

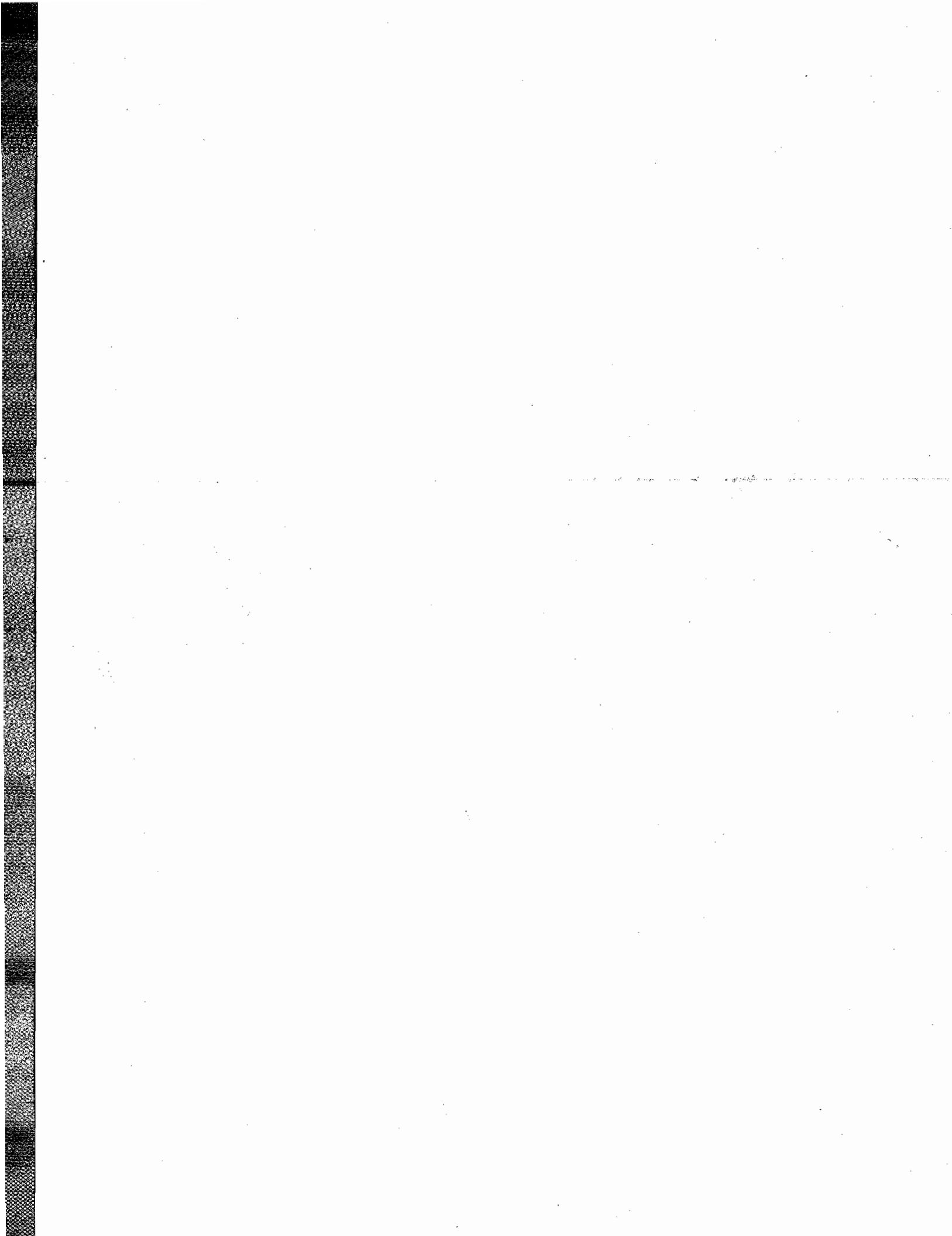
Constitution, Governance and Polity

GENERAL STUDIES



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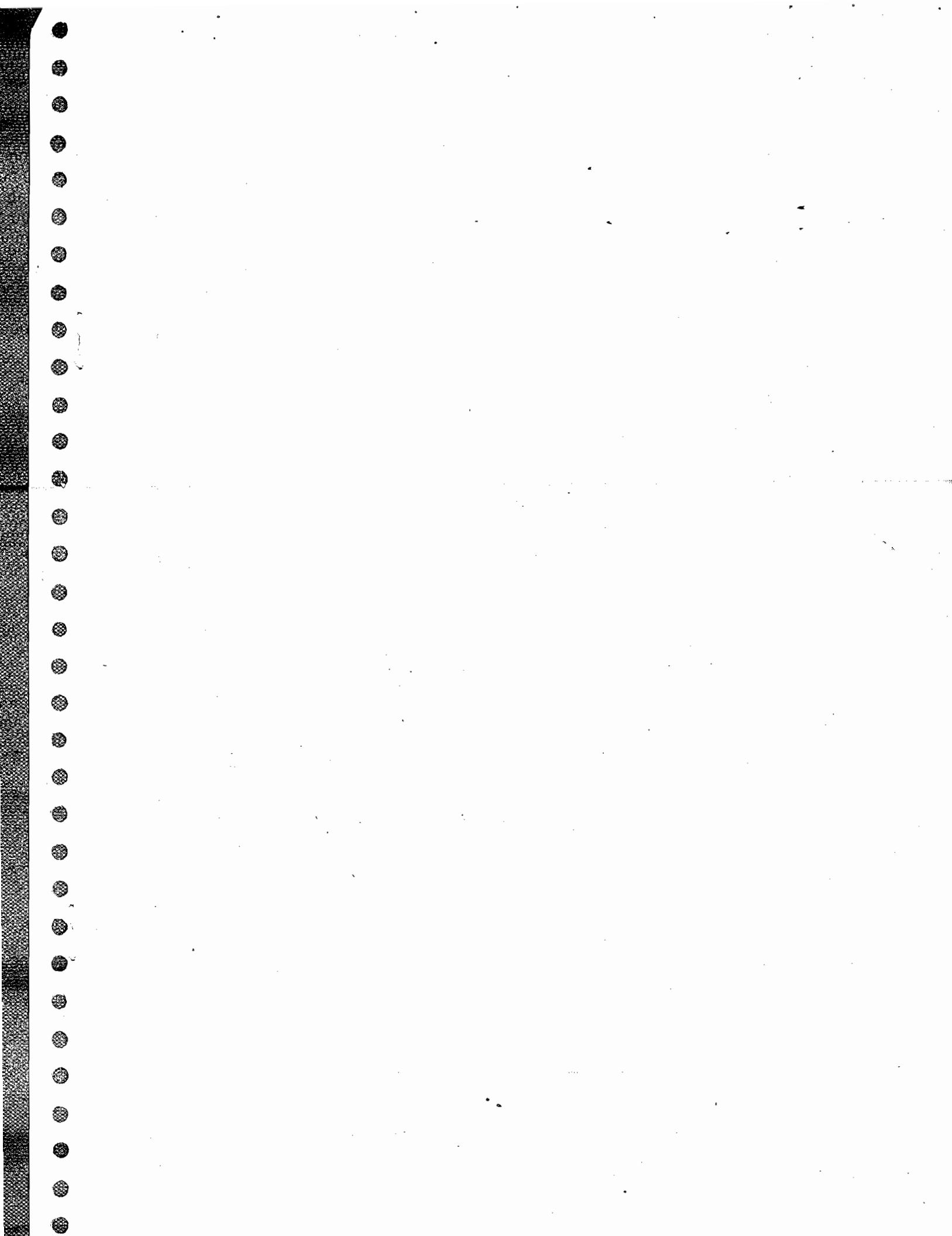


S. No.	Topic	Page No.
1.	What Is A Constitution?	01-02
2.	Constitution Of India Outstanding Features	03-10
3.	Preamble	11-15
4.	Union And Its Territory	16-35
5.	Citizenship In India	36-41
6.	Fundamental Rights	42-92
7.	Directive Principles Of State Policy	93-110
8.	Fundamental Duties	111-115
9.	Constitution Amendment Process	116-131
10.	Emergency Provisions	132-142
11.	President Of India	143-164
12.	Vice-President Of India	165-168
13.	Attorney-General Of India	169-169
14.	The Judiciary	170-199
15.	Union-State Relations And Federal System	200-238
16.	Comptroller And Auditor General Of India	239-251
17.	Electoral System In India	252-279

CONTENTS

SRIRAM'S IAS

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The constitution of a nation is the Basic Law. It embodies the customs, mores, values, precedents, culture and so on. It is the Sacred Law that is the basis for the governance of the country. It established the political system; the institutions that make it; Legislature, Executive and Judiciary. All other institutions have to be compatible with the Constitution. Laws made and implemented should be in line with the Constitution.

Constitution also lays down what powers are available to the above mentioned institutions. It sets limits to the powers as well. The pattern of separation of powers among the three organs is also clearly demarcated in the Constitution. For example, in a parliamentary form, SOP is provided in a limited way. For example, India. In the US

it. There are many more rights outside the Constitution but their validity is judged by its formality to the Constitution. For example, the Criminal Law (Amendment) Act, 2013 protects women on a preferential basis but it does not violate right to equality as special treatment of women is legitimate under Art. 15 of the Constitution. Right of Children to Free and Compulsory Education Act, 2009 is being taken up by a Constitution Bench of the apex court(2013) to ascertain whether the special rights conferred on the disadvantaged children are allowed by the Constitution or not.

In a democracy the purpose of a constitution is to prevent the government from abusing its power over the people of a nation. Therefore, judiciary is sanctioned by the Constitution to ensure rule of law and individual and collective rights.

Some Constitutions also imposed duties on the citizens- as in the erstwhile USSR and India since 1976, called Fundamental Duties. The objective is to build responsible citizenship.

The need for the Constitution arises because government is the only institution that has the legal right to force/coercion within a country and restrained use of force requires rules.

In most countries the constitution is a written document. India, the US, Australia, Canada and China and India and almost every other nation have a single written document. It means a body elected or nominated members meets for a prolonged period to deliberate and draft a constitution as to what should be the rules of governance.

What is a Constitution?

State is the political entity. Family is a private institution. All institutions that fall in between can be called civil society.

The state and civil society

States can also be distinguished from the concept of a "nation". Nation may refer to a community of people who share a common history, culture, some times ethnicity and so on. However, it can also refer to people who share a common territory and government (for example the inhabitants of a sovereign state) irrespective of their ethnic make-ups; that is, a nation state.

Each successive government is composed of a specialized and privileged body of individuals, who monopolize political decision-making, and are separated by status and legislature new ones, and arbitrate conflicts. In some societies, this group is often a self-perpetuating or hereditary class. In other societies, such as democracies, governments organize from the population as a whole. Their function is to enforce existing laws, individuals, who monopolize political decision-making, and are separated by status and change on the basis of periodical elections.

The concept of the state can be distinguished from the concept of government. That is, governments are the means through which state power is used. State is served by a continuous succession of different governments. State uses the instrument of Government to enforce its powers in the discharge of its duties.

The state and government

States may be classified as sovereign if they are not dependent on, or subject to any other power or state. Other states are subject to external sovereignty or hegemony where ultimate sovereignty lies in another state. For example, a colony.

According to the Oxford English Dictionary, a state is "an organized political community under one government".

The most common used definition of State is Max Weber's: it describes the State as a political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain territory. General categories of state institutions include administrative bureaucracies, legal systems, and military organizations.

State set up to draft the Constitution like the Constituent Assembly of India which met from 1946 to 1949 to formulate the Constitution.

If a country has a Constitution evolving out of conventions, laws, judicial verdicts and so on, it is known as "unwritten" - for example, UK, New Zealand and Israel. The only reason for naming these constitutions as "unwritten" is that a single body of experts was not set up to draft the Constitution like the Constituent Assembly of India which met from 1946 to 1949 to formulate the Constitution.

- Written Constitution**
- Indian Constitution was adopted on 26th November 1949 by the Constituent Assembly. It came into force on 26th January 1950. It has evolved over the last more than 63 years and is characterised by the following salient features:
- Indian Constitution is a written Constitution. Written constitution is that which is drafted as a result of long process of discussion and deliberation 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. 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 to elect the President, though it is substantially different from the electoral college in India.
- Independence of the judiciary
- Judicial review
- French Constitution**
- Directive principles of state policy

Outstanding features Constitution of India

- 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 rights of the individuals.
- There are detailed provisions for various aspects of administration in order to minimize conflict and confusion.
- The voluminous nature of the Constitution is for the voluminous nature of the Constitution.
- 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 rights of the individuals.

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(2013), it presently has about 450 articles. The 97th Amendment Act related to cooperatives added Art 43B in 2012. These are Articles are serialized into 25 Part.
- 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 12 Schedules to amplify and support the contents in the Articles. The reasons for the voluminous nature of the Constitution are

Weimar Constitution

- Emergency Provision from Weimar Constitution of Germany. Weimar Constitution was the constitution that governed Germany during the Weimar Republic (1919-1933).
- Fundamentals Duties(Art. 51-A) on the recommendations of Saradar Swaran Singh Committee 1976.

Constitution of the Soviet Union

- The idea of Residuary powers with Centre, in the federal distribution of powers government
- A quasi-federal form of government — a federal system with a strong central
- Ideals of Liberty, Equality and Fraternity

Canadian Constitution

- Ideals of Liberty, Equality and Fraternity
- French Constitution
- Concurent List
- Joint sitting of the Parliament

Australian Constitution

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, elected 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 enjoys 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, Parliament has 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)

- 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 provisions for powers, independence etc. which are in other Constitutions not a part of the Constitution but only statutes.
- Independent bodies Election Commission, Union Public Service Commission, Comptroller and Auditor General of India have been set up with elaborate policies.
- The size and diversity of the country with a pluralist tradition require that conflicts and crisis in the working of the Constitution

Federal Polity with a Unitary Title

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 like banking, national security, currency, defence, railways, post and telegraph, foreign affairs, citizenship, etc have been given to the Union Parliament, police, local self government, agriculture, law and order, health and entertainment being placed in the Union List. Items of provincial and regional importance like divorce, adoption, succession, forests, transfer of property, preventive detention, which are of common interest such as socio economic planning, marriage and divorce, adoption, succession, forests, transfer of property, preventive detention, which are of common interest such as socio economic planning, marriage and 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 'imderestructible' 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 residual 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.

welfare state.

Government in favour of the socially marginalised like dalits is an important aspect of the welfare state. Affirmative action (positive discrimination) by the nationalisation of banks in 1969 and 1980, land reforms and various subsidies are meant to establish a welfare state. Affirmative action programmes of the government (MNREGS), interventions like the various flagship programmes of the government (Part IV) aim at the establishment of a Welfare State in India. Progressive taxation, developmental acts, 1976) to insert the goal of socialism. Directive Principles of State Policy (Part IV) aim at the Constitution was amended in 1976 (Fourty-second Amendment) to a welfare State. The Preamble to the Constitution has many features that commit the country to a welfare vulnerable people. Constitution has many features that commit the country to a welfare vulnerable people. Government took upon itself the responsibility to provide welfare to the vast majority of markets were not well developed and many were outside the economic system, poverty and deprivation. Historically inherited social divisions marked the society. Since markets were not well developed and many were outside the economic system, poverty and deprivation. Historically inherited social divisions marked the society. Since

At the time of independence India was an impoverished country. There was large scale

Welfare State

organic people." 97 amendments have been made so far (2012)

anything rigid and permanent, you stop the nation's growth, the growth of a living vital permanence in a constitution. There should be a certain amount of flexibility. If you make Constitution is to be as solid and permanent as we can make it, yet there is no passed. Jawaharlal Nehru, while justifying this nature of the Constitution, said, "Our that is a special majority in the Parliament is enough for the Amendment Bill to be far as amendment to the federal features are concerned. It is flexible for all other features, be amended like an ordinary law - states are not involved. Indian Constitution is rigid as prescribed involving both the Union and the States. A flexible constitution is one that can Constitution is rigid in a federal polity - that is a special and elaborate method is security, social progress, national integration and so on. The method to amend the An amendment to the Constitution may become necessary for any reason like national

Rigid as well as Flexible

discretion of the state governments.

the federal system. However, powers and finances of the Panchayats are still left to the and Nagarapalika institutions respectively, Indian Constitution has added another tier to the since 1992, with the making of the 73rd and 74th Amendment Acts related to Panchayats

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 judgments of the Supreme Court have contributed to the implementation of the Directive Principles. For example, 86th Amendment Acts 2002 - RTE, National Urban

Directive Principles of State Policy

(Art.300A).

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

- The Right to Constitutional Remedies.
- Cultural and Educational Rights; and
- The Right to Freedom of Religion;
- The Right against Exploitation;
- The Right to Freedom;
- The Right to Equality;

under the following groups:

The Fundamental Rights of India conferred by the Constitution are broadly classified

to restore the Fundamental Rights in case they are violated. Being made directly accessible under Art.32 and High Courts under Art.226 to issue writs being made extraordinary protection with the Supreme Court Fundamental Rights. They are given extraordinary protection with the Supreme Court 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 As a hallmark of the democracy that the Constitution establishes, Fundamental Rights are

Fundamental Rights

based. The judges can be objective and impartial.

Independence of judiciary ensures that there is no pressure on the judiciary to be service. For example, the judges of the Supreme Court and the State High Courts have security of tenure. The Constitution contains many provisions for an independent and impartial judiciary.

Thus, it is said that the Supreme Court has a unifying effect on the country. Such a system plays an important integrating role and maintains the unity of the country. Supreme Court can be approached to challenge any verdict of the High Court and other courts. Such a system provides an avenue for each state and one for federal laws and matters. In India, two sets of courts - one for each state and one for federal laws and matters. In India, the subordinate judiciary (district and below). It is unlike in the USA where there are

Unified, hierarchical and independent judiciary

Additionally, in India minorities - both religious and linguistic - are given special protection (Art.29 and 30) so as to preserve the diversity within unity.

- All individuals have the right to pursue the religion of their choice
- State has an equal-distant policy towards all religions
- State and religion are separated
- State has no official religion

following meaning

A natural corollary of a pluralist and democratic Constitution is secularism which has the

Secular polity

December 2011. Indexing the MGNREGA wages to CPI(ALL) in 2012. Health Mission(2013). Food Security Bill that was introduced in the Parliament in

Art. 368.

Since 1973, as a result of the *Keshavananda Bharati* case verdict of the Supreme Court, the doctrine of basic features was introduced into India's Constitutional Jurisprudence under which certain features of the Constitution may be pronounced 'basic' by the apex court and kept out of the reach of Parliament's amendment power which is found in Article 368.

Basic Features

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 Legislative Assembly constituencies from where only the members of the Scheduled Castes or Tribes can contest elections. Rajya Sabha in 2010 passed a Bill to give reservation to women in the popular Houses of Union and State legislatures. Representation of People's Act was amended by the Parliament in 2010 to allow voting rights for Non-Resident Indians (NRIs)

Universal adult franchise

The laws made and enforced are reviewed by the judiciary for their legality and constitutionality. It protects the Constitution; prevents abuse of law; and empowers citizens. In the last more than 3 decades, review powers have assumed activist dimensions expanding the scope of citizen rights.

Judicial review

Preamble can be enriched but not restricted. According to the Supreme Court, in the Kesavaananda Bharti case 1993, Preamble cannot be amended. When it means abridgement, is not allowed. That is, example, laws related to secularism, elections, social justice and so on.

For many Parliamentarily and state laws and if they are violated, punishment is meted out. For Territory) Preamble is not enforceable. However, the Preamble values are found in an organic part of the Constitution (Remember Part I of the Constitution is Union and its ruled that Preamble is a part of the Constitution. Though it is not counted as a Part, it is Constitution but in the Kesavaananda Bharti case in 1973 reversed its earlier verdict and The Supreme Court, in the Berubari case (1960) ruled that Preamble is not a part of the

- Preamble in its interpretation of the relevant provisions
- if there is any lack of clarity in the Constitution, the judiciary turns to the
- it has many of the 'basic features' of the Constitution
- It categorically says that people of the country are sovereign

Preamble contains the essence of the Constitution - its values and goals. It is a microcosm of the Constitution and has the following significance

Simple recommends that this amendment be enacted.

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.

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

FRA TERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

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

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

JUSTICE, social, economic and political;

to all its citizens:

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

PRE AMBLE

economy.

Thus, while India continues to strive for the Preamble value of socialism, the method of achieving the goal is modified towards market forces playing a greater role in the market of the global economy than since 2002.

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 centred 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 2008.

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.

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' on the one hand and to uphold the Constitution except the 'basic features' on the other hand.

Sovereignty is a characteristic of governments of all independent countries. 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, in democratic countries. Even if a country were not democratic, its sovereignty is undeniably. 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 it makes are subject to judicial review. Whether the laws made by the Parliament are constitutionally compatible or not is ruled by the judiciary.

Sovereignty

Preambular values

In 2010, Supreme Court dismissed a petition filed by an NGO arguing for the removal of the word 'socialist' from the Constitution's preamble. The challenge under PIL comes from the fact that Section 29A(5) of the Representation of People Act, 1951 requires that each political party have a memorandum of association. This memorandum must include a specific provision that the body shall bear true faith ... to the principles of socialism, secularism and democracy. Without this, a body cannot be recognised as a political party. Otherwise, the Election Commission can deregognize the party.

In 2013, A PIL in the Bombay high court sought an interpretation of the term socialist as used in the preamble to the Constitution of India. The PIL does not refuse to reaffirm its commitment to 'socialism', there really is no cause, other than the academic importance of the question, that merits the hearing of this case.

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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, all religions should be given equal right to exist. Secularism means equivalence 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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Liberalization of the economy began in 1991. The PIL pointed to debates of the Constituent Assembly where Dr B.R.Ambedkar liberalized the economy began in 1991. In 2013, A PIL in the Bombay high court sought an interpretation of the term socialist as used in the preamble to the Constitution of India. The PIL does not refuse to reaffirm its commitment to 'socialism', there really is no cause, other than the academic importance of the question, that merits the hearing of this case.

The Courts reasoning was that since no political party has objected to it, and that the Election Commission has not yet had an occasion to disreognise a party that refuses to reaffirm its commitment to 'socialism', there really is no cause, other than the academic importance of the question, that merits the hearing of this case.

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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.

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.

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 redistributive justice programmes in to supply essential goods at affordable prices and so on.

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. People speak of social, political and economic justice. Social justice means the whole society should progress without some sections falling behind and exploited. It is inclusive of ethnicities and corporations and NGOs to ensure that the weak and impoverished are uplifted and, at any rate, are not allowed to become weaker.

Empowering the citizen.

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

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 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

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.

According to the Supreme Court, in the Kesavananda Bharti case, Preamble is a part of the basic framework of the Constitution and can not be amended. Amendment, when it means amendment, is not allowed. That is, Preamble can be enriched but not restricted.

Amendment

The Preamble is a part of the Constitution as ruled by the Supreme Court in the Kesavananda 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 compatible with the objective of socialism. Judiciary may rule on the question taking assistance from the Preamble in this regard.

Fraternality

Fraternality means common brotherhood of all Indians. It asserts that social divisions will be removed and integration achieved as emotion national integration is the goal of national integration. One common citizenship the feeling of being Indian first is the nature of fraternity.

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 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, OBCs, SCs, STs and the SC/ST and the marginalised sections of society have been given reservations in Art. 15 and Art. 16 in favour of the SC/ST and the OBCs.

There are two expressions used in the context of government 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 UTs and so on and thus 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.

The States and UTs found in the First Schedule of the Constitution are Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, 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, Dadra & Diu, Nagar Haveli, Lakshadweep and Pondicherry.

India is a Union of 28 States and seven centrally administered Union Territories, including the National Capital Territory of Delhi.

- 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.

Union at the time of the Constituent Assembly debates.

- The expression "India is" a Union of States" was chosen as India was already a convenience of administration, the country is one integral whole, its people a single people living under a single imperial derived from a single source."

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

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.

Art. I says that India, that is Bharat, is a Union of States.

UNION and its TERRITORY

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.

There are instances where the State legislatures have passed resolution for creating new states. But Constitutionally, 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 recommend the introduction of the Bill in the Parliament.

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.

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 Bill needs to be passed by the Parliament by a simple majority.

- alter the name of any State;
- alter the boundaries of any State;
- diminish the area of any State;
- increase the area of any State;
- form a new State by separation of territories 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;

Art.3. Formation of new States and alteration of areas, boundaries or names of existing States:- Parliament may by Law

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.

The States and the territories thereof are specified in the First Schedule. The territories 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. For example, Siikim in 1974 and Puducherry (Pondicherry then) in 1950's.

Government of India can acquire any territory by purchase, treaty, cession, conquest or any other method administered it on the basis of Parliamentary Act.

A federation is one consisting of an indescribable Union of indescribable 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 indescribable. 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 President's recommendation. It acts as a check to politicise the matter to serve the partisan interests of any political group.

- The need for political reorganisation and integration after Independence even in the face of any provincial resistance was the overriding factor. 600 Princely states that were undemocratic had to be absorbed into India and had to be made parts of different states for democratic and administrative reasons.
- 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.
- 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 1962. Till 1962, therefore, it could not be given the status of 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).

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Is the process of creation and abolition of states unitary?

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SRIRAM'S IAS

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 efficiency 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 Patrabhi Sitaramaih to consider the Dhar Commission's recommendations. In its report (J.V.P. Report) the Committee concluded utmost caution in proceeding with the proposal for the linguistic reorganization of states.

Creating New States

1. Delhi - capital of India.
2. Puducherry - 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. Lakshwadeep - 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.

Specific reasons are

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.

Union Territories

The case of Sikkim

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.

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Up-grade the status of Sikkim from a protectorate to an associate state of the Indian Union, the Constitution (Thirty-fifth amendment) was passed in Parliament in 1974 to Sikkim, the Constitution (Thirty-fifth amendment) was passed in Parliament in 1974 to Sikkim, was originally a protectorate of India. Reflecting the wishes of the people of Sikkim.

The States Reorganization Act of 1956 was made to implement the recommendations of the SRC for linguistic reorganization of states and to rework the territorial limits of India's states and territories. The Constitution (Seventh) Amendment Act was made to 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.

States Reorganization Act 1956 and Constitution (Seventh) Amendment Act 1956

Formation of States in India on the basis of languages in 1956 was because language representation of States in India on other concerning language like geography, ethnicity, ecology, economic development and so on. Prevents fissiparous tendencies like separatism and disintegration. Prevents diversities and thus strengthens the federal system of governance. It strengthens model as it helped administrative efficiency; greater citizen convenience; effective administrative units. The linguistic reorganization of states was the only viable 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 reorganization of states and federal devolution of resources report. 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 reorganization of states and federal devolution of resources

- It should aid the process of implementation of five years plans.

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.

Accepting the demand by a region for the formation of a State are:

The four criteria laid down by the States Reorganization Commission (SRC) for

of living obtaining in well defined regions of the country. Only rational basis for reconstituting the state, for it reflects the social and cultural pattern language as the basis for constituting a state, it said: Linguistic homogeneity provides the efficiency - the use of a single language in a given state. Explaining the criterion of linguistic confederations. The change was justified on the basis of administrative imposed administrative boundaries be redrawn to recognize certain regional, cultural, and 1953) that included Fazl Ali, KM Panikkar and HN Kunzru. In 1955, the States Reorganization Commission submitted its report recommending that many British- Jawahar Lal Nehru subsequently appointed the States Reorganization Commission (

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 separate Andhra. In 1953, the 16 Telugu-speaking districts of Madras State became united Telugu-speaking state of Andhra Pradesh.

In 1956 Andhra State was merged with the Telangana region of Hyderabad State to form a new State of Andhra. It comprised Coastal Andhra and Rayalaseema Regions. In

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of separate Andhra. In 1953, the 16 Telugu-speaking districts of Madras State became

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 aspirations of all cultural and ethnic groups. The dissatisfaction of the cultural reorganization in a vast and diverse country like India cannot satisfy the linguistic reorganization. Such potential has been further sharpened because linguistic reorganization itself is minor and aspire to simulate some of the unrecognised minority linguistic groups also continue to simmer. Such problems exist with regard to the Konkan region of Maharashtra/Goa, Nepali-speaking groups of Darjeeling, Sikkim, and Assam, and Maithili and Avadhi language groups in Bihar. There

Criticism of Linguistic Reorganization of States

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. Between 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.

- The nine Part A states, which were the former governors' provinces of British India, were ruled by an elected government 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 and other centrally administered areas except Andaman and Nicobar Islands. The chief commissioner was appointed by the President of India.
- The States were reorganized into three categories - Part A, Part B and Part C.

The Constitution of India, when it came into existence on January 26, 1950 had three classes of states.

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.

When India became independent on August 15, 1947, British government 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.

- Princely states under the control of local hereditary rulers having British government as the sovereign but enjoying autonomy based on a treaty.
- Provinces, governed directly by British officials who were responsible to the Governor-General of India and
- 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

While the reasons for the impressive gains of two small states and the third parent state thrived, with double-digit economic growth and striking social progress since separation, Jharkhand in eastern India has faltered after separating from Bihar. But Bihar itself has

much better economically than before with consistently high growth. Chhattisgarh, backward but resource-rich and once a part of Madhya Pradesh, is doing

outperformed UP. New tax breaks and a surge in tourism helped. Uttarakhand, a hilly state recorded rapid economic growth and social gains and thus

Experience of new states created in 2000

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 independent decisions etc, to name some general reasons.

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 Haryana Pradesh (western UP); Bundelkhand (UP); Kosha (western Orissa); Telangana (AP); Kodagu (Karnataka); Vidarbha (Maharashtra); Jharkhand (West Bengal); Ladakh (Jammu and Kashmir); Bodoland (Assam); Gorkhaland (West Bengal); UTs of Puducherry and Delhi.

Three new states were created in 2000 not on the basis of language but primarily for economic growth and good governance: Jharkhand, Chhattisgarh and Uttarakhand.

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.

The Sarkaria Commission (1988) hinted at weaknesses of the linguistic reorganization of states in this respect when it said:

Exploring the linguistic identities of their constituents, Demand for Telangana state shows the linguistic basis for creation of states is at best a partial remedy or no solution at all. Development takes centre stage in the formation of new states after the linguistic reorganization of states has been completed.

- better system of administration through participative planning
- big states needed to be divided for administrative viability

States reorganization has been taking place since mid-fifties-first in south and later in northwest and northeast and now in the northem, central and eastern India so that big economic or any other criterion or a combination of them. The case for small states rests on

Big States or Small States?

Historically been neglected by the more powerful or richer parts of the State. Likewise, Utar Pradesh is far too large to be administered as a single unit. Breaking it up into three or four states would lead to more effective and focused governance. After 65 testing years of independence, there need no longer be any fear about the unity of India. The country is not about to Balkanise(break up). The real problems in India today have to do with the quality of governance. Smaller states may be one way to address this problem. All states and UTs believe that the robust democracy of India and the prospect for prosperity can not be compromised with this feeling justifies creation of new states where ground realities justify the same.

SRC to consider the historic experience with states reorganisation; lay down new principles for formation of new states; and recommend solutions for the demands we early, stages of Indian independence, it may now be time for a further reorganisation of Ram Guha like many others believes that linguistic states were necessary in the first, case. Their regions are well defined in an ecological and cultural sense, and have

He further says: Linguistic states were crucial at one stage of Indian history, but have they now outlived their usefulness? In north Karnataka, in the inland districts of Andhra Pradesh and of Maharashtra, and in the hilly districts of northern Bengal — in all these places there are vigorous movements calling for separation from the parent province. Are these movements legitimate, and will they persist? Or are they spurious and hence to be disregarded?

Ramachandra Guha, eminent historian holds that the creation of linguistic states has safeguarded the unity of India. Pakistan was divided, and Sri Lanka subject to a protracted civil war, because Bengali speakers in the one case and Tamil speakers in the other were refused the autonomy and dignity they wanted and deserved. On the other hand, the fact that in India citizens are free to educate and administer themselves in their own language has created a feeling of comfort and security.

Climatic in the country were helpful, the fact also remains that the earlier over-sized states did deter uniform and robust growth and social development.

imbalances, expedited development and so on. It may lead to deepening democracy; reduction of regional imbalances, expedited development and so on.

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.

Second SRC

Given the sensitivities associated with proliferation of States, the need is to take the following measures for the improvement of governance and welfare.

Another policy that the GOI adopted is to give concessional funds to underdeveloped states for growth and political stability so as to prevent demands for smaller states. Special category status for certain states has been given to transfer funds to them for plan transfers for planned projects are grants and the rest is loan which is very different from the terms at which other states receive funds - 70% loan and 30% grants.

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 assistance) and Finance Commission - Planed transfers on the basis of poverty; special category states etc.

- higher rates of taxation on citizens to raise the required resources for the central assistance that is no longer available.
- it enjoys as a UT. It necessitates resort to higher taxation to compensate for the following reason: when a UT becomes a State, it foregoes financial assistance that

- federal coordination becomes difficult
- leave the parent state with drastically reduced resources
- more demands by other regions
- viability problems creating fiscal stress for Centre

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

Examples ofaryana, 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. The above analysis shows that the creation of small states in 2000 has produced dividends.

- remove regional economic imbalances etc.
- avoid neglect of certain regions and sections of society

In spite of the above facilities, there is a feeling that a second SRC be formed to recommend further steps.

- 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
 - 73^d 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

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

- 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 - election 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.

Besides, twenty years of economic liberalisation has fundamentally altered the political economy of India. Regional imbalances have grown and have created political tensions. Regionalism sentiment is on the rise and requires solution. Therefore, a Second State Reorganisation Commission is necessary to redraw India's federal map, creating smaller states keeping in mind economic viability and political stability.

In this context a second SRC is being recommended to look back at the reorganization so far, what are the outcomes and experiences; what general and specific principles can be laid down for formation of states; can the states concerned have a greater say. As there is a resurgence of regionalism in the country and so on.

- Has a government which provides public services and police power.
 - Has economic activity and an organized economy; regulates foreign and domestic trade and issues money.
 - Has external recognition by other States.
 - Has control over the Government territory, people and resources. There is no authority, in within or outside, that has sovereignty, that is, no other State should have power over the State's territory, people who live there on an ongoing basis.
 - Has territory which has internationally recognized boundaries
- A State is characterized by the following:

Palestinians are stateless nationalities. Kurds and nations, such as Canada and Belgium. There are nations without States: Kurds and has a State of its own, it is called a nation-State. There are some States which have two common language, institutions, religion, and historical experience. When a nationality homogeneous groups of people, larger than a single tribe or community, which share a division of a federal State (such as the states of India). Nations are culturally boundaries internally recognized. A "state" (with a lower-case "s") is usually a State (note the capital "S") is a self-governing political entity within certain geographical while the terms Nation and State are often used interchangeably, there is a difference. A

Nation, State and Nation-State

needed for a monitoring mechanism of region-wise expenditure has been stressed by many sectors is necessary and also to suggest mid term corrections wherever necessary. The region in various social and economic sectors. A mechanism for continued guidance regarding future allocations to be made by the government in various Kelkar Committee is expected to look into the potential of development of each funds for local bodies and may have to be emulated. Democratic decentralization of government may also receive adequate attention as local bodies should get more funds in state budget. State of Kerala reserves 33% of funds for local bodies and may have to be emulated.

It is expected to submit its report in 2013. It is expected to recommend greater and immediate attention to the problems of Gadchiroli, Chandrapur and other Naxal affected districts as unless attention was paid to the developmental concerns of the region, there could be difficulty in maintaining law and order.

Vijay Kelkar Committee on Balanced Regional Development Maharashtra Government in 2011 setup a Committee to study 'Alternative approaches to balance regional development in Maharashtra State' under leadership of renowned Economist and Ex-Chairman of 13th Finance Commission Dr. Vijay Kelkar. This is the growth and improvement in Human Development Index in the State of Maharashtra report in 1984. The New Committee will recommend measures to achieve a balance second such committee, after one chaired by Dr. V M Damdekar, which had submitted its recommendations to the government was paid to the developmental concerns of the region, there could be difficulty in maintaining law and order.

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 the Punjab-Haryana-Chandigarh model.
3. Dividing Andhra Pradesh into two states - One of Rayal-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

The six options presented in the report were as follows:

The Sri Krishna Committee submitted a comprehensive 46-page report after their detailed across the state which included consultations with various political as well as social groups.

Srikirshna Committee on Telangana or Committee for consultations on the situation in Andhra Pradesh (CCSAP) is a committee headed by former chief justice B. N. Srikirshna to look into the demand for separate statehood for Telangana or keep the State Government of India in 2010.

Srikirshna Commission

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.

Telangana are called Mulki. 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 had the disadvantage in education and jobs. The Telangana movement grew compared to the coastal region, the contrast is stark. Being backward , people of 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. 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 with a population of 3.5 crores. 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

- 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

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 state for any of the following reasons

Regionalism

Advocates say that Telangana can be set up as it satisfies the core prerequisites: economic viability and it has no border disputes.

While the creation of the separate state of Telangana is recognised as necessary given the widespread support it receives from within the 13 districts, there is no political consensus. Future status of Hyderabad is also contentious—the options being whether joint capital status at least with a time frame by when a separate capital is set up and built for rest of Andhra.

Hyderabad should be the capital of Telangana alone; joint capital; made into a UT with Jammu and Kashmir, Assam, West Bengal, Meghalaya, Mizoram and Tripura. All of them will immediately ask for statehood; for 2,300 Telugu speaking people lived together; creation separate state may not solve underdevelopment problems; staying within wider AP will give them access to resources etc.

Concrems are: left wing extremism; there are 13 autonomous development councils in Jammu and Kashmir, Assam, West Bengal, Meghalaya, Mizoram and Tripura. All of them will immediately ask for statehood; for 2,300 Telugu speaking people lived together; creation separate state may not solve underdevelopment problems; staying within wider AP will give them access to resources etc.

5. Bifurcation of the State into Telangana and Seemandhra 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.

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 government. The establishment 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.

Further, it was thought that the interchange of capital and labour between the richer and poorer sub-regions in large states would create equality over time. B R 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.

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 centralised planning of resources, leading to equitable regional development.

Comments

- Ensuring that the regional feeling of neglect does not degenerate into separatism
- Checking the centralisation tendency and help the states receive more powers and thus develop cooperative federalism
- Contributing 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.

Regionalism as seen in Tamil Nadu, Andhra Pradesh, Assam and elsewhere has the effect of stabilizing the polity with the following contributions /

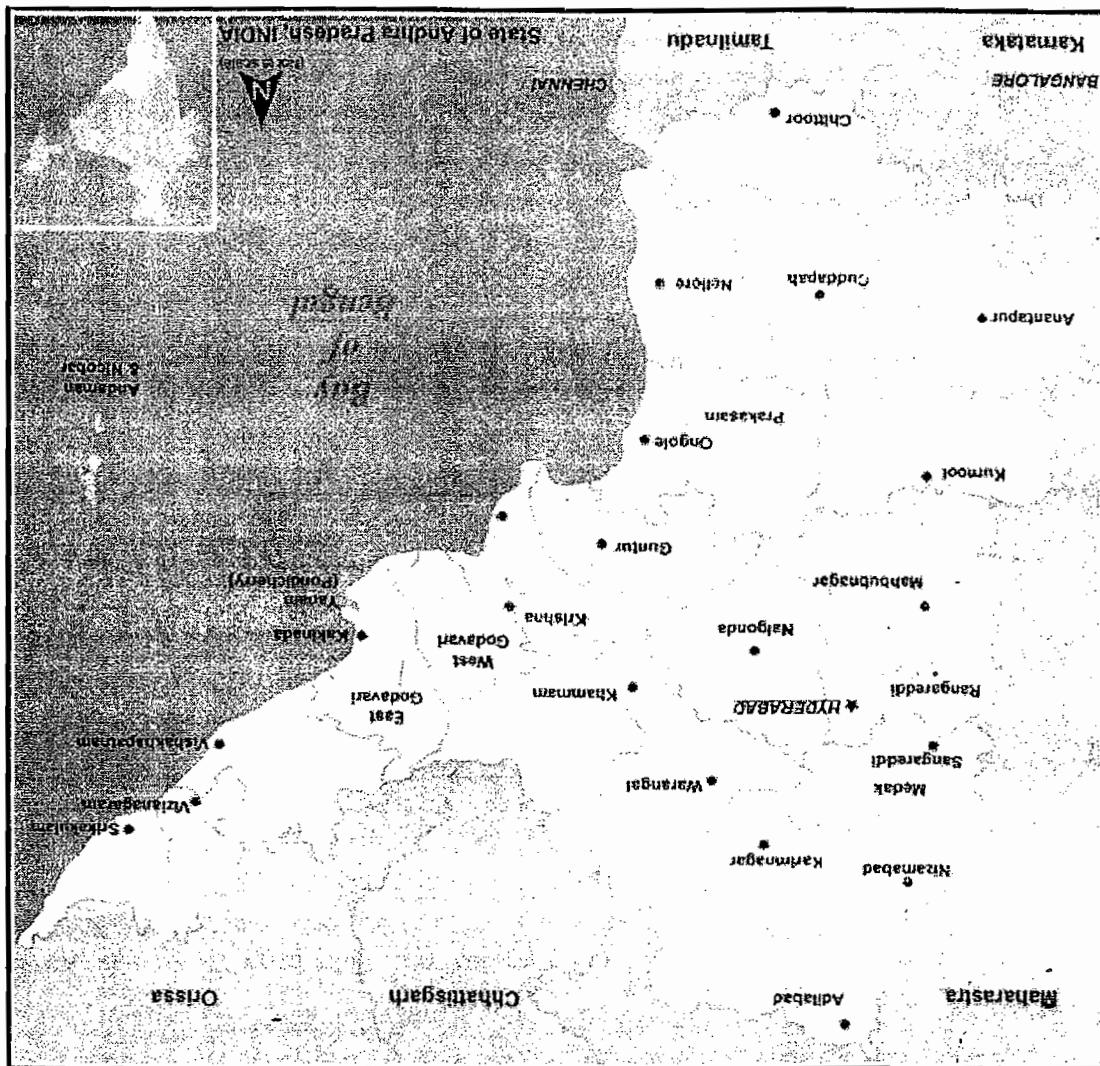
- Autonomous council
- Inclusion of the language in the Eighth Schedule as in the case of Bodoland
- Special provisions for certain regions in a State which are underdeveloped - Art.371(2) for Gujarat and Maharashtra.
- Constitutional establishment of the local self government institutions (3rd and 4th Amendment Acts in 1992).
- Grant of a separate state - Uttarakhand, Chatisgarh and Jharkhand in 2000
- Government reacted to the regionalist demands in the following manner

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 more 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.

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.

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.

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 Vidarbha, 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.



Kachchathievu is an uninhabited island belonging to Sri Lanka. This island was given to Sri Lanka by India in 1974. Since then it has been a source of controversy between the two countries. This is because the sea around Kachchathievu is rich in prawns, and attracts fishermen from Rameswaram. 1974 Agreement expressly protected the "traditional rights" of Indian fishermen to visit Kachchathievu and the right of pilgrims to take part in the St. Anthony's festival there. Article 5 of the agreement states: "... Indian fishermen and pilgrims will enjoy access to visit Kachchathievu as hitherto, and will not be required by Sri Lanka to obtain travel documents or visas for these purposes." Article 6 says, "The pilgrims will enjoy access to visit Kachchathievu as hitherto, and will not be required by Sri Lanka to obtain travel documents or visas for these purposes." Article 6 says, "The vessels of India and Sri Lanka will enjoy in each other's waters such rights as they have traditionally enjoyed therein".

However, Indian fishermen have been fired at and killed many times by Sri Lankan navy. A petition was filed in the Supreme Court requesting that the Central government be directed to retake control of Kachchathievu island, which was ceded to Sri Lanka by India through treaties concluded between the two neighbours in 1974 and 1976.

Two issues are involved here: whether an order issued by Supreme Court will be between states) of any claim that Tamil Nadu may persuade the Centre to make.

The petitioners have argued that ceding of Indian territory requires amendment of the Constitution by Parliament. This is correct as a matter of Indian law. The territory of India is defined in Article 1(2) of the Constitution read with First Schedule to the Constitution by the First Schedule to give effect to the same through an amendment to the Indian law.

Clarity by the Supreme Court of India in Berubari Union case (1960). A treaty entered into by India ceding Indian territory to a foreign power is without effect in Indian law unless Parliament chooses to give effect to the same through an amendment to the Constitution.

The treaties of 1974 and 1976 establish a boundary line between India and Sri Lanka. Kachchathievu falls on the Sri Lankan side of this line. No legislation or amendment to the Constitution has been passed by Parliament of India to give effect to the treaties. In light of the above position, they concern Kachchathievu, are without effect Schedule to the Constitution. Since Kachchathievu is not expressly mentioned in the First Schedule to the Constitution, the Supreme Court will have to enquire, based on the available facts, whether Indian law if Kachchathievu is included in the territory of India as defined in the First Schedule to the Constitution. For that under Art. 143, the President of India may seek the opinion of Madras . For that under Art. 143, the President of India may seek the opinion of the apex court.

Even if the court were to find that Kachchathievu forms a part of the territory of Tamil Nadu and that it has been ceded to Sri Lanka illegally, this ruling will have no binding effect on Sri Lanka, which is in control of the island. As a sovereign state, Sri Lanka is immune from the jurisdiction of Indian courts. Hence, the Supreme Court can merely rule that Kachchathievu forms a part of the territory of Tamil Nadu and that it has been ceded to Sri Lanka.

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119th Amendment Bill to the Constitution relates to amending the Constitution to give effect to the 1974 India-Bangladesh Land Boundary Agreement (LBA); the protocol for location or move to the country of their choice.

intended agreement, the enclave residents could continue to reside at their present addresses; however, the Indian Parliament has yet to ratify it. Under this Sepember 2011, the Prime Ministers of the two countries (Manmohan Singh of India and Sheikh Hasina of Bangladesh) signed an accord on border demarcation and exchange of the Bangladesh-India border, in Bangladesh and the Indian state of West Bengal.

India-Bangladesh LBA: Constitution Amendment (119th) Bill 2013

(Substantially borrowed from the Hindu article)

In sum, regaining control over the Katchatheevu island does not appear to be a realistic possibility both from an Indian law point of view as well as an international law angle. While Tamil Nadu's concerns relating to the alleged harassment of Indian fishermen by the Sri Lankan Navy, which forms the context of the State's renewed claims over Katchathieevu, need to be addressed, more feasible alternative solutions should be explored for the same.

Prior to the conclusion of the two treaties, both Sri Lanka and India claimed sovereignty over the island. However, after 1974, India has not asserted its claims while Sri Lanka has continuously maintained control of the island. Such silence of one of the disputing parties in a territorial dispute has been construed as an abandonment of its claim in favour of the other party in several cases.

As mentioned above, as per the treaties of 1974 and 1976, Katchathieevu would fall within the sovereign territory of Sri Lanka. Both the treaties state that they are subject to ratification. It may be argued that, ratification of a treaty ceding territory occurs, as a domestic law to avoid treaty obligations. International Court of Justice holds that non-compliance with a ratification requirement in domestic law does not invalidate a treaty.

27 of the Vienna Convention on the Law of Treaties, 1969, a state may not invoke

treaty. But the normal process of ratification is done by the Union cabinet. Under Article 27 of the Vienna Convention on the Law of Treaties, 1969, a state may not invoke

matter of Indian law, when Parliament amends the Constitution to give effect to the

treaty. It may be argued that, ratification of a treaty ceding territory occurs, as a

ratification. Within the sovereign territory of Sri Lanka. Both the treaties state that they are subject to

international law between the two States.

If the Government of India chooses to entertain Tamil Nadu's demand and raise the issue

with Sri Lanka, the question of title to the island will need to be determined under

sovereign state without unilateral forceful action, the court is likely to exercise restraint

considering that the Government of India cannot retake territory possessed by another

Katchathieevu (or any other territory considered in Indian law to be part of India),

constitutional limitations on the power of the court to direct the government to retake

Central government to retake possession of the island? While there may not be express

make a declaration on the historical illegality of the cession. Can the court then direct the

this was agreed during Prime Minister Manmohan Singh's visit to Dhaka in September 2011. If the CAB 119 is passed by the Parliament, would implement the LBA and fully demarcate the 4,100 km India-Bangladesh land border. Operatinalising the LBA would also resolve the issue of enclaves and adverse possessions. Currently, India possesses 111 enclaves within Bangladesh, while the latter possesses 51 enclaves within Indian territory. Neither country can exercise jurisdiction over its enclaves due to geographicical constraints. This leaves the 51,000 enclaves virtually stateless. Devoted of any infrastructure - no access to schools or even police stations - in the enclaves, they lead a pitiable existence, running from pillar to post for even the most basic of amenities. This in turn has converted the enclaves into hubs of criminal activities ranging from smuggling to human trafficking. If the LBA comes into effect, it would lead to a exchange of the enclaves, ending the hardships of the enclave dwellers. However, despite the LBA having been ratified in Bangladesh, Indian parliament could not amend the Constitution so far.

Opposition to the deal is based on the fact that since the exchange of enclaves involves India ceding 17,149 acres of its territory to Dhaka in return for 7,110 acres, India would lose a few thousand acres.

However, large part of the land that India would be giving up has been lying fallow for decades. Besides the writ of the Indian state does not run in these landlocked enclaves. Hence, the so called loss in land area is symbolic but enhances security of Indians.



SRIRAM'S IAS

There are two classes of people in any country - citizens and aliens. Citizens make up the political community of the country and 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 cannot. Citizens are eligible for all administrative posts while those of enemy countries are enemy aliens - the latter being denied some of the rights that the former may enjoy.

Aliens may have come to another country for a variety of reasons: 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 home. Proof of such an intention is employment or property etc.

Domicile means to stay in a country with the intention of making it his or her permanent home. Other types of aliens.

Expelling an alien is called deportation. Tourists, students, employees and so on are the other types of aliens.

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 of citizens.

Aliens are not. Aliens are of two types: citizens of friendly countries are friendly aliens while the rest are aliens. Citizens are eligible for all administrative posts while aliens are not. Aliens are granted to people in any country who are afraid to return to their home country to which they have fled for political reasons. Asylum is the legal protection granted to people in any country to which they have fled for political reasons. Aliens may reside in a country to which they have fled for political reasons. 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 previous fiscal year as the Indian law defines. If not, he or she is considered a non-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 is one who resides in the country for certain number of days - 182 days in the state like Bihar, Karnataka, for example.

The Constitution of India provides for a single citizenship for the entire country. There is no provision for the US model of being a citizen of the country as well as the citizen acquired citizenship of another country. He is no more a citizen of India unlike an NRI.

Since 2003, a type of dual citizenship is allowed by Indian laws with some restrictions. PIOs can become eligible for certain citizenship rights on par with NRIs in social, economic, commercial areas even though PIOs are not citizens of India any more. Such PIOs who obtain Overseas Citizens Card are entitled to these benefits. It is loosely referred to as dual citizenship. Such dual citizens are called overseas Citizens of India. It is facilitated to satisfy the urge of the diaspora to participate in Indian national affairs more actively.

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.

CITIZENSHIP IN INDIA

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 months preceding the date of application). 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.

By Naturalisation

- minor children whose both parents are Indian citizens
 - persons who are or have been married to a citizen of India for ~~five~~ years
 - persons of Indian origin(PIO) who are ordinarily resident in India for ~~five~~ years
 - minor children whose both parents are Indian citizens
- Citizenship of India by registration can be acquired by -

By Registration

Those born outside India on or after 26th January 1950 but before 10th December 1992 are eligible for citizenship 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 eligible to be citizens of India if either of their parents is a citizen of India at the time of their birth. The latter provision was inserted into citizenship rules to give men and women equality.

By Descent

Those born in India on or before 26th January 1950 but before 10th December 1992 are citizens of India at the time of their birth. The latter provision is necessary and was inserted in 1980's so that illegal immigrants do not have the benefit.

By Birth

- By acquisition of territory
- By naturalisation
- By registration
- By descent
- By birth

Citizenship of India can be acquired by the following ways

Modes of acquiring Indian citizenship

- no need of going through registration formalities for staying in the country, which a foreigner is required to undergo.
 - does not require visa for travel to India.
- Following are the benefits to dual citizens in detail

Persons who have dual nationality as citizens of both India and the foreign country are eligible, nor are they eligible for defence jobs. Dual citizens do not have voting rights in India. Neither can they be elected to public office, nor are they eligible for defence jobs. Persons who have dual nationality as citizens of both India and the foreign country are subject to all Indian laws.

In 2004, by an amendment to the Citizenship Act, the facility of Overseas Citizenship of 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.

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.

Determination of citizenship

The Central government under the Indian citizenship Act, 1955 deprives any citizen of Indian citizenship grounds like 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 assisted any enemy in that war etc.

Involutionary Deprivation

Any citizen of India voluntarily acquires the citizenship of another country, he ceases to be a citizen of India. 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

Acquisition of citizenship of another country

Voluntary

- Involutionary
- Voluntary

If is based on the following grounds

Loss of Citizenship

If any territory becomes a part of India, its people will be citizens of India.

Citizenship by Incorporation of Territory

Most of the stateless people in Sri Lanka are descendants 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.

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.

Stateless Tamils in Sri Lanka

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. For example, the tea plantation workers from Tamil Nadu in central Sri Lanka who were taken there as indentured labour by the British in 19th century.

Stateless Persons

One who has left his country voluntarily

Expatiate (expat)

One who has left a native country, especially for political reasons.

Emigre

however can. (Read ahead)

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. POs can not vote in Indian elections as they are not citizens. NRIs, however can.

Few important terms

The Ministry of Overseas Indians Affairs (MOIA).

Ministry of Overseas Indian Affairs

- 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 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.
- Allowed to live in India indefinitely, unlike the Person of Indian Origin (PIO)
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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 mother from Gujarat. The boys were refused German passports because Germany 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 of the parents to be Indian Citizens at the time of birth of the child. In the case on hand the children did not

Surrogacy and citizenship

- L-1B-for employees in a specialized knowledge capacity
- L-1A-for employees in an executive or managerial position, and

There are two kinds of L visas:

L1 visa

6 years.

The H-1B visa program allows American companies and universities to employ foreign scientists, engineers, programmers, and other professionals in the United States for up to 6 years.

H1B visa

(Residency)

A green card in the USA gives official immigration status (Lawful Permanent Resident).

Green card

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.

Refugee is defined 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. Some refugees leave the their country due to civil war- for example, Syrian citizens are going to Jordan and other neighbouring countries to escape the civil war. So did the Tamils from northern and eastern Sri Lanka in the last few decades. They had escaped to Malaysia due to negative discrimination and persecution.

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

Once the refugees had been repatriated, this law was specifically designed effectively to deny Rohingya to a nationality. The 1982 Citizenship law has had the effect of rendering the vast majority of Rohingyas ineligible to be Myanmar citizens. Rohingyas are not issued any new national identity cards which are issued to other citizens. There are restriction of movement. Rohingyas in Arakan State must routinely apply for permission to leave their village, even if it is just to go another nearby village. These restrictions prevent people from seeking work in other villages, trading, fishing or even attending a funeral of a relative or visiting a doctor.

The Arakan State in Myanmar, bordering Bangladesh, is inhabited by two ethnic sister communities, the Rakhine Buddhist and the Rohingya Muslim. The Rakhine Buddhists are the majority group while the Rohingya Muslims are minority group. The Rohingyas are members of approximately 2 million are enduring continued persecution and the ethnic cleansing policy of military regime in Myanmar. Also about 1.5 million Rohingyas have been living in exile in many countries all over the world.

Rohingyas

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 should be considered Indians; and that the surrogate mother was required to be regarded as the legal mother of the children. This contention had got the sympathetic hearing of the High Court of Gujarat, which agreed that the surrogate mother should be regarded as the legal mother of the children. The court also directed the Union of India to grant citizenship and passport for the children enabling them to travel abroad, relented, issuing travel visas, and the family went home.

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.

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.

Natural Rights: These are universal rights which are inherent in every individual, being a part of human nature. They are recognised and made enforceable by law. For example, right to life.

Various Kinds of Rights

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 Constitution⁸⁶. 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. Duties in Art. 52 require citizens to contribute to national and social development.

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.

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 21B). If any one violates the right illegally, the individual can approach the court for justice. The right can be diluted or denied according to a procedure established by law.

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 government is the norm, rights have been central to the relation between citizen and government.

FUNDAMENTAL RIGHTS

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 rights 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.

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 highest importance in India as they are defended by the Supreme Court directly. To restrict them, Constitution has to be amended. 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.

Fundamental Rights are important for the individual to live with dignity and the society to evolve on democratic lines. Constitutional 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. The individual concerned can approach the High Court as well. For all other rights, the highest court of first instance is the High Court. 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 of religion and the right to constitutional remedies in case of violation of the rights. The Constitutional remedies are while affirmative action in favour of certain castes, women and minorities is an example of group 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 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.

Freedom Struggle and Fundamental Rights

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 by an order of Tamil Nadu 2007). State legislatures can not restrict FRs at all. Under National Emergency (Art. 352, 358 and 359) however, Constitution permits suspension of the operation/enforcement of all Fundamental Rights except Art. 20 and Article 21.

The "Doctrine of Basic Structure" that was introduced in the Kesavanda Bharati vs State of Kerala (1973) was amplified in various verdicts of the apex court since then.

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 Supreme Court upheld the power of the Parliament to amend the Fundamental Rights to amend the Fundamental Rights. 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 Kesavanda Bharati case (1973) verdict, it permitted limited power to the Parliament to amend the Fundamental 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. Even then, amendment to the Constitution is the only way to amend the FRs.

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 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.

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.

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 throughout 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.

Right to Freedom of Speech and Expression: The Supreme Court (1995) upheld the validity of such awards. The recipient as a title and does not, according to, come within the constitutional prohibition. The awards of Bharat Ratna and Padma Bhushan and Vibhushan "cannot be used by the recipient as a title and does not, according to, come within the constitutional prohibition". 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 Government 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. Hence, any one practicing it is punishable by law. The State cannot confer any titles of offence and anyone practicing it is punishable by law. While equality has been declared in classes (that is, other than the SC/STs). Practice of untouchability has been declared an offence - for women, children, scheduled castes/ tribes , other backward allowed - for all is guaranteed, affirmative action in favour of deprived groups is constitutionally guaranteed before birth. Every person shall have equal access to public places. While equality for place of birth, social equality and equal access to public areas, race, caste, sex, or the State cannot discriminate against a citizen on the basis of religion, race, caste, sex, or in matters of public employment, abolition of untouchability and abolition of titles. Thus, guarantees of equality before law, social equality and equal access to public areas, equality of the Constitution. It is the principal foundation of all other rights and liberties and of the Constitution. They are:

- Right to constitutional remedies (Art.32)
- Cultural and educational rights (Art.29-30)
- Right to freedom of religion (Art.25-28)
- Right against exploitation (Art.23-24)
- Right to freedom (Art.19-22)
- Right to equality (Art.14-18)

There are six classes of Fundamental Rights in Part III of the Constitution. They are:

Six Classes

Most of the rights are subject to reasonable limitations. Some however are absolute - for example, untouchability is abolished unconditionally. Art.19.2 says that the rights contained in Art.19.1 are conditional and subject to reasonable restrictions. Such reasonable restrictions are spelled 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.

Limits on Fundamental Rights

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 constitutional and dweller and are given in Article 29 and 30 of the 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 any community which has a language and a script of its own has the right to 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 religious. Any community which has a language and a script of its own has the right to constitute and are given in Article 29 and 30 of the 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

dwellers living in Rayagada and Kalahandi districts. (Details further ahead) which will consider the cultural and religious rights of the tribes and forest Nyamgiri Hills of Odisha will have to get clearance from the gram sabha, April 2013 when it said that the Vedanta Group's bauxite mining project in the Secularism in India was further strengthened with the Supreme Court ruling in the promotion of a religion. A State run institution cannot impair religious for the interest of public order, morality and health. No person is compelled to pay taxes in the interest of charitable institutions of their own, subject to certain restrictions communities can set up charitable institutions of their own, subject to certain restrictions religious can be restricted in the interest of public order, morality and health. Religious practices like wearing and carrying of kirpans in the profession of the Sikh citizens are free to preach, practice and propagate any religion of their choice. However, equal before the state and no religion shall be given preference over the other. are equal to sustain the principle of secularism in India. According to the Constitution, all religions are 27 and 28, provides religious freedom to all people in India. The objective of this right is Right to Freedom of Religion : Right to freedom of religion, covered in Articles 25, 26,

trafficking. 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. In 2013, the concern with 'missing children' has become acute as children are exploited through trafficking. abolition of employment of children below the age of 14 years in hazardous jobs like factories and mines.

- abolition of trafficking in human beings and
- abolition of trafficking in human beings and

Right against Exploitation: The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely

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 to life and personal liberty cannot be suspended under any circumstance even under ordinary circumstances is laid down in the right to life and personal liberty. However, the National Emergency imposed according to Art.352.

also guarantees the right to life and personal liberty and says that the right can be limited in the interest of public order, security or morality. The Constitution 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.

The State shall not deny to any person equality before law or equal protection of the laws within the territory of India. Equality before law means that irrespective of any other Article 14:- Equality before Law

This 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 deleted or deleted, the earlier law may come 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, it allows the pre-Constitution law to re-surface, it comes out of eclipse. Generally, it does not apply to the post-Constitution laws as they become null and void from inception if they contravene the Constitution.

Doctrine of Eclipse

made under Article 368.

In sum, nothing in this article shall apply to any amendment of this Constitution Act can abridge FRs though within limits as laid down by the apex court.

The latter thus is outside the purview of Art. 13 and thus an amendment power. The latter thus is outside the purview of Art. 13 and thus an amendment does in its legislative capacity and amendment is what it does in its Constitution of law. But not an amendment to the Constitution. Law is what the Parliament regulates, notification, custom or usages having in the territory of India the force in various verdicts that "law" includes any ordinance, order, bye-law, rule,

There was a controversy about what constitutes 'law'. Supreme Court concluded

extremity of the contravention, be void.

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

purposes, government and State are used interchangeably.

Article 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 a part of State. For all practical purposes, Government and State are used interchangeably.

Explanation of Art.12-35

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 no legal basis. The courts can issue various kinds of writs to safeguard FRs: habeas corpus, mandamus,

basis of the fact that it is administered by a minority institution.

Granting aid to institutions, the state cannot discriminate against any institution on the

"However high you may be, the Law is above you" sums up the essence of rule of law.

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.

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."

Supreme Court of India, relying on Dicey observed: "The rule of law ... means that

dictatorship or absolutism.

Separation of powers, since the fusion of powers in one authority leads to

Penal laws can not be made retrospectively

Motion of equality and equal protection of laws, as explained above

characterised by the following

order. Arbitrariness defined such rule. Rule of law gradually replaced it and is

Earlier, rule by individuals and groups according to their own whims and fancies was the

As nation states emerged and democracy dug deeper, rule of law became the norm.

liberty, property etc.

Rights and codifies, the same for legal protection. For example, right to life,

Secondly, Constitution is not the source of rights but recognises the pre-existing

courts.

rank or status, is subject to the ordinary law of the land and the jurisdiction of the

Secondly, it means that no one is above the law and every one, whatever be his

limitations of government action.

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

Firstly, rule of law means absence of arbitrary power on the part of the

English Constitution, Prof. A.V. Dicey says rule of law has following dimensions.

Rule of law is a basic feature of all modern Constitutional democracies. An expert on

Rule of Law

African Americans in the USA were empowered.

introduced in government policies causing social progress in the country. Similarly,

SC/STs, women and others were given positive discrimination and thus equality is

action in USA and India. It allows deprived sections to be treated differently. Thus,

the same amount of tax. Equal protection of laws has been responsible for the affirmative

are treated similarly. For example, persons having the same taxable income have to pay

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

certain matters is the President of India and the Governor of a State.

critera, all persons-citizens and others are equal in the eyes of law. The exception in

- Juvenile MUST be released on bail irrespective of the offence.
- A juvenile may be released on bail without surety.
- A juvenile may not be released on bail if release brings him into association with a criminal; exposes him to moral, physical or psychological danger.

Some rules:

/ life imprisonment / committed to jail.
 period of appeal / reasonable period. Orders that the JJB cannot pass include sentencing to death institution, or send to a Special Home. JJB must remove records of conviction after expiry of probation of good conduct, and place him under care of parent / guardian or other fit person or service; order payment of fine, if juvenile is above 14 years of age and earns money; release on the child to participate in group counseling and similar activities; perform community orders to counsel parents / guardian and the child; advise / administer the child and release; advise by state government to deal with matters relating to juveniles in conflict with law. JJB may pass under the law, juvenile justice Boards (JJB) are set up for each district or group of districts age. Under the law, juvenile or child means a person who has not completed 18 years of juvenile justice system. Juvenile, juvenile or child means a person who has not completed 18 years of framework for the protection, treatment and rehabilitation of children in the purview of the approach towards the prevention and treatment of juvenile delinquency and provides a 2006 is the primary legal framework for juvenile justice in India. The Act provides for a special The juvenile justice (Care and Protection of Children) Act, 2000 which was further amended in

Juvenile Justice (Care and Protection of Children) Act, 2000

The doctrine generally does not apply to the post-Constitution laws as they are challenged and invalidated immediately if they contradict FRs.
 fundamental rights. As soon as the eclipse is removed, the law begins to operate from the date of constitutional impairment was removed. This law was eclipsed for the time being by the form blemish or infirmity. It became enforceable against citizens as well as non-citizens after the effect of the amendment was to remove the shadow and to make the impugned Act free from transport operators. The Government to monopolise any business. The Supreme Court held however, in 1951 Clause (6) of Article 19 was amended by the Constitution (1st Amendment of the Constitution in 1950 as they violated Article 19(1)(g) of the Constitution. commerce to take up the entire motor transport business in the Province to the exclusion of motor transport operators. This provision though valid when enacted, became void on the Supreme Court formulated the doctrine of eclipse in Bhikaji v. State of M.P. In this case the provisions of C.P. and Bihar Motor Vehicles (Amendment) Act 1948 authorized the State Government to take up the entire motor transport business in the Province to the exclusion of will see ahead.

The Doctrine of Eclipse is based on the principle that a law which violates fundamental rights, is not nullify or void ab initio but becomes, only unenforceable i.e. remains in a limbo. Such laws are not deleted from the statute book. It essentially applies to the pre-Constitution laws as we will see ahead.

Doctrine of Eclipse

Clause 5 of the Article 15 says "Nothing in this Article or in sub-clause (g) of clause (l) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether

Article 19(1)(g) in the constitution provides for freedom to practise any profession, occupation, trade or business.

In the same verdict the Supreme Court said that such reservation violates Art. 19(1)(g). In the basis of their minority and non-minority status and thus violates right to equality. Institutions on the basis of their minority and non-minority status and thus violates right to equality. In the same verdict the Supreme Court said that such reservation violates Art. 19(1)(g).

The petition contained that Article 15 (5) was ultra vires of the basic structure of the constitution as it discriminates between two similarly placed category of educational institutions on the basis of their minority and non-minority status to non-minority students.

The apex court Oct 8, 2012, issued notice to the centre on a petition that sought equal status for unaided educational institutions at par with unaided minority institutions in reserving 25 percent seats for socially and economically backward sections. In 2002, in the TMA Pai case, the apex court held that unaided minority educational institutions need not give seats to non-minority seats for socially and economically backward sections. In 2002, in the TMA Pai case, the apex court held that unaided minority educational institutions need not give seats to non-minority seats for socially and economically backward sections need not give seats to non-minority students.

A of the Constitution of India, the apex court held that matter needs to be referred to the five." Since the challenge involved raises the question as to the validity of Articles 15(5) and 21- Article 145(3) of the Constitution or for the purpose of hearing any reference under Article 143 shall be purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any case involving a substantial question of law as to sit for the Article 145(3) of the Constitution: "The minimum number of judges who are to sit for the RTE), was challenged by weaker sections of society. The Right to Education quoted and economically weaker sections of society. The provision, under the Right to Education Act an obligation on unaided private schools to reserve 25 percent seats for students from socially and economically weaker sections of society to Article 15(5) of the constitution, which places strength of five judges) will hear the challenge to Article 15(5) of the Supreme Court (minimum

Right to education and the special rights of the disadvantaged children

harrassment law made in 2013 is a similar example.

Criminal Law (Amendment) Act 2013 is an example of special laws for women. Anti-sexual

considered a model in this regard.

improving state of implementation. Juvenile Justice Committee of Delhi High Court is implementation of juvenile justice Act in their jurisdiction and have been very effective in headed by sitting judges of High Courts. These Committees supervise and monitor possible.

High Courts have constituted "juvenile justice Committees" which are monitoring committees headed by sitting judges of High Courts. These Committees supervise and monitor as soon as

- Parents / guardian of juvenile must be informed of the detention of the juvenile as soon as possible.
- A juvenile not released on bail must be kept in the Observation Home/place of safety pending inquiry

(1) of Article 30... it exempts the minority and does not exempt the non-minority educational institutions.

In April, 2012, an apex court upheld the constitutional validity of the Right to Education (RTE) Act, that mandates unaided private schools to keep 25 percent seats for students from economically and socially weaker sections of society. The petition seeks to challenge that verdict as a Constitution Bench is required to judge the validity of the 86th Amendment Act that gives right to education under Art.21A.

While upholding the Section 12(1)(C) of the RTE Act, the majority judgment exempted unaided minority educational institutions from such quota but held back same exemption from unaided schools, whether majority or minority, could not be compelled to earmark 25 percent seats in their institutions.

However, in a separate judgment Justice K.S. Radhakrishnan held that the mandate under the RTE Act providing for reservation of seats was not constitutionally valid, and thus the unaided RTE Act that prohibits discrimination on grounds of religion, race, caste, sex or place of birth, The State shall not discriminate any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

Art.15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected 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 any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

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.

Article 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.

- There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- 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 of, any appointment to any office under the State.

Art.16. Equality of opportunity in matters of public employment

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.

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.

3. Reservation for women in local bodies (Panchayat and Nagarpalika bodies) and educational institutions is supported by the Art.15.

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.

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.

Regarding women and their social progress on the basis of Art.15, the following needs to be noted:

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 permissible. Also, in the case of the SEBCs, creamy layer is excluded. Further, the Supreme Court suggested data about the SEBCs in India to see if the quota set aside is in conformity with that or not.

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 best with discrimination against certain sections.

Art.15 and social progress

Among non-Hindoos, 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).

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.

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:

Art.16 and Supreme Court Judgment in Indira Sawhney vs Union of India

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.

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'.

Art.16 (3)

Descent can be exemplified by the following. In GD Ram 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.

(1). Descent and Residence are the two additional criteria found in Art.16 (2) as compared to Art.15

Explanation

- 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.
- 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.
- Religious and denominational institutions can reserve the employment in them for those professing the religion. For example, church, mosque etc.

The aforesaid Constitutional amendments were made in order to protect the interests of the backward classes including Scheduled Castes and Scheduled Tribes. The validity of all these four Amendments were challenged before the Supreme Court through various writ petitions clubbed together in M. Nagaraj & others vs. Union of India & others.

The 82nd amendment was made to the Constitution whereby a proviso was incorporated in Article 335 of the Constitution which enabled the State to give relaxations/concessions to the SC and ST candidates in the matter of promotion.

The 81st amendment was made to the Constitution whereby clause (4/B) was incorporated in Article 16 of the Constitution which permits to treat the backlog reserved vacancies as a separate launch Special Recruitment Drives to fill up the backlog vacancies reserved for SCs/STs and and distinct group, to which the limit of 50% may not apply. This enables the Government to Article 16 before expiry of five years from the date of judgment as a separate OBCs.

In 1992 in the case of Indra Sawhney (Mandal verdict), the apex court held reservation in promotion is ultra vires but allowed its continuation for five years from the date of reservation for Article 16 before expiry of five years which enabled the Government to continue reservation for special case. The 77th amendment to the Constitution was made in 1995 inserting clause (4A) to promote SCs and STs in promotion.

In 2012 April, the ruling of the Supreme Court in the case of U.P. Power Corporation Ltd. vs. Rajesh Kumar & Ors struck down provision of reservation to SCs and STs in the State of UP.

Nagaraj case and later: Promotion in reservation for SC/ST

- The reservation of 10% of the posts in favour of economically backward sections among forward castes is not constitutionally invalid and is accordingly struck down.
- While the rule of reservation cannot be called anti-merrarian, there are certain services super specialty institutions; research based institutions etc.
- Reservations contemned 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.
- Article 16(4) does not permit provision for reservations in the matter of promotion.
- Creamy layer can be, and must be excluded.
- There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories.
- Reservations contained 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.
- The reservation of 10% of the posts in favour of economically backward sections among forward castes is not constitutionally invalid and is accordingly struck down.

Supreme Court in its judgment in 2006 in Nagara case upheld the validity of all these amendments. However, the Court stipulated that if the State Government wishes to make provisions for reservation to SCs and STs in promotion, 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 of Article 335.

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 reservations. After all, the aim is the same - empowerment.

The instruments available for affirmative action are reservations in the 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.

- Article 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.

In this case, caste-based reservations were overruled 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, including the Scheduled Castes, who could be admitted to the State's medical and engineering colleges.

Article 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 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."

Article 15(4) states: "Nothing in this Article or in Clause (2) of Article 29 shall prevent the state judgegment. Article 15(4) was added to the Constitution by the First Amendment in 1951.

Article 29(2) says that in Government or Government-aided educational institutions, a citizen could

State of Madras vs Champakam Dorairajan 1951

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Affirmative Action and Art.15 and Art.16

Supreme Court in its judgment in 2006 in Nagara case upheld the validity of all these amendments. However, the Court stipulated that if the State Government wishes to make provisions for reservation to SCs and STs in promotion, 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 of Article 335.

- Minority educational institutions as they are Constitutionally given a separate status
- They are basically the research institutions
- Institutions of Excellence because in these bodies students are not admitted for studies.
- It provides for reservation in public, private aided and private unaided educational bodies as well. However, following are the exceptions

Central Educational Institutions (Reservation in Admission) Act, 2006

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.

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.

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 should get the benefit of reservation especially Muslims and Christians of Dalit and OBC origin, should get the benefit of reservation in unaided minority educational institutions.

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 judgments of the Supreme Court. Further, minorities need to advance educationally for socio-economic progress to take place. National integration also requires that minorities should be included in the educational institutions of the country.

The Supreme Court judgment in Hammar 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 Hammar 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 and not merely professional educational institutions have to come up with enabling legislations to enforce the Act.

The Constitutional amendments. Minority educational institutions are not covered by the amendment. Scheduled Tribes and SEBCs in educational institutions: government, private aided and unaided educational institutions. Minority educational institutions are not covered by the amendment.

Art.18 is only a Constitutional enabling provision. Laws have to be made to operationalise the general provisions found in the Article.

The Supreme Court, in 1995, upheld the validity of awards like Bharat Ratna and Padma Vibhushan could not be used by the recipient as a title and did not, accordingly, come within the Constitutional prohibition.

However, Military and academic distinctions can be conferred on the citizens of India.

Bahadurs in India . Constitution abolishes these titles for the reason that they create inequality. The British government had created an aristocratic class known as Rai Bahadurs and Khan Bahadurs.

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 accept any title or office from any foreign State. No person holding any office or trust under the President any title from the President, accept any office of profit or trust under the State shall, without the consent of the President, accept any office of profit or trust under the President any title from the President, accept any office of profit or trust under the State, accept any office of profit or trust under the State, accept any office of profit or trust under the State shall accept any title from any foreign State. No person who is not a citizen of India shall be conferred any foreign State.

Art.18. Abolition of Titles

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 was provided for the offenders). In certain offences, the parties involved can come to a compromise while the case is under 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)

- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
- The Protection of Civil Rights Act, 1955 (PCA) and

17:

There are two important legislations related to Article 17: "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.

Art.17. Abolition of Untouchability

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.

Reasonable restrictions as mentioned above apply to freedom of press too.

the Indian Constitution.

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.

Press Freedom in India

If they are not justified.

The courts have the power to review the reasonableness of the restrictions and strike them down

- incitement to an offence.

- defamation or

- contempt of court

- decency or morality

- friendly relations with foreign States

- public order

- security of State

- sovereignty and integrity of India

State can impose reasonable restrictions on the exercise of the above rights on grounds of:

- carrying on any trade.

professional or technical qualifications may be prescribed for practicing any profession or

thus, there is no right to carry on a business which is dangerous or immoral. Also,

which the state may impose reasonable restrictions in the interest of the general public.

Freedom to practise any profession or to carry on any occupation, trade or business on

protection of the scheduled tribes from exploitation and coercion.

reasonable restrictions by the State in the interest of the general public or for the

protection to reside and settle in any part of the territory of India which is subject to

may be imposed on movement and travelling, so as to control epidemics.

Freedom to move freely throughout the territory of India through 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.

and integrity of India.

restrictions on this freedom in the interest of public order, morality and the sovereignty

of India through associations or unions on which the state can impose reasonable

restrictions in the interest of public order and sovereignty and integrity of India.

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.

be imposed in the interest of public order, security of State, decency, morality etc.

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 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.

The right to freedom in Article 19 guarantees the following six freedoms:

Art. 19: Right to Freedom

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 underlying 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.

However, the restrictions must be reasonable. The test of reasonableness, wherever 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.

State has a duty to protect itself against certain unlawful actions and, therefore, may enact laws which would ensure such protection.

The rights that spring from Article 19(1) are not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrollable 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.

Rights and restraints

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.

• restrictions, to be reasonable, should satisfy the test of "proportionality" - that is the restriction should not be excessive.

• the authority that imposes restrictions is responsible for showing that they are reasonable and

• reasonable, should be qualified with the following

Article 19(2) says that in the interests of public order, security of state, morality etc, reasonable restrictions may be imposed on the six freedoms mentioned in Art.19(1). However,

Reasonable restrictions

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)

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.

Arts. 32 or 226 of the Constitution.

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

The judgment, however, imposes an obligation on the protesters to obey every lawful order like Section 144 of CrPC.

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.

“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 understood in its comprehensive sense and not to thwart 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 protest was peaceful. The Supreme Court in its judgment has upheld the right to peaceful protest to a Constitutional right. The Court observed –

“The protest was peaceful. The Supreme Court in its judgment has upheld the right to peaceful protest to a Constitutional right. The Court observed –

“The essence of the judicial position is this: people cannot be made to participate in bands under duress and that organisers of bandh “trample upon the rights of the citizens protected by the Constitution.”

“Freedom of speech and bands and hartals does not include calling for forced bands. The Kerala High Court had in 1997 and again delivered judgment curbing the right of trade unions and political parties to call for forced bands. (Bandh and Hartal mean essentially the same. Hartal was originally a Gujurati expression meaning the closing down of shops to press a demand) The Supreme Court in 1997 upheld the Kerala High Court’s order making bands illegal.” Bands and hartals cost 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.

“Freedom of Speech and bands and hartals

Censor Board.

Federal issues are whether state government can stop screening of a film that has been passed by Art. 19(1), the other issues involved here are whether any one has a right not to be offended. Apart from freedom of speech and expression and the right to do business (both being a part of Art. 19(1), the other issues involved here are whether any one has a right not to be offended by film. That inability to keep law and order could not be a ground for stopping the screening of the Censor Board passed and it was open to be challenged. Supreme Court in earlier verdicts said that the Censor Board passed due to public protests. However, cinematography is in the Union List(Entry 60) and maintained due to public protests. The reason cited by the State government to stop the screening of the film till the cuts were affected was that law and order could not be maintained by the government to reach a settlement. The reason cited by the State government to stop the screening Muslim groups to reach a settlement. Some Muslim groups in Tamil Nadu were offended. The government and the court banned the movie and suggested to Kamal Hassan to negotiate with government and the court before waging jihad. Some Muslim groups in Tamil Nadu were offended. The recent rally released Kamal Hassan movie Viswaroopam portrays Afghan jihadis as offering

Viswaroopam 2013

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. Ramaujan's great essay on the Ramayana being banned by the Central University of Delhi and so on.

Some people had objected to screening of Da Vinci Code, as the movie was considered to hurt Christian feelings. Allowing the screening of the film, the Madras High Court 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 interpretations. 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.

Da Vinci Code

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.

Before the release of Aravakshan, 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. The Andhra Pradesh withdrew the order of suspension. However, Uttar Pradesh decided to defend its order.

Judicial intervention and Art.19(1a) Aravakshan case

"The misuse of information technology, particularly the social media sites, has been witnessed by the country in the recent past when emails were sent, messages posted on social media sites attaching morphed images purported to certain incidents," the ministry said.

The Centre provided statistics about internet users in India and the danger of internet misuse. Of the 700 million internet users worldwide, India had 125 million and accounted for 16% of spam mails/messages, which has emerged as an altogether new medium to spread malicious content and information.

The Centre provided statistics about internet users in India and the danger of internet misuse. Of the 700 million internet users worldwide, India had 125 million and accounted for 16% of spam mails/messages, which has emerged as an altogether new medium to spread malicious content and information.

Moreover, the advisory issued by the Centre to states not to effect arrest under Section 66A it is regulatory in nature" and was not in breach of Article 14, 19 and 21 of the Constitution. It added that the "content, effect, and the purpose of Section 66A of the IT Act clearly shows that Constitution, as the provision did not provide absolute freedom but imposed certain restrictions. did not curb freedom of expression and speech guaranteed under Article 19(1) of the future.

Without prior permission from senior police officers would rule out unnecessary detentions in

The ministry of communication and technology in its affidavit said Section 66A challenging the constitutional validity of Section 66A.

The Union government defended in the Supreme Court legal validity of Section 66A of Information Technology Act, which was used by Thane police to arrest two girls from Palghar for their comments on Facebook. The SC had asked the Maharashtra government to explain the action taken against police officials for the manner in which the 21-year-old girls were detained in the night. It had also sought the Centre's response to Shreyas Singhal's PIL

which may extend to three years. The section was intended to curb the misuse of communications services such as SMS, MMS and email through the sending of offensive messages or spam.

Section 66A, which was added to the Information Technology Act in 2008, states that any message sent out electronically that is "grossly offensive or has menacing character", with the purpose of "causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages", shall be punishable with a fine and a prison term,

Section 66A of Information Technology Act

Supreme court held that it is the duty of the State government to maintain law and order and ensure the safe screening of a film that has been cleared by the expert body i.e. CBFC. In Prakash Jha's case, the U.P. government had sought-to prohibit screening of the film 'Aarakshan' under the U.P. Cinemas (Regulation) Act, 1955, the Supreme Court did not accept it.

The Indian Penal Code and other provisions of the IT Act, especially after the 2008 amendment, provide enough safeguards against defamation, intentional insult leading to breaking the peace, incitement to commit offence, etc. Political criticism often causes some annoyance to someone. Should they be charged? The basic idea behind freedom of speech is to allow diverse critical views without looking into whether people are annoyed or inconvenienced.

These comments as they are also on The Hindu website?

that it is 'grossly offensive' to the Shiv Sena. Would it be constitutional to prosecute him for balkanization of the nation. Police might think this article causes 'annoyance', 'inconvenience', or Council, wrote in The Hindu that the Shiv Sena policy of favouring sons of the soil would lead to internet. An eminent Constitutional lawyer says: Justice Markandey Katju, Chairman, Press Council when it is made in the physical world, it cannot become one in the virtual world rooted in those listed in Article 19(2) (see the grounds given above). If an expression is not criminal when it is certain a breach of the fundamental right to speech. The grounds provided are not years. This is certainly a breach of the fundamental right to speech. The maximum imprisonment of three responsible under Section 66A of the IT Act, which carries a maximum imprisonment of three inconvenience, annoyance, damage, obstruction or insult, they can prosecute the netizen cannot go beyond this.

Article 19(1)(a) of Indian Constitution guarantees freedom of speech and expression. Threat to public order, defamation, indecency and morality, committing contempt of court, etc, are listed in Article 19(2) as grounds to limit freedom. Curb on speech cannot go beyond this.

Critics' points

The apex court had also issued notice to Delhi government, West Bengal government and Puducherry and Air India employee R Jagannatha Mayank Sharma in Mumbai. Arrest of Jadavpur University professor Amikesh Malhapatra, businessman Ravinder Srinivasan in Puducherry administration taking into account three other incidents of harassment last year --

"The policies adopted by the internet mega companies located outside India compounded the problem by not offering information pertaining to perpetrators/offenders under certain pretexts which effectively blunts the law enforcement activities. The cyberspace therefore, offers altogether different kind of medium, opportunities as well as a perception of invisibility as compared to physical shape," the Centre said defending the regulatory mechanism under Section 66A.

"There have been innumerable instances to distribute/outrage the religious/inter-community harmony and faith by uploading, publishing and transmitting highly inflammatory and objectionable information in the forms of texts, tweets, images, audio-videos and links," it said.

23

The question of whether freedom of speech is an absolute right has been a subject of recurrent debate in the wake of recent controversies. There were serious debates over the publication of cartoons of the Prophet Muhammad in a Danish newspaper, which prompted comparisons with the landmark controversy over Salman Rushdie's *The Satanic Verses*. There have been protests and secessionist attacks by Hindu deities in the nude, and the works of a fine artist M.F. Husain's depiction of Hindu deities in the nude, before it could be screened in 2013. Viswaroopam film by Kamal Hassan had to go for cuts before it could be screened in Tamil Nadu. Salman Rushdie could not take part in the Jaipur Literary Festival in 2012. These cases stirred a wider debate on the limits of freedom of expression in an democratic, pluralistic and secular country committed to protecting people's religious sentiments.

There is the related question of incitement and hate speech, triggered by the violence against migrants in Mumbai. The trade by Raj Thackeray, leader of Maharashtra Navnirman Sena (MNS), against north-indian migrants in Mumbai resulted in his arrest and a gag order against him. Politicians across the board have demanded a ban on MNS. Further, the Indian Constitution (MNC) prohibits the board from taking any action against the MNS. Some argue that we can be justified in believing that they may lead to physical harm ('incitement to violence'), or speech, should be banned because they may lead to physical harm ('incitement to violence'), or freedom of speech on the basis that it is only by allowing beliefs to be criticised that we can be best way to oppose speech is to use free speech against it.

However, certain actions are criminalised in order to protect people from physical harm. Extending this argument to speech, it is argued that some types of speech, particularly hate speech, should be banned because they may lead to physical harm ('incitement to violence'), or because the harm these forms of speech cause is just as serious as physical harm. In a culturally diverse society, respect for others' beliefs should take precedence. On the other hand, it is argued that if one accepts some limits to free speech on grounds of offence, it will lead to competing demands by other groups not be offended, leading to an overall loss of freedom. Furthermore, the best way to oppose speech is to use free speech against it.

Advocates of absolute freedom of speech say that in a diverse society, instead of trying to prevent offence, the right to be offensive should be seen as essential to democracy. Diverging from this way, free speech is the basis for all other political values, as it assumes people are rational and fully capable of assessing different arguments. Those wary of protecting absolute freedom of speech take a very different view. They argue that speech is not only used to make speeches being egalitarian, it is too often used to oppress those without a voice.

One argument against absolute freedom of speech is that speech is never really 'free' but has consequences; like all rights, it comes with responsibilities. Proponents of the above argument point out, for example, that there is no right to shout 'fire!' in a crowded theatre. They claim that speech being egotitarian, it is too often used to oppress without a voice.

Section 66A is harsh as it deprives right to life personal liberty in Art.21.

- It gives citizens the right to practice 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

Art.19(1g)

- protection of the interests of Scheduled Tribes.
- case law and order. A person can be arrested from a state if he is intimidating witnesses in a
- element. In June 2011, Baba Ramdev was arrested from Delhi as the police feared for
- extremism orders against citizen to leave the territory of a state if he is an anti-social
- for safety reasons, helmets can be prescribed for the two wheeler riders
- be oppressive or excessive.
- disturbance public order in a region, the right can be denied. However, the restrictions can not
- to maintain public order: if authorities suspect the movement of persons is likely to
- apply to them also. The following are the reasonable restrictions that additionally apply to them
- freedoms like other freedoms in Art.19. The restrictions that apply to other rights in Art.19(1) apply to the territory. Both are related and in fact follow from one another. They are not available to the latter grants the right to residence. The basis for the grant of the rights is that India is one
- The former deals with the right of the citizens to move freely throughout the country and the

Freedom of movement and residence Art.19(1d) and (1e)

The 97th amendment to the Indian constitution makes the right to form "associations or unions or cooperative societies".

fundamental right under Article 19(1)(c). The article now reads: the right to form "associations to an elected representative in an organization as he represents people".

that they carry are justified. Thus, there is a balance to be established between the speech and obligations. Thus, service rules are valid and the restrictions on freedom of statutory duties and obligations. The object is to ensure that government servants effectively discharge their speech and expression but to curb freedom of the superiors is not permitted. The object is not to curb criticism in public but to ensure that government servants effectively discharge their speech and expression is not permitted. The object is not to curb freedom of the superiors is not mentioned in Art.19(2). Service rules are essential for discipline within the service- for example, curtailed for the public servants in the interest of discipline even though such a restriction is not according to the Supreme Court, restrictions on freedom of speech in Art.19 (1a) can be

Freedom of speech and Civil Servants

Rushdie says : There is no right in the world not to be offended. In a free society, an open society, people have strong opinions, and these opinions very often clash. In a democracy, we have to learn to deal with this. And this is true about novels, it's true about cartoons, it's true about all these products.

physically, which justifies banning inflammatory types of speech.

this can be extended to other areas, such as speech that incites others to harm third parties

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.

In May 2010 the Supreme Court of India in the case "Smt. Selvi vs. State of Karnataka" held that article 20(3) of the Constitution which says that a person can not be compelled to be a witness against himself.

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.

An ex post facto law that criminalizes certain acts or alleviates possible punishments. For example by reducing punishment for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted.

- change or increase the punishment prescribed for a crime or committed or aggravated by bringing it into a more severe category than it was at the time it was committed.
- criminalize actions that were legal when committed or committed to criminal law, it means the following
- aggrevate a crime by bringing it into a more severe category than it was at the time it was committed.
- 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.

An ex post facto law (from something done afterwards) or retrospective 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

3. No person accused of any offence shall be compelled to be a witness against himself.

2. No person shall be prosecuted and punished for the same offence more than once. That is, retrospective criminal legislation is illegal.

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, offence.

Art. 20. Protection in respect of conviction for offences

- 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(s)
- Betting and gambling are not a part of trade, and so can be restricted or banned (prohibition)
- For food security, traders can be asked to sell a commodity at a concessional price (levy suggest)
- Restriction on slaughter of animals.

in India under Article 21A of the Indian Constitution. India became one of 135 countries to model laws of the provision of free and compulsory education for children between 6 and 14 Education Act (RTE), which was passed by the Indian parliament in August 2009, describes the relevant legislation. The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) is only an enabling law and is to be made operational by the Government with

to fourteen year in such manner as the State may, by law, determine".

"21A. the State shall provide free and compulsory education to all children of the age of six

86th Amendment Act introduced Art.21A introduced right to education which says:

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.

Art.21. Protection of life and personal liberty

Parliament made many such retrospective fiscal rules and laws to overcome the court verdicts and were upheld by the apex court.

Justice K T Thomas, former judge of the SC, clarified that only penal statutes cannot be amended by the legislature retrospectively. Article 20 of the Constitution applies to the criminal/public interest laws. But this is not the case for fiscal statutes, which can be amended in public interest by raising revenue concerns and public interest.

Justice JS Verma, former CJ, opined : "It is a well-settled SC decision that the legislature has the power to amend laws retrospectively, including tax laws."

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.

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.

Vodafone case

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.

law guaranteed under Article 14 of the Constitution. It further held that legislative intent of taking into consideration while interpreting the Act, helping women who are harassed at the hands of their husbands and their in-laws, should be

Substantive due process can be the basis for pronouncing the law unconstitutional if the law making agency has no power to make the law.

- Right to self-defense and so on.
- Right to an impartial jury
- Right to be present at the trial
- Right to a fair and public trial

Procedural due process sees if the law is clearly written and whether it grants the

unfairly depriving individuals of their basic constitutional rights to life, liberty, and property or amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendment to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

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

due process is followed. Otherwise, it is nullified. In the USA, the Supreme Court scrutinizes the law as it is made and implemented to ensure that the US. It is discussed in the context of the protection of the right to life, liberty and property. In procedure is followed. This is the essence of the expression 'due process of law' as it obtains in procedure is followed. If it is not, it is liable to be stuck down, even if the prescribed

Due process of law

Thus, *Maneka Gandhi* case judgment overruled 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 judgment in 1978, presently we follow both thus strengthening judicial review.

- 1 Art. 19 and 21 can not be understood as wider right compartments and the same criteria of arguments 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.

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

Art. 21 saw many developments since the Constitution commenced.

2010. Supreme Court upheld the law in 2012. make education, a fundamental right of every child when the act came into force on 1 April

- 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 (Paveement dwellers' case 1986)
 3. In Olga Tellis (1985) the apex court held that the right to life included the right to live in a healthy environment.
 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 Choudhary 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 Kajju declared right to water as part of the right to life guaranteed by Article 21 of the Constitution.Justice Kajju's observations came in a decision on a petition filed by the state of Orissa, which sought directions to end its dispute with the petitioner.

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.

"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".

Relying on Francis Coralie, in Bandhua Mukti Morcha vs. Union of India (1984) where the question of bondage and rehabilitation of some labours was involved, Justice Bhagwati observed:

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....."

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 rights 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.

Judiciary deduced rights, or inferred rights, or derived rights

- 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.

86th Constitutional Amendment Act 2002 brought about the following changes to the Constitution

The Supreme Court judgment 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. Article 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 for all children until the age of 14 years. It has been replaced by the 86th Amendment Act.

In 1992, Supreme Court held in Mohini Jain v State of Karnataka, that the "right to education" is included as a fundamental right in Part III of the Constitution.

Acharya Ramamurti Committee in 1990 recommended that the right to education should be

(Read along with the material given above as a part of Art.15)
Right to Education

While rejecting Pmki Virani's plea for Aruna Shanbaug's euthanasia, the court laid out guidelines for passive euthanasia. According to these guidelines, passive euthanasia involves the withdrawal of treatment or food that would allow the patient to live. Active euthanasia means killing by injecting poison.

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 Pmki Virani, turned down the mercy killing petition. The court, in its landmark judgment, however allowed passive euthanasia in India.

Euthanasia and Aruna Shanbaug case

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.

Andhra Pradesh Government over the construction of a barrage over the Vamsadhara river.

30

In 1996, in the People's Union of Civil Liberties (PUC) case, the Supreme Court reaffirmed the above law. The right to privacy, even though not constitutionally provided for, has been now

The Indian Telegraph Act is a 125-year-old law, which has stood the scrutiny of time. It allows interpretation 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 interpretation 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 interpretations are unconstitutional.

Another dimension is the conflict between the right to information(RTI) and the right to privacy. Judicial verdicts and government laws followed by certain analytical points.

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. The Supreme Court held that the right to privacy is a right to be let alone.

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

Right to personal liberty broadly includes

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.

- 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

It has recommended an over-arching law to protect privacy and personal data in the private and public spheres. The report also suggested setting up privacy commissioners, both at the Central and State levels. It has spelled out nine national privacy principles that could be followed while framing the law.

A Committee headed by J. A. Shah dealing comprehensively with the law of privacy submitted its report recently to the Planning Commission. The object of this report was to provide recommendations on the right to privacy in the context that the information that the government has access to about its citizens has considerably increased with the rise of the digital age.

Justice A. P. Shah panel on right to privacy

The above arguments are relevant to the Nira Radia episode where the telephonic conversations were secretly recorded.

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:

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.

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.

The interpreted materials disclosures are neither prohibited nor can it 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 investigation process if the same are utilised for that purpose. If the material interpreted deals with matters concerning the affairs of the state, unauthorized 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.

What are the obligations of the state, once it is in possession of the interpreted material? The 1885 Telegraph Act does not deal with this subject at all. Ordinarily, it would stand to reason that the interpreted material can only be used for the purpose for which the interpretation was ordered. The Supreme Court, in the PUCJ judgment, has held that the competent authority, while passing the order permitting the interpretation, must state thereupon as to how the interpreted material is to be dealt with.

Telephonic communications have been elevated to the right of free speech and read as an essential ingredient of personal liberty. Privacy gives one the right to be left alone. Expression, interpretation thus is a violation of Art. 19, if thought it can be reasonably restricted.

The report comes at a time when there is growing concern over unique identity numbers, DNA profiling, brain-mapping, etc, most of which will be implemented on the ICT platform. The report has listed certain exceptions in the right to privacy such as national security, public order, disclosure in public interest, prevention, detection, investigation and prosecution of criminal offences and protection of the individual or of the rights of freedom of others.

In certain cases, historical or scientific research and journalistic purposes can also be considered as exceptions, says the report.

Referring to social networking sites and search engines, which have their own privacy code, Justice Shah said these will either have to follow the model provided in the proposed Act or have a self-regulatory mechanism approved by the privacy commissioner.

The report suggests harmonising the proposed privacy Act with the RTI Act. Responding to privacy infringement concerns, as aired by the Prime Minister recently, Justice Shah said RTI was the only law that gave statutory protection to privacy, which could be over-ridden only in certain cases for individuals, not companies.

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

and there are about forty such laws presently on the statute book in India.

Since independence, the Government of India passed much legislation for preventive detention

Preventive Detention Laws in India

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.

Parliament may relax the provisions of Art.22 relating to preventive detention. For example, detention for more than 3 months.

- Give the detainee the earliest opportunity of making a representation against the public interest to disclose.
- 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 order.
- Endorse that there is, in its opinion, sufficient cause for such 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 the journey from the place of arrest to the court of the magistrate and no magistrate within a period of twenty-four hours of such arraignment, the time necessary for the journey shall be detained in custody beyond the said period without the authority of a magistrate.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate who is arrested shall be detained in custody until he is produced before the nearest magistrate.
- Noticing in clauses (1) and (2) to any person who is arrested or detained under any law providing for preventive detention.

Safeguards against Preventive Detention

- To be defended by, a legal practitioner of his choice.
- 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.
- Article 22- Protection against arrest and detention in certain cases

The apex court made the observation while reserving its judgment on a special leave petition filed by noted south Indian actress Khusboo seeking to quash 22 criminal cases filed against her after she allegedly endorsed pre-marital sex in interviews to various magazines in 2005. Khusboo had approached the apex court after the Madras High Court in 2008 dismissed her plea for quashing the criminal cases filed against her throughout Tamil Nadu.

Live-in Relationship: Art.21

In an verdict in 2010, the apex court held that live-in relation is a part of Art.21

- Bonded Labour System (Abolition) Act 1976 and

- Imperial Traffic Prevention Act (ITPA) 1956

Legislations that is made to check human trafficking is the following

remuneration for it. It is also known as 'debt bondage'.

Begar is described as labour or service which a person is forced to give without receiving any

class or any of them.

Article 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.

Rights Against Exploitation

misapplied and open to abuse, it was repealed in 2005.

abuse is minimised. However, since critics maintained that POTA was draconian and was safeguards that the Supreme Court prescribed were incorporated to ensure that the potential for improvement over the Terrorist and Disruptive Activities (Prevention) Act (TADA). The introduced. POTA was drafted on lines recommended by the Law Commission and was an joint sitting of the budget session of the Parliament as Rajya Sabha did not permit it to be POTA is the Prevention of Terrorism Act, 2002. It was passed by the Parliament in 2002 in a

POTA

in 2002.

interpreted communications accepted as valid. To overcome these limitations, POTA was made less than 10% as witnesses were not protected nor was the evidence in the form of courts for speedy and expeditious trial of offences. However, under TADA, the conviction rate but the Supreme Court upheld its validity. TADA provides for the constitution of designated 1995. The constitutional validity of TADA was challenged before the Supreme Court in 1994, TADA And Disruptive Activities (Prevention) Act (TADA) was passed in 1985. It expired in

TADA

governments.

(POTA) 2002 was repealed in 2005. Laws with similar provisions are also enacted by the State and Maintenance of Supplies of Essential Commodities Act, 1980. Prevention of Terrorism Act similar laws such as the National Security Act (NSA) 1980 and Prevention of Black-marketing MISA was repealed and TADA lapsed, COFEPOSA continues to be operative along with other 1974 and the Terrorism and Disruptive Activities (Prevention) Act (TADA) in 1985. Though Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in the Maintenance of Internal Security Act (MISA) was enacted in 1971, followed by Preventive Detention Act was passed by Parliament in 1969, after the expiry of this Act in 1969,

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".

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

Child Labour (Prohibition and Regulation) Act, 1986 is the legislation to check child labour.

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.

In India one child goes missing every ten minutes as per government records. Complaints for 90,654 missing children were received in 2011 but it was only 15,284 First Information Reports (FIRs) that were eventually registered by the police to investigate various crimes these children were victims of. Unfortunately, the graph of missing children continues to rise. Most are untraced due to their poverty. The metros continue to report the largest number of missing children. Trafficking is profitable business, with traffickers targeting low-income families. Kalash Satyarthi of the NGO Bachpan Bachao Andolan points out, "The maximum number of children being trafficked today belong to dalit, tribal and poor Muslim families. The economic strength to put pressure on the police or political leaders." Forty percent of the children said they had been trafficked when they were less than 10 years old. A deep net of organized crime is behind the missing Indian children, according to the Central Bureau of Investigation.

The Honorable Court defined missing children as "a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person, who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well being is established."

The Supreme Court ruled for compulsory registration of all cases by police of missing children with the presumption that they are victims of kidnapping and trafficking; preparation of standard operation procedures in all Indian states to deal with such cases; appointment and training of Special Child Welfare Officers at every police station to deal with cases related to missing children; records related to all missing and traced children to be maintained by Ministry of Home Affairs and Police; and provisions for para-legal workers to be present at every Police station to assist the parents whose child may be the victim of a crime.

SC on "Missing children"

Missing children will have far-reaching impact on the lives of millions of children. This historic judicial verdict was delivered in response to a petition filed by my Indian organization Bachpan Bachao Andolan (BBA) which is the key partner of Global March Against Child Labour.

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SC on "Missing children"

Missing children

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.

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.

- health for women and
- social reform.

Public order is the same as public peace, safety and tranquillity. The other limitation is 'moralism'. Health considerations can be explained thus: Harayana legislature disallowed 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 moralism.

- public order, morality and health
- other provisions of part III of the Constitution
- matters related with social reforms

The limitations on Art.25 are of three types

Limitations on religious freedom

In the Jagadiswaranand vs the Police Commissioner 1984 case, the Supreme Court held that the Anand Margi practice of dancings with skulls is not essential to their religion and could be reasonably restricted. Cow slaugher similarity 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.

(The wearing and carrying of kripans shall be deemed to be included in the profession of the Sikh religion. Hindus include persons professing the Sikh, Jain or Buddhist religion).

Government can make laws for regulating or restricting any economic, financial, political or other secular activity which may be associated with religious institutions of a public character to welfare and reform or the thriving open of Hindu religious institutions of a social character to all classes and sections of Hindus.

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.

Right to Freedom of Religion

1986. 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,

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 Mansarovar, 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."

Article 27 of Article 27 of the Constitution of India were to be utilized for promotion or maintenance of any particular religion. Nor is the amount spent, collected specifically for Haj subsidy. Of the tax collected in India 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. Some conveniences or facilities or concessions to any religious denomination, that would not be violated if only a small part of any tax collected is utilized for providing some conveniences or facilities or concessions to any tax collection, that petition, the bench said: In our opinion, if only a small part of any tax collected is utilized for direct taxes, part of which were utilized by the government to subsidize Haj Dismissing the petitioner Prafull Goradia had complained that though he was a Hindu, he had to pay direct or Constitution.

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 meager and could not be termed as a diversion of a major chunk of taxes to violate Article 27 of the Constitution.

Article 27: No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion.

- d) to administer such property in accordance with law;
- c) to own and acquire movable and immovable property; and
- b) to manage its own affairs in matters of religion;
- a) to establish and maintain institutions for religious and charitable purposes;

shall have the right - Subject to public order, morality and health, every religious denomination or any section thereof

Art.26. Freedom to manage religious affairs

Sabha," said a three-member Bench in its order.

Hundajali, which is the hill top known as Niyam-Raja, have to be considered by the Gram TFDs [traditional forest dwellers], like Dongria Kondh, Kuita Kandha and others, have got any religious rights i.e. rights of worship over the Niyamgiri hills, known as Niimagini, near Sabha," said a three-member Bench in its order.

"We are, therefore, of the view that the question whether STs [Scheduled Tribes] and other tribes given the power to balance the religious rights of Kondhs against the need for growth and development.

The state is empowered to regulate secular activities associated with religious practices with the object to bring about social reform: activities of an economic, commercial or political character.

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.

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 provided.

Every State and other local authority within a State is directed to provide adequate facilities for linguistic minorities 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)

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.

Linguistic Minorities

(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.

(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.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Article 30: Right of minorities to establish and administer educational institutions.

(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.

(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.

(3) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds only if such person is a minor, his guardian has given his consent thereto.

Article 29: Protection of interests of minorities

(1) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be impeded in such institution.

(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.

(1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds.

Article 28:

It must be clarified that the order of the apex court in 2012 upheld the Haj subsidy once again as a spent in educational needs of Muslims.

Constitutional but suggested that it be phased out in 16 days as it is wasteful and the same amount

Article 29(1) is a general protection given to sections of citizens to conserve their language, script or culture. Article 30(1) deals with the right of minorities to establish conservative language, script or culture. Article 30(1) deals with the right of minorities based on religion or language. While Article 29(1) is concerned with the right to section of citizens which will include the majority section, Article 30(1) confers the right only and administer educational institutions of their choice. While Article 29(1) confers the right on any or culture. Article 30 is a special right to minorities based on religion or language, script or culture.

Article 30(1) 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.

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 29(2) says that no citizen shall be denied admission into any educational institution promoted 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 as well.

The figures for persons speaking a language subsidiary to their mother tongue are given below:

Language	Percentage
Hindi (5.10%)	8.65%
Oriya (5.75%)	8.96%
Malayalam (7.11%)	10.47%
Gujarati (7.31%)	10.69%
Tamil (8.11%)	14.03%
Bengali	
Kannada (14.43%)	14.16%
Assamese (8.96%)	22.09%
Urdu (22.09%)	

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 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 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.

Constitution of India provides safeguards to the linguistic minorities under Article 345 and 347:

be laid before each House of Parliament and also to be sent to the Government of the State concerned. (Art 350B).

Conversions

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).

Supreme Court's five-member Constitution Bench (2003) clarified on the TMA Pai case verdict, that Article 30 confers on linguistic and religious minorities the right to establish educational institutions but Government could exercise control and regulation essentially, the ruling says that: Article 30 need to be differentiated from other minorities who have been given the right to establish educational institutions but no institution can charge fees to be charged by unaided MEL cannot be regulated but no institution can charge fees to be charged by aided and unaided MEL need to be differentiated from other minorities who have been given the right to establish educational institutions but no institution can charge fees to be charged by aided and unaided MELs even of the unaided MELs.

- 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 MEL need to be differentiated from other minorities who have been given the right to establish educational institutions but no institution can charge fees to be charged by aided and unaided MELs by the Government even of the unaided MELs.

The essence of the judgment is the following

- Capitalization fee
- Fees to be charged by unaided MEL cannot be regulated but no institution can charge state or university
- Percentage of non-minority students to be admitted to an aided MEL to be decided by the aided MELs should admit certain percentage of non-minority students
- State can apply regulations to unaided MELs also to achieve educational excellence
- The right to administer MEL (Minority Educational Institutions) is not absolute.
- All citizens have right to establish and administer educational institutions

Following are the essential features of the landmark judgment

T.M.A. Pai Foundation and Others vs State of Karnataka and Others case 2002

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. 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.

St. Stephen's College vs University of Delhi

Important Judgments

and administrator educational institutions of their choice. While Article 29(1) does not deal with education as such, Article 30(1) deals only with the establishment and administration of educational institutions.

41

The scope was further extended to immunise all DPSs against the three Fundamental Rights by the 42nd Amendment Act 1976.

The 25th Amendment Act inserted Article 31 (c) which immunises legislation undertaken to protect two Directive Principles in Article 4(b) and (c) from challenge in a court of law for any infringement of the rights guaranteed under Articles 14, 19 and 31.

Article 31C: Saving of laws giving effect to certain directive principles.

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 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.

Art.31 and made into an ordinary right-Art.300A. 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.

Some states in India have passed anti-conversion laws. Thus, only voluntary conversions are valid in India.

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.

- 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.
- Some states in India have passed anti-conversion laws.

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 bench of the SC, in Rev. Stamislaus State of MP case 1977 ruled that Art. 25(1) does not give the right to convert but only the right to spread the tenets of one's own religion. The substance of the judgment is

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).

The Ninth Schedule was included in the Indian Constitution by the Constitution (First Amendment) Act, 1951, as provided by Article 31B. 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, the following:

example the 69 per cent reservation law of Tamil Nadu. 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 created by a Constitution Amendment in 1951 by former Prime

Ninth Schedule

The objective of initially limiting and later removing the right to property as a Fundamental Right is to implement socialist policies to benefit the have-nots.

The difference being that it is only a Constitutional right and not a fundamental right anymore. Article 31 was another limitation. They were aimed at implementing DPSUs. Finally, Amendment Act 1971 was another limitation. That was introduced by the twenty fifth Constitution Amendment Act 1971 as another limitation. Article 31C that was introduced by the twenty fifth Constitution Amendment Act 1951 were a limitation on the right to property. Article 31C that was introduced by the twenty fifth Constitution Amendment Act 1951 were a limitation on the right to property. Article 31A and 31B as were inserted by the very first Constitution Amendment Act 1951 were a limitation on the right to property. Article 31C that was introduced by the twenty fifth Constitution Amendment Act 1951 were a limitation on the right to property. Article 31A and 31B as were inserted by the very first Constitution Amendment Act 1951 were a limitation on the right to property. Article 31C that was introduced by the twenty fifth Constitution Amendment Act 1951 were a limitation on the right to property.

Article 31 Right to property: The right to property came under pressure from Parliamentary laws from amendments to Article 31 by way of addition of Arts. 31a, b and c.

Article 19(5) nothing in the above clauses shall prevent the state from making any laws in the interests of the general public

Originality the Constitution contained the following:

Right to Property: Legislative and judicial history

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'.

The expanded scope of Article 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 Supreme Court upheld the immunity but struck down the other part of Article 31(c) which is called in question in any court on the ground that it does not give effect to such policy. The following: no law containing a declaration that it is for giving effect to such policy shall be

- An important aspect of the controversy around the Ninth Schedule pertains to the relationship between Parliament and the judiciary - conflict between the representative legislative structure that needs to respond to the needs of the people and the judicial insistence on basic structure of the Constitution being maintained.
- Ninth Schedule is redundant as the purpose of Art. 31B is met.
- its impact on separation of powers and checks and balances if judicial review is denied.
- to 69% against the Supreme Court verdict of limiting it to 50%.
- 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%.
- 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 to escape judicial review

Questions raised by the frequent recourse to the Ninth Schedule

- 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 Kesavananda Bharti case verdict 1973 would have to be examined with respect to their compatibility with the basic structure of the Constitution.
- 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. Amending it is contrary to the purpose and object of article 31B.

- The Industries (Development and Regulation) Act, 1951
- The Monopolies and Restrictive Trade Practices Act, 1969 and
- The Foreign Exchange Regulation Act, 1973.

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,

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.

- Under the Indian legal system, jurisdiction to issue "prerogative writs" is given to the Supreme Court, and to the High Courts. Parts of the law relating to writs are set forth in the Constitution of India. The Supreme Court, the highest in the country, may issue writs under Article 32 of the Constitution for enforcement of Fundamental Rights and under Articles 139 (if the Parliament permits) for enforcement of rights other than Fundamental Rights, while High Courts, the superior courts of the States, may issue writs under Articles 226. The Constitution broadly provides for five kinds of "prerogative" writs: habeas corpus, certiorari, mandamus, quo warranto and prohibition.
1. The writ of habeas corpus is issued to a detaining authority, ordering the detainee to produce the detainee. If the detainee is found to be illegal, the court issues an order to set the person free.
 2. The writ of mandamus is issued to a subordinate court, an officer of government, or a corporation or other institution commanding the performance of certain acts or duties.
 3. The writ of prohibition is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to itself or any other court of competence.

Writs Introduction

A three-judge bench was set up to look into every law placed in the Schedule since April 1993 and satisfy itself that its place is justified.

- sanctity of fundamental rights
- basic structure doctrine

The ruling thus tests an item in the Ninth Schedule on two grounds

"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 question in Coelho case essentially related to the competence of Parliament to put any law under the Ninth Schedule and, thus, beyond judicial scrutiny.

Supreme Court judgment(2007) on Ninth Schedule

The Supreme Court, in the L.R. Coelho judgment in 2007 ruled that laws placed under Ninth Schedule after April 24, 1973 (the date of Keshvananda Bharti 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 violation of 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.

SRI RAM'S IAS

45

The difference between bail and the writ of Habeas is that the former wants a release from jail conditional 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

under Article 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.

Individuals can be imprisoned indefinitely and without charge. When the law is suspended, for example, when national emergency is proclaimed, then if the charge is considered valid, the person must submit to trial; if not, the person is left free. Imprisonment by requiring that any person arrested be brought before a court for formal charge before the court. A Habeas Corpus is a legal writ that protects an individual against arbitrary court issues the writ which has to be obeyed by the detaining authority by producing the person without legal justification. The words habeas corpus literally means "to have the body". The Habeas Corpus: The writ of Habeas Corpus is a remedy available to a person who is confined

The above writs are issued for the enforcement of any of FRs by the SC

- | | | | | | | | | | |
|---|---------------|---|----------|---|-------------|---|------------|---|--------------|
| 1 | Habeas Corpus | 2 | Mandamus | 3 | Prohibition | 4 | Certiorari | 5 | Quo Warranto |
|---|---------------|---|----------|---|-------------|---|------------|---|--------------|
- (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

All the above 5 writs are called **Prerogative Writs** (a writ is an official order) as they were originally available only to the Crown under English law. The term may be considered antiquated through this writ the court inquires by what authority the person supports his or her claim.

5. The writ of quo warranto is issued against a person who claims or usurps a public office. Lower court does not have jurisdiction or for similar reason. If any interim order is given, it is quashed.
4. The writ of certiorari is issued to a lower court directing that the record of a case be sent up for review, together with all supporting files, evidence and documents, because the lower court does not have jurisdiction or for similar reason. If any interim order is given,

into the 2G spectrum scam.

issued a continuing mandamus on the investigation by the CBI and the Enforcement Directorate in Centre for Public Interest Litigation and Ors. v. Union of India and Ors., the Supreme Court monitors investigations performed by agencies like the Central Bureau of Investigation. In 2010 SC in particular, further this free and fair investigation, the Supreme Court agencies for its self interest. To done without political executive using the investigation, particularly in high-profile cases, is to ensure that criminal "continuing mandamus" on policing and investigative authorities in order to ensure that criminal Supreme Court of India has, in an act of remarkable judicial activism, created the concept of Narain v. Union of India and 1984 Bandhua Mukti Morcha v. Union of India & Ors.

Continuing Mandamus has been discussed and dealt with in the respective cases of 1997 Vmeet expeditiously and independently for preventing miscarriage of justice. The concept of SC in India - in general public interest asking the officer or the authority to perform its task SCs and HCs and SC in India is a writ of Mandamus issued by the higher judicial bodies - HCs and

- It must not be discretionary duty
- It must be a public duty

The duty sought to be enforced must have two qualities:

Mandamus does not lie against 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.

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.

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.

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 money/fees need be paid. For bail it has to be.

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 violation(s). For parole, no

- Exercises exclusive jurisdiction
 - When the judicial body does not have jurisdiction
- The following are the circumstances under which prohibition and certiorari are issued:
- 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 judge has already been given, certiorari writ is issued to quash it.
- 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.
- Certiorari is issued after the proceedings have commenced.
- 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 higher court can quash a portion or total of the proceedings that have irregularities involved. The higher court can quash a portion or total of the proceedings that have irreparable damage. While mandamus can be issued before the trial of the case, a writ of mandamus cannot be issued. It is generally issued before the trial of rules of law, a writ of mandamus prevents acts without or in excess of jurisdiction, or in violation of rules of law. When a semi-judicial body acts within its jurisdiction which does not belong to it. It refers to the order a quasi-judicial authorities and is not available against a public officer who is not vested with commands activity, prohibition command inactive, it is available only against judicial or quasi-judicial functions. Not take over the investigation.
- Prohibition: A writ of prohibition is issued to an inferior court or semi-judicial body (tribunal), work and so on. However, it is resorted to very rarely.
- The criticism of continuing mandamus is that it confuses the chain of command as the executive made to be accountable to both the judiciary and the legislature; it violates the principle of separation of powers; courts without competence for execution and investigation take up the
- "Continuing mandamus" allows the court to issue interim orders from time to time.
- Late Justice (Retd) JS Verma says the following about the difference between the continuing mandamus in the Jain hawala case and the Black money case where the SC has set up an SIT (Special investigation team) headed by retired Supreme Court judge: in Jain hawala case, court directed the CBI to keep the court apprised of the investigation but the court didn't participate in the investigation. It only monitored the case when a PIL was filed that the CBI was not investigating the case properly. Court was not one of the investigators. SIT in black money case with a SIT headed by a retired judge raises uncomfortable questions. The presence of a judge in the investigation might make the accused think the case is already weighed against him. Court should only monitor the investigation. Not take over the investigation.
- Another instance is the 2006 Delhi sealing drive, a campaign by the Municipal Corporation of Delhi (MCD) to close (and thus "seal") the locks of a number of illegal commercial establishments in Delhi which are running in residential areas without authorization. The ran until early 2007. It was done under the writ of continuing mandamus by Supreme Court.

Art.358

way

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

Fundamental Rights and National Emergency

Art.24, and Art.30.

Welfare provisions of Part III of the Constitution are included in Art.15, Art.16, Art.17, Art.23,

Article 35: Legislation to give effect to the provisions of this Part.

Article 34: Restriction on rights conferred by this Part while martial law is in force in any area

among them
 abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or persons employed in, or in connection with, the telecommunication systems set up for the

(d) intelligence or counter intelligence; or

(c) persons employed in any bureau or other organisation established by the State for purposes of

(b) members of the Forces charged with maintenance of public order; etc

(a) Members of the Armed Forces; or

Part shall, in their application to -

Article 33: Parliament may, by law, determine to what extent any of the rights conferred by this

conditions.

2010 on a petition in a PIL case in 2010 with the writ of quo warranto and certain other Supreme Court set aside J. Thomas' appointment as Central Vigilance Commissioner (CVC) in

claimant occupies a public office. It is not available against a ministerial 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

- the respondent has asserted his claim to the office.

- created by statute or by the Constitution itself, and

- the office is of public and of a substantive nature

quo Warranto: It means 'by what authority?'. The writ of quo warranto enables enquiry into the court under what authority he holds the office. It is issued when if he is holding it illegally and without valid credentials. The holder of the office has to show to the court

- Natural justice is violated
- Acts on the basis of a law that is itself struck down

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.

Parts III, IV and VVA of the Constitution of India are closely connected and are in fact interdependent.

Rights, Duties and DPSs

- Removal of right to property from Part III
- Pressure from the DPSs

On the other, they have been diluted in the following way
 Protection from Art.13 was removed by the 24th Amendment Act

Art.16 being extended to OBCs
 Art. 15 being strengthened
 FRs have seen a mixed record. On the one hand, they are expanded by way of
 Due process of law being adopted in the Menaka Gandhi case in 1978 to strengthen judicial protection of rights
 Art.21 leading to a large group of rights under the right to life
 Article 13 amendment of Art.30.
 Minority protection in the educational sphere being given additional attention by the amendment of Art.30.

Fundamental Rights: A retrospective
 under right to life and personal liberty by the 86th constitutional amendment of 2002.
 The right to education at elementary level has been made one of the Fundamental Rights
 Amendment Act of 1971 seeks to upgrade the DPSs with reference to Arts.14 and 19.

Article 31-C, inserted into the Directive Principles of State Policy by the 25th Amendment passed in 1978, revised the status of property rights by removing it from Part III
 The right to property was originally included as a fundamental right. However, the 44th Amendment to the Constitution which has to be passed by a special majority of both houses of the Parliament, the 1st and 93rd Amendment Act.
 Art.15 and 16 were amended for empowerment of the SC, ST and OBC communities,
 Constitutional amendment which has to be passed by a special majority of both houses of the Parliament.

It must be stated that any one imprisoned -- under trial or convicted - can enjoy those FRs which can be enjoyed , physical confinement notwithstanding. For example, freedom of speech is enjoysable while freedom of movement is physically not possible.

FRs for prisoners

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.

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.

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.

Constitution of India declares that DPSs are "fundamental in the governance of the country" (Art.37). Both the Legislature and the Executive should apply DPSs while making and implementing policies in social and economic spheres.

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 DPSs 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 to education is limited to the rural adults and also limited because it is available for only 100 days in a year(MGNREGA).

Influences

The concept of Directive Principles as incorporated in the Constitution of India, is influenced by various factors. Firstly, DPSs 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 represented liberal democratic ideas of the welfare state. That is, DPSs were intended to help the Government play a positive role of the welfare state. That is, DPSs were intended to include them in the Indian Constitution as moral guidelines for the public policy which chose to build India as a model democracy with socialist content. Fourthly, the Directive Principles, DPSs, thus guide public policy.

Article 36-51. These are institutions/directives given to all present and future governments in India-federal and state governments to make policies and legislation incorporating these principles. DPSs, thus guide public policy.

Directive Principles of State Policy are contained in Part IV of the Indian Constitution in economic order to provide a firm foundation to political democracy in India. Social security and economic well being are ensured. DPSs aim at creating a new socio-economic development. Individual rights can be effectively enjoyed and become meaningful only when 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 distribution with policies that aim to establish a welfare state. Welfare State is a government 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.

Fundamental Rights (Part III of the Indian Constitution) that were discussed in the earlier chapter are the bedrock of political democracy. They ensure, with the help of individual rights, that democracy prevails and the roots of democracy run deep. They are essential for individual development - essential for an individual to attain full physical, intellectual, moral and spiritual development.

DIRECTIVE PRINCIPLES OF STATE POLICY

52

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 government called Pancharatras and Nagarapalika bodies. The economic democracy that Gandhian ideals speak of is based on

Gandhian Principles

public assistance in case of unemployment, old age, sickness and disablement. The state is mandated to legislate for securing right to work, right to education and right to work and education; living wage which is equal for equal work; care of the weaker sections to work and education; living wage which is equal for equal work; care of the weaker sections.

The above DPSs direct the State to make policies for distribution of wealth; legislate on right

- Art.47
- Art.46
- Art.45
- Art.43
- Art.42
- Art.41
- Art.39
- Art.38

DPSs that are socialistically oriented are

Socialist policies are necessary in an underdeveloped country like India with large section of the population being poor.

Socialism is a worldview in which the Government does so by public ownership of means of production. The aim is to minimize concentration of wealth in a few hands. It grants right to work to the people and actively prevent inequalities. Government makes policies that aim to achieve socialist society. In the 11th Five Year Plan(2007-12), the goal of inclusive growth is being actively followed by the government to achieve socialist society. In the 12th Plan(2012-17), the aim is to follow the 11th Five Year Plan(2007-12), the goal of inclusive growth is being actively followed by the government to achieve socialist society. In the 12th Plan(2012-17), the aim is to make planning "more inclusive".

DPSs and Socialism

- Others
- International
- Social
- Gandhian
- Socialistic

Categories

DPSs 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 DPSs can be broadly classified into the following

Classification of Directive Principles

Thus, seeking international peace and cooperation is a Constitutional directive.

- Also aim at maintaining just and honourable relations with other countries.
- Aim at the settlement of international disputes by arbitration.
- Promote international peace and security

The state shall:

says the following

Nations and universal and non-discriminatory disarmament are consistent with Art.51 which supports for decolonization, opposition to apartheid and advocacy of democratization of United Nations and independent and stable base for national development is a classical example. Our build a independent and stable base for foreign policy to diffuse global tensions and build a independent and stable base for foreign policy to diffuse global tensions. Our initiation of the non-alignment as the bedrock of foreign policy to diffuse global tensions Indian foreign policy, since Independence, has stood for peace in the world and multilateralism.

International Relations

Government to eradicate these social imbalances with public policy problems on a justiciable basis (Art.15, Art.16 and Art.17), DPSPs contain instructions to the 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 like marriage and succession; caste exploitation; inter-religious differences on vital areas of social life gender disparities; caste exploitation; inter-religious differences on vital areas of social life.

DPSPs encompasses a wide range of State activity. They impose social obligations on federal and the State Government which are to be enacted into law.

DPSPs and Social Integration

the following Articles of the Constitution

- Art.48 (banming of cow slaughter)
- Art.47 (prohibition)
- Art.43 (Village and cottage industries)
- Art.40 (Panchayatraj)

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 cottage and villages as they are labour-intensive; help in dispersal of power geographically and also in terms of economic benefits; and prevent concentration of wealth.

Geographically and villages industries as they are labour-intensive; help in dispersal of power cottage and villages industries as they are labour-intensive; help in dispersal of power.

intoxicating substances. The above elements of Gandhian ideology are found in the DPSPs in cottage and villages as they are labour-intensive; help in dispersal of power.

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

1945. Constituent Assembly drew from its recommendations in formulating the Fundamental Rights and other rights in the Indian Constitution.

DPSPs guide economic justice. The Constituent Assembly chose welfare state over the minimalist state. Disclosures 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. 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).

DPSRS elaborates on Preamble 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 Pancayat and Nagarpalika bodies being given Constitutional status and enforceability. Secularism is found in Art 44 where the goal of uniform form 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.

- Characteristics of DPSPs
- Amplification of Socio-economic Guidelines for I Non-justifiable

There are other Directive Principles which deal with important areas of governance like separation of judiciary 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.

~~Art.37. DPSs are not enforceable by any court (in case of non-implementation, courts can not move it) 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. 36. "the State" has the same meaning as in Part III (Fundamental Rights)~~

DPSs in detail

~~Judicially considers DPSs as an important moral input in government policy. In fact, the Supreme Court, starting from Keshavamanda Bharati case verdict in 1973 ruled that DPSs 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 Nirmith Schedule. DPSs influence a wide gamut of government policies - economic policies like agrarian reforms; banking and taxation policy; employment generation; decentralization; closing gender disparities; factor legislation; uniting personal laws; pre-school child care; environmental stability, prohibition; and divesting the executive of its judicial responsibilities and powers.~~

- Admistrative and economic constraints. For example, free and compulsory education for children in 10 years after the commencement of the Constitution (Art.45).
- They are moral in nature and can not be legally imposed: banning cow slaughter and prohibition.
- Social and political development may not be adequate. For example, uniform civil code.
- Economic resources may not permit. For example, right to work

~~The reason for making the DPSs non-justiciable are the following~~

~~Art.37 says that DPSs are non-justiciable but are fundamental to the governance of the country. They are moral guidelines to the government for making appropriate policies of socio-economic growth. DPSs are not mere plous declarations. It was the intention of the framers of the Constitution that DPSs should guide the State for socio-economic and political reconstruction of the country. Same is stated in Art.37.~~

~~mentioned in Part IV of the Constitution - to the Government for making appropriate policies of socio-instruments of instruction - in the DPSs which are largely in the nature of economic change.~~

Legal aid is provided in Article 39A and thus is a constitutional obligation of the state and right of the citizens. Justice Krishna Iyer regards it as a catalyst that enables equality of opportunity. Article 14 and Article 21 and Article 22 implicitly contain it, the latter confirmed in various apex court verdicts.

Legal Aid implies giving free legal service to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Unless legal aid is given to needy, due process of law may have been compromised. Guru who was hanged in February 2013 claimed that at the trial court stage, he did not have legal assistance and so the case turned against him and led to his death sentence.

Article 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. 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
- 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.

- 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 among groups of people
- that the ownership and control of the material resources of the community are so equitably distributed that
- 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.

The Government has an obligation to implement these principles. The language used is indicative of the obligation of the State to implement DPSPs.

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.

Jaluk legal services committees are constituted for each of the Taluk or Mandal or for groups of Adalats. Every taluk legal services committee is headed by a civil judge operating within the Taluk or mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats.

District legal services authority is constituted in every district to implement legal aid programmes and schemes. The district judge of that particular district is its ex-officio chairman.

In every state, State Legal Authority is constituted to give effect to the policies and directions of the central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the state. State Legal services Authority is headed by the chief Justice of that High Court. A service or the retired judge of the high court is nominated as its executive chairman.

National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of this act to frame most effective and economical schemes for legal services. It also distributes funds and grants to state Legal services Authorities and NGOs for implementing free legal Aid schemes and programmes.

- in receipt of annual income less than a prescribed amount;
- an industrial worker;
- in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or home within the meaning of clause
- section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987);
- a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;
- a mentally ill or otherwise disabled person;
- a woman or a child;
- Constitution;
- a victim of trafficking in human beings or beggar as referred to in Article 23 of the Indian Penal Code;
- a member of a Scheduled Caste or Scheduled Tribe;
- that person is-

Every person who has to file or defend a case shall be entitled to legal services under this Act if

Legal Services Authorities Act, 1987 and the basis for providing Legal Aid services to the eligible persons. Section 12 of the Act reads as under:-

Article 39 A of Indian constitution says that:- "It is the duty of the State to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities."

Rights to work from the time the accused is arrested. If the person is not aware of this right then it is the duty of the Magistrate to inform the person about this. It is the duty of the police to inform the nearest legal aid committee also about the arrest of an accused seeking legal aid for the first time and this goes on whenever the person is brought in for questioning.

When can the free legal aid be defined?

- Contempt of court
- Lying under oath
- Proceedings related to elections
- Cases where the fine imposed is not more than Rs. 50.
- Economic offences and offences against social laws
- Defamation
- Proceedings related to elections

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 Girish Kalayan Kendra Workers 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 jurisdiction having regard to the constitutional mandate of equality in Article 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.

Rights 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 poverty; lead to better use of human resources; and social indicators will improve.

The MNREGS since 2005 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.

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,

attain equality. Thus, legal gender empowerment also requires UCC.

- UCC makes sure that women who are given a subordinate status under all religions,

there is a common criminal law, there should be common civil code as well

harmony

litter and inter religious differences in inheritance, marriage etc are against social

separate personal laws can be the basis for sub-national identities

The reasons given for endeavouring for the UCC are the following

Rationale for the UCC

citizens a uniform civil code throughout the territory of India."

national and social integration. Art.44 directs that "the State shall Endeavour to secure for the tax and other implications. A secular and democratic society requires common law that fosters

personal laws relate to marriage, divorce, maintenance, succession, and adoption; they also have

Personal Laws

Uniform Civil Code

a uniform civil code throughout the territory of India.

Art 44. Uniform civil code for the citizens. - The State shall Endeavour to secure for the citizens

however struck down portions of the Amendment Act as it encroached into state subject
cooperative societies". The amendment came into force in January, 2012. Gujarat High Court
formation, autonomous functioning, democratic control and professional management of
constitution, Article 43B which reads: "The State shall Endeavour to promote voluntary
97th amendment to the Indian Constitution inserts a new directive principle into Part IV of the
management of undertakings, establishments or other organisations engaged in any industry.

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.

requirements of a living wage.

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

endeavor to promote cottage industries on an individual or co-operative basis in rural areas.
enjoyment of leisure and social and cultural opportunities and, in particular, the State shall
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
Art 43. Living wage, etc, for workers. - The State shall Endeavour to secure, by suitable

make provision for securing just and humane conditions of work and for maternity relief.
Art 42. Provision for just and humane conditions of work and maternity relief. - The State shall

According to the Mitakshara law, only the son, grandson and great grandson constitute 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 wife or widow and unmarried daughters have no significant rights. Females cannot inherit ancestral or joint property as males can. It is only the Hindu family which consists of father, son, grandson and so on.

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.

The Hindu Succession Act 1956 governs the succession to the property of a deceased Hindu. It includes Buddhists, Jains and Sikhs within its ambit. The Hindu Succession Act is applicable to any person who is a Hindu. It includes

Hindu Succession Act : 2005 Amendments

It is one of the reasons for adopting UCC.

Thus, the personal laws of different religions in India do injustice to women and need changes.

Catholic Church does not accept divorce under the Indian Divorce Act.

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. However, the Roman

Polygamy among Muslims remains an issue. Muslim personal law makes man the sole guardian of a child.

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.

1986. Under the Muslim Personal Laws, women's right to property is limited to half of what Muslim Marriages Act, 1939 and the Muslim Women (Protection of Rights on Divorce) Act,

Some Muslim personal laws have been codified in the Shariat Act 1937, the Dissolution of

"prevention fragmentation of landholdings". The law is changed as detailed ahead.

contingent to live in it. A woman's right to agricultural property is also similarly restricted to

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

property remains with the male line of descent. A son gets a share equal to that of his father; a

The Hindu Succession Act makes provision for a Hindu Undivided Family to ensure that

Personal Laws and the status of women

made personal laws more gender sensitive.

women have same rights as it is religion-neutral. Two, progressive verdicts of the courts also reforming these laws. For example, Special Marriage Act, 1954. Under which men and

Even though personal laws are not codified in India, there have been many attempts at

imcorporation as a DPSR which is non-binding but fundamental to governance of the country.

otherwise, it may be seen as an imposition and rejected. That is the reason for its adoption. It can divide the society and communalise it. It is felt that with social and political

development, UCC could be gradually implemented as different religious will volunteer to

it can divide the society and communalise it. It is felt that with social and political

Art 45. Provision for free and compulsory education for children. - The State shall endeavour to provide, within a period of ten years from the date of commencement of this Constitution, for free and compulsory education for all children until they complete the age of six years.

The Supreme Court again remanded 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 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.

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 Muslim so that he could marry again. The Court said no to such conversion.

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. Akel Khan 1985 a Muslim woman sought maintenance from her husband after their divorce. Being a Muslim, husband had paid her maintenance for the period as required by the personal law, but it was held by the Supreme Court that Shah Bano would be entitled to get maintenance under section 125 of CPC. This decision represented and protested against several Muslim 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.

UCC and Supreme Court

This change can be quite significant in terms of social education. 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.

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 this specific position.

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.

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.

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

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."

- Civil rights are better protected
- Rule of law also demands that the separation take place as otherwise the judiciary may not be impartial
- Such separation helps in better governance as there will be more checks and balances based on the doctrine of separation of powers
- It helps in specialization
- It is necessary for independence of judiciary
- The need for the separation are

Separation of judiciary from executive

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.

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 interest, 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 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 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 milk and draught cattle.

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 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.

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 Mandal government welfare policy, the most recent being the implementation of the Mandal

Special Marriage Act 1954 is made to give everyone the option of marrying outside their personal laws. Women are brought on par with men in Hindu Succession Act that was amended in 2005. And voluntarily seek the enforcement of the UCC, it is not desirable to implement the article. The country with its social backwardness, unless the religious groups concerned come forward the purpose. 97th Amendment Act 2012 promotes cooperatives which is a Gandhian dream.

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 makes provisions for early childhood care and education (Art.45)

Article 41, right to work. In 2005, NREGA was made and is operating in the entire country since 2008. It gives shape to Art.41, right to work. Ajeevika National Rural Livelihoods Mission) also finds its base in Art.41.

The food security Bill being considered is to give effect to Art.47. 86th Amendment Act 2002 makes provisions for early childhood care and education (Art.45)

In 2005, NREGA was made and is operating in the entire country since 2008. It gives shape to Art.41, right to work. Article 73rd Constitution Amendment Act (1992) is in pursuit of the implementing the Art. 40.

First amendment Act is for implementing land reforms. It was followed by the 4th, 17th, 25th, 42nd, and 44th Amendment Acts.

Since the commencement of the Constitution, there has been substantial legislation to implement the DPSs. As detailed below:

- (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 dealing of organised people with one another; and encourage settlement of international disputes by arbitration.

Article 51, Promotion of international peace and security. - The State shall endeavour to -

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.

- “police” functions, e.g. the handling of unlawful assemblies
- administrative functions, e.g. issuance of licences for firearms and similar functions; and
- judicial functions, e.g. the trial of criminal cases.

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.

The FRs and the DPSPs constitute the conscience of the Constitution. The two are complementary and not mutually exclusive.

Constitution aims to bring about a synthesis between the two and together they constitute, not essentially for the welfare society. According to former CJL, Justice Chandrachud, the DPSPs confer on individuals the rights necessary for their development free from coercion. DPSPs to confer the rights necessary for their development free from coercion. DPSPs individually, the conscience of the Constitution. The two are complementary and not mutually individual.

Relation between FRs and DPSPs

India pioneered Non Aligned Movement to defend cold war after the second world war. 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. 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.

Separation of judiciary from executive is being done by amending the CPC. Appointment of judges of High Courts and Supreme Court is being done on the recommendation by a committee of judges of higher judiciary since 1993, based on Art.50.

The Archaeological Survey of India, Ministry of Culture, is responsible for archaeology which the various acts of the Indian Parliament accordance with the various acts of the Indian Parliament for archaeology studies and the preservation of archaeological heritage of the country in accordance with the Wild Life Act, 1986; 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 resilience agriculture(2011). National Green Tribunal was set up in 2010.

- equity in sharing benefits from such use of resources.
- the sustainable use of biological resources;
- the conservation of biodiversity;

The Biological Diversity Act 2002 is a law meant to achieve three main objectives

Regarding Art. 48, the green revolution and the research in biotechnology are aimed at modernizing agriculture and animal husbandry, among other things. Genetically modified (GM) organisms and crops like BT cotton in India for boosting productivity, among other things.

Commission in pursuit of Art. 46. The 93rd Amendment Act 2006 is a step in the direction of pursuit of Art.46.

- Noticing 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.

The Constitution 24th Amendment 1971 was made to overcome the SC judgement in the Golak Nath case. Its contents are

24th Amendment Act

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.

- Article 368 provides the procedure to amend the Constitution but does not confer power on Parliament to amend the Constitution.
- In order to amend Fundamental Rights, a new Constitution Assembly is necessary.
- A place of permanence is given to FRs in the Constitution.
- FRs are given a transcendental position in the Constitution and are not amenable to Parliamentary restriction as stated in Art. 13.
- FRs are given a transcendental position in the Constitution and are not amenable to

Relevant Judgments and CAs

Judgment says

Amendments regarding restrictions on the right to property was questioned and the SC held Constitution to a point of abridging FRs. Specifically, the validity of 1st, 4th and 17th Amendment to the State of Punjab (1967) relates to the power of the Parliament to amend Sajjan Singh case 1965

Shankari Prasad case 1951

Golaknath Vs the State of Punjab (1967)

In order-to Amend-Fundamental Rights, a new Constitution Assembly is necessary

Article 368 provides the procedure 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.

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 DPSs only if public interest is served (Olelio verdict 2007).

- 1. it removes judicial review which is a basic feature of the Constitution
- 2. FRs and DPSs have a complementary relation which can not be upset.

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 Kesavananda Bharati case, the Constitution power of the Parliament was partly restored. In the 42nd Amendment Act in 1976, DPSs were given precedence over the FRs and the same was struck down in the Minerva Mills case verdict (1980) for the following two reasons

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 laws.

- DPSs outside Part IV
- The relation between the FRs and DPSs presently is based on the Minerva Mills verdict of the Supreme Court.
- The SC by a majority of four to one ruled that
- Powers of Parliament to amend the Constitution are limited by the basic framework introduced by the SC in the Kesavananda Bharati case
 - Finite balance between the FRs and DPSs as found in the Constitution can not be tilted in favour of either.
 - In addition to the Directives that are found in Part Four of the Indian Constitution, there are certain other directives that are found 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 enjoys the state to promote the use of Hindi so that it may be developed as a medium of communication.
 - Art. 350A enjoys the state and the local authorities to impart primary education to the linguistic minorities in their mother tongue.

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 powers, making implementation of some DPSs unquestionable in the courts of law for violating Art. 14, 19 and 21.

Kesavananda Bharati verdict

It struck down the unlimited power Parliament claimed under the 25th CA, and introduced the doctrine of basic features.

25th CA

It gave Parliament power to amend any part of the Constitution.

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.

- The word 'law' in Art. 13 does not include a Constitution Amendment Act and includes only ordinary legislation as stated in the Shanti Prasad and Saffron Singh verdicts
- Parliament can amend any part of the Constitution except 'basic features'
- 24th Amendment Act is valid.

24th Amendment Act, along with the 25th and 29th Amendments was questioned in the apex court and the majority judgment of the 3-judge Constitution Bench in the Kesavananda Bharati Vs State of Kerala case is as follows

67

DPSPs and the nature of State obligations

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.

- FRs are rights while DPSPs are directions to the Government
- FRs are enforceable (justiciable) while DPSPs are not
- FRs are essentially individual - centred while DPSPs are group-centred
- FRs are aimed at creating political democracy while DPSPs aim for an inclusive society that is environment-friendly.

In a nutshell, the differences between FRs and DPSPs are

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 government that they need not be derived from a vigilant public opinion.

- Principles attempt to provide socio-economic foundations to Indian democracy.
- Fundamental Rights aim at establishing political democracy in India while Directive Principles 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.
- The fundamental rights are enforceable in the courts, hence are justiciable. But the 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.
- Directive Principles are not enforceable in the courts, thus they are non - justiciable. The fundamental rights are enforceable in the courts, hence are justiciable. But the justiciable principles are not enforceable in the courts, thus they are non - justiciable.
- Instruments of instructions to the Government of the day to undertake collective positive actions.

Both FRs and DPSPs are essential for a welfare state - democratic socialism. Both aim at building human capital.

Directive Principles and Fundamental Rights: The differences

SIRIAMS IAS

(contd.)
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P. A. K.

By contrast with the welfare state, the minimalist state is the ideal of those commentators who criticize social legislation (labour 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.

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.

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.

Note on laissez faire, welfare and socialist state

In the case of bonded labourers - Bandhua Mukti Morcha Case (1984), the Court said: "It is freedom and dignity....." In Mohini Jain's Case (1992), right to education was declared an opportunity for children to develop in a healthy manner and in conditions of strength of the workers, men and women, and of the tender age of children against abuse, Arts. 41 and 42, 43A, 48A and at least, therefore, it must include protection of the health and from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Art. 39 and 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 since life is not merely "animal existence, it has to be rendered meaningful and imparted a sense of dignity for which DPSPs contribute significantly."

Supreme Court became activist and gave expanded meaning to Art. 21 by reading DPSPs into it. Art. 13 notwithstanding. It permitted the FRs to be restricted to some extent in the process. Later, initially, the apex court allowed the parliament to amend the Constitution in favour of DPSPs,

Supreme Court and the DPSPs Since life is not merely "animal existence, it has to be rendered meaningful and imparted a sense of dignity for which DPSPs contribute significantly."

- National Emblem
- (d) to defend the country and render national service when called upon to do so;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (d) to value and preserve the rich heritage of our composite culture;
- (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 safeguard public property and to abjure violence;
- (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; *National Emblem*
- (i) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”

“51A. Fundamental Duties – It shall be the duty of every citizen of India –

Duties are generally associated with the socialist countries. Part IV A 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 37A~~ 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:

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.

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 complemented by the State working for the DPSPs that render the society even more democratic (Panchayats) and egalitarian(Art.38 and 39). The regular provisions of FRs and DPSPs are also complementary. Art.25-28 and Art.44 can be read together as mutually rendering each other meaningful. FDs, on their part contribute to a

Duties
Relationship between the Fundamental Rights, Directive Principles and Fundamental

The Commission recommended that the first and foremost step required to be taken by the Union and the State Government 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.

National Commission to Review the Working of the Constitution (NCRWC) report in 2002 recommended the implementation of the report of Justice Vema Committee.

The former Chief Justice of India, Ranganath Misra, 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.

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).

Supreme Court on citizens' duties

Verma Committee Report on Teaching Fundamental Duties to Citizens was set up in 1998 and the report was presented in 2000. It recommended re-opening approaches to school curriculum and teachers' education programmes and incorporating fundamental duties in higher and professional education.

Justice Verma Committee Report on Teaching Fundamental Duties to Citizens

The duties reflect Indian tradition and values and India's 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.

(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)

SRI RAM'S IAS

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 to the 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 DPSs 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 laws. Similarly, the DPS 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 Kesavanda Bharati case, has adopted the view of the Fundamental Rights and Duties 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 enjoining 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 citizens to properly perform their duties.

The Fundamental Rights are basic rights of all citizens in Part III of the Constitution, applying irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the Courts, subject to specific restrictions.

The second part of the clause gives a mandate to remove prejudices and prejudicial or harmful concepts and conduct based on gender. The central core of the concept is indignity to women. Many laws have been passed by the Union Government and the State Governments which duty. The passing of the Commission of Sati (Prevention) Act, 1987 emphasizes the importance of the concepts and conduct based on gender. The central core of the concept is indignity to women. Punish practices derogatory to the dignity of women. The significance of clause (e) lies in its call to every citizen to renounce such practices. This clause itself to its effectiveness in a

The first part of the clause (e) deals with the duty of citizens to promote harmony and spirit of common brotherhood among all the people of India.

to rise above the later day degenerations and aberrations which tarnished the image of our society. This again should come normally to a country where it is an abhorrence that Gods reside where women are worshipped. (वारा नायास्तु पूज्यान्ते रामान्ते तात्रा देवाता). It is for us to ensure that all practices derogatory to the dignity of women are Fundamental Duty of ensuring that all citizens of a country like India where the brotherhood should come very normally among the citizens of a country like India where the term has been to consider the entire world as one family. The Constitution also casts upon us the fundamental duty of ensuring the entire world as one family. The Constitution also casts upon us the streams but we are one people with one Constitution, one flag and one citizenship. Spirit of India is a country of different castes, languages, religions and many cultural Constitution flows from the basic value of fraternity enshrined in the Preamble to the India essentially flows from the spirit of common brotherhood among all the people of brotherhood among the citizens of a country like India where the

51A.e

The Fundamental Duty enshrined in clause (d) of Article 51A is contingent on the citizens being called upon to defend the country and render national service. It is addressed to all citizens being called upon to defend the army, the navy and the air force. It is a Fundamental Duty entrusted than those who belong to the army, the navy and the air force. It is a Fundamental Duty entrusted to the common man as indicated by the expression "when called upon to do so". Those citizens who belong to any of the three defence forces are entrusted constantly with this Fundamental Duty. This Fundamental Duty has not so far been tested as there has been no occasion when the common man was called upon to render national military service and to defend the country from any external aggression. The defence of the country may be needed against extreme aggression and war mongering armed rebellion within the country. It connects with FR in Art.23.2

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Fundamental Duty enshrined in clause (c) of Article 51A is essentially addressed to those citizens who belong to the defence forces or responsible for the maintenance of law and order.

Some excerpts from NCRWC report

A number of judicial decisions are available towards the enforcement of certain clauses under Article 51A.

It is no longer correct to say that Fundamental Duties enshrined in article 51A are not enforceable to ensure their implementation and are a mere reminder. Fundamental Duties have the element of compulsion regarding compliance. What is needed is to enact suitable legislation wherever necessary to require obedience of the duties by the citizens, with legal sanctions. There is need for comprehensive legislation in this area to ensure a faithful and effective implementation of the Fundamental Duties. (Read above in the relevant excerpt.)

Out of the eleven clauses in article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (i) and (k) require the citizens to perform these Fundamental Duties actively.

Concrete case because of its comparatively precise dimension." (Vishaka vs State of Rajasthan 1997)

Conventions and Constitutional change

- 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(Kesava Namda Bharati case verdict of the Supreme Court 1973)
- FRs and DPSs are complementary and such balance between the two Parts of the Constitution can not be disturbed (Minerva Mills case verdict 1980)
- Territories can not be ceded except by an amendment Act (benibar 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)

Judicial rulings and Constitutional amendments

Imperceptible methods

- Judicial pronouncements
- Conventions

Constitutions undergo amendments informally(imperceptibly) and formally(perceptably). In the former method, there are two ways

Flexibility means passing an amendment Bill in the same manner as an ordinary Bill. Indian Constitution has a combination of both.

However, only federal provisions are covered by the rigid procedure and not the non-federal government accept the same. Rigidity, thus, usually involves ratification by state legislatures of powers to the two levels of government and so can be amended only when both the tiers of government pass to the two levels of federal Constitutions where the Constitution involves distribution of powers. It is a characteristic of federal Constitutions where the Constitution involves distribution of powers to the two levels of government and so can be rigid or flexible. Rigid procedure is elaborate, difficult and amendable. Such procedures can be rigid or flexible. Rigid procedure for built-in procedures for moving society and its needs. Therefore, all constitutions provide for built-in procedures for facilitating socio-economic changes as they evolve from time to time. 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 changes as they evolve from time to time. It has to be a dynamic document reflecting the aspirations and needs of the people of the country. It has to be a moving society and its needs. Therefore, all constitutions provide for built-in procedures for moving society and its needs. Therefore, all constitutions provide for built-in procedures for

CONSTITUTION AMENDMENT PROCESS

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.

The Constitution amendment process is given in Art 368 in which two methods of amendment are mentioned.

Art 368

- (Read ahead)
- The first category in the above list is not deemed to be amendment. The latter 2 types are:
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.

Bills seeking to amend the Constitution are of three types:

It refers to an amendment according to the procedure laid down in the Constitution.

Formal and Perceptible method

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.

- Prime Minister has to seek the advice of the Union Council of Ministers
- Government accepting the recommendations of the Finance Commission
- President dissolves the Lok Sabha on the advice of the Union Council of Ministers
- Prime Minister has to seek the Lok Sabha

Conventions are a set of unwritten rules that have come to be accepted as having the force of law. Some conventions in India in the field of Constitution and governance are

76

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 Kithoto Hollahan case, the Supreme Court upheld the validity of the Tenth Amendment.

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 within which the State Legislatures should ratify the amendments referred to them.

- very procedure for amendment as specified in the Constitution (Art.368)

- or the representation of States in Parliament

- distribution of legislative powers between the Union and States (Seventh Schedule)

- Supreme Court and the High Courts; High Courts in UTs

- extent of the executive power of the Union and the States

- manner of election of the President

- Parliament's power to amend the Constitution**
- Article 368 of the Constitution confers power on Parliament to amend the Constitution and Article 13 applies to Art. 368 and restricts Parliamentary power.
 - Article 368 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 cases - to review the legality of 1st and 17th Amendment Acts - Parliament had held that Art. 368 however, in the verdict in the *Golak Nath case (1967)*, the Supreme Court had held that Article 368 contains only the procedure of amendment but does not confer power on the Parliament to amend any part of the Constitution.
 - If Parliament wants to amend the FRs, it should convene a Constituent Assembly.
 - 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.
 - President has no choice but to assent to the CAB and

introduction in the List of Business.

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 consideration by the Lok Sabha.

- Private Member and Constitution Amendment Bills**
- Both the above Bills were rejected by the Rajya Sabha and so did not bring down the governments that introduced the 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 Amendment) Bill, 1989, regarding Panchayats and Municipalities, as passed by the Lok Sabha were rejected by Rajya Sabha.
 - Constitution (Sixty-fourth and Sixty-fifth Amendment) Bills, 1989, regarding Panchayats and Purse of erstwhile rulers, was passed by the Lok Sabha but Rajya Sabha rejected it,
 - Both the above Bills were rejected by the Rajya Sabha and so did not bring down the governments that introduced the Bills.

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

SVS IAS

14. your own writing on the answer
cannot count unless written clearly
and correctly

Ans 49 Q : Secular

- Salient features of amendment process in India
- The theory of basic structure of the Constitution was reaffirmed 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. Parliament, therefore, could not, under Article 368 as distinguished from its ordinary legislative power.
- When Parliament amends the Constitution, it does so in exercise of its constituent power introduced only in the Parliament - either House. States do not have the power to initiate an amendment 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 by the President.
- Basic features can not be amended
- Constitution of India can be amended with the following limitations
- basic features can not be amended

Normal legislative procedure applies to this category of amendments. However, the Constitution lays down certain conditions before Parliament legislates in respect of some 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 concerned State.

Article 168 of the Constitution contains provision for constitution of two Houses of Assembly. Article 169 talks of abolition and creation of Legislative council. Legislative Council and the Legislatures in the States mentioned herein i.e., Legislative Council and the Legislative Assembly. Art. 169 repeals Art. 169 of the Constitution for constitution of Legislative council. Legislative Council and the Houses of the State mentioned in the same. Art. 169 repeals Art. 169 of the Constitution for constitution of Legislative council. Legislative Council and the Houses of the State mentioned in the same.

Legislative Councils and Amendment Act

- Article 11 – Empowers Parliament to make laws related to certain aspects of citizenship
result(Art.4) areas, boundaries or names of existing States; changes in First and Fourth Schedules as a admission of new States or formation of new States and alteration of
 - Article 12 – Establishes such provisions in the Constitution of new States 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 are of consequential nature(Art.4 and 169, for example). The following are such provisions in the Constitution :
 - Article 13 – Provides for the formation of new States or such changes in the Constitution of existing States; changes in First and Fourth Schedules as a result of admission of new States and alteration of boundaries or names of existing States; changes in First and Fourth Schedules as a result of creation or abolition of Legislative Councils in States(Art.169)
 - Article 14 – Empowers Parliament to amend Second Schedule to revise the salaries of certain Constitutional dignitaries
 - Article 15(3) – Contains parliamentary privileges until Parliament defines them
 - Article 239A relating to creating an Assembly or Council of Ministers in a UT.
 - Article 239B relating to Scheduled Castes and Scheduled Tribes Orders Mizoram respectively ; amendment of Schedule Castes and Tribes Orders in a UT.
 - Article 105(3) – Contains parliamentary privileges until Parliament defines them

'Amendments', not 'deemed', to be so

- In the verdict on Ninth Schedule in 2007 - L.R. Coleho 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.

- The unity of the country.
- The democratic character of the polity.
- The sovereignty of India.

Justices Hegde and Mukherjee instead provided, in their opinion, a separate and shorter 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 Shelat and Grover added three features to the Chief Justice's list:

- The federal character of the Constitution.
- Separation of powers.
- The secular character of the Constitution.
- A republican and democratic form of government.
- The supremacy of the constitution.

structure consists of the following:

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

diluted. "In the Shakari Prasad (1952) and Sajjan Singh (1965) cases, 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 Golak Nath 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 amended.

but limited it with the introduction of "basic structure" concept. In the Kesavananda Bharati case verdict, apex court gave parliament power to amend the Constitution Amending Act was made by parliament in 1971 to overcome the Golak Nath ruling. In the 24th Amendment Act was made by parliament in 1971 to overcome the Golak Nath ruling. In the 24th Amendment could abridge FRs without any limitation from Article 13 by amending the Constitution and not by ordinary legislation. Golak Nath case judgement overruled it in 1967. 24th Amendment Act was made by parliament in 1971 to overcome the Golak Nath ruling. In the 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 Golak Nath 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 amended.

power is also subject to judicial review. 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 States (effectively parliament) the power to abridge Fundamental Rights. Parliament's constituent power is also subject to judicial review.

Basic Structure

House and a majority of not less than two-thirds of the members of the Assembly present and voting (special majority).

There have been 97 amendments to the Indian Constitution till 2012 necessitated by the objective of welfare State (and reforms etc); social justice(1st and 93rd Acts); cleanse the political process of defections (2nd 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 not justify the hands of the Parliament?

Is the amendment process so simple as to make the Constitution a 'toy' in the hands of the Parliament? 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 features are an evolving and dynamic concept that enable the judiciary to retain the essence of the Constitution.

- Judicial review is retained to protect the original aims of the Constitution
- parliaments' dynamic responsibilities are recognised but its constituent power is restricted
- essential features are preserved
- judicial review and parliamentary powers and obligations are balanced for the sake of good governance and individual liberties.

The effect of the doctrine of basic features is the following

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.

- limited power of the Parliament to amend the Constitution
 - balance between the FRs and the DPSPs
- Minerva Mills case (1980), the following basic features are added through various judgments. For example. judicial review in Chandrab Kumar case (1997). In the Minerva Mills case (1980), the following basic features are added

- 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.

Constitution were laid out by that part of the document, and thus could be represented by: Justice Jagann Mohan Reddy preferred to look at the Preamble, stating that the basic features of the

- Essential features of individual freedoms.
- The mandate to build a welfare state.

- 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
 - ordinance promulgated by the President can not amend the Constitution.
 - 7. The Constitution (Seventh Amendment) Act, 1956—This amendment Act purported to give effect to the recommendations of the State Reorganization Commission.
 - 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 entered into between Governments of India and Pakistan. This amendment was necessitated in view of the judgment 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.
 - 24. Twenty-Fourth Amendment 1971—The amendment was made necessary by the Supreme Court judgment 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 power to amend any provision of this Constitution in accordance with the procedure laid down in Art. 368.
 - 2. Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power to amend any provision of this Constitution made under article 368.
 - 1. Nothing in Art. 13 shall apply to any amendment of this Constitution made under article 368.
 - 3. When the duly passed Constitution Amendment Bill is presented to the President for his assent, President shall give his assent.

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 land reform laws.
- 7. The Constitution (Seventh Amendment) Act, 1956—This amendment Act purported to give effect to the recommendations of the State Reorganization Commission.
- 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 entered into between Governments of India and Pakistan. This amendment was necessitated in view of the judgment 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.
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- 1. Nothing in Art. 13 shall apply to any amendment of this Constitution made under article 368.
- 3. When the duly passed Constitution Amendment Bill is presented to the President for his assent, President shall give his assent.

Suggest that Constitution has been too flexible because of the flexibility of the Constitution. It was the response of the Parliament and states to the need to shape India democatically and socialistically. Managing the diversity, implementation of policies for a 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.

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 equivalence in money of the property compulsorily acquired. Thus, the adequacy of compensation has become justiciable issue much 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 owner of the property.
26. Twenty-ninth Amendment 1972 - Article 31C, Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards principles specified in clause (b) or clause (c) of article 39(socialist legislation) 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 void.
27. The Constitution (Twenty-ninth Amendment) Act, 1972 - The Ninth Schedule to the Constitution was amended to include therein two Kerala Acts on land reforms.
28. Forty-second Amendment 1976 - It is called a mini-Constitution and has been affected on the recommendations of the Swaran Singh Committee in 1976.
29. The Constitution (Twenty-ninth Amendment) Act, 1972 - The Ninth Schedule to the Constitution in question in any court on the ground that it does not give effect to such policy:
1. Amendment of article 31 so that the word 'compensation' is replaced by the word 'amount'.
2. Article 31C. Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards principles specified in clause (b) or clause (c) of article 39(socialist legislation) 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 void.
3. 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 material abandonment".
4. Insertion of new Part IV A: 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 decentralise 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

- 87th Amendment Act, 2003 - delimitation of constituencies for LS and LA elections on the basis of 2001 census
- 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

Recent Amendment Acts upto 2013

Having regard to these imadequacies 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. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of regular elections, prolonged supercession and inadequate devolutions of powers and functions, become weak and ineffective on account of a variety of reasons, including the failure to hold self-government.

74. The Constitution (Seventy-fourth Amendment) Act, 1993—In many states local bodies have within a period of six months in the event of supersession of any Panchayat.

Part IX relating to the Panchayats has been inserted in the Constitution to provide for among necessary to enable them to function as units of self-government. In the light of the above, a new steps to organise village Panchayats and endow them with such powers and authority as may be Part IX relating to the Panchayats at all levels, direct elections to all seats in Panchayats at village and other levels, direct elections to all seats in Panchayats at such 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.

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.

52. The Constitution (Fifty-second Amendment) Act, 1985—Anti-defection law and the Tenth Schedule.

Right and it was made into an ordinary legal right. Article 300A. Article 352 of the Constitution was amended to provide "armed rebellion" as one of the circumstances for declaration of emergency replacing 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.

Right and it was made into an ordinary legal right. Article 300A. Article 352 of the Constitution was amended to provide "armed rebellion" as one of the circumstances for declaration of emergency replacing 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

The family of Henry and William Golak Nath held over 500 acres of farmland in Jalandhar, Punjab. In the face of the 1953 Punjab Security and Land Tenures Act, the state government held that the brothers could keep only thirty acres each, a few acres would go to tenants and the rest was declared surplus. This was challenged by the Golak Nath family in the courts and the rest was referred to the Supreme Court in 1965. The family filed a petition under Article 32 challenging the 1953 Punjab Act on the ground that it denied them their constitutional equality before and equal protection of the law (Article 14). They also sought to have the rights to acquire and hold property and practice any profession (Articles 19(f) and (g)) and to declare ultra vires. The issues that were to be determined by the apex court were - Seventeenth Amendment - which had placed the Punjab Act in the Ninth Schedule - Article 32 challenging the 1953 Punjab Act on the ground that it denied them their constitutional equality before and equal protection of the law (Article 14). They also sought to have the rights to acquire and hold property and practice any profession (Articles 19(f) and (g)) and to declare ultra vires. The issues that were to be determined by the apex court were -

- Whether Amendment is a "law" under the meaning of Article 13(2)?
- Whether Fundamental Rights can be amended or not?

Golaknath case

1. CAB related to women's reservation in state and parliament legislatures
2. CAB 50% women's reservation in PRIs
3. CAB 50% women's reservation in Nagarpalikas
4. CAB bringing the retirement age of High Court judges at par with that of the Supreme Court judges
5. 115 CAB for GST
6. 117 CAB for promotion in reservation for SC/STs
7. 119 CAB to ratify the LBA with Bangladesh signed in 2011

Important Constitution Amendment Bills at various stages of passage are

- of the ministers
- 92nd amendment Act relates to inclusion of four languages in the Eighth Schedule-Bodo, Dogri, Maithili and Santali.
- 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 Jharkhand and Chhattisgarh 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 34 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 DPSs). It was however rejected by the Gujarat High Court in 2013.
- 98th Amendment to amend Article 34 in 2010 to extend the reservation of seats for SCs to 50% of members of Lok Sabha and state assemblies from Sixty years to Seventy years.
- 99th Amendment Article 34 in 2010 to extend the reservation of seats for SCs to 50% of members of Lok Sabha and state assemblies from Sixty years to Seventy years.
- 108 CAB related to women's reservation in state and parliament legislatures
- 110 CAB 50% women's reservation in PRIs
- 112 CAB 50% women's reservation in Nagarpalikas
- 114 CAB bringing the retirement age of High Court judges at par with that of the Supreme Court in 2011
- 115 CAB for GST
- 117 CAB for promotion in reservation for SC/STs
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Schelat and Grover, jj held that, Parts III and IV of the Constitution which respectively embody the fundamental rights and the directive principles have to be balanced and harmonised. This therefore be construed in such a manner as to preserve the power of the Parliament to amend the Constitution which cannot be altered. The word 'amendment' occurring in Article 368 must therefore be construed in accordance with two integral parts of the Constitution forms a basic element of the balance and harmony between the directive principles have to be balanced and harmonised. This Schelat and Grover, jj held that, Parts III and IV of the Constitution which respectively embody the fundamental rights and the directive principles have to be balanced and harmonised. This

destroyed.

elements of fundamental features of the constitution.

S M Sikri, Chief Justice held that fundamental rights conferred by Part III of the Constitution of India cannot be abrogated, though a reasonable abridgement of those rights could be effected in public interest. According to the learned Chief Justice, the expression "amendment" of this Constitution, in Article 368 means any addition or change in any of the provisions of the Constitution within the broad contours of the preamble, made in order to carry out the basic objectives of the Constitution. Accordingly, every provision of the Constitution was open to amendment provided the basic foundation or structure of the Constitution was not damaged or destroyed.

The 13-judge Constitutional bench of the Supreme Court deliberated on the limitations, if any, of the powers of the elected representatives of the people and the nature of fundamental rights of an individual. In a sharply divided verdict, by a margin of 7-6, the court held that the while the Parliament has "wide" powers, it did not have the power to destroy or emasculate the basic elements of fundamental features of the constitution.

It is a landmark decision of the Supreme Court that introduced the Basic Structure doctrine of the Constitution. The Basic Structure doctrine forms the basis of a power of the Indian judiciary to review, and strike down, amendments to the Constitution enacted by the Indian parliament which conflict with or seek to alter this basic structure of the Constitution.

The case originated in 1970 when Swami HH Kesananda Bharati Sripu, head of "Edneer Mutt" - a Hindu Matha situated in Edneer, a village in Kasaragod District of Kerala, challenged the Kerala government's attempts, under two state land reform acts, to impose restrictions on the management of its property. It was challenged under Article 26, concerning the right to manage property acquired for managing religion without government interference. The majority held that the government actions already taken would not be retrospectively undone.

Kesananda Bharati V. State of Kerala

Court reversed the earlier verdicts and ruled in favour of FRS (given ahead). Doctrine of prospective overruling was applied to the effect that in future, the verdict will be respected and the government actions already taken would not be retrospectively undone.

1977.

The 42nd amendment was made in 1976 to cancel the impact of the verdict and Parliament assumed complete power to amend any part of the Constitution and DPSs were given unconditional precedence over FRS. It was however partly repealed by the apex court in the Minerva Mills case and partly dropped by the 43rd amendment act under the Janata regime. In

the basic institutional pattern.

That the word 'amendment' postulated that the Constitution must survive without loss of its identity, which meant that the basic structure or framework of the Constitution must survive any amendment of the Constitution. According to the learned judge, although it was permissible to amend the Parliament, in exercise of its amending power, to effect changes so as to meet the requirements of changing conditions, it was not permissible to touch the foundation or to alter the basic structure of the Constitution. Although it was permissible to make any changes so as to meet the requirements of changing conditions, it was not permissible to touch the foundation or to alter the basic structure of the Constitution.

Justice H R Khanna broadly agreed with the aforesaid views of the six learned judges and held that the word 'amendment' postulated that the Constitution must survive without loss of its identity to amend any and every provision of the Constitution. Justice H R Khanna broadly agreed with the aforesaid views of the six learned judges and held that the word 'amendment' postulated that the Constitution must survive without loss of its identity to amend any and every provision of the Constitution. Subject to these limitations, Parliament had the right to amend any and every provision of the Constitution.

Justice Jagannamohan Reddy held that the word 'amendment' was used in the sense of permitting a

change, in contradistinction to destruction. Therefore, the width of the power of amendment

should not be enlarged by amending the amending power itself. The learned judge held that the essential elements of the basic structure of the Constitution are reflected in its preamble and that some of the important features of the Constitution are justice, freedom of expression and equality of status and opportunity. The word 'amendment' could not possibly embrace the right to abrogate the pivotal features and the fundamental freedoms and therefore, that part of the basic amendment was wide, it did not cover the power to totally abrogate or emasculate or damage structure could not be damaged or destroyed. The learned judge held that though the power of Parliament could not be damaged or destroyed, the learned judge held that through the power of

Parliament from abolishing or changing the identity of the Constitution which rests on its Basic Structure.

The above CAs were challenged in Supreme Court resulting in the Kesavamanda Bharati case verdict in 1973. Thirteen judges of the Supreme Court, including then Chief Justice Sikri, heard arguments and 29th amendments and also the correctness of the decision in the Golak Nath case. This in Kesavamanda Bharati V. The State of Kerala and thus considered the validity of the 24th, 25th and 29th amendments and also the correctness of the decision in the Golak Nath case.

Parliament responded by making the 24th CAA in which Art. 13 and 368 were amended to make the CAA outside the scope of Art. 13 and Art. 368 was amended to give Parliament all the power to amend the Constitution. 25th Amendment was made resticting FRs legitimate while implementing DPSs(Art.39 b and c). 29th CAA was made to insert the land reform laws of Kerala in the Ninth Schedule.

- FRs hold a transnational status and are thus outside the reach of Parliament's power to amend
- Article 368 does not contain a power to amend the constitution but only a procedure.
- In Article 13, the word law includes Constitution Amendment Act

In 1967, in Golak Nath vs. The State of Punjab, a bench of eleven judges (such a large bench constituted for the first time) of the Supreme Court deliberated as to whether any part of the Fundamental Rights provisions of the constitution could be revoked or limited by amendment. Although Kesavamanda was decided by a narrow margin of 7-6, the basic structure doctrine has since gained widespread acceptance and legitimacy due to subsequent cases and judgments. The note in the case of Sajjan Singh v. State of Rajasthan (1965) : "It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Art. 368 ?"

The "basic features" principle was first expounded by Justice J.R. Mudholkar in his dissenting note in the case of Sajjan Singh v. State of Rajasthan (1965). It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Art. 368 ?"

The basic structure doctrine as introduced in the Kesavamanda Bharati case verdict in 1973 (see above) is an Indian judicial doctrine that the Constitution of India has certain basic features that cannot be altered or destroyed through amendment by the parliament. The basic structure doctrine as expounded by Justice J.R. Mudholkar in his dissenting note in the case of Sajjan Singh v. State of Rajasthan (1965) : "It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Art. 368 ?"

Doctrine of Basic Structure : Background, content and impact

More on Basic structure:

time, the court held, by a thin of margins of 7-6, that although no part of the constitution, including fundamental rights, was beyond the amending power of Parliament (thus overruling the 1967 case), the "basic structure of the Constitution could not be abrogated even by a constitutional amendment". The interpretation of the basic structure of the Constitution has since evolved in numerous other court rulings since the Kesavananda judgment. In the Minerva Mills case (1980), the fine balance between the FRS and DPSs was added. In the Bommai case (1994), secularism was added. In the Chandra Kumar case in 1997, judicial review was added.

The interpretation of the basic structure has since evolved in numerous other court rulings since the Kesavananda judgment. In the Minerva Mills case (1980), the fine balance between the FRS and DPSs was added. In the Bommai case (1994), secularism was added. In the Chandra Kumar case in 1997, judicial review was added.

In 1976, The Constitution (Forty-Second Amendment) Act had been enacted in response to the Kesavananda judgment in an effort to reduce the power of the judicial review of constitutional amendments by the Supreme Court. (Read above). 43rd CA nullified most of the provisions brought in by the 42nd CA. Minerva Mills case verdict too contributed.

The impact of the basic structure doctrine is that the immutable part of the Constitution is protected; parliamentary power to amend is balanced with the judicial power to protect the permanent part of the Constitution; judicially asserted its role as the guardian of the Constitution.

- New NLSI
Study
- Indian Constitution recognizes three types of emergency
 - "we are in grave and difficult times". They were convinced of the need for a strong Centre
 - 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
 - Constitution (Articles 352 - 360) deal with emergency.
 - 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 XVII of the Constitution (Articles 352 - 360) deal with emergency.
 - Members of the Constituent Assembly believed that "the danger of a grave emergency in which could effectively deal with emergent situations.
 - Indian Constitution recognizes three types of emergency
 - National Emergency(Art.352)
 - Financial Emergency(Art.360)
 - State Emergency or President's rule or Central Rule(Art.356)
 - 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
 - It can be imposed under Art.352
 - Following are the features of the national emergency
 - National Emergency
 - It can be imposed based on which emergency can be imposed: war or external aggression or rebellion, if the President is satisfied that there is imminent danger.
 - 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
 - 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 Ministers recommends, 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 majority of the total membership of the House irrespective of whether there are vacancies or absences on any account).

EMERGENCY PROVISIONS

- 4 On Fundamental Rights, the impact is given below.
- 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 issued in the Parliament However, no such order can last beyond the financial year in which emergency ends.
- 2 On the Legislative front, the 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 emergency, doctrine of federal supremacy ensures that federal laws will prevail. State assembly however, continues to exist.
- 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 State as to the manner in which the executive power 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.

Rendring the Union Government more powers to deal with a threat to national security involves the following

Effect of Proclamation of Emergency

- 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 intent 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.
- 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.
- 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 passed by the House of the People.

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 passed by the House of the People.)

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 till 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 majority decision of a five-member Constitution bench upholding the suspension of fundamental rights during Emergency in the ADM Jajalpur 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 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 was Justice Khanna who gave a dissenting 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 any court 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."

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.

Revocation of 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 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 imposed in 1975 was resented and it was thought that the terms of national emergency were made by the Janata Government in 1978 as the experience of national emergency was imposed in the country when China attacked India (extremal 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 received 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.

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 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. The economic situation of the country in 2013 has also deteriorated on internal and external fronts and there are suggestions in some quarters that Art.360 be invoked.

say no to illegal invasion

Financial Emergency



President's Rule

Procclamation of Presidents 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 extreme aggression and internal disturbance; it shall be the duty of the Union to protect the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

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 deployed armed forces to preventive in nature.

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

President's Rule: Art. 356

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.

- The state legislative assembly may be suspended or dissolved upon the circumstances that can form a government suspension is the course of action. Or, it may be dissolved 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 if the President believes that the Assembly can be revived and there will be a political coalition that can form a government.

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 if the Presidents rule has to be extended by more than one year, two conditions must be met:

- President's rule cannot last for more than 3 years.
- President's rule is to be extended by more than 3 years.

- (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,

- When Presidents rule imposed or what is constitutes failure of the Constitutional machinery?
- After elections, a hung assembly results and no clear winner emerges and there is no recommendation by the Governor. Practically, it may involve the following situations
 - The leader of a party with 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 (as in the Sharakhand case give above)
 - 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)

Sharakhand 2013

In January 2013, the first six month period ends. Either it has to be extended by another six months or elections are to be held by dissolving the assembly.

Both Houses of Parliament in the Budget session. Assembly was not yet dissolved by June 2013. By July 18, the Chief Minister Arjun Munda of the BJP resigned as his ministry was reduced to a minority after the Finance Minister Arjun Munda of the BJP resigned as his ministry suspended indefinitely after the Chief Minister Arjun Munda of the BJP placed under Sharakhand rule in January 2013 and the assembly placed under

- 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.

Once these two conditions are met, it can be extended six months at a time till a limit of 2 years. Already, it lasted for 1 year. That is, the total period for which it can last through extensions is 3 years, though conditionally. The idea is that an internal problem related to one state should be amenable to a solution within 3 years.

- the Election Commission certifies that the central rule should continue due to the difficulties in holding elections.

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 Government controlled by a political party at the Centre. The Supreme Court laid down standards according to 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.

***Significance of the Bommai judgement**

- if mala fides are proved, dissolution of the assembly may be reversed and the dismissed government can be reinstated
- dissolution of the Assembly should not be resorted to until the proclamation is ratified by the Parliament
- Article 74(2) says that Union Cabinet can withhold its recommendations to President from courts under the provision of confidentiality. But when Presidents 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
- Governor's report or any other authentic report should be the basis for the proclamation makes it liable to be dismissed under Art.356.
- secularism is a basic feature of the Constitution and its violation by a State government
- Art.356 is within the scope of judicial review
- December 1992 important points of the judgement
- 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 S.R. Bommai Vs. Union of India case judgement (1994) of the apex court is a landmark judgement in terms of Art.356 as it aims to minimise the partisan application of the provisions.

S.R. Bommai Vs. Union of India case judgement

5. majority of the political party should be tested on the floor of the assembly.
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.
3. dissolution of the assembly should not be done till the proclamation is ratified
2. Governor's report should be a speaking document
1. President's rule should be the last resort

Sarkaria Commission on Union-States Relations recommended in 1987 that:

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 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.

- Proclamation is approved by the Parliament of India (1994) - to ensure that the State Legislative Assembly is not dissolved before the amendment Article 356 - in line with the Supreme Court's judgment in S.R. Bommai vs Union of India (1994).
- Amend Article 356 - statement of all material facts and grounds, on the basis of which the President may take the decision.
- 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 last resort.
- Article 356 should not be deleted but it must be used sparingly and only as a remedy of recommendations.

* NCRWC (National Commission to Review the Working of the Constitution)

- Ministers to impose President rule in Bihar. The points raised by the President are noteworthy.
 - The charge that the Constitutional Government of the State failed is not established beyond doubt.
 - Warings, 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.
 - 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.
- In 1998, President of India returned for reconsideration the recommendation of the Council of 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.

*Role of NIDC
Reviewing
Assembly
and
Speaker
of
Parliament*

Inter-State Council (Art.263) also made some recommendations in this regard

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.

~~Punjab 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. 2. The commission has proposed "localising emergency provisions under Articles 355 and 356, confining that localised areas — either a district or parts of a district — be brought under Government's rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.~~

~~Art. 356 in recent times~~

~~Notion of emergency President and Governor should have authority to declare emergency under Article 356, confining that localised areas — either a district or parts of a district — be brought under Government's rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.~~

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PRESIDENT OF INDIA

SIR RAM'S IAS

X

Some point → (a) Capital of the country
and the govt.

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, he is also the head of the political executive. The US Presidency represents this form. In Britain, the monarch is the symbolic head, represented by the Prime Minister. The powers of the Government are vested in the Cabinet, headed by the Prime Minister. India therefore, he is also the head of the political executive. The US Presidency represents this form. In Britain, the monarch is the symbolic head, represented by the Prime Minister. 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.

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 universality 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 an electoral college with elected representatives from parliament and 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

Total population of the state	Total number of elected member × 1000
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as one:

Total Population of the State (by 1971 census) is divided by total number of elected MLAs. Assembly will have a number of votes calculated as follows:

Each member of the electoral college who is an elected member of a State Legislative For the purpose of securing such uniformity and parity the following method is laid down:

- federal idea.
- to secure parity between the States as a whole and the Union in order to do justice to

- to secure as far as possible, uniformity in the scale of representation of different States of the Union

down in Art. 55 representation by means of the single transferable vote. Two fundamental principles are laid The Constitution provides for the election of the President by the system of proportional representation by members of Parliament and legislative assemblies have no right to vote in

Procedure for the Election of the President

The nominated members of Parliament and legislative assemblies have also been excluded from the electoral college. Similarly, the members of the Legislative Councils of the State Legislatures have also been excluded from the electoral college.

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.

In the case of the French Presidential election in May 2012 when Francois Hollande and Nicolas Sarkozy did. The process is tedious and not warranted for a ceremonial head. There is a round off election with the top two candidates going into the next and final round if none of the contestants gets majority/quota-election will be complete only when elections. If none of the contestants gets majority/quota-election will be held by a plurality (largest number of votes though not majority) of votes as in the Lok Sabha elections. If more than 50% of valid votes as he/she represents the nation and can not be elected 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 be 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 this system, this is chosen for single transferable vote as provided by Article 55(3) of the Constitution. This system is chosen for 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 their non-legislative and elective capacity while electing the President-Election of the MLAs of all states and the two UTs of NCT of Delhi and Puducherry. The members act in the same way as in India the electoral college is made up of the elected MPs and elected members of the two legislative assemblies of the body ceases to exist once the election is over). In India the electoral college is made up of the elected MPs and elected members of the two legislative assemblies of the body ceases to exist once the election is over).

- 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).

Quota =	Total number of valid votes cast	Total number of seats to be filled + 1
<hr/>		
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:-		
$\text{Quota} = \frac{\text{Total number of valid votes cast}}{\text{Total number of seats to be filled} + 1}$		
<hr/>		
Quota of Votes		
<hr/>		
Those who voted for him as first preference will have their second preferences counted and basis of first preference votes, the candidate who gets the least number of votes is eliminated. A candidate, to be elected, requires to obtain a quota. If no candidate gets quota on the expresses his preferences in the single vote that he casts - first preference, second preference etc. Transferable Vote", which means that each elector has only one vote but it is transferable. He transfers his preferences in the single vote that he casts - first preference, second preference etc. A candidate is finally elected. Thus, votes are transferable.		
Therefore, proportional representation is prescribed where the President is bound to secure a majority of votes.		
That the President should have a majority of the votes cast as he represents the nation.		
The first past the post principle can not be applied for Presidential election for the reason that it takes all system, a candidate getting plurality of votes - relative majority or winner takes all system", or "first past the post		
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 with the value of the vote of an elected MLA for all states.		
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.		
<hr/>		
Proportional Representation		
<hr/>		
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 party is represented(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.		
<hr/>		
SRIRAM'S IAS		

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.

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.

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 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.

- There is parity between centre and the States
- Electoral college has Legislative Assemblies of States

The following facts make the presidency a federal institution:

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. Samjev Reddy 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 candidates were V.V.Giri, N.S. Reddy, C.D. Deshmukh and others. V.V.Giri got 4,01,515 first preference votes. Reddy and Deshmukh 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. Giri was declared elected as the President of India.

VV Giri

(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.)

If a candidate is elected in first count, the election is completed. But if no candidate gets quota in the first count, the process continues till the candidate is elected. This second preference votes by eliminating the candidate who has the least number of first preferences. His second preference votes are transferred to those in the fray. The process continues till the candidate is elected.

Elimination of the Bottom Candidate

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.

Members 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 free 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.

Constituents can be called in question on the ground of any vacancy existing for any reason. The phrase, "the elected members of Legislative Assembly of States" means only such election cannot be held even if some seats in the Electoral College are vacant.

Conscience vote

Elected MPs and MLAs are free to abstain from voting in the Presidential election. They can influence the voter and is illegal. Thus, there is conscience vote in the Presidential elections.

Earlier, the Attorney General had opposed the plea of Sangma on the issue of office of profit. "An office of profit is an office which must be under the Government, which enjoys the power to appoint and remove and some salary or emoluments must be attached to the post," Vahavati said, adding that this was not the case with the post of Chairman of Indian Statistical Institute (ISI). "No pecuniary benefits was attached to the post of Chairman of ISI" the law officer, who is assisting the court, said.

Chief Justice Altamas Kabir, who led the 3 to 2 majority ruling, held that Sangma's petition is not maintainable for regular hearing.

Earlier, the Attorney General had opposed the plea of Sangma on the issue of office of profit. "An office of profit is an office which must be under the Government, which enjoys the power to appoint and remove and some salary or emoluments must be attached to the post," Vahavati said, adding that this was not the case with the post of Chairman of Indian Statistical Institute (ISI). "No pecuniary benefits was attached to the post of Chairman of ISI" the law officer, who is assisting the court, said.

The Supreme Court dismissed Purmo Sangma's petition. A five-judge bench of the apex court which is mandatory set up to hear such pleas decided by 3:2 majority that the petition did not deserve to be entertained for detail trial, which if ordered would have entailed possible cross examination of Pranab Mukherjee.

Earlier, the Attorney General had filed his nomination and entered the Presidential race.

Sangma has challenged Mukherjee's election on grounds that Mukherjee was holding offices of profit as chairman Indian Statistical Institute, Kolkata and as also the leader of the Congress Party in Lok Sabha when he had filed his nomination and entered the Presidential race.

The Supreme Court dismissed Purmo Sangma's petition. A five-judge bench of the apex court which is mandatory set up to hear such pleas decided by 3:2 majority that the petition did not deserve to be entertained for detail trial, which if ordered would have entailed possible cross examination of Pranab Mukherjee.

On 22 July, Mukherjee was declared the winner. Mukherjee gained 373, 116 MP votes and 340,647 MLA votes for a total of 713,763 votes to win the election. He defeated Sangma, who got 145,848 MP votes and 170,139 MLA votes for a total of 315,987 votes.

Prasad held the position for two terms—1952-62.

Pranab Mukherjee was the 13th President and the election was the 14th one as Babu Rajendra Agnihotri.

Sangma from Meghalaya. Returning Officer was Rasya Sabha Secretary-General, Vivek Mishra Pranab Mukherjee from West Bengal and former Speaker of the Lok Sabha, P. A. Sangma from Meghalaya. Returning Officer was Rasya Sabha Secretary-General, Vivek Mishra Pranab Mukherjee from West Bengal and former Speaker of the Lok Sabha, P. A. Minister Pranab Mukherjee from West Bengal and former Speaker of the Lok Sabha, P. A.

19 July 2012. The two leading candidates for the office of the presidency are former Finance Minister Pranab Mukherjee from West Bengal and former Speaker of the Lok Sabha, P. A.

The 14th indirect presidential election, in order to elect the 13th president, was held in India on 22 July, Mukherjee was declared the winner. Mukherjee gained 373, 116 MP votes and 340,647 MLA votes for a total of 713,763 votes to win the election. He defeated Sangma, who got 145,848 MP votes and 170,139 MLA votes for a total of 315,987 votes.

14th Presidential election

105

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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.

House and should be signed by not less than one-fourth of the total number of members of the

at least fourteen days' notice in writing

- following:
-
-
-

The charge may be preferred (initiated) by either House of Parliament. Conditions are the

for violation of the Constitution. The process is as follows:

The President may be removed from office before the expiration of his term by impeachment

Impeachment(Art.61)

President gets emoluments of Rs. 1,50,000 per month.

communicated to the Speaker of the Lok Sabha.

The President may resign before the expiration of his term by writing under his hand addressed to the Vice-President. The resignation is forthwith required to be

communicated to the Vice-President. The term of office by writing under his

According to Art.57, he is eligible for re-election.

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 sixteenth day before the expiration of the term of office of the outgoing President

upon the office.

The President holds office for a term of five years from the date on which he enters upon his

Term of office (Art.56)

or the State Legislature as the case may be, on the date on which he enters upon his office as President.

one of them is elected President, he is deemed to have vacated his seat in Parliament respectively President Officers can seek election to the office of the President but if any chosen as President. A Member of Parliament or of a State Legislature including the Government have also been declared as not to disqualify the holders thereof for being State, are not offices of profit for this purpose. Certain offices of profit under the President, Vice-President, Governor of a State or the Minister for the Union or a should not hold an office of profit under the Government. The offices of the

not less than thirty-five years in age

should be qualified to be a member of the Lok Sabha and

a citizen of India

A person eligible for election as President should be

Qualifications(Art.58)

and there is no Constitutional or statutory law in this regard. However, it is inconceivable.

are not present as the LS is dissolved at the time of Presidential election, is an open question

Election of the President by a lame-duck Electoral College - where Lok Sabha members

a suspended Assembly (Article 36) are entitled to take part in the Presidential election.

those who are actually in office at the time of Presidential Election. The elected members of

- The following are the privileges of the President:
- 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 cannot be instituted for his official acts but in his personal actions, they can be instituted only after a two months notice.
- 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.
- 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, whereby 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.

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, or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

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.

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.

When a charge has been so preferred by either House of Parliament, the other House will appear and to be represented at such investigation.

The independence of the office of the President is maintained by the following Constitutional provisions

- Fixity of tenure- 5 years term
- Impediment process being a difficult one
- Art.361 and judicial immunity
- Immunity against criminal and civil proceedings
- Emoluments etc. are fixed by the Parliament and cannot be reduced while he is in service.

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 misbehavior and incapacity and on that basis the President removes them. Similar is the case with CAG and Comptroller and Auditor General. Election Commissioners are however removed by the Chief Election Commissioner.

- Attorney General
 - Special Officer for Linguistic Minorities
 - Chairman and members of the Finance Commission every five years
 - Commissioners etc
 - Chairmen and members of the statutory commissions like NHRCC, Minorities UPSC Chairman and members
 - CAG
 - Regional Election Commissioners, if any
 - Chief Election Commissioners and the two other Election Commissioners and Judges of the Supreme Court and High Courts
 - Governors of States
 - Prime Minister and his advice rest of the Union Council of Ministers
 - President appoints the following:-
- Appointments made by the President

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).

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.

Article 53 says that all executive powers of the Union are vested in the President. The President can seek information from the Prime Minister and also enforce collective responsibility of the Council of Ministers which is the central piece of policy making in the parliamentary system of democracy (Art.78). 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 and on his own or by his subordinates. The President appoints the prime minister and other ministers in the Council.

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.

President is the Head of the executive of the country. The entire administration of the country is run in his name.

• *diagnosable disorder of the State.*

The power so entrusted is a power belonging to the people and possessed in the highest

and so on, the President can either give relief partly or wholly

Based on the same evidence and on some other factors like remorse, record of behaviour

The judicial verdict may be too harsh and deserves relief

• *Fallibility of the judgment of the apex court*

The importance of Art.21 which guarantees right to life

The need for the mercy powers of the President is the following

President's clemency powers: Critical appraisal

• *or commutation.*

Reprieve is stay of death sentence or life imprisonment pending an appeal for pardon

• *Parole or old age*

Respite means reduction of punishment in view of a special fact, for example,

punishment, for example, 2 years of rigorous punishment becomes 1 year of rigorous

remission is quantitative reduction of punishment without affecting the nature of

commutation is reduction of punishment from death sentence to life imprisonment

• *Pardon means absolving the convict of all guilt and punishment*

Art.72)

The President can issue the following orders of mercy to the convicted citizens of India (

Mercy Powers

• *may seek the advisory opinion of the Supreme Court(Art.143)*

incapacity (Art.124)

removes the judges mentioned above if the two Houses of the Parliament pass

resolutions to that effect by special majority for proved misbehaviour and

appoints the Chief Justice and other judges of the Supreme Court and High Courts

Judicial Powers

The President

2 War and peace are declared in his name

1 He is the Supreme Commander of Defence Forces and

They are the following

Military Powers

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.

Diplomatic Powers

The diplomatic powers of the President include the following

circumstances are removed by him.

President on the advice of the Chief Election Commissioner, UPSC members, under certain

There is no mercy plea pending with the President by 2013 April.

Delay is a sad fact in deciding on these cases for clemency. Delay of 12 years occurred in 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 hanged him in 2013. 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.

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.

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

- interest of society and the convict
- the period of imprisonment undergone and the remaining period
- the effect on the family members of the victim
- remorse and atonement
- post-conviction conduct, character and reputation
- the health of the prisoner, especially any illness from which he may be suffering
- there is a shade of doubt about the convict's guilt
- seriousness of the offence

The following are the legitimate and relevant considerations for exercise of the pardon power.

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 humanness of law - the President being the symbol of people in a republican country like ours.

The personality of the President and his/her value system is also a factor in the exercise of mercy powers. For example, former President KR Narayanan (1997-2002) is known as a 'no hanging President'.

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.

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.

Thus, the President acts in a wholly different plane from that of the Court. It is a

R.S. Pathak, then the Chief Justice of India, explained in the Kehar Singh case that "[p]ardoning power of President is [a] constitutional responsibility of great significance; to be exercised when occasion arises in accordance with the discretion contemplated by context." The CJ further explained the reason: "to any civilized society, there can be no attributes more important than life and personal liberty of its members... recourse is provided to the judicial organ for its protection... There is always a possibility of the fallibility of human judgment." The Constitution has provided checks and balances for almost every conceivable situation. If the judiciary is fallible,

Kehar Singh's appeal however was turned down by President once again for mercy. Kehar Singh's court allowed Kehar Singh to appeal to the President once again for mercy.

The record of evidence and determine whether a petitioner deserves mercy or not. Court in regard to guilt of and sentence imposed on the accused. However, as explained by the apex court, the President had no power to amend or modify or supersede the judicial record. The nature of the constitutional power exercised by the President in this regard is totally different from the judicial power. Without altering the judgment, the President can remove the stigma of guilt or remit the sentence imposed on him. Thus, the President can go into the merits, examine the record of the criminal case and come to a different conclusion from the evidence on exercise of pardoning power. The apex court took a liberal view and held that the President, in the bench of five judges considered the question whether the President can scrutinise evidence while exercising pardon power. After his appeal to the Supreme Court, in the case of the President regarding pardon vested in him under Article 72, could "scrutinize the evidence on exercise of the power of pardon under Article 72 which deals with the President's power to grant pardon, suspension, his father under Article 72 which deals before the President of India for grant of pardon to was dismissed, his son presented a petition before the President of India to the Supreme Court then Prime Minister of India, and was sentenced to death. After his appeal to the Supreme Court Kehar Singh was convicted for murder and conspiracy for the assassination of Indira Gandhi, the

In *Kehar Singh v Union of India* (AIR 1989 SC 653), the Supreme Court asserted that "the question as to the area of the President's power under Article 72 falls squarely within the judicial domain and can be examined by the court by way of judicial review." Judicial review is part of the basic structure of the Constitution which even Parliament cannot interfere with.

In the Macchi Singh V. State of Punjab, delivered by a three-judge Bench in 1983, apex court sought to standardize crimes into five absolute categories, in order to identify the rest of rare crime deserving death sentence. These five categories are rare manner of commission of murder, motive for commission of murder, anti-social or socially abhorrent nature of the crime, magnitude of crime and personality of victim of murder.

The Supreme Court's five-judge Constitution Bench judgment in Bachan Singh V State of Punjab (1980) is basic to the discourse on death penalty and mercy in India. It introduced the doctrine of rarest of rare crimes. It said that judges must consider the aggravating features of the crime, as well as the mitigating factors of the criminal.

President, Supreme Court and mercy matters : Bachan Singh, Macchi Singh, Kehar Singh and Bhullar

President and Dissolve

President summons from time to time each House of Parliament, may from time to time prorogue either Houses or either House and dissolve the Lok Sabha (Art.83). Summons to call the House into session. Prorogue means to terminate a session. Dissolve means to 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.

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 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 present of the President under article 111.

President and Governor on Mercy

The Bench of Justice G. S. Singhvi and S. J. Mukhopadhyaya said the Supreme Court's earlier judgments holding that long delay might be one of the grounds for commutation of the death sentence could not be invoked in cases where a person was convicted for offences under the TADA or similar statutes. "Such cases stand on an altogether different plane and cannot be compared with murders committed due to personal animosity or over property and personal disputes," the Bench said. Giving examples, the court said if murder was committed in an extremely brutal or dastardly manner, giving rise to intense and extreme indignation in the community, the court might fully justified in awarding the death penalty. Bribe-bribery for the sake of money or greed was another example. In Bhullar's case, the Bench agreed that there was considerable delay in disposal of his mercy plea. Much of the delay could be attributed to the "unnecessary spate of petitions" filed on behalf of the prisoner.

Bhullar case 2013

The apex court verdict delivered in April 2013 says that long delay by the President or the government in disposing of mercy petitions of persons convicted under anti-terror laws or similar statutes cannot be a ground for commutation of the death sentence. A two-judge bench gave this ruling while rejecting the plea of Khalistani terrorist and death-row convict Devinderpal Singh Bhullar.

It paved the way for the three convicts sentenced to death in the Rajiv Gandhi assassination case, Santhan, Murgan, Perarivalan to secure a reprieve from the Madras High Court after the President dismissed their clemency petition in 2011 (though the jurisdiction of the High Court is questionable). Similarly, in the same year, the Supreme Court admitted a plea by Devinder Pal Singh Bhullar's wife. He had been sentenced to death for a 1993 terror attack in Delhi, and his petition for pardon had been rejected.

The President has a chance of making a correction under Article 72. And if the President's exercise of his power was questionable, the higher judiciary may ask him to reconsider.

Speaker is appointed in the new Lok Sabha to swear in the newly elected members. The President appoints a permanent Chairman of the Rajya Sabha (Art. 91(1)) and a temporary Speaker of the Lok Sabha (Art. 95(1)) in certain circumstances. Permanent Chairman and the Deputy Chairman are vacant. Permanent Chairman is appointed when the offices of the Chairman and the Deputy Chairman are vacant. Pro tem Speaker is appointed by another member and is put to vote. It is adopted with or without amendments.

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.

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 Constitution Head, he is the symbol. The President represents not only the executive authority but is a symbol of the Constitution.

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 each year and inform Parliament of the causes of its summons. Address both Houses of Parliament assembled together at the commencement of the first session after each general election to the Lok Sabha and at the commencement of the first session of both Houses by the President and provides that the President shall

Article 87 deals with a Special Address by the President and provides that the President shall together under this provision. Article 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.

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Art.87

- Return for repassage the Office of Profit Bill by President Abdul Kalam in 2006
- Return for re-passage Post Office Bill by President R. Venkataraman in 1990

Address the Parliament 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 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 Houses of Parliament assembled together and informs Parliament of the causes of its summons (Art.87). At the commencement of the first session of each year, the President addresses both the 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).

- 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)
- 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.33I)
- Disqualification of members of Parliament
- Grounds of disqualification of a Member of Parliament are given in Article 102. President is 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 acknowledgement of allegiance or adherence to a foreign State;
 - if he is so disqualified by or under any law made by Parliament.
- The President's prior recommendation for introduction of a Bill is required for the following disqualification of a member of Parliament with the Election Commission(Art.103)
- Prior recommendation of the President for some Bills
- 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).
- The President's prior recommendation for formation of new States or alteration of areas, introduction of a Bill relating to formation of new States or areas, boundaried or names of existing States(Art.3)
- Money Bill (Art.110)
 - Financial Bill(A)(Art.117.I)
 - Financial Bill(B) after it is introduced but before it is taken up for consideration(2d Readying)(Art.117.3)
 - introduction 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)
 - Monopoly matters.
 - Federalism and the rights of the states
- It is clear that the above provisions centre around either of the two features as given below

- Money Bill (Art.110)
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- to enforce the provisions of a Bill already passed by one House but not yet passed by Committee or
- enforce the provisions of a Bill introduced in, and pending before a House or a
- The President may issue an Ordinance to expedite if both Houses pass a resolution to that effect. *Co-ordinate*
- Ordinance has to be laid before both Houses of Parliament and it ceases to operate at the expiration of six weeks from the session of Parliament in which it may be disapproved before the so promulgated by the President has the same force and effect as an Act of Parliament. Every ordinance, it is also exercised on the advice of the Union Council of Ministers. An Ordinance immediate action, he may promulgate Ordinances as the circumstances require. Like most ordinances, it is satisfied that circumstances exist which render it necessary for him to take
- If at any time, except when both Houses of Parliament are in session, the

Ordinance is an executive law.

- ~~Promulgation of Ordinances (Art.123) ↗ when we want to pass the laws~~
- Commission for Linguistic Minorities, (Art.350B)
- Backward Classes Commission, (Art.340)
- Commissions for the Scheduled Castes and Scheduled Tribes, (Art.338)
- Union Public Service Commission, (Art.323)
- Finance Commission, (Art.281)
- Comptroller and Auditor-General of India, (Art.151)
- Reports of constitutional functionaries or bodies such as

- grants), (Art.115)
- statements showing supplementary or additional grants (and before the Lok Sabha, excess Budget) for that year, (Art.112)
- statement of the estimated receipts and expenditure of the Government of India (i.e., year).
- The President causes to be laid before both Houses of Parliament in respect of every financial

- laying of statements, reports etc
- any law made by Parliament. (Art.98)
- appointed to the secretarial staff of the respective Houses. The later rules are, however, subject to the Lok Sabha made rules regulating the recruitment and the conditions of service of persons the Speaker of the Lok Sabha and the Rajya Sabha and the Speaker of the two Houses (Art.118.)
- 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 the Speaker of the Lok Sabha made rules for the procedure with respect to joint sittings of the two Houses (Art.108.) 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.)

- Constitution Amendment Bill, the President summons a joint sitting of both Houses. (
- In the case of disagreement between the two Houses on a Bill (other than a Money Bill and Constitution Amendment Bill), the President is to preserve the federal character and ensure that fiscal system and responsibility is protected.

116

Constitutional experts and others have objected to the frequent resort to the power to issue Ordinance by the Government, particularly on dates too close to a session of Parliament.

Judicial review is also a limitation on recourse to ordinance (Cooper's case verdict 1970).

With the Bill necessitated legislation by Ordinance, is required to be placed before the House along introduced in the House, a statement explaining the circumstances which had whenever a Bill seeking to replace an Ordinance with or without modification is Parliament.

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 - it can not last for more than 6 weeks after parliament reconvenes.

Parliament needs to be explained the reasons for the Ordinance if can not amend the Constitution.

Promulgation is permitted only when either House is not in session.

Rule by the ordinance is against the spirit of the parliamentary democracy. Therefore, there are safeguards built into the Constitution like

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.

passage.

As stated above, unless the Criminal Law (Amendment) Bill, 2013 was passed within six weeks of the first sitting of Parliament (February 21), the ordinance would lapse. Given that the budget session broke for a month, starting March 22 for the process, it gave the government only four and not six weeks to pass the Bill. If the ordinance lapsed, it could be re-promulgated, but only after the budget session ended in May and await the monsoon session of Parliament for its passage.

Given the urgency, it could not be referred to the Standing Committee of Parliament.

Promulgated on February 3rd, if the Bill was not passed by March 22nd, it would have lapsed.

Long recess began on March 22. It replaced the Criminal Law (Amendment) Ordinance.

The Criminal Law (Amendment) Bill, 2013 was passed by the Parliament before its 1 month

passage in Parliament, having been introduced in 2011 December (as mentioned above).

The need to promulgate Food Security Ordinance even as the Bill for the same is awaiting urgent implementation is necessary. For example, there is a discussion (June 12, 2013) about

Bill pending in the Parliament, when Parliament is not in session if the government feels

promulgate an ordinance. An ordinance can be promulgated containing the provisions of a

Parliament in session can be adjourned sine die and prorogued if there is any urgent need to

Ordinance can not be promulgated to amend the Constitution.

- for a temporary purpose;

- on an entirely new matter or

the other House or

- Veto powers
 - Veto (Latin for "I forbid") means that a party has the right to stop unilaterally a certain piece of legislation. President of India has the right to stop bills passed by the two Houses of Parliament. 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.
 - 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.
 - 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, for example, the party that may succeed may not accept the Bill.
 - 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.
 - 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, Giani Zail Singh exercised pocket veto with regard to mid-term Post Office(Amendment) Bill as his opinion it was violative of Fundamental Rights in Art.19 as the Bill authorized for intercepting the mail. President R Venkataraman in 1991 returned it to Rajya Sabha. In other words, the former was a pocket veto and the latter was a suspensive veto.
 - The Bill survived the dissolution of the Lok Sabha and was withdrawn about a decade later.

118

to give
when a
big joke
occurred
to the following etc. whole
process

Office of PM → It has to be a govt office he is liable

President till such time that the elections to the 13th LS were held and a new government was formed.

April 1999, it had to resign and was asked to continue as 'caretaker government' by the Prime Minister of Shri Atal Bihari Vajpayee lost majority in the LS in For example, after the Government of Shri Atal Bihari Vajpayee lost majority in the LS in It is requested to continue to be in power by the President till the new ministry is sworn in.

Caretaker
Government
N.B.
M.S.
J.S.
A.P.J.A.K.
C.R.D.
C.R.E.T.
C.R.E.T.

- term is over
- resignation on losing majority or
- resignation on its own or

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

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.

Generally veto powers are exercised on the advice of the Union Council of Ministers. In sum, there are substantive and procedural grounds for the President to exercise his veto.

- If procedure is not followed
- If Fundamental Rights and other Preamble values are violated
- If he has suggestions about how to improve the Bill
- If the Bill is hastily passed
- If the legislative competence is breached

Thus, the Presidential veto of the above three kinds can be exercised in the following circumstances

1991 as it was not introduced with his prior recommendation.

President Venkataraman withheld assent from the MPs (Salary, Allowances and Pensions) Bill

President Kalam in 2006 returned the Parliament (Prevention of Disqualification) Amendment Bill, 2006 popularly known as Office of Profit Bill to emphasise that the Bill needed improvement. It is also a suspensive veto.

- 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.
 - 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 incoming ministry to continue to take care of the Government till elections produce a successor.
 - Carreker government like Charan Singh Ministry in 1979 lasted 5 months; the Gujarat 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 etc could be taken by the caretaker for farmers; transfers of senior officials etc under laws; economic policy like FDI, support prices 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.
 - 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'.
 - 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 monarch 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 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 however circumstances when the President need not go by the advice of the Council of Ministers like
- 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.
- Art. 74 clearly states that the President of India shall follow the advice given by the Council of Ministers like

Minister heading the Council of Ministers - called Head of the Government. Article 74 of the President of India, the Head of the State, is a formal position. Real power rests with the Prime Constitutional role of the President

- Both the amendments strengthen the President of India and make governance more accountable.
- Article 74 has been amended to make it possible for the President to return the advice of the Council of Ministers once for reconsideration.
- Article 352 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.
- Article 352 is amended to the effect that the Union Cabinet (the word Cabinet is found only in Art.352 of the Constitution) is necessary for the President to invoke the emergency.
- 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.

44th Constitution Amendment Act 1978

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 judgment in 1974 in the Shamsher Singh case that the President should act on the advice of the Council and Presidency is a ceremonial institution.

Apex court verdicts

- President APJ Kalam returned the Office of Profit Bill to the Parliament for repassage in 2006 (suspensive veto)
- President KR Narayanan did not accept the advice of the Cabinet to impose President's rule in Bihar in 1988
- President Zail Singh exercised pocket veto on Post Office Bill in 1986
- The same controversy was raised by

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.

Babu Rajendra Prasad raised the issue again 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.

- Sendling messages to the Parliament.
- Giving assent to the Bills passed by the Parliament
- This opinion that he would act independently of the Council of Ministers in two matters came into force. Babu Rajendra Prasad, the first President of India, expressed his opinion that he would act independently of the Council of Ministers in two matters.

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, expressed his opinion that he would act independently of the Council of Ministers in two matters.

SIRIAMS IAS

Geographical distribution of forests

Geography

Geography

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 of discretion'. The last case leaves him with no discretion as the advice rendered by the EC is 'discretion'. In the first five cases mentioned above, it is a case of the president exercising powers in his final and binding.

- Dissolving members of the Parliament in consultation with the EC(Art.103)
- They may have lost it. It is particularly true in the coalition era.
- Direct the Council of Ministers to prove its majority if there is any indication that also
- While exercising veto power, generally suspensive or pocket but rarely absolute veto
- Asking the Council of Ministers to re-consider the advice(Art.74.1)
- Such circumstances to explore the possibility of forming an alternative.
- 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 this regard.
- In the dissolution of the Lok Sabha when the Council of Ministers is voted out or results in a hung parliament.
- In selecting the Prime Minister from among the contenders when general elections of the Council of Ministers except under the following circumstances.
- 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 always acts on the aid and advice of the Council of Ministers except under the following circumstances.
- 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, that he has only a ceremonial role while few others say that his role is substantive. However, that he has only a ceremonial role while few others say that his role is substantive. However,

British Constitutional expert Walter Baggehot 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.

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.

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.

Vice-President of India

A person cannot be elected as Vice-President unless he fulfills the following qualifications:

- 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 Art. 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-A).

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-Z).

The Vice-President is not a member of either House of Parliament or of a House of a Legislature of any state and the voting in such election is by secret ballot. The Electoral College to elect Parliament, in accordance with the system of proportional representation by means of the single transferable vote and the principle of representation of members of both Houses of Parliament to the office of the Vice-President consists of all members of both Houses of Parliament.

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 election of India conducts the election to the office of the Vice-President.

Superintendence of the Election of the Vice-President

The Election Commission of India is responsible for the election of the Vice-President.

Impartial Provisions relating to the Election of the Vice-President are:

The election of the 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 for Vice-Presidential election of India is the Secretary General who was the Returning Officer for Vice-Presidential election of India in 2013.

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 principle of representation of members of both Houses of Parliament to the office of the Vice-President.

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Unlike that of the President of India where nominated members of Parliament have no role, a person to the office of the Vice-President consists of all members of both Houses of Parliament to the office of the Vice-President.

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Rs. 20,000/-.

Supreme Court of India. The petition has necessarily to be accompanied by a security deposit of Rs. 20,000/-.

A petition challenging the election has been heard by a five-judge bench of the Supreme Court before the Vice-President is filed only before the Supreme Court.

In 1952, an election petition can be filed only before the Vice-President and Vice-Presidential Elections Act, by the Supreme Court. Further, according to President or Vice-Presidential shall be inquired into and decided by the Supreme Court.

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.

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.

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.

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.

If at the end of any count, no candidate can be declared elected, then, second preference votes of the candidates 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 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.

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$$\frac{789}{2} + 1 = 394.5 + 1 \text{ (Ignore 0.5)} \\ \text{Quota} = 394 + 1 = 395$$

- The number 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:

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:

Proportional system

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 President 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 says that when the Vice-President's office is vacant, his functions as the Chairperson of the Council of States (Rajya Sabha) are performed, during the period of such vacancy, by the Deputy Chairperson of the Rajya Sabha, or any Vice-Chairman of Rajya Sabha or other member of the Rajya Sabha authorised by the President of India (President Chairman).

depending upon the circumstances.

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.

Term of Office

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."

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.

Oath of the Vice-President

S Radhakrishnan to become reelected to the post. Ansari defeated the NDA nominee Jaswant Singh by 252 votes in the electoral college of 787 Rajya Sabha and Lok Sabha MPs. Of the 736 votes polled, Ansari secured 490 against Singh's 238. Fifty one MPs did not cast their votes, while eight votes were declared invalid. The abstentions largely belonged to BJP, TDP and RSP that had decided to stay away from the election.

An election petition may be presented within 30 days from the date of publication of the declaration containing the name of the returned candidate.

Shri Hamid Ansari secured his re-election as vice-president to become the second person after S Radhakrishnan to become reelected to the post. Ansari defeated the NDA nominee Jaswant Singh by 252 votes in the electoral college of 787 Rajya Sabha and Lok Sabha MPs. Of the 736 votes polled, Ansari secured 490 against Singh's 238. Fifty one MPs did not cast their votes, while eight votes were declared invalid. The abstentions largely belonged to BJP, TDP and RSP that had decided to stay away from the election.

SRIRAM'S IAS

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.

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.

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. The constitution provides that when the Vice President acts as the Vice President, the salary of the President, he/she is entitled to the salary and privileges of the President of India. He draws his salary for the duties he discharges as the ex-officio Rajya Sabha Chairman. The pension is 50% of the salary.

- The Attorney-General for India is the chief legal adviser of Indian government and its primary法律顾问。He is appointed by the President of India under Article 76(1) of the Constitution and holds office during the pleasure of the President. 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 in legal matters referred to him. He also performs other legal duties assigned to him by the President. All references to the Attorney-General are made by the Law Ministry. All references to the Attorney-General in the Constitution of India as well as the right to participate in the proceedings of the Parliament, though not to vote. The Attorney-General appears on behalf of Government of India in all cases in the Supreme Court in which he can not defend an accused in the criminal proceedings and accept the directorship of a company without the permission of the Government.
- The Attorney-General is concerned. He 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 President referred to the Supreme Court regarding the 2G case verdict of the Supreme Court that was given in 2012.
- The Attorney-General can accept briefs but cannot appear against the Government. He cannot defend an accused in the criminal proceedings and accept the directorship of a company without the permission of the Government.
- By June 2013, there are 18 additional Solicitor General and many Additional Solicitors General. The Attorney-General is assisted by a Solicitor General and many Additional Solicitors General.
- The current Attorney-General is Goolam Essaji Vahanvati. *AK 16/12/09*
- The Attorney-General is the highest law officer in the country. *AK 16/12/09*
- 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.
- Advocate General of a State government is the counterpart of Attorney-General for India.
- The Solicitor General for India is subordinate to the Attorney-General of India. The Solicitor General for India, Additional Solicitor-General for India, the Attorney-General for India, and the Additional Solicitor and additional solicitor general.
- "Law Officer" means and includes the Attorney-General for India, the Solicitor-General for India, the Law Officers (Terms and Conditions) Rules, 1972. Union Law Ministry appoints the Solicitors General advise the A-G. Like the Attorney-General, the Solicitor General and the Additional Solicitor assisted by many Additional Solicitors General. It is not a Constitutional post himself for India is the second law officer of the country, assists the Attorney-General, and is general for India is subordinated to the Attorney-General of India. The Solicitor General for India and the Attorney-General for India are two separate posts.
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Attorney-General of India

127

In 1993, a nine-judge Constitution Bench of the Supreme Court in the Advocates-on-Record Association case, overruled 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 the President.

It is known as the First Judges case.

In the S.P.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".

Collegeium of 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.

Appointment of Judges to the Supreme Court: Details

- In the opinion of the President, a distinguished jurist.
- An advocate of a High Court or of two or more such Courts in succession for at least 10 years, or
- For at least five years, a judge of a High Court or of two or more such Courts in succession, or
- In order to be appointed as a judge of the Supreme Court, a person must be a citizen of India and must have been:

Qualifications

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.

The Supreme Court of India was constituted under Article 124 of the Constitution. It commenced its sittings on January 28, 1950.

Supreme Court

THE JUDICIARY

128

The Act authorizes the constitution of a three-member committee once a motion for presenting can be admitted only if 100 Lok Sabha or 50 Rajya Sabha members propose it to their respective an address to the President seeking the removal of a judge is admitted in Parliament. The motion

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 judges (Inquiry) Act, 1968 regulates the procedure for the inquiry into an allegation of charges have been proved.

down the details of procedure for investigation and inquiry into the allegations against a judge. (5), Parliament passed the Judges (Inquiry) Act, 1968. The Judges (Inquiry) Rules, 1969 lay 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 voting on the ground of proved misbehaviour or incapacity. Article 124(5) specifically lays House and by a majority of not less than two-thirds of the members of that House present and addresses by each House of Parliament supported by a majority of the total membership of that

Removal of Supreme Court Judge

Supreme Court Judge may be removed from his office by an order of the President passed after letter to the President of India. He may be removed by an order of the President based on

parliamentary vote.

Retirement, resignation and removal

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 to sit and act as judges of that Court.

It is known as the Third 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 "Collegeum" for the purpose of appointment of judges to the Supreme Court.

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 - dividing the executive of its judicial powers.

Chief Justice of India shall always be consulted according to Art.124, in the case of appointment of a Judge other than the Chief Justice, the current Chief Justice is S. H. Kapadia, who has held the office since May 2010.

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 heads its administrative functions.

Chief Justice of India

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.

Seat of Supreme Court

Art.128 says that retired High Court and Supreme Court Judges may be requested by the CJ, 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 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.

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. Who is qualified to be a Judge of the Supreme Court, to function as ad hoc Judge of the High Court who is qualified to be a Judge of the High Court concerned can request in writing a Judge of the High Court to be a Judge of the High Court, with the previous consent of the President and in consultation with the Chief Justice of the High Court, the CJ, with the previous consent of the President and in consultation of the Court.

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 CJ, with the previous consent of the President and in consultation with the Chief Justice 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.

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.

Chief Justice of one of the High Courts, and one distinguished jurist, Houses. The committee includes the Chief Justice or one of the Judges of the Supreme Court,

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:

matters relating to the supervision and functioning of the Supreme Court;

appointment of court officials;

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. 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.

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In the 2nd judges case 1993, it was said that the collegium headed by the CJJ 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.

CJJ is administered oath by the President while the CJJ administers oath to all other judges of the apex court.

Article 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 CJJ for the case.

Three-judge Bench - Matters placed before three-judge Bench are considered priority matters. CVC case (2011) and Vodafone case (2012).

Acking CJJ

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Art. 132 of the Constitution provides for an appeal to the Supreme Court from any judgment of a High Court, whether in civil or criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law which two or more High Courts have differed.

Constitutional cases

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 monetarily 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 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.

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 habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.

The writ jurisdiction of the Supreme Court is in the nature of residuary, category and belongs to the three Lists - Union, State and Concurrent in the residuary, category and belongs to the legislature in the VII Schedule. Any item that comes up subsequently and is not covered by the Constitution distributes legislative powers to the Union parliament and State parliament.

It also involves clarification as to whether a certain item is in the residuary category or not. To decide on one side and one or more States on the other or between two or more States.

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.

Original jurisdiction means that a case originates in the court. It may be exclusive or otherwise.

Original jurisdiction

The Supreme Court has original, appellate and advisory jurisdiction.

Jurisdiction

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 till then.
Another landmark verdict - Golaknath case(1967) was determined by eleven-judge Bench.

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 government in response to a suspected violation of law and seeks a fine, a jail sentence or both.

In a criminal case, prosecution is by the State of a person or organization, for committing a public wrong considered an offence against the State. Standard of proof for crimes is higher than for civil wrongs (torts) and, for major crimes such as a murder, guilt must be established beyond a reasonable doubt (see proof beyond a reasonable doubt). Civil cases on the other hand involve disputes between individuals or corporations and are settled by monetary payments and damages. Civil case is a lawsuit brought to redress a private wrong such as breach of contract, encroachment, or negligence; or to enforce civil remedies such as compensation, damages etc.

Difference between criminal and civil cases

Parliament is authorised to confer on the Supreme Court any further powers in criminal jurisdiction, under Art. 134.

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.

c) certifies that the case is a fit one for appeal to the Supreme Court.

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 to imprisonment for life or for a period of not less than 10 years, or

a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death

According to Art. 134 and Criminal Procedure Code provisions, an appeal lies to the Supreme Court if the High Court

Criminal cases

The term 'general importance' means that the case holds interest for a wider section of the society other than the litigants.

b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

a) that the case involves a substantial question of law of general importance, and

Appeals lie to the Supreme Court in civil matters (Art. 133) if the High Court concurred certifies

Civil cases

For example, the Domestic Violence Act 2006 has been interpreted to have retrospective value for the aggrieved women. 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.

SC has power to make law

It says that the law declared by Supreme Court is binding on all courts within the territory of India.

Art.141

Enables Parliament to confer ancillary powers on Supreme Court consistent with Constitution to make the Court more effectively discharge its Constitutional duties.

Art.140

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.

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.

Supreme Court may withdraw the case or cases and dispose of all cases itself. 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 by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of Article 32.

Art.139: Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of Article 32.

Power to transfer a case

Art.138

Certain facets of SLP need to be noted: it is available against both interim and final orders; it is under any law relating the Armed Forces. 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 against orders of military courts constituted as it may, in its discretion, grant special leave to appeal under Art. 136 of the Constitution from any judge or order. In order to be enlargable by the Parliament.

The Supreme Court has a very wide appellate jurisdiction over all Courts and Tribunals in India

SLP

2012. 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 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 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.

§ Judge bench held that the advisory opinion is entitled to due weight and respect and normally, 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 bindig? The question came up in the Cauvery Waters inter-state river water dispute of 1991- a judge bench held that the advisory opinion is entitled to due weight and respect and normally, it will be followed.

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).

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 judgment for all courts and other bodies.

The Article is titled : Power of President to consult Supreme Court.

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.

Court may render its advice or it may decline to do so. But in one case such advice is to be mandatory given: pre-Independence agreements and accords that India entered into.

the President of India may seek the advice of the Supreme Court on such a matter. The Supreme Court may render its advice of the Supreme Court on such a matter. The Supreme

- it is necessary to take the opinion and advice of the Supreme Court on it

• which is of public importance and that

• a question of law or fact has arisen, or is likely to arise

According to Art. 143, if it appears to the President that the Council of Ministers ~~has~~ preferred to it by the President under Article 143 of the Constitution.

The Supreme Court has special advisory jurisdiction in matters which may specifically be

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

Ans

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 apex court had observed that auction was best suited route for allocating natural resources like telecom spectrum because the policy of first-come-first-servce was flawed.

Eight questions have been raised, including whether there could be judicial interference in policy matters, whether the court holds the permissible scope of judicial review that the policy is flawed, is the court not obliged to take into account investors under the multi and bilateral policy including the investment made by foreign investors under the said agreements.

The government in April 2012 moved the Supreme Court with a Presidential Reference for its opinion on issues arising out of its 2G spectrum judgment delivered earlier in 2012, including whether auctioning of natural resources across all sectors is mandatory and the verdict be given retrospectively effect for licenses granted since 1994.

2G Reference 2012

- 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
- Presidentail references in the last two decades

- Of itself
- Of High Court and
- of a subordinate court.

Willfulness is necessary to constitute contempt. Merely 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.

"Criminal contempt" means saying or doing anything that obstructs the administration of justice in any other manner.

"Contempt of court" means willful disobedience to any judgment, 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.

"Civil contempt" means willful disobedience to any judgment, 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.

Effectiveness of Contempt of Court Powers

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

Effectiveness of Contempt of Court Powers

Article 129 : "The Supreme Court shall be a court of record and shall have all the powers of the rule of law and Constitutional Government. Contempt powers are necessary for the higher judiciary and the authority of the judiciary to enforce respect for the law.

Civil and Criminal Contempt

"Civil contempt" means willful disobedience to any judgment, 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.

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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".

Effectiveness of Contempt of Court Powers

Article 129 : "The Supreme Court shall be a court of record and shall have all the powers of courts to enforce rule of law and judicial orders, prevent corruption, insubordination and contempt to the rule of law and Constitutional Government. Contempt powers are necessary for the higher judiciary and the authority of the judiciary to enforce respect for the law.

Effectiveness of Contempt of Court Powers

Article 129 : "The Supreme Court shall be a court of record and shall have all the powers of the rule of law and Constitutional Government. Contempt powers are necessary for the higher judiciary and the authority of the judiciary to enforce respect for the law.

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 or any other member of a Public Service Commission can be removed from his office by order of the President, on the ground of reported that he ought, on such ground, to be removed from his office.

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Public service commission member's removal

Article 71 of the Constitution, provides that all disputes relating to election of a President or Vice-President are required to be enquired into and decided by the Supreme Court.

Miscellaneous powers: Election disputes

Appointment of judges is a vital function in a democracy based on the rule of law and whose Constitution guarantees fundamental rights. Constitution originally provided for Presidential appointments based on consultation with the higher judiciary (High courts and the Supreme Court). In 1993, the system changed. Collegium model was instituted. In other words, collegium of the Chief Justice and four senior-most judges of the Supreme Court appointing judges, if available. No time limit is given for filing Curative petition. The court could impose circulate to the three senior most judges and the judges who delivered the impugned petition. Curative petition has to be certified by a senior advocate. The Curative petition is then heard powers. For this purpose the Court has revised what has been termed as "curative" process and to cure gross miscarriage of justice, it may reconsider its judgments in exercise of its review power. The Supreme Court in the said case held that in order to prevent abuse of its discretion to any relief against the final judgment/order of the Supreme Court, after a dismissal of Rupee Ashok Hurra vs. Ashok Hurra (2002) where the question was whether an aggrieved person

Critical analysis of collegium model

"exampley costs" to the petitioner if his plea lacks merit. Judgment, if available. No time limit is given for filing Curative petition. The court could impose circulate to the three senior most judges and the judges who delivered the impugned petition. Curative petition has to be certified by a senior advocate. The Curative petition is then heard powers. For this purpose the Court has revised what has been termed as "curative" process and to cure gross miscarriage of justice, it may reconsider its judgments in exercise of its review power. The Supreme Court in the said case held that in order to prevent abuse of its discretion to any relief against the final judgment/order of the Supreme Court, after a dismissal of Rupee Ashok Hurra vs. Ashok Hurra (2002) where the question was whether an aggrieved person

Curative petition

- it can punish for contempt of court including contempt of itself.
 - its proceedings are recorded and can be quoted as evidence in any court in the country following attributes
- Under Art. 129 of the Constitution the Supreme Court is a court of record. It means it has the contempt of court of record

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 given a fair and reasonable opportunity to defend himself.

Under the contempt law, to protect principles of natural justice, it is necessary that the defendant may defend himself on the basis of truth and public interest.

That the defendant (one who commits contempt of court) is made aware of the charge against him and is

Procedure is fair

Defence: Defendant 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 defendant may defend himself on the basis of truth and public interest.

Defence: Contemnor may defend himself on the basis of truth and public interest.

Contempt of subordinate courts.

Rare circumstances affecting the entire judiciary, Supreme Court may directly take cognizance cases relating to contempt of subordinate courts are matters for High Courts. However, under 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,

Does not affect the inherent power of Supreme Court under Article-129. The Supreme Court affects the inherent power of subordinate courts.

- of itself as well as
 - of subordinate courts.
- High Court being a court of record has inherent power in respect of contempt

judicial commissions in India, one for the Supreme Court and another for the High Courts. National Judicial Commission with a predominance of judicial members as an alternative to the Commissions to Review the Constitution 2002 set up by the Government of India favoured a college system. With the size of the Indian superior judiciary, it may be necessary to have two Commissions for the appoinments of judges. A Constitutional Amendment Bill was tabled in Parliament for the establishment of such a Commissions in 1990 but it lapsed. The National Commissions for the appointments of judges. A Constitutional Amendment Bill was made in 1987 recommended a broad based body of judges and other person to make National Commission for Judicial Appointments have been made at various times. The Law that applications are invited by public advertisements for the establishment of a executive and other sections of society. They are transparent in their working even to the extent independent, broad based and they represent not only the judiciary but also of the U.K., South Africa and Canada. The advantage of judicial commissions are that they are been established to select judges. Such judicial commissions have worked with success in the several countries of the Commonwealth, National Judicial Appointment Commissions have executive can not be restored as it stood pre-1993. T.R. Andhyarajina, Constitution expert says: It is necessary that the appointment etc process has to be broad based. The power of the U.K., South Africa and Canada. The advantage of judicial commissions are that they are been established to select judges. Such judicial commissions have worked with success in the several countries of the Commonwealth, National Judicial Appointment Commissions have executive can not be restored as it stood pre-1993. T.R. Andhyarajina, Constitution expert says:

Remedy

At any given time there are two to three vacancies in the Supreme Court, and 200 in the 24 High Courts (new ones to have come up in 2013 being in Tripura, Meghalaya and Manipur). If we add the issue of transfer of High Court judges, an administrative task of high magnitude results to cope with which the apex court has necessarily to be detached from their principal judicial work of hearing and deciding cases. The collegium neither has a secretariat to shoulder this burden nor an intelligence bureau to make appropriate inquiries of the competence, character and integrity of a proposed appointee. Lack of this infrastructural backup is a major problem with the collegiums.

- c. many vacancies are not filled.
- b. it is not transparent
- a. it is not provided in the Constitution

However, the collegian model worked for 20 years by 2013 and its working has been found to be deficient on the following grounds

- d. Mrs. Gandhi in the 1970's advocated a committed judiciary that supported the government programmes and policies which the judiciary found to be unconstitutional
- c. Coalition governments may be under pressure to dilute principles of integrity a itself for the independence of the judiciary
- b. Art. 50 wants the 'judicial powers' of the Executive divided and given to the judiciary
- a. Independence of the judiciary

Supreme Court judges has not been provided by the Constitution. Supreme court created the model on the basis of the word 'consultation' which is meant to be 'concurrence' in the interpretation in the 1993 verdict, as you have studied earlier in the notes. The need for the collegium model is felt to be the following

- Independence of judiciary is essential for the strength of a federal democracy like ours. Our appoinment of judges of Supreme Court is kept above politics as the President appoints Supreme Court 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-volatile
- Administrutive 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
- Article 141 says that the SC judgments are binding on all courts in the country

Independence of the Judiciary

All Women judges Bench in the Apex Court

India is facing a growing backlog of environmental cases with rapid industrialization leading to disputes with traditional stakeholders. Land acquisition 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 cases 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.

For the first time in the history of the Supreme Court, an all women bench heard cases in the top court in April 2013. Justice Gyan Sudha Misra headed the women bench with her colleague Justice Ranjana Prakash Desai. However, such a bench has not been institutionalized.

Constitution establishes it on the basis of the following

- Appointments of judges of Supreme Court is kept above politics as the President
- Removal is possible on grounds of proved misbehaviour or incapacity and the parliament should vote with special majority followed by Presidential Order of removal
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The Constitution may have to be amended to set up the NJC.

Before his recent demise, Justice S Verma, the author of the Second Judges' case which evolved the collegium system, had expressed his disappointment with its working. There is also a demand that the reasons for appointment of a particular judge and rejection of other judges should be briefly disclosed as that would impart transparency to the process.

SRIRAM'S IAS

All-India Judicial Service would become members of the State Judicial Service for all practical purposes. Control of the High Court will remain as, on allotment to a State, the allottees (members of the All India Competitive examination, only a portion of the total vacancies are to be filled through With respect to the second objection, among others, the Law Commission 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.

- The main objections have been raised in this matter
- inadequacy of regional language would damage 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.

Finally, national integration is another benefit. Near uniform standards prevail in the country in judicial matters. Plague the higher judiciary. Near uniform standards prevail in the country in judicial matters. The strength in High Courts after the IAS recruits become eligible and thus vacancies may not be filled at a young age can be tapped. It helps to fill

The advantages with IAS are that the best talent at a young age can be tapped. It helps to fill amendment of the Constitution within the meaning of Article 368. Article 312). Law of the Parliament to create IAS is not to be deemed to be an All-India service (Art.312). States and also to regulate the recruitment and conditions of service of persons appointed to such law provide for creation of an All-India Judicial Service (IAS) common to the Union and the and voltage that it is necessary or expedient in the national interest to do so, Parliament may by (Rajya Sabha) declares by resolution supported by not less than two-thirds of members present and vote in the House of Commons to that an All-India Judicial Service (IAS) common to the Union and the States and also to regulate the recruitment and conditions of service of persons appointed to such law provides for creation of an All-India Judicial Service (IAS) common to the Union and the

The process of creation of an All-India Service needs to be noted. If the Council of States 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.

Article 312 deals with the All-India Service. The Supreme Court endorsed the recommendation recommended that IAS should be constituted, essentially for managing the higher Commission to attract the best young talent can improve the efficiency of the subordinate judiciary. Law Court. There has been a suggestion for many decades that an IAS should be constituted to services in the subordinate judiciary. The Supreme Court endorsed the recommendation recommended that IAS should be constituted, essentially for managing the higher Commission to attract the best young talent can improve the efficiency of the subordinate judiciary. Law in the case of other posts, in consultation with the Public Service Commission and the High Court. The appointment is to be made in the case of district judge, in consultation with the High Court and the appointment of the members of the subordinate judiciary is made by the Governor. Such

The subordinate court/superior/supreme judiciary is a State subject (an item in State List (List II).

All-India Judicial Service

- At present, almost all states have a system of selecting members of the subordinate judiciary.
- But, there is no all India judicial service.
- 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 judiciary and distinguishing judges involved in 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.
- 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 11 judges per 1 million. Law Commission
- recommended to raise it 5-fold. Approved strength of High Courts is 906(2013) but here are 276 vacancies(2013). Similarly, against a sanctioned strength of 18,100 trial court judges, there are only 14,300 judges available (2013).
- Judicial infrastructure is inadequate - both in terms of courts or adoption of new technology (IT etc)
- Chief Justice K G Balakrishnan suggested higher budgetary allocation to set up new courts like evening courts and special magistrate courts to combat backlog 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, Gram Nyayalaya Act is one solution. Peendancy can also be reduced through alternative settlement of disputes - mediation and conciliation. Lok Adalats have proved to be useful 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.
- State governments should set up more family courts - one family court should be set up in mass disposal of cases and quickly.
- High Court judges.

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 judiciary and distinguishing judges involved in the process to be transparent and broad-based.

At present, almost all states have a system of selecting members of the subordinate judiciary.

But, there is no all India judicial service.

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 Nyayalaya, computerisation of District and Subordinate Courts in the country and for upgrading of ICT infrastructure of the Supreme Court and the High Courts.

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 consideration. The plan proposes new initiatives such as fast track courts, second shift in existing courts, etc for speedy disposal of cases

Molly 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.
- Pendingancy 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
- 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)

Judicial reforms

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Gram Nyaya Act 2008 aims at providing inexpensive justice to people in rural areas on their doorsteps. It provides for first class judicial magistrates dispensing Justice-Naya Adhikaris are appointed by the states in consultation with the high courts. Gram Nyaya Adhikaris are 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 tube well or well are some of the offences which could be tried in the Nyayalayas. An appeal from the judgement of the Gram Nyayalaya lies with the state high court.

Gram Nyaya Act 2008

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 plead for plea bargaining overcharge.

The rules say the court would examine the accused in-camera to determine if he has willingly admitted a woman or a child below the age of fourteen are also excluded. This is allowed for cases in which the maximum punishment is imprisonment for seven years. However, offences in socio-economic area such as theft and offences committed against a woman or a child below the age of fourteen are also excluded.

Accused admits guilty without a trial, and in return is given a lighter punishment. Again, criminal defendant and prosecutor reach an agreement subject to court approval. The barter is was introduced in India by amendment of the Code of Criminal Procedure. Under plea bargaining, criminal defendant and prosecutor reach an agreement subject to court approval. The barter is also empowers the court to fix a time limit for oral arguments and to avoid delay, it is allowed to file written submissions.

Plea Bargain

- The 2013 Criminal Law Amendment Act
- ADR - conciliation and arbitration - should be encouraged
- concludes
- a judgment is to be pronounced within 60 days from the date on which the hearing may ask the parties to file written submissions.
- The court is also empowered to fix a time limit for oral arguments and to avoid delay, it disposes of cases in a move to speed up justice delivery, the Centre amended the Civil Procedure Code which provides 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 empowers to file oral arguments and to avoid delay, it may ask the parties to file written submissions.
- The court is also empowers to fix a time limit for oral arguments and to avoid delay, it disposes of cases in a move to speed up justice delivery, the Centre amended the Civil Procedure Code which provides for time-bound disposal of civil cases. The following amendments make for speedier disposal of cases
- 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.
- E-judiciary
- Lok Adalats
- Gram Nyaya Act 2008
- Criminal law amendment act 2013 - gender sensitivity
- Fast track courts in 2001 as well as 2013, the latter being for women related cases shown below:

Many reforms have already been initiated and are in progress. Some have already taken effect as shown below:

Alternative Dispute Resolution

ADR today falls into two broad categories – litigation and mediation. The modern ADR movement seeks to reduce cost and delay and avoid adversarial litigation. Alternative dispute resolution encompasses a range of means to resolve conflicts short of formal trial or litigation. The interest in ADR essentially centres around Lok Adalats.

73 such courts are set up since January 2013 to try cases of sexual harassment and other heinous crimes. As part of its comprehensive agenda for legal and judicial reforms, the government and the top judiciary have resolved to set up at least 1,800 fast-track courts and run for trial of heinous crimes as well as for offences against elderly, women and children.

Telangana to sexual assault. Other states such as Maharashtra and Tamil Nadu have also begun the process of establishing FTCs for rape cases. The reason for the fast track courts to produce decisions quickly is that they hold proceedings continuously.

After the recent gang-rape of a 23 year old girl, the Delhi High Court directed the state to discontinue it. Other states such as Delhi and Karnataka have decided to continue the FTC scheme only till 2013. FTCs gave a boost to faster disposal of cases. 39 lakh cases transferred to some states such as Arunachal Pradesh, Assam, Maharashtra, Tamil Nadu and Kerala decided to discontinue with the FTC scheme. However, some states such as Haryana and Chhattisgarh decided to discontinue it. In 2012, the Court upheld the decision of the central government. Y 2013, Supreme Court, the central government stopped giving financial assistance to the states for establishing FTCs, the state governments could establish FTCs from their own funds. The decision of the central government not to finance the FTCs beyond 2011 was challenged in the Fast Track Courts. In 2012, the Court upheld the decision of the central government. The

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. They were ended in 2011. Though the central government stopped giving financial assistance to the states for

establishing FTCs, the state governments could establish FTCs from their own funds. The decision of the central government not to finance the FTCs beyond 2011 was challenged in the Fast Track Courts. In 2012, the Court upheld the decision of the central government. The

sessions court which will be heard and disposed of within six months from the date of filing of the appeal;

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

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 summing up of evidence and, examination of witnesses, requiring public records, etc. However, they are not courts (read ahead). No lawyers are involved in the process. The procedure, followed in the Lok Adalats for the settlement of cases, is simple, informal and flexible.

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 filing a case in a regular court. All legal disputes are simple and carries no fees. Lok Adalats are statutory forums since the and the process is simple and carries no fees. Lok Adalats are mediation. It helps in quick disposal of cases 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 mediation of Legal Services Authorities Act, 1987. (Connect with the Chapter on DPSs)

Lok Adalat

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 judge, known as an award, is confidential and binding.

Mediation is a voluntary and confidential process where a neutral third party assists negotiations. 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 problem 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.

Conciliation is an informal process designed to create an environment where negotiations can take place. If the parties fail to reach an agreement, the case is referred to mediation.

- court-driven options and negotiation:
- 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 access 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.

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 committee recommended that judicial Impact Assessments must be made on a scientific basis for the purpose of estimating the extra 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.

Assessment in India under chairmanship of Shri Justice M. Jagannadha 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 Task Force constituted by Government to study the feasibility of judicial Impact Assessment in India under chairmanship of Shri Justice M. Jagannadha 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.

Judicial Impact Assessment

The concept of Pravartik Mahila Lok Adalat (PMLA) has been evolved by the National Commission for Women (NCW) to supplement the efforts of the District Legal Service Authority for redressal and speedy disposal of matters pending in various courts related to marriage and family affairs. Other advantages of the PMLA are that it is cheaper, it helps encourage the public to settle their disputes outside the formal set-up, it empowers the public (especially women) to participate in the justice delivery mechanism, and ideally, cases are amicably settled by the parties in a harmonious atmosphere.

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.

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.

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. It is enforceable like the decrees of a civil court once the compromise is accepted.

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On both the parties reject it, the recourse is to the courts. Thus, Lok Adalats are not courts, in subject to the litigants accepting the same. If it is accepted, it is binding. If it is not accepted and this sense, they are conciliatory bodies, suggesting remedies.

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.

Protection of Children from Sexual Offences Act, 2012, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 and Criminal Law (Amendment) Act, 2013 were passed recently and they are likely to impose huge burden on the courts unless proactively judiciary is strengthened.

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.

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 right to draw adverse inferences if he refuses to answer the questions put to him by the court.

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)

It recommended the following:

—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 "probability 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 reasonable 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 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 to be set up and function continuously. Evening courts in November 2008 allows special courts to be set up after the Bombay terror attacks. The National Investigation Agency set up in 2008 after the Gujarat and Fast Track courts are also special courts in Bihar Special Courts Act, 2009 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

Specialist corruption by public servants. Special courts essentially speed up justice.

Governance in Judiciary

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.

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 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. COURTIC 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 24 High Courts in the lines of Apex Court's Computerisation has been done. All High Courts' Case 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 Judgment Information System (JUDIS) on CD-Rom consisting of complete text of all reported judgments of Supreme Court of India from 1950. The Judgments of 2001 onwards are available on internet. Cause lists 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 operate nationwide a number of plans to ensure expeditious and quality justice. The Centre is committed to spending Rs. 5,10 crore in the next five years for the Mission.

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 directives and an action plan worked out by the Ministry of Law and Justice focuses on initiatives such as an All Missions' various initiatives.

Leader and a Mission Directorate. The Mission will advise on the goals, objectives and strategies and an action plan. The Governing Council will facilitate implementation, give policy directives and an action plan worked out by the Ministry of Law and Justice focuses on initiatives such as an All Missions' various initiatives.

Conciliation Act and Legal Education Reforms. It seeks re-engagement of procedures and alternative methods of dispute resolution such as mediation of bottlenecks, procedural changes in court processes, statutory changes to reduce and disentangle delays, fast tracking of proceedings, appointment of court managers and Alternative Dispute Resolution.

They can also file an appearance or act for a party in the Supreme Court.

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Advocates on Record

Judicial review is the power of the judiciary to review the laws made and executed by the legislature and executive respectively, to make sure that they are in line with the Constitution and statute. If they are not, judiciary strikes them down partly or wholly. The power of judicial review is given to the judiciary by various provisions of the Constitution and law. For example, Art. 13 says that no law is valid if violates Fundamental Rights. Art. 131 says that if there is a review of a law by the judiciary, it will be struck down.

~~Judicial review, activism and overreach~~

Issue of advisory or warnings to judges, and also recommend their removal to the President. The Overight Committee may be confidential and frivolous complainers will be penalised. The Overight Committee judges will be referred for further inquiry to the Overight Committee. Complainants and inquiries against such a motion will be of a judge on grounds of misconduct or misbehaviour. Such a motion for removal against a judge to the Overight Committee on grounds of misconduct or misbehaviour. A motion for removal against a spouse and children. The Bill establishes the National Judicial Overight Committee, the High Courts, judges will be required to declare their assets and liabilities, and also that of their spouses and their family members, assets and liabilities. Complainants Scrutiny Panel and an investigation committee. Any person can make a complaint against judges and establish standards, and processes for removal of judges of the Supreme Court, lower judicial standards, lays down standards and Accountability Bill, 2010 requires judges to declare their assets, lays grounds of misconduct or incapacity.

The judicial Standards and Accountability Bill, 2010 creates mechanisms to allow any person to complain against judges on grounds of misconduct or incapacity. It also requires judges to declare details of their and their family members' assets and liabilities. Importantly, it creates from any person to complain against judges on grounds of misconduct or incapacity, Art. 124 prescribes removal of 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 complain against judges on grounds of misconduct or incapacity.

~~The Judicial Standards and Accountability Bill, 2010~~

Where the judiciary suffers from misconduct or incapacity, Art. 124 prescribes removal by Parliamentary address and Presidential order. Thus, there is a multi-layered judicial accountability in the country. After which there is judicial review once again. In matters of mercy, the President and Governor are the arbiters (Art. 72 and 161 respectively), been disposed off, if there is any natural justice issue involved, here is curative petition. Finally, the High Court and Supreme Court, there is an appeal to a larger bench. After review petition has which the lower court verdicts are open to challenge and nullification by the higher court. Within the judicial accountability question has the following dimensions: judicial accountability under Administrative accountability is via the RTI.

The National Commission to Review the Working of the Constitution (NCRWC) made similar recommendations in the matter in its report in 2002.

Is being considered by Parliament (2013) provides for remedies for minor cases of misconduct does not function as a deterrent. Therefore, judicial Standards and Accountability Bill 2010 that is removed, in the Indian Constitution (Art. 124). It is so difficult that it is not practical and so well.

The mechanism for accountability for serious judicial misconduct, for disciplining errant judges an appeal and review of orders up the judicial hierarchy from subordinate courts upwards.

Accountability of the judiciary in respect of its judicial functions and orders is provided for by and ethical standards.

In a Constitutional democracy, every institution is subject to accountability, including the judiciary. There are three dimensions to judiciary and its accountability - judicial, administrative

~~Judicial Accountability~~

black money case.

Two recent cases represent encroachment in the domain of the Executive - CVC case and the MPs from LS in the cash for query scam in 2005 and sending to the Speaker summons which was vigorously opposed by Somnath Chatterjee, Falu Nariman and other legal luminaries.

One more case relates to the Supreme Court admitting the petition challenging the expulsion of item Speaker of the Jharkhand Legislative Assembly to conduct a composite floor test in the Assembly in 2005 to ascertain who enjoyed the majority — the Chief Minister, Shibu Soren, Assembly or the Governor or the former Chief Minister, Arjun Mundra.

It was seen as an interference in the legislative domain.

Another case cited in the overreach debate is the following: The Supreme Court directed the pro item Speaker of the Jharkhand Legislative Assembly to conduct a composite floor test in the Assembly in 2005 to ascertain who enjoyed the majority — the Chief Minister, Shibu Soren, Assembly or the former Chief Minister, Arjun Mundra.

Executive constantly accountable is another example.

said to be an example of overreach. Continuing mandates under which the apex court keeps the other two organs - legislature and executive. judgments appomiting judges since 1993 is judicial overreach, on the other hand, is a case of judicial encroaching into the territory of the Art 21 (right to life and personal liberty).

The Supreme Court since late seventies has been expanding the scope of FRs - particularly Article 21 (right to life and personal liberty).

The PIL movement is a case of the judiciary being actively interested in taking justice to the door step of the marginalized.

Governments in support of the common man and good governance. It is the outcome of the PIL movement.

Judicial activism is understood as the judicial stance which activates the public and the litigations, the person moving the petition need not be related to the case. It can be a member of civil society - an NGO, media, individual with social conscience etc. Thus, the courts had come to the rescue of the little rate and the resourceless by rendering the rules flexible. It finds its support in Art.21 and Art39.

The key to the historic game changing innovation was to not to insist on locus standi in matters of public interest - social justice issues like child labour, pollution etc. Unlike in private

those unrelated to the case - to challenge government action or inaction in the higher judiciary.

Public interest litigation(PIL) was innovated by the apex court in late seventies to enable any one means. It is often referred to as judicial activism.

India, there is a trend of judiciary enabling the masses to access the courts by unconventional

While above said review power is the conventional form, in the last more than 30 years, in thus, the review jurisdiction comes from FRs and federalism. In the sphere of administrative actions, ordering it to act or not to act is within the power. Invalidations of illegal acts is also a part of it.

federal dispute between states and centre or between states, Supreme Court has exclusive power to settle it. Art.32 and 226 give power to the Supreme Court and High Courts, respectively, to restore Fundamental Rights(Supreme Court) and all rights(High Courts) in case they are violated. Art.142 etc.

In the CVC case(2011), the appointment of the CVC by the collegium headed by the PM was set aside in a PIL by a three judge bench headed by the CJL as it did not comply with the due process.

In the black money order given in 2011, the two judge bench set up a two retired judge Special Investigation Team to oversee the investigation into black money- which was criticized as the function of the Executive.

While activism is welcome as it helps the weak, keeps the Executive on its toes and makes it efficient and, by and large, sustains the faith of the people in the government, it is criticized for upsetting the delicate balance among the three organs of the government.

- 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 immoral 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.

151 (a)

Public Interest Litigation

PIL must be differentiated from private litigation. In private litigation, courts are approached for the redressal of wrongs 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.

expressions PIL for the first time. Justice Bhagwati added momentum to PIL in the late 1970s. Justice Krishna Iyer, in *Mumbaikar Sahba v Abdulhai Faizullahai* (1976) used the severities.

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, bonded 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 litigates and cannot 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 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 Asiaid Labour case 1982, the apex court accepted a letter written by an NGO as writ petition and ruled in favor of workers. Newspapers reports can also be the basis for initiation of action. Attidavits have not been asked for.

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 labours; 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.

(51) (b)

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 executive, and the judiciary should settle disputes in accordance with the pre-existing law.

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. 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.

Judicial legislative and executive, (Montesquieu in his book - Spirit of Laws).

Supreme Court in the PILs on FDI in MBR and nuclear power plant in Koodankulam in TN gave verdicts earlier in 2013.

A plea has been filed in the Supreme Court seeking cancellation of generic drugmaker Ranbaxy's manufacturing license on the grounds that it manipulated data and sold adulterated products in the US. On spot-fixing in PIL, PIL was filed in Supreme Court in June 2013.

In April 2013, the High Court of Jharkhand at Ranchi ordered the State Respondents to submit a report and account for the high number of maternal deaths in the Public Interest Litigation (PIL). Sharukhand reports a state-wide maternal mortality rate (MMR) of 278 maternal deaths per 100,000 live births, while Godda District has a MMR of 823.5.

A two-judge Bench of the apex court (2008) observed that frivolous PIL cases should be petitioned (and partly sung before the Chief Justice); scrap the Indo-US nuclear etc. Some frivolous PILs are: India should be renamed Hindistan; the Arabian Sea should be called Simdu Sagar; the national anthem Jana Gana Mana should be replaced by the one offered by the Imposed a penalty of Rs. 1 lakh. There is a wing in the apex court that screens out frivolous PILs.

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.

CJI Kapadia in 2010 observed: "PIL petitioners have been moving the courts straightforwardly without bringing the problem to the notice of the authorities. And the courts have been entrenching these PILs, virtually taking over the function of the authorities. We will not allow such bypassing of the authorities to take place any more."

- It has become a tool for obstruction, delay and sometimes, harassment.
- Has led to loss of precious court time
- Various government decisions without justification
- Individuals and organizations are trivializing and politicizing the PIL by questioning its being used for publicity, private interest is being projected as public interest misuse of PIL

While the PIL instrument has great potential to help the ordinary people, there is concern about

(c) 151

In 2009, the two-member bench of Justices Makrandey 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 need to resolve it.

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 basic Constitutional issue of the judiciary's competence to make executive orders or frame laws.

- 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 concerned authority in this connection;

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:

Article 142 confers the court with the power to do complete justice and under this power, the court makes law.

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).

Rajasthan ruled that in the absence of legislature 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."

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 gave the doctrine of separation of powers when it said to have "strictly following the procedure prescribed therein."

"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 judges of these organs to function and exercise their discretion by strictly following the procedure prescribed therein."

According to the Supreme Court in Asif Hameed v. State of Jammu & Kashmir, India has followed a liberal approach, resorting to the doctrine of checks and balances. Constitution of the United States of Australia.

151 (d)

legislature. 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.

With regards to freedom of speech and freedom to vote. Article 105 (2) and 194 (2) privileges protect the legislature from interference of the Courts other hand preclude the courts from interfering in the internal proceedings of the legislature. His duties except when impeachment proceedings are being taken up, Articles 122 and 212 on the Articles 121 and 211 bar the legislature from discussing the conduct of any judge in discharge of his functions, the three organs are independent and the Constitution bars any interference.

There is a clear and delicate balance of power between the three organs. In their respective federalism. Separation of powers among the three organs of the government is a basic feature. Indian Constitution provides for a parliamentary democracy and the essential features of jurisdiction, the judiciary and the executive.

Parliament and the Judiciary

a. Implementation of laws - in the normal sphere of judicial review

The conflict arises on the basis of

- a. Appointments - Art. 124, CVC etc
- b. Policy - FDI-MB

Judiciary and the Executive

Judiciary is very much conscious of its duty under the Constitution to enable good governance and establishment of welfare society (DPSs).

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) its empowerment of the civil society (PICL) 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.

completing these projects effectively.

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 fulfilling 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."

Honourable judges observed: "Today there are high prices and large-scale unemployment. These are pressuring 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."

Committee recommendations on reforming students' union polls in colleges and universities. Questioned a September 2006 apex court order for implementation of the J M Lyngdoh

Date 1999 - The accused accepted the guilty of
the court
151 (e)

SC should be aware of
ACB's physical source
available.

Jagadambika Pal and Kalyan Singh - the apex court directed the Speaker to conduct the
test in the State Assembly. A similar situation in 2005 in the case of the
Composite Floor Test in the State Assembly. The 2005 case of expulsion of MPs from Parliament
is another such instance

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
Composite Floor Test in the State Assembly. The 2005 case of expulsion of MPs from Parliament
is another such instance

Comments on judicial over-reach :

- In the Conference of Presidents of Legislative Bodies convened by the Speaker of the Lok Sabha, Somnath Chatterjee in 2005, the Presidents 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 of the 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.

All India Judicial Institute - Ad. 312

by Jyoti Pathak
Editor
Q1L

E-government
AIS - the standardization of services
Society of Information & Communication
soft work culture for learning is all about
it is also a matter of culture - simpler
and modern and for learning is all about
soft work culture for learning is all about
soil pollution of society of information &
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information technology

SC should be aware of
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the court
151 (e)

former USSR and Yugoslavia that broke up in the 1990's. 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

Confederations

Federal system is adopted so that states and their diversity can flourish with autonomy and their security is assured by the central government.

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. 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. Union Government at the centre (federal government) and states (provinces). A written constitution is a system of constitutional government brought about by the voluntary agreement among states that join together into a new federal union in which power is divided between the

Federations

They do not have any constitutionally conferred powers. The powers enjoyed by them are making power. Provincial governments are the administrative arms of the central government. In a unitary government, the central government possesses predominant authority and decisions withheld - partly or wholly. In fact, the provinces can be abolished altogether. Examples, devolved to them by the unitary government at its will and these powers are subject to Britain, France and China.

Unitary system

On the basis of distribution of power between centre and states, governments can be classified into three types

- Unitary
- Federation and
- Confederation

Federal System

Union-State Relations and

- 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.
 - 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, federation is a framework that is adopted for the sake of unity of the country and national integration. It is a response to a specific historical 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 US, 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 in India
 - India is essentially a federation though in our case the provinces did not join together voluntarily. While the core of federalism is seen in the Indian polity, there are some features that are unfeudal, 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 indescribable

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154

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.

Union List

I); State List(List II); and Concurrent List(List III).

Schedule. Three fold distribution of the subjects of legislative power is adopted- Union List Chapter I in Part XI. It comprises 11 articles- 245 to 255. It should be read with Seventh Schedule. The framework for division of legislative powers in the Indian Constitution is contained in the framework for division of legislative powers in the Indian Constitution.

Legislative Sphere

Union-State Relations in India: Constitutional Framework

The Constitution frames 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.

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.

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 usage of India as a Union of States, though its Constitution is federal, does no violence to the principles.'

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-federal. 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.

- Residuary powers are with the Union parliament
- There is no dual citizenship of province(state) and the country unlike in the USA
- Unifield 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 democratic elected state governments.

- 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

 - 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 assessment of the President by the Governor and such assent is already received. But at the same time, the Parliament can even if there is a clash: if the State law is reserved for the assessment of the President by the Governor and such assent is already received.

Concurrent list consists of 52 items. Nutriment 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 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.

Concurrent list

The state lists costs of 61 items and individual states have exclusive authority to legislate on items included in this list: Public order, police, administration of justice, persons, 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 or buildings, estate duty, taxes on electricity, taxes on vehicles, taxes on luxuries.

State Hist

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.

Government accepted Sarkaria Commission's recommendation that laws in respect of subjects in the Concurrent List should be made, as a matter of convenience, 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.

Nominally, a broad uniformity of approach in legislation exclusively either to the States or the Union. Nonetheless, a broad uniformity of approach in legislation of a common national 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."

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 legislation either to the States or 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 legislation either to the States or the

NRWC report(2002) expresses the need and significance of the Concurrent List in the teaching profession at all levels) etc.

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

- * To secure uniformity in the main principles of law
 - * To encourage local efforts
 - * For flexibility in public policy
- There are three reasons for the Concurrent List

Therefore, there is a need for the Concurrent List to enable the best policy response under all circumstances.

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 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 reverse 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.

Article 245 says that Parliament can legislate for the whole or part of the State.

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.

Article 245 says that Parliament can legislate for the whole nation while the State Legislatures can

Ratiocinable for the Concurrent List

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

Exceptions

Parliament can make laws on State List items under certain special circumstances.

The State government then went to the apex court where the case is pending.

- c. The state government did not do it and so the Act is invalid.
- notwithstanding.

law for the Presidential assent and if the assent is given, it would be valid, repugnance
b. In such a case of friction with central law, the Governor should have reserved the state
return of the land.

central law. In the central law - Land Acquisition Act, 1894 - there is no provision for
a. Land acquisition being in the concurrent list, the state law has to be in line with the

following:

Within a month of MS. Banerjee's government coming to power, the Singur Land Rehabilitation
and Development Act, 2011 was passed to enable the return of a portion of the land acquired for
the setting up of the Tata Motors small car factory to "unwilling farmers." A week later, Tata
Motors moved the Calcutta High Court against the Act challenging its constitutional validity in
2012, a Division Bench held the Act to be "unconstitutional and void." The reasons are the

Singur 2013

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.

President by the Government under Art. 200 and the President may assent to it.
would not be possible under the current Bill. Such a state Bill, however, can be reserved for the
guaranteed and are willing to take a lower level of another item in return, such a compromise
rehabilitation and resettlement. If people in some states prefer a higher level of an item being
For example, the Bill lists 25 facilities that need to be provided in any area being developed for
the flexibility for states to tailor the law for their local (and possibly very different) conditions.
same level of protection and rights to land owners and displaced persons. However, it reduces
central law. A higher degree of detail ensures uniformity across the country and provides the
central enactment. This leaves open the question of the level of detail to be included in the
subject. States may also make laws on this topic as long as those laws do not contradict the
introduced in Parliament. Land is a State List item while land acquisition is a concurrent list
There is another challenge. Land Acquisition and Rehabilitation Bill has been

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.

Recent developments 2013

All residuary powers are with the Union Parliament. Service taxes are still imposed and was passed in 2002 because it has not been notified. States demand that the power be collected by the Union government by virtue of this power even though the 88th Amendment Act

Residuary Power and Taxation

- such a law. The latter falls under Art.253.
- the UN Convention Against Corruption meant that Parliament had jurisdiction to enact criminal justice which is a concurrent list item, and second that India's obligations under Article 253. Two justifications were made for the inclusion of these provisions: first that the law was on Local Laws Bill 2011 has provisions relating to state governments. Two challenging the Central policies made under WTO agreements (Art.253). Lokpal and on a State List item. For example, WTO. There is no Constitutional validity to the States in the implementation of international treaties and agreements. Parliament can legislate Regulation) Act, 2010. Other states may later resolve to come under such a law. (Art.252)
- Organic Act 1994 and its amendment in 2011; Clinical Establishment (Registration and Pollution) Act; Urban Land (Ceiling and Regulation) Act; Transplantation of Human Effect. For example, Wild Life (Protection) Act 1972; Water (Prevention and Control of When two or more States request the parliament to do so by passing a resolution to that as shown above is because routine through the Rajya Sabha makes it federal whole or part of the country. The need for empowering the Parliament in such a manner maximum of 6 months after the resolution has expired. Such a law can be made for the extended by year at a time. The law made by the parliament can be in force for a legislature on a subject in the State List. The resolution has a life of one year but can be the members present and voting. In other words, Rajya Sabha authorizes Parliament to State List in national interest by passing the relevant resolution by two thirds majority of Art.249 says that Rajya Sabha can empower the Parliament to legislate on an item in the the Assembly after a new democratic government resumes in the state.
- Parliament makes laws for the State concerned President's rule when the Assembly does not operate as mentioned above and so the Art.249 says that Rajya Sabha can empower the Parliament to legislate on an item in the State List in national emergency by passing the relevant resolution by two thirds majority of the Assembly 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 List emphasizes that when national emergency has been ended. It needs to be can last a maximum of 6 months after the emergency has been ended. It needs to be when national emergency is in force. The law made by the Parliament during emergency items. Under the following five circumstances, Parliament can legislate on an item in the State
- Legislative Assembly is either suspended (suspended animation) or dissolved and the item in the State List unlike when the President's rule is proclaimed when the State List continues to exist but the Constitution gives power to Parliament as well to legislate on an item in the State List in national emergency (Art.352), State Legislative Assembly can last a maximum of 6 months after the emergency has been ended. It needs to be emphasized that when there is national emergency has been ended. It needs to be can last a maximum of 6 months after the emergency has been ended. It needs to be when national emergency is in force. The law made by the Parliament during emergency items. Under the following five circumstances, Parliament can legislate on an item in the State
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The IPL spot fixing scam also brought to light the question of regulating sports and dishonest betting and gambling as defined in the state list. The AG is of the opinion that-fixing, spot-fixing do not come within the purview of the term that changes the outcome of the game, centre can legislate in its residuary capacity also a state subject. But if the IPL scam is neither betting nor gambling under entry 35 of list two is under entry 33 of list two is a state subject. Betting and gambling under entry 35 of list two is practices in sports. One view is that there can be no national legislation on this because sports

Sports, betting and Centre's residuary powers

- is, in case of repugnancy between the central and state laws, federal law prevails.
- The Concurrent List items are subject to the doctrine of federal supremacy. That contained in Art.268-279 can be suspended in favour of the Centre.
- During National Emergency, the union state financial relations as they are to send for his consideration Money Bills and related Bills
- During Emergency (Art.352), Parliament can legislate on any State subject
- During financial emergency (Art.360), President may direct the State government restricting freedom of trade and commerce
- President's prior permission is required for the introduction of state Bill absolute veto (Art 200 and 201)
- Governor can reserve a Bill for President's consent over which the President has

Centre's control over State legislation is covered by the following

Centre's control over state laws

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.

interpretation that these powers cannot be so expansively interpreted as to dilute the power of the centre and not transferred to the States, even though it endorsed the Supreme Court's which submitted its report in 1987, wanted the residuary powers in taxation to be retained with transferred to the Concurrent List. However, Sarkaria Commission on Centre-State relations,

No Bill or amendment which imposes or varies any tax or duty in which States are interested, or
Art.274: Prior permission of President for the introduction of certain Bills. Art.274

- shareable
- 271. Surcharge on certain duties and taxes for purposes of the Union. Surcharges are not income tax, corporation tax etc (see ahead)
 - 270. Taxes levied and collected by the Union and distributed between the Union and the States.

above

269. Taxes levied and collected by the Union but assigned to the States - CST as mentioned
Ex: medicinal preparation with alcohol in the

268. Taxes and duties levied by the Union but collected and appropriated by the States.

Following are the important Articles in the fiscal federal relations:

- Taxes levied and collected by the Union but shared with the states on the
which is due.
- gets the CST. However, CST is being phased out as it has to be made a part of the GST
state. The latter state gains in the form of sales tax while the former (producing state)
tax on goods produced in one state where they are bought so as to sell them in another
- Taxes levied and collected by the Union but assigned to the States(Art.269) - central sales
except cess and surcharges(Art.271)
- recommodations of the Finance Commission(Art.270) - all central taxes and duties

All the taxes and duties can be grouped under the following broad categories:

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)

Part relates to some sources of finance being entirely given to the states - taxes and duties
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
Art.268 to 293 in Part XII deal with the financial relations. The Constitution contains fixed as
specified as such in the Constitution like sales tax.

Fiscal Federal Relations

161

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 monies 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.

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 C.I.L.)

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 income accruing from or arising out of 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 gross collections of taxes, when the amount spent on collection is deducted, net amount is arrived at: gross minus collection expenditure net).

279. Calculation of "net proceeds", 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).

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

280. Finance Commission: Constitutional provisions Article 280

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The Constitution (Eighteenth 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.

Tenth Finance Commission(TFC) and Alternative Scheme of Devolution(ASD)

Art. 270
 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 temporary and additional taxes on taxes. The difference between cess and surcharge is that the former is made explicit while the latter is general purpose 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 of 80th Constitutional 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.

Taxes levied and collected by the Union and distributed between the Union and the States.

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 pursuance of Article 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.

- 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.

Finance Commission's transfers has been between 15-18 per cent. and which are relatively more sparsely populated. The share of these Art 275 grants in the total essentially micro States which have geographically difficult terrain such as mountainous regions Finance Commission meets the requirements of what we call 'special category' States, which are ameliorate particular problems faced by individual States. It is through these grants that the DR.Kekkar says: Art. 275 which enjoys the Commission to give State specific grants to.

Purposes. Generally, gap-filling grants are interpreted to mean only revenue grants and not for plan states. Grants in aid of the revenues of the States. Not all states get them. Nor is the amount same to all are meant to even out the horizontal imbalances among the states to an extent. They are the revenue deficits, the Finance Commission recommends gap-filling grants to such states. They After the devolution of the taxes and duties from the divisible pool, if some States still face

Short Notes on Art.275: Grants from the Union to certain States.

necessity to move towards ASD. 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

players, centre yielded. With Coalition government becoming the norm and the regional parties being influential them. With Coalition government becoming the norm and the regional parties being influential particularly since the eighties. They demanded that more fiscal resources be made available to tax and Union excise duty. Regional parties became a force to reckon with since 1967 and Union Customs duty, and similar effort was not visible in sharable taxes like personal income concentrated in improving the elasticity of non-sharable taxes such as corporate income tax and the Finance Commission. Over the years, it was observed that the Union government to Union and the state governments, but did not mention the formula for such division, leaving it to The Constitution of India specified the taxes whose revenues were to be shared between the

Background to ASD

- 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

The advantages of the system are shareable with States unlike earlier when the Union had some taxes and duties exclusively to it. have been made in Article 270. ASD essentially means making all Union taxes and duties Constitution was amended to give it legal effect. Under the provisions of the Act, amendments

- 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
- Cooperative financial relations between centre and states
- FC has a crucial role in the following areas

Finance Commission and Fiscal federalism

- Miscellaneous transfers like the transfers from the National Investment Fund (NIF)
- Central ministers provide finances for some central schemes in the areas of irrigation, power, health etc
- International borders.
- Semi-federal population. Almost all of them are border States with considerable difficult terrain and very low level of infrastructural development. Most of them have basis of special problems like: all of them have the common characteristics of hilly and of population; (ii) 25% on per capita income (iii) 7.5% for performance in Tax Effort, remaining States on the basis of the following criteria: (i) 60 per cent on the basis 2. The remaining balance of the Central assistance should be distributed among the Central assistance.
- Uttrakhand are given preference. Their needs should first be met out of the total pool of Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and
1. Eleven Special Category States - Arunachal Pradesh, Assam, Himachal Pradesh, Chairman of the PC then.
- The Gadgil-Mukherjee formula since then as Shri Pranab Mukherjee was 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 Chairperson of the Planning Commission which prepared the "Gadgil formula", so called after the Deputy assistance to the states is governed by the "Gadgil formula", so called after the Deputy and loan is 10%. These states are the hilly, 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 fiscalily weak states (called Special Category States) the grant component is 90 percent central plan assistance. Plan assistance is by way of grants and loans. In the case of state plans. State plans are financed partially by states' own resources and the balance by A second channel of resource flow from the Centre to the states is central assistance for tax revenues of the states.
- The Central tax devolution through the FC which constitutes about one-third of the total state plans. State plans are financed partially by states' own resources and the balance by A second channel of resource flow from the Centre to the states is central assistance for tax revenues of the states.
- They are of the following types:
- Central fiscal transfers to the states

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 Article 275.

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.

6. Loans for any public purpose (Article 293).

5. Grants for any public purpose (Article 282).

4. Statutory grants-in-aid of the revenues of States (Article 275)

Union excise duties under Article 272).

and permissive sharing of

270. (Effective from April 1, 1996, following the Eighteenth Amendment to the Constitution replacing the earlier provisions relating to mandatory sharing of income tax under Article 270

3. Sharing of the proceeds of all Union taxes between the Centre and the States under Article 269).

2. Taxes and duties levied and collected by the Centre but assigned in whole to the States

1. Levy of duties by the Centre but collected and retained by the States (Article 268)

the transfer of resources from the Centre to the States.

States are very sharp. In an explicit recognition of vertical endowment of resources, and capacity to raise

which include historical backgrounds, different horizontal imbalances across States in account of factors,

resulting in vertical imbalances. Horizontal imbalances across States are of revenue

responsibilities involving expenditure disproportionate to their assigned sources of revenue

States being closer to people and more sensitive to the local needs, have been assigned functional

the country one common economic space unhampered by internal barriers to the extent possible.

Vertical and horizontal imbalances are common features of most federations and India is no

Federalism and Fiscal and Economic Imbalance

15) and the basis of the recommendations.

The above role can be comprehended by looking into the recommendations of the 13th FC(2010-

governance.

- Various reforms, on being referred by the President of India, for infrastructure and good
- Promote state fiscal autonomy and efficiency
- Adequate devolution to the states
- Bridge the vertical imbalances between the centre and the states by recommending

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.

The Finance Commission recommended 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, macroeconomic 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 an increase of 1.5 per cent. It has also said that the total transfers to the States, inclusive of Union Taxes be fixed at 32 per cent, against the 12th FC prescribed transfer of 30.5 per cent, 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 prescribed transfer of 30.5 per cent, grants, be subjected to an indicative ceiling of 39.5 per cent of the gross tax revenues of the grants, be released to 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 500 crore for forest grant, 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.

Academy and training of judicial officers and public prosecutors. With legal cost of Rs 5000 crore for alternate Dispute Resolution Centre, Heritage Court Buildings, State Adalats and Legal Aid, Alternative Dispute Resolution Centre, Heritage Court Buildings, State Academics and Legal Aid, alternate Dispute Resolution Centre, Heritage Court Buildings, State Adalats and Lok Asabha and Lok Sabha Library of Justice, this move would 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 UID 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.

about good governance and national welfare.

At a time when coalition government has become a rule rather than an exception in national politics, the whole recommendations of the 3rd 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.

An 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 otherwise its expenditures.

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On fiscal consolidation, the Commission has drawn a roadmap for fiscal deficit reduction and allocates revenues arising from the fiscal commoⁿs such as profit petroleum, profit gas and revenue shares from spectrum. Since these are national resources and must perform better than 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.

An important recommendation that might satisfy the interests of States relates to its proposal 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 the Goods and Services Tax (GST), the Commission has put in place a model GST structure they have growth implications and thus fiscal consequences.

The above grants were recommended by the 13th FC as their terms of reference include the need to improve the quality of public expenditure to obtain better outputs and outcomes and the need to manage ecology, environment and climate change consistent with sustainable development. They are connected to fiscal management as they have growth implications and thus fiscal consequences.

168

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 (Protection and Control of Pollution) Act, 1981; Water (Prevention and Control) Act, 1986; Air (Prevention and Control of Pollution) Act, 1974; and Ozone Depleting Substances (Regulation and Control) Rules, 2000. These powers were exercised by the Parliament under Art. 253.

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. Given the responsibilities to regulate the development of mines and mineral resources, land, forests and minerals - were assigned to the States, while the central government was given the responsibility to regulate the development of mines and mineral resources - federal system. In the original Seventh Schedule of the Constitution, all the natural resources -

The Constitution of India has generally remained silent on the environmental issues in Indian

Green Federalism

FC and Planning Commission

Finally, the criterion of fiscal discipline encourages better performance and has no bias.

Such FC recommendations have not helped and inequalities and imbalances persist and have become worse. The moral hazard is that it incentivizes backwardness. It punishes performance and laggards are helped at their expense

- Such FC recommendations have not helped and inequalities and imbalances persist and 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.

It must also be recognized that the leading states develop when the savings of the laggards are imbalances persist, it is because of other structural factors like not attracting investment etc.

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) are used to assist the economically backward states. Developed states have made the following three arguments against it

FC and Performing states

- Fiscal Discipline - 17.5%
- Fiscal Capacity Distance - 47.5%
- Area - 10.09%
- Population in 1971 - 25.0%

Criteria and Weights adopted by the TFC

Terms of reference of the 14th Finance Commission-The FFC is asked to suggest changes to the fiscal responsibility and Budget Management (FRBM) Act, assess the impact of the proposed goods and services tax (GST) on government finances and also the mechanism to compensate states for revenue losses, if any. The FFC has also been asked to look at the need to insulate the pricing of public utility services - drinking water, irrigation, power and public transport from policy fluctuations through statutory provisions. FFC has also been asked to look at the level of subsidies needed for inclusive growth, and equitable sharing of subsidies between the Centre and the states.

Ajay Narayan Jha had been appointed Secretary to the Commission. The commission has to give its report by October 2014 and the recommendations will come into effect from April, 2015 for a five-year period.

It has Prof Abhijit Sen, the Member of Planning Commission as its part-time member. Also,

- Sushma Nath
- M. Govind Rao
- Sudipto Mukund

Finance Commission. The Commission would have three full-time members -

Reddy is going to primarily review finances of the governments keeping in mind the fiscal consolidation road map that was laid out by his predecessor Vijay Kelkar, the head of 13th Reserve Bank of India (RBI) Governor Yaga Venugopal Reddy. The commission under YV Union Government in January 2013 constituted the 14th Finance Commission under former

14th FFC

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 government - national, state and local - and involve 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.

Environment, Ecology and Climate Change.

1 - Union List of the Seventh Schedule empowers the Union on matters concerning environment issues. The Commission on Centre-State Relations headed by Puncchi has recommended that the Constitution needs to be amended again to provide a specific Entry in List of the Central government should have more definite and coordinating role on environment issues. The Commission on Centre-State Relations headed by Puncchi has recommended that the Central government should have more definite and coordinating role on environment issues. The Commission on Centre-State Relations headed by Puncchi has

- d. Centrally sponsored schemes
- c. Royalties for minerals
- b. FDI-MBR
- a. Gst

Centre and states are having friction in the financial relations based on the following issues:

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.

Further such transfers also take place through the Planning Commission. There are three main channels of Central transfers to States; the Finance Commission transfers and assistance for central sector and centrally sponsored schemes. Today such transfers constitute almost 36 per cent of the revenues collected by the central government.

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.

The major sources of revenue allocated to the States, on the other hand, are: land revenue; taxes on agriculture; taxes on land and buildings; estate duty in respect of agricultural land; taxes on mineral rights; excise duties on alcoholic liquors for human consumption; succession duty in respect of agricultural land; estate duty in respect of agri-land; taxes on land and buildings; taxes on mineral rights; excise duties on alcoholics and liquors for human consumption; sales tax; professional taxes; taxes on the consumption of electricity; taxes on advertisements; etc.

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.

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.

Fiscal Federalism

171

Cooperative Federations
and Central Government

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 instrument 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 ministers to strengthen cooperation. Besides Chief Ministers, Finance and other

National Council, food security, inflation management, education, land acquisition and so on.

The federal challenges in the country today requiring cooperation include national security (NCC etc), food security, inflation management, education, land acquisition and so on.

A strong Centre in India is therefore necessary for strong States and vice versa. Since the Centre, there are signs of stresses and tensions in intergovernmental relations between the Centre recently when national parties were eroded and coalition governments became the norm in the sevenies when different political parties are in power in the centre and the states and more spatially and a strong central government enables that the unity amidst diversity, is maintained democacy provides freedom to everybody, federation ensures that government is distributed country as also the largest federal and the largest pluralist country of the world. While religious and other diversities which cut through the States. India is the largest democratic national, state and local levels and the pluralities of its culture in terms of ethnic, linguistic, national federations should be seen in the context of its democratic system of governance at the and the country mobilizes all its resources to maintain its harmony and integrity and marches ahead to progress.

considering the overriding powers given to the Central government, Indian federation often been described as quasi-federation, semi-federation, pragmatic federation or a federation with strong unitary features.

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 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.

Constitution, powers and functions of the Union and the State Governments. Third, Constitution has spelled out in detail the legislative, administrative and financial relations between the Union and the States. And judicial wings of government. Secondly, Constitution has clearly demarcated the provided separate governments at the Union and the States with separate legislative, executive and judicial wings of government. First of all, Constitution has structure of government which is essentially federal in nature. First of all, Constitution has although the Constitution of India has nowhere used the term 'federal', it has provided for a cooperative federalism

- NCTC**
- Federal Flashpoints**
- 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.
- 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.
- National Counter Terrorism Centre(NCTC) India is federal anti-terror organisation which gained urgency after the 26/11 attacks as it was strongly felt that India lacked a federal agency blame had been put on the states which failed to act on intelligence inputs provided prior to the 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 NCTC's function will include drawing up of plans and coordinating all actions and the interest of preventing terror attacks.
- The agency derives its powers from the Unlawful Activities Prevention Act, 1967. It includes 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 unfeudal is answered.
- States say that it is antagonistic toward the federal structure of India and encroach into state list -police and law and order.
- 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.
- Dwelling upon the Constitutional provisions, experts point out that in List II, law and order is the responsibility of the State against external aggression and internal threat.

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 Chattisgarh and Odisha. The said deployments have been questioned. Government has proposed to amend the relevant provisions of the Act to permit deployment of this force in other parts of the territory (hinterland) as well. The major objectives of this amendment has been to confering such powers to the BSF, which 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.

BSF Act Amendments

"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 mitigate such powers of the state but also a serious blow to the federal structure of the Country - some critics hold.

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.

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 promises 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.

RPF Act Amendments

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.

There were other changes also proposed in the new draft the CMs conference was shown in 2013 June: keeping the NCTC out of the purview of the Intelligence Bureau, and taking States into confidence before carrying out any operation in their territories.

Another objective 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. Chief Ministers' Conference on internal security held in June 2013 remedied it and said that the NCTC will directly report to the Home Minister.

Communalism and Federalism: Puncchi Commission

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 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 the control of the Union is declared by Parliament by law to be expedient in the public interest.'

Maintainance 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 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 advices and 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.

Article 256 so that the Union Government may give appropriate and time-bound direction to the Centre's responsibility to act under Article 355 was well recognized. Enlarging the provisions of States, 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.

Puncchi Commission suggests that National Integration Council (NIC) could be utilized as a forum for preparing a comprehensive strategy involving all political parties for fighting

Act, 1968, when deployed in the local limits of such area adjoining the border.

Chidambaram had explained that such powers are already available in Section 139 of the BSF

Naxalism and centre-state relations

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.

The most important internal Security problem which needs extensive Centre-State co-operation and coordination to ensure effective handling is Naxalism.

In 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 coordination will be a pre-requisite as response mechanism. In respect of improving the Centre-State and inter-State 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 include regular security reviews, more frequent and intensive joint anti-Naxal operations, intelligence sharing on Naxal activities and activities of other 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. Para Military Forces has also been increased substantially in the affected areas. Creation of joint sharing, police modernization and fortification of Police Stations etc. The deployment of Central other criminals, hot pursuit of extremists even across the border of the State, general information intensive joint anti-Naxal operations, intelligence sharing on Naxal activities and activities of neighbouring States. The initiatives include regular security reviews, more frequent and intensive joint anti-Naxal operations, intelligence sharing on Naxal activities and activities of other criminals, hot pursuit of extremists even across the border of the State, general information

Unimanned aerial vehicles(UAVs) are being used. Centre pays salaries of the SPs.

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, Orissa 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 probe naxal acts of violence, if necessary.

- national or military importance.
- (2) 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 necessity for that purpose.
- (1) The executive power of every State shall be so exercised as not to impede or preclude 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.
- Articles 256 - 263 on Administrative Relations Articles 256 - 261 - General 256. The executive 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.
- 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 as may appear to the Government of India to be necessary for that purpose.
- 257 (1) The executive power of every State shall be so exercised as not to impede or preclude 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.
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Executive/Administrative relations

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.

Problems of internal security have conspicuous external dimensions. Several States affected by internal disturbances are at the nation's frontiers, and external support and sanctuaries in neighbouring countries have exacerbated the internal challenge. Also, increasingily, there is a pernicious nexus between domestic miscreants and international criminal networks.

Between the Centre and the States has been provided under the Constitution as it is a vital subject with multiple challenges.

1, 2 and 11A.

Criminal law, Criminal procedure and Administration of Justice are covered in List III as Entries

Public order and Police feature as Entries 1 and 2 in the List II.

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), 353, 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.

Under the Constitutional scheme, National Security is not a subject specifically listed in any of the three Lists. The State or the Concurrent List. The subject of Security under the Article 352 and under the Emergency Provisions in Part XVII 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.

Federal polity and internal security

(10/10/1971)
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NCIC
JULY 1971

law.

laws such as the untouchability abolition law, factory legislation, and child marriage abolition secure the proper execution of the laws which Parliament was obliged to enact. For example: Ambedkar also said that if the Centre did not have such power, it would become impossible to

Central Government, Parliament shall have the power to do so."

The second proposition it lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent field, the execution ought to be retained by the Central Government, Parliament shall have the power to do so."

"The first proposition is that generally the authority to execute laws which related to what is called the Concurrent field, whether the law is passed by the Central Legislature or is passed by the State Legislature shall ordinarily apply to the State.

Explaining the object of Article 256, Ambedkar said that it envisaged two propositions:

The position is more or less the same.

In a federal system, executive powers of the respective governments and their distribution and implementation is complex and requires elaborate detail.

Article 263 - on Co-ordination between States- Inter State Council

Article 262 - on Disputes relating to waters(given ahead)

Article 258(1). Notwithstanding anything in this Constitution, the President may, with the consent of the Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

The costs incurred for the above functions will be borne by the GOI.

(3) 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 provisions mentioned above are meant to prevent conflicts - largely taken from Government of India Act of 1935.

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178

- Union can direct the State Governments to secure the provision of adequate facilities for welfare of the Scheduled Tribes in the States
- Union can direct the State Governments to ensure execution of schemes essential for the

Apart from the above, Centre can give directions to states on the following matters too:

- The President is empowered not only to establish such a Council but also to determine its organisation and procedure and to define the nature of its duties. In accordance with this better co-ordination of policy and action with respect to these subjects.
- (3) To make recommendations upon these subjects and, in particular, recommendations for the

~~(2) To investigate and discuss subjects in which the States and the Union have a common interest,~~

(1) To enquire into and advise upon disputes which may have arisen between States;

To facilitate the smooth working of the administrative machinery of the country as a whole as well as to ensure the better co-ordination of policy and action between the Union and the States or between the States themselves, the Constitution empowers the President to appoint an Inter-State Council whenever the necessity is felt. The Council is charged with the following three specific duties:

Union's executive functions. The Union Government will pay to the State the cost involved in the State, to entrust to that Government or its officers functions which fall within the scope of the Constitution also empowers the Union Executive, with the consent of the Government of a

(2) The protection of railways within the States.

If any Union agency finds it difficult to function within a State, the Union Executive is empowered to issue appropriate directions to the State Government to remove all obstacles. The Union's power of giving directions in this regard includes certain specific matters such as:

(1) The construction and maintenance of means of communication which are of national or military importance; and

In addition to the general power of the Union to give directions to the States, the Constitution wants every State (under Article 257) not to impede or prejudice the executive power of the Union in the State.

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 36".

River Water Disputes India

NCRWC recommends that for harmonious federalism and for expedited decision-making on important issues involving States, prior consultation by the Union Government with the State Council may be considered before signing any treaty vitally affecting the interests of the states regarding matters in the State List. For example, LBA and Teesta river sharing with Bangladesh.

The ratification of treaty is done by the Union Cabinet. Parliament has the power to discuss and has no say in the approval.

Article 246 with Lists in the Seventh Schedule to the Constitution.

Article 246 read with Article 253, therefore, overrides the distribution of legislative powers provided for by article (article 253), made at any international conference, association or other body. This article or any decision made at any international conference, association or other body.

India for implementing any treaty, agreement or convention with any other country or countries respects to "entering into treaties and agreements with foreign countries" as per the provisions contained in treaties, agreements and conventions with foreign countries and implementing of Article 253, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries.

Entry 14 of List I - Union List of the Seventh Schedule empowers Parliament to make laws with respect to "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries". As per the provisions contained in Article 253, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries.

Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, commerce, economy, communications, environment or ecology. The

advent of globalization and the enormous advances made in communication and information technology have rendered independent States more inter-dependent. Article 246 (1) read with

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Treaty Making

If the directions of the centre are not followed by a state, Article 365 allows the central government to invoke Article 36 and take over the state administration under the President of India.

- Union can direct the State Governments to ensure the development of the Hindi language.

to linguistic minority groups

instruction in the mother-tongue at the primary stage of education to children belonging

- Cauvery Water Disputes Tribunal (1990-2007)
- Ravi and Beas Waters Tribunal (1986 and report is still to be submitted)
- Godavari Water Disputes Tribunal (1969-1980)
- Narmerda Water Disputes Tribunal (1969-1979)
- Krishna Water Disputes Tribunal (1969-1976)

So far, five inter-state water disputes tribunals have been constituted

and constitute an authority to implement the tribunal's award.

decree of the Supreme Court. The act also empowers the central government to make schemes published, the award is binding on all the parties and it is deemed equivalent to an order or the report, called award, is published by the government of India in the official gazette. Once it is clarified from the tribunal within 90 days; the tribunal may give further clarifications. Then riparian states or the government of India need any clarification, they can apply seeking such all the aspects as may be necessary, the tribunal gives its report to the government of India; if the government of India can appoint up to two assessors to assist the tribunal; after considering the supreme court or the high court and are appointed in consultation with the Chief Justice of India; adjudicate an award. Such a tribunal should have three members who should be judges of the India shall constitute a tribunal to hear the disputes concerning claims of water sharing and when convinced that such dispute cannot be resolved through negotiations, the government of India to constitute a tribunal under the Act. Within one year of receiving such a request and are likely to be) affected by actions of other states, they can request the government of when one or more riparian states of an inter-state is/are of the opinion that their interests are (or inter-state water disputes. Government of India can set up a tribunal to settle such a dispute being referred to the Supreme Court.

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.

When a "Water dispute" arises between two or more state governments, the following is the procedure to resolve the same:

"the public interest". development under the control of the Union is declared by Parliament by law to be expedient in development of inter-State rivers and river valleys to the extent to which such regulation and of List I". The role of federal government is stipulated in entry 56 of List I: "...Regulation and

- 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 Pradesh 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.

Babhli Dam: A history of controversy

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 Godavari flows from Nanded into the Stirnasaagar project in Nizamabad district of Andhra Pradesh. The distance between Babhli and Stirnasaagar is just 10 km and because of the proximity, unless Babhli releases water, Stirnasaagar, which is the lifeline of north Telangana, will dry up.

The Babhli barrage, built over River Godavari, stands in Maharashtra's Nanded district. And it has become the flashpoint of the water wars between Maharashtra and Andhra Pradesh.

River Boards Act, 1956. The Act contemplated the appointment of river boards by the central valleys, under Entry 56 of List-I of the Constitution (Union List). Parliament enacted the River Boards Act, 1956. In order to promote integrated and optimum development of waters of inter-state rivers and river development of irrigation, drainage, water supply, flood control and hydro-electric power.

- the constitution of a tribunal
- the limit of one year from the date of receipt of a request by government of India to
- 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 requirement for the tribunal to appoint two assessors to assist the tribunal
- the provision for central government to appoint two assessors to assist the tribunal

The following provisions were introduced through an amendment to the 1956 Act in 2002 changes in the 1956 Act made in 2002 by Parliament

Mahadayi Water Disputes Tribunal

SRI RAM'S IAS

Mahadayi (Mandovi) river originates in Karnataka state, flows 29 km through the State and passes through Maharsashtra 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 meet drinking water scarcity in around 100 areas of northern Karnataka, including Hubli and Dharwad. Object 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.

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.

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 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.

The Mahadayi Water Disputes Tribunal would adjudicate the water dispute between the State of Goa and Karnataka.

Causes and related issues to be discussed in the class

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

Union territories not having Legislative Assembly, Governors of States under President's Rule,

States, Chief Ministers of Union territories having Legislative Assembly and Administrators of

Union territories of Cabinet rank in the Union Council of Ministers to be nominated by the Prime

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

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Art.263 reads as follows:

- (a) investigating into and advising upon disputes which may have arisen between States;
- (b) investigating and discussing upon 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;

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 -

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 reorganisation 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.

ii. The Central Zonal Council, comprising the States of Chhattisgarh, Uttaranchal, Uttar Jammu & Kashmir, Punjab, Rajasthan, NCT of Delhi and U.T. of Chandigarh;

i. The Northern Zonal Council, comprising the States of Haryana, Himachal Pradesh, Pradesh and Madhya Pradesh;

Zonal Councils

Supreme Court and the river water dispute panels set up under Art.262.

ISCI 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.

The Ninth ISCI meet was held in mid-2005 with the theme of good governance and last meeting was in 2006.

The Ninth ISCI meet was held in mid-2005 with the theme of good governance and last meeting was in 2006.

d) The Council decided that the issue regarding the use of articles 256, 257 and 365 of the Constitution should be referred to the Sub-Committee deliberating on the issues of article 356.

c) The Council decided that the issue regarding the use of articles 256, 257 and 365 of the Constitution should be referred to the Sub-Committee dealing with the time-bound clearance of Bills referred. The Bills should not be referred for Presidents' consideration in a routine manner.

b) Articles 355 and 356 of the Constitution of India was another matter.

a) The Council approved the Alternative Scheme of Devolution of Share in Central Taxes to States as recommended by the Standing Committee.

Council are as follows

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 on 171 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 Sarkaria Commission as finalised by the Sub-committee. In the same meeting, the Inter-State Council, in its second meeting, the Council broadly endorsed the recommendations of the Council. It would be first examined by a Sub-committee of the Council and thereafter considered by the Sarkaria Commission, it was decided by the Council that the recommendations involved and their wider implications, it was decided by the Council that the recommendations involved 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 of the duties to be performed by it and its organisation and procedure.

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 Zonal Councils provide an excellent forum where irritants between Centre and States and among 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/Cabinet 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 and welfare of specific zones, they are capable of focusing attention on specific issues taking into account regional factors while keeping the national perspective in view.

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 of to do necessary ground work for further meetings of the Zonal Councils. Senior Officers of the Planning Commission and other Central Ministers 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.

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 minister of the States included in each zone acts as Vice Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.

(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.

Further the Zonal Council for each zone has the following persons as Advisers to assist the Council in the performance of its duties :
 (b) where any Union Territory is included in the zone, two members from each such territory nominated by the President;

(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;

The Zonal Council for each zone consists of the following members :
 (v) Mizoram (vi) Meghalaya and (vii) Nagaland are now included in the 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 seven North Eastern States i.e. (i) Assam (ii) Arunachal Pradesh (iii) Manipur (iv) Tripura (v) Mizoram (vi) Meghalaya and (vii) Nagaland are now included in the Zonal Councils and their

Kerala, Tamil Nadu and the Union Territory of Pondicherry.

v. The Southern Zonal Council, comprising the States of Andhra Pradesh, Karnataka,

the Union Territories of Daman & Diu and Dadra & Nagar Haveli; and

vi. The Western Zonal Council, comprising the States of Goa, Gujarat, Maharashtra and Sikkim and West Bengal;

iii. The Eastern Zonal Council, comprising the States of Bihar, Jharkhand, Orissa,

member States on various issues of common importance. The Union Home Minister explained Eastern region and emphasised the need for enhanced cooperation and coordination among the Ms. Mata Banerjee, Chief Minister highlighted the strategic location of the States of the

of Jharkhand attended the meeting.

Minister chaired the meeting which was hosted by the Chief Minister of West Bengal. Governor Bihar and Jharkhand, was held at Kolkata in April. Shri Sushilkumar Shinde, Union Home The 20th meeting of Eastern Zonal Council, comprising of the States of West Bengal, Odisha,

Eastern Zonal Council meeting 2013

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.

Inter-State problems, fostering balanced regional development and building harmonious Centre-State Relations. With the objective to provide a common meeting ground in each zone for ensuring resolution of States represented in that Council, have a common interest. These Councils have been set up which some or all of the States represented in that Council, or the Union and one or more of the which some or all of the Zonal Councils is very wide, as they can discuss any matter in

(v) Deal with common problems like floods, drought, scarcity, local cess, etc.

(iv) Tackle common law and order problems and devise uniform policies regarding administration of civil and criminal law; and

(iii) Initiate measures of common interest in the field of social and economic planning, and exchange of information, statisticians and experience available with each State to the best common advantage;

Promote a cooperative approach to facilitate economic and social planning and the execution of development schemes particularly inter-State projects; Broader Councils are expected to :

- Establishing a climate of co-operation amongst the States for successful and speedy execution of development projects.
- Enabling the Centre and the States to co-operate and exchange ideas and experiences; and
- Balancing regionalism with federalism
- National integration;

The main objectives of setting up of Zonal Councils are as under :

- To discuss any matter in which some or all of the States represented in the Council have common interest and advise the Central Government as to the action to be taken on any such matter, particularly with regard to

The North Eastern Council was constituted for performing the following functions

Functions

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, Nagaland and Tripura. The NEC started functioning in the year 1972. In 2003 Sikyim 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.

Various inter-state issues including those related to co-ordination and co-operation for better working, trafficking of women and children; liquor smuggling, exchange of information on crime and criminals to curb crime, sharing of water and power, apart from several socio-economic issues were on the agenda.

Northem Zonal Council meeting was held in 2012 July. Mr. P. Chidambaram, Union Home Minister, Mr. Shivraj Patil, Administrator, UT Chandigarh and Mrs. Shelia Dikshit, Delhi Chief Minister, Mr. Prem Kumar Dhumal, Himachal Pradesh Chief Minister and Mr. Ashok Gehlot, Rajasthan Chief Minister were also present.

Next meeting of the Council is to be held later this year in Odisha. The meeting discussed various important issues, such as, internal security, problems of naxalism, communal harmony, safety on the national highways, use and distribution of coal and other natural resources, allotment of land for CRPF to establish battalion camping sites, matters related to police administration, border area development programme, strengthening of vigilance establishment in the states to deal with corruption, issues relating to scheduled castes and scheduled tribes, etc.

The Governor of Jharkhand and Ministers from the States of Odisha and Bihar raised various issues, such as, sharing of information and intelligence, use of national resources like, water, minerals etc, common border check posts, and suggested various mechanisms for strengthening cooperation among the States of the region.

The recent initiatives taken for strengthening the mechanism for Centre-State and Inter State cooperation. He emphasised the need for more frequent meetings of the Council to resolve various issues among the States of the region.

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.

Interstate trade and commerce

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 responsiveness of the mass media, among others.

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 held its first meeting in 1962. The council has held 15 meetings so far, with the last meeting in 2011 focused on communal harmony.

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 and to formulate definite conclusions in order to lead to the country.

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 government constituted the National Integration Council (NIC).

National Integration Council

The Council acts as a funding agency as well as a planning agency.

- To review, from time to time, the implementation of any project 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 include in the Regional Plan
- To review, from time to time, the implementation of the projects and schemes included in the Regional Areas.
- To formulate and forward proposals for securing the balanced development of the common interest.
- State Transport and Communications; Power or Flood-control projects of any master of common interest in the field of economic and social planning; inter-

- 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 not be hindered by artificial barriers and restrictions imposed by the various States of the federation.
- Article 301 to 307 deal with interstate trade and commerce which is a core feature of a federation like ours.
- Articles 301 to 307 deal with interstate 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 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 commerce and integrity of India 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 of 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).

The holders of this view argued that making Lokayuktas mandatory for states violated the Constitution's federal structure and that it impinged on the autonomy of states. Similarly, even though foreign policy is the prerogative of the Central government and the Constitution does not allow the states to take initiatives in these matters, the West Bengal government challenged the Central foreign policy on sharing the waters of river Teesta by stalled by the bilateral treaty with Bangladesh. Some states have been arguing in favour of the role of states in foreign policy, particularly, states with an international border are vocal on issues which directly or indirectly affect them.

- The debate in the two houses of Parliament on the Lokpal and Lokayukta Bill (Art. 252 vs Art. 253), NCTC, GST etc defined in the Constitution needs to be curtailed and restricted. This was highlighted in the backdrop of changing nature of polity, economy and society. The Centre's role as a watchdog of federalism needs to be redefined. States need to be empowered more in the nation. The country and society are one and not as an aggregate of regional identities.
- Building process is not yet complete and serious challenges continue to confront the Constitution to make it more relevant to present day requirements because the nation principle of federalism needs to be redefined. States need to be more responsible and serve the nation.
- Largely states quo-reclaiming the present federal structure with some amendments to the Constitution to make it more relevant to future course.

The federal debate 2013

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."

(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.

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 reasonableness of such restrictions and declare those that are unreasonable in its view invalid.

The President will have the opportunity to see that the legislation is in the public interest and the restriction imposed is reasonable.

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.

(3) A State Legislature may impose on goods imported from other States any tax if similar goods produced in that State are taxed in a like manner. A State Legislature is also authorised to impose reasonable restrictions on the freedom of trade and commerce within the State as may be required in the public interest (Art. 304).

arrangement with the objective of creating enough room for economic development of states without compromising the overall national interest? The North Eastern states of the country have borders with various countries like Myanmar, Bangladesh, China, Bhutan and Nepal and their proximity to countries east of India demands that their economy should benefit more from Look east policy. North east state leaders have been suggesting that New Delhi should take them on board while conducting economic diplomacy, particularly with the neighbouring countries.

Federalism is also seen in the context of decentralisation of powers. Economic liberalisation after 1991, undoubtedly, put India on a fast-track trajectory; however, inequity and regional imbalance also increased. The states, therefore, started demanding more flexibility in their policies and growth strategies.

The GST negotiations and the demand that centrally sponsored schemes be transferred to the states are prime examples.

The deepening of democracy and assumption of power by different regional parties in various states has generated an intense debate on giving States more fiscal and other powers.

In the present context, some questions arise: whether the principle of federalism in India is being used as a mere excuse to oppose the Centre because of political compulsions or is there more substance in the argument for a review of the federal structure? Has the time come to have a fresh look at the entire issue of States versus Centre? Are these demands being raised because of practicaling and fragmentation of polity or because of growing political ambitions of some regional leaders who are using the principle of federalism to assert themselves with the desire to project their leadership?

Governments and Pancayats.

It is important that these demands should be seen in a larger perspective. In the light of this second discourse, is it indicative that the time has come to review the constitutional issues, the views of states have been incorporated in India's stand. Tamil Nadu has on a number of occasions demanded the Centre's intervention in Sri Lanka.

Sikkim's views were sought. In the ongoing negotiations in the WTO on agriculture related issues, the views of states have been incorporated in India's stand. Tamil Nadu has on a number of occasions demanded the Centre's intervention in Sri Lanka.

- 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 Telegraphic Communications.
 - 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.

The Constitution gives special status to Comptroller & Auditor General (CAG) as laid down in Articles 148 to 151. The Act gives authority to CAG to audit all expenditure from and receipts into the Consolidated Fund of India and the States. It also authorises CAG to audit the receipts and expenditure of bodies or authorities substantially financed by loans or grants from 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.

We have to go back to 15th century to find the origin of the word "comptroller," which means "financial officer."

Constitutional and Statutory Position of CAG

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.

Act also established the position of Comptroller and Auditor General (CAG). The results of CAG's investigations were considered by a dedicated parliamentary committee called the Committee on Public Accounts thus establishing a system of parliamentary financial control.

(Appropriation is legally authorized money being drawn and spent for a specific purpose.) The department for the first time, to produce annual accounts known as appropriation accounts.

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 people is raised well and spent for the purpose for which the parliament authorised it.

Public audit is a vital instrument of ensuring supremacy of Parliament over executive and enforces 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 monies 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.

Comptroller and Auditor General of India

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.

Audit Duties

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

That 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".

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 money 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.

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 as accounting, though the latter may be a part of the former; the word 'accountability' means answerability. We are of course talking about financial accountability. 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.

Importance of CAG

- The statutory duties of the CAG include audit of
- Receipts and expenditure of the Union and the State Government accounts 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.
 - Acccounts of stores and stock kept in Government organisations, Government companies and Government corporations whose statutes provide for audit by the CAG.
 - Accounts of stores and stock kept in Government organisations, Government companies and Government corporations (Where the grant or loan is not less than seven-fifths the amount of such grant or loan is not less than five rupees twenty-five lakhs and the amount and the States (Where the grant or loan is not less than five rupees twenty-five lakhs and the amount of such grant or loan is not less than seven-fifths the amount 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.
 - The 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 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 Ministers 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

CAG has been undertaking many types of audit such as property 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.

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.

In such cases, it is within the CAG's mandate, as the instrument of accountability, to comment on selling natural resources or adopting tax amnesty schemes with a moral hazard. CAG's audit of such a policy. Be it under selling government shares in PSUs or not adopting auction process on such numbers were correct but the reasoning behind the decision was questionable.

- the assessment of financial implications was quite clearly wrong
- made
- the financial implications of a policy were not gone into at all before the decision was

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

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

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.

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.

Audit covers both the voted and charged expenditures.

The Finance Accounts show the details of receipts and expenditure for all the three funds. 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.

Auditor General of India documents are presented before the Parliament after their statutory audit by the Comptroller and documents are presented before the Parliament after their statutory audit by the Comptroller and

195

Efficiency Audit

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

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

It extends beyond scrutinising the mere formality of expenditure to its wisdom and economy and brings 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".

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

Property 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.

Supplementary Audit

It is an audit to ascertain whether the monies 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.

Regularity Audit (Commercial)

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

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.

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.

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 huge budget annually. The importance of its work also means that it be effective and efficient.

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 organizations engage internal auditors.

CAG and Internal Audit

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

The Comptroller and Auditor General of India today with respect to management and conservation of the challenges facing India has increased its focus on audit of Audit of Environment issues, keeping in mind CAG of India has increased its focus on audit of Audit of Environment issues like biodiversity, pollution environment. More than 100 audits on environment issues like 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 conserve and protect this scarce resource more effectively. CAG has done EA for Mumbai Port Trust, Tiger Parks etc.

The ministry issued orders to make it compulsory for all gram panchayat accounts related to the rural employment 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 RSI, 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.

Performance Audit

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

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 independence 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.

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- 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 cultivering 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 panchayatias institutions. Thus, CAG does not have full authority to audit them.

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

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.

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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 styling of Koodamkulam nuclear power plant in Tamil Nadu recently by NGOs brought the question to the fore once again.

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

audit this vast area of public economic activity. Civil society is gaining space and the role of public-private partnerships. Because of lack of mandate, the CAG feels unable adequately to another development and has meant public money is increasingly utilised in joint ventures and expenditure management — to the institutions of the state. Liberalisation of Indian economy is 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 increasing.

Need for more powers to CAG and the Reasons

out with the report in 2012.

CAG audited the NRM accounts in UP on the request of the UP government in 2011 and came

rural development schemes had not been tapped for creation of sustainable outcomes.

Social equity in the State. The potential benefit of convergence of the MNREGS with other Employment Guarantee Scheme (MNREGS) resulted in empowerment of women and fostering there were many positives pointed out. One is that the Mahatma Gandhi National Rural

that social audit was never conducted in their village.

CAG also carried out interviews of 38,000 beneficiaries and more than 75% of them reported diversions of funds etc. The audit also found that plans of social audits were more on paper. The like multiple job cards in the name of one person, jobs cards not issued in thousands of cases,

The CAG report revealed several irregularities in implementation of the scheme

under the scheme. The performance in 2012-13 is believed to be even worse.

country's below poverty line (BPL) population, accounted for only 20% of total expenditure employment in a year. UP, Bihar and Maharashtra, which are home to nearly 50% of the rural household employment declined from 54 days in 2009-10 to 43 days in 2011-12 even as the scheme aims to enhance livelihood security by providing at least 100 days of guaranteed wage for the flagship rural job guarantee scheme MNREGA. It pointed out many irregularities like The CAG carried out sample checks in over 3,800 gram panchayats in 182 districts of 28 states

CAG and Marga audit 2013

empowers it to audit only traditional government departments and public sector companies. The inclusion of this clause had become necessary as inspection of the account books of private entities that spent government money was not part of CAG's mandate. The current law

that they will be subject to audit, if required.

undertaken by various NGOs, normally outside the purview of CAG, will come with the ride

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 than 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 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 details 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

Combining accounts and audit 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 Powers and Conditions of Service passed, which visualised the need for separating accounts from audit.

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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.

CAG Audit and Social Audit

Over the last four decades, CAG has been conducting performance audits of socio-economic developmental programmes of the Central and State Governments. This has gained renewed emphasis over the last decade (2013), with the introduction of new performance audit guidelines in line with international best practices. The new performance audit methodology envisages more structured planning to identify governance-centric issues, closer interaction with the executive at all stages of the audit process (during audit planning, execution and reporting), and physical inspection, audio visual recordings, statistical sampling etc.

SRIRAM'S IAS

During the last ten years, CAG has conducted performance audits of most of the key socio-economic programmes of the Government of India e.g. National Rural Employment Guarantee Scheme (NRGES), National Rural Health Mission (NRHM), Sarva Shiksha Abhiyan (SSA), Mid-day Meals Scheme, Accelerated Rural Water Supply Programme (ARWSP), and Pradhan Mantri Gram Sadak Yojana (PMGSY). CAG's audits have also covered several niche areas of public interest like Waste Management, Police Modernization Scheme etc. CAG's audit of Government departments, offices, and agencies in the States, detailing with implementation of Government schemes, also touches upon the performance of schemes or their components at various levels of the audit process.

CAG's audit is an external audit on behalf of the tax payers. The Union and State legislatures, through their respective legislative committees on public accounts and public under takings, discuss the matters brought out in CAG's audit reports and make recommendations to the executive for appropriate management action. In a broad theoretical sense, therefore, CAG's audit itself is a social audit. Yet, in its commonality percieved sense, CAG audit remains a Government process largely confined to Government domain of stakeholders, i.e. users of the Government schemes, services and utilities.

The demand for social audit has grown in recent years due to the steady shift in devolution of Central funds and functions relating to socio-economic schemes to the local tiers of Government. Pancayati Raj Institutions (PRIs), Urban Local Bodies (ULBs) and other special purpose agencies set up by the Government for implementation of specific schemes.

The shift in devolution of funds and functions towards PRIs and ULBs has been the result of the 73rd and the 74th Amendments to the Constitution and the recommendations of the XI Finance Commission. Further, Central Government has been entrusted the implementation of various socio-economic developmental schemes to autonomous agencies/societies. More often than not, Central Government agencies/societies have also envisaged direct transfer of funds to PRIs, ULBs and such agencies/societies with only facilitatory involvement of the concerned State governments. Such fiscal allocations have effectively remained out of the State legislative and administrative accountability loop, as these agencies/societies are outside the traditional State government administrative accountability structure. In these cases, as indeed at PRIs and ULB levels also, local government administration structures are either non-existent or are very fragile. From the audit point of view, accountability structures are either nebulous, entities such as given rise to a new situation. The CAG's audit jurisdiction over such entities compares to his

jurisdiction over traditional Government Departments. The shift in Government expenditure to PRIs, ULBs and other agencies/societies has given rise to the shift in Government expenditure to PRIs, ULBs and other agencies/societies has given rise to a new situation. The CAG's audit jurisdiction over such entities compares to his jurisdiction over traditional Government Departments. Such fiscal allocations have effectively remained out of the State legislative and administrative accountability loop, as these agencies/societies are outside the traditional State government administrative accountability structure. In these cases, as indeed at PRIs and ULB levels also, local government administration structures are either nebulous, entities such as given rise to a new situation. The CAG's audit jurisdiction over such entities compares to his jurisdiction over traditional Government Departments.

New Accountability Concerns

CAG is considering the issue of positioning of social audit within the three basic categories of audit viz. financial, compliance and performance audits. The objectives of social audit revolve around empowerment of the beneficiaries and delivery of services, of the public sector programmes in matters of planning, implementation, delivery of services, appraisal, corruption and frauds, impact, etc. The social audit provides a voice to the people to participate and be heard. Above all, social audit provides close to complete transparency to the entire gamut of programme management and renders the impact sustainable. It enables the

techniques in to the audit of CAG of India within the framework of the existing mandate. organisations and explored the modalities of assimilating social audit concepts and CAG studied the social audit practices of Gram Sabhas and civil society.

Considering the significant contribution by various social audit groups in ensuring accountability of the programme managers and implementation agencies, the Government of India has embedded social audit in one form or the other (like village level monitoring committees/vigilance committees) in almost all the flagship social sector programmes like NREGS, ARWP, NRHM, MDM etc.

Other oral evidence gathering methods to ascertain the outputs of social sector programmes and from beneficiaries on a large scale through Gram Sabha meetings, Jan Sunwais, Sammelans and society groups. In both these types, the social auditors are in a position to obtain direct feedback from beneficiaries of various social sector programmes, and those carried out by Civil Society in the guidelines of local level Monitoring Committees as stipulated by the Gram Sabhas/Panchayats or local level Vigilance and Monitoring Committees cannot be ignored.

Social audit initiatives fall into two categories - social audits carried out by Gram Sabhas and the local level Gram Sabhas and Gram Sabhas. The vital role of social audit for ensuring the local stakeholder's role in grass root level implementation of the public sector programmes, verification of deliverables and ensuring accountability of the implementing agencies, besides a safeguard against corruption and ensuring self-government institutions, the participation of local stakeholders and civil society in monitoring the implementation of the programmes cannot be ignored.

Social audit concepts are becoming increasingly popular and further, despite the joint physical verifications with Departmental authorities, and processes within Governmental agencies, with the actual verification of outputs and outcomes being only of secondary focus. The prime reason for this is audit methodology and evidence well as manipulative constraints. In other words, CAG cannot accept unauthenticated oral evidence except as supplemental to core audit evidence.

Also, the scheme guidelines of some of the flagship socio-economic programmes of the Government do not provide adequate clarity with regard to audit of the programmes by the CAG.

While social audit has a crucial role in implementation of social sector programmes, its objectives cannot in standalone mode, sustain the complete audit objective of any of the three basic types of auditing. All the objectives and processes adopted for social audit will fit into the audit objectives of one or more of the three instantaneuous interface and interlocution it provides among the beneficiaries and stakeholders of social audit programmes, has its unique strengths. Social audit provides an opportunity to plug a long felt gap in the audit process and techniques used by our Department. It provides the strongest and irrefutable direct evidence for inputs, processes, financial and physical reporting, compliance, physical verification, assurance against misuse, fraud and misappropriation, and utilisation of resources and assets. In addition, social audits also provide a forum for strengthening the democratic process in governance and grievance redressal. Social audit provides the most important link between oral and documentary evidence and offers a means of securing accountability of the managers of public sector programmes and renders the monitoring and evaluation of social audits out of a wide range of audit concerns in highly localised and specialised areas only certain selected aspects of a wide range but the financial, compliance and performance audits. These are also sporadic and ad hoc, except where broad-based monitoring by Gram Sabha has been embedded in the social sector programmes. Even in these cases, the monitoring is informal and unprocessed. Moreover, the planning, implementation and monitoring and should be brought into the mainstream of auditing by the Indian Audit and Accounts Department as an essential process and tool in all the compliance audits of the social sector programmes. It can also be placed in the mainstream of performance audits of social sector programmes. It can also be placed in the mainstream of the Indian Audit and Accounts Department as an essential process and tool in all the compliance audits of the social sector programmes. Further, it can facilitate rules and assurance against frauds, corruption and misappropriation.

Partnership between Social Audit and CAG's Audit

While social audits lend a powerful tool for programme audit and monitoring by the beneficiaries and direct stakeholders, its limitations should be recognised in determining its positioning in the public sector framework. The scope of social audits is intensive but highly specialised and covers only certain selected aspects out of a wide range but the financial, compliance and performance audits. These are also sporadic and ad hoc, except where broad-based monitoring by Gram Sabha has been embedded in the social sector programmes. Even in these cases, the monitoring is informal and unprocessed. Moreover, the planning, implementation and monitoring and should be brought into the mainstream of auditing by the Indian Audit and Accounts Department as an essential process and tool in all the compliance audits of the social sector programmes. Further, it can facilitate rules and assurance against frauds, corruption and misappropriation.

Limitations of Social Audit

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Strengths of Social Audit

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People to view the decision making process and criteria adopted for various elements of the programme.

Space for social audit has been created both by the Constitution Amendment which ordained that accounts of Gram Panchayat be placed before GramSabha, and by the RTI Act 2005. State Governments of Andhra Pradesh have taken the initiative to incorporate social audit as part of their monitoring systems through Gram Sabhas and in partnership with a consortium of NGOs. Given these highly acclaimed initiatives, it is possible for CAG auditors to associate themselves with various activities from the social audit process in these States. The experience in Rajasthan has shown that we can gain immensely from the oral evidence tendered at the public hearings which are part of the social audit process. Participation sensitizes the people and helps them realize that accountability is not just a part but the prime driving force of good governance.

It is said that Cag should take the social audit and social auditors on board for serving the cause of public good. Social auditors are likely to benefit by way of finding a place for their work in a wider and formal/legal forum of the CAGofIndia, ultimately adding value to their work. On the other hand and objectively, they would also be benefited through their exposure to the professional development level, they would also be benefited through their work. On the delivery of the programmes, including the existence of the community assets and their actual utilization can be overcome in an effective manner.

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World over, there is a growing perception that it is important to partner with civil society to ensure the latter's participation in policy development, service delivery and public accountability. Auditing for Social Change requires participation of the civil societies in building accountable partnerships with the major social audit organizations within the country and sustainable ongoing partnership with the major social audit organizations within the country and building of the social audit groups and encourage social audits in the States where it has not been off in a significant manner.

Association of CAG's auditors with local fund auditors and Gram Sabhas in certification of accounts of local governments.

shall act as the Chairman of the Election Commission.

When any Election Commissioner is appointed, the Chief Election Commissioner 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.

The Election Commission shall consist of the Chief Election Commissioner and elections to the offices of President and Vice-President of India.

Article 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, and the conduct of all elections to Parliament and State Legislature; and elections for, and the conduct of, all elections to Parliament and State Legislature, and the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats under Article 324.

Constitutional provisions

- 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 enacted laws are silent or inadequate, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner.

Part XV of the Constitution (Art. 324-329) contains provisions related to elections. There are two RPs:

Constitutional provisions, supplemented by laws made by Parliament and the Rules made by the Election Commission are the basis for the conduct of elections.

Apart from a robust constitutional and legislative framework, universal adult franchise, competitive political party system, statutory right to vote, an informed electorate and a vigilant media and civil society constitute key elements of a sound and democratic electoral system, and are important prerequisites for a credible electoral democracy. It goes without saying that a neutral and efficient election management with transparent systems and procedures in place is the most critical of all.

India is a great example of representative democracy where periodic 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.

Electoral System in India

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

RPA 1950.
However, right to vote is not implied in Art. 326. It is a statutory right under the

4. corrupt or illegal practice.

3. crime or

2. unsoundness of mind

1. non-residence

Legislature on the grounds of

is not disqualifed under this Constitution or any law made by the appropriate

Should be not less than eighteen years of age.

Should be a citizen of India

vote

and to the Legislative Assemblies of States. The following are the qualifications to 326 lays down adult suffrage as the basis for elections to the House of the People

religion, race, caste or sex.

No person shall be ineligible for inclusion in the electoral roll on grounds of established equality among citizens for being enrolled as voters by affirming that constituency for election to either House of Parliament and State Legislature. It

Art. 325 says that there shall be one general electoral roll for every territorial make available to the Election Commission or to a Regional Commissioner such staff that is necessary for the conduct of the elections

The President, or the Governor of a State, shall, when so requested by the Election Commission, Election Commissioner or a Regional Commissioner shall not be removed from

office except on the recommendation of the Chief Election Commissioner. The conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

President determines the conditions of service and tenure of office of the Election Commission and the Regional Commissioners, subject to the provisions of any law made by Parliament.

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.

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.

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 the two Election Commissioners draw salaries and allowances at par with those of the judges of the Supreme Court of India.

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 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.

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.

(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.

Article 329 bars interference by courts in electoral matters.—Notwithstanding anything

in the Constitution—

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 Houses or Houses.

State including the preparation of electoral rolls, the delimitation of constituencies etc. Constitution, on all matters relating to elections to Parliament or Legislature of a

EC appoints the following:

The Election Commission of India nominates or designates an Officer of the Government of a State/Union Territory as the Chief Electoral Officer of a State/Union Territory. The Chief Electoral Officer is authorised to supervise the election work of a district.

The Election Commission of India nominates or designates an Officer of 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 State Government as the District Election Officer in consultation with the State Government. The District Election Officer supervises the election work of the State/Union Territory subject to the overall supervision and control of the Election Commission.

The Election Commission of India nominates or designates an Officer of the State Government as the Territorial Superintendent of a State/Union Territory. 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 supervision and control of the Election Commission.

The Election Commission of India nominates or designates an Officer of the State Government of a State/Union Territory as the Chief Electoral Officer of a State/Union Territory. The Chief Electoral Officer of a State/Union Territory is authorised to nominate the election work in the State/Union Territory subject to the overall supervision and control of the Election Commission.

Under Article 324(1) of the Constitution of India, the Election Commission of India, in particular, is vested with the power of superintendence, direction and control of elections to both Houses of Parliament. Detailed provisions are made under the same Article 324 also vests in the Commission the powers of superintendence, direction and representation of the People Act, 1951 and the rules made thereunder.

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Functions of Election Commission

While functioning as the CEC, he acts as the Chairmain 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.

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.

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."

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.

Are the commissioners and the CEC equal?

Election rolls are two important tasks in the updating of the electoral rolls. As we do not have compulsory voting in our country, the eligible voters did not always receive the election rolls used to be as high as 10 per cent in some cases. The presence of names of non-existent voters in the rolls therefore offered scope for poll-day malpractices such as impersonation and the names of bogus, dead and shifted voters from electoral rolls. As the result, the inaccuracy of the election it deserves. Besides, there was no focused attention paid to the process of removal of the names of deceased, dead and shifted voters from electoral rolls. As the result, the inaccuracy of the names of deceased, dead and shifted voters from electoral rolls. As the result, the inaccuracy of the names of deceased, dead and shifted voters from electoral rolls.

BLO

- 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.
- Officers of a parliamentary or assembly constituency is responsible for the conduct of elections in the parliamentary or assembly constituency concerned.
- The Returning Officer of a parliamentary or assembly constituency is responsible for the preparation of electoral rolls for a (ERO). The Electoral Registration Officer is responsible for the preparation of electoral rolls for a (ERO).
- Under Article 1951, the Election Commission of India nominates officers of Government as Observers (General Observers and Election Expenses 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 appoints the officer of State or local government as Electoral Registration Officer of elections in the parliamentary or assembly constituency concerned.
- Under Article 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.
- EC's other administrative functions are
- Under Article 324, EC has the duty to prepare and revise the electoral rolls
- EC makes the election decisions the election schedules for the conduct of elections, generally polluting stations or by-elections; location of polluting stations, arrangement 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 reinforces the Model Code of Electoral Conduct that is mutually agreed upon by the political parties.
- EC 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 recall 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 (Article 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

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.

It has quasi-judicial jurisdiction: settlement of disputes between the splinter groups of a recognized party based on which symbol may be attached or frozen.

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.

Quasi-judicial jurisdiction
The power for removing or reducing the period of such disqualification as also other election expenses within the time and in the manner prescribed by law. The Commission has also the power for disqualification under the law.

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.

Under the BLO system
Within a few of years of the introduction of the BLO system in 2007 it has now become an integral part of election management. In subsequent elections in Gujarat and in other States, the BLOs now began to also collect photos for photo electoral rolls. Finally, we adopted the concept of the BLO system as a national exercise in the 2009 election, with very beneficial results.

Boosted voter confidence in the credibility of the election process. BLO system led to increase in accurate electoral rolls and direct distribution of voter-identification slips by the BLOs also ensured door-to-door distribution of voter-identification slips to voters. The preparation of polling booth level. So he or she became accountable for the 1,000 to 1,500 eligible voters in his or her area. During 2009 and the subsequent elections to State Assemblies, the BLOs also accounted for preparation of an error-free electoral roll, making the BLO its custodian at the polling booth level. The BLO system to deal with these problems. It created a clear line of accountability for preparation of an error-free electoral roll, making the BLO its custodian at the polling booth level. Often, names were repeated. With up-to-date software, EC is able to easily eliminate such duplication all over the country. The EC deliberated and introduced a new system called the booth level officer (BLO) system to deal with these problems. It created a clear line of accountability for preparation of an error-free electoral roll, making the BLO its custodian at the polling booth level. So he or she became accountable for the 1,000 to 1,500 eligible voters in his or her area. During 2009 and the subsequent elections to State Assemblies, the BLOs also ensured door-to-door distribution of voter-identification slips to voters. The preparation of accurate electoral rolls and direct distribution of voter-identification slips by the BLOs also boosted voter confidence in the credibility of the election process. BLO system led to increase in voter turnout.

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 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 Superintendentship, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from 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 to elections in addition to their other responsibilities.

At the district and constituency levels, the District Election Officers, Electoral Registration performs 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, supervision 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 parliamentary 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 legislative elections, the expenditure related to preparation for electoral rolls and for Electors' Identity Cards too, the expenditure is shared equally.

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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 start filling their nominations in the constituency concerned after the last date for nomination is over. The validity 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 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 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.

EC lays down the definition of national and state party. Party is recognized -as national or state party - or unregistered and is merely a registered party. EC is responsible for allocation of symbols to the political parties based on whether a political

The Election Symbols (Reservation and Allotment) Order 1968

Recognition and Reservation of Symbols

- EC budget be Charged on the Consolidated Fund of India.

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, Registrars of the Supreme Court and High Courts etc., and

Chief Election Commissioner to all Election Commissioners as is available to the same constitutional protection as is available to the

Molly 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 and Rajya Sabha Deputy Chairperson. Same was earlier recommended by the NCRWC

and ECs are not charged on the Consolidated Fund of India.

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

their appointment.

Conditions of service of the CEC and ECs can not be altered to their disadvantage after

Supreme Court salary and other facilities, like rent free accommodation, as are provided to a judge of the

The Chief Election Commissioner and Election Commissioners are entitled to the same recommendation by the Chief Election Commissioner.

The other Election Commissioners cannot be removed from office except on conditions of his service shall not be varied to his disadvantage after his appointment.

Art. 324(5) says that Chief Election Commissioner shall not be removed from his office

age of 65 years, whichever is earlier.

Commissioners is six years from the date he assumes office or till the day he attains the

The term of office of the Chief Election Commissioner and other Election

guaranteed by the following provisions

Independence of the EC and its insulation from executive interference is

like, free time on Doordarshan/AIR, free supply of copies of electoral rolls, etc. symbol will not mean the extension of other facilities to it, as are available to recognised parties, time to try and retrieve its status. However, the grant of such facility to the party to use its shall not lose its symbol immediately, but shall be given the facility to use that symbol for some time 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 National political parties are six: INC, BJP, Nationalist Congress Party, BSP, CPI and CPI(M).

State party. This is the only definition where votes matter irrespective of seats). State parties complained that even after winning 8% or more of vote, they are still denied the status of polled in the State (in 2011, the last one was a new definition added for the State Party as some candidates set up by the Party have secured not less than eight percent of the total valid votes the last general election to the House of the People or the Legislative Assembly of the State, At the last general election to the House of the People or the Legislative Assembly of the State,

OR

that State in the said general election. (added in 2005). State, and in addition, the party should win at least one seat in the Lok Sabha from by the party should secure at least 6 percent of the total valid votes polled in the In a Lok Sabha general election from the State concerned, the candidates set up

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

Legislative Assembly of the State, or at least three seats in the Assembly, whichever is more. It wins at least three percent (3%) of the total number of seats in the State concerned.

OR

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

A party recognised as a State party in a minimum of four States (added in 2005) from at least three different 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.

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.

FPTP system

Models of Representation System

The plurality voting system which is in vogue in India, UK, Canada and the USA, 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 getters compete 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

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 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.'

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This concession will be only a one-time facility for the Lok Sabha or the Assembly elections.

They should initiate the choice of 10 symbols from the list of free symbols.

Constituencies in a State having less than 20 Parliamentary constituencies.

Constituencies in a State having less than 50 Assembly Constituencies, and two Parliamentary constituencies least 10 per cent of the constituencies in a State, subject to a minimum of 5 Assembly (Reservation and Allotment) Order, 1968, such parties will have to contest the general elections from one candidate asked for a particular symbol. Consequently, these parties were unable to get uniform symbols in all the constituencies they contested.

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 least 10 per cent of the constituencies in a State, subject to a minimum of 5 Assembly constituencies in a State having less than 20 Parliamentary constituencies.

Assembly symbols from the list of free symbols.

Models of Representation System

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

As EC made the rule that sitting members could choose the symbol of their choice.

YSR Congress and Fan symbol

The party chose ceiling fan symbol. It contested by polls 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, YSR 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.

Elephant symbol

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.

AGP, BSP, PMK and SSP to share elephant as election symbol

The Assam Gana Parishad, Bahujan Samaj Party, Pattali Makkal Katchi and Sikkim Sangram Parishad have elephant as their symbol. BSP is a national party while others 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 symbol is shared between AGP, BSP, PMK and SSP. They resolved the dispute over the use of the elephant as their election symbol as follows:

The Assam Gana Parishad, Bahujan Samaj Party, Pattali Makkal Katchi and Sikkim Sangram Parishad have elephant as their symbol. BSP is a national party while others are state parties. Inevitably, it led to disputes. They resolved the dispute over the use of the elephant as their election symbol as follows:

A variant of PR system is list proportional representation system. Every party puts up a list and achieves with money and muscle power.

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 allotted 25% of seats. Thus, an important lacuna of the FPTP is filled - the vote-seal mismatch.

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.

- 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 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 proportional to the number of candidates to be elected - the more the number the less the quota. It means that and VP elections: a quota is set for a candidate to win the election. Quota depends on the proportionality system of representation has been discussed in the chapters on RS and President and VP.
- Proportional system of representation**
- The remedies are the form of PR and semi PR systems

- The first-past-the-post (FPP) system creates a distortion between the votes polled by a party and the seats 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 legislature.
 - Parliament/state legislature in the State.
- However, the first-past-the-post system prevailing in our country is found to be distorted 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

FPTP system is adopted for the following reasons:

President of France. In the run off 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.

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 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 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.

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 constituents 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.

Legislative Assemblies of the States should be filled on the basis of list system, according to the Law Commission recommended that 25% of the number of members in Lok Sabha or Lok Sabha as well as in the State Legislative Assemblies, the increased strength should be filled on the basis of list system. The list system should be confirmed only to recognized political parties (RPP).

- open list order of candidates in the list is determined by the voters at large
 - closed list where the list is decided by party leadership. It may encourage sycophancy and represenative-voter link may suffer
 - 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.
- List systems of two types

- 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
- Making the EC a multi member body as provided by Art.324
- Limiting introduction of state finding of elections by making suitable laws like the Election and Other Related Laws (Amendment) Act 2003
- 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 deprive a convicted person from contesting even while an appeal is pending in the apex court

- The Government reformed the electoral system in many ways in the last few decades as given below
- Establish level playing field among political parties
 - Use new technologies like ICE for more genuine participation by voters
 - De-criminalise the polity
 - Help electorate vote fearless
 - Representitive justice
 - Make all constituencies have more or less the same number of electorate for democratic like ours, the need for a completely free and fair election process needs emphasis.
 - The need for electoral reforms arises from the following reasons
 - The success of Indian democracy has been globally applauded but loopholes, in the foundation of the electoral system, remain. Since good governance begins with elections in a parliamentary democracy like ours, the need for a complete free and fair election process needs emphasis.
 - The success of Indian democracy has been globally applauded but loopholes, in the foundation of the electoral system, remain. Since good governance begins with elections in a parliamentary democracy like ours, the need for a complete free and fair election process needs emphasis.

- ### Electoral/political reforms for Stable Government
- Bonuses 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 is an alternative. Otherwise, it continues even after losing the vote.
 - Constitutional vote of no confidence in the LS where the ruling party loses only if there would be another round of election
 - However, even as it guarantees stability, it is against Art.75(3). It can create strange and quarreling 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.
 - The success of Indian democracy has been globally applauded but loopholes, in the foundation of the electoral system, remain. Since good governance begins with elections in a parliamentary democracy like ours, the need for a complete free and fair election process needs emphasis.

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.

- 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), Imdrajit 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.
- Offeriture of security deposit for failure to secure less than $1/4^{\text{th}}$ of the votes 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 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 party which it does not have now.
- If a person contests the seat in one of the two constituencies and wins both. In such a situation he vacates the seat. The consequence is that a bye-election would be required from one constituency involving avoidable labour and expense due to 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 expense of the bye-election.
- If a person contests the election from two constituencies and wins both. In such a case he vacates the seat in one of the two constituencies. The consequence is that a person cannot contest from more than one constituency at a time or he should bear the expense 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 with false identities to influence electoral behaviour in the name of secularism, socialism and so on. They are not genuine bodies and it constitutes surreptitious advertisement.
- negative / neutral polling in the form of a provision enabling a voter to reject all the candidates in the constituency if he does not find them suitable.

good governance if political parties come under the RTI like RTI Act 2005. However, there are advantages to the electoral democracy and the values of transparency and financial transparency; why they are not giving tickets to women can be asked; their openness about their internal workings gets corrected - for instance on inner party elections or selection of candidates.

Dr. Abhishek Singhvi says that the substantial funding subsections (i) and (ii) should apply only if the body satisfies the stipulation of first being established by the government, and which the CIC has itself said is not the case.

But on grounds of sub-clauses (i) and (ii), which permit to substantial funding-tax-free money raising; land for party office; AIR/DD time etc. Parliament or the State Legislature; nor are these bodies owned or controlled by any appropriate established or constituted by and under the Constitution; nor by any other law made by The CIC admits that neither (a), (b), (c) and (d) applies to political parties. They have not been provided by the appropriate Government.

- non-Government Organisation substantially financed, directly or indirectly, by funds
- body owned, controlled or substantially financed
- (d) by notification issued by the appropriate Government, and includes any-
- (c) by any other law made by State Legislature;
- (b) by any other law made by Parliament;
- (a) by or under the Constitution;

"Public authority" means any authority or body or institution of self-Government established or constituted,

CIC order on political parties: critical analysis

In June 2013, Central Information Commission (CIC) held that the parties are public authorities and answerable to citizens under RTI Act. The CIC, a quasi-judicial body, has said that six national parties INC, BJP, NCP, CPI, CPI-M, and BSP have been substantially funded indirectly by the Central Government and they have the character of public authority under the RTI Act as answerable to the citizens regarding their source of funding, how they spend money and choice of candidates for elections, among other issues.

- expenses of election commission to be treated as charged on Consolidated Fund of India
- members of the commission. Same protection should be given to the ECs as the CEC.
- composition of election commission and constitutional protection of all government sponsored advertisements should be outlawed

- Molly Commission on electoral reforms
 - tighthening of anti-defection law. Power of disqualification of MPs and MLAs on grounds of defection should be taken away from the President and Government on the advice of the Ethics Commission.
 - partial state funding of elections should be available 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 Chairman
 - 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 failing charges related to grave and heinous offences and corruption, with the modification suggested by the EC.
 - The introduction of electronic 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 Machineries 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 like in Kerala by Achutanandan govt; dynasty issues as in Tamil Nadu with DMK party.
- Vulnerability mapping
 - BLO

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

Critics believe the code obstructs government initiatives for too long a period.

the Election Commission.

Model Code of Conduct comes into force on the date of announcement of election schedule by

obey the same.

The Code is not given a statutory status as there is a voluntary desire on the part of the parties to

Recognition of the party

If a recognized political party violates the model code, EC has the power to suspend or withdraw

- Ministers and other authorities shall not sanction grants/payments out of discretionary funds
- Issue of advertisement at the cost of public exchequer shall be scrupulously avoided
- For the purposes of its election campaign
- the party in power whether at the Centre or in the State shall not use its official position connected with the public activities of the leaders or workers of other parties
- Parties and Candidates shall refrain from criticism of all aspects of private life, not programme, past record and work.
- criticism of other political parties, when made, shall be confined to their policies and religious or linguistic
- No party or candidate shall cause tension between different castes and communities,

parties at the Centre and the States. Some points of the Code are:

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 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.

Code was issued by the EC in 1991 and has since been amended many times. Partly that violates the model code after the party is given reasonable time to defend itself. The discussion from the disreputable fund once elections are announced. EC can take action against a sanction from the EC, unambiguously agreed to the content. For example: ministers should not discuss with the EC, unambiguously agreed to the content. For example: ministers should not

Model Code of Conduct

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.

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.

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 election 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.

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 election incurred or

Daman and Diu and Lakshadweep.

For a parliamentary constituency is Rs. 10 lakhs for the constituency of Dadar and Nagar Haveli,

The maximum limits of election expenditure vary from State to State. The lowest limit at present

is 16 lakhs.

The limit of election expenditure for an assembly constituency in the above bigger states is Rs.

Andhra Pradesh, Madhya Pradesh is Rs. 40 lakhs.

Present the limit of expenditure for a parliamentary constituency in bigger states like U.P., Bihar,

The limit for expenditure is fixed by the Government and is revised from time to time. At

limits are exceeded, it would also amount to a corrupt practice under R.P. Act, 1951.

Election Rules, 1961. Limit are set by the Union Government. EC is only an advisory body. If

total election expenditure shall not exceed the maximum limit prescribed under Conduct of

A candidate is not free to spend as much as he likes on his election. The law prescribes that the

- State funding of elections
- Reduction of campaign period permitting.
- Holding of simultaneous elections for LS and Legislative Assemblies, logistics

Steps that are suggested are .

- 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.

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.

Funding which can be inimical to democracy and the integrity of the candidate. cannot be raised from public at large and so the party depends on other sources like corporate

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.

The relationship between the media and elections is controversial. The media always claim they merely "inform the public", while critics claim they actually shape public opinion, thereby "controlling" democracy. EC tries to control such influence of the media. For example, The Election Commission of India had on April 11, 2013 notified that conducting any exit poll and publishing or publicising by means of print or electronic media or disseminating in any other manner whatsoever the result of any exit poll in connection with the current general elections to the time fixed for conclusion of poll in connection with the elections in Karnataka.

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 RP Act 1951.

Therefore, the EC recommends making it as a crime.

Paid news

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 Hindustan 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.

Umlesh Yadav

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- 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
- State Funding of elections**

State funding is now available to registered parties in the form of allocation of time on the electronic media.

The Election Act 2003 was made to reform the law related poll funding and party finances.

Election and Other Related Laws (Amendment) Act 2003

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.

Simultaneous Polls for State Assemblies and Parliament

(Discussed in the Class)

None of the Above Option

Political parties do not pay income tax as they are not commercial entities and are public authorities. As declared by the EC in 2008, CIC also designated them as public authorities in 2013. Being public authorities, they submitted detailed balance sheets indicating the availability of funds, income and expenditure incurred by them.

The Law Commission recommended 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.

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.

Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. 2nd ARC advocated that this needs to be acted upon in an amendment made — 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/- and making it public as it should be received only by cheque, this is not sufficient for ensuring transparency and accountability in the financial management of political parties.

The audited accounts should be available for information of the public domain. Although early, the audited accounts should be available for information of the public domain. Although in an amendment made — the Election and Other Related Laws (Amendment) Act, 2003, a

- the campaign period should be reduced considerably
- the State and Parliamentary level elections should be held at the same time
- How to reduce election expenditure
- political parties should accept all donations above Rs.10,000 in the form of cheques or drafts and disclose the names of the donors.
- in order to be eligible for state funding, political parties and their candidates should have submitted their income tax returns up by the Centre and a matching amount contributed by all State governments together.
- Rs.10 a voter, for the total electorate of about 60 crores, since grew to 75 crores by 2013)
- A separate Election Fund should be created with an annual contribution at the rate of etc.
- respecific state capitals; one rent-free telephone with subscriber trunk dialling facility New Delhi and every recognised State party may be provided the same facility in the constituency; electronic media time; rent-free accommodation for party headquarters in constituency slips; postal stamps for a specific sum of money; copies of the electoral roll in election campaign; a specified quantity of paper to prepare election literature and voter registration elections like: a specified quantity of petrol or diesel to run vehicles during an election should be in kind and take the following form of materials and other facilities for and provide them some administrative support during the period between elections State should meet some essential expenses of political parties during election campaigns and recognize them as national and state parties.
- State funding should be confined to recognized national and state parties.

Indrajit Gupta Committee Recommendations

- The committee said that state funding of elections would bring in an element of equality to which represent the socially and economically weaker sections and which often have limited access to big donors.
- electorally because it would help remove the disadvantage faced by parties
 - contestants, particularly because it would bring in an element of equality to
 - and provide them some essential expenses of political parties during election campaigns
 - State should meet some 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 registration elections like: a specified quantity of petrol or diesel to run vehicles during an election should be in kind and take the following form of materials and other facilities for
 - respecific state capitals; one rent-free telephone with subscriber trunk dialling facility New Delhi and every recognised State party may be provided the same facility in the constituency; electronic media time; rent-free accommodation for party headquarters in constituency slips; postal stamps for a specific sum of money; copies of the electoral roll in
 - political parties under the chairmanship of Indrajit Gupta (1998)
 - multi-party parliamentary committee under the chairmanship of Indrajit Gupta (1998)
 - Dimesh Goswami committee (1990).
 - Taraknudde committee set up by Jayaprakash Narayan (1974)
 - Joint Parliamentary Committee (1971-1972)
 - The following committees recommended state funding of elections

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.

- it prevents the influence of foreign money from influencing the parties
- playing field among the parties
- spectrum of opinions is represented. Thus, state funding is required to establish a complete outcome. Smaller parties are a vital part of a democracy, as they ensure that a complete 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 a complete
- 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

- Section 8 of RP Act**
- The section relates to disqualification of candidates from contesting in an election to Parliament or State Legislature for specific 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 dowery 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 at least 2 years, the convicted person is disqualified to contest for a period of 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.

Politicalisation 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 machimery is used to protect some criminals and foil cases against others depending upon their loyalties.

The reasons for increasing criminalization of politics is the poverty and illiteracy of people, pressure on courts and the consequent delay in settling of disputes; political parties prefer winner to intimidate the voters for votes.

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.

This does not augur well for democracy. Therefore, there needs to be amendments to RP Act 1951 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. Political parties in India are influenced by dynastic politics. No regular periodical elections are for regular elections.

- Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency

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 thus rendering for years and in the meanwhile, even the full term of the house expires thus rendering the term of the elected.

proceedings of an election petition on a day to day basis.

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 such petitions be filed within six months from its presentation and also as far as practically possible conduct

Adjudication of Election Disputes

The Supreme Court in a second landmark judgment in 2003 declared the Act unconstitutional and restored its earlier order. Subsequently, the Election Commission issued orders implementing the judgement.

It led to a landmark Supreme Court judgment 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.

- asset-liability details of himself and his family.
- educational qualifications
- criminal antecedents, if any

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

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.

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.

The EC interpreted the Section stringently in 1997. The effect is: earlier during the pendancy of appeal, the nominated of the convicted person was accepted while it is not so since 1997. After disqualification 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.

Election Commission in recent years has been quick to make good use of technology and devise conditions and manpower requirements necessary to stagger the election. But the duck government, the better it is for governance. True, security considerations, geographical works are suspended till after the new government takes office. The shorter the period of a lame- three months. No major policy decision can be taken, and welfare schemes and development Code of Conduct comes into effect, to the time Lok Sabha is constituted, it is about the space of a month, but from the time the election is announced, which is when the Model brings the government to a standstill for close to three months. The election itself is held within with the introduction of Electronic Voting Machines, the multi-phase polling process virtually There is still a case for a shorter election process. While the counting process is now quickened Shorter election process

is seen as an effort to ensure that polls, which are generally spread over several phases, are free phase of voting so that it does not "influence" the voters. Governments move to amend the RPA Act (RPA), 1951 to curb publication of exit polls during elections till the conclusion of the final regulation on the issue. The government had in 2008 amended the Representation of the People the EC to decide on laying down guidelines on opinion and exit polls till the government frames The EC's move comes against the backdrop of the Supreme Court leaving it to the discretion of before the poll and put a blanket ban on exit polls till the last phase is over in the event of multi-phase elections.

The Election Commission (EC) banned dissemination of results of opinion polls during 48 hours before the poll. The EC banned dissemination of results of opinion polls during 48 hours 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 last phase is over in the event of multi-phase elections.

60, proxy voting is permitted. Proxy voting is when a soldier in the Indian armed forces constitutes another person to vote on his behalf. He can nominate any eligible voter from his 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 million defence personnel who benefit from proxy voting. Ifs officers do not have this facility. They vote by postal ballot if they are posted abroad.

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 than a fortnight which very often is found impossible. Being dispatched to the far off locations. For example, a soldier from Kerala posted to Tripura reduced to 14 days. Ballot papers can be printed only after withdrawal of the nomination before since 2003. The need for proxy voting arises from the fact that the campaigning period is The word proxy means "to act on behalf of another. It is allowed in India for defence personnel

. Administrative Reforms Commission, all have recommended setting up of Special Election the election petitions infructuous. The NCRWC, the Election Commission, and the Second Benches for fast disposal of election related cases.

228

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.

were used to print ballots.

In 1996, before the introduction of electronic voting machines, 8,000 metric tonnes of paper ballot boxes were also used -- some were transported by elephants and camels to remote voters. to a symbol of the party of their choice.

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. These were first

Around 1.1 million electronic voting machines were used across the nation. These were first over by 2.1 million security personnel.

More than 800,000 polling stations are set up for a five-phased vote over several weeks, watched by 2.1 million security personnel.

The world's biggest democratic exercise, 420 million voted -- about 60% of turnout.

714 million people -- more than twice the population of the United States -- are eligible to vote in

2009 Elections: Snapshot

the influence of others etc.

The questions marks are about secrecy of voting; reliability of the e-systems; voter may be under

e-Voting helps citizens who have access to the internet, cast their votes online, without standing in long queues, which are a deterrent. The online voting system is being run by Tata Consultancy Services.

In 2011, The Gujarat State Election Commission implemented e-Voting for Municipal Corporation elections. Many voters registered for e-Voting, and some opted for voting from their homes or office computers, while some went to e-Booths set up by the commission, to cast their votes online.

Online voting is discussed in the class. Of the Conduct of Election Rules 1961. However, it does not go to determine the results. Polling officer will then put his/her signature under such entries. This provision is under rule 49. "electors" to the effect that the particular voter has decided not to vote for any candidate. The polling officer about the decision, and the latter will then make entries in the "register of voters", if a voter, after going through the formalities of identification, application of indelible ink on the finger etc, decides not to vote for any candidate, he or she will have to inform the polling officer, if a voter, after going through the formalities of identification, application of indelible ink on the finger etc, decides not to vote for none of the above, button in the EVM is pending with the government. This issue is also pending before the Hon'ble Supreme Court.

The option of not voting for any candidate is available even if the electronic voting machines (EVMs) do not have a button with the above option. A proposal made by the Commission for making provisions in the law for none of the above, button in the EVM is 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. Campaign period can be cut short.

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 unregistered parties included banangles, a cricket, 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.

An efficient election management is about managing information and ensuring mid-course interventions and corrections. Today India has one of the fastest growing mobile network markets. The mobile reach has improved tremendously in recent years. It is estimated that over

Communication for election tracking (COMET)

mind, crime or corrupt or illegal practice.

The Constitution identifies disqualification only on grounds of non-residence, unsoundness of

Section 62, 1951 ~~Age~~ deals with right to vote. Every person who is entered in the roll of a constituency is entitled to vote in that constituency. A person suffering from disqualification cannot vote. Every person entitled to vote, can vote only in one constituency and only once at one election. Section 62 (5) disallows a person to vote at an election if he/she is confined in a prison; the confinement may be under a sentence or in the lawful custody of the police. Undertrials have no right to vote. This disqualification will not apply to those confined under any preventive detention law. A person under trial but who is on bail can vote.

Section 19 lays down minimum 18 years of age & ordinary residence in the constituency as registration if any person becomes disqualified his/her name shall be struck off from the rolls. India or is of unsound mind or is disqualified for election offences/corrupt practices. Also, after Act. Section 16 disqualifies a person from registration in an electoral roll who is not a citizen of India or is of unsound mind or is disqualified for election offences/corrupt practices. After section 16 lays down minimum 18 years of age & ordinary residence in the constituency as conditions for registration.

Right to vote is given by Sections 16 & 19 of 1950 RP Act & Ss. 11A & 62 of the 1951 RP Act. Section 16 disqualifies a person from registration in an electoral roll who is not a citizen of India or is of unsound mind or is disqualified for election offences/corrupt practices. Also, after

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Right to vote

60% of the country is covered by mobile connectivity. The Election Commission as a constantly innovating institution took the initiative to try to reach out to every polling station in the country, using one or other multimode communication tool. A systematic mapping of communication assets and resources was done with reference to every polling station. Mobile connectivity, landline phones, high frequency (HF) and very high frequency (VHF) communication equipment, and satellite phones were used in the process. Where none of these worked (as in high mountain areas or deep forests), dedicated "runners" were identified to track remote polling stations. Through this system almost all polling stations could be contacted by supervising officials, and different layers of tracking hierarchy were predetermined for each location. To drive home the seriousness to be attached to this initiative, the Commission ordered the conduct of two "dry runs" to validate the numbers, connectivity and efficacy. COMET created a huge psychological presence of the Commission and ensured an extended vigil even in the remotest of locations.

