
- In the dissolution of the Lok Sabha when the Council of Ministers is voted out or resigns and advises the President to dissolve the Lok Sabha but significant portion of life of Lok Sabha still remains.. The President is expected to exercise his discretion in such circumstances to explore the possibility of forming an alternative.
- Asking the Council of Ministers to re-consider the advice(Art.74.1)
- While exercising veto power , generally suspensive or pocket but rarely absolute veto also
- Direct the Council of Ministers to prove its majority if there is any indication that they may have lost it. It is particularly true in the coalition era.
- Disqualifying members of the Parliament in consultation with the EC(Art.103)

In the first five cases mentioned above, it is a case of the president exercising powers in his 'discretion'. The last case leaves him with no discretion as the advice rendered by the EC is final and binding.

It may be said that the President of India is a ceremonial institution but assumes certain real powers under circumstances as mentioned above- hung parliament, dissolution of the Lok Sabha and veto powers. In the era of coalition Governments, the President becomes a 'working President' as it throws up situations without a precedent and the President needs to set standards.

President and the Council of Ministers

74.1 : There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:Provided that the President may require the Council of Ministers to reconsider such

Questions about the nature of Indian Presidency

Questions were raised as to the true nature of the Presidency immediately after the Constitution came into force. Babu Rajendra Prasad, the first President of India raised the issue while laying the foundation stone for Indian Law Institute building in 1960 when he said that it was necessary to look into the Constitution to see which provisions required the President to act independently of the Council of Ministers.

In 1967, the issue came up on the eve of Presidential elections when regional parties came to power in many states . Opposition parties asserted that the President of India had independent powers and was not a titular head.

The same controversy was raised by

- President Zail Singh exercised pocket veto on Post Office Bill in 1986
- President KR Narayanan did not accept the advice of the Cabinet to impose President's rule in Bihar in 1998
- President APJ Kalam returned the Office of Profit Bill to the Parliament for repassage in 2006(suspensive veto)

Apex court verdicts

In the U.N.R.Rao case (1972) Supreme Court concluded that , even after the dissolution of the Lok Sabha, the care taker Council of Ministers' advice is binding on the President. It is in line with the apex court judgement in 1974 in the Shamsher Singh case that the President of India should act on the advice of the Council and Presidency is a ceremonial institution.

44th Constitution Amendment Act 1978

The Constitution-(44th Amendment) Act 1978 made the following changes in the powers of the President so as to invest the institution with greater strength.

- Art. 74 has been amended to make it possible for the President to return the advice of the Council of Ministers once for reconsideration.
- Art.352 is amended to the effect that the written advice of the Union Cabinet (the word Cabinet is found only in Art.352 of the Constitution) is necessary for the President to proclaim the national Emergency. It is meant to ensure that the Prime Minister without the approval of the Cabinet does not recommend. Also, the written advice renders it open to judicial review.

Both the amendments strengthen the President of India and make governance more accountable.

- The President to take over the responsibility of administration for which there is no Constitutional sanction as Art. 74.1 clearly spells out that the President can act only on the advice of the Council of Ministers.

The most appropriate option is to ask the incumbent ministry to continue to take care of the Government till elections produce a successor.

Caretaker governments like the Charan Singh Ministry in 1979 lasted 5 months; the Gujral ministry lasted 4 months in 1997-98 and the Vajpayee ministry lasted longer in 1999. An important question is whether crucial decisions regarding national security; foreign policy ; international treaty obligations like patent laws; economic policy like FDI, support prices for farmers; transfers of senior officials etc could be taken by the care taker government. In fact, the Kargil tragedy exposed the nation to international hostility when the caretaker government was in power. There is, thus, the need to lay down norms governing the caretaker government. The President must evolve conventions in such political circumstances for governance of the country.

Recurrence of the minority governments; their inherent instability; and the relatively long periods for which caretaker governments are in power forces the 'ceremonial Presidency' to become a 'working Presidency'. The conventions for the relationship between the President and the Council also have to be redefined in such a context.

President and Union Council of Ministers

India is a parliamentary form of democracy modeled after the British system where the Council of Ministers is the effective Head of the Government and the President (the British counterpart being the Monarch) is only the ceremonial Head of State without any real powers.

Art. 74 clearly states that the President of India shall follow the advice given by the Council of Ministers headed by the Prime Minister though he does have the power to return the advice for reconsideration once at the end of which it is mandatory for him to accept it.

There are however circumstances when the President need not go by the advice of the Council of Ministers like

- when it advises that the Lok Sabha be merely because it has lost its majority
- exercise of veto powers- return of a Bill for repassage (suspensive veto)

There are times when the advice of the PM is not to be available: after general elections, when fractured verdict is the outcome, President has to decide which party to invite. The caretaker government can not advise. Therefore, President acts in his/her discretion.

In the above three circumstances, Presidential discretion is the basis of his actions. However, unlike the Governor, the President has no explicitly conferred Constitutional discretionary powers.

- If the Bill is hastily passed
- If he has suggestions about how to improve the Bill
- If Fundamental Rights and other Preambular values are violated
- If procedure is not followed

In sum, there are substantive and procedural grounds for the President to exercise his veto. Generally veto powers are exercised on the advice of the Union Council of Ministers.

Emergency powers

If the President is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened, whether by war or external aggression or armed rebellion, (Art.352) or there is a failure of constitutional machinery in a State (Art.356) or a situation has arisen whereby the financial stability or credit of India or of any part of its territory is threatened, (Art.360) he issues a Proclamation for the purpose. These Proclamations need parliamentary approval.

President and Caretaker Government

A Government that continues to be in office even after the dissolution of Lok Sabha, pending general elections, is a caretaker government. The situation may arise for the following reasons

- resignation by the government either for a snap poll(mid term election to cash in on the wave it may be riding) or when it loses majority and resigns(mid term election but not a snap poll as polls were caused by loss of numbers)leading to the dissolution of LS but the caretaker government is necessary for the day to day functioning of the government
- term is over

It is requested to continue to be in power by the President till the new ministry is sworn in. For example, after the Government of Sri Atal Bihari Vajpayee lost majority in the LS in April 1999, it had to resign and was asked to continue as 'care taker government' by the President till such time that the elections to the 13th LS were held and a new government was formed.

Caretaker government is not a Constitutional concept but a political compulsion as there can not be a Constitutional vacuum because there is no provision for President's rule at the centre. In the absence of caretaker government, the options for the President are the following

- Let the incumbent government exit. But it will create a constitutional vacuum and so is not a valid choice.
- Asking the ministry to continue even after its majority in the LS is lost which violates Art.75.3 that says that the ministry lasts till it enjoys the confidence of LS.

Veto powers

'Veto' (Latin for " I forbid ") power is given to the President with regard to a Bill passed in the parliament and in certain cases, State Bills as well.After a Bill has been passed by the two Houses of Parliament, it is presented to the President who has the option of assenting to it or exercising any of the following types of veto

- withhold the assent, that is, reject the Bill in which case that is the end of the Bill. He may do so in case of Private member's Bill or a State Bill. A state Bill may be reserved for Presidential assent by the Governor of the State(Art.200) and the President may return it for repassage by the state legislature any number of times(Art.201). The State legislature has no way of prevailing . It is called the absolute veto.Private Member's Bill also may be rejected by the president on the advice of the Cabinet.
- He may return the Bill, if it is not a Money Bill to the Parliament with a message for reconsideration of the Bill or any specific provision thereof . When a Bill so returned is passed by both the Houses again, by a simple majority, with or without amendment, the President cannot withhold assent. It is called suspensive veto

- President also has a pocket veto, that is, since the law does not prescribe any time limit for the President to decide on a Bill, he may not commit himself either way for any reason. Generally, pocket veto is used to buy time in circumstances of political fluidity- for example, if a controversial Bill is passed by the ruling party/coalition in the last months of its rule before election, President may wait till the election outcome as, if a new party comes to power, it may not approve of the Bill. If it does approve, the president will assent to it.

A Constitution amendment Bill shall be assented to by the President(24th amendment Act 1971). The Money Bill can not be returned to the Parliament but assent can be withheld.

In 1986, the President of India, Gyani Zail Singh exercised pocket veto with regard to Indian Post Office(Amendment) Bill as in his opinion it was violative of Fundamental Rights in Art.19 as the Bill authorized for intercepting the mail. President R.Venkataramanan returned it to Rajya Sabha(suspensive veto).The Bill survived the dissolutions of the Lok Sabha and was withdrawn about a decade later.

President Kalam in 2006 returned the Office of Profit Bill to emphasise that the Bill needed improvement. It was also a suspensive veto.

President Venkataramanan withheld assent from the MPs (Salary, Allowances and Pensions) Bill 1991 as it was not introduced with his prior recommendation.

Thus, the Presidential veto of the above three kinds can be exercised in the following circumstances

- If the legislative competence is breached
- If the Bill is ill conceived

The President may issue an Ordinance to

- enforce the provisions of a Bill introduced in, and pending before a House or a Committee or
- to enforce the provisions of a Bill already passed by one House but not yet passed by the other House or
- on an entirely new matter or
- for a temporary purpose.

Ordinance can not be promulgated to amend the Constitution.

Ordinances promulgated by the Governor of a State under the President's Rule are also laid on the Table in the Parliament in the same manner as Ordinances promulgated by the President.

Rule by the ordinance is against the spirit of the parliamentary democracy. Therefore, there are safeguards built into the Constitution like

- promulgation is permitted only when either House is not in session
- it can not amend the Constitution
- Parliament needs to be explained the reasons for the Ordinance
- It can not last for more than 6 weeks after parliament reconvenes
- Parliament – both the houses independently of each other- can pass resolution seeking its discontinuation before the period of 6 weeks expires after the reassembly of the Parliament
- Whenever a Bill seeking to replace an Ordinance with or without modification is introduced in the House, a statement explaining the circumstances which had necessitated legislation by Ordinance, is required to be placed before the House along with the Bill
- Judicial review is also a limitation on recourse to ordinance (Cooper's case verdict 1970).

Constitutional experts and others have objected to the frequent resort to the power to issue an Ordinance by the Government, particularly on dates too close to a session of Parliament. Ordinance raj refers to the practice of a government to avoid making legislation and instead rely on ordinances as legislative debate and vote may unsettle the party in power.Supreme Court objected to such repromulgation of ordinances without any genuine compulsions.

Of late, ordinances have become necessary for one additional reason: coalition government , lacking in majority in the Rajya Sabha is not in a position to have the Parliament pass the Bill. But international treaties may require that the Parliament enact legislation. In such circumstances, Government promulgates and re-promulgates the ordinances to make the necessary law. It should not be considered misuse of the powers.

In the Cooper's case (1970) and AK Roy case(1982), the Supreme Court upheld the power of courts to.review the justification for the ordinance.

Art.108.3) The President has, after consultation with the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha made rules for the procedure with respect to joint sittings of the two Houses(Art.118.3).

Rules

The President has, after consultation with the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha made rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the respective Houses. The later rules are, however, subject to any law made by Parliament.(Art.98)

Laying of statements,reports etc

The President causes to be laid before both Houses of Parliament in respect of every financial year

- statement of the estimated receipts and expenditure of the Government of India (i.e., Budget) for that year, (Art.112)
- statements showing supplementary or additional grants (and before the Lok Sabha, excess grants), (Art.115)

Reports of constitutional functionaries or bodies such as

- Comptroller and Auditor-General of India, (Art.151)
- Finance Commission, (Art.281)
- Union Public Service Commission, (Art.323)
- Commissions for the Scheduled Castes and Scheduled Tribes,(Art.338)
- Backward Classes Commission,(Art.340)
- Commissioner for Linguistic Minorities,(Art.350B)

Promulgation of Ordinances(Art.123)

Ordinance is an executive law.

If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate Ordinances as the circumstances require. Like most actions, it is also exercised on the advice of the Union Council of Ministers. An Ordinance so promulgated by the President has the same force and effect as an Act of Parliament.Every Ordinance has to be laid before both Houses of Parliament and it ceases to operate at the expiration of six weeks from the reassembly of Parliament. It may be disapproved before the expiration of that period if both Houses pass a resolutions to that effect.President may withdraw the ordinance any time. Ordinance can not do any thing that the Parliament can not do.

Disqualification of members of Parliament

Grounds of disqualification of a Member of Parliament are given in Article 102. President is the authority to disqualify a member of parliament . Art.103 says that the President decides on disqualification in consultation with the Election Commission. Such disqualification, according to Art.102, can arise from the following

- if a member holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- if he is of unsound mind and stands so declared by a competent court;
- if he is an undischarged insolvent;
- if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
- if he is so disqualified by or under any law made by Parliament.

Broadly speaking, except for cases of defection and expulsion, President is the authority to disqualify a member of Parliament in consultation with the Election Commission(Art.103)

Prior recommendation of the President for some Bills

The President's prior recommendation for introduction of a Bill is required for the following

- introduction of a Bill relating to formation of new States or alteration of areas, boundaries or names of existing States(Art.3)
- Money Bill (Art.110)
- Financial Bill(A) (Art.117.1)
- Financial Bill B after it is introduced but before it is taken up for consideration(2nd Reading)(Art.117.3)
- introduction of a Bill or moving of an amendment affecting taxation in which States are interested or changing the definition of `agricultural income'
- State Bills restricting freedom of trade(Art.304)

It is clear that the above provisions centre around either of the two features as given below

- Federalism and the rights of the states
- Money matters.

The role given to the President is to preserve the federal character and ensure that fiscal system and responsibility is protected.

Joint session of Parliament

In the case of disagreement between the two Houses on a Bill (other than a Money Bill and Constitution Amendment Bill), the President summons a joint sitting of both Houses.(

after each general election to the Lok Sabha and at the commencement of the first session of each year and inform Parliament of the causes of its summons.

As article 87 makes it clear, the Address is to be to both Houses of Parliament assembled together. In other words, it means that if at the time of commencement of the first session of the year, the Lok Sabha has been dissolved and the Rajya Sabha has to meet, then the Rajya Sabha can have its session without the President's Address. During the dissolution of the Lok Sabha in 1977 and 1991, the Rajya Sabha had its sessions in February 1977 and June 1991, respectively without the President's Address.

The President's Address to both Houses of Parliament assembled together is a constitutional obligation for the President . It is a statement of the government policy of which, as the constitutional Head, he is the symbol.The discussion on the Address is initiated by a Motion of Thanks moved by a member and seconded by another member and is put to vote.It is adopted with or without amendments.

Appointment of Protem Speaker and Protem Chairman

The President appoints a pro tem Chairman of the Rajya Sabha (Art.91.1) and pro tem Speaker of the Lok Sabha (Art.95.1) in certain circumstances. Protem Chairman of Rajya Sabha is appointed when the offices of the Chairman and the Deputy Chairman are vacant. Protem Speaker is appointed in the new Lok Sabha to swear in the newly elected members.

Senior most Lok Sabha member Manikrao Gavit of Congress was appointed as Pro-tem Speaker by President Pratibha Patil in 2009 for the 15th Lok Sabha.A nine-term Member of Parliament, Gavit performed the duties of the Speaker till the election of a new Speaker on June 3.Gavit was administered oath by President Patil at a function at Rashtrapati Bhavan.

Protem Speaker swears in the newly elected members so that they can elect the Speaker.The Speaker pro term presides over the sitting in which the Speaker is elected, if it is a newly constituted House.

Administer oath

Every Member of Parliament, before taking his seat in the House, is required to make and subscribe the oath or affirmation before the President or before the person appointed by him in that behalf. (Art.99). Protem Speaker undertakes this work.

Nomination

The President nominates to the Rajya Sabha twelve persons having special knowledge and practical experience in respect of such matters as literature, science, art and social service. (Art.80) The President also nominates to the Lok Sabha not more than two members to represent the Anglo-Indian community, if he is of the opinion that the community is not adequately represented in the Lok Sabha.(Art.331)

President of India-II

Legislative Powers of President

According to Art.79, Parliament consists of the President and the two Houses of Parliament - the Council of States (Rajya Sabha) and the House of the People (Lok Sabha) . Thus the President is the Head of executive as well as a constituent part of Parliament. President is made a component part of the Parliament as every Bill passed by the Houses of Parliament has to be reserved for the assent of the President under article 111.Also, as a principle, Parliamentary democracy is a system where the executive is a part of the legislature. The following powers further clarify as to why the President is considered a part of the parliament.

Summon, Prorogue and Dissolve

President summons from time to time each House of Parliament, may from time to time prorogue the Houses or either House and dissolve the Lok Sabha (Art.85). Summon means to call the House into session. Prorogue means to terminate a session. Dissolve means to end the life of Lok Sabha and pave way for elections to constitute a new Lok Sabha which is mandatory every five years except during national emergency.

Address the Parliament and send messages

At the commencement of the first session after each general election to the Lok Sabha and at the commencement of the first session of each year(calendar year), the President addresses both Houses of Parliament assembled together and informs Parliament of the causes of its summons (Art.87). He has also the right to address either House of Parliament or both Houses assembled together and send messages to either House, whether with respect to a Bill then pending in Parliament or otherwise(Art.86). President has a message twice under this provision since the commencement of the Constitution

- Return for re-passage Post Office Bill by President R.Venkataramanan in 1990(it was pocket vetoed by Zail Singh earlier)
- Return for repassage the Office of Profit Bill by President Abdul Kalam in 2006

Art.87

Articles 86 and 87 of the Constitution deal with the Address by the President. Article 86 confers a right on the President to address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members. However, since the commencement of the Constitution, the President has not so far addressed a House or Houses together under this provision.

Article 87 deals with a Special Address by the President and provides that the President shall address both Houses of Parliament assembled together at the commencement of the first session

- the health of the prisoner, especially any serious illness from which he may be suffering
- post-conviction conduct, character and reputation
- remorse and atonement
- the effect on the family members of the victim
- the period of imprisonment undergone and the remaining period
- interest of society and the convict

Supreme Court has categorically ruled that the power of pardon cannot be exercised for political considerations. It has further held that considerations of religion, caste, colour or political loyalty can not come into the field.

Exercise of power of pardon is not immune from judicial scrutiny. Courts in exercise of judicial review have interfered with orders of pardon or remission when it is established that the order was mala fide or is arbitrary.

Delay is a sad fact in deciding on these cases for clemency. Delay of 11 years occurred in considering the mercy pleas of the three death-convicts in the Rajiv Gandhi assassination case with their pleas being ultimately rejected in August , 2011 by the President of India. Afzal Guru was sentenced to death by the Supreme Court in 2005 and the government has not taken a decision on his clemency petition yet.In 1983, the Supreme Court of India observed that a self-imposed rule should be followed by the executive authorities that every such petition should be disposed of within a period of three months from the date it is received.

Eighteen mercy pleas are pending with the President by 2012.

- Pardon means absolving the convict of all guilt and punishment
- Commutation is reduction of punishment from death sentence to life imprisonment
- Remission is quantitative reduction of punishment without affecting the nature of punishment, for example, 2 years of rigorous punishment becomes 1 year of rigorous punishment
- Respite means reduction of punishment in view of a special fact, for example, pregnancy or old age
- Reprieve is stay of death sentence or life imprisonment pending an appeal for pardon or commutation.

President's clemency powers: Critical appraisal

The need for the mercy powers of the President is the following

- The importance of Art.21 which guarantees right to life
- Fallibility of the judgement of the apex court
- The judicial verdict may be too harsh and deserves relief
- Based on the same evidence and on some other factors like remorse, record of behaviour and so on, the President can either give relief partly or wholly
- The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the State.

Thus, the President acts in a wholly different plane from that of the Court. It is a Constitutional responsibility and is meant for the benefit of the convict as well as the people at large whose faith in the criminal justice system needs to be sustained.

The Presidential power of mercy is not considered a judicial power as the President does not 'hear' any arguments; also, the power is exercised on the advice of the Union Cabinet.

Every civilised country in its Constitution or in its laws provides for a power to grant pardon or remission of sentence. Articles 72 and 161 of our Constitution confer this power on the President and the Governor, respectively. It is settled law that this power is to be exercised in accordance with ministerial advice and not by exercise of the President's or the Governor's individual discretion. The rationale of the pardon power is public faith in the humaneness of law- the President being the symbol of people in a republican country like ours.

The following are the legitimate and relevant considerations for exercise of the pardon power

- seriousness of the offence
- there is a shade of doubt about the convict's guilt

The power of removal in some cases rests with the President. For example, the Governor of the state, Attorney General etc hold office during the time they enjoy the pleasure of the President. Others can be removed by elaborate procedures- SC and HC judges can be removed by a parliamentary vote by a special majority for `proved misbehaviour and incapacity' and on that basis the President removes them. Similar is the case with CAG and Chief Election Commissioner. Election Commissioners are however removed by the President on the advice of the Chief Election Commissioner. UPSC members, under certain circumstances are removed by him.

Diplomatic Powers

The diplomatic powers of the President include the following

- All treaties and agreements are signed by India in the name of the President
- He appoints High Commissioners of India(ambassadors to Commonwealth countries are called High Commissioners) and ambassadors; and receives the credentials of the ambassadors and High Commissioners of other countries.

Military Powers

They are the following

1 He is the Supreme Commander of Defence Forces and
2 War and peace are declared in his name

Judicial powers

The President

- appoints the Chief Justice and other judges of the of the Supreme Court and High Courts
- removes the judges mentioned above if the two Houses of the Parliament pass resolutions to that effect by special majority for `proved misbehaviour and incapacity'(Art.124)
- may seek the advisory opinion of the Supreme Court(Art.143)

Mercy powers

The President can issue the following orders of mercy to the convicted citizens of India(Art.72)

Powers of The President

President is the Head of the executive of the country. The entire administration of the country is run in his name.

Executive or Administrative Powers

While there is no definition of executive powers in the Constitution, they basically refer to policy making; policy execution; appointment and removal of high Constitutional dignitaries for the purpose and related matters.

Art.53 says that all executive powers of the Union are vested in the President. The President can exercise them on his own or by his subordinates. The President appoints the prime Minister and on his advice other ministers in the Council.

President can seek information from the Prime Ministers and also enforce collective responsibility of the Council of Ministers which is the centre piece of policy making in the parliamentary system of democracy(Art.78)

President has significant powers with regard to the Fifth and Sixth Schedule provisions in relation to tribals. He can declare that an area in a state is a scheduled area.

President directly administers the UTs.

However, the powers of the President, like in other fields, are subject to the advice of the Council of Ministers headed by the Prime Minister(Art.74)

Appointments made by the President

President appoints the following:-

- Prime Minister and his advice rest of the Union Council of Ministers
- Governors of States
- Judges of the Supreme Court and High Courts
- Chief Election Commissioners and the two other Election Commissioners and Regional Election Commissioners; if any
- CAG
- UPSC Chairman and members
- Chairmen and members of the statutory commissions like NHRC, Minorities Commission etc
- Chairman and members of the Finance Commission every five years
- Special Officer for Linguistic Minorities.
- Attorney General

Succession to Presidency(Art.62)

The Constitution provides that where a vacancy in the office of the President occurs by reason of his death, resignation or removal or otherwise, the Vice-President acts as the President until the new President enters upon his office and the election is required to be held within six months from the date of occurrence of the vacancy. The Constitution also provides that when the President is unable to discharge his functions owing to absence, illness, or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties .

However, the Constitution does not provide for cases where a vacancy occurs in the offices both of the President and the Vice-President simultaneously, or where the Vice-President while acting as, or discharging the functions of, the President is unable to do so. The Constitution has, therefore, empowered Parliament to make such provisions as it thinks fit for the discharge of the functions of the President in any contingency not provided for in the Constitution . Parliament has accordingly, enacted the President (Discharge of Functions) Act, 1969, whereunder in such cases, the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court discharges the functions of the President.

When the Vice-President, Shri V.V. Giri, who was acting as the President in the vacancy caused by the death of the President, Dr. Zakir Husain, resigned from the office of the Vice-President in 1969, the Chief Justice of India, Shri M. Hidayatullah, discharged the functions of the President .

President's privileges

The privileges of the President are the following

- he enjoys immunity for the official acts (Art.361)
- no criminal proceedings can be instituted against him for his official and personal acts while he is in office
- civil proceedings can not be instituted for his official acts but in his personal actions, they can be instituted only after a two months notice.

Independence of the office of the President

The independence is maintained by the following Constitutional provisions

- fixity of tenure- 5 years term
- impeachment process being a difficult one
- Art.361 and judicial immunity
- Immunity against criminal and civil proceedings
- Emoluments etc are fixed by the Parliament and can not be reduced while he is in service.

until his successor enters upon the office.

The Presidential election must be held before the expiration of his term of office. The Election Commission shall issue the notification on or as soon as conveniently may be, after, the sixtieth day before the expiration of the term of office of the out-going President

According to Art.57, he is eligible for re-election.

The President may resign before the expiration of his term of office by writing under his hand addressed to the Vice-President. The resignation is forthwith required to be communicated to the Speaker of the Lok Sabha.

President gets emoluments of Rs. 1,00,000 per month(2008) .

Impeachment(Art.61)

The President may be removed from office before the expiration of his term by impeachment for violation of the Constitution. The process is as follows:

The charge may be preferred(initiated) by either House of Parliament. Conditions are the following:

- atleast fourteen days' notice in writing
- should be signed by not less than one-fourth of the total number of members of the House and
- such resolution should be passed by a majority of not less than two-thirds of the total membership of the House in which the resolution originates.

When a charge has been so preferred by either House of Parliament, the other House will investigate the charge or cause the charge to be investigated. The President has the right to appear and to be represented at such investigation.

If the investigation upholds the charges of violation of Constitution against the President and a resolution is passed by a majority of not less than two-thirds of the total membership of the other House , President stands removed.

Oath of office

Before the President enters upon his office, an oath of office is administered to him by the Chief Justice of India or in his absence, by the senior-most Judge of the Supreme Court available, in the form set out in Art. 60 of the Constitution. The President takes oath/affirmation to protect, preserve and defend the Constitution.

Conscience vote

Elected MPs and MLAs are free to abstain from voting in the Presidential election. They can vote the way the choose. There can not be a whip issued by the party . Such a whip amounts to influencing the voter and is illegal. Thus, there is conscience vote in the Presidential elections.

Memmebrs of the electoral college- elected MPs and MLAs do not act in their legislative capacity and therefore are not subject to anti-defection law in the Tenth Schedule to the Constitution of India . Electors are at liberty to vote or not to vote at the Presidential election as per their own free will and choice. Thus, there is conscience vote.

Election of the President can be held even if some seats in the Electoral College are vacant. Such election cannot be called in question on the ground of any vacancy existing for any reason. The phrase, "the elected members of Legislative Assemblies of States" means only those who are actually in office at the time of Presidential Election. The elected members of a suspended Assembly (Article 356) are entitled to take part in the Presidential election.

Election of the President by a lame-duck Electoral College- where the Lok Sabha members are not present as the LS is dissolved at the time of Presidential election , is an open question and there is no Constitutional or statutory law in this regard. However, it is inconceivable.

Qualifications(Art.58)

A person eligible for election as President should be

- a citizen of India
- not less than thirty-five years in age
- should be qualified to be a member of the Lok Sabha and
- should not hold an office of profit under the Government. The offices of the President, Vice-President, Governor of a State or the Minister for the Union or a State, are not offices of profit for this purpose. Certain offices of profit under the Government have also been declared as not to disqualify the holders thereof for being chosen as President . A Member of Parliament or of a State Legislature including the respective Presiding Officers can seek election to the office of the President but if any one of them is elected President, he is deemed to have vacated his seat in Parliament or the State Legislature as the case may be, on the date on which he enters upon his office as President.

Term of office (Art.56)

The President holds office for a term of-five years from the date on which he enters upon his office. Even after the term expires, he continues to hold his office

candidates were V.V.Giri, N.S. Reddy, C.D. Desmukh and others. V.V.Giri got 4, 01,515 first preference votes. Reddy and Desmukh got 3, 13,548 and 12,799 first preference votes respectively. Giri was short of 16,654 votes to get absolute majority.After the counting of second preference votes, Giri got 4, 20,077 votes which was more than absolute majority and Reddy got 4, 05,427 votes only. Giri was declared elected as the President of India.

The following facts make the presidency a federal institution:

- Electoral college has Legislative Assemblies of States
- There is parity between centre and the States

The election to the offices of the President and the Vice- President are regulated by the Presidential and Vice-Presidential Elections Act, 1952. For the purposes of these elections, it has been the established practice that the Secretary-General of the Lok Sabha or the Rajya Sabha is appointed by the Election Commission as returning officer along with one or more assistant returning officers.

The nomination for a presidential candidate has to be proposed and seconded by 50 electors each. The security deposit is Rs 15,000 which is forfeited if the candidate does not get at least 1/6th of the total valid vote.

An election petition calling in question an election to the office of the President may be presented – within 30 days from the date of publication of the result of election- to the Supreme Court by any candidate at such election or any twenty or more electors joined together as petitioners.

13th Presidential election

The Election Commission of India held indirect 13th presidential elections of India in July 2007. Smt.Pratibha Patil with 638,116 votes won over her nearest rival Shri.Bhairon Singh Shekhawat who secured 331,306 votes. Smt. Pratibha Patil became the first woman President of India.

Shri. Bhairon Singh Shekhawat, Vice President contested but did not resign before filing his nomination papers as it was not an office of profit and there was no Constitutional need to resign. Smt. Pratibha Patil , however, resigned as Governor of Rajasthan, before contesting as it was her personal decision and there was no Constitutional compulsion.

Smt Patil was the 12th President and the election was the 13th one as Babu Rajendra Prasad held the position for two terms- 1952-62.

is transferable. He expresses his preferences in the single vote that he casts- first preference, second preference etc. A candidate, to be elected, requires to obtain a quota. If no candidate gets quota on the basis of first preference votes, the candidate who gets the least number of votes is eliminated. Those who voted for him as first preference will have their second preferences counted and they are distributed among those in the fray. The process continues till such time that a candidate is finally elected. Thus, votes are `transferable'.

Quota of Votes

Under the Proportional Representation system, a quota is fixed for being elected.Any member who secures the necessary quota of votes is declared elected. Quota is arrived at by dividing the total number of valid votes cast by the members of the electoral college divided by the total numbers of candidates to be elected plus one and one is added to the quotient. The formula may be represented as follows: -

$$\text{Quota} = \frac{\text{Total number of valid votes cast}}{\text{Total number of seats to be filled} + 1} + 1$$

Supposing there are 100 valid voting papers and four seats are to be filled up. According to the above formula, quota is 21. After the quota is fixed, any candidate whose total number of first preference votes is equal to or exceeds the quota is declared elected.

Elimination of the Bottom Candidate

If a candidate is elected in first count, the election is completed. But if no candidate gets quota in the first count, the process of selection continues by eliminating the candidate who has the least number of first preferences. His second preference votes are transfered to those in the fray. The process continues till the candidate is elected.

(For the Rajya Sabha elections, there is a small but significant change in the system: In case of adequate number not getting the quota, surplus votes, if any , from the elected members are transferred to those in the contest.)

VV Giri

VV Giri was elected in 1969. He was independent candidate sponsored by Mrs.Gandhi who fell out with the old guard in the Congress party. Sanjeev Redy was the choice of the old guard. In the 1969 election , no candidate was declared elected after the counting of first preference votes. In that year, the

different States of the Union

- to secure parity between the States as a whole and the Union in order to do justice to federal idea.

For the purpose of securing such uniformity and parity the following method is laid down:

Each member of the electoral college who is an elected member of a State Legislative Assembly will have a number of votes calculated as follows:

Total Population of the State (by 1971 census) is divided by total number of elected MLAs. The resultant number is further divided by 1000. Fractions exceeding one half being counted as one:

$$\frac{\text{Total population of the state}}{\text{Total number of elected member} \times 1000}$$

The value of the vote of an elected member of the assembly of each State is found out. The number of elected MLAs is known. Total number of votes assigned to the elected members of all the State /UT assemblies is calculated. It is divided by total number of elected members of both Houses of the Parliament to arrive at the value of the vote of an elected MP. Thus, centre-state parity is respected(Art.55)

Uniformity in the scale of representation of states is arrived at by following the same principle for fixing the value of the vote of an elected MLA for all states.

Proportional Representation

Article 55(3) of Indian Constitution requires that the President should be elected in accordance with the system of proportional representation by means of the single transferable vote.

In the ordinary mode of election known as "straight voting system", or ` first past the post system' or `winner takes all system ', a candidate getting plurality of votes- relative majority(more than the nearest rival) is elected- even if , in percentage terms, it means only a plurality of the electorate. It means he has more votes than any of his rivals. Very often such candidates secure far less than simple majority of votes polled.

The `first past the post' principle can not be applied for Presidential election for the reason that the President should have a majority of the votes cast as he represents the nation. Therefore, proportional representation is prescribed where the President is bound to secure a majority of votes.

Proportional Representation as adopted in the Presidential elections is called the "Single Transferable Vote", which means that each elector has only one vote but it

an electoral college with elected representatives from parliament and the state assemblies.

Election of the President

Article 54 of the constitution says:-

"The President shall be elected by the members of an electoral college consisting of -

- The elected members of both Houses of Parliament and
- The elected members of the Legislative Assemblies of the States (including National Capital Territory of Delhi and the Union Territory of Puducherry after the Constitution 70th amendment Act, 1992)."

In India, no special electoral college is elected, as in the case of America(in the USA, members of electoral college are elected by the people and the body ceases to exist once the election is over.) In India the electoral college is made up of the elected MPs and elected MLAs of all states and the two UTs of NCT of Delhi and Puduchery . The membes act in their non-legislative and elective capacity while electing the President.Election of the President of India is by the system of proportional representation by means of single transferable vote as provided by Article 55(3) of the Constitution. This system is chosen for the following reason:In this system, there is a quota as we will see ahead. Any candidate to be elected will have to obtain the quota. In the case of the president , the quota works out to 50% plus 1 of the valid votes cast- that is simple majority. It is necessary for the president to get more than 50% of valid votes as he/she represents the nation and can not be elected by a plurality (largest number of votes though not majority) of votes as in the Lok Sabha elections. If none of the contestants gets majority/quota- election will be complete only when there is a round off election with the top two candidates going into the next and final rou8nd- as in the case of the French Presidential elections in May 2012 when Francois Hollande and Nicolas Sarkozy did. The process is tedious and not warranted for a ceremonial head. Therefore, the proportional system is chosen. Under this, there is no second round of voting but only counting of second preference of votes as we will see ahead.

The nominated members of Parliament and legislative assemblies have no right to vote in the election. Similarly, the members of the Legislative Councils of the State Legislatures have also been excluded from the electoral college.

Procedure for the Election of the President

The Constitution provides for the election of the President by the system of proportional representation by means of the single transferable vote. Two fundamental principles are laid down in Art.55

- to secure as far as possible, uniformity in the scale of representation of

PRESIDENT of INDIA-I

India adopted the Westminster model of democracy where the Parliament is supreme and the political executive composed of the Union Council of Ministers headed by the Prime Minister, is the head of the Government- de facto head. President is the Head of State and is the nominal head- counterpart of the British monarch- de jure head.

In some democratic systems, the head of the State is also the head of the government and, therefore, he is also the head of the political executive. The US Presidency represents this form. In Britain, the monarch is the symbolic head, representing the British nation. The powers of the Government are vested in the Cabinet headed by the Prime Minister. India follows the same model with President as the counter part of the British Crown- though the former is elected and can be removed.

The President of India is the first citizen and represents the entire Indian nation and is not, therefore, partisan. He/she is largely ceremonial in his status.

President and the Constitution

The entire Union of India- President, Parliament and Judiciary along with the CAG are contained in PART V of the Constitution(Art. 52-151).

Article 52 states that there shall be a President of India.

According to Art.53, the executive powers of the Union shall be vested in the President.

Preference for indirect election

Constituent Assembly debated whether the President should be directly or indirectly elected. Some preferred direct election of the President . The suggestion was rejected on the following grounds

- if President of India is elected directly by people, it will be a partisan process- the President will represent a particular political party which denies the office universal character. He may not work impartially
- Secondly, a directly elected Chief Executive will insist on enjoying real powers and not satisfied with a ceremonial role and thus clash with the council of ministers, particularly if the Presidency and the Council of Ministers come from different parties.

A middle course was chosen by the framers of the Indian Constitution by having

Bihar assembly dissolution case 2006

The Bihar assembly was dissolved in May 2005 after the declaration of President's rule in March 2005 when the elections in February 2005 did not throw up a clear winner – hung assembly. The decision was challenged in the Supreme Court which delivered the verdict in 2006 with an indictment of the Governor for not discharging Constitutional duties with a sense of objectivity and impartiality. The apex court saw political motives in the actions of the Governor – to prevent the formation of government by one political party. It further observed that the Union Cabinet should have verified the authenticity of the report of the Governor. When the Governor asserted correctness of his actions on the basis of the need to curb defections, the apex court ruled that it was not the duty of the Governor to prevent defections. Speaker of the Assembly is Constitutionally vested with such duties. Governor 's duty was to swear in the party with majority .

Art.356 in recent times

In recent years, the checks on the Art. 356 have emerged from

- Coalition Partners not being in agreement about the desirability or political correctness of dismissing state governments without reason
- Sensitization of the Government due to the regional parties' ascendancy.
- Supreme Court bringing Art.356 under judicial review in Bommai verdict
- Presidential objections to partisan application of Art.356 as was seen in 1998 when KR Narayanan made counter points
- Inter State Council norms and so on.

Punchhi Commission recommends that there should be provision in the Constitution for localized emergency- under Arts.352 and 356 – wherein a part of the State can come under emergency/President's rule.

(Other recommendations are given elsewhere)

which the centre's power under Art.356 is to be exercised. In short, Bommai judgement made Art.356 liable to judicial review; Union Cabinet accountable and made exercise of powers under Art.356 more responsible.

Inter-State Council (Art.263) also made some recommendations in this regard

1. erring state should first be warned
2. Governor's report should be a speaking document
3. instead of two months, proclamation needs to be ratified only within a month
4. special majority should be necessary for ratification.

In 1998, President of India returned for reconsideration the recommendation of the Council of Ministers to impose President rule in Bihar. The points raised by the President are noteworthy

- The charge that the Constitutional Governance of the State failed is not established beyond doubt
- Warnings, directives and eliciting seeking from the State should have preceded the option of President's rule being recommended.
- The Rabri Devi ministry enjoyed majority in the Assembly and could not be ignored.
- Parliament should discuss the matter.
- Other States with worse conditions were spared the same recommendation.
- The President further mentioned that the parliamentary passage of the proclamation was in doubt as the ruling coalition had differences within and it did not have majority in RS.

NCRWC(national Commission to Review the Working of the Constitution) recommendations

- Article 356 should not be deleted but it must be used sparingly and only as a remedy of the last resort.
- The Governor's report should be a "speaking document", containing a precise and clear statement of all material facts and grounds, on the basis of which the President may take the decision
- amend Article 356 - in line with the Supreme Court's judgment in S.R. Bommai vs Union of India (1994) - to ensure that the State Legislative Assembly is not dissolved before the proclamation is approved by the Parliament

2. Governor's report should be a speaking document
3. dissolution of the assembly should not be done till the proclamation is ratified
4. In order to make judicial review more concrete, a constitutional amendment should be made to provide that the material facts and grounds on which Article the promulgation is made should be made an integral part of the Proclamation issued under that Article. This would also make the control of Parliament over the exercise of this power by the Union Executive more effective.
5. majority of the political party should be tested on the floor of the assembly.

S.R. Bommai Vs. Union of India case judgement

S.R. Bommai Vs. Union of India case judgement (1994) of the apex court is a land mark judgement in relation to Art.356 as it aims to minimise the partisan application of the provisions. The judgement was delivered partly as a response to the challenge to the imposition of President's rule in four states- UP, HP, MP and Rajasthan after the Babri mosque destruction in December 1992.Important points of the judgement

1. Art.356 is within the scope of judicial review
2. secularism is a basic feature of the Constitution and its violation by a State government makes it liable to be dismissed under Art.356.
3. Governor's report or any other authentic report should be the basis for the proclamation
4. Art.74.2 says that Union Cabinet can withhold its recommendations to President from courts under the provision of confidentiality. But when President's rule is recommended and imposed, the recommendation needs to be produced in the apex court, if the Court so directs, so that the court can establish mala fides, if any
5. dissolution of the Assembly should not be resorted to until the proclamation is ratified by the Parliament
6. if mala fides are proved, dissolution of the assembly may be reversed and the dismissed government can be reinstated

Significance of the Bommai judgement

The background of the verdict was that the Article was used indiscriminately. Art.356 was used more than 100 cases and in many cases, it appeared to be of doubtful constitutional validity and was largely politically motivated. That power was exercised to dismiss the State Governments controlled by a political party opposed to the ruling party at the Centre. The Supreme Court laid down standards according to

If the President's rule has to be extended by more than one year, two conditions must be met:

- a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and
- the Election Commission certifies that the central rule should continue due to the difficulties in holding elections.

Once these two conditions are met, it can be extended six months at a time till a limit of 2 years. The idea is that an internal problem related to one state should be amenable to a solution within 3 years.

Effects of President's rule

1. President assumes the executive powers of the State government
2. Confers on the Parliament the powers of the state legislature
3. Parliament can authorize the President or his nominee to legislate for the state when it is not in session
4. For the President to authorise when the House of the People is not in session, expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

When is President's rule imposed or what constitutes `failure of the Constitutional machinery'?

"Failure of the Constitutional machinery" is not found in the Constitution as a term. However, if the state can not be governed in accordance with the Constitution, President's rule may be recommended by the Governor. Practically, it may involve the following situations

- After elections, a hung assembly results and no clear winner emerges and there is no possibility of a coalition government
- The leader of a party with relative majority refuses to form Government- the party has the largest number of seats but not enough
- Party in power loses majority and there is no alternative
- The party in power loses majority and refuses to step down
- Armed rebellion in the state
- State government does not comply with the directions of the Centre(Art.365)

Sarkaria Commission on Union-States Relations recommended in 1987 that:

1. President's rule should be the last resort

President's Rule

Proclamation of President's rule in a state may become necessary if the state can not be governed in accordance with the Constitutional provisions. Such imposition is the logical outcome of the duty conferred on the Union Government under Art.355.

Art 355

It is the duty of the Union to protect States against external aggression and internal disturbance: It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

Under Art.355, the following steps are generally taken

1. sending fact finding teams to the States in question

2.despatching Central forces

3.deployment armed forces

It is to be mentioned that invocation of Article 355 is not necessarily the first step towards dismissal of a government under Art.356. It, in fact can be a warning to the erring State and be preventive in nature.

President's Rule: Art.356

If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may

1 assume to himself all or any of the functions of the Government of the State other than the Legislature of the State;

2 declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.

Powers vested in the High Court are unchanged.

The state legislative assembly may be suspended or dissolved,depending upon the circumstances. If the President believes that the Assembly can be revived and there will be a political coalition that can form a government, suspension is the course of action. Or, it may be dissolved.

The proclamation is to be ratified by the parliament within 2 months.

The Proclamation ceases to operate on the expiration of a period of six months from the date of issue of the Proclamation: Extension by a period of six months at a time is possible but President's rule can not last for more than 3 years.

1

Financial Emergency

Provisions regarding financial emergency are contained in Art.360 to deal with crises that destablise the economic condition of the country either from internal sources or because of external shocks. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory is threatened, he may proclaim financial emergency. The proclamation needs to be approved by resolutions of both Houses of parliament within 2 months. Majority required is simple.

If any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the people. Financial emergency , once imposed can last till it is revoked.

During the emergency, the executive authority of the Union shall extend to giving of directions to any State to observe such canons of financial propriety as may be specified in the directions. Any such direction may include a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State; a provision requiring all Money Bills or related Bills be reserved for the consideration of the President after they are passed by the Legislature of the State; issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

The country so far did not have financial emergency though conditions of severe economic crisis did prevail in the year 1990-91.

355 , 356
IMP.

and

5. by special majority
6. Lok Sabha is given special power to discontinue emergency and
7. Art.20 and 21 can never be suspended in their enforcement

The above changes were made by the Janata Government in 1978 as the experience of national emergency imposed in 1975 was resented and it was thought that the terms of national emergency should be made more stringent and less open to abuse.

Emergency was imposed in the country when China attacked India (external aggression) in 1962(by S.Radhakrishnan) and was lifted in 1968. It was again imposed when Pakistan launched war on India in 1971(by President VV Giri). In 1975, on grounds of internal disturbance, emergency was imposed . President Fakhruddin Ali Ahmed declared a State of Emergency upon the advice of the Prime Minister, Mrs.Gandhi on 26 June 1975.The two impositions were revoked in 1977. The need for the 1975 imposition was felt as the Government perceived internal threat to national security. While the effect of the two emergencies- 1971 and 1975 was the same, the political message was different. The 1975 emergency gave the government legitimacy to suspend rights.

majority decision of a five-member Constitution bench upholding the suspension of fundamental rights during Emergency in the ADM Jabalpur V Shivakant Shukla case (1976) was erroneous.

The majority opinion was that in view of the Presidential order under Article 359(1) of the Constitution, no person has the locus standi to move for any writ petition under Article 226 before a high court for Habeas Corpus or any other writ to enforce any right to personal liberty of a person detained under the then law of preventive detention (MISA) on the ground that the order is illegal or malafide or not in compliance with the Act.

The Bench pointed out that in the 4:1 ruling that it was Justice Khanna who gave a dissenting judgement by holding that "under Article 226 under which the high courts can issue writs of Habeas Corpus is an integral part of the Constitution. No power has been conferred upon any authority in the Constitution for suspending the power of the high court to issue writs in the nature of habeas corpus during the period of Emergency."

However, Art.359 reads as follows: " Suspension of the enforcement of the rights conferred by Part III during Emergencies... Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move <u>any court</u> for the enforcement of such of the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order ...shall remain suspended."

Revocation of Emergency

Emergency may end when the President revokes it with a proclamation on the advice of the Union cabinet. As mentioned above, since the 44th Amendment Act 1978, the Lok Sabha initiative is also provided.

44th Amendment and Emergency

The 44th Constitution made the following amendments in the national emergency law in order to minimize its scope for abuse

1. replacement of internal disturbance with armed rebellion
2. Union Cabinet should recommend to the President(Cabinet is the highest class of ministers among the Union Council of Ministers. The word Cabinet is found in no other Article of the Constitution.)
3. In writing
4. Ratification should be in 1 month and not two months as earlier

State as to the manner in which the executive power thereof is to be exercised. In normal times, such directions are to be confined to certain matters only like maintenance of railways, promotion of Hindi etc.

2 On the Legislative front, life of Lok Sabha/Assembly can be extended by a period of one year at a time.New Lok Sabha has to be constituted within 6 months after the emergency ceases, if the normal life of Lok Sabha has expired. Distribution of Union-state legislative powers can be suspended in favour of the Parliament. That is, Parliament gets concurrent power to legislate on any item in the State List. If there is any repugnancy, doctrine of federal supremacy ensures that federal laws will prevail. State assembly however, continues to exist.

3 As far as the federal fiscal framework is concerned, according to Art.354, the President may direct that all or any of the provisions of Articles 268 to 279 (division of revenues etc) be modified . Such orders should be tabled in the Parliament However, no such order can last beyond the financial year in which emergency ends.

4 On Fundamental Rights, the impact is given below.

Fundamental Rights and national emergency

Art.358 and 359 are relevant. Art. 358 says that suspension of provisions of Article 19 automatically takes place during emergency if the proclamation is on grounds of war or external aggression and not armed rebellion. Art.358 comes automatically into effect with the proclamation. Such suspension may be made for any part of India that is not under Emergency when any other part is under emergency.

Art. 359 needs to be separately invoked with Presidential order. It says that enforcement of any Fundamental Right can be suspended except Arts.20 and 21. President should specify that the suspension is in connection with the emergency. Every such order must ,as soon as it is made, be laid before each House of Parliament.It lasts for such period as the president may specify during the period of emergency- that is, it need not last for the full period of emergency unlike Art.358.It may apply to the whole or a part of the country- that part where the emergency is in force.

Comment

The Supreme Court in 2012 observed that it had permitted violation of the fundamental rights of citizens during the 1975 Emergency. It took the view that the

Ministers recommend, it carries greater credibility.

- Parliament should ratify the proclamation by special majority, within a month. Special majority is two thirds of the members present and voting and a majority of the total membership of the House ("total membership" means the total number of members comprising the House irrespective of whether there are vacancies or absentees on any account).

If the Lok Sabha can not ratify it within 30 days for any reason, the proclamation must be passed by Rajya Sabha in 30 days and by Lok Sabha within 30 days after its first meeting.

(If any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of one month and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.)

- After being ratified by both the Houses, emergency will last for 6 months from the date of ratification by the latter of the two houses.
- It can be extended at a time for six months and as many times as necessary.
- Lok Sabha has the power to initiate proceedings for the discontinuation of the emergency. Lok Sabha can issue a notice in writing signed by not less than one-tenth of the total members with the intention to move a resolution for disapproving the continuance in force of emergency. It should be addressed
- to the Speaker, if the House is in session; or
- to the President, if the House is not in session.

A special sitting of the House shall be held within fourteen days from the date on which such notice is received for the purpose of considering such resolution. If the resolution is passed by a simple majority, emergency stands discontinued.

Effect of Proclamation of Emergency

Rendering the Union Government more powers to deal with a threat to national security involves the following

1 On the executive front, the country becomes a unitary system. The executive power of the Union shall extend to giving of directions to any

EMERGENCY PROVISIONS

A country faces threats to its security both from outside and inside. Union Government requires additional powers to deal with such emergencies. In a federal government, the need for such emergency provisions is even greater as federal government , by virtue of sharing powers with the provincial (state) governments, enjoys relatively limited powers. Part XVIII of the Constitution (Articles 352 – 360) deal with emergency.

Members of the Constituent Assembly believed that "the danger of a grave emergency arising in this country is not merely theoretical; it is very real". In the words of Alladi Krishnaswami Ayyar , "we are in grave and difficult times". They were convinced of the need for a strong Centre which could effectively deal with emergent situations.

Indian Constitution recognizes three types of emergency

1 National emergency(Art.352)
2 Financial Emergency(Art.360)
3 State Emergency or President's rule or Central Rule(Art.356)

National Emergency

Following are the features of the national emergency

- It can be imposed under Art.352
- If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened
- three grounds are given based on which emergency can be imposed: war or external aggression or armed rebellion
- President may declare national emergency in respect of the whole of India or part of the territory
- Proclamation may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger.
- Union Cabinet consisting of the Prime Minister and other Ministers of Cabinet rank should communicate the same in writing to the President. This provision ensures that Prime Minister, without the approval of the Union Cabinet can not recommend. When the advice is given in writing, it is also open to judicial review. When the highest ranking class of Union

working for the DPSPs that render the society even more democratic(Panchayats) and egalitarian(Art.38 and 39). The secular provisions of FRs and DPSPs are also complimentary- Art.25-28 and Art.44 can be read together as mutually rendering each other meaningful. FDs, on their part contribute to a stronger , socially diversified and democratic nation. DPSPs prescribe the fundamental obligations of the State to its citizens and FDs prescribe duties of the citizens to the State.

The Fundamental Rights are basic rights of all citizens in Part III of the Constitution; apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions.

The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts (not justiciable), but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties, set out in Part IV–A of the Constitution, concern individuals and the nation. Like the Directive Principles, they are not legally enforceable. However, like the DPSPs these are made enforceable through various laws, though in themselves non-justiciable. For example, the FD that citizens should not destroy public property finds enforcement through various legislative statutes. Similarly, the DPSP of maternity relief has been enacted into various enforceable laws. These are only two examples from the many that are available.

The Supreme Court, after the judgment in the Kesavananda Bharati case, has adopted the view of the Fundamental Rights and Directive Principles being complementary to each other, each supplementing the other's role in aiming at the same goal of establishing a social democracy and welfare state by means of social revolution. The same was stressed in the Minerva Mills case and the IR Coelho verdict (2007). Similarly, the Supreme Court has used the Fundamental Duties to uphold the Constitutional validity of statutes which seeks to promote the nationalist objects. These Duties have also been held to be obligatory for all citizens, subject to the State enforcing the same by means of a valid law. The Supreme Court has also issued directions to the State in this regard, with a view towards making the provisions effective and enabling a citizen to properly perform their duties.

that the nation constantly rises to higher levels of endeavour and achievement.".

(k) who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years".(added by the 86th Amendment Act)

The duties reflect Indian tradition and values and in India environment is traditionally revered. Respect for women pervades our culture. Education is necessary for science and technology which is the forte of ancient India. Our commitment to multicultural society is one of the sources of our soft power.

Justice Verma Committee Report on Teaching Fundamental Duties to Citizens

Justice Verma Committee Report on Teaching Fundamental Duties to Citizens was est up in 1998 and the report was presented in 2000.It recommended re-orienting approaches to school curriculum and teachers' education programmes and incorporating fundamental duties in higher and professional education,

Supreme Court on citizens' duties

In 2003, Supreme Court has directed the Centre to enact a law for the enforcement of fundamental duties by citizens as suggested by the Justice Verma Committee(2000).

The former Chief Justice of India, Ranganath Mishra, in a letter to the Chief Justice of India, requested the apex court to issue necessary directions to the State to educate its citizens in the matter of fundamental duties so that a right balance emerged between rights and duties. This letter was treated as a writ petition.The apex court appointed senior advocate K. Parasaran, as amicus curiae to assist the court.

National Commission to Review the Working of the Constitution(NCRWC) report in 2002 recommended the implementation of the report of Justice Verma Committee

The Commission recommended that the first and foremost step required to be taken by the Union and the State Governments was to sensitise the people and create a general awareness of the provisions of fundamental duties amongst the citizens, on the lines recommended by the Justice Verma Committee.

Relationship between the Fundamental Rights, Directive Principles and Fundamental Duties

The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties are parts of the Constitution of India that lay out what the Government owes to the citizens and vice versa. While FRs are democratic in nature, they lead to citizen contribution to democracy and secularism. It is complimented by the State

Fundamental Duties

While rights are important, they need to be balanced with duties. Unless duties are performed, rights become vacuous. Right to free speech and expression can be meaningful only when the duty to protect public property is followed. One's right to life is complete only when one is educated and helps his/her children go to school. Right to do business needs to be harmonised with the right to respect environment. The duty to build a modern and egalitarian nation coexists with the democratic rights.

Duties are generally associated with the socialist countries. Part IVA of the Constitution relating to Fundamental Duties was inserted in the Constitution by the Constitution (Forty-second Amendment) Act, 1976 in accordance with the recommendations of the Swaran Singh Committee appointed to review the Constitution. This Part contains only one article, namely, article 51A containing 11 Fundamental Duties. Originally it had only 10 duties but the 86th Amendment Act- Right to education- included the 11th one.The following are the FDs:

"51A. Fundamental Duties – It shall be the duty of every citizen of India –

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so

- 88th Amendment Act, 2003- Service tax amendment
- 89th Amendment Act, 2003- for SCs and STs, separate Commissions were set up while earlier they were combined into a single one.
- 91st Amendment Act relates to strengthening the anti defection law and limiting the size of the ministries
- 92nd amendment Act relates to inclusion of four languages in the Eighth Schedule- Bodo, Dogri, Maithili and Santhali.
- 93rd amendment Act 2006 to provide reservations in educational institutions for SC, ST and SEBCs- other than minority educational institutions
- 94th Amendment Act amends Art.164 to stipulate that there shall be a minister in the council of Ministers of the states of Jharkhand and Chattisgarh while excluding Bihar as it has no significant tribal population. The other two states that must have a tribal affairs minister are Orissa and Madhya Pradesh.
- 95th Amendment amended Article 334 in 2010 to extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Sixty years to Seventy years
- 96th Amendment amended Eighth Schedule 2011 . It substituted "Odia" for "Oriya"
- 97th Amendment amended .Art 19(1)(c) and added Part IXB and Art.43B, January 2012.(See the Chapters on FRs and DPSPs)

Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it was necessary to amend Article 16 of the Constitution by inserting a new clause (4A) in the said Article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.This Act seeks to achieve the aforesaid object.

78. The Constitution (Seventy-eighth Amendment) Act, 1995—Article 31B of the Constitution confers on the enactments included in the Ninth Schedule to the Constitution immunity from legal challenge on the ground that they violate the fundamental rights enshrined in Part III of the Constitution. The Schedule consists of list of laws enacted by various state governments and Central Government which inter alia affect rights and interest in property including land.

In the past, whenever, it was found that progressive legislation conceived in the interest of the public was imperilled by litigation, recourse was taken to the Ninth Schedule. Accordingly, several State enactments relating to land reforms and ceiling on agricultural land holdings have already been included in the Ninth Schedule. Since the Government is committed to give importance to land reforms, it was decided to include land reform laws in the Ninth Schedule so that they are not challenged before the courts. The state governments of Bihar, Karnataka, Kerala, Orissa, Rajasthan, Tamil Nadu and West Bengal had suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule.
Since the amendment to Acts which are already placed in the Ninth Schedule are not automatically immunised from legal challenge, a number of amending Acts along with a few principal Acts have been included in the Ninth Schedule so as to ensure that implementation of these Acts is not adversely affected by litigation.
This Act seeks to achieve the above objects.

79.The Constitution (Seventy-ninth Amendment) Act, 1999 – Article 334 of the Constitution was amended with a view to extend the period of reservation of seats for Scheduled Castes, Scheduled Tribes and to the Anglo-Indian community by nomination in Parliament and in the State Legislatures for a further period of ten years ie the words "fifty years" have been substituted with "sixty years".

Recent Amendment Acts upto 2012

- 87th Amendment Act, 2003 - delimitation of constituencies for LS and LA elections on the basis of 2001 census

levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of five years for Panchayats and holding elections within a period of six months in the event of supersession of any Panchayat.

74. The Constitution (Seventy-fourth Amendment) Act, 1993—In many states local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolutions of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.
Having regard to these inadequacies a new part IX-A relating to the Municipalities has been incorporated in the Constitution to provide for among other things, constitution of three types Municipalities, i.e., Nagar Panchayats for areas in transition from a rural area to urban area, Municipal Councils for smaller urban areas and Municipal Corporations for larger urban areas.

76. The Constitution (Seventy-sixth Amendment) Act, 1994—The policy of reservation of seats in educational institutions and reservation of appointments or posts in public services for Backward Classes, Scheduled Castes and Scheduled Tribes has had a long history in Tamil Nadu dating back to the year 1921. The extent of reservation has been increased by the State Government from time to time, consistent with the needs of the majority of the people and it has now reached the level of 69 per cent (18 per cent Scheduled Castes, one per cent Scheduled Tribes and 50 per cent Other Backward Classes).The Supreme Court in Indira Sawhney and others vs. Union of India and others in 1992 ruled that the total reservations under Article 16(4) should not exceed 50 per cent, normally.

The Tamil Nadu Government enacted a legislation and forwarded it to the Government of India for consideration of the President of India in terms of Article 31-B of the Constitution. The Government of India supported the provision of the State legislation by giving the President's assent to the Tamil Nadu Bill. As a corollary to this decision, it was necessary that the Tamil Nadu Act was brought within the purview of the Ninth Schedule to the Constitution so that it could get protection under Article 31B of the Constitution with regard to the judicial review.
This Act amends the Constitution to achieve the above objects.

77. The Constitution (Seventy-seventh Amendment) Act, 1995—The Schedule Castes and the scheduled tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16 November 1992 in the case of Indra Sawhney and Others vs. Union of India and others, however, observed that reservation of appointments or posts under Article 16(4) of the Constitution is confined to initial appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the

Commission and covers measures that should be taken by the Union or any state for the effective implementation of the reports presented by the Commission. It also provides that the Commission shall, while investigating any matter or inquiring into any complaint have all the powers of a Civil Court trying a suit and the reports of the said Commission shall be laid before Parliament and the Legislature of the states.

66. The Constitution (Sixty-sixth Amendment) Act, 1990—The Act protects 55 State Acts relating to land reforms and ceiling on agricultural land holdings enacted by States of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan,Tamil Nadu, Uttar Pradesh, West Bengal and administration of the Union Territory of Pondicherry, from challenge in courts, by including them in the Ninth Schedule to the Constitution.

69. The Constitution (Sixty-ninth Amendment) Act, 1991—Legislative Assembly and a Council of Ministers for the UT of Delhi.

70. The Constitution (Seventieth Amendment) Act, 1992—Inclusion of the elected members of the legislative assemblies of union territories of Delhi and Pondicherry in the electoral college for the election of the President under Article 54 of the Constitution.At present Article 54 relating to the election of the President provides for an electoral college consisting of only the elected Members of Parliament as well as the legislative assemblies of the states (not of union territories). Accordingly, an Explanation was inserted in Article 54 to provide that reference to 'State' in Article 54 and 55 would include the National Capital Territory of Delhi and the Union Territory of Pondicherry for constituting the electoral college for election of the President. This would enable the elected members of the Legislative Assembly created for the Union Territory of Pondicherry under the provisions of Article 239A and of the proposed Legislative Assembly of the National Capital Territory of Delhi under Article 239AA to be included in the electoral college.

71. The Constitution (Seventy-first Amendment) Act, 1992—There have been demands for inclusion of certain languages in the Eighth Schedule to the Constitution. This Act amends the Eighth Schedule to the Constitution to include Konkani, Manipuri and Nepali languages in the Eighth Schedule to the Constitution.

73. The Constitution (Seventy-third Amendment) Act, 1993—Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the above, a new Part IX relating to the Panchayats has been inserted in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any and to the offices of Chairpersons of Panchayats at such

material abandonment.".

3 Insertion of new article 39A:Equal justice and free legal aid.-The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.".

4 Insertion of new Part IVA:FUNDAMENTAL DUTIES(Art.51A)

5 use 1971 census figures for election till 2000 AD and freeze the LS and Assembly strength till 2001 census as otherwise the states with more population will gain and those limiting population will lose

6 TRIBUNALS:323A and 323B.Administrative tribunals and other tribunals are to be introduced to decongest the courts and speed of disposal of cases.

7 There shall be no limitation on the constituent power of Parliament to amend Constitution

8 Amendment of the Seventh Schedule.Forests, education etc should be shifted from State List to Concurrent List

44. The Constitution (Forty-fourth Amendment) Act, 1978—The right to property which had been the occasion for more than one amendment of Constitution was omitted as a Fundamental Right and it was made into an ordinary a legal right-Art.300A. Article 352 of the Constitution was amended to provide "armed rebellion" as one of the circumstances for declaration of emergency replacing
` internal disturbance'. Internal disturbance not amounting to armed rebellion would not be a ground for the issuance of a Proclamation. Emergency and President's rule provisions were strengthened. President is empowered to return the advice given by the Union Council of Ministers once for reconsideration- Art.74 being amended for this.

52. The Constitution (Fifty-second Amendment) Act, 1985—Anti-defection law and the Tenth Schedule.

61. The Constitution (Sixty-first Amendment) Act, 1989—The Act provides for reducing voting age from 21 to 18 years by amending Article 326 of the Constitution.

65. The Constitution (Sixty-fifth Amendment) Act, 1990—Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. The Article has been amended for the constitution of a National Commission for Scheduled Castes and Scheduled Tribes consisting of a Chairperson, Vice Chairperson and five other Members who shall be appointed by the President by warrant under his hand and seal. The amended Article elaborates the duties of the said

`amount'.

2 31C. Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39(socialist legislation as a part of Directive Principles of State Policy) shall be deemed to be void on the ground that it is inconsistent with any of the rights conferred by Article 14 and Article 19 ; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

26. The Constitution (Twenty-sixth Amendment) Act, 1971—By this amendment, the privy and privileges of the former rulers of Indian states were abolished. This amendment was passed as a result of Supreme Court decision in Madhav Rao's case.

29. The Constitution (Twenty-ninth Amendment) Act, 1972—The Ninth Schedule to the Constitution was amended to include therein two Kerala Acts on land reforms.

31.The Constitution (Thirty-first Amendment) Act, 1973—This Act raises the upper limit for the representation of states in the Lok Sabha from 500 to 525 and reducing the upper limit for the representation of union territories from 25 members to 20.

35. The Constitution (Thirty-fifth Amendment) Act, 1974—By this Act a new Article 2A was added thereby conferring on Sikkim the status of an associate State of Indian Union. A new schedule i.e., Tenth Schedule, was added laying down terms and conditions of association of Sikkim with the Union.

36. The Constitution (Thirty-sixth Amendment) Act, 1975—This enacted to make Sikkim a full-fledged State of Indian Union and to include it in the First Schedule to the Constitution and to allot to Sikkim one seat each in the Council of States and in the House of the People. Article 2A and the Tenth Schedule were omitted

39. The Constitution (Thirty-ninth Amendment) Act, 1975—By this Act, disputes relating to the election of President, Vice-President, Prime Minister and Speaker are to be determined by such authority as may be determined by Parliamentary Law. Certain Central enactments were also included in the Ninth Schedule by this Act.

42. Forty-second Amendment 1976

It is called a `mini-Constitution and has been affected on the recommendations of the Swaran Singh Committee in 1976.

Amendment of the Preamble: the words `SOCIALIST, SECULAR and integrity' are inserted.

1 All DPSPs are given precedence over all FRs

2 Amendment of article 39 to include that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and

9. The Constitution (Ninth Amendment) Act, 1960—The purpose of this amendment is to give effect to the transfer of certain territories to Pakistan in pursuance of the agreement extended into between Governments of India and Pakistan. This amendment was necessitated in view of the Judgement of Supreme Court in "In the Berubari Union" case by which it was held that any agreement to cede a territory to another country could not be implemented by a law made under Article 3 but would only be implemented by an amendment of the Constitution.

14. The Constitution (Fourteenth Amendment) Act, 1962—By this Act, Pondicherry was included in the First Schedule as a Union Territory, and this Act has also enabled the creation of Legislature by Parliamentary law for Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry.

17. The Constitution (Seventeenth Amendment) Act, 1964—Article 31A was further amended to prohibit the acquisition of land under personal cultivation unless the market value of the land is paid as compensation. The Ninth Schedule had also been amended to include 44 more Acts.

18. The Constitution (Eighteenth Amendment)Act, 1966—Article 3 was amended by this Act to specify that the expression "State" will include a union territory also and to make it clear that the power to form a new state under this Article includes a power to form a new state or union territory by uniting a part of a state or a union territory to another state or union territory.

24. Twenty-Fourth Amendment 1971- The amendment was made necessary by the Supreme Court judgement in the Golaknath case in 1967 when the apex court ruled that Art.13 is a limitation on Parliamentary power to amend the Constitution. Art.368 gave only the procedure and not the power of amendment to the Parliament.

1 Nothing in Art.13 shall apply to any amendment of this Constitution made under article 368.".

2 Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power to amend any provision of this Constitution in accordance with the procedure laid down in Art.368.

3 When the duly passed Constitution Amendment Bill is presented to the President for his assent, President shall give his assent.

25. Twenty-Fifth Amendment 1971 - In the Bank Nationalisation Case [1970], the Supreme court had held that the Constitution guaranteed right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus, the adequacy of compensation has become justiciable inasmuch as the Court could go into the question whether the amount paid to the owner of the property was reasonable. The Act amends the Constitution to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation.

1 . Amendment of article 31 so that the word `compensation' is replaced by the word

Is the amendment process so simple as to make the Constitution a `toy' in the hands of the Parliament?

There have been 97 amendments to the Indian Constitution till 2012 necessitated by the objective of welfare State(land reforms etc); social justice(1st and 93rd Acts);cleanse the political process of defections(52nd and 91st Amendment Act); fiscal reforms(88th Amendment Act to streamline service tax) etc. While the number of amendments , on the face of it does suggest that Constitution has been too flexible , it is not entirely because of the flexibility of the Constitution. It was the response of the Parliament and states to the need to shape India democratically and socialistically. Management of diversities, implementation of policies for a socialist pattern of society, making the political process stable and clean etc are the compulsions that rendered the amendments necessary. It must not be forgotten, that the more voluminous the Constitution, the greater the number of amendments.

The Constitutional safeguards that make it very difficult to pass amendments are the following

- majority required is special majority and in some cases ratification by at least half the State Legislatures
- both the Houses , sitting independently , should pass the Bill. That is, there is no joint session in case of a deadlock between the two Houses and the Bill needs to be reintroduced
- only Union Government can initiate the amendment Bill. It can be introduced only in the Parliament
- an Ordinance promulgated by the President can not amend the Constitution.

Important Amendments to the Constitution

1.The Constitution (First Amendment) Act, 1950—The amendment inserted two new Articles, 31A and 31B and the Ninth Schedule to give protection from challenge to land reform laws.

4. The Constitution (Fourth Amendment) Act, 1955—Article 31 (2) of the Constitution was amended to re-state more precisely the State's power of compulsory acquisition and requisitioning of private property. Article 31A of the Constitution was also amended to extend its scope to cover categories of essential welfare legislation like abolition of zamindaris.

7. The Constitution (Seventh Amendment) Act, 1956—This amendment Act purported to give effect to the recommendations of the State Reorganisation Commission .

- The sovereignty of India.
- The democratic character of the polity.
- The unity of the country.
- Essential features of individual freedoms.
- The mandate to build a welfare state.

Justice Jaganmohan Reddy preferred to look at the Preamble, stating that the basic features of the constitution were laid out by that part of the document, and thus could be represented by:

- A sovereign democratic republic.
- The provision of social, economic and political justice.
- Liberty of thought, expression, belief, faith and worship.
- Equality of status and opportunity.

Since then, the basic features have been growing in number as the apex court added to them through various judgements. For example. Judicial review in Chandra Kumar case(1997).In the Minerva Mills case(1980), the following basic features are added

- limited power of the Parliament to amend the Constitution
- balance between the FRs and the DPSPs

In Bommai case verdict (1994), secularism was added to the list of basic features with the further ruling that a State Government that violates it is liable to be dismissed and President's rule imposed. This is a new dimension to the concept of basic features and has not been seen till then and since then.

The effect of the doctrine of basic features is the following

- essential features are preserved
- parliament's dynamic responsibilities are recognised but its constituent power is restricted
- judicial review is retained to protect the original aims of the Constitution
- judicial review and parliamentary powers and obligations are balanced for the sake of good governance and individual liberties.

Basic features are an evolving and dynamic concept that enable the judiciary to retain the essence of the Constitution.

The basic structure doctrine applies only to the constitutionality of amendments and not to ordinary Acts of Parliament, which must conform to the entirety of the Constitution and not just to its basic structure.

Basic Structure

Constitution gives Parliament power to amend the Constitution(Art.368). This power is not absolute in nature. It is limited by the Constitution.For example, Art.13 denies State (effectively parliament) the power to abridge Fundamental Rights. Parliament's constituent power is also subject to judicial review.

In the Shankari Prasad(1952) and Sajjan Singh (1965) cases, the Supreme Court ruled that Parliament could abridge FRs without any limitation from Art.13 by amending the Constitution and not by ordinary legislation. Golaknath case judgement overturned it in 1967. 24th Amendment Act was made by parliament in 1971 to overcome the Golaknath ruling. In the Keshavananda Bharati case verdict, apex court gave parliament power to amend the Constitution but limited it with the introduction of "basic structure" concept.

Thirteen judges of the Supreme Court, including then Chief Justice Sikri, heard arguments in *Kesavananda Bharati v. The State of Kerala* and thus considered the validity of the 24th, 25th and 29th amendments, and more basically the correctness of the decision in the Golak Nath case. This time, the court held, by 7-6, that although no part of the constitution, including fundamental rights, was beyond the amending power of Parliament (thus overruling Golaknath ruling), the "basic structure of the Constitution could not be abrogated even by a constitutional amendment".It said that basic features are 'embedded' in the Constitution and could not be diluted.

In *Kesavananda* there was little consensus among the majority for what the "basic structure" of the constitution comprised. Chief Justice Sikri, writing for the majority, indicated that the basic structure consists of the following:

- The supremacy of the constitution.
- A republican and democratic form of government.
- The secular character of the Constitution.
- separation of powers.
- The federal character of the Constitution.

Justices Shelat and Grover added three features to the Chief Justice's list:

- The mandate to build a welfare state contained in the Directive Principles of State Policy.
- Maintenance of the unity and integrity of India.
- The sovereignty of the country.

Justices Hegde and Mukherjea instead provided, in their opinion, a separate and shorter list:

are of consequenctial nature(Art.4 and 169, for example). The following are such provisions in the Constitution :

- admission or establishment of new States or formation of new States and alteration of areas, boundaries or names of existing States; changes in First and Fourth Schedules as a result(Art.4)
- Art.11 empowers Parliament to make laws related to certain aspects of citizenship
- Parliament can amend Second Schedule to revise the salaries of certain Constitutional dignitaries
- creation or abolition of Legislative Councils in States(Art.169)
- Fifth and Sixth Schedules- administration and control of Scheduled Areas and Scheduled tribes; administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram respectively ; amendment of Scheduled Castes and Scheduled Tribes Orders
- Art.239A relating to creating an Assembly or Council of Ministers in a UT.
- Art.105(3) contains parliamentary privileges until Parliament defines them

Legislative Councils and Amendment Act

Article 168 of the Constitution contains provision for constitution of two Houses of the Legislatures in the States mentioned therein *i.e.*, Legislative Council and the Legislative Assembly. Legislative Council Act to be passed by the Parliament after the Resolution is passed by the State Assembly confers power upon the President for issuing an order to include the name of the State in clause (1) of article 168 of the Constitution. In the case of abolition of the Council, the name is to be deleted identically. Since the amendment thus brought about in the Constitution is by a process outside Art.368 and is is consequential in nature, it is not deemed to be an amendment. Please follow the case of Tamil Nadu where the Act was passed in 2010 to create a Council and a similar Bill was introduced in Lok Sabha in 2012 for repealing the earlier Act, on the basis of a TN Assembly resolution passed in 2011.

Normal legislative procedure applies to this category of amendments. However, the Constitution lays down certain conditions before Parliament legislates in respect of some of such amendments. For instance, no Bill for the formation of a new State, etc. can be introduced in either House of Parliament except on the recommendation of the President and unless such Bill is referred by the President to the Legislature of the State concerned for expressing its views thereon within the specified period. Further, Parliament's power to make law for the abolition or creation of a Legislative Council in the States is exercisable only if the Legislative Assembly of the concerned State passes a resolution to that effect by a majority of total membership of the House and a majority of not less than two-thirds of the members of the Assembly present and voting(special majority).

Parliament, therefore, could not , under Article 368 expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution and its basic and essential features. The Court developed the concept of basic structure in subsequent cases also like the Bommai case in 1994 when secularism was pronounced a basic feature.

Salient features of amendment process in India

- Constitution is both flexible and rigid- rigid essentially for the federal features.
- When Parliament amends the Constitution, it does so in exercise of its constituent power as distinguished from its ordinary legislative power.
- An amendment Bill can be introduced by a private member(member of Parliament who is not a minister) or a Minister
- An amendment Bill can be initiated only by the Union Government and can be introduced only in the Parliament- either House. States do not have the power to initiate an amendment Bill.
- The Bill so initiated must be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.
- There is no provision for a joint sitting in case of disagreement between the two Houses as it will override the interests of the States because Rajya Sabha is numerically inferior to Lok Sabha.
- An amendment Bill after being passed duly and sent to the President shall be assented to by the President(24th Amendment Act).
- An ordinance can not amend the Constitution
- Basic features can not be amended

Constitution of India can be amended with the following limitations

- basic features can not be amended
- In the verdict on Ninth Schedule in 2007 - I.R. Coelho judgment-, the Supreme Court ruled that FRs- the `golden triangle' of Art.14,19 and 21- could be amended but only if substantive public interest is served by such restriction which is open to judicial review.

`Amendments' not `deemed' to be so

There are some provisions in the Indian Constitution that may be amended by the parliament but such `amendments' are not considered- ` deemed' – Constitution amendments . The reason is that the procedure for such changes is not found in Art.368; the process requires only a simple majority in the Parliament; some of them

Parliament's power to amend the Constitution

Article 368 of the Constitution confers power on Parliament to amend the Constitution and prescribes procedure for the same .In the Shankari Prasad Singh(1951) and Sajjan Singh(1965) cases- to review the legality of 1st and 17th amendment Acts –Parliament ruled that the word `law' in Art.13 excludes Constitution amendment and so Art.13 does not apply to Art.368.However, in the verdict in the Golak Nath case(1967), the Supreme Court had held that

a. Art.368 contains only the procedure of amendment but does not confer power on the Parliament to amend any part of the Constitution
b. Art.13 applies to Art.368 and restricts Parliamentary power
c. Fundamental rights are immutable
d. If parliament wants to amend the FRs, it should convene a Constituent Assembly
e. Amendment refers to minor changes and not to substantive changes

The ruling led Parliament to enact the Constitution (Twenty-fourth Amendment)Act in 1971 , which declared expressly that

- there would be no limitation on the constituent power of Parliament to amend the provisions of the Constitution
- Article 13 which was a bar against abridging or taking away any of the fundamental rights did not apply to a Constitution Amendment under article 368 and
- President has no choice but to assent to the CAB

When the 24th Amendment Act along with other Amendment Acts – 25th and 29th Acts- was challenged in the Supreme Court, Supreme Court delivered the Keshavananda Bharati case verdict in 1973. In the Kesavananda Bharati case(24/4/1973) the Supreme Court reversed the decision given in the Golak Nath case and held that Parliament could amend any part of the Constitution but not the `basic features'- a concept that it introduced in the judgement. Also, Art.13 does not apply to Art.368. The apex court had the sole authority to declare any feature of the Constitution as basic and could do so from time to time.

The 42nd Amendment Act(1976) gave Parliament full power to amend the Constitution . It was challenged and the Supreme Court delivered the Minerva Mills case verdict (1980) to reiterate the pre-42nd Amendment Act position.

The theory of basic structure of the Constitution was reaffirmed and applied by the Supreme Court in the Minerva Mills case (1980) when the Supreme Court held that the Constitution had conferred a limited amending power on the Parliament and this limited amending power was one of the basic features of the Constitution.

- extent of the executive power of the Union and the States
- Supreme Court and the High Courts; High Courts in UTs
- distribution of legislative powers between the Union and States(Seventh Schedule)
- or the representation of States in Parliament
- very procedure for amendment as specified in the Constitution (Art.368)

In the above cases, the amendment, after it is passed by the special majority has also to be ratified by Legislatures of not less than one-half of the States by resolutions by a simple majority before the Bill is presented to the President for assent. The Constitution does not contemplate any time-limit within which the State Legislatures should ratify the amendments referred to them.

Constitution (Fifty-second Amendment) Act, 1985, popularly known as the Anti-Defection Law was not ratified by the State Legislatures. But it seeks to keep out the courts and bar judicial review. In the Kihoto Hollohan case, the Supreme Court upheld the validity of the Tenth Schedule but declared its paragraph 7 invalid for want of ratification by State Legislatures as it excludes judicial review and dilutes powers of higher judiciary. While doing the apex court treated paragraph 7 as severable part from the rest of the Schedule. (Doctrine of Severability)

Deadlocked Bills

The following are the instances when Constitution Amendment Bills passed by one House could not secure the requisite majority in the other House

- Constitution (Twenty-fourth Amendment) Bill, 1970, regarding abolition of privileges and purses of erstwhile rulers, was passed by the Lok Sabha but Rajya Sabha rejected it ,
- Constitution (Sixty-fourth and Sixty-fifth Amendment) Bills,1989, regarding Panchayats and Municipalities, as passed by the Lok Sabha were rejected by Rajya Sabha.

Both the above Bills were rejected by the Rajya Sabha and so did not bring down the governments that introduced the Bills.

Private Member and Constitution Amendment Bills

Constitution Amendment Bills can be introduced in either House of Parliament. If sponsored by a Private Member, the Bill has to be examined in the first instance and recommended for introduction by the Committee on Private Members' Bills and Resolutions before it is included for introduction in the List of Business.

Art.368

The Constitution amendment process is given in Art.368 in which **two methods** of amendment are mentioned .

One category of amendments are those which can be made by Parliament by the prescribed `special majority'. The second category of amendments require ratification by at least one half of the State Legislatures after being passed by a special majority by each House of the Parliament.

Amendment by special majority

A Bill seeking to amend any other provision of the Constitution has to be passed in each House of Parliament by a special majority which means -

- a majority of not less than two-thirds of the members of that House present and voting ' and

- a majority of the 'total membership of that House. The expression "present and voting", means members who vote for "ayes" or for "noes". Members who are present in the House and vote "abstention" either through the electronic vote recorder or on a voting slip or in any other manner, are not treated as "present and voting." Total membership means total number of members comprising the House irrespective of any vacancies or absentees on any account.

Taking a strict interpretation of the Constitutional provision, the special majority prescribed may be required only for voting at the third reading stage, but by way of caution, the requirement of special majority has been provided for in the Rules of Procedure and Conduct of Business in Lok Sabha in respect of all the effective stages of the Bill *i.e.* motion that the Bill be taken into consideration, motion that the Bill, as reported by the Select or Joint Committee, be taken into consideration, motion that the Bill, as passed by Rajya Sabha/LS , be taken into consideration, motion for adoption of clauses and schedules to the Bill and finally for the adoption of the motion that the Bill be passed. Motions that the Bill be circulated for eliciting opinion thereon or that the Bill be referred to a Select or Joint Committee are passed by simple majority.

All provisions of the Constitution can be amended by a special majority in the parliament except the `federal provisions' as mentioned in the Art.368. They require amendment by special majority and ratification by at least half State Legislatures. The following features fall in that category:

- Manner of election of the President

force of law. Some conventions in India in the field of Constitution and governance are

- Prime Minister hails from the Lok Sabha
- President dissolves the Lok Sabha on the advice of the Union Council of Ministers
- Government accepting the recommendations of the Finance Commission

British Constitutional expert Dicey is of the opinion that conventions can not be enforced by courts as they are unwritten. But there is also an opinion that they are enforceable and that there is no distinction between Constitutional law and an established Constitutional convention and the latter is enforceable if it is long established(Justice Kuldip Singh, former judge of Supreme Court of India). The former view is correct in some cases like the prime Minister belonging to the Lok Sabha. It is certainly not enforceable Dr.Manmohan Singh's a member of Rajya Sabha. Similarly , the recommendations of the Finance Commission have been conventionally accepted. But that can not be enforced as some recommendations may not be acceptable. For example, the 10th FC(1995-2000) recommended that its recommendations be in force for 15 years which was clearly out-of- mandate.

Formal and Perceptible method

It refers to an amendment according to the procedure laid down in the Constitution.

Bills seeking to amend the Constitution are of three types:

1. Bills that are passed by Parliament by simple majority;
2. Bills that have to be passed by Parliament by the special majority prescribed in article 368(2) of the Constitution; and
3. Bills that have to be passed by Parliament by the special majority as aforesaid and also to be ratified by not less than one-half of the State Legislatures.

The first category in the above list is not `deemed ` to be amendment. The latter 2 types are. (Read ahead)

CONSTITUTION AMENDMENT PROCESS

Constitution reflects the aspirations and needs of the people of the country. It has to be a dynamic document giving shape to the popular aspirations as they evolve from time to time. It has to facilitate socio-economic change and national security. Law can not lag behind the fast moving society and its needs. Therefore, all constitutions provide for built-in procedures for amendment. Such procedures can be rigid or flexible. Rigid procedure is elaborate, difficult and special. It is a characteristic of federal Constitutions where the Constitution involves distribution of powers to the two levels of government and so can be amended only when both the tiers of government accept the same. Rigidity, thus, usually involves ratification by state legislatures However, only federal provisions are covered by the rigid procedure and not the non-federal parts of the Constitution.

Flexibility means passing an amendment Bill in the same manner as an ordinary Bill. Indian Constitution has a combination of both.

Constitutions undergo amendments informally(imperceptibly) and formally(perceptably). In the former method, there are two ways

- Judicial pronouncements
- Conventions

Imperceptible methods

Judicial rulings and Constitutional amendments

In India, the Supreme court contributed to evolution of the Constitution in a significant way by its verdicts. Some important rulings are

- Introduction of the doctrine of Basic features of the Constitution and the ruling that they can not be amended by the Parliament(Keshavananda Bharati case verdict of the Supreme Court 1973)
- FRs and DPSPs are complementary and such balance between the two Parts of the Constitution can not be disturbed(Minerva Mills case verdict 1980)
- Territory can not be ceded except by an amendment Act(berubari case 1960)
- Even though Art.361 gives Governor of a state immunity from judicial review, judiciary has the right to invalidate any wrong and malafide actions that a Governor may take(Bihar assembly dissolution case 2006)

Conventions and Constitutional change

Conventions are a set of unwritten rules that have come to be accepted as having the

Since life is not merely "animal existence, it has to be rendered meaningful and imparted a sense of dignity for which DPSPs contribute significantly.

In the case of bonded labourers – Bandhwa Mukti Morcha Case (1984), the Court said: "It is the fundamental right of every one in this country..... to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Art. 21, derives its life-breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Art. 39 and Arts. 41 and 42,43A, 48A and at least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity....." In Mohini Jain's Case (1992), right to education was declared an FR. It was till then a DPSP.

Note on laissez faire, welfare and socialist state

Welfare state is one where the responsibility of social welfare rests with the State. It seeks to provide employment to the jobless, remove poverty, provide for social security, take care of women and other marginalized sections like SC/STs in India, deepen democracy and institutionalize genuine democracy from the grass roots level, ensure distributional justice and so on.

Laissez faire is a French term meaning "let do, let go, let pass.". It is a form of economic organization where the markets operate with minimal government control.

By contrast with the welfare state, the minimalist state is the ideal of those commentators who criticize social legislation (labour law and social security law) as a source of rigidity which damages competitiveness in economy. The term "nightwatchman state" is also used to describe a minimalist state as it exists in a laissez faire economy.

Socialist state is one that owns the means of production and does not permit private property in a significant way.

In a nutshell, the differences between FRs and DPSPs are

- FRs are rights while DPSPs are directions to the Government
- FRs are enforceable(justiciable) while DPSPs are not
- FRs are essentially individual –centered while DPSPs are group-centered
- FRs are aimed at creating political democracy while DPSPs aim for an inclusive society that is environment-friendly.

Art.37

DPSPs are fundamental to governance(Art.37) means that the government needs to keep in consideration these ideals while making laws. Similarly, the courts also give importance to DPSPs while adjudicating on laws. A law may be struck down if it goes against DPSPs.

The Government has an obligation to implement these principles. The language used is indicative of the obligation of the State to implement DPSPs.

Art. 38(1): The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all institutions of the national life".

The words as against each obligation, such as "strive to promote" (Art. 38) "direct its policy towards securing" (Art. 39) .... "endeavour to secure....." (Art. 43).... "take steps ....." (Art. 43A) "..... promote the educational and economic interests ..... (Art. 46)" "..... endeavour to raise the level of nutrition..... (Art. 47), all indicate a continuous process of "progressive" implementation of these principles. Therefore, the State cannot adopt any "regressive" measure which will hinder the objective of full realization of these rights.

Supreme Court and the DPSPs

Initially, the apex court allowed the parliament to amend the Constitution in favour of DPSPs, Art.13 notwithstanding. It permitted the FRs to be restricted to some extent in the process. Later, Supreme Court became activist and gave expnded meaning to Art.21 by readin DPSPs into it.

- Fine balance between the FRs and DPSPs as found in the Constitution can not be tilted in favour of either.

The relation between the FRs and DPSPs presently is based on the Minerva Mills verdict of the Supreme Court.

DPSPs outside Part IV

In addition to the Directives that are found in Part Four of the Indian constitution, there are certain other directives in other Directives in other Parts of the Constitution addressed to the state and non-justiciable like the rest. They are the following

- Art.335 says that in reserving jobs for the Scheduled Caste and Tribes in Government, due attention should be paid to efficiency in administration.
- Art 351 enjoins the state to promote the use of Hindi so that it may be developed as a medium of communication.
- Art.350A enjoins the state and the local authorities to impart primary education to the linguistic minorities in their mother tongue.

Directive Principles and Fundamental Rights: The differences

Both FRs and DPSPs are essential for a welfare state- democratic socialism. Both aim at building human capital.

- FRs are essentially individual rights . Directive Principles are in the nature of instruments of instructions to the Government of the day to undertake collective positive actions.
- The fundamental rights are enforceable in the courts, hence are justiciable. But the Directive Principles are not enforceable in the courts, thus they are non – justiciable. Justiciable means that if Fundamental Rights are violated, the aggrieved individual can move the courts for the protection of their Fundamental Rights. Non-justiciable means that citizens can not go to court to secure implementation of the Directive Principles. DPSPs are made non-justiciable as their implementation requires resources; society may not be ready for their implementation- UCC; they need time for introduction- local self government institutions etc.
- Fundamental Rights aim at establishing political democracy in India while Directive Principles attempts to provide socio-economic foundations to Indian democracy.

Fundamental Rights and Directive Principles are not opposed but are complementary to each other. Both ultimately aim at the welfare and the well-being of the people. While Directive Principles are non-justiciable, it does not imply that they need not be implemented. They are fundamental to the governance of the country. FRs have legal sanction while DPSPs enjoy moral and political sanction.The real strength of Directive Principles is derived from a vigilant public opinion.

- Art. 368 provides the procedure to amend the Constitution but does not confer power on Parliament to amend the Constitution.

Doctrine of prospective overruling was applied in the case of the Golaknath verdict and it said that the actions already taken do not become void but the judgement applies to future actions of the State.

24th Amendment Act

The Constitution 24th Amendment 1971 was made to overcome the SC judgement in the Golak Nath case. Its contents are

- Nothing in Art.13 bars Parliament from amending the Constitution under Art. 368.
- Art. 368 contains the procedure as well as empowers the Parliament to amend any part of the Constitution.
- President shall assent to a Constitution Amendment Bill duly passed by the Parliament.

24th Amendment Act, along with the 25th and 29th judgements was questioned in the apex court and the majrotiy judgement of the 13 judge Constitution Bench in the Kesavanand Bharati Vs the State of Kerala case is as follows

- 24th Amendment Act is valid.
- Parliament can amend any part of the Constitution except 'basic features'
- The word 'law' in Art. 13 does not include a Constitution Amendment Act and includes only ordinary legislation as stated in the Shankari Prasad and Sajjan Singh verdicts

The main question addressed in the verdict was whether the Parliament had the power to amend the Constitution without limits or not and the way to interpret Art. 13 and Art. 368.

Minerva Mills case

In the Minerva Mills Ltd. Vs Union of India case 1980, the SC was responding to issues related , among others, to the 42nd Amendment Act 1976 where it gave Parliament unlimited constituent powers, making implementation of some DPSPs unquestionable in the courts of law for violating Art. 14, 19 and 21.

The SC by a majority of four to one ruled that

- Powers of Parliament to amend the constitution are limited by the basic framework as introduced by the SC in the Kesavananda Bharati case

The two are complementary and not mutually exclusive.

Since commencement of the Constitution in 1950, the inevitable tension between the FRs and the DPSPs surfaced. DPSPs could not be implemented without the FRs being restricted. For example, land redistribution in an unequal society demanded that land be taken from those having in excess and given to those in need of it.But , the affected parties went to court on the ground that their right to property- an FR at that time, was violated.

Parliament has the obligation to promote justice by implementing Art.39. When they conflicted with the FRs- Art.14 and 19, the laws were challenged and the Supreme Court most of the time upheld the parliamentary action .

Supreme Court in the Shankari Prasad case, 1951 and Sajjan Singh case in 1965 said that Art.13 did not come in the way of parliament's power to limit the FRs. In the Golaknath case 1967, however the earlier position was reversed and in the Keshavananda Bharati case , the constituent power of the Parliament was partly restored . In the 42nd amendment Act in 1976, DPSPs were given precedence over the FRs and the same was struck down in the Minerva Mills case verdict (1980) for the following two reasons

1 . it removes judicial review which is a basic feature of the Constitution
2 FRs and DPSPs have a complementary relation which can not be upset.

The relation between the two Parts is complementary and this relation is a basic feature and can not be disturbed either way. That is the legal position since then. It is to be noted that FRs could be diluted by the DPSPs only if public interest is served(Coelho verdict 2007)

Relevant Judgements

- Shankari Prasad case 1951
- Sajjan Singh case 1965
- Golaknath Vs the State of Punjab(1967) relates to the power of the Parliament to amend the Constitution to a point of abridging FRs. Specifically, the validity of 1st, 4th and 17th Amendments regarding restrictions on the right to property was questioned and the SC Judgement says

- FRs are given a transcendental position in the Constitution and are not amenable to Parliamentary restriction as stated in Art. 13.
- A place of permanence is given to FRs in the Constitution.
- In order to amend Fundamental Rights , a new Constituent Assembly is necessary.

the Mandal Commission in pursuit of Art. 46.The 93rd Amendment Act 2006 is a step in the direction of pursuit of Art.46.

Regarding Art. 48, the green revolution and the research in biotechnology are aimed at modernizing agriculture and animal husbandry, among other things. India is permitting genetically modified (GM) organisms and crops like Bt cotton in India for boosting productivity, among other things.

The Biological Diversity Act 2002 is a law meant to achieve three main objectives

- the conservation of biodiversity;
- the sustainable use of biological resources;
- equity in sharing benefits from such use of resources.

The Environment Protection Act. 1986; the Wild Life Act; The National Forest Policy 1988 are some examples for implementation of Art. 48A. Government is taking many steps for countering climate change centrally sponsored programme for climate resilient agriculture(2011). National green tribunal was set up in 2010.

The **Archaeological Survey of India**, Ministry of Culture, is responsible for archaeological studies and the preservation of archaeological heritage of the country in accordance with the various acts of the Indian Parliament

Separation of judiciary from executive is being done by amending the CrPC. Appointment of judges of High Courts and Supreme Court is being done on the recommendation by a collegiums of judges of the higher judiciary since 1993, based on Art.50.

The efforts of India to secure international peace are many like participation in the peacemaking operations of the UN is a prime examples of contribution to international peace and security. India has been the largest troop contributor to UN missions since inception. So far (2012) India has taken part in 43 Peacekeeping missions with a total contribution exceeding 1,60,000 troops India pioneered Non Aligned Movement to defuse cold war after the second world war.

Relation between FRs and DPSPs

The FRs and the DPSPs constitute the conscience of the Constitution. The purpose of the FRs is to confer on individuals the rights necessary for their development free from coercion. DPSPs are essential for the welfare society. According to forme CJI, Justice.Chandrachud, the Constitution aims to bring about a synthesis between the two and together they constitute, not individually, the conscience of the Constitution.

Art 51. Promotion of international peace and security.- The State shall endeavour to –

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

Implementation of DPSPs

Since the commencement of the Constitution, there has been substantial legislation to implement the DPSPs. As detailed below:

First amendment Act is for implementing land reforms. It was followed by the 4th, 17th, 25th, 42nd, and 44th Amendment Acts.

The 73rd Constitution Amendment Act (1992) is in pursuit of the implementing the Art. 40.

In 2005, NREGA was made and is operating in the entire country wince 2008 . It gives shape to Art.41, right to work.

86th Amendment Act 2002 makes provisions for early childhood care and education (Art.45)

There has been much welfare legislation to make the conditions of the work humane for the workers. Factory laws, Industrial Disputes Act 1947 are some examples.

Promotion of the cottage industries has been one of the main aspects of the economic policy of the government and there is in existence the Khadi and the Village Industries Commission for the purpose. 97th Amendment Act 2012 promotes cooperatives which is a Gandhian dream.

The government position as regards the uniform civil code is that the matter being sensitive in the country with its social backwardness , unless the religious groups concerned come forward and voluntarily seek the enforcement of the UCC, it is not desirable to implement the article. Women are brought on par with men in Hindu Succession Act that was amended in 2005. Special Marriage Act 1954 is made to give everyone the option of marrying outside their personal laws.

The policy of preferential treatment in education, administration and economy for weaker sections including women, SCs, STs and the OBC has been a consistent plank of the government welfare policy, the most recent being the implementation of

Art 48A Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Art 49. Protection of monuments and places and objects of national importance.- It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Art 50. Separation of judiciary from executive- The State shall take steps to separate the judiciary from the executive in the public services of the State.

Separation of judiciary from executive

The need for the separation are

- It is necessary for independence of judiciary
- It helps in specialization
- Such separation helps in better governance as there will be more checks and balances based on the doctrine of separation of powers
- Rule of law also demands that the separation take place as otherwise the judiciary may not be impartial
- Civil rights are better protected

According to the Law Commission (14th Report, 1958),"... separation means officers will devote their time entirely to judicial duties and this fact leads to efficiency in the administration of justice."

The essential feature of the scheme for the separation since Independence was the transfer of purely judicial functions like trial of criminal cases from the collector and subordinate magistrates to a new set of judicial officers who were no longer to be under the control of the collector. Previously, under the CrPC and other relevant codes , the functions of a magistrate fell into three classes

- "police" functions,e.g. the handling of unlawful assemblies
- administrative functions, e.g. issuance of licenses for firearms and similar functions; and
- judicial functions, e.g. the trial of criminal cases.

When separation was effected, the judicial functions were transferred to courts. Thus, executive magistrates and judicial magistrates were separated. The former were given functions like sanction of prosecution etc while judicial functions were with the latter.

maintenance for the period as required by the personal Muslim Law, but it was held by the Supreme Court that Shah Bano would be entitled to get maintenance under section 125 of CrPC. This decision resented and protested against by several Muslims priests claiming that this decision would harm their personal law and social order. Parliament responded by passing *the Muslim Women's (Protection of Rights in Divorce) Act in 1986*, a law that essentially provided for maintenance for Muslim women outside the criminal code, thus ensuring that Muslim women were not protected under the constitutional right to equality, and that they could not have the benefit of Section 125 of the Criminal Code.

The second instance in which the Supreme Court again directed the government of Article 44 was in the case of Sarla Mudgal v. Union of India(1995). In this case, the question was whether a Hindu husband, married under the Hindu law, can become a Mulsim so that he could marry again. The Court said no to such conversion.

The Supreme Court again reminded the government of its Constitutional obligations to enact a UCC in 2003 when a Christian priest moved the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. His contention was that Section 118 of the said Act was discriminatory against the Christians as it imposed unreasonable restrictions on their right to donate property for religious or charitable purpose by will. The apex court struck down the Section declaring it to be unconstitutional.

Art 45. Provision for free and compulsory education for children.- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. The above contents are replaced by the 86th Amendment Act 2002 by the following:The State shall endeavour to provide early childhood care and education(ECCE) for all children until they complete the age of six years.

Art 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. State shall protect them from social injustice and all forms of exploitation.

Art 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health, and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Art 48. Organisation of agriculture and animal husbandry.- The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

However, the Roman Catholic Church does not accept divorce under the Indian Divorce Act.

Thus, the personal laws of different religions in India do injustice to women and need changes. It is one of the reasons for adopting UCC.

Hindu Succession Act : 2005 Amendments

The Hindu Succession Act 1956 governs the succession to the property of a deceased Hindu. The Hindu Succession Act is applicable to any person who is a Hindu. It includes Buddhists, Jains and Sikhs within its ambit.

There are mainly two schools of Hindu Law namely the Mitakshara and the Dayabhaga. The Mitakshara school is prevalent in many parts of India, while Dayabhaga school prevails in West Bengal and some of its surrounding areas. Property of a Hindu can be broadly divided into two categories - joint property and separate or self-acquired property. Joint property (coparcenary property) comprises of ancestral property essentially.

According to the Mitakshara law, only the son, grandson and great grandson constituted a class of coparceners. Coparcenary is a body of persons within a joint Hindu family consisting of father, son, grandson and so on. Coparcener's wives or widows and unmarried daughters have no significant rights. Females cannot inherit ancestral or joint property as males can. It is only when a coparcener dies, a female can get her share in her capacity as an heir to his estate. The amendment to Hindu Succession Act in 2005 removes this discrimination.

Under the amended law, the daughter is given a share in the ancestral property. If a person can be the member of the coparcenary the next stage is that he or she can become the Karta of the family.

A Karta is the head of the family and hence now it would be possible for daughters to occupy this role. Currently only male members can occupy thisspecific position.

This change can be quite significant in terms of social equations. However all this relates to only coparcenary property. In case of other property there is no restriction on the ability of anyone to will away the self acquired property in any manner that they desire.

UCC and Supreme Court

Article 44 of the constitution states that *the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.* In the case of Shah Bano Begum v. Mohd. Akeel Khan 1985 a Muslim woman sought maintenance from her husband after their divorce. Being a Muslim, husband had paid her

Rationale for the UCC

The reasons given for endeavouring for the UCC are the following

- Separate personal laws can be the basis for sub-national identities
- Intra and inter religious differences in inheritance, marriage etc are against social harmony
- As there is a common criminal law, there should be common civil code as well
- UCC makes sure that women who are given a subordinate status under all religions , attain equality. Thus, legal gender empowerment also requires UCC.

At the same time, Constitution does recognize the fact that UCC can only be introduced on voluntary demand but not imposed, in the long term social and national interest. If it is imposed, it can divide the society and communalise it. It is felt that with social and political development, UCC could be gradually implemented as different religions will volunteer to adopt it. Otherwise, it may be seen as an imposition and rejected. That is the reason for its incorporation as a DPSP which is non-binding but fundamental to governance of the country.

Even though personal laws are not codified in India, there have been many attempts at reforming these laws . For example, Special Marriage Act, 1954- under which men and women have same rights as it is religion-neutral. Two, progressive verdicts of the courts also made personal laws more gender sensitive.

Personal Laws and the status of women

Personal laws have been unjust to women.

The Hindu Succession Act makes provision for a Hindu Undivided Family to ensure that property remains with the male line of descent. A son gets a share equal to that of his father; a daughter gets only a share in her father's share. She cannot reside in the family home unless she is single or divorced, and cannot claim her share of property as long as the men of the family continue to live in it. A woman's right to agricultural property is also similarly restricted to "prevent fragmentation of landholdings." The law is changed as detailed ahead.

Some Muslim personal laws have been codified in the Shariat Act 1937, the Dissolution of Muslim Marriages Act, 1939 and the Muslim Women (Protection of rights on Divorce) Act, 1986. Under the Muslim Personal Laws ,women's right to property is limited to half of what their brothers get. The 1937 Act categorically denies women any right to agricultural land. Polygamy among Muslims remains an issue. Muslim personal law makes man the sole guardian of a child.

Personal laws applicable to Christians were the earliest to be codified. The Indian Divorce Act was amended to give women and men equality in seeking divorce.

poverty; lead to better use of human resources; and social indicators will improve.

The MNAREGS since 2006(Parliamentary Act was made in 2005 and it became operational in 2006) which is operating in the entire country since 2008 partially fulfills Art.41.

Art 42. Provision for just and humane conditions of work and maternity relief.- The State shall make provision for securing just and humane conditions of work and for maternity relief.

Art 43. Living wage, etc., for workers.- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Living wage means the wage necessary for a person to achieve certain specific standard of living. It is different from minimum wage which is set by law and may not meet the requirements of a living wage.

Art 43.A Participation of workers in management of industries.- The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

97th amendment to the Indian constitution inserts a new directive principle into Part IV of the constitution, Article 43B, which reads: "The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies". The amendment came into force in January ,2012

Art 44. Uniform civil code for the citizens.- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Uniform Civil Code

Personal laws

Personal laws relate to marriage, divorce, maintenance, succession, and adoption; they also have tax and other implications. A secular and democratic society requires common law that fosters national and social integration. Art.44 directs that "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

- concentration of wealth is prevented
- that there is equal pay for equal work for both men and women;
- children are not forced by economic necessity to enter avocations unsuited to their age or strength;
- that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children are protected against exploitation .

Art.39 A. Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 39(d) of the Indian Constitution states that *the state shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women.* Supreme Court ruled in Grih Kalyan Kendra Workers" Union vs Union Of India And Others (1991) that "Equal pay for equal work is not expressly declared by the Constitution as a Fundamental Right but in view of the Directive Principles of State Policy as contained in Art. 39(d) of the Constitution "equal pay for equal work" has assumed the status of the Fundamental Right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 of the Constitution". The Court further observed:"Directive Principles as even pointed out in some of the Judgments of this Court, have to be read into the Fundamental Rights as a matter of interpretation".

Art 40. Organisation of village panchayats.- The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Art 41. Right to work, to education and to public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Right to work

In a country with high level of unemployment, there is a need for right to work as a measure of social justice. Art.41 commits the Government to it. However, Art.41 says that right to work can be given within the limits of economic capacity and development. In other words, if the government has resources and the development paradigm permits the same, the right can be given. It will help create assets; remove

Guidelines to public policy

Public policy is essentially the policy of the Government. Public policy is made by the Executive conventionally. Certain important government policies have been enacted by parliamentary laws: education, labour, environment etc. Judiciary also contributes to it- education, food etc. But largely, it is the privilege of the Executive. DPSPs deal with the public policy that aims at socio-economic change which in a developing country like India is largely aimed at removing the hardships of the weak. It also has environmental dimension.

Judiciary considers DPSPs as an important moral input in government policy. In fact, the Supreme Court, starting from Keshavananda Bharati case verdict in 1973 ruled that DPSPs can be a source of reasonable limitation on Fundamental Rights in pursuit of public interest.The same was reinforced in the IR Coelho verdict(2007) dealing with the Ninth Schedule.

DPSPs influence a wide gamut of government policies- economic policies like agrarian reform; banking and taxation policy; employment generation; political decentralization; closing gender disparities; factory legislation; unifying personal laws; pre-school child care; environmental stability; prohibition; and divesting the executive of its judicial responsibilities and powers.

DPSPs in detail

Art. 36. "the State" has the same meaning as in Part III(Fundamental Rights)

Art.37. DPSPs are not enforceable by any court(in case of non-implementation, courts can not be moved), but the principles therein laid down are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Art.38. State to secure a social order for the promotion of welfare of the people

- The State shall secure a social order in which justice, social, economic and political, shall inform all the institutions of national life.
- The State shall, minimize the inequalities not only among individuals but also amongst groups of people

Art.39. Certain principles of policy to be followed by the State:- The State shall, in particular, direct its policy towards securing

- the right to an adequate means to livelihood;
- that the ownership and control of the material resources of the community are so equitably distributed that

DPSPs and economic justice

The Constituent Assembly chose welfare state over the minimalist state. Minimalist state discharges law and order responsibilities internally and keeps security from external threats. Government , under minimalist or laissez faire state, does not take up socio-economic interventions.

DPSPs guide public policy to distributive justice where resources of the country are to be meant for the welfare of all. DPSPs differ from FRs in the sense that the former have economic content - prevent concentration of economic resources(Arts.38 and 39); promise right to work(Art.41); social security for the vulnerable sections like sick and old-aged(Art.41); just and humane conditions of work(Art.42); labour-intensive growth process(Art.43) and so on. FRs deliver on political democracy, largely.DPSPs are not justiciable. DPSPs are positive- require Government to act. DPSPs guide governance(Art.37)

DPSPs are non-justiciable

The Sapru Committee appointed by an "All Parties Conference" in 1944 submitted its report in 1945. Constituent Assembly drew from its recommendations in formulating the Fundamental Rights and other rights in the Indian Constitution.

Sapru Committee suggested two categories of individual rights- justiciable and non-justiciable. The former are found as FRs and other rights in the Indian Constitution .The latter are mentioned in Part IV of the Constitution as DPSPs which are largely in the nature of `instruments of instruction' to the Government for making appropriate policies of socio-economic change.

Art.37 says that DPSPs are non-justiciable but are fundamental to the governance of the country. They are moral guidelines to the government to make positive socio economic policies for inclusive growth. DPSPs are are not mere pious declarations. It was the intention of the framers of the Constitution that DPSPs should guide the State for socio-economic and political reconstruction of the country. Same is stated in Art.37.

The reason for making the DPSPs non justiciable are the following

- Economic resources may not permit. For example, right to work
- Social and political development may not be adequate. For example, uniform civil code
- They are moral in nature and can not be legally imposed: banning cow slaughter and prohibition
- Administrative and economic constraints . For example, free and compulsory education for children in 10 years after the commencement of the Constitution(Art.45)

International Relations

Indian foreign policy, since Independence, has stood for peace in the world and multilateralism. Our initiation of the non-alignment as the bedrock of foreign policy to defuse global tensions and build a independent and stable base for national development is a classical example. Our support for decolonization, opposition to apartheid and advocacy of democratization of United Nations and universal and non-discriminatory disarmament are consistent with Art.51 which says the following

The state shall:

- Promote international peace and security
- Aim at the settlement of international disputes by arbitration.
- Also aim at maintaining just and honourable relations with other countries.

Thus, seeking international peace and cooperation is a Constitutional directive.

Others

There are other Directive Principles which deal with important areas of governance like separating the judicial powers from executive so that there is no arbitrary administration and civil liberties are safe(Art.50). Also, preservation of cultural and historical sites (Art.49) Workers' participation in management (Art.43A) and environmental directives (Art.48A) are other examples.

Characteristics of DPSPs

- Amplification of Preamble
- Socio-economic justice
- Guidelines for public policy
- Non-justiciable

DPSPs elaborate on Preambular values

Socialist democracy is enshrined in the Preamble to the Indian Constitution. In fact, the word 'socialist' was incorporated into the Preamble by the 42nd Amendment Act 1976. Socialism is elaborated in Art.38 and 39. Democracy is given full meaning by the 73rd and 74th Amendment Acts in 1992 with Panchayat and Nagarapalika bodies being given Constitutional status and enforceability. Secularism is found in Art.44 where the goal of uniform of civil code is mentioned. Social justice is also substantially contained in the Part IV as seen above.

Preamble commits the government to equality- social, political and economic. It is given substance by Art.38 and Art.39 where redistribution of material resources for the entire community is promised.

care of the weaker sections. The state is mandated to legislate for securing right to work, right to education and right to public assistance in case of unemployment, old age, sickness and disablement.

Gandhian Principles

The philosophy of Mahatma Gandhi centres around empowerment of people through decentralization of political power to villages and economic power to the village industries. It is embodied in the traditional Indian institutions of participatory governance called Panchayatraj and Nagarapalika bodies. The economic democracy that Gandhian ideals speak of is based on cottage and villages industries as they are labour-intensive; help in dispersal of power geographically and also in terms of economic benefits; and prevent concentration of wealth. Further, Gandhiji advocated banning of cow slaughter and banning consumption of intoxicating substances. The above elements of Gandhian ideology are found in the DPSPs in the following Articles of the Constitution

- Art.40(Panchayatraj)
- Art.43(Village and cottage industries)
- Art.47(prohibition)
- Art.48(banning of cow slaughter)

Comptroller
UID

DPSPs and Social Integration

DPSPs encompass a wide range of State activity. They impose social obligations on federal and the State Governments which are to be enacted into law.

Gender disparities; caste exploitation; inter-religious divergences on vital areas of social life like marriage and succession; backwardness of certain social sections like the Dalits are some of the social areas in need of change. While Fundamental Rights address some of the above problems on a justiciable basis(Art.15, Art.16 and Art.17), DPSPs contain instructions to the Government to eradicate these social imbalances with public policy-

- Protection and development of children(Art.39 and 45)
- Right to education(Art.41
- Art.42(maternity relief)
- Art.44 (uniform civil code)
- Early childhood care and education(ECCE)(Art.45)
- Art.46(welfare of weaker sections)
- Art.47(improvement of health standards)

limited because it is available for only 100 days in a year.

Constitution of India declares that DPSPs are "fundamental in the governance of the country"(Art.37). Both the Legislature and the Executive should apply DPSPs while making and implementing policies in social and economic spheres.

Classification of Directive Principles

DPSPs are very comprehensive in their scope to include almost all aspects of socio-economic change . They guide State activity in political, economic, social, environmental, educational, cultural and international areas. The DPSPs can be broadly classified into the following categories

- Socialistic
- Gandhian
- Social
- International
- Others

DPSPs and Socialism

Socialism is a worldview in which the Government makes policies that aim to minimize inequalities. Government does so by public ownership of means of production. The aim is to prevent concentration of wealth in a few hands. It grants right to work to the people and actively intervenes in the socio-economic affairs in favour of poor and vulnerable like elderly and women.Since the 11th Five Year Plan(2007-12), the goal of inclusive growth is being actively followed by the government to achieve socialist society.

Socialist policies are necessary in an underdeveloped country like India with large section of the population being poor.

DPSPs that are socialistically oriented are

- Art.38
- Art.39
- Art.41 ~ MGNREGA
- Art.42
- Art.43
- Art.45
- Art.46

The above DPSPs direct the State to make policies for distribution of wealth; legislate on right to work and education; living wage which is equal for equal work;

DIRECTIVE PRINCIPLES OF STATE POLICY

Fundamental Rights (Part III of the Indian Constitution) that were discussed in the earlier chapter are the bedrock of political democracy. They ensure that democracy prevails and the roots of democracy run deep. They are essential for individual development - essential for an individual to attain full intellectual, moral and spiritual development.

Political democracy , however, remains fragile unless the socio-economic foundations are strengthened with policies that aim to establish a welfare state. Welfare State is a government that takes primary responsibility for the welfare of the people ,particularly those who are weak and vulnerable. It is a state that aims to minimize disparities and ensure equitable development . Individual rights can be effectively enjoyed and become meaningful only when social security and economic well being are ensured. DPSPs aim at creating a new socio-economic order to provide a firm foundation to political democracy in India

Directive Principles of State Policy are contained in Part IV of the Indian Constitution in Art.37-51. These are instructions/directions given to all present and future governments in India-federal and state governments to make policies and legislation incorporating these principles. DPSPs, thus guide public policy.

Influences

The concept of Directive Principles as incorporated in the Constitution of India, is influenced by various factors. Firstly, DPSPs as an idea was borrowed from the constitution of Ireland. Secondly, Government of India Act, 1935 contained a set of such "Instruments of Instructions" . Thirdly, the leadership of the freedom struggle representing liberal democratic ideas of the west chose to include them in the Indian Constitution as moral guidelines for the public policy of the welfare state. That is, DPSPs were intended to help the Government play a positive role in rebuilding India as a model democracy with socialist content. Fourthly, the contemporary socialist ideas had impacted the framers of the constitution. For example, the DPSPs related to worker welfare, elimination of inequality etc. Fifthly, the Constituent Assembly was influenced by the ideas of Mahatma Gandhi like Panchayatraj, promotion of village industries etc.

It is necessary to note that in Part III of the Indian Constitution- Fundamental Rights -some important economic and social rights were not originally included , such as : right to work, right to education, social security etc . These rights found place in the Directive Principles.However, as Indian democracy strengthened and economy grew, the State found the need and resources to shift some of these DPSPs into the Chapter on FRs. For example, the right to education is today an FR. Right to work since 2005 has been a limited legal right- limited to the rural adults and also

- Art.21 leading to a large group of rights under the right to life
- Due process of law being adopted in the Menaka Gandhi case in 1978 to strengthen judicial protection of rights
- Minority protection in the educational sphere being given additional attention by the amendment of Art.30.

On the other, they have been diluted in the following way

- Protection from Art.13 was removed by the 24th Amendment Act
- Pressure from the DPSPs
- Removal of right to property from Part III

Rights, Duties and DPSPs

Parts III, IV and IVA of the Constitution of India are closely connected and are in fact interdependent.

With the development of law in recent years, certain matters covered under Part IV relating to Directive Principles have been elevated to the status of fundamental rights, for instance, the right to education. Though this right formed a part of the Directive Principles of State Policy initially, compulsory and primary education has been treated as a part of Article 21 of the Constitution of India by the courts, which consequently led to the enactment of the Right of Children to Free and Compulsory Education Act, 2010.

Article 51A deals with the fundamental duties of the citizens. It postulates that it shall be the duty of every citizen of India to abide by the Constitution, to promote harmony and the spirit of common brotherhood, to safeguard public property and to abjure violence.

A common thread runs through Parts III, IV and IVA of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens.

It is difficult to imagine the existence of a right not coupled with a duty. The duty may be a direct or indirect consequence of a fair assertion of the right. Part III of the Constitution of India although confers rights, still duties and restrictions are inherent thereunder. The intimate bonds the complementary relation will be further explored ahead .

FRs for prisoners

It must be stated that any one imprisoned – undertrial or convict- can enjoy those FRs which can be enjoyed , physical confinement notwithstanding. For example, freedom of speech is enjoyable while freedom of movement is physically not possible.

NCRWC and Fundamental Rights

The National Commission to Review the Working of the Constitution (NCRWC) that was set up in 2000 by the Union Government, submitted its report of recommendations in 2002 and sought to strengthen the Fundamental Rights in the following ways

- freedom of speech and expression(Article 19) should be amplified to explicitly provide for freedom of the press and other media
- Art.19 should be expanded to incorporate right to information .
- right to privacy
- right to compensation if a person is illegally deprived of his right to life or liberty
- right to leave and return to India
- right not be preventively detained, under any circumstances, for more than six months
- no suspension of fundamental rights to freedom of religion or right to move the Supreme Court (habeas corpus) under Emergency (Article 352).
- Article 300-A of the Constitution be amended to ensure that "no deprivation or acquisition of agricultural, forest etc land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land."

Important Constitution amendments to FRs

Changes in Fundamental Rights, Directive Principles and Fundamental Duties require a Constitutional amendment which has to be passed by a special majority of both houses of the Parliament.

- Art.15 and 16 were amended for empowerment of the SC, ST and OBC communities-, the 1st and 93rd Amendment Act.
- The right to property was originally included as a fundamental right. However, the 44th Amendment passed in 1978, revised the status of property rights by removing it from Part III
- Article 31-C, inserted into the Directive Principles of State Policy by the 25th Amendment Act of 1971 seeks to upgrade the DPSPs with reference to Arts.14 and 19.
- The right to education at elementary level has been made one of the Fundamental Rights under right to life and personal liberty by the 86th constitutional amendment of 2002.

Fundamental Rights: A retrospective

FRs have seen a mixed record. On the one hand, they are expanded by way of

- Art. 15 being strengthened
- Art.16 being extended to OBCs

restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them

Article 34: Restriction on rights conferred by this Part while martial law is in force in any area

Article 35: Legislation to give effect to the provisions of this Part.

Welfare provisions of Part III of the Constitution are included in Art.15, Art.16, Art.17, Art.23, Art.24, and Art.30.

Fundamental Rights and National Emergency

Under the Indian Constitution, national emergency can be imposed by the President when the national security is threatened(Art.352).Such proclamation impacts on the FRs in the following way

Art.358

Art.358 comes into effect immediately after the proclamation of National Emergency. Article 19 is suspended when a Proclamation of Emergency is made on grounds of war or external aggression . That is, if the proclamation is on grounds of armed rebellion, Art.19 can not be suspended under Art.358.

Art. 359

Art.359 suspends the enforcement of the rights conferred by Part III during emergencies. It suspends the right to move any court for the enforcement of such of the Part III rights (except articles 20 and 21) as may be mentioned in the President's order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

Such order should be laid before each House of Parliament.

It must be clearly seen that Art.359 suspends the enforcement and not the right itself.

Constitution was amended by Constitution (Forty-Fourth) Amendment Act 1978 and it was provided by article 359-1A that articles 20 and 21 cannot be suspended when a proclamation of emergency is in operation.

total of the proceedings that have already taken place. Certiorari is issued after the proceedings have commenced.

Essentially, it is a writ issued by a superior court and is directed to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in the particular case.

It is a writ with the same scope as prohibition. It is issued after proceedings begin so as to quash the proceedings and transfer the case to a competent court. If the judgement has already been given, certiorari writ is issued to quash it.

The following are the circumstances under which prohibition and certiorari are issued:

- When the judicial body does not have jurisdiction
- Exercises excessive jurisdiction
- Natural justice is violated
- Acts on the basis of a law that is itself struck down

b) Quo Warranto: It means ` by what authority?' The writ of quo warranto enables enquiry into the legality of the claim which a person asserts, to a public office and to oust him from such position if he is holding it illegally and without valid credentials. The holder of the office has to show to the court under what authority he holds the office. It is issued when

- the office is of public and of a substantive nature
- created by statute or by the Constitution itself, and
- the respondent has asserted his claim to the office.

It can be issued even though he/she has not assumed the charge of the office. The fundamental basis of the proceeding of quo warranto is that the public has an interest to see that a lawful claimant occupies a public office. It is not available against a ministerial office.

Supreme Court set aside J. Thomas' appointment as Central Vigilance Commissioner (CVC) in 2010 on a petition in a PIL case in 2010 with the writ of quo warranto and certain other conditions.

Article 33: Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-
(a) Members of the Armed Forces; or
(b) Members of the Forces charged with maintenance of public order; etc
(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),be

Mandamus does not lie against the President or the Governor of a State for the exercise of their duties and power (Article 361) as they work on the advice of the Council of Ministers. It does not lie also against a private individual or body except where the State is in collaboration with such private party. It is a discretionary remedy and the High Court may refuse if alternative remedy exists except in case of infringement of fundamental rights.

The duty sought to be enforced must have two qualities:

- It must be a public duty
- It must not be discretionary

Continuing Mandamus is a writ of Mandamus issued by the higher judicial bodies- HCs and SC in India- in general public interest asking the officer or the authority to perform its task expeditiously and independently,for preventing miscarriage of justice.The concept of Continuing Mandamus has been discussed and dealt with in the respective cases of 1997 *Vineet Narain* v. *Union of India* and 1984 *Bandhua Mukti Morcha* v. *Union of India & Ors.* When a petition is filed under Article 32 or Article 226 of the Constitution of India in the Supreme Court or the High Court respectively, the court can issue the writ of Mandamus to enforce law and in the interest of general public welfare.

Supreme Court of India has, in an act of remarkable judicial activism, created the concept of "continuing mandamus" on policing and investigative authorities in order to ensure that criminal investigation, particularly in high-profile cases, is done without political executive using the agencies for its self interest. To further this free and fair investigation, the Supreme Court monitors investigations performed by agencies like the Central Bureau of Investigation. In December 2010 in Centre for Public Interest Litigation and Ors. v. Union of India and Ors., the Supreme Court ordered a continuing mandamus on the investigation by the CBI and the Enforcement Directorate into the 2G spectrum scam:

Prohibition: A writ of prohibition is issued to an inferior court or semi-judicial body (tribunal), preventing the latter from exercising jurisdiction which does not belong to it. When a semi-judicial body acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be issued. It is generally issued before the trial of the case. While mandamus commands activity, prohibition commands inactivity, it is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions.

Certiorari: In Latin, it means 'to be informed of' or "to be ascertained". It refers to the order a court issues to a lower court or semi-judicial body to transfer the case to another court of semi-judicial body. The reason is that the original body does not have the jurisdiction or there are irregularities involved. The higher court can quash a portion or

The above writs are issued for the enforcement of any of the rights conferred by this Part. All the above are prerogative writs. They were a part of English law. Their name comes from the fact they were originally enjoyed only by the Crown, and only later were rendered accessible to common man.

Habeas Corpus: The writ of Habeas Corpus is a remedy available to a person who is confined without legal justification. The words habeas corpus literally means "to have the body". The court issues the writ which has to be obeyed by the detaining authority by producing the person before the court.

A Habeas Corpus is a legal writ that protects an individual against arbitrary imprisonment by requiring that any person arrested be brought before a court for formal charge. If the charge is considered valid, the person must submit to trial; if not, the person is left free. When the law is suspended, for example, when national emergency is proclaimed, then individuals can be imprisoned indefinitely and without charge.

Under Articles 32 and 226, any person can move for this writ to the Supreme Court and High Court respectively. The applicant may be the prisoner or any person acting on his behalf to safeguard his liberty. An appeal to the Supreme Court may lie against an order granting or rejecting the application. Disobeying this writ is met with by punishment for contempt of court under the Contempt of Courts Act.

The difference between bail and the writ of Habeas is that the former wants a release from jail conditionally even as the case is proceeding, the latter challenges the very detention as illegal. Parole on the other hand is conditional release from jail of a person who has been convicted and imprisoned . Parole is granted because of "good" behavior or jail over-crowding and that the prisoner does not pose a threat to society being released from Prison before sentence has been completed... If he/she violates conditions of Parole... he/she will be returned to Prison and complete entire sentence and may be even extra time for your violation(s). For parole, no money/fees need be paid. For bail it has to be.

Mandamus: The word mandamus literally means "we command". The writ of mandamus is a command issued to direct public or semi-public authority commanding him to discharge a specific public duty. This writ is used when the inferior public or semi public office has refused to discharge its official duty. Mandamus commands activity. The writ is used for securing judicial enforcement of public duties. It is not issued if the authority has discretion. That is, the official duty must be a statutory requirement. The Constitution, through Articles 226 and 32, enables mandamus to be issued by the High Court and the Supreme Court, respectively. It is issued to government, subordinate court, and company etc commanding them to act or refrain from acting.

Mandamus has less scope compared to habeas corpus- while habeas corpus can be issued to a private person, mandamus can be issued only to the public or semi-public body.

An important aspect of the controversy around the Ninth Schedule pertains to the relationship between Parliament and the Judiciary- conflict between the representative legislature that needs to respond to the needs of the people and the judicial insistence on basic structure of the Constitution being maintained.

Supreme Court Judgement(2006) on Ninth Schedule

The Supreme Court , in the I.R.Coelho judgment in 2007 ruled that laws placed under Ninth Schedule after April 24, 1973(the date of Keshavananda Bharati case verdict when the concept of `basic features' was introduced by the apex court) shall be open to challenge in court for violation of the basic structure. Also, 9th Schedule items can be challenged for violating fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution. Articles 14, 19 and 21 of the Constitution constitute the `golden triangle` and can be diluted only if sufficient public interest is served.

The question in Coelho case essentially related to the competence of Parliament to put any law under the Ninth Schedule and, thus, beyond judicial scrutiny.

"A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court," the bench held.

The ruling thus tests an item in the Ninth Schedule on two grounds

- basic structure doctrine
- sanctity of fundamental rights

A three-judge bench was be set up to look into every law placed in the Schedule since April 1993 and satisfy itself that its place is justified.

Right to Constitutional Remedies

Article 32: Remedies for enforcement of rights conferred by this Part.
(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of

1 Habeas Corpus
2 Mandamus
3 Prohibition
4 Certiorari
5 Quo Warranto

An act is included in the Ninth Schedule by exercising the constituent power of the Parliament i.e. by a process of constitutional amendment. Today the schedule consists of about 284 Acts. Most of them are related to land ceiling and are passed by the State Legislatures. They are placed in the Ninth schedule by the Parliament by an amendment Act. The Ninth Schedule was conceived as a novel and innovative way of ensuring that parliamentary legislation of a progressive kind is not caught in litigation and delay.

However, it is seen that laws which are not in any manner connected with land reforms or agrarian reforms have been included in the Ninth Schedule in order to avoid judicial scrutiny of their constitutionality on the ground of violation of Fundamental Rights. For example

- The Industries (Development and Regulation) Act, 1951
- The Monopolies and Restrictive Trade Practices Act, 1969 and
- The Foreign Exchange Regulation Act, 1973.

This is contrary to the purpose and object of article 31B.

In 1994, the TN Backward Classes, Scheduled Castes, Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993, was included in the Ninth Schedule of the Constitution through the 76th Constitution Amendment. The TN Act enjoys constitutional protection from challenge in court.

From the 1970's onwards, the courts realized the scope for misuse of Ninth Schedule. The Waman Rao case verdict of the apex court (1981) stated that any amendments or additions to the Schedule after the Keshavananda Bharti case verdict 1973 would have to be examined with respect to their compatibility with the basic structure of the Constitution.

Questions raised by the frequent recourse to the Ninth Schedule

- it is to escape judicial review
- Judicial review is a basic feature of the Constitution and it can not be abridged. To insert in the Ninth Schedule an Act which is nullified by the apex court is to destroy the basic structure of the Constitution.
- it is arguable if policies other than agrarian reforms can be placed in the Ninth Schedule- for example, inclusion of the Tamil Nadu reservation law giving reservation up to 69% against the Supreme Court verdict of limiting it to 50%.
- its impact on separation of powers and checks and balances if judicial review is denied.
- Ninth Schedule is redundant as the purpose of Art.31B is met.

The Supreme Court upheld the immunity but struck down the other part of Art.31(c) which is the following: no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

The expanded scope of Art.31(c) under the 42nd Amendment Act was struck down by the apex court in the Minerva Mills case 1978 for denial of judicial review.

The 25th Amendment Act also said that in case of acquisition of property for public purpose, an 'amount' can be paid and market rate compensation need not be paid. Supreme Court upheld the same but ruled that the 'amount' can not be 'illusory'

Right to Property: Legislative and Judicial history

Originally the Constitution contained the following:

Art. 19(1) (f) All citizens shall have the right to acquire, hold and dispose of property....,

Art 19(5) nothing in the above clauses shall prevent the state from making any laws in the interests of the general public

Art 31 Right to property: The right to property came under pressure from Parliamentary laws from amendments to Art.31 by way of addition of Arts.31 a, b and c.

Art.31A and 31B as were inserted by the very first Constitution Amendment Act 1951 were a limitation on the right to property. Art.31C that was introduced by the twenty fifth Constitution Amendment Act 1971 was another limitation. They were aimed at implementing DPSPs. Finally, 44th Amendment Act 1978 deleted Art 31 as the right to property . It now appears as Art.300A. The difference being that it is only a Constitutional right and not a fundamental right any longer.

The objective of initially limiting and later removing the right to property as a Fundamental Right is to implement socialistic policies to benefit the havenots.

Ninth Schedule – land reforms / National security

The Ninth Schedule was created by a Constitution Amendment in 1951 by former Prime Minister Jawaharlal Nehru to implement land reforms. The basic purpose of the schedule was to abolish zamindari system.Over the years, government included several laws under it, for example the 69 per cent reservation law of Tamil Nadu.

The Ninth Schedule was included in the Indian Constitution by the Constitution (First Amendment) Act, 1951, as provided by Article 31 B. Items placed in it are given judicial immunity and can not be questioned in a court of law for contradicting Art.14 and Art.19. Thus, judicial review is excluded.

bench of the SC, in Rev. Stainislau vs State of MP case 1977 ruled that Art. 25(1) doest not give the right to convert but only the right to spread the tenets of one's own religion. The substance of the judgement is

- Art. 25.1 gives the freedom of conscience to all religions and not to one particular region.
- Right to convert another person is a violation of his own freedom of conscience.
- What is freedom for one is freedom for the other in equal measure.
- State can intervene in the defence of the public order etc., even if conversions are construed as legal.
- If the conversions are permitted they will be indulged in by every religion and the result is bound to be chaos and destabilization.

The SC delivered the verdict about the legislation made in MP and.Orissa to outlaw conversions based on force, fraud and allurement thus exploiting the vulnerability in the social situation.

Thus, only voluntary conversions are valid in India.

Some states in India have passed anti-conversion laws.

Art.31

Art.31 was originally the right to property but was repealed in 1978 by the 44th Amendment Act and made into an ordinary right- Art.300A.

(land to da landless)

Article 31A: If Parliament makes law for implementing agrarian reforms, it can not be struck down by the courts on grounds that it is inconsistent with any of the rights conferred by Article 14 or Article 19.

Article 31B: Validation of certain Acts and Regulations: None of the Acts and Regulations specified in the Ninth Schedule shall be deemed to be void on the ground that such Act, Regulation or provision is inconsistent Art.14 or Art.19.

Article 31C: Saving of laws giving effect to certain directive principles.

The 25th Amendment Act inserted Article 31 (c) which immunises legislation undertaken to protect two Directive Principles in Article 38(b) and (c) from challenge in a court of law for any infringement of the rights guaranteed under Articles 14, 19 and 31.

The scope was further extended to immunise all DPSPs against the three Fundamental Rights by the 42nd Amendment Act 1976.

T.M.A. Pai Foundation and Others vs State of Karnataka and Others case 2002

Following are the essential features of the landmark judgement

- All citizens have right to establish and administer educational institutions
- The right to administer MEI(Minority Educational Institutions) is not absolute .
- State can apply regulations to unaided MEIs also to achieve educational excellence
- Aided MEIs should admit certain percentage of non-minority students
- Percentage of non-minority students to be admitted to an aided MEI to be decided by the State or University
- Fees to be charged by unaided MEI cannot be regulated but no institution can charge capitation fee

The essence of the judgement is the following

- Right to establish an educational institution is available to both minority and majority
- concept of minority is with reference to the State as States have been linguistically reorganized since Independence
- aided and unaided MEI need to be differentiated
- excellence demands that there should be reasonable regulation by the Government even of the unaided MEIs.

Islamic Academy of Education Vs State of Karnataka case 2003

Supreme Court's five-member Constitution Bench (2003)clarified on the TMA Pai case verdict. Essentially, the ruling says that: Article 30 confers on linguistic and religious minorities the right to establish educational institutions but Government could exercise control and regulation on them for good standards.

The issue acquires importance in the context of the fact that Constitution does not define the words "majority" and "minority" - a lacuna that has induced many Hindu sects, like the Arya Samajists and the Ramkrishnaites to claim minority status. It may be noted that Hindus (82% of the Indian population) are a minority in five States, (Jammu & Kashmir, Punjab, Nagaland, Mizoram, and Meghalaya).

Conversions

India is a secular country with Art. 25-28 containing the essence of secularism and Preamble to the Constitution proclaiming the same categorically.The people of the country are given the freedom of conscience and the right to freely profess, practise and propagate religion subject to the public order, morality, health and so on (Art. 25.1).

There has been a debate about whether Art. 25(1) can be understood as granting to the people the right to convert another person to one's own religion. But the Constitution

The figures for persons speaking a language subsidiary to their mother tongue are given below: Hindi (5.10%), Oriya (5.75%), Malayalam (7.11%), Gujarati (7.31%), Tamil (8.11%), Bengali (8.65%), Assamese (8.96%), Marathi (10.47%), Kashmiri (10.69%), Telugu (14.03%), Punjabi (14.16%), Kannada (14.43%), Urdu (22.09%).

Art.29 and 30: Analysis

Article 29(I) guarantees to any section of the citizens residing in any part of India having a distinct language, script or culture of its own, the right to conserve the same, i.e., language, script or culture. A minority community can preserve its language, script or culture by and through educational institutions. Right to establish and maintain educational institutions of their choice is necessary to preserve their distinctive language, script or culture. In order to preserve and promote their language etc, education is important and so Art.29 (2) supports the above. However, since the expression' any section of citizens' is used in the Article, it applies to majority as well.

Article 29(2) says that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on ground only of religion, race, caste, language or any of them.

Article 30(I) says that all minorities ,whether based on religion or language, have the right to establish and administer educational institutions of their choice. This right is further strengthened by Article 30(2) which prohibits the State from discriminating against any educational institutions, in granting aid , on the ground that it is under the management of a minority whether based on religion or language.

Article 29(I) is a general protection given to sections of citizens to conserve their language, script or culture. Article 30 is a special right to minorities based on religion or language to establish and administer educational institutions of their choice. While Article 29(I) confers right on any section of the citizens which will include the majority section, Article 30(I) confers the right only on minorities based on religion or language. While Article 29(I) is concerned with the right to conserve language, script or culture, Article 30(I) deals with the right of minorities to establish and administer educational institutions of their choice. While Article 29(I) does not deal with education as such, Article 30(I) deals only with the establishment and administration of educational institutions.

Important Judgements

St. Stephen's College vs University of Delhi

In St. Stephen's College vs University of Delhi (1992), the Supreme Court ruled that minority institution should make available at least 50% of annual admission for other communities. The admission of other communities should be done purely on the basis of merit.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30: Right of minorities to establish and administer educational institutions.-
(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
1(A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority the State shall ensure that the amount fixed will be on market lines.
(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Linguistic Minorities

Broadly, a linguistic minority is one that speaks a language other than the language spoken by the majority in the State. Partly, linguistic minorities emerged after the states were reorganised on linguistic basis in 1956. For the protection of the linguistic minorities, the following directives are provided.

Every State and other local authority within a State is directed to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups and the President is authorised to issue such directions to any State as he may consider necessary for the securing of such facilities. (Art 350a)

A Special Officer for linguistic minorities is appointed by the President to investigate all matters relating to the safeguards provided by the Constitution for linguistic minorities and to report to the President upon those matters. It shall be the duty of the President to cause all such reports to be laid before each House of Parliament and also to be sent to the Government of the State concerned. (Art 350B).

Constitution of India provides safeguards to the linguistic minorities under Article 345 and 347:

- Article 345 :'...the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State.

- Article 347:"On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purposes as he may specify."

Article 27: No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion.

The Supreme Court (2011) upheld the constitutional validity of central assistance to subsidize air fare for Haj pilgrims.A bench said the amount given as subsidy for Haj was too meagre and could not be termed as a diversion of a major chunk of taxes to violate Article 27 of the Constitution.

Petitioner Prafull Goradia had complained that though he was a Hindu,he had to pay direct or indirect taxes,part of which were utilized by the government to subsidize Haj.Dismissing the petition,the bench said: In our opinion,if only a small part of any tax collected is utilized for providing some conveniences or facilities or concessions to any religious denomination,that would not be violative of Article 27 of the Constitution.It would be violated if a substantial part of the tax collected in India were to be utilized for promotion or maintenance of any particular religion. Nor is the amount spent, collected specifically for Haj subsidy.

The Bench pointed out that the State governments incurred some expenditure for the Kumbh Mela and the Centre, for facilitating Indian citizens to go on pilgrimage to Mansarover, etc. Similarly some State governments provided facilities to Hindus and Sikhs to visit temples and gurdwaras in Pakistan. "These are very small expenditures in proportion to the entire tax collected. Thus there is no discrimination.

It must be clarified that the order of the apex court in 2012 upheld the Haj subsidy once again as Constitutional but suggested that it be phased out in 10days as it is wasteful and the same amount b spent in educational needs of Muslims.

Article 28:

1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds.
2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

Article 29: Protection of interests of minorities
(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

In the Jagadiswaranand vs the Police Commissioner 1984 case, the Supreme Court held that the Anand Margi practice of dancing with skulls is not essential to their religion and could be reasonably restricted. Cow slaughter similarly is not considered inherent to Islam on Bakrid day. Thus, State can regulate what constitutes the essential religious practice and what does not and outlaw the latter if it is not social.

Limitations on religious freedom

The limitations on Art.25 are of three types

- public order, morality and health
- other provisions of part III of the constitution
- matters related with social reforms

'Public order' is the same as public peace, safety and tranquility. The other limitation is 'morality'. Health considerations can be explained thus: Haryana legislature disqualified persons having more than two children from holding panchayat posts. It was challenged in the High Court on grounds that it was against personal laws of Muslims. High Court upheld the law on grounds of

- health for women and
- social reform.

The High Court thus ruled(1998) that the provision in question does not interfere with the right to profess, practise or propagate the religion of one's choice.

Temples may be thrown open to all Hindus which was not the case earlier as some sections were not allowed. It is a measure of social reform.

A person can exercise his religious freedoms while respecting the FRs of others. For example, right to propagate does not include the right to convert others as it means the violation of their right to religious freedom.

The state is empowered to regulate secular activities associated with religious practices with the object to bringing about social reform: activities of an economic, commercial or political character.

Art.26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

a) to establish and maintain institutions for religious and charitable purposes;
b) to manage its own affairs in matters of religion;
c) to own and acquire movable and immovable property; and
d) to administer such property in accordance with law.

Right against Exploitation

Art.23: Prohibition of traffic in human beings and forced labour :-(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Begar is described as labour or service which a person is forced to give without receiving any remuneration for it. It is also known as 'debt bondage'.

Legislations that is made to check human trafficking is the following

- Immoral Traffic Prevention Act (ITPA) 1956
- Bonded Labour System (Abolition) Act 1976 and
- Juvenile Justice (Care and Protection) Act, 2000

Art.24. Prohibition of employment of children in factories, etc.: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Child Labour (Prohibition and Regulation) Act, 1986 is the legislation to check child labour.

On the recommendation of the Technical Advisory Committee on Child Labour headed by the Director General, Indian Council of Medical Research, the Government ordered ban on employment of children as domestic help or servants at the roadside kiosks in 2006. The ban was imposed by the Labour Ministry under the Child Labour (Prohibition and Regulation) Act, 1986.

Right to Freedom of Religion

Art.25. Subject to public order, morality and health, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Government can make laws for regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

(The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Hindus include persons professing the Sikh, Jaina or Buddhist religion).

Parliament may relax the provisions of Art.22 relating to preventive detention. For example, detention for more than 3 months.

The following laws make room for such relaxation: National Security Act, Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) and Prevention of Terrorism Act (POTA) have a provision to detain beyond 3 months.

Preventive Detention Laws in India

Since independence, the Government of India passed much legislation for preventive detention and there are about forty such laws presently on the statute book in India.

Entry 9 of List I of the Constitution allows Parliament to enact preventive detention laws in national security. Entry 3 of List III of the Constitution of India allows Parliament and state legislatures to pass preventive detention laws in times of peace for "the maintenance of public order or maintenance of supply and services essential to the community."

Preventive Detention Act was passed by Parliament in 1950. After the expiry of this Act in 1969, the Maintenance of Internal Security Act (MISA) was enacted in 1971, followed by Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in 1974 and the Terrorism and Disruptive Activities (Prevention) Act (TADA) in 1985. Though MISA was repealed and TADA lapsed, COFEPOSA continues to be operative along with other similar laws such as the National Security Act (NSA) 1980 and Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Prevention of Terrorism Act (POTA) 2002 was repealed in 2005. Laws with similar provisions are also enacted by the State governments.

TADA

Terrorist And Disruptive Activities (Prevention) Act (TADA) was passed in 1985. It expired in 1995. The constitutional validity of TADA was challenged before the Supreme Court in 1994, but the Supreme Court upheld its validity. TADA provides for the constitution of designated courts for speedy and expeditious trial of offences. However, under TADA, the conviction rate was less than 10% as witnesses were not protected nor was the evidence in the form of intercepted communications accepted as valid. To overcome these limitations, POTA was made in 2002.

POTA

POTA is the Prevention of Terrorism Act, 2002. It was passed by the Parliament in 2002 in a joint sitting of the budget session of the Parliament as Rajya Sabha did not permit it to be introduced. POTA was drafted on lines recommended by the Law Commission and was an improvement over the Terrorist and Disruptive Activities (Prevention) Act (TADA). The safeguards that the Supreme Court prescribed were incorporated to ensure that the potential for abuse is minimised. However, since critics maintained that POTA was draconian and was misapplied and open to abuse, it was repealed in 2005.

However, if the conversations so tapped are private in nature and have no bearing whatsoever on the functioning of the state, it would ordinarily be expected from the competent authority to direct that such conversations or intercepts be maintained in absolute secrecy and its disclosure and use is prohibited.

Here the interplay of public interest, right to privacy and right to information can be seen and it is necessary to balance the three on a case by case basis.

Those who seek to interfere in the matters of the state and influence decisions concerning the state of play in the political arena are hardly expected to contend that a cloak of secrecy be maintained around their roles. They may have a right to privacy in relation to their private lives but not in relation to activities which are wholly political or related to the public affairs of the state.

The above arguments are relevant to the Nira Radia episode where the telephonic conversations were secretly recorded.

In 2012, noted legal expert and Rajya Sabha member , Abhishek Singhvi, was involved in a case where his private behaviour was secretly filmed and placed on the social media even against judicial orders prohibiting airing them.

Article 22:- Protection against arrest and detention in certain cases

- No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- Nothing in clauses (1) and (2) to any person who is arrested or detained under any law providing for preventive detention.

Safeguards against Preventive Detention

- No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has endorsed that there is, in its opinion, sufficient cause for such detention.
- Communicate to such person the grounds on which the order has been made. Reasons for detention need not be disclosed if the authority considers it to be against the public interest to disclose.
- Give the detainee the earliest opportunity of making a representation against the order.

Right to privacy

In India, the Constitution does not expressly recognize the right to privacy. The concept of privacy as a fundamental right first evolved in 1964 in the case of Kharak Singh v State of Uttar Pradesh. The Supreme Court, for the first time, recognized that there is a right of privacy implicit in the Indian Constitution under Article 21 . The Court held that the Right to Privacy is an integral part of the Right to Life. InR.Rajagopal v State of TN (1994) the Supreme Court held that the right to privacy is a right to be let alone.

In recent years, partly due to rise of the new social media and for public order and national security reasons as well, right to privacy has come under pressure. The following are some judicial verdicts and government laws followed by certain analytical points.

Another dimension is the conflict between the right to information(RTI) and the right to privacy.

The Indian Telegraph Act is a 125-year-old law, which has stood the scrutiny of time. It allows interception of telecommunications only on the occurrence of any 'public emergency' or in the 'interest of public safety'. Only when either of these two conditions are satisfied, can the competent authority permit the interception of telephonic communications, if it is in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence. If any of these conditions are not satisfied, telephonic interceptions are unconstitutional.

In 1996, in the People's Union of Civil Liberties (PUCL) case, the Supreme Court reaffirmed the above law. The right to privacy, even though not constitutionally provided for, has been now read as an essential ingredient of personal liberty. Privacy gives one the right to be left alone. Telephonic communications have been elevated to the right of free speech and expression.Interception thus is a violation of Art.19.1a though it can be reasonably restricted.

What are the obligations of the state, once it is in possession of the intercepted material? The 1885 Telegraph Act does not deal with this subject at all. Ordinarily, it would stand to reason that the intercepted material can only be used for the purpose for which the interception was ordered. The Supreme Court, in the PUCL judgment, has held that the competent authority, while passing the order permitting the interception, must state thereupon as to how the intercepted material is to be dealt with.

The intercepted materials' disclosures are neither prohibited nor can at present be penalised. It is expected that the same would be available with the relevant departments of the government and a legitimate disclosure of the same could be made either through the RTI Act or through an investigative process if the same are utilised for that purpose. If the material intercepted deals with matters concerning the affairs of the state, unauthorised intervention in the functioning of a government or commission of an offence, it could be handed over to the competent authority dealing with the matter.

Right to Education

Acharya Ramamurti Committee in 1990 recommended that the right to education should be included as a fundamental right in Part III of the Constitution.
In 1992, Supreme Court held in Mohini Jain v State of Karnataka, that the"'right to education' is a part of right to life (Art.21) and thus is a Fundamental Right enshrined under Part III of the Constitution"

The Supreme Court judgement in the case of Unnikrishnan, J P v State of Andhra Pradesh further reinforced the same when it affirmed that right to education flows from the right to life guaranteed under Article 21 and draws its support from the Directive Principles of the Constitution, Article 41 and 45. Art.41 provides for right to education. Article 45 of the Constitution originally required state to make provisions within 10 years for free and compulsory education for all children until they complete the age of 14 years. It has been replaced by the 86th Amendment Act.

86th Constitutional Amendment Act 2002 brought about the following changes to the Constitution

- Under Article 21-A of the Constitution, every child between the ages of 6–14 has a fundamental right to education, which the State shall provide 'in such manner as the State may, by law, determine'
- Early childhood care and education (for children in the age group of 0–6 years) is provided for as a directive principle of State Policy under Article 45 of the Constitution.
- Article 51(K)- who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years

NCRWC recommended that the inferred rights be given explicit status.
The above inferred rights- deriving from the court verdicts are positive rights- the State has an obligation to provide them- water, environment,education,health,work etc. That is very significant. No less significant however are the negative rights- rights that require the State to be inactive- for example, right to freedom of speech and expression. The State should allow these rights to be exercised and not interfere unless required.

Right to personal liberty broadly includes
(1) The right to go abroad.
(2) The right to privacy.
(3) The right against solitary confinement.
(4) The right against hand cuffing.
(5) The right against delayed execution.
(6) The right to shelter.
(7) The right against custodial death.
(8) The right against public hanging.
(9) Doctor's assistance.

In 1993, the Supreme Court held in J. P. Unnikrishnan case that Right to Education is a fundamental right as the objectives set forth in the Preamble to the Constitution can be achieved only when education is provided to the citizens of this country; Part III (FRs) and IV (Directive Principles of State Policy) are supportive of each other. Unless the right to education is made a reality, the fundamental rights in Part III will remain beyond the reach of the illiterate majority.

Over the years, SC expanded the scope of Art.21 by including many rights in it like the following:

1. Right to elementary education (Mohini Jain vs the State of Karnataka case 1992 and the Unnikrishnan case 1993)
2. Right to livelihood (Pavement dwellers' case 1986)
3. In **Olga Tellis (1985)** the apex court held that the right to life included the right to livelihood.
4. Right to life with dignity (Maneka Gandhi case 1978)
5. Bonded labour should not only be identified and released but must be suitably rehabilitated (Neerja Choudary vs The State of MP 1984).
6. Right to water; Right to speedy justice; Right to clean surroundings; Right to travel abroad; Right to privacy; Right to health.
7. In 2009, Justice Katju declared right to water as part of the right to life guaranteed by Article 21 of the Constitution.Justice Katju's observations came in a decision on a petition filed by the state of Orissa, which sought directions to end its dispute with the Andhra Pradesh Government over the construction of a barrage over the Vamsadhara river.
8. Supreme Court in Ramdev case in 2012, the apex court ruled that right to sleep is a part of the right to life. While ruling that the police action on a sleeping crowd at Baba Ramdev's rally at Ramlila Maidan in mid-2011 amounted to violation of their crucial right, it said "Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril," terming it as a basic human right.

Euthanasia and Aruna Shanbaug case

In 2011, Supreme Court while responding to the plea to end the life(mercy killing or euthanasia) Aruna who was sexually assaulted and attacked and was driven into a vegetative state , made by activist-journalist Pinki Virani, turned down the mercy killing petition . The court, in its landmark judgement, however allowed passive euthanasia in India.

While rejecting Pinki Virani's plea for Aruna Shanbaug's euthanasia, the court laid out guidelines for passive euthanasia. According to these guidelines, passive euthanasia involves the withdrawing of treatment or food that would allow the patient to live. Active euthanasia means killing by injecting poison.

Due process of law includes such constitutional requirements as adequate notice, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property.

Procedural due process sees if the law is clearly written and whether it grants the

- Right to a fair and public trial
- Right to be present at the trial
- Right to an impartial jury
- Right to self-defense and so on.

Substantive due process can be the basis for pronouncing the law unconstitutional if the law making agency has no power to make the law.

'Judiciary deduced rights' or 'inferred rights' or 'derived rights'

In recent years, courts have been expanding the scope of the Right to life and liberty. Art. 21 has been enriched in a number of cases to safeguard the rights of different sections of the society. The Article has been invoked to give right to elementary education, protect the rights of prisoners, the rights of inmates of protective homes, right to legal aid, right to speedy trial, right of release and rehabilitation of bonded labour, right to health, and right to healthy environment.

In Francis Coralie vs. Union Territory of Delhi [(1981) former Chief Justice of India, P.N. Bhagwati said "..the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter ...."

Relying on Francis Coralie, in Bandhua Mukti Morcha vs. Union of India (1984) where the question of bondage and rehabilitation of some labourers was involved, Justice Bhagwati observed:

"It is the fundamental right of everyone in this country... to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Art. 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Art. 39 and Articles 41 and 42 and..... therefore, it must include protection of the health and strength of the workers, men and women and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."

Art.21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law. This Article prescribes a negative mandate that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The procedure established by law for deprivation of rights conferred by this Article must be fair, just and reasonable.

86th Amendment Act introduced Art.21a introduced right to education which says:

> "21A. the State shall provide free and compulsory education to all children of the age of six to fourteen year in such manner as the State may, by law, determine".

However, it is only an enabling law and is to be made operational by the Government with relevant legislation. **The Right of Children to Free and Compulsory Education Act** or **Right to Education Act (RTE)**, which was passed by the Indian parliament in August 2009, describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010.Supreme Court upheld the law in 2012.

Art.21 saw many developments since the Constitution commenced.

Supreme Court in the Maneka Gandhi case (1978) applied the American jurisprudence – the principle of due process of law , to the restrictions on Art.21 on the basis of the following arguments

1. Art.19 and 21 can not be understood as water tight compartments and the same criteria of reasonableness as in Art.19 must be applied for Art.21 too.
2. Merely following the procedure established by law is not enough. The courts have the right to review and question the reasonableness of law itself
3. Restrictions must be reasonable, just and fair and should not be arbitrary.

Thus, Maneka Gandhi case judgement overturned the apex court verdict in the Gopalan case (1950) when the Supreme Court ruled that it was enough if the procedure was followed and that courts could not inquire into the reasonableness of the procedure .In India traditionally, procedure established by law was followed as it prevailed in Britain. But since the apex court judgement in 1978, presently we follow both thus strengthening judicial review.

Due process of law

Law has to be fair and reasonable. If it is not, it is liable to be struck down, even if the prescribed procedure is followed. This is the essence of the expression `due process of law' as it obtains in the US. It is discussed in the context of the protection of the right to life, liberty and property. In the USA, the Supreme Court scrutinizes the law as it is made and implemented to ensure that `due process' is followed. Otherwise, it is nullified.

An ex post facto law may also decriminalize certain acts or alleviate possible punishments .For example by reducing punishment from rigorous imprisonment to simple imprisonment. If the retroactive law eases the punishment for a crime, it is valid.

In May 2010 the Supreme Court of India in the case "Smt. Selvi vs. State of Karnataka" held narco, polygraph (also called Lie-detector) and brain mapping tests to be unconstitutional as they violate article 20(3) of the Constitution which says that a person can not be compelled to be a witness against himself.

The Kerala High Court in 2011 held that relief under the provisions of the Protection of Women from Domestic Violence Act, 2005 could be sought against domestic violence that took place before the Act came into force. Delhi High Court also ruled the same in 2010:There is no difference between the women who were subjected to domestic violence before 2005 and those who were later, as any differentiation would tantamount to denying the right of equality before law guaranteed under Article 14 of the Constitution. It further held that legislative intent of helping women who are harassed at the hands of their husbands and their in-laws, should be taken into consideration while interpreting the Act.

Critics however argue against the verdict on two grounds: if the Parliament wanted to make it retrospectively valid, it would have stated it expressly. Further, it is violative of Art.20.

Vodafone case

Parliament in the budget session amended retrospectively the Income-Tax Act to give clarity to tax law in the country so that it can recover Rs 11,000 crore from Vodafone. Its validity is being debated in the country and abroad.

In the Vodafone case, the SC had declared that the I-T Department doesn't have the jurisdiction to levy tax on the US$ 11 billion acquisition deal between the UK telecom major and Hutchison Essar in 2007.

Justice. JS Verma , former CJI opined : "It is a well-settled SC decision that the legislature has the power to amend laws retrospectively, including tax laws."

Justice K T Thomas, former judge of the SC, clarifid that only penal statutes cannot be amended by the legislature retrospectively. Article 20 of the Constitution applies to the criminal/punitive laws. But this is not the case for fiscal statutes, which can be amended in public interest by raising revenue concerns and public interest.

Parliament made many such retrospective fiscal rules and laws to overcome the court verdicts and were upheld by the apex court.

- protection of the interests of Scheduled Tribes.

Art.19(1g)

It gives citizens the right to practise any profession, or to carry on any occupation , trade or business. However, there can be restrictions imposed on following grounds

- qualifications can be prescribed for the same
- State can monopolise business in any sector to the exclusion of any one- partial or complete. It may be a part of the planned economy
- Restrictions on trading in liquor or any intoxicating substances in public interest(prohibition)
- Betting and gambling are not a part of `trade' and so can be restricted or banned
- For food security, traders can be asked to sell a commodity at a concessional price(levy sugar)
- Restriction on slaughter of animals.

Art. 20. Protection in respect of conviction for offences

1. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act ; nor be subjected to a penalty greater than that which might have been given under the law in force at the time of the commission of the offence. If a law is made in violation of the principle mentioned above, it is invalid. Thus, retrospective criminal legislation is illegal.
2. No person shall be prosecuted and punished for the same offence more than once. That is, double jeopardy for the offence committed only once is unconstitutional.
3. No person accused of any offence shall be compelled to be a witness against himself.

Ex post facto Laws (Retrospective laws)

An ex post facto law (from the Latin for "from something done afterward") or retroactive law is a law that retrospectively changes the legal consequences of acts committed prior to the enactment of the law. In reference to criminal law, it means the following

- criminalize actions that were legal when committed or
- aggravate a crime by bringing it into a more severe category than it was at the time it was committed or
- change or increase the punishment prescribed for a crime or
- alter the rules of evidence in order to make conviction for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted.

held that the issue is whether there can be a work of art or literature or a film which propounds such interpretations, and whether the public have the right to decide whether to accept or reject such alternative interpretation. The issue is whether the state is bound to protect the person whose fundamental right is sought to be violated by people who threaten to breach peace.

While the democratic credentials of India are convincing, there are certain worrying signs like the assault on freedom of speech and expression in the case of Salman Rushdie not being allowed to participate in the Jaipur Literary Festival; **A.K. Ramanujan's** great essay on the **Ramayana** being **banned** by the Central University of Delhi and so on.

Freedom of speech and Civil Servants

According to the Supreme Court, restrictions on freedom of speech in Art.19 (1a) can be curtailed for the public servants in the interest of discipline even though such a restriction is not mentioned in Art.19(2). Service rules are essential for discipline within the service- for example, criticism in public of the superiors is not permitted . The objective is not to curb freedom of speech and expression but to ensure that government servants effectively discharge their statutory duties and obligations. Thus, service rules are valid and the restrictions on freedom of speech that they carry are justified. Thus, there is a balance to be established between the organizational functioning and the freedom of speech. Such restrictions, however, do not apply to an elected representative in an organization as he represents people.

The 97th amendment to the Indian constitution makes the right to form cooperative societies a fundamental right under Article 19(1)(c). The article now reads: the right to form "associations or unions *or cooperative societies*".

Freedom of movement and residence
Art.19(1d) and (1e)

The former deals with the right of the citizens to move freely throughout the country and the latter grants the right to residence. The basis for the grant of the rights is that India is one territory. Both are related and in fact follow from one another. They are not available to the foreigners like other freedoms in Art.19. The restrictions that apply to other rights in Art.19(1) apply to them also. The following are the reasonable restrictions that additionally apply to them

- to maintain public order: if authorities suspect the movement of persons is likely to disturb public order in a region, the right can be denied. However, the restrictions can not be oppressive or excessive.
- for safety reasons, helmets can be prescribed for the two wheeler riders
- externment orders against citizen to leave the territory of a state if he is an anti-social element. In June 2011, Baba Ramdev was externed from Delhi as the police feared for law and order. A person can be externed from a state if he is intimidating witnesses in a case

However, right to protest is Constitutional. The Supreme Court (2012) pronounced a landmark judgement on the incident that took place on the midnight of 4-5th June, 2011 at Ramlila Maidan, Delhi where Baba Ramdev and his supporters were carrying on a protest against corruption and prevalence of black money in India. They were agitating against the reluctance of the government to take key steps to eliminate the menace of corruption and black money.

The protest was peaceful. The Supreme Court in its judgement has upheld the right to peaceful protest to a Constitutional right. The Court observed –
"Freedom of speech, right to assemble and demonstrate by holding *dharnas* and peaceful agitation are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the government on any subject of social or national importance. The Government has to respect, and in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions".

The right to peacefully protest subject to just restrictions is now an essential part of free speech and the right to assemble. Additionally, it is an affirmative obligation of the State to make that exercise of this right effective.

The judgement , however, imposes an obligation on the protesters to obey every lawful order like Section 144 of CrPC.

Judicial intervention and Art.19.1a

Aarakshan case

Before the release of *Aarakshan*, which attempts to critically analyse the system of reservation in admissions in the Indian education system, three States, namely, Punjab, Andhra Pradesh and Uttar Pradesh, decided to suspend the screening of the film in their respective States. The Director of the film approached the Supreme Court against this decision of the States. Punjab and Andhra Pradesh withdrew the order of suspension. However, Uttar Pradesh decided to defend its order.

Striking down the decision of the Uttar Pradesh Government, the Supreme Court held that even delicate issues like reservation require public discussion and debate in a vibrant democracy such as ours. Such a discussion on social issues spreads awareness, which is required for the effective working of the democracy.

Da Vinci Code

Some people had objected to screening of *Da Vinci Code*, as the movie was considered to hurt the Christian feelings. Allowing the screening of the film, the Madras High Court

- restrictions, to be reasonable, should satisfy the test of `proportionality'- that is the restriction should not be excessive.

The Supreme Court has held that a reasonable restriction is one which is not in excess of the requirements of the case. This test involves a drawing of balance between the interest of the citizen and collective demands like national security and public order.

Rights and restraints

The rights that spring from Article 19(1) are not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder.

State has a duty to protect itself against certain unlawful actions and, therefore, may enact laws which would ensure such protection.

However, the restrictions must be reasonable. The test of reasonableness, whereever prescribed, should be applied on a case by case basis and no abstract standard or general pattern of reasonableness, can be laid down as applicable to all cases.

For determining the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorized, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the prevailing conditions at the time enter into the judicial consideration.

Freedom of Speech and bandhs and hartals

Freedom of speech does not include calling for forced bandhs.The Kerala High Court had in 1997 and again delivered judgements curbing the right of trade unions and political parties to call for forced bandh. (Bandh and Hartal mean essentially the same. Hartal was originally a Gujarati expression meaning the closing down of shops to press a demand) The Supreme Court in 1997 upheld the Kerala High Court's order making bandhs illegal." Bandhs and hartals cost the State and private citizens by way of loss to investments and destruction to property.The Bombay High Court (2004) imposed a fine on two political parties for organising a bandh in Mumbai in 2003. The petitioners had claimed damages of Rs 50 crore on the basis of economic loss to the city for one day of stoppage.

The essence of the judicial position is this: people cannot be made to participate in bandhs under duress and that organisers of bandh "trample upon the rights of the citizens protected by the Constitution."

- Freedom to practise any profession or to carry on any occupation, trade or business on which the state may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

State can impose reasonable restrictions on the exercise of the above rights on grounds of

- sovereignty and integrity of India
- security of State
- public order
- friendly relations with foreign States
- decency or morality
- contempt of court
- defamation or
- incitement to an offence.

The courts have the power to review the reasonableness of the restrictions and strike them down if they are not justified.

Press Freedom in India

There is no separate provision guaranteeing the freedom of the press, but the Supreme Court has held that freedom of the press is included in the 'freedom of expression' under Article 19(1) (a) of the Indian Constitution.

Reasonable restrictions as mentioned above apply to freedom of press too.

The printer, publisher or editor of a newspaper who is aggrieved by an infringement of this right by a law or order may apply for relief to the Supreme Court under Art.32 or a High Court under Arts. 32 or 226 of the Constitution.

The National Commission to Review the Working of the Constitution (NCRWC) recommended that freedom of press be explicitly granted and not left to be implied in the freedom of speech.

Freedom of speech guaranteed to citizen is subordinate to the parliamentary privileges (Art.105 and 194) and in case of a clash between the two, the latter prevails.(More ahead)

`Reasonable restrictions`

Art.19(2) says that in the interests of public order, security of state, morality etc, reasonable restrictions may be imposed ion the six freedoms mentioned in Art.19(1). However, `reasonableness' should be qualified with the following

- the authority that imposes restrictions is responsible for showing that they are reasonable and

trial in the court. This is 'compoundable ', further action in trial is discontinued. More serious offences are called non-compoundable as they can not be withdrawn)

Art.18. Abolition of Titles

No title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign State. No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

The British government had created an aristocratic class known as Rai Bahadurs and Khan Bahadurs in India . Constitution abolishes these titles for the reason that they create inequality. However, Military and academic distinctions can be conferred on the citizens of India.

The Supreme Court, in 1995, upheld the validity of awards like Bharat Ratna and Padma awards. The apex court ruled that the awards of Bharat Ratna and Padma Vibhushan could not be used by the recipient as a title and did not, accordingly, come within the Constitutional prohibition.

Art.18 is only a Constitutional enabling provision. Laws have to be made to operationalise the general provisions found in the Article.

Art. 19: Right to Freedom

The right to freedom in Article 19 guarantees the following six freedoms:

- Freedom of speech and expression, which enable a citizen to participate in public activities- freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency, morality etc.
- Freedom to assemble peacefully without arms, on which the state can impose reasonable restrictions in the interest of public order and sovereignty and integrity of India.
- Freedom to form associations or unions on which the state can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- Freedom to reside and settle in any part of the territory of India which is subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes from exploitation and coercion.

8) The reservation of 10% of the posts in favour of economically backward sections among the forward castes is not constitutionally invalid and is accordingly struck down:

Nagraj case

In M Nagaraj case in 2007, the Supreme Court held, "...the State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. " The court ruling upheld 77th and 85th amendments which dealt with promotion quota and had only added two riders for data on backwardness and inadequate share in services.

Affirmative Action and Art.15 and Art.16

Affirmative action means policies, programs and procedures that give preference to vulnerable sections of society like minorities and women in employment, educational opportunities and so on. Affirmative action is any action aimed at empowering the weak: scholarships, coaching etc.. Reservation on the other hand is based on a statutory requirement for quantitative targets. It is quota based and gives no discretion to the employer. Some use affirmative action to include quota.After all, the aim is the same-empowerment.

The instruments available for affirmative action or reservation are seats in educational institutions; various government jobs; employment opportunities in the corporate sector; bank loans, etc.

Affirmative action (positive discrimination) programmes are specifically written into the Indian Constitution.

- Clauses (3) and (4) of Article 15 permit the making of any kind of special provision for advancing the interest of women and children and the Scheduled Castes and Scheduled Tribes and SEBCs.
- Art.15.5 is inserted by the 93rd Amendment Act 2005.
- Clause (4) of Article 16 provides specifically for reservation of appointments or posts under the State in favour of backward classes of citizens.

State of Madras vs Champakam Dorairajan 1951

In this case, caste-based reservations were overruled as unconstitutional by the Supreme Court on the basis of Art.29 (2). The Madras government order that was ruled ultra vires by the apex court involved fixing the proportion of students from various communities,

Art.16 (3)

Residence can not be the basis for reservation. However, Art.16 (3) makes exceptions. That is, a State or a UT can reserve certain posts for its own residents. Parliament alone is competent to make such laws for any State or UT. The exception is made for reasons of efficiency as knowledge of local conditions is essential, at times, for discharge of duties well. Jobs so reserved are generally subordinate in nature. It is called 'sons of soil policy'.

Parliament, in 1957 made the Public Employment (Requirement as to Residence) Act for a temporary duration for preferential appointment to the residents of the State for the non-gazetted ranks in the States of Andhra Pradesh, Himachal Pradesh, Tripura and Manipur. The Act expired in 1974.

Art.16 and Supreme Court Judgement in Indira Sawhney vs Union of India

In Indira Sawhney vs Union of India 1992, the Supreme Court upheld the Government policy of providing for reservation for the other backward classes (OBC)in government services. The gist of the verdict is the following:

1) It is not necessary that the 'provision' under Art. 16(4) should necessarily be made by the Parliament/ Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory Corporations and other instrumentalities of the State falling under Art. 12 of the Constitution are themselves competent to make such a provision, if so advised.

2) Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons are socially backward. They too represent backward social groups for the purposes of Art. 16(4).

3) 'Creamy layer' can be, and must be excluded.

4) There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories.

5) Reservations contemplated in Clause (4) of Art. 16 should not exceed 50%, except in rare circumstances. The rule of 50% should be applied to each year. More than 50% amounts to reverse discrimination.

6) Article 16(4) does not permit provision for reservations in the matter of promotion.

7) While the rule of reservation cannot be called anti-meritarian, there are certain services and posts to which it may not be advisable to apply the rule of reservation. For example, super speciality institutions; research based institutions etc.

Article 15 of the Constitution now carries an enlarged mandate for the advancement of socially and educationally backward classes and Scheduled Castes and Scheduled Tribes. The prime purpose of this amendment is to make premier educational institutions accessible to SEBCs.

Notably, Article 15(5) makes it necessary for the State to make any special provision for the advancement of these weaker sections by legislative action and not by any executive order. So far, the government has been implementing the policy of reservation for the weaker sections through executive orders and instructions.

Central Educational Institutions (Reservation in Admission) Act, 2006

It provides for reservation in public, private aided and private unaided educational bodies as well. However, following are the exceptions

- Institutions of Excellence because in these bodies students are not admitted for studies. They are basically the research institutions
- Minority educational institutions as they are Constitutionally given a separate status

Supreme Court Verdict 2008

A five-Judge Constitution Bench headed by Chief Justice K.G. Balakrishnan upheld the law.The Supreme Court wanted the creamy layer to be excluded from the socially and educationally backward classes for reservation.The court directed that every five years, there should be a review of the lists of backward classes.

Art.17. Abolition of Untouchability

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

There are two important legislations related to Article 17:

- The Protection of Civil Rights Act, 1955 (PCRA) and
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PAA).

Initially the Untouchability (Offences) Act, 1955, had been enacted to abolish the practice of untouchability and social disabilities arising out of it against members of the Scheduled Castes. It was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955. Under the revised Act the practice of untouchability was made both cognizable (a police officer can arrest the accused person without magisterial warrant) and non-compoundable and stricter punishment was provided for the offenders.(In certain offences, the parties involved can come to a compromise while the case is under

including the Scheduled Castes, who could be admitted to the State's medical and engineering colleges.

Art.29(2) says that in Government or Government-aided educational institutions, a citizen could not be denied admission on grounds of religion, race, caste or language.

The First Amendment to the Constitution in 1951 was made necessary by the Champakam case judgement. Article 15(4) was added to the Constitution by the First Amendment in 1951.

Article 15(4) states: "Nothing in this Article or in Clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

93rd Amendment Act 2005

The Constitution has been amended to include reservation of seats for Scheduled Castes, Scheduled Tribes and SEBCs in educational institutions: government, private aided and unaided educational institutions.Minority educational institutions are not covered by the amendment.

The Supreme Court judgement in Inamdar case (2005) - doing away with reservations for SC/STs in unaided private professional educational institutions was the immediate reason for the 93rd Act. The 93rd Act has gone well beyond what was required to undo the apex court verdict in Inamdar case. It widened the scope of reservations by extending it to all aided/unaided private educational institutions and not merely professional educational institutions. Minority educational institutions are exempted as mandated by Art.30. Centre and States have to come up with enabling legislations to enforce the Act.

Clause (1) of Article 30 provides the rights to all minorities to establish and administer educational institutions of their choice. It is essential that the rights available to minorities are protected in regard to institutions established and administered by them. Accordingly, institutions declared by the State to be minority institutions under Article 30 are omitted from the operation of the 93rd Act. The right of the unaided minority institutions not to be subjected to any regulatory measures, other than those aimed at promoting the educational standards of the institution and the interests of the community concerned, has been judicially upheld in the judgements of the Supreme Court. Further, minorities need to advance educationally for socio-economic progress to take place. National integration also requires that minorities should progress educationally .

However, some concerns were raised during the debate in Parliament on the issue. One set of criticisms relates to abuse of the right by members of religious and linguistic minorities simply for profiteering. The other points out that at least the weaker sections among minorities especially Muslims and Christians of Dalit and OBC origin, should get the benefit of reservation in unaided minority educational institutions.

1. According to Supreme Court, reservation of posts exclusively for women is valid under Art.15 (3) as the Article 15(3) covers every dimension of State action. It needs to be noted that Art.15 does not cover employment for any other social group except women. All others are given preference in jobs under Art.16.

2. Provisions in the criminal law and procedural law in favour of women have been accepted by the courts in view of their social weakness.

3. Reservation for women in local bodies (Panchayat and Nagarapalika bodies) and educational institutions is supported by the Art.15.

4. In Visakha vs State of Rajasthan (1997), Supreme Court suggested measures to eliminate sexual harassment in the work place as it violates Art.14, Art.15 and Art.23.

The Women's Reservation Bill that is being nationally debated since 1996 is also based on the protective provisions of Art.15 (3). Constitution(108) Amendment Bill was passed by the Rajya Sabha in March 2010.

Art.16. Equality of opportunity in matters of public employment

1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.
3) Parliament may legislate that residence is a criterion for employment in certain categories. For example, 'sons of soil policy' whereby people in the vicinity of an area may have the employment reserved for them.
4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
5) Religious and denominational institutions can reserve the employment in them for those professing the religion. For example, church, mosque etc.

Explanation

Descent and Residence are the two additional criteria found in Art.16 (2) as compared to Art.15 (1).

Descent can be exemplified by the following. In GD Rama Rao Vs State of Andhra Pradesh, the Supreme Court struck down an order of the Government where the Collector was directed to appoint persons from among the last holders of the office as it amounted to discrimination on the basis of descent.

Art.15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to- (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Nothing in this article shall prevent the State from making any special provision for women and children; nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

93rd Constitution Amendment Act (2005) inserted a new clause in Art.15. The new Clause- Art.15.5 states more explicitly that the State can make any special provision for SC,ST and SEBCs (Socially and Educationally Backward Classes) in regard to admissions to educational institutions, including private educational institutions, whether aided or unaided by the state. However, minority educational institutions (Article 30) are exempt. It is an enabling Act and requires specific Central and State laws to enforce it. The enabling law was made in 2006- The Central Educational Institutions (Reservation in Admission) Act 2006.Similarly states also have enacted the relevant laws.

Art.15 and social progress

Art.14 establishes equality before law but historical facts of inequality mandate that special treatment for the disadvantaged groups be given. Constitution recognizes that affirmative action is necessary for genuine social development. Therefore, in Art.15, there are provisions in support of marginalized sections of Indian society. One of the main goals of Art.15 is to reform the traditional social order which is beset with discrimination against certain sections.

Preferential treatment in favour of SC/ST and OBCs regarding educational and other facilities is a social reform that is based on Art.15. At the same time, the Supreme Court sought to balance the quota-based preferential action with general social good by limiting the quantitative extent of reservation permissible. For example, 50% is the limit laid down by the court for all reservations combined. Also, in the case of the SEBCs, creamy layer is excluded. Further, the Supreme Court sought updated data about the SEBCs in India to see if the quota set aside is in conformity with that or not.

Regarding women and their social progress on the basis of Art.15, the following needs to be noted:

to the post-Constitutional laws as they become null and void from inception if they contradict the Constitution.

Article 14:- Equality before Law

The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Equality before law means that irrespective of any other criteria, all persons-citizens and others are equal in the eyes of law. The exception in certain matters is the President of India and the Governor of a State.

Equal protection of laws means `like are treated alike' or `people in similar circumstances are treated similarly'. For example, persons having the same taxable income have to pay the same amount of tax.

Rule of Law

Rule of law is a basic feature of all modern Constitutional democracies. In explaining the rule of law as a characteristic of the English Constitution, Prof. A.V. Dicey delineated the following dimensions.

- Firstly, rule of law means absence of arbitrary power on the part of the Government. There is a written law that lays down rights and responsibilities of citizens and others; it also states clearly the powers, obligations and the limitations of government action.
- Secondly, it means that no one is above the law and every one, whatever be his rank or status, is subject to the ordinary law of the land and the jurisdiction of the courts.
- Thirdly, Constitution is not the source but the consequence of rights of individuals as individual rights are enjoyed even before the emergence of the Constitution and the Constitution only consolidates and codifies the same for legal protection.

Rule of law implies many related notions like

- Notion of equality and equal protection of laws, as explained above
- Separation of powers, since the fusion of powers in one authority leads to dictatorship or absolutism.

Supreme Court of India, relying on Dicey observed: "The rule of law ...means that decisions ... should be predictable and the citizen should know where he is."

Rule of law is the norm in modern times and arbitrary exercise of power by individuals and groups and rule by decree are not accepted.

"*Howsoever high you may* be, the *Law* is above you" sums up the essence of rule of law.

religious. Any community which has a language and a script of its own has the right to conserve and develop them. No citizen can be discriminated against for admission in State or State aided institutions. All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the state cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution.

Right to Constitutional Remedies: Art.32 confers the right to move the Supreme Court directly in case of any denial of the fundamental rights. For instance, in case of arrest and detention, the person concerned can challenge the same as illegal and courts may either grant him/her bail or may set him free completely if there is nom legal basis. The courts can issue various kinds of writs to safeguard FRs: habeas corpus, mandamus, prohibition, quo warranto and certiorari.

Explanation of Art.12-35

Art.12 defines "the State" as including the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The definition is important when any one approaches courts against the Government as they have to show that the agency being challenged is State. For all practical purposes, government and State are used interchangeably.

Art.13. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

1 There was a controversy about what constitutes 'law'. Supreme Court concluded in various verdicts that "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law. But not an amendment to the Constitution. Law is what the parliament does min its legislative capacity and amendment is what it does in its Constituent power. The latter thus is outside the purview of Art.13 and thus an amendment Act can abridge FRs though within limits as laid down by the apex court.
2 In sum, nothing in this article shall apply to any amendment of this Constitution made under Article 368.

Doctrine of Eclipse

The doctrine says that a law that is overridden by a subsequent law does not cease to exist. It only goes into dormancy. Once the overriding law is diluted or deleted, the earlier law comes into operation. For example, a pre-Constitution law goes into eclipse if it conflicts with a provision in the Constitution.. When the Constitution is amended allowing the pre-Constitution law to re-surface, it comes out of eclipse. It does not apply

Right to Freedom: It is given in Articles 19, 20, 21 and 22 of the Constitution of India, with the view of guaranteeing individual rights that were considered vital by the framers of the Constitution. The right to freedom encompasses the freedom of speech and expression, freedom to assemble peacefully without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of the territory of India and the freedom to practice any profession or to carry on any occupation, trade or business.Restrictions can be imposed on all these rights in the interest of public order, security of State, decency or morality. The constitution also guarantees the right to life and personal liberty and says that the right can be limited or denied in a way prescribed by the law.Protection with respect to conviction for offences, protection of life and personal liberty and the rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty.However, the right to life and personal liberty cannot be suspended under any circumstance even under the National Emergency imposed according to Art.352.

Right to education by the 86th Constitutional amendment 2002 has been made one of the Fundamental Rights under the right to life and personal liberty (Art.21a). It is in line with the expanded reading of the right to life that the Supreme Court introduced since late seventies.

Right against Exploitation: The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely

- abolition of trafficking in human beings and
- abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.

Child labour is considered a gross violation of the spirit and provisions of the constitution. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law. Compulsory military conscription is however, permitted.

Right to Freedom of Religion : Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all people in India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the state and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice. However, certain practices like wearing and carrying of Kirpans in the profession of the Sikh religion can be restricted in the interest of public order, morality and health. Religious communities can set up charitable institutions of their own, subject to certain restrictions in the interest of public order, morality and health. No person is compelled to pay taxes for the promotion of a religion. A State run institution cannot impart religious instruction.

Cultural and Educational Rights: They are given in Articles 29 and 30 of the constitution and are measures to protect the rights of the minorities- linguistic and

Under National Emergency (Art. 352,358 and 359) however, Constitution permits suspension of the operation/enforcement of all Fundamental Rights except Art. 20 and 21.

Limitation on Fundamental Rights

All rights are subject to reasonable limitations. No right is absolute- not even the right to life. Art.19.2 says that the rights contained in Art.19.1 are conditional and subject to reasonable restrictions. Such reasonable restrictions are spelt out in Art. 19.2 for some freedoms while for others, such limitations are added through either Amendment Acts or Supreme Court verdicts. For example, the doctrine of proportionality demands that restrictions be truly limited and not excessive.

Six Classes

There are six classes of Fundamental Rights in Part III of the Constitution. They are:

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

Right to Equality: It is a very important right enshrined in Articles 14, 15, 16, 17 and 18 of the Constitution. It is the principal foundation of all other rights and liberties and guarantees equality before law, social equality and equal access to public areas, equality in matters of public employment, abolition of untouchability and abolition of titles. Thus, the State cannot discriminate against a citizen on the basis of religion, race, caste, sex, or place of birth. Every person shall have equal access to public places. While equality for all is guaranteed, affirmative action in favour of deprived groups is constitutionally allowed- for women, children, scheduled castes/ scheduled tribes , other backward classes(that is, other than the SC/STs)and certain other social groups. Practice of untouchability has been declared an offence and anyone practicing it is punishable by law. The State cannot confer any titles and citizens of India cannot accept titles from a foreign State, without the permission of the Government of India. The titles of Rai Bahadurs and Khan Bahadurs are also abolished. However, military and academic distinctions can be conferred on the citizens of India. The awards of Bharat Ratna and Padma Bhushan and Vibhushan "cannot be used by the recipient as a title and does not, accordingly, come within the constitutional prohibition". The Supreme Court (1995) upheld the validity of such awards.

parliamentary democratic system of government and protection of minorities. In 1931, the Indian National Congress, at its Karachi session further committed itself to individual rights and liberties which included social and economic rights in favour of the lower castes and for a living wage for the workers.

Fundamental Rights were incorporated into the Indian Constitution with the inspiration of the leadership of the freedom struggle and the experience of the world's leading democracies – UK, USA and France that had detailed provisions for the recognition and protection of individual rights in their Constitutions: Bill of Rights of UK, Bill of Rights of USA and Declaration of Rights of Man of France.

Fundamental Rights essentially safeguard individuals from any arbitrary State actions, but some rights are enforceable against private persons as well. For example, abolition of untouchability (Art.17) is a limitation on State action as also on individual actions.

Art. 15, 16, 19,29 and 30 are available to citizens only while others are enjoyable by non-citizens (aliens) as well. The reasons for limiting these rights to citizens only is evident in the content of these rights.

Fundamental Rights, being Constitutional rights, can be amended by the Parliament only- abridge or expand. However, Parliament is not free to abridge the FRs unless it serves public interest.

The Supreme Court upheld the power of the Parliament to amend the Fundamental Rights from the commencement of the Constitution till the Golak Nath case verdict in 1967. In the Golak Nath case ruling, it held that Parliament could not amend the Fundamental Rights as these rights enjoy a 'transcendental' status under the Indian Constitution. But in the Keshvananda Bharati case (1973) verdict, it permitted limited power to the Parliament to amend the Fundamental Rights.

In the Kesavanda Bharati vs. State of Kerala case, the Supreme Court laid down the concept of "basic features" of the Constitution. The apex court ruled that basic features cannot be amended by the Parliament. What is meant is that the basic features cannot be restricted or violated but there is scope of enrichment and amplification, subject to judicial review. Fundamental Rights are not classified as a basic feature but if they are violated and there is no clear public purpose served by the violation, the violative law can be partially or wholly struck down by the courts.

The "Doctrine of Basic Structure" that was introduced in the Kesavananda Bharati vs State of Kerala (1973) was amplified in various verdicts of the apex court since then.

The sanctity attached to FRs under the Indian Constitution is seen in the fact that apex court can be approached directly; amendment to the FRs is possible only by an Amendment to the Constitution; FRs can be abridged only if public interest is served and the judiciary will determine if public interest is being served or not(Coelho case (I.R. Coelho v. State of Tamil Nadu 2007). State legislatures can not restrict FRs at all.

Constitutional Rights

They are rights enshrined in the Constitution.Some enjoy special status as Fundamental Rights and some others do not enjoy such status- for instance, outside part III of the Indian Constitution (other than Fundamental Rights)

Fundamental Rights: They are a branch of civil rights and are given higher importance in India as they are defended by the Supreme Court directly. Some Fundamental Rights are confined to citizens only while others are open to all. For example, Art.15, 16, 19, 29 and 30 in the Chapter on Fundamental Rights in the Indian Constitution (Part III) are available to Indian citizens only. They are essential for human development, democracy and social progress.

Statutory/legal rights: Where a right has the backing of law, it is called a statutory right. It may be a part of the Constitution or not. For example, the limited right to work given in the Mahatma Gandhi National Rural Employment Guarantee Act is a statutory right. Similarly, right to information is a statutory right. The above two rigjhts like many more are not a part of the Constitution like the right to life. But they have to be compatible with the Constitution as otherwise; they will be declared null and void by the higher courts- High Court and Supreme Court.

Fundamental Rights

Fundamental Rights are important for the individual to live with dignity and the society to evolve on democratic lines. Constituent Assembly of India borrowed the concept of Fundamental Rights from American Constitution where they are found in the Bill of Rights. In fact, Fundamental Rights are considered so sacrosanct that if they are violated, the aggrieved individual can approach the Supreme Court of India directly (Art.32). Supreme Court can issue writs mentioned in Art.32 for the defence of the Fundamental Rights. In case of other rights, the individual concerned can approach the High Court – as the highest court of first instance. But not the Supreme Court.

Fundamental rights include individual and group rights. They are common to most liberal democracies: equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practise religion and the right to constitutional remedies in case of violation of the rights. The Constitutional remedies are the writs(orders) such as habeas corpus. Right to life is an example of individual rights while affirmative action in favour of certain castes, women and minorities is an example of group rights.

Freedom Struggle and Fundamental Rights

In 1928, a series of All Party conferences were chaired by Motilal Nehru. They drafted a constitutional scheme, called the Nehru Report. This constitution called for a

FUNDAMENTAL RIGHTS

Some human actions are necessary for individual and social progress. That is, they are right actions. Throughout history, in all societies such 'right actions' are accepted and promoted, initially morally and later legally. Such actions are called rights and are protected by law. For example, freedom of speech and movement (Art.19); freedom to acquire and own property (Art.300A) and so on. In modern times when Constitutional governance is the norm, rights have been central to the relation between citizen and government.

A right is a legal claim that a citizen or any other individual is granted by the Constitution or any statute. For example, right to life. It means the individual's life can not be abridged or abolished by any one except in a manner that is prescribed in law (Art.21). If any one violates the right illegally, the individual can approach the court for justice.

Rights are the essence of democracy as they empower the individuals and enable them to develop. Rights not only promote individual development but are generally associated with equality in contemporary times and establish a level playing field among the people- rich and poor; men and women; and various social groups. Thus, they are egalitarian in nature. They limit government control over individuals and are a protection against arbitrary Government actions.

Rights may be associated with obligations, there being very few absolute rights. For example, Right to Education that is made a Fundamental Right by the insertion of Art 21a by the Constitution 86th Amendment Act 2002 in India may confer the obligations on some citizens of the country to pay taxes that contribute to the revenues necessary to implement the right. Fundamental Duties that were inserted into the Constitution by the Constitution (42nd) Amendment Act 1976 are the obligations that citizens are expected to discharge. Fundamental Duties in Art. 51a require citizens to contribute to national and social development.

Various Kinds of Rights

Natural Rights: These are universal rights which an inherent in every individual, being a part of human nature. They are recognised and made enforceable by law. For example, right to life.

Human Rights: Human rights are similar to natural rights in the sense that they are universal and are intrinsic to human nature. They are needed for dignified human life and are enjoyed irrespective of social, political and other considerations.They are contained in United Nations Universal Declaration of Human Rights 1948.

Civil Rights: These are the rights that citizens of a country enjoy and are conferred by the Constitution or the law of the country. Civil rights may differ from one country to another while human rights are universally accepted by all.

There are two kinds of L visas:

- L-1A-for employees in an executive or managerial position, and
- L-1B-for employees in a specialized knowledge capacity

Surrogacy and citizenship

Twins born to German parents through a surrogate Indian mother remained stateless for some time recently in India. Their parents are German nationals, but the woman to whom the babies were born is Indian surrogate from Gujarat. The boys were refused German passports because the country does not recognize surrogacy as a legitimate means of parenthood. Therefore, they could not go to Germany. India was unable to grant citizenship to the twins born through surrogacy. The acquisition of citizenship by birth under the Indian Citizenship Act, 1955 requires either one or both of the parents of the child to be Indian Citizens at the time of birth of the child. In the case on hand the children did not have an Indian National Parent. The contention of the German Couple was that the children born to an Indian surrogate mother using the gamete from an Indian anonymous egg donor is India; and that the surrogate mother was required to be regarded as the legal mother of the children. This contention had got the sympathetic eyes of the High Court of Gujarat, which agreed that the surrogate mother should be regarded as the legal mother of the child. The Gujarat High also directed the Union of India to grant citizenship and passport for the children enabling them to travel abroad. Union of India appealed against the High Court order in the Supreme Court. Germany relented, issuing travel visas, and the family went home. Gujarat High Court ruled that Indian Government should confer citizenship on the twins.

Expatriate(expat)

One who has left his country voluntarily

Stateless Persons

A stateless person is one with no citizenship or nationality. It may be because the state that gave their previous nationality has ceased to exist and there is no successor state, or their nationality has been repudiated by their own state, making them effective refugees.

Stateless Tamils in Sri Lanka

They have no nationality, no right to vote, to work officially, to open a bank account or to obtain state land,no possibility to apply for documents like a passport or birth certificate.

Most of the stateless people in Sri Lanka are descendents of people who had been brought from India by British colonisers between 1820 and 1840 to work on coffee and tea plantations in Sri Lanka. Known as "up-country Tamils" or "hill Tamils", the majority still lives on tea estates in southern and central Sri Lanka. A minority was displaced in the north and east by inter-ethnic fighting in 1983.

Over the years, several Indo-Ceylon agreements have granted some of these people either Indian or Sri Lankan citizenship, the latest being a Sri lankan Parliamentary Act to grant them citizenship in 2004.

Refugee

Refugee is defined as as a person who is outside his/her country and is unable or unwilling to return to that country because of a genuine fear that she/he will be persecuted because of race, religion, nationality, political opinion, or membership in a particular social group.

Those who seek refugee status in another country are sometimes known as asylum seekers and the practice of accepting such refugees is that of offering political asylum. The most common asylum claims to industrialized countries are based upon political and religious grounds.

Green card

A green card in the USA gives official immigration status (Lawful Permanent Residency)

H1b visa

The H-1B visa program allows American companies and universities to employ foreign scientists, engineers, programmers, and other professionals in the United States for upto 6 years.

L1 visa

India (OCI) was made available to PIOs in 16 specified countries. Later ,it was extended to PIOs of any country (except Pakistan & Bangladesh) that allows dual citizenship, by Citizenship (Amendment) Act, 2005 .

Persons who have dual nationality as citizens of both India and the foreign country are subject to all Indian laws.

Dual citizens do not have voting rights in India. Neither can they be elected to public office,nor are they eligible for defence jobs.

Following are the benefits to dual citizens in detail

- does not require visa for travel to India.
- no need of going through registration formalities for staying in the country, which a foreigner is required to undergo.
- Is granted parity with non-resident Indians in respect of facilities available to the latter in the economic,financial and educational field
- is allowed to own real estate and purchase property within India with few or no restrictions.There are some restrictions on owning agricultural property
- allowed to live in India indefinitely, unlike the Person of Indian Origin (PIO) card, which permitted a single stay for a period of six months.
- The children of dual citizens can avail of the facilities for obtaining admission to educational institutions, including medical colleges, engineering colleges, IITs, IIMs, etc. under the general category.
- can also avail facilities under the various housing schemes of the LIC, state government and other government agencies.

Ministry of Overseas Indian Affairs

The 'Ministry of Non-Resident Indians' Affairs' was created in 2004 and was renamed the 'Ministry of Overseas Indian Affairs' (MOIA) .

The High Level Committee on the Indian Diaspora (HILCID) had noted that the grievance of a cross-section of overseas Indians was for a mechanism that provides a single window interaction with India.

Few important terms

Person of Indian origin is one who or either of whose parents or grand parents was an Indian but is a foreign citizen now. NRI on the other hand is a citizen of India who is abroad to a point that he/she did not reside in India for the mandatory 182 days in the previous year. PIOs can not vote in Indian elections as they are not citizens. NRIs, however can.(Read ahead)

Emigre

One who has left a native country, especially for political reasons.

Where a person ceases to be a citizen of India every minor child of that person shall thereupon cease to be a citizen of India, provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

For the purpose of this section. Any woman who is, or has been, married shall be deemed to be of full age

Acquisition of citizenship of another country

Any citizen of India voluntarily acquires the citizenship of another country, he cease to be a citizen of India. However, this does not apply to a citizen of India, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by Central Government

Involuntary

Deprivation

The Central government under the Indian citizenship Act, 1955 deprives any citizen of Indian Citizenship on following grounds-

- the registration or certificate of naturalization was obtained by means of fraud, false representation or concealment of any material fact; or
- that citizen has shown himself by act or speech to be disloyal towards the Constitution of India; or
- that citizen has, during the war in which India may be engaged, unlawfully traded or communicated with an enemy assisted any enemy in that war; or
- that citizen has, within five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years; or
- That citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government of India or of an International organization of which India is a member etc.
- The Central Government shall deprive a person of citizenship for public good.

Determination of citizenship

If a question arises as to whether, when and how, a citizen of India acquired the Citizenship of another country, it will be determined only by the Central Government.

Dual Citizenship Law in India

In 2004, by an amendment to the Citizenship Act, the facility of Overseas Citizenship of

By Descent

Those born outside India on or after 26th January 1950 but before 10th December 1992 are citizens of India by descent, if their father was a citizen of India at the time of their birth. Those born outside India after 10th December 1992, are considered citizens of India if either of their parents is a citizen of India at the time of their birth.

By Registration

Citizenship of India by registration can be acquired by –

- persons of Indian origin who are ordinarily resident in India for five years
- persons who are or have been married to a citizen of India and are ordinarily resident in India for five years;
- minor children whose both parents are Indian citizens;

By Naturalisation

Citizenship of India by naturalisation can be acquired by a foreigner who is ordinarily resident in India for ten years (continuously for the twelve months preceding the date of application and for nine years in the aggregate in the twelve years preceding the twelve months). The condition can be waived if in the opinion of the Central Government, the applicant is a person who has rendered distinguished services to the cause of science, philosophy, art, literature, world peace or human progress generally.

Citizenship by Incorporation of Territory

If any territory becomes a part of India, its people will be citizens of India.

Loss of Citizenship

It is based on the following grounds

- Voluntary
- Involuntary

Voluntary

Renunciation

If any citizen of India of full age and capacity, who is also a citizen or national of another country, renounces his Indian citizenship, he loses his citizenship of India. If any such declaration is made during any war in which India may be engaged, Central government shall not allow the same till it thinks appropriate.

CITIZENSHIP IN INDIA

There are two classes of people in any country- citizens and aliens. Citizens enjoy all rights and entitlements while aliens (owing political allegiance to another country or government) are denied some of them. For example, citizens can vote and contest to hold representative offices like a member of parliament while aliens can not. Aliens are of two types: citizens of friendly countries are friendly aliens while those of enemy countries are enemy aliens- the latter being denied some of the rights that the former may enjoy.

Aliens may find asylum in a country to which they have fled for political reasons. Asylum is the legal protection granted to people in any country who are afraid to return to their home country Expelling an alien is called deportation.

Domicile means to stay in a country with the intention of making it his or her permanent home. Proof of such an intention is employment or property etc.

Resident is one who resides in the country for certain number of days- 182 days in the previous fiscal year as the Indian law defines.. If not, he or she is considered a non-resident. A non-resident Indian is a citizen of India but has not resided in India for the required number of days. A Person of Indian Origin(PIO) on the other hand is one who acquired citizenship of another country. He is no more a citizen of India unlike an NRI.

The Constitution of India. originally provided for a single citizenship for the entire country. Since 2003, however, dual citizenship is allowed by Indian laws, though with some restrictions. That is, a person is a citizen of the India as well as citizen of the country. Such dual citizens are called overseas Citizens of India. The provisions relating to citizenship are contained in Articles 5 to 11 in Part II of the Constitution of India.

The Citizenship Act, 1955 deals with matters relating to the acquisition, determination and termination of Indian citizenship. It provides for the acquisition of Indian citizenship by birth, by descent, by registration and by naturalisation. The Citizenship Rules, 1956 prescribe the procedure, forms of applications, fee etc.

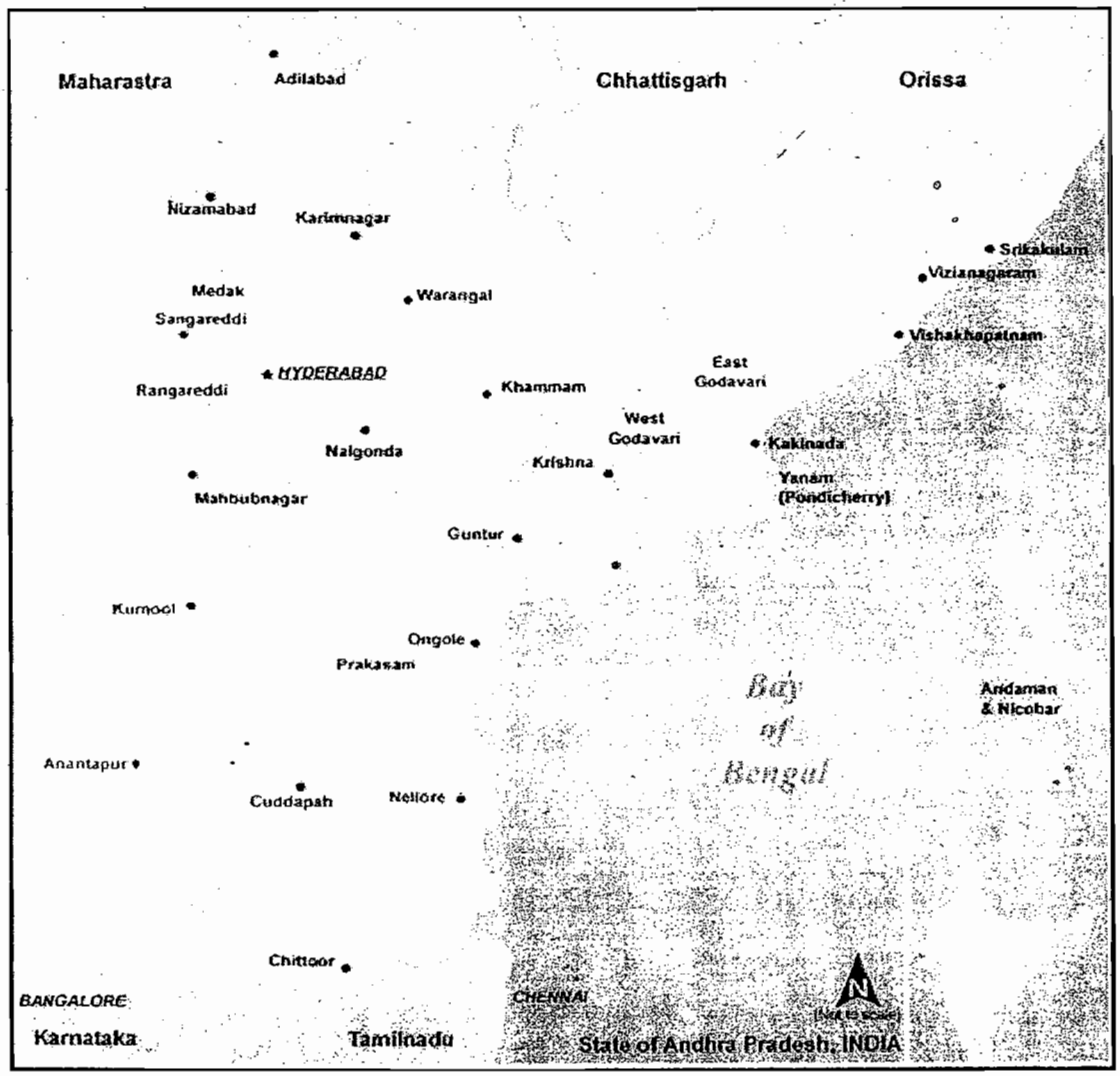
Modes of acquiring Indian citizenship

Citizenship of India can be acquired by the following ways

- By Birth
- By descent
- By registration
- By naturalization
- By acquisition of territory

By birth

Those born in India on or after 26th January 1950 but before 1st July 1987 are citizens of India by birth irrespective of the nationality of their parents. Those born in India on or after 1st July 1987, are considered citizens of India only if either of their parents is a citizen of India at the time of their birth.


Maharastra
Adilabad
Chhattisgarh
Orissa
Nizamabad
Karimnagar
Srikakulam
Vizianagaram
Medak
Warangal
Sangareddi
Vishakhapatnam
HYDERABAD
East Godavari
Rangareddi
Khammam
West Godavari
Kakinada
Nalgonda
Krishna
Yanam (Pondicherry)
Mahbubnagar
Guntur
Kurnool
Ongole
Prakasam
Bay of Bengal
Andaman & Nicobar
Anantapur
Cuddapah
Nellore
Chittoor
BANGALORE
CHENNAI
Karnataka
Tamilnadu
State of Andhra Pradesh, INDIA

China
Nepal
Sikkim
Mangan
Gangtok
Geyzing
Bhutan
India
West Bengal

Ambedkar, on the other hand, held that the doctrine of "one language, many states" would enshrine the principles of language and size: there could be four states carved out of Maharashtra, for example, all of which would speak Marathi but be of a viable size.

Today, the situation has undergone a substantial change. There are increasing demands for carving out smaller states out of the large, single-language states created after Independence. In the contemporary post-Congress and post-reform era, states have emerged as important players determining national political patterns. In many states, an upsurge from below has brought the hitherto underprivileged groups to power, creating new political elites. And in the era of coalition governments, regional or state parties have become partners in central governance. The establishment of a market economy, too, has opened the floodgates to private capital that has led to increasing regional inequalities and, thus, contributed to the rising demands for smaller states.

Economic backwardness of sub-regions within large states has also emerged as an important ground on which demands for smaller states are being made. This is evident from the immediate demands for the formation of Vidharbha, Bodoland and Saurashtra, among other states. These developments have been responsible for a shift away from issues of language and culture – which had shaped the earlier process of reorganisation – to those of better governance and greater participation, administrative convenience, economic viability etc.

In this situation, the move towards smaller states appears to be inevitable and would lead to more democratisation. The formation of three new states in 2000 – Jharkhand, Chhattisgarh and Uttarakhand – has provided a fillip to this process. It also points to a new confidence in the political elite in comparison to the early years of Independence. Today, fears of the Centre weakening due to the creation of a large number of small states are unfounded. Many small states were created after 1956 – Punjab, Haryana and some in the north-east – which strengthened rather than weakened the Union. Even as the older federal structure served the polity created at Independence, there is a need to redraw the map of India in keeping with the new social and political order. Reorganisation needs to be seen not as a task undertaken at a single point of time, but as an ongoing process that remains unfinished.

At the same time, the creation of a federation consisting of smaller states is a complex task and requires careful attention. Many critics have correctly argued that the mere creation of smaller states out of the existing bigger ones does not guarantee good governance and faster and inclusive economic development. Considering the plethora of demands being raised, it is time for a second States Reorganisation Commission (SRC) that can redraw India's federal map, creating many smaller states and keeping in mind the twin criteria of economic viability and people's aspirations.

Regionalism

Regionalism refers to a group of people in a region or a state coming together to demand and agitate for more powers of autonomy or a separate sate for any of the following reasons

- Collective feeling of neglect in the context of uneven development
- Economic backwardness
- Their resources are being spent on others
- The state is too large for them to be given adequate attention for development.
- Ethnic identity being asserted

Government reacted to the regionalist demands in the following manner

- Grant of a separate state- Uttarakhand, Chattisgarh and Jharkhand in 2000
- Autonomous council
- Inclusion of the language in the Eighth Schedule as in the case of Bodos
- Special provisions for certain regions in a State which are underdeveloped- Art.371(2) for Gujarat and Maharashtra.
- Constitutional establishment of the local self government institutions(73rd and 74th Amendment Acts in 1992).

Regionalism as seen in Tamil Nadu, Andhra Pradesh, Assam and elsewhere has the effect of stabilizing the polity with the following contributions

- Ensuring that the regional feeling of neglect does not degenerate into separatism
- Checking the centralization tendency and help the states receive more powers and thus develop `cooperative federalism'
- Contribute to better management of `cultural diversities' through devolution of powers
- Greater proximity of the government to the people and thus help evolve participative planning systems.

Comments

The current demand for the break-up of large states like Andhra Pradesh, Maharashtra and Uttar Pradesh needs to be examined seriously and dispassionately in its historical and contemporary context. After Independence, following Partition, Jawaharlal Nehru felt that the idea of linguistic states needed to be postponed since he feared it would foster local nationalisms, breed parochialism and undermine national unity. So, he argued for large states within a strong political Union and a socialist economy that would enable centralised planning of resources, leading to equitable regional development.

Further, it was thought that the interchange of capital and labour between the richer and poorer sub-regions in large states would create greater equality over time. B R

Srikrishna Commission

Srikrishna Committee on Telangana or Committee for consultations on the situation in Andhra Pradesh (CCSAP) is a committee headed by former chief justice B. N. Srikrishna to look into the demand for separate statehood for Telangana or keep the State united in the present form, Andhra Pradesh. The committee was constituted by the Government of India in 2010.

The Sri Krishna Committee submitted a comprehensive 461-page report after their detailed across the state which included consultations with various political as well as social groups.

The six options presented in the report were as follows:

1. Maintaining Status Quo - Keeping the Andhra Pradesh State as it is with no change in the Telangana, Seemandhra and coastal regions.
2. Bifurcating the state of Andhra Pradesh into Seemandhra and Telengana regions with both of them developing their own capitals in due course of time. Hyderabad to be converted to a Union Territory - This proposal was similar to thePunjab-Haryana-Chandigarh model.
3. Dividing Andhra Pradesh into two states - One of Rayala-Telangana with Hyderabad as its capital and second one of the Coastal Andhra Pradesh
4. Dividing Andhra Pradesh into Seemandhra and Telangana with enlarged Hyderabad Metropolis as a separate Union Territory that will be linked geographically to district Guntur in coastal Andhra via Nalgonda district in the southeast and via Mahboobnagar district in the south to Kurnool district in Rayalaseema
5. Bifurcation of the State into Telangana and Seemandhrâ as per existing boundaries with Hyderabad as the capital of Telangana and Seemandhra to have a new capital. This was the second most preferred option according to the report.
6. Keeping the State united and providing for creation of a statutorily empowered Telangana Regional Council for socio-economic development and political development of Telangana region. This was the most preferred option

The Committee's report suggested options 1 through 4 to be not feasible. The Fifth option is to bifurcate the State into Telangana with Hyderabad as its capital and Seemandhra which is to have a new capital city. The Committee noted that "Separation is recommended only in case it is unavoidable and if this decision can be reached amicably amongst all the three regions." The Sixth and the option that the Committee recommended as the "way forward" is to keep the state united and set up Telangana Regional Council with adequate transfer of funds, functions and functionaries in keeping with the spirit of Gentlemen's Agreement of 1956"

Nation, State and Nation-State

While the terms Nation and State are often used interchangeably, there is a difference. A State (note the capital "S") is a self-governing political entity. A "state" (with a lower-case "s") is usually a division of a federal State (such as the states of India). Nations are culturally homogeneous groups of people, larger than a single tribe or community, which share a common language, institutions, religion, and historical experience. When a nationality has a State of its own, it is called a nation-State. There are some States which have two nations, such as Canada and Belgium.There are nations without States: Kurds and Palestinians are stateless nationalities.

A State is characterized by the following:

- Has territory which has internationally recognized boundaries
- Has people who live there on an ongoing basis.
- Has sovereignty, that is ,no other State should have power over the State's territory, people and resources. There is no authority, in within or outside, that has control over the Government
- Has external recognition by other States.
- Has economic activity and an organized economy; regulates foreign and domestic trade and issues money.
- Has a government which provides public services and police power.

India, like all other countries, is a nation in making.

Telangana

An early expression of regionalism was the Telangana movement in the state of Andhra Pradesh. The region consists of 10 northwestern districts of Andhra Pradesh including the state capital, Hyderabad. The Krishna and Godavari rivers flow through the region from west to east. In 1953, based on the recommendation of the States Reorganisation Commission, Telugu-speaking areas were separated from the former Madras States to form Andhra, India's first state established along linguistic lines. Telangana was merged with Andhra to form the new state of Andhra Pradesh in 1956.

The concerns about Telangana stem essentially from economic under-development. Compared to the costal region, the contrast is stark. Being backward , people of Telangana had the disadvantage in education and jobs. The Telangana movement grew out of a sense of neglect . The movement demanded redress for economic grievances and recognition of a sense of cultural distinctness. The local disadvantaged people of Telangana are called Mulkis.

The 1956 "gentlemen's agreement" provided reassurances to the Telangana people in education , jobs and ministerial berths. The use of Urdu was to continue in the administration and the judiciary . A Regional Council for Telangana was to be responsible for economic development, and its members were to be elected by the members of the state legislative assembly from the region. The demand for Telangana as a separate state re-emerged in recent.

Reorganisation Commission is necessary to redraw India's federal map, creating many smaller states keeping in mind economic viability and political stability.

The demand for statehood has the following explanatory factors :

- "Development deficit" due to the uneven development of the country is one reason. Those regions that have not seen fruits of growth want a new state.
- Population explosion- electorate today is about 70 crores which is a five fold increase over the 1950's figure. It has created pressures that have found expression as demands for special status.
- Cultural identities have become the basis for political agitations for separate statehood which is partly the offshoot of language-based statehood followed since 1950's.
- Political parties also are instrumental in encouraging such demands for their own ends.

So far, a range of Constitutional and non-Constitutional mechanisms have been put in place to satisfy demands for autonomy and respect for cultural identity . They are

- special category states like the north east, Himachal Pradesh, Uttarakhand etc that receive central plan assistance at liberal terms
- there are autonomous councils as in Ladakh, Darjeeling, Bodo where regions enjoy autonomy in administration
- development boards (Art. 371(2)) for the backward regions of the states of Maharashtra and Gujarat
- Finance Commission recommends more finances in terms of tax share and grants for the underdeveloped states
- 73rd and 74th Amendment Acts for local self government strive to satisfy local aspirations through decentralized governance
- Inclusions of languages in the 8th schedule of the Constitution for the cultural development of the people.
- Sixth Schedule benefits

In spite of the above facilities, there is a feeling that a second SRC be formed to recommend further steps.

Examples of Haryana, Punjab and Himachal Pradesh are shown as successful small states. Northeast is cited to show that without the reorganization, there would have been greater levels of insurgency.

While there is no opposition to carving more states out of the big states like Bihar, MP and UP as social and economic indicators show that for reasons of governability, there should be bifurcation, the costs are cited as the following

- viability problems creating fiscal stress for Centre
- more demands by other regions
- leave the parent state with drastically reduced resources
- federal coordination becomes difficult
- higher rates of taxation on citizens to raise the required resources for the following reason: when a UT becomes a State, it foregoes financial assistance that it enjoys as a UT . It necessitates resort to higher taxation to compensate for the central assistance that is no longer available.

According to some development experts, the need for division of big states is undeniable but the debate regarding the desirability of small states is basically one of how to enable balanced development and facilitate better administration. According to them, the answer lies in Local self government institutions;institutionalization of regional planning through autonomous councils etc;sustaining the existing funding mechanisms through Planning Commission(Gadgil formula for plan assistances) and Finance Commission - mediated transfers on the basis of poverty; special category states etc.

Given the sensitivities associated with proliferation of States, the need is to take the following measures for the improvement of governance and welfare.

Second SRC

It is true that the substantial part of political reorganization of states has been completed- initially on the basis of language and later on developmental lines. It is very clear that the linguistic division of states has played a crucial role in holding a diverse country like India together.The task however is not complete: there are many regions demanding separate statehood. It may lead to deepening democracy; reduction of regional imbalances; expeditious development and so on.

In this context a second SRC is being recommended to look back at the reorganization sofar; what are the outcomes and experiences; what general and specific principles can be laid down for formation o states; can the states concerned have a greater say as there is a resurgence of regionalism in the country and so on.

Besides, twenty years of economic liberalisation has fundamentally altered the political economy of India. Regional imbalances have grown and have created political tensions. Regionalist sentiment is on the rise and requires solution. Therefore, a Second State

aspirations of all groups. The dissatisfactions of some of the unrecognized minority linguistic groups also continue to simmer. Such problems exist with regard to the Konkan region of Maharasthra/Goa, Nepali-speaking groups of Darjeeling, Sikkim, and Assam, and Maithili and Avadhi language groups in Bihar.There are several political parties which are ethnicity-based, and they build their strength by exploiting the linguistic identities of their constituencies. Demand for Telangana state shows the linguistic basis for creation of states is at best a partial remedy or no solution at all.

The Sarkaria Commission (1988) hinted at weaknesses of the linguistic reorganization of states in this respect when it said:

Very often, the sub-national sentiment which is initially based on linguistic, religious or ethnic groupings, gains strength with a blend of economic issues, such as those relating to... economic backwardness. One of the most significant developments has been the rise of linguistic chauvinism, rearrangement of the boundaries of the States on linguistic basis... resulting in fissiparous tendencies.

Three new states were created in 2000 not on the basis of language but primarily for good governance.

Since the SRC report was acted upon first in 1956, many new States came into existence first in South and West and later in the Northwest and the Northeast. The last phase of the reorganization was in the north and the Central India in 2000.There are demands for new States still like Harita Pradesh (western UP); Bundelkhand(UP);Koshal (western Orissa); Telangana (AP); Kodagu (Karnataka); Vidarbha (Maharashtra); Jatland (Haryana); Ladakh (Jammu and Kashmir); Bodoland (Assam); Gorkhaland (West Bengal); UTs of Pudicheri and Delhi.

Needless to say, the demands could not be met as it would lead to proliferation of states to a point of making federal coordination difficult; they are not economically viable; national unity would be threatened ; small states may be unable to tackle political threats like naxalism; small states are not necessarily better governed as seen in Jharkhand and the north east; political instability due to fractured verdicts with Independents deciding crucial issues of government formation and survival ;administrative problems about creation of institutions like High Court ; Secretariat etc; the costs of setting up a capital etc, to name some general reasons.

Big States or Small States?

States reorganization has been taking place since mid-fifties-first in south and later in northwest and northeast and now in the northern, central and eastern India so that big states are made more governable through bifurcation on linguistic, cultural, ecological, economic or any other criterion or a combination of them. The case for small states rests on

- big states needed to be divided for administrative viability
- better system of administration through participative planning
- avoid neglect of certain regions and sections of society
- remove regional economic imbalances etc.

amend the Indian Constitution to replace the three types of states, known as Parts A, B, and C states, with a single class of states.

In order to understand the significance of the SR Act 1956 and the Constitution (Seventh)Amendment Act 1956, the nature of political and administrative organization under the British needs to be followed. British India had two types of territories

- provinces, governed directly by British officials who were responsible to the Governor-General of India and
- princely states under the control of local hereditary rulers having British government as the sovereign but enjoying autonomy based on a treaty

When India became Independent on August 15, 1947, British dissolved their treaty relations with the over 600 princely states, who had the option of acceding to either India or Pakistan. Most of the princely states joined India. Hyderabad was incorporated into India after armed intervention.

In the three year period during 1947-1950 , the princely states were politically integrated into the Indian Union- either merged with the existing provinces or organised into new provinces.

The Constitution of India, when it came into existence on January 26, 1950 had three classes of states.

- The nine Part A states, which were the former governors' provinces of British India, were ruled by an elected governor and state legislature.
- The eight Part B states were former princely states or groups of princely states, governed by a rajpramukh, who was often a former prince, along with an elected legislature. The rajpramukh was appointed by the President of India.
- The ten Part C states included both the former chief commissioners' provinces and other centrally administered areas except Andaman and Nicobar islands. The chief commissioner was appointed by the President of India.

The States Reorganization Act 1956 brought about linguistic reorganization of the states under which absorbed the former British provinces and princely states on the basis of language. The Seventh Amendment to the Constitution (1956) abolished the difference between Part A and Part B states- both became "states" constituting a single category. Part C states were renamed "union territories." The personal privileges of the princes - the privy purse, the exemption from customs duty etc continued till they were abolished in 1971.

Criticism of Linguistic Reorganization of States

The linguistic reorganization of the states encouraged various ethnic groups to demand statehood. This was because ethnic identity was provided a territory under the scheme of linguistic reorganization. Such potential has been further sharpened because linguistic reorganization in a vast and diverse country like India cannot satisfy the cultural

recommendations. In its report (J.V.P. Report) the Committee counseled utmost caution in proceeding with the proposal for the linguistic reorganization of states.

Political movements for the creation of new language -based states emerged after independence. The Telugu-speaking people agitated in Madras State for the formation of Andhra. In 1953, the 16 Telugu-speaking districts of Madras State became the new State of Andhra. It comprised Coastal Andhra and Rayalaseema Regions. In 1956 Andhra State was merged with the Telangana region of Hyderabad State to form a united Telugu-speaking state of Andhra Pradesh.

Jawahar Lal Nehru subsequently appointed the States Reorganization Commission (1953) that included Fazl Ali, KM Panikkar and HN Kunzru. In 1955, the States Reorganization Commission submitted its report recommending that many British-imposed administrative boundaries be redrawn to recognize certain regional, cultural, and linguistic configurations.The change was justified on the basis of administrative efficiency - the use of a single language in a given state. Explaining the criterion of language as the basis for constituting a state, it said:Linguistic homogeneity provides the only rational basis for reconstituting the state, for it reflects the social and cultural pattern of living obtaining in well defined regions of the country.

The four criteria laid down by the States Reorganisation Commission (SRC) for accepting the demand by a region for the formation of a State are:

- Creation of new States should strengthen and preserve national unity.
- States are to be formed on the basis of linguistic and cultural unity.
- Financial, administrative and economic viability should govern the formation of new states.
- It should aid the process of implementation of five years plans.

Parliament passed the States Reorganization Act (1956) that was based on the SRC report. This was the beginning of states' reorganization in India on a linguistic basis. It was a major development toward incorporating cultural identities into political and administrative units. The federal devolution of power strengthened this expression of cultural diversity. Linguistic reorganization of states was the only viable model as it helped administrative efficiency; greater citizen convenience; effective management of diversities and thus strengthening the federal system of governance. It prevents fissiparous tendencies like separatism and disintegration.

Formation of States in India on the basis of languages in 1956 was because language represented relatively acceptable base in comparison to other contending criteria like geography, ethnicity, ecology, economic development and so on.

States Reorganization Act 1956 and Constitution(Seventh)Amendment Act 1956

The States Reorganization Act of 1956 was made to implement the recommendations of the SRC for linguistic reorganization of states and to revamp the territorial limits of India's states and territories. The Constitution(Seventh) Amendment Act was made to

The case of Sikkim

Sikkim was originally a protectorate* of India. Reflecting the wishes of the people of Sikkim , the Constitution (Thirty-fifth amendment) was passed in Parliament in 1974 to up-grade the status of Sikkim from a protectorate to an associate state of the Indian Union.

Sikkim Assembly unanimously adopted a resolution in 1975, abolishing the institution of the Chogyal (royalty) and declaring Sikkim as a constituent unit of India. The Assembly also resolved to submit its resolution to the people of Sikkim by way of a general referendum. Consequently , Parliament made the Thirty- sixth Constitution Amendment Act in 1975 and Sikkim became the 22nd state of the Indian Union.

*In international law, a protectorate is a political entity that formally agrees by treaty to enter into a relationship with another, stronger state, called the protector, which agrees to protect it (diplomatically or militarily) against third parties, in exchange for which the protectorate usually accepts specified obligations.

Union Territories

The reasons for having UTs differ with the Union Territory in question. General reasons are:Unique history; geographical size/location ; cultural heritage; Inter-State disputes; need for territories administered by the Union Government.

Specific reasons are

1 Delhi - capital of India.

2 Pondicherry - French colonial & cultural heritage - small far-flung areas.

3 Daman & Diu - Portuguese colonial & cultural heritage - far from Goa.

4 Dadra & Nagar Haveli - Portuguese heritage - far from Goa, Daman & Diu.

5 Andaman & Nicobar - group of islands deep into the Bay of Bengal - far from the mainland.

6 Lakshwadweep - group of small islands deep into the Arabian Sea - far from mainland.

7 Chandigarh - dispute between states of Punjab & Haryana - Punjab Accord - awarded to Punjab - transfer not yet through - continues as UT.

Creating New States

Even before Independence, Government was exploring the appropriate basis for states reorganization. Dhar Commission was set up by the President of the Indian Constituent Assembly in 1948 to consider the question of reorganization of states in India. The Commission favoured reorganization on the basis of administrative efficacy and not language. The Indian National Congress at its Jaipur Session (1948) set up a high level committee called Linguistic Provinces Committee -consisting of Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramiah to consider the Dhar Commission's

Is the process of creation and abolition of states unitary?

A federation is one consisting of 'an indestructible Union of indestructible States' as in the USA. India, though a federation, has Constitutional mandate for the abolition of a state. That is , in India, states are not' indestructible'. A state can be abolished or merged with another state. Its boundaries, area and name can be changed. The process is initiated by the Union Government and the role of the affected state is only to express its opinion which is not binding on the Union Government. Parliament needs to pass the Bill only by a simple majority.The Council of States(Rajya Sabha) which is the representative of states does not have any special powers in this matter. Thus, the process is unitary. However, there are certain aspects that require consideration

- President is given the power to refer the Bill to the state concerned. The Bill can not be introduced in the Parliament without the Presidential recommendation. It acts as a check to politicise the matter to serve the partisan interests of any political group.
- The need for political integration after Independence even in the face of any provincial resistance was the overriding factor.
- The Constitution was drafted at a time when the country was partitioned and the danger from centrifugal tendencies made the Constituent Assembly members feel the need for a strong centre.

It is true that the provisions in Art.2 and 3 are unitary in content. But , as shown above, the need to for centralization of power was strongly felt across the political spectrum.

In recent years, however, there has been an opinion that the Union is strong after 65 years of Independence and states may be given more powers including the power to influence formation of new states.

The case of Pondicherry(Puducherry)

It is a former French colony . A treaty of cession was signed by India and France in 1956. It was ratified by the French parliament in May 1962. Till 1962, therefore, it could not be given the status if a Union Territory and was given the status of 'acquired territory' . In 1962 India and France exchanged the instruments of ratification under which France ceded to India full sovereignty over the territories it held. It came to be administered as the Union Territory of Pondicherry from 1963 .Parliament in 2006 passed a Bill to rename the Union Territory (UT) of Pondicherry as Puducherry in response to the wishes of the people of the Union Territory expressed through a unanimous resolution by the legislative Assembly in 1980.The Bill amends Part VIII, the First and Fourth Schedules of the Constitution and the Government of Union Territories Act 1963.

Puducherry encompasses four regions - Puducherry, Karaikal (near Nagapattinam in Tamil Nadu), Mahe (near Thalassery, Kerala) and Yanam (near Kakinada, Andhra Pradesh).

Government of India can acquire any territory by purchase, treaty, cession, conquest or any other method administer it on the basis of Parliamentary Act.

The States and the territories thereof are specified in the First Schedule. 'The territory of India ' comprises of the territories of the States; the Union territories specified in the First Schedule; and such other territories as may be acquired.

Art.2 says that the Parliament may by law admit into the Union, or establish, new States on such terms and conditions, as it thinks fit.

Art 3. Formation of new States and alteration of areas, boundaries or names of existing States: - Parliament may by law:-

- form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- increase the area of any State;
- diminish the area of any State;
- alter the boundaries of any State;
- alter the name of any State;

The relevant Bill may be introduced in either House of Parliament only on the recommendation of the President. The Bill should be referred by the President to the Legislature/Legislatures of the State/States for expressing views within such period as may be specified in the reference. Such period may be extended by the President. The opinion of the State Legislature/s is not binding on the President. The Bill can be introduced in the Parliament- either House- only on the recommendation of the President. The Bill needs to be passed by the Parliament by a simple majority.

Art.4 says that laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters are not to be deemed to be an amendment of this Constitution for the purposes of Article 368.

There are instances where the State legislatures have passed resolution for creating new states. But Constitutioonally, states can not initiate the process of creation of states etc. It has to start from the Union Council of Ministers advising the President to refer the matter to the state legislature/s.

Uttar Pradesh assembly in November 2011 passed a motion by voice-vote to divide the state into four smaller parts. The resolution was for dividing UP into — Poorvanchal, Paschim Pradesh, Awadh Pradesh and Bundelkhand. It has only suggestive value but no material significance in Constitutional terms.

UNION and its TERRITORY

Art.1 says that India, that is Bharat, is a Union of States.

There is an opinion that the term' Union of States' implies that India is a unitary system of government and is federal only in a secondary sense. However, the following explanation dispels such an interpretation.

In the Constituent Assembly, the Drafting Committee decided in favour of describing India as a Union, although its Constitution is federal in structure. Moving the Draft Constitution for the consideration of the Constituent Assembly in 1948, Dr.Ambedkar explained the significance of the use of the expression "Union" instead of the expression "Federation". Three reasons are given

- Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source."

- The expression- India is" a Union of States" was chosen as India was already a Union at the time of the Constituent Assembly debates.

- Further, there is a school of thought that federal constitutions grant the provincial units the right to break away and since India does not give any such rights to the states, it is not warranted to call ourselves federal

India is a Union of 28 States and seven centrally administered Union Territories, including the National Capital Territory of Delhi.

The States and UT's found in the First Schedule of the Constitution are Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhatisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharakhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttaranchal, Uttar Pradesh and West Bengal. The Union Territories- centrally administered territories, are Andaman and Nicobar Islands, Chandigarh,Delhi , Daman & Diu, Dadra & Nagar Haveli, Lakshadweep and Pondicherry.

There are two expressions used in the context of governance in India-' Union of India' and 'Territory of India' : the former includes States that share federal powers with the Union Government and is a political expression; the latter includes not only States but all other units like UT's and so on and thgus is a geographical expression. In other words, territory of India encompasses a larger area than Union of India.That is, Territory of India encompasses the entire territory over which Indian sovereignty is exercised while Union of India covers only the federal system.

Equality

Equality of status means equal treatment under law, independent of one's status. For example, caste, gender, property and so on can not be basis for conferment or denial of duties, rights and privileges. Equality of opportunity is a refinement over the basic concept in that it seeks to empower the marginalized sections with additional rights and government policies. The basis of the concept of equality of opportunity is that formal equality does not in reality benefit all equally. The vulnerable sections of society need additional protection and preference in education and employment. For example, affirmative action as contained in Art.15 and Art.16 in favour of the SC/ST and the OBCs.

Fraternity

Fraternity means common brotherhood of all Indians. It asserts that social divisions will be removed and integration achieved as emotional integration is the goal of national integration. One common citizenship the feeling of 'being Indian first' is the nature of fraternity.

Importance of Preamble

The Preamble is a part of the Constitution as ruled by the Supreme Court in the Keshavananda Bharti case,(1973) but is in itself not enforceable. Its primary utility lies in helping clarify the essential character of the Constitution to judiciary in case of ambiguity in the Constitution. For example, cases are pending in various High Courts and the Supreme Court whether India's accession to the World Trade Organization (WTO) is compatibile with the objective of socialism. Judiciary may rule on the question taking assistance from the Preamble in this regard.

According to the Supreme Court, in the Keshavananda Bharati case, Preamble is a part of the basic framework of the Constitution and can not be amended. Amendment, when it means abridgement, is not allowed. That is, Preamble can be enriched but not restricted.

In fact, Government has enormous social, economic and political obligations flowing from the Preamble- building a socialist pattern of society; equality of opportunity (affirmative action); deepening democracy by enlisting active participation of all social groups; ensuring that globalization and liberalization do not erode the sovereignty etc.

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Democracy

Democracy means rule by people. Effectively, it is the adult population which constitutes the electorate- based on universal adult franchise- that is the foundation for democracy. Periodical elections are held to constitute parliament to govern the country. Democracy is pluralism. Plurality of opinions, parties, ideologies, languages, religions and cultures coexist and flourish without any discrimination. Other important features of democracy are rule of law, independent judiciary, and individual rights and so on.

Republic

Republic is a political order in which the supreme power lies in a body of citizens. Will of people is the basis for governance. Public offices are thrown open to all citizens .It also means a country where the Head of State is elected and is not a hereditary institution like the monarchy in Britain. Republican values, like democratic values are aimed at empowering the citizen.

Justice

Justice is a concept involving the fair and moral treatment of all persons, both in the formulation and enforcement of law. It is often seen as the effort to define and do what is "right." It involves reward for doing right and punishment for deviating from it. Preamble speaks of social, political and economic justice. Social justice means the whole society should progress without some sections falling behind and exploited. It is inclusive growth .Equal treatment for all people independent of gender, caste, religion, language or any form of ethnicity is a part of social justice. Social protection programmes are initiated by the Government and corporate agencies and NGOs to ensure that the weak and impoverished are uplifted and, at any rate, are not allowed to become weaker.

Similarly, economic justice means ensuring that growth benefits all by alleviating poverty and generating jobs. If growth does not positively impact on all, the government takes up distributive justice programmes in to supply essential goods at affordable prices and so on.

Political justice means all citizens are given the right to vote and stand for political office except those who are not adults or below the age prescribed for the office and are not mentally sound or barred for violation of law.

Liberty

Liberty is derived from the Latin word 'liber', which means freedom, from slavery, imprisonment etc. It was one of the goals of the French revolution along with equality and fraternity. It is the essence of democracy. Liberties are always associated with reasonable restrictions. Liberty of thought, belief, faith and expression are essential to the development of the individual and the society.

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it makes are subject to the provisions of the Constitution. Whether the laws made by the Parliament are constitutionally compatible or not is ruled by the judiciary.

Supreme Court , by virtue of its powers to uphold the Constitution, imposed limitations on the powers of the Parliament to amend the Constitution in the form of 'basic features' (Keshavananda Bharati case 1973) in which the Court held that Parliament could amend any part of the Indian Constitution except the 'basic features'. Thus, Indian Parliament is not sovereign but is supreme.

Socialism

The word 'socialist 'was added to the Preamble by the 42nd Amendment Act in 1976. Socialism means ownership of productive forces by the Government so that they benefit people equitably. Private ownership can deepen inequalities and create and perpetuate divisions. Public ownership and control can reduce the disparities and ensure equitable enjoyment of resources. That is, disparities in socialist society are not as steep as they are in market societies. Distributive justice is a part of the socialist societies.

Since 1991, there is a new direction to Indian economic system towards greater role for markets in economic development and retreat of state. It has triggered a debate as to whether the Constitutional goal of socialism is being implemented or not. However, the basis for the new economic policy centered around liberalization of economy is to generate wealth which in turn can be distributed to all sections. Markets have proven their value as wealth generators. Government continues to play an active role in social security and distributive justice.

There is a campaign for compassionate capitalism in the wake of the global economic turmoil since 2009.

Thus, while India continues to strive for the Preambular value of socialism, the method of achieving the goal is modified towards market forces playing a greater role in the economy.

Secularism

Secularism means separation of religion from politics. Religion is private while politics is public. That is one explanation. Another perspective is that if religion and politics are mixed, it may create social tensions and disturb democracy.

Also, in a multi-religious society like India, democracy necessarily means secularism, pluralism being the essence of democracy with all religions being given equal right to exist. Secularism means equidistance of the State towards all religions- State should not show discrimination either positive or negative towards any one religion. All individuals have the right to follow religion of their choice while respecting the same right of others.

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

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

The Constitution (42nd Amendment) Act 1976 introduced three words - socialist, secular and integrity- into the Preamble. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment be enacted.

Preamble contains the essence of the Constitution- its values and goals. It is a microcosm of the Constitution and has the following significance

- It categorically says that people of the country are sovereign
- it has many of the `basic features' of the Constitution
- if there is any lack of clarity in the Constitution, the judiciary turns to the Preamble in its interpretation of the relevant provisions

The Supreme Court, in the Berubari case (1960) ruled that Preamble is not a part of the Constitution but in the Keshavananda Bharati case in 1973 reversed its earlier verdict and ruled that Preamble is a part of the Constitution. Preamble is not enforceable. However, the Preambular values are found in many Parliamentary and state laws and if they are violated, punishment is meted out. For example, laws related to secularism, elections and so on.

According to the Supreme Court, In the Keshavananda Bharati case 1993, Preamble cannot be amended. Amendment, when it means abridgement, is not allowed. That is, Preamble can be enriched but not restricted.

Preambular values

Sovereignty

Sovereignty is a characteristic of government. It means that there is no authority above the government either outside or inside the country. Government itself is the choice of the people expressed through periodical elections. Sovereignty is the modern notion of supreme political authority within a territory. According to the Preamble of the Constitution, people of India are sovereign. That is, Preamble establishes popular sovereignty which means that no law or rule is legitimate unless it rests directly or indirectly on the consent of the people. All modern democracies are based on popular sovereignty. According to some constitutional experts, the word `people' in the Preamble means representatives of the people in the Parliament and thus implies parliamentary sovereignty in an indirect democracy like ours. However, Indian parliament is not sovereign as ours is a federal country where the powers of Parliament are restricted and shared with the states. Indian parliament is not sovereign also for the reason that the laws

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Unified, hierarchical and independent judiciary

Indian Constitution provides for a single integrated judiciary headed by the Supreme Court. Each state, or a group of them, has a High Court with administrative control over the subordinate judiciary (district and below) . It is unlike in the USA where there are two sets of courts- one for each state and one for federal laws and matters. In India, Supreme Court can be approached to challenge any verdict of the High Court and other courts. Such a system plays an important integrating role and maintains the unity of the country. Thus, it is said that the Supreme Court has a `unifying effect' on the country.

The Constitution contains many provisions for an independent and impartial judiciary. For example, the judges of the Supreme Court and the State High Courts have security of service. Independence of judiciary ensures that there is no pressure on the judiciary to be biased. The judges can be objective and impartial.

Universal adult franchise

The Constitution provides for Universal Adult Franchise. The citizens of India who are 18 years of age and above have been granted the right to vote irrespective of any qualification pertaining to education, possession of property or payment of income tax. To bring the Scheduled Castes and Tribes at par with the other communities of the country, some seats have been reserved for them in the Union Parliament, State Legislatures and local bodies in accordance with their population. . There are reserved parliamentary and assembly constituencies from where only the members of the Scheduled Castes or Tribes can contest elections. Rajya Sabha in 2010 passed Constitution Amendment(108th) Bill to give reservation to women in the popular Houses of Union and State legislatures.

PREAMBLE

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

JUSTICE, social, economic and political;

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

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

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- The Right to Freedom;
- The Right against Exploitation;
- The Right to Freedom of Religion;
- Cultural and Educational Rights; and
- The Right to Constitutional Remedies.

The Right to Property was deleted as a Fundamental Rights by the Forty-fourth Constitution Amendment Act, 1978 and is made into an ordinary Constitution right (Art.300A).

Directive Principles of State Policy

Borrowed from the Irish Constitution, Directive Principles of State Policy constitute a distinctive feature of Indian Constitution. DPSPs are a set of social and economic obligations imposed on the Government- Union and State- to establish a welfare society. They are not justiciable (non-implementation of the DPSPs cannot be challenged in courts) but are fundamental to the governance of the country (Art.37). Democratic decentralization through local self government, equitable distribution of wealth, welfare of workers, uniform civil code, improvement in the health standards of the people, commitment to contribute to international peace are some of the obligations that the DPSPs sets for the Government. Many amendments to the Constitution as well as landmark judgements of the Supreme Court have contributed to the implementation of the Directive Principles. For example, 86th Amendment Acts 2002- RTE.

Secular polity

A natural corollary of a pluralist and democratic Constitution is secularism which has the following meaning

- State has no official religion
- State and religion are separated
- State has an equi-distant policy towards all religions
- All individuals have the right to pursue the religion of their choice

Additionally, in India minorities- both religious and linguistic- are given special protection (Art.29 and 30) so as to preserve the diversity within unity.

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prescribed involving both the Union and the States. A flexible constitution is one that can be amended like an ordinary law – states are not involved. Indian Constitution is rigid as far as amendment to the federal features are concerned. It is flexible for all other features, that is a special majority in the Parliament is enough for the Amendment Bill to be passed. Jawaharlal Nehru, while justifying this nature of the Constitution, said, *"Our Constitution is to be as solid and permanent as we can make it, yet there is no permanence in a constitution. There should be a certain amount of flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living vital organic people."* 97 amendments have been made so far (2012)

Welfare State

At the time of Independence India was an impoverished country. There was large scale poverty and deprivation. Historically inherited social divisions marked the society. Since markets were not well developed and many were outside the economic system, Government took upon itself the responsibility to provide welfare to the vast majority of vulnerable people. Constitution has many features that commit the country to a welfare State. The Preamble to the Constitution was amended in 1976 (Forty-second Amendment Act, 1976) to insert the goal of socialism. Directive Principles of State Policy (Part IV) aim at the establishment of a Welfare State in India. Progressive taxation, developmental interventions like the various flagship programmes of the government (MNREGS), nationalization of banks in 1969 and 1980, land reforms and various subsidies are meant to establish a welfare state. Affirmative action (positive discrimination) by the Government in favour of the socially marginalised like dalits is an important aspect of the welfare state.

Fundamental Rights

As a hallmark of the democracy that the Constitution establishes, Fundamental Rights are provided in Part III to citizens (Art.15,16,19,29 and 30) and others. They are fundamental to the development of the individual and the society and so they are called Fundamental Rights. They are given extraordinary protection with the Supreme Court being made directly accessible under Art.32 and High Courts under Art.226 to issue writs to restore the Fundamental Rights in case they are violated.

The Fundamental Rights of India conferred by the Constitution are broadly classified under the following groups:

- The Right to Equality;

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like banking, national security, currency, defence, railways, post and telegraph, foreign affairs, citizenship, etc have been are given to the Union Parliament, being placed in the Union List. Items of provincial and regional importance like police, local self government, agriculture, law and order, health and entertainment have been given to the States, being a part of the State List. Neither can legislate on the other's List. However, under rare and special circumstances, Union Parliament can legislate on items in the State List. Concurrent List has subjects which are of common interest such as socio economic planning, marriage and divorce, adoption, succession, forests, transfer of property, preventive detention, education, civil and criminal law, etc. The Union Parliament and the State Legislatures enjoy co-equal powers to make laws in regard to the However, if there is a conflict between a Union law and a State law, the law made by the Union Parliament would prevail over the State law, according to the doctrine of federal supremacy.

- Each level of government being provided with its own sources of revenue
- Supremacy of the written Constitution
- Rigid constitution
- Independent judiciary to settle disputes among the federal units. Supreme Court under Art.131 has exclusive and original jurisdiction in federal matters

Even while the above listed essential features of federalism are found in the Indian Constitution, there is a strong unitary tilt. For example, states are not 'indestructible' as in the USA. Union Parliament can not only alter the area and boundaries of a state but can also abolish a state. The Parliament has the residuary powers- that is powers that may be left out of the three Lists detailed above. Emergency powers (Art.352 and 356) of the Union Government also turn the country into a unitary system.

Since 1992, with the making of the 73rd and 74th Amendment Acts related to Panchayatraj and Nagarapalika institutions respectively, Indian Constitution has added another tier to the federal system. However, powers and finances of the Panchayats are still left to the discretion of the state governments.

Rigid as well as Flexible

An amendment to the Constitution may become necessary for any reason like national security, social progress, national integration and so on. The method to amend the Constitution is rigid in a federal polity- that is a special and elaborate method is

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powers of the states and centre. The idea is to prevent any constitutional conflicts and crisis in the working of the Constitution

- Since the Constitution draws from many Constitutions as shown above, it is bound to be lengthy.
- The size and diversity of the country with a pluralist tradition require that Constitution promote the same with detailed provisions. For example, language policy.
- Independent bodies Election Commission, Union Public Service Commission, Comptroller and Auditor General of India have been set up with elaborate provisions for powers, independence etc which are in other Constitutions not a part of the Constitution but only statutes.

Parliamentary democracy

The Constitution of India adopts Parliamentary system of democracy in order to represent the pluralist tradition and interests of the country. In the parliamentary form , members of legislature provide the executive. That is, the Council of Ministers who make up the political executive are necessarily drawn from legislature in order to enforce the highest forms of popular accountability. The Council of Ministers is collectively responsible to the legislature. Council of Ministers enjoy power till they have support of the popular house, Lok Sabha of India. There are many devices in the Constitution and various statutes and rules with the Parliament holds the executive answerable. As a last resort, no-confidence motion is provided to vote out the council of ministers and either replace it with another party or coalition or have a general election to the Lok Sabha. Parliament has enormous power to make laws and amend the Constitution. But unlike in Britain where the Parliament can make any laws, in India, Parliamentary power is limited by the following: federalism gives some powers of legislation to Union and some to the states.Judicial review is another limitation. "Basic features" doctrine is one more limitation (Read ahead)

Federal Polity with a Unitary Tilt

The Constitution contains all the basic features of a federation as shown below

- Sets up a dual polity- the Union Government and the State Governments
- Legislative, administrative and financial powers are divided between the two levels of government. All legislative powers are classified into three lists-the Union List, the State List and the Concurrent List. Subjects of national importance

Australian Constitution

- Concurrent List
- Joint sitting of the Parliament

French Constitution

- Ideals of Liberty, Equality and Fraternity

Canadian Constitution

- A quasi-federal form of government —a federal system with a strong central government
- The idea of Residual Powers with centre

Constitution of the Soviet Union

- Fundamental Duties(Art. 51-A) on the recommendations of Sardar swaran Singh Committee 1976)

Other Constitutions

- Emergency Provision from Weimar Constitution
- Amendment of Constitution from South Africa
- Procedure established by Law from Japan(though it is a British feature, some attribute it to Japan)

It is the most voluminous in the world

Indian Constitution is the lengthiest in the world in terms of the number of articles. Originally, at the time of being adopted, it consisted of 395 articles but after 97 amendments(2012), it presently has more than 450 articles. There are 12 Schedules to amplify and support the contents in the Articles. The reasons for the voluminous nature of the Constitution are

- There are detailed provisions for various aspects of administration in order to minimize conflict and confusion.
- Being a democratic country, there is a great need to lay down elaborately the rights of the individuals. There is a chapter on Fundamental Rights.
- A federal constitution has to detail the rights and jurisdictions of the centre and states. It is more so in India where much care is taken to spell out in detail the

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CONSTITUTION OF INDIA
OUTSTANDING FEATURES

Indian Constitution was adopted on 26th November 1949 by the Constituent Assembly. It has evolved over the last more than 60 years and is characterised by the following salient features:

Written Constitution

Indian Constitution is a written Constitution. Written constitution is that which is drafted after a prolonged process of discussion by a representative body elected for this very purpose, for example Constituent Assembly of India(1946-49); the Constituent Assembly of Nepal elected in 2008 with the mandate to draft and adopt a Constitution by 2012. An unwritten constitution, as in Britain, evolves from popular conventions, customs and traditions along with the social values and ideals. Israel also has an 'unwritten' Constitution- that is there is no body like the Constituent Assembly that drafted it.

Drawn from many sources

The Constituent Assembly, desirous of providing the best features in the Constitution, drew from many sources as shown below

British Constitution

- Parliamentary form of government
- Rule of law
- Procedure established by Law

United States Constitution

- Charter of Fundamental Rights
- Federal structure of government
- Electoral College
- Independence of the judiciary
- Judicial review

Irish Constitution

- Directive principles of state policy

Indian polity

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