SRIRAM'S IAS

GENERAL STUDIES

Constitution, Governance and Polity

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Union-State Relations and Federal System

On the basis of distribution of power between centre and states, Governments can be classified into three types

- Unitary
- Federation and
- Confederation

Unitary system

In a unitary government, the central government possesses preponderant authority and decision-making power. Provincial governments are the administrative arms of the central government. They do not have any constitutionally conferred powers. The powers enjoyed by them are 'devolved' to them by the unitary government at its will and these powers are subject to withdrawal- partly or wholly. In fact, the provinces can be abiolished altogether. Examples, Britain, France and China

Federations

Federation is a system of constitutional governance brought about by the voluntary agreement among states that join together into a new federal union in which power is divided between the Union Government at the centre(federal government) and states(provinces) . A written Constitution divides powers. Constitution is rigid and can be amended only when the centre and states accept the amendment. Thus, there is a dual government with their respective jurisdictions . In case of a conflict, there is an independent judiciary to resolve the differences. Examples, India, USA, Canada, Australia, Belgium and Switzerland. Each level of government has its own resources as conferred by the Constitution.

Federal system is adopted so that states and their diversity can flourish with autonomy and their security is assured by the central government.

Confederations

They are nations where the provinces have maximum autonomy so much so that they can become members of international organizations, have flag and may even secede.For instance, the former USSR and Yugoslavia that broke up in the 1990's.

`Coming together' and ` Holding together' Federations

When independent states `come together' voluntarily to form a larger nation where they retain their cultural identity and Constitutional powers of legislation and administration while having their security ensured by a central government, it is called `coming together' type of federation. For example, the USA. In this case, constituent units tend to enjoy more powers than the federal government.

When a large country decides to establish provincial governments with which it is willing to share Constitutional powers in a written manner so that the country can `hold together', it is called `holding together' federation. For example, India.In this case, states are not given co-equal powers on par with the federal government.

Motives of federating units

There is a range of expectations on the part of the federating units to come together.
The political motives are

- security from external and internal threats
- additional central assistance when required
- political stability while keeping a separate cultural and ethnic identity.

In the economic sphere, the federating state can expect

- access to a larger national market
- financial assistance from federal government
- transfer of resources from other states in case of underdeveloped states etc

The case of India

In India, `holding together ' federation formed differently from the American experience of coming together . `Holding together' federations as in India is a framework that is adopted for the sake of unity of the country and national integration. It is a response to a specific historic situation. Constituent Assembly prescribed federalist model so that the country can be `held together' in the face of the challenges in the form of centrifugal forces; rapid and balanced development; reorganization of states etc. Therefore, compared to `coming together' federation like the UAS, Indian federation does not confer high level autonomy on the states.

States did not bargain and create a federation as in the USA. There were only three states at the time of Independence and the others were created according to the Constitutional provisions.

Federal System in India

India is essentially a federation though in our case the provinces did not join together voluntarily. Federalism is a prescription for our multi-diverse country to pursue pluralist polity.

While the core of federalism is seen in the Indian polity, there are some features that are unfederal, which are seen to be necessary for national security, integration and development, particularly in the light of the experience of partition. They are

- States can be created and abolished without their consent. States are not indestructible

- Residuary powers are with the Union parliament
- There is no dual citizenship- of province(state) and the country unlike in the USA There is a unified system of audit which is under Union control
- Unified and hierarchical judiciary
- Elections are held for assemblies under the authority of the Election Commission that is appointed by the Union government
- The role of Governor is pro-Centre
- President's rule is a threat to the existence of democratically elected state governments.

However, all the basic features of federalism are found in the Indian Constitution . Since there are strong unitary features as well, it is called quasi-federation. It must be clarified that the fact that in Art.1 of the Constitution India is described as a `Union of States' only stresses the unity among the provinces and not have any unitary implications for our polity. Dr. Ambedkar explained that the expression " India is a union of states' in Art.1 is chosen to mean that we are a union at the time of Independence and that it is not a result of the voluntary coming together of the provinces.

No particular significance need be attached to the word 'Union', since it is used in the Preamble to the Constitution of the United States of America, which is a federation. During the Constituent Assembly discussions, B.R. Ambedkar mentioned the above examples and stated that 'the description of India as a Union of States, though its Constitution is federal, does no violence to usage'.

There is no model federal State. One can only determine whether a constitution is basically federal or unitary. The Indian Constitution is basically federal, but with strong unitary features. Therefore it is described as 'quasi-federal' _ 'unitary with subsidiary federal features', 'a federation with a strong centralizing tendency', etc.

The Constitution framers opted for a mix of strong Central control with adequate provincial autonomy . In their concern for the unity and integrity of the country in the face of partition of the country, a strong centre was preferred. Strong centre is found to be necessary to coordinate policy and action among the federal units. At the same time, there is enough scope for autonomy of States in the Indian Constitution

Union-State relations in India: Constitutional Framework

Legislative Sphere

The framework for division of legislative powers in the Indian Constitution is contained in Chapter I in Part XI. It comprises 11 articles- 245 to 255. It should be read with Seventh Schedule. Three fold distribution of the subjects of legislative power is adopted- Union List(List I); State List(List II); and Concurrent List(List III).

Union list

Union list consists of 99 items on which the parliament has exclusive power to legislate with including: defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs,

telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organisation of the Supreme Court, High Courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty, terminal taxes.

State list

The state list consists of 61 items and individual states have exclusive authority to legislate on items included in this list: Public order, police, administration of justice, prisons, local government, public health and sanitation, agriculture, animal husbandry, water supplies and irrigation, land rights, forests, fisheries, money lending, state public services and state Public Service Commission, land revenue, taxes on agricultural income, taxes on lands on buildings, estate duty, taxes on electricity, taxes on vehicles, taxes on luxuries.

Concurrent list

Concurrent list consists of 52 items. Uniformity is desirable but not essential on items in this list: Marriage and divorce, transfer of property other than agricultural land,education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press, stamp duties.

Subjects of common importance are in the Concurrent List, matters that can be legislated upon by both the union and state legislatures - socio economic planning, education, forests, protection of wild animals and birds; ports other than major ports; marriage and divorce; adoption; price control; criminal law; preventive detention; labour etc.

Matters that do not figure in any of the three Lists are the residuary items and are given to the Union Parliament. Which item is residuary is determined by the Supreme Court. (Art.248, entry 97 in the Union List), including items related to residuary matters in taxation. For example, service tax was in the residuary category till the 88th amendment act made it explicit .

Parliament has the exclusive jurisdiction over List I items. State legislatures have exclusive jurisdiction over List II items except under five circumstances when the Union parliament is empowered to legislate on them. Regarding the Concurrent List, the following are the relevant facts

- Union and State legislatures can legislate on these items.
- Rule of federal supremacy operates in this List- if there is a clash between the Union and State laws, the Union law prevails. However, in the following case, the State law is valid even if there is a clash: if the State law is reserved for the assent of the President by the Governor and such assent is already received. But at the same time, the Parliament can

legislate to overrule the State law subsequently.Thus, the Union power is seen in case of conflict or inconsistency when the rule of repugnancy, as contained in article 254, comes into play.

Art.245 says that parliament can legislate for the whole nation while the State Legislatures can legislate for the whole or part of the State.

Rationale for the Concurrent List

Concurrent List items fall in the common territory. Both Centre and states have a common interest in them. On these items , depending on the circumstances, Centre or the States or both can make the relevant law. Uniformity of law throughout the country is necessary in national interest and so the Parliament legislates. Being restricted to its own territory, State Legislature can not assure such uniformity. On the other hand, problems vary from state to state and may require diverse remedies suited to the peculiarities of the state. For example, education. In such situations , State laws are more relevant though the centre can give the broad policy framework. Therefore, there is a need for the Concurrent List to enable the best policy response under all circumstances.

There are three reasons for the Concurrent List

* To secure uniformity in the main principles of law
* To guide and encourage local efforts
* For flexibility in public policy

It can be explained with the help of education as a subject of legislation.
Education, which was originally distributed in its various aspects into all the three Lists, was subsequently transferred to the Concurrent List by means of 42nd Constitution amendment in 1976. It enables the Union Government to accept a larger responsibility to reinforce the national and integrative character of education, to maintain quality and standards (including those of the teaching profession at all levels) etc.

NCRWC report(2002) expresses the need and significance of the Concurrent List in the following words: "The framers of the Constitution recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union. Nonetheless, a broad uniformity of approach in legislative policy was essential to combine specific requirements of different States with the articulation of a common national policy objective. Conceived thus, harmonious operation of the Concurrent List could well be considered to be creative federalism at its best."

Government accepted Sarkaria Commission's recommendation that laws in respect of subjects in the Concurrent List should be made, as a matter of convention, only after active consultation with the State governments except in cases of extreme urgency. This is because laws enacted by the Union, particularly those relating to matters in the Concurrent List, are enforced through the machinery of the States and consultation is essential to secure uniformity.

Recent developments 2013

Right to Free and Compulsory Education Act was passed by Parliament in 2009. The implementation of this Act would require large capital as well as revenue outlays. The Act has a provision for sharing of costs between the centre and the states.

There is another challenge. Land Acquisition and Rehabilitation and Resettlement Bill has been introduced in Parliament. Land is a State List item while land acquisition is a concurrent list subject. States may also make laws on this topic as long as those laws do not contradict the central enactment. This leaves open the question of the level of detail to be included in the central law. A higher degree of detail ensures uniformity across the country and provides the same level of protection and rights to land owners and displaced persons. However, it reduces the flexibility for states to tailor the law for their local (and possibly very different) conditions. For example, the Bill lists 25 facilities that need to be provided in any area being developed for rehabilitation and resettlement. If people in some states prefer a higher level of an item being guaranteed and are willing to take a lower level of another item in return, such a compromise would not be possible under the current Bill. Such a state Bill, however, can be reserved for the President by the Governor under Art.200 and the President may assent to it.

Food is in the Concurrent List. The National Food Security Bill also raises these two issues. It requires states to implement a number of initiatives, and to provide for the funds for the purpose. It also prescribes a uniform system for implementation across states.

Singur 2013

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 following:

a. Land acquisition being in the concurrent list. the state law has to be in line with the central law. In the central law- Land Acquisition Act, 1894- there is no provision for return of the land.
b. In such a case of friction with central law, the Governor should have reserved the state law for the Presidential assent and if the assent is given, it would be valid, repugnance notwithstanding.
c. The stte government did not do it and so the Act is invalid.

The State government then went to the apex court where the case is pending.

Parliament can make laws on State List items under certain special circumstances.

Exceptions

Though states have exclusive powers to legislate with regards to items on the states list, articles 249, 250, 252, and 253 state situations in which the federal government can legislate on these

items.Under the following five circumstances, Parliament can legislate on an item in the State List

- when national emergency is in force. The law made by the Parliament during emergency can last a maximum of 6 months after the emergency has been ended. It needs to be emphasized that when there is national emergency(Art.352), State Legislative Assembly continues to exist but the Constitution gives power to parliament as well to legislate on an item in the State List unlike when the President's rule is proclaimed when the State Legislative Assembly is either suspended(suspended animation) or dissolved and the Parliament can make laws for the State concerned
- President's rule when the Assembly does not operate as mentioned above and so the Parliament makes laws for the state. Such laws may be repealed, retained or amended by the Assembly after a new democratic government resumes in the state.
- Art.249 says that Rajya Sabha can empower the Parliament to legislate on an item in the State List in national interest by passing the relevant resolution by two thirds majority of the members present and voting. In other words, Rajya Sabha authorizes Parliament to legislate on a subject in the State List. The resolution has a life of one year but can be extended by year at a time. The law made by the parliament can be in force for a maximum of 6 months after the resolution has expired.Such a law can be made for the whole or part of the country. The need for empowering the Parliament in such a manner as shown above is because routing it through the Rajya Sabha makes it federal
- When two or more States request the parliament to do so by passing a resolution to that effect. For example, Wild Life (Protection) Act 1972; Water (Prevention and Control of Pollution) Act; Urban Land (Ceiling and Regulation) Act; Transplantation of Human Organs Act 1994 and its amendment in 2011; Clinical Establishments (Registration and Regulation) Act, 2010.Other states may later resolve to come under such a law. (Art.252)
- In the implementation of international treaties and agreements, Parliament can legislate on a State List item. For example, WTO. There is no Constitutional validity to the States challenging the Central policies made under WTO agreements.(Art.253). Lokpal and Lokayuktas Bill 2011 has provisions relating to state government officials. Two justifications were made for the inclusion of these provisions: first that the law was on criminal justice which is a concurrent list item, and second that India's obligations under the UN Convention Against Corruption meant that Parliament had jurisdiction to enact such a law. The latter falls under Art.253.

Residuary Power and Taxation

All residuary powers are with the Union Parliament. Service taxes are still imposed and collected by the Union government by virtue of this power even though the 88th Amendment Act was passed in 2002 because it has not been notified. States demand that the power be

transferred to the Concurrent List. However, Sarkaria Commission on Centre-State relations, which submitted its report in 1987, wanted the residuary powers in taxation to be retained with the centre and not transferred to the States, even though it endorsed the Supreme Court's interpretation that these powers cannot be so expansively interpreted as to dilute the power of the State legislatures.

The Sarkaria Commission reasoned that the Constitution-makers did not include any entry relating to taxation in the Concurrent List so as to avoid Union-State frictions, double taxation and frustrating litigation.The Commission said that the power to tax might be used not only to raise resources but also to regulate economic activity and giving the power to states may prejudice national interest.As mentioned above, states demand that the residuary powers, including those of taxation, be vested in the States. The States argue that they need taxation powers in order to mobilise resources to meet their developmental needs.

Centre's control over state laws

Centre's control over State legislation is covered by the following

- Governor can reserve a Bill for President's consent over which the President has absolute veto (Art 200 and 201)
- President's prior permission is required for the introduction of state Bill restricting freedom of trade and commerce
- During financial emergency(Art.360), President may direct the State government to send for his consideration Money Bills and related Bills
- During Emergency (Art.352), Parliament can legislate on any State subject
- During National Emergency, the union state financial relations as they are contained in Art.268-279 can be suspended in favour of the Centre.
- The Concurrent List items are subject to the doctrine of federal supremacy. That is, in case of repugnancy between the central and state laws, federal law prevails.

Sports, betting and Centre's residuary powers

The IPL spot fixing scam also brought to light the question of regulating sports and dishonest practices in sports. One view is that there can be no national legislation on this because sports under entry 33 of list two is a state subject. Betting and gambling under entry 35 of list two is also a state subject. But if the IPL scam is neither betting nor gambling and is an unfair practice that changes the outcome of the game, centre can legislate in its residuary capacity.

The AG is of the opinion match-fixing, spot-fixing do not come within the purview of the term betting and gambling as defined in the state list.

Fiscal Federal Relations

Art.268 to 293 in Part XII deal with the financial relations. The Constitution contains fixed as well as dynamic parts for ensuring adequate finances to the States and the Union. The static part relates to some sources of finance being entirely given to the states- taxes and duties specified as such in the Constitution like sales tax.

The dynamic portion consists of making revenues from central taxes and duties divisible between centre and the states- respective shares of the divisible pool being determined every five years by a Finance Commission(Art.282)

All the taxes and duties can be grouped under the following broad categories:

- Taxes and duties imposed, collected and enjoyed by the states. For example, sales tax
- Duties levied by the Union but collected and appropriated by the States(Art.268) Stamp duties on bills of exchange, cheques, promissory notes etc
- Taxes levied and collected by the Union but assigned to the States(Art.269)- central sales tax on goods produced in one state where they are bought so as to sell them in another state. The latter state gains in the form of sales tax while the former (producing state) gets the CST. However, CST is being phased out as it has to be made a part of the GST which is due.
- Taxes levied and collected by the Union but shared with the states on the recommendations of the Finance Commission(Art.270)- all central taxes and duties except cess and surcharges(Art.271)

Following are the important Articles in the fiscal federal relations:

268. Taxes and duties levied by the Union but collected and appropriated by the States. Ex:medicinal preparation with alcohol in them
269. Taxes levied and collected by the Union but assigned to the States- CST as mentioned above

270. Taxes levied and collected by the Union and distributed between the Union and the States. Income tax, corporation tax etc (see ahead)
271. Surcharge on certain duties and taxes for purposes of the Union. Surcharges are not shareable

Art.274: Prior permission of President for the introduction of certain Bills. Art.274
No Bill or amendment which imposes or varies any tax or duty in which States are interested, or

varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or affects the principles on which moneys are or may be distributable to States, shall be introduced or moved in either House of Parliament except on the recommendation of the President.This is to protect the interests of the States.

275. Grants from the Union to certain States. Parliament may provide grants-in-aid of the revenues of some States if they are in need of assistance, and different sums may be fixed for different States. Such sums are charged on the CFI.

276. Taxes on professions, trades, callings and employments. It is a tax that the States impose, collect and appropriate but the annual limit is set by the Parliament. Presently the limit is Rs.2,500 per annum. There is no **profession tax** in **Union Territories**.The power of the Legislature of a State to make laws with respect to taxes on professions, trades, callings and employments shall not be seen as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

279. Calculation of "net proceds", etc. (from the gross collections of taxes, when the amount spent on collection is deducted, net amount is arrived at: gross minus collection expenditure= net).

280. Finance Commission.

Finance Commission: Constitutional provisions

Article 280

The President sets up every five years, or at such earlier time as the President considers necessary, a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President. Duties of the FC involve making recommendations to the President as to

- the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation between the States of the respective shares of such proceeds
- the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
- the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State
- the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State

- any other matter referred to the Commission by the President in the interests of sound finance.

The recommendations are presented to the President in the FC report and the President causes the same to be tabled in the Parliament. They are not binding but are conventionally accepted by the Government. They fall into three categories

- Implemented by an Order of the President- relating to Art.270(income tax etc that is divisible) and Art.275(grants in aid)
- Those to be implemented by executive orders(relief grants etc)
- Those to be examined further.

Art.280 says that the Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected. Parliament made the Finance Commission (Miscellaneous Provisions) Act, 1951 in pursuit of Art.280.The Finance Commission is headed by one who has wide experience in public affairs. There are four other members including a High Court judge- one who is qualified to be a judge or who is or retired as a judge. Other three are distinguished with special knowledge in economics and two members with experience and special knowledge in government finances and accounts respectively.

Art. 270

Taxes levied and collected by the Union and distributed between the Union and the States.

There are many taxes and duties that are levied and collected by the Union and are shared with the states. In fact, there are no taxes and duties that go only to the centre except the cesses and surcharge on taxes. Surcharges are temporay and additional taxes on taxes. The difference between cess and surcharge is that the purpose for the levy of the former is made explicit while the latter is general purpose additional levy. Surcharges and cesses are not shareable as they are temporary(Art.271). Originally, income tax other than agricultural income tax and Union Excise duties were in the divisible pool . But since the Tenth Finance Commission recommendations (80th Constitution Amendment Act 2000) came into force , all taxes and duties that were exclusive to the Union Government are also made divisible . For example, customs duties, corporate tax , service tax etc. Only surcharges go to the Union exclusively.

Tenth Finance Commission(TFC) and Alternative Scheme of Devolution(ASD)

The Constitution (Eightieth Amendment) Act, 2000, which seeks to provide an alternative scheme for sharing taxes between the Union and the States, is based on the recommendations of the Tenth Finance Commission.

Constitution was amended to give it legal effect. Under the provisions of the Act, amendments have been made in Article. 270 .ASD essentially means making all Union taxes and duties shareable with States unlike earlier when the Union had some taxes and duties exclusively to it.

The advantages of the system are

- States will be able to share the buoyancy of Central taxes
- The Central Government can pursue tax reforms and expect states to cooperate
- Economic reforms in general will have wider consensus
- Creates conditions for Cooperative federalism in other spheres

Background to ASD

The Constitution of India specified the taxes whose revenues were to be shared between the Union and the state governments, but did not mention the formula for such division, leaving it to the Finance Commission. Over the years, it was observed that the Union government concentrated in improving the elasticity of non-sharable taxes such as corporate income tax and Union Customs duty, and similar effort was not visible in shareable taxes like personal income tax and Union excise duty. Regional parties became a force to reckon with since 1967 and particularly since the eighties. They demanded that more fiscal resources be made available to them . With Coalition government becoming the norm and the regional parties being influential players, center yielded.

Need for rapid tax reforms to make the country a common market and bring in foreign investment is another reason. Economic reforms and political developments thus made it necessary to move towards ASD.

Short Notes on Art.275:Grants from the Union to certain States.

After the devolution of the taxes and duties from the divisible pool , if some States still face revenue deficits, the Finance Commission recommends `gap-filling grants' to such states. They are meant to even out the `horizontal imbalances` among the states to an extent. They are the grants in aid of the revenues of the States. Not all states get them . Nor is the amount same to all states.Generally, gap-filling grants are interpreted to mean only revenue grants and not for plan purposes.

Dr.Kelkar says: Art. 275 which enjoins the Commission to give State specific grants to ameliorate particular problems faced by individual States. It is through these grants that the Finance Commission meets the requirements of what we call 'special category' States, which are essentially micro States which have geographically difficult terrain such as mountainous regions and which are relatively more sparsely populated. The share of these Art 275 grants in the total Finance Commission's transfers has been between 15-18 per cent.

Central fiscal transfers to the states

They are of the following types:

- The Central tax devolution through the FC which constitutes about one-third of the total tax revenues of the states.
- A second channel of resource flow from the Centre to the states is central assistance for state plans. State plans are financed partially by states' own resources and the balance by central plan assistance. Plan assistance is by way of grants and loans. In the case of fiscally weak states (called Special Category States) the grant component is 90 percent and loan is 10%. These states are the hill, border and weak-infrastructure states and can not repay the loan. For other states, it is 70% loan and 30% grant. The distribution of Plan assistance to the states is governed by the "Gadgil formula", so called after the Deputy Chairman of the Planning Commission which prepared the Fourth Five Year Plan (1969-74). National development council (NDC) approved the formula in 1991 and it is called the Gadgil-Mukherjee formula since then as Shri.Pranab Mukherjee was the Deputy Chairman of the PC then. :

  1. Eleven Special Category states - Arunachal Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand are given preference. Their needs should first be met out of the total pool of Central assistance.

  2. The remaining balance of the Central assistance should be distributed among the remaining States on the basis of the following criteria: (i) 60 per cent on the basis of population; (ii) 25% on per capita income (iii) 7.5% for performance in Tax Effort, Fiscal Management and Progress in respect of National objectives and (iv)7.5% on the basis of special problems like: all of them have the common characteristics of hilly and difficult terrain and very low level of infrastructural development. Most of them have significant tribal population. Almost all of them are border States with considerable international borders.
- Central ministries provide finances for some central schemes in the areas of irrigation, power, health etc
- Miscellaneous transfers like the transfers from the National Investment Fund(NIF)

Finance Commission and Fiscal federalism

FC has a crucial role in the following areas

- Cooperative financial relations between centre and states
- Level the inequality among the states- bridge horizontal imbalances by giving more to the backward states(read ahead) as a part of the mandate to create equity

- Bridge the vertical imbalances between the centre and the states by recommending adequate devolution to the states
- Promote state fiscal autonomy and efficiency
- Various reforms, on being refered by the President of India, for infrastructure and good governance.

The above role can be comprehended by looking into the recommendations of the 13th FC(2010-15) and the basis of the recommendations.

Federalism and Fiscal and Economic Imbalances

Vertical and horizontal imbalances are common features of most federations and India is no exception to this. The Constitution assigned taxes with a nation-wide base to the Union to make the country one common economic space unhindered by internal barriers to the extent possible. States being closer to people and more sensitive to the local needs, have been assigned functional responsibilities involving expenditure disproportionate to their assigned sources of revenue resulting in vertical imbalances. Horizontal imbalances across States are on account of factors, which include historical backgrounds, differential endowment of resources, and capacity to raise resources. Unlike in most other federations, differences in the developmental levels in Indian States are very sharp. In an explicit recognition of vertical and horizontal imbalances, the Indian Constitution embodies the following enabling and mandatory provisions to address them through the transfer of resources from the Centre to the States.

1. Levy of duties by the Centre but collected and retained by the States (Article 268)
2. Taxes and duties levied and collected by the Centre but assigned in whole to the States (Article 269).
3. Sharing of the proceeds of all Union taxes between the Centre and the States under Article

270. (Effective from April 1, 1996, following the eightieth amendment to the Constitution replacing the earlier provisions relating to mandatory sharing of income tax under Article 270 and permissive sharing of

Union excise duties under Article 272).

4. Statutory grants-in-aid of the revenues of States (Article 275)
5. Grants for any public purpose (Article 282).
6. Loans for any public purpose (Article 293).

Vertical imbalances are taken care of by the FC with tax devolution. It was further consolidated with the ASD since 2000 when all central taxes and duties became shareable.

Horizontal imbalances are rectified by tax devolution and the criteria adopted for the distribution among the states and UTs(each UT counts for a State for the FC and each UT gets its own funds); and the grants under Art.275.

In addition to provisions enabling transfer of resources from the Centre to the States, a distinguishing feature of the Indian Constitution is that it provides for an institutional mechanism to facilitate such transfers. The institution assigned with such a task under Article 280 of the Constitution is the Finance Commission. There is Planning Commission working on the guidelines of the NDC. Inter State Council under Art.263 can advise on such matters.

TFC

The five member team, headed by economist Dr.Vijay L Kelkar submitted report of the Thirteenth Finance Commission to the Government and was tabled in the Parliament during the Budget session 2010. It focused on three key objectives of inclusive and 'green' growth, macro economic stability and fiscal consolidation for both the Centre and the States particularly in view of the global recession since 2009 when the economy had to undertake fiscal expansion in response to domestic economic slowdown.

On sharing of Union taxes, the Commission recommended the share of States in the net proceeds of Union Taxes be fixed at 32 per cent, against the 12th FC prescribed transfer of 30.5 per cent, an increase of 1.5 per cent. It has also said that the total transfers to the States , inclusive of grants, be subjected to an indicative ceiling of 39.5 per cent of the gross tax revenues of the Centre.

The Commission has recommended a grant of Rs 51,800 crore for eight States that have a revenue deficit chronically(Art.275).

With elementary education at State level remaining a problem area, the Commission has accorded a grant, based on the Sarva Shiksha Abhiyan norms, of Rs 24,068 crore.

In a bid to de-carbonize development in line with growing interests in promoting green growth, the Commission favoured a grant of Rs 15,000 crore, each Rs 5000 crore for forest grant, promotion of renewable energy and for water sector. As there remains a gap between outlay and outcome due to deficiency in delivery mechanism or designing of proper schemes to help the needy, the Commission recommended six grants for improving outcomes, amounting to Rs 14,446 crore over the award period. An incentive grant for reduction in infant mortality of Rs 5000 crore is to be released to States starting 2012-13 depending on the reduction in infant mortality rate (IMR) achieved by the States with reference to the baseline level of 2009-10 figures. Grant of Rs 5000 crore for improved delivery of justice has been proposed for Lok Adalats and Legal Aid, Alternate Dispute Resolution Centre, Heritage Court Buildings, State Judicial Academy and training of judicial officers and public prosecutors. With legal cost becoming dearer and lakhs of poor people denied access to justice, this move would help address the aberrations and anomalies in the system. Other components under this include, Rs 2989.10 crore for the Unique Identification (UID) programme based on the number of people covered under the UDI database, two grants of Rs 616 crore each for District Innovation Funds and improving statistical systems at district and State levels and a grant of Rs 225 crore for setting up database of employees and pensioners. There are also grants for the requirement of roads in a State amounting to Rs 19930 crore for four years of the award period beginning 2011-12. Finally, under grants, the Commission has provided Rs 27,945 crore for various State-specific needs of the States.

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.

On the Goods and Services Tax (GST), the Commission has put in place a model GST structure that includes features such as single rate of 12 per cent of goods and service tax, zero rating of exports, inclusion of various indirect taxes at the Central and State level in GST ambit, major rationalization of the exemption structure. It has recommended a grant of Rs 50,000 crore for implementation as per the recommended model.

On fiscal consolidation, the Commission has drawn a roadmap for fiscal deficit reduction and spelt out a combined debt target of 68 per cent of GDP, against 75 per cent in 2009-10. It has stressed the need for achieving and maintaining revenue account in balance and containing the fiscal deficit to 3 per cent of Gross State Domestic Product (GSDP) for the respective States by 2014-15.

An important recommendation that might satisfy the interests of States relates to its proposal allocating revenues arising from the 'fiscal commons' such as 'profit petroleum, profit gas and revenue shares from spectrum'. Since these are national resources and must perforce be the collective disposal of the Central and all States, there is a case to view such non-tax revenues that were predominantly in the domain of the Centre "as being sharable between the Centre and the States collectively". In order to execute this proposal it needs to be included as a part of the divisible pool which entails Constitutional amendment.

At a time when coalition governance has become a rule rather than an exception in national politics, the whole recommendations of the13th Finance Commission, most of which have been accepted by the Government, would go a long way in reducing the federal trust deficit and bring about good governance and national welfare.

Any FC adopts certain criteria with respective weights for giving to the states and the UTs their individual share from the total quantum that they are accorded from the net proceeds. For example, the TFC under Vijay Kelkar recommended for the states and UTs 32% of the total. The issue is which state gets how much. That is decided by the criteria and weights. Fiscal capacity distance is the criterion that replaces the earlier criterion of per capita income- the state that has the least per capita income is given the maximum share. Therefore, it is called the `inverse of per capita`- the lower the per capita the more the share. Fiscal discipline measures the improvement in the financial performance of each State during during a certain period over a selected base year in terms of the ratio of its own revenue receipts to total revenue expenditure- essentially how effective is its tax effort; how much is its borrowing and how wasteful or otherwise its expenditures.

Criteria and Weights adopted by the TFC

- Population in 1971- 25.0%
- Area -10.0%
- Fiscal Capacity Distance -47.5%
- Fiscal Discipline- 17.5%

FC and Performing states

FC has so far taken into consideration regional equality and the need to bridge it , as one of the objectives of the recommendations. The criteria of per capita income and Grants in aid(Art.275) are used to assist the economically backward states. Developed states have made the following three arguments against it

- It punishes performance and laggards are helped at their expense
- The moral hazard is that it incentivizes backwardness
- Such FC recommendations have not helped and inequalities and imbalances persist and have become worse.

The answer of the FC is: Indian federation can be stable and be sustained only if all regions and states enjoy an element of regional balance for which FC has an obligation. Secondly, if regional imbalances persist, it is because of other structural factors like not attracting investment etc. It must also be recognized that the leading states develop when the savings of the laggards are used for the trade and industrial development of the leaders. Also, cheap labour from all over the country fuels development of the so called performing states.

Finally, the criterion of fiscal discipline encourages better performance and has no bias.

FC and Planning Commission

Green Federalism

The Constitution of India has generally remained silent on the environmental issues in Indian federal system. In the original Seventh Schedule of the Constitution, all the natural resources - land, water, forests and minerals - were assigned to the States, while the central government was given the responsibilities to regulate the development of mines and mineral resources.

Constitution made separate arrangements for resolving inter-State disputes on sharing of river water among the States. The 42nd Constitution (Amendment) Act 1976 amended the Seventh Schedule to include 'Forests' and 'protection of wild animals and birds' in the Concurrent List, thereby enabling a formal role of the central government on the subject.

The Ministry of Environment and Forests came into existence in 1980 and starting with the Forest Conservation Act, 1980, several measures have since been initiated by the Government to protect and manage the environment. These include the Environmental (Protection) Act, 1986; Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control) Act, 1974; as well as certain rules viz. Hazardous Wastes (Management and Handling) Amendment Rules, 2003 and Ozone Depleting Substances (Regulation and Control) Rules, 2000. These powers were exercised by the Parliament under Art.253.

It is felt that the Central government should have more definite and coordinating role on environmental issues. The Commission on Centre-State Relations headed by Punchi has recommended that the Constitution needs to be amended again to provide a specific Entry in List 1 - Union List of the Seventh Schedule empowering the Union on matters concerning 'Environment, Ecology and Climate Change'.

Apart from the jurisdictional issues there are larger issues of governance, research, resources and capacity building to deal with the complex issues of environment management, which cannot be handled by just one layer of government, but requires sustained efforts of all the three layers of governance - national, state and local - and involvement of all relevant stakeholders in the process. 'Green Federalism' refers to the holistic management of all these issues of environmental matters. Federal countries around the world are facing new challenges and opportunities to deal with the issues of environment and therefore sharing of knowledge and experiences among the federal countries shall be mutually useful and beneficial.

14th FC

Union Government in January 2013 constituted the 14th Finance Commission under former Reserve Bank of India (RBI) governor Yaga Venugopal Reddy. The commission under YV 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 finance Commission.The Commission would have three full-time members-

- Sushma Nath
- M. Govind Rao
- Sudipto Mundle

It has Prof.Abhijit Sen , the Member of Planning Commission as its part-time member. Also, 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.

Terms of reference of the 14th Finance Commission-The FFC is asked o 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.

Fiscal Federalism

The fiscal relations between the Centre and the States have been defined under the Constitutional provisions of distribution of revenues between the Union and the States.

Under the scheme of distribution of taxing powers, the major sources of revenue assigned to the Union are: taxes on income other than agricultural income; customs duties including export duties; excise duties on goods manufactured in India except alcohol and liquors for human consumption; taxes on capital value of the assets, exclusive of agriculture land, of individuals and companies; taxes on the capital of companies; estate duty and succession duty in respect of property other than agricultural land; etc.

The major sources of revenue allocated to the States, on the other hand, are: land revenue; taxes on agricultural income; succession duty in respect of agricultural land; estate duty in respect of agriculture land; taxes on land and buildings; taxes on mineral rights; excise duties on alcoholic liquors for human consumption; sales tax; professional taxes; taxes on the consumption of electricity; taxes on advertisements; etc.

While the resources of the States are limited, they have larger responsibilities for social, educational and economic development of the people. Further there are wide differences in the level of development of the States. In order to address the issues of this vertical and horizontal imbalance in the Centre-State and inter-State relations, the Constitution of India has provided for inter-governmental transfers through the mechanism of Finance Commission which is constituted once in five years to recommend transfers of central revenue to the States for a five yearly fiscal cycle. Thirteen such Finance Commissions have been set up so far.

Further such transfers also take place through the Planning Commission. There are three main channels of Central transfers to States; the finance commission transfers, plan transfers and assistance for central sector and centrally sponsored schemes. Today such transfers constitute about 44 per cent of state's total revenues, 42 per cent of the state's current expenditure; and almost 36 per cent of the revenues collected by the central government.

The figures show that the transfers have grown at a faster rate than the revenues collected by both the centre and the States. Still the resources available to the States have not been found adequate for discharging the responsibilities of the State governments.

Centre and states are having friction in the financial relations based on the following issues:

a. Gst
b. FDI- MBR
c. Royalties for minerals
d. Centrally sponsored schemes

Cooperative Federalism

Although the Constitution of India has nowhere used the term 'federal', it has provided for a structure of governance which is essentially federal in nature. First of all, Constitution has provided separate governments at the Union and the States with separate legislative, executive and judicial wings of governance. Secondly, Constitution has clearly demarcated the jurisdictions, powers and functions of the Union and the State Governments. Third, Constitution has spelt out in detail the legislative, administrative and financial relations between the Union and the States.

Within this basic framework of federalism, the Constitution has given overriding powers to the Central government. States must exercise their executive power in compliance with the laws made by the Central government and must not impede on the executive power of the Union within the States. Governors are appointed by the Central government to oversee the States. The Centre can even take over the executive of the States on the issues of national security or breakdown of constitutional machinery of the State.

Considering the overriding powers given to the Central government, Indian federation has often been described as 'quasi-federation', 'semi-federation', 'pragmatic federation'or a 'federation with strong unitary features'.

Indian federation should be seen in the context of its democratic system of governance at the national, state and local levels and the pluralities of its culture in terms of ethnic, linguistic, religious and other diversities which cut through the States. India is the largest democratic country as also the largest federal and the largest pluralist country of the world. While democracy provides freedom to everybody, federation ensures that governance is distributed spatially and a strong central government enables that the 'unity amidst diversity' is maintained and the country mobilizes all its resources to maintain its harmony and integrity and marches ahead to progress.

A strong Centre in India is therefore necessary for strong States and vice versa. Since the seventies when different political parties are in power in the centre and the states and more recently when national parties were eroded and coalition governments became the norm in the Centre, there are signs of stresses and tensions in intergovernmental relations between the Centre and the States.

The federal challenges in the country today requiring cooperation include national security(NCTC etc), food security, inflation management, education, land acquisition and so on.

Article 263 of the Constitution has provided for the setting up of an Inter-State Council for investigation, discussion and recommendation for better coordination of relation between the Centre and the States. The Zonal Councils set up under the State Reorganization Act 1956 provide another institutional mechanism for centre- state and inter-state cooperation to resolve the differences and strengthen the framework of cooperation. The National Development Council and the National Integration Council are the two other important forums that provide opportunities for discussion to resolve differences of opinion. Central councils have been set up by various ministries to strengthen cooperation. Besides Chief Ministers, Finance and other

Ministers have their annual conferences in addition to the regular meetings and discussions of the officials of the Centre and the States to share mutual concerns on various issues.

One of the challenges of Indian federation would be how best these mechanisms of cooperative federalism can be strengthened further to promote better coordination and cooperation between the Centre and the States.

Federal Flashpoints

NCTC

National Counter Terrorism Center(NCTC) India is federal anti-terror organisation which gained urgency after the26/11 attacks as it was strongly felt that India lacked a federal agency with real time intelligence inputs of actionable value specifically with respect to terrorism. Much blame had been put on the states which failed to act on intelligence inputs provided prior to the Mumbai attacks.

The NCTC's function will include drawing up of plans and coordinating all actions and integrating all intelligence pertaining to counter-terrorism. It will coordinate with relevant investigation and intelligence agencies to make sure that the perpetrators of terror are brought to justice, besides maintaining a comprehensive database of terrorists, their associates and supporters.

The agency derives its powers from the Unlawful Activities Prevention Act, 1967. It 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 unfederal 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 governments. In Article 355, it is the responsibility of the Central Government to protect every State against external aggression and internal threat.

Another objection of the Chief Ministers pertains to the proposed NCTC being part of the Intelligence Bureau (IB), which is controlled by the Home Ministry. Some of the Chief Ministers have suggested giving an independent status to it.Some suggested that it be accountable directly to the Parliament if such a procedure is feasible. Chief Ministers' Conference on internal security held in June 2013 remedied it and said that the NCTC will directly report to the Home Minister.

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.

Some CMs say NCTC shouldn't be given wide powers to search, seize and arrest anyone from the States as such powers are not given to IB anywhere in the world.

RPF Act Amendments

The proposed amendment in 2012 is meant to make the Railway Protection Force (RPF) more effective, since the central force deployed on moving trains and railways premises has to take up cases in various states.The RPF has to take the help of local police in each state when offences take place. To ensure that the force is more effective, the railway ministry had proposed that it be given powers to register cases against offenders and move against them. But this proposal ran into trouble with some states.

However, it has become a bone of contention in the Indian federal system. Some CMs have criticized it as RPF is unwarranted, violation of the constitutional spirit and blow to federal structure of India. It also usurps power of the state legislature.

"Public order" and "police" are state subjects and proposing an amendment on these subjects under entry 22, 30 and 93 of Union List with entry 2 of the concurrent list in schedule VII of the Constitution of India is, not only a step to infringe upon powers of the state but also a serious blow to the federal structure of the Country- some critics hold.

BSF Act Amendments

BSF (Amendment) Bill 2012 wants the BSF that is deployed in the hinterland like Jharkhand and Chattisgarh to have some powers additionally. As per the present legal position, BSF can be deployed only along or adjoining the borders of India. However in recent times, BSF has been deployed in the hinterland, especially in Chhattisgarh and Odisha. The said deployments have been questioned.Government has proposed to amend the relevant provisions of the Act to permit deployment of this force in other parts of the territory (hinterland) as well.The major objections raised by the CMs are related to conferring of powers of arrest, search and seizure to BSF, when deployed in hinterland as states believe that such powers may be in conflict with functions of the local police. The states have also argued that such powers given to the BSF would weaken the federal structure as it would violate the 'rights' of states.

Chidambaram had explained that such powers are already available in Section 139 of the BSF Act, 1968, when deployed in the local limits of such area adjoining the border.

Minerals

In the federal structure of India, the State Governments are the owners of minerals located within their respective boundaries. The Central Government is the owner of the minerals underlying the ocean within the territorial waters or the Exclusive Economic Zone of India.

In this context, the entry 23 of List II (State, list) to the Constitution of India states, 'Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.'

The entry at serial No. 54 of List I (Central list) to the Constitution of India states, 'Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Communalism and federalism: Punchi Commission

Maintenance of communal harmony in the country is one of the key responsibilities of both the Union and the State Governments. It is the duty of the States under the Constitution, to maintain public order (List II, entry 1, Schedule 7) and thus prevent communalism. However, if such violence gets prolonged, and threatens to cause internal disturbances in a large area of the State, or which has potential for escalation in other parts of the country, then it becomes the duty of the Union under Article 355 to protect all its citizens and the property and bring the situation back to normal as quickly as possible. As in the case of communal incidents, violence is also quite common in caste, sectarian, ethnic or other social conflicts. Such incidents have the potential of assuming evil proportions. As such, the Government has the responsibility to nip in the bud the problems threatening communal, caste, sectarian, ethnic and social harmony.

The Centre's role should generally include issue of timely advisories and intelligence inputs, monitoring of the situation and for providing para-military forces support at the specific request of the States for enabling the State Governments to bring the situation under control at the earliest. Centre's support to the State Governments would be of paramount importance in the relief and rehabilitation efforts.

Centre's responsibility to act under Article 355 was well recognized. Enlarging the provisions of Article 256 so that the Union Government may give appropriate and time-bound direction to the States. Thus,while maintenance of Law and Order is in the domain of States, maintenance of communal harmony is a joint responsibility of the Centre and States.

Punchi Commission suggests that National Integration Council (NIC) could be utilized as a forum for preparing a comprehensive strategy involving all political parties for fighting

communal conflicts in the society. The Liberhan Commission recommended that NIC be conferred with statutory powers in this regard for it to play proactive and effective role.

Naxalism and centre state relations

The most important Internal Security problem which needs extensive Centre- State co-operation and coordintion to ensure effective handling is Naxal i s s u e . The process of effective implementation of land reforms and extending Panchayati Raj to the Scheduled Areas (PESA) has already been initiated by State Governments. Similarly, under the ForestRights Act, 2006, the vesting of forest rights of the scheduled tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded a framework has been provided for recording the forest rights so vested. Special schemes for development of states and districts affected by left wing extremism are also in place.A positive aspect is that most of these schemes are being implemented at the Panchayat level.

Since the Naxal problem has spread over a large geographical area in the country, covering several States, a collective approach and coordinated action will be a pre-requisite as response mechanism. In respect of improving the Centre-State and InterState coordination in containing Naxal violence, as such, several measures have been adopted by the Centre in co-operation with the affected States. Inter-State coordination is being ensured through joint action by neighbouring States. The initiatives includeregular security reviews, more frequent and intensified joint anti-Naxal operations, intelligence sharing on Naxal activities and activities of other criminals, hot pursuit of extremists even across the border of the State, general information sharing, police modernization and fortification of Police Stations etc. The deployment of Central Para Military Forces has also been increased substantially in the affected areas. Creation of joint local resistance groups against Naxalite movement with adequate security cover.

Centre pays salaries of the SPOs.

Unmanned aerial vehicles(UAVs) are being used.

Unified commands for streamlining anti-Naxal operations in four Maoist-affected states of the country are in place.The commands, based in capitals of the four states of Chhattisgarh, Jharkhand, Orrisa and West Bengal, are headed by their respective chief secretaries. The other members are state DGP,CRPF, Intelligence Bureau (IB) along with a retired major general rank officer of the Army.

Naxal issues are being discussed in the Zonal Council meetings.

National Investigating Agency,(NIA) may also proble naxal acts of violence, if necessary

Federal polity and internal security

Under the Constitutional scheme, 'National Security' is not a subject specifically listed in any of the three Lists i.e the Union, the State or the Concurrent List.The subject of Security under the Article 352 and under the Emergency Provisions in Part XVIII of the Constitution has been assigned to the Union Government. However, 'Security'is a subject in which the States and the Union have a common interest and are expected to act in a co-ordinated manner.

Under the co-operative relationship, the duties and obligations of the Union and the States are covered primarily in Article 256 (Union Government's directions to the states), 355, 356 and 365 and also under relevant provisions. Entries pertaining to Defence of India and control and deployment of the armed forces of the Union are covered in List-I of the Seventh Schedule.

Public order and Police feature as Entries 1 and 2 in the List II.

Criminal law, Criminal procedure and Administration of Justice are covered in List III as Entries 1, 2 and 11A.

Problems of internal security have conspicuous external dimensions. Several States affected by internal disturbances are at the nation's frontiers, and external support and sanctuaries in neighbouring countries have exacerbated the internal challenge. Also, increasingly, there is a pernicious nexus between domestic miscreants and international criminal networks.

National security has internal security as a dimension .Therefore, the close co-operation between the Centre and the States has been provided under the Constitution as it is a vital subject with multiple challenges.

Executive/Administrative relations

Articles 256 - 263 on Administrative Relations Articles 256 - 261 - General 256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State 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 prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(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 national or military importance.

(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 costs incurred for the above functions will be borne by the GOI.

Article 258(1). Notwithstanding anything in this constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

Article 262 - on Disputes relating to waters(given ahead)

Article 263 - on Co-ordination between States- Inter State Council

In a federal system , executive powers of the respective governments and their distribution and implementation is complex and requires elaborate detail

The provisions mentioned above are meant to prevent conflicts – largely taken from Government of India Act of 1935.

According to Article 256, the executive power of every State is to be exercised in such a way as to ensure compliance with the laws made by Parliament. Further, the Union Executive is empowered to give such directions to a State as may appear to the Government of India be necessary for the purpose.The idea of the Union giving directions to the States is foreign to most federations. It is looked upon with suspicion and distrust in the United States. In Australia too, the position is more or less the same.

Explaining the object of Article 256, Ambedkar said that it envisaged two propositions:

"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.

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."

Ambedkar also said that if the Centre did not have such power, it would become impossible to secure the proper execution of the laws which Parliament was obliged to enact. For example: laws such as the untouchability abolition law, factory legislation, and child marriage abolition law.

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.

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

(2) The protection of railways within the States.

The Constitution also empowers the Union Executive, with the consent of the Government of a State, to entrust to that Government or its officers functions which fall within the scope of the Union's executive functions.The Union Government will pay to the State the cost involved in the discharge of functions by the States or its officers.

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:

(1) To enquire into and advise upon disputes which may have arisen between States;

(2) To investigate and discuss subjects in which the States and the Union have a common interest,

(3) To make recommendations upon these subjects and, in particular, recommendations for the better co-ordination of policy and action with respect to these subjects.

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 provision an I Inter-State Council was established by Parliament in 1990.(Read ahead)

Apart from the above, Centre can give directions to states on the following matters too:

- Union can direct the State Governments to ensure execution of schemes essential for the welfare of the Scheduled Tribes in the States
- Union can direct the State Governments to secure the provision of adequate facilities for

instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups

- Union can direct the State Governments to ensure the development of the Hindi language.

If the directions of the centre are not followed by a state, Art.365 allows the central government to invoke Art.356 and take over the state administration under the President of India.

Treaty Making

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 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 or any decision made at any international conference, association or other body. This article (article 253), therefore, overrides the distribution of legislative powers provided for by article 246 read with Lists in the Seventh Schedule to the Constitution.

The ratification of treaty is done by the Union Cabinet. Parliament has the power to discuss and has no say in the approval.

NCRWC recommends that for harmonious federalism and for expeditious decision-making on important issues involving States, prior consultation by the Union Government with the inter-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 water sharing with Bangladesh.

River Water Disputes India

The Seventh Schedule to the Constitution contains the legislative powers of federal and state governments. Water is a state subject and is included as entry 17 in list 2 (i.e., subject matters for state legislation). This entry reads: "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56

of List I". The role of federal government is stipulated in entry 56 of List I: ""Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

When a "Water dispute" arises between two or more state governments , the following is the procedure to resolve the same:

Article 262 of the constitution empowers the Parliament to make laws for the adjudication of inter-state water disputes. That article also permits the Parliament to exclude such disputes from being referred to the Supreme Court.

The Inter States Water Disputes (ISWD) Act, 1956, was enacted by the Parliament to deal with inter-state water disputes. Government of India can set up a tribunal to settle such a dispute when one or more riparian states of an inter-state is/are of the opinion that their interests are (or are likely to be) affected by actions or plans of other states, they can request the government of India to constitute a tribunal under the Act. Within one year of receiving such a request and when convinced that such dispute cannot be resolved through negotiations, the government of India shall constitute a tribunal to hear the disputes concerning claims of water sharing and adjudicate an award. Such a tribunal should have three members who should be judges of the supreme court or the high court and are appointed in consultation with the Chief Justice of India; the government of India can appoint up to two assessors to assist the tribunal; after considering all the aspects as may be necessary, the tribunal gives its report to the government of India; if the riparian states or the government of India need any clarification, they can apply seeking such clarification from the tribunal within 90 days; the tribunal may give further clarifications. Then the report, called award, is published by the government of India in the official gazette. Once it is published, the award is binding on all the parties and it is deemed equivalent to an order or decree of the Supreme Court. The act also empowers the central government to make schemes and constitute an authority to implement the tribunal's award.

So far, five Inter-state water disputes tribunals have been constituted

- Krishna Water Disputes Tribunal (1969- 1976)
- Narmada Water Disputes Tribunal (1969- 1979)
- Godavari Water Disputes Tribunal (1969- 1980)
- Ravi and Beas Waters Tribunal (1986 and report is still to be submitted)
- Cauvery Water Disputes Tribunal (1990-2007).

Changes in the 1956 Act made in 2002 by Parliament

The following provisions were introduced through an amendment to the 1956 Act in 2002

- the limit of one year from the date of receipt of a request by government of India to constitution of a tribunal
- the requirement for the tribunal to give its award within three years (with a proviso that government of India can extend this by another two years)
- the provision for central government to appoint two assessors to assist the tribunal

River Boards Act, 1956.

In order to promote integrated and optimum development of waters of inter-state rivers and river valleys, under Entry 56 of List-I of the Constitution(Union List), Parliament enacted the River Boards Act, 1956. The Act contemplated the appointment of river boards by the central government in consultation with the state governments. These boards are expected to promote development of irrigation, drainage, water supply, flood control and hydro-electric power.

Babhli barrage

The Babhli barrage, built over River Godavri, stands in Maharashtra's Nanded district And it has become the flashpoint of the water wars between Maharashtra and Andhra Pradesh.

The Babhli dam will help irrigate 8000 hectares in Nanded, and provide drinking water to nearly 60 villages and towns. Maharashtra's gain will come at a cost, argues the Andhra Pradesh government. It says six districts will turn into a desert. The Godavari flows from Nanded into the Sriramsagar project in Nizamabad district of Andhra Pradesh. The distance between Babhli and Sriramsagar is just 10 km and because of the proximity, unless Babhli releases water, Sriramsagar, which is the lifeline of north Telangana, will dry up.

Babhli Dam: A history of controversy

- The Babhli Project was cleared in 1995, but the construction only began in 2004.
- In 2005, Andhra Pradesh complained to the Centre that Babhli would deny the state its due share of water. The Centre appointed a technical committee to investigate.
- In 2006, Andhra went to the Supreme Court to stop Maharashtra from constructing the barrage.
- The next year, the court said Maharashtra could continue with the construction but, not install the 13 gates, which are the most crucial part of the dam as their height determines how much water can be stored.

Mahadayi Water Disputes Tribunal

Mahadayi (Mandovi) river originates in Karnataka state, flows 29 km through the State and passes through Maharashtra and Goa where its length is 52 km, before reaching the Arabian Sea.Karnataka had planned to utilise 7.6 tmc feet of water from Kalasa and Banduri tributaries of Mahadayi to meeting drinking water scarcity in around 100 areas of northern Karnataka, including Hubli and Dharwad.Objection from Goa is the basis of the controversy. Goa had opposed the project claiming that Mahadayi was a deficit basin and water diversion would impact on the environment in the basin.

Article 262 and Inter-State Water Disputes Act (ISWDA), 1956 provide a legal and constitutional mechanism for adjudication of water disputes between the states in India.

The Government of Goa requested for setting up of an Inter-State Water Disputes Tribunal under the Inter-State Water Disputes Act, 1956 for resolution of the dispute.

The Union Government in 2009 approved the proposal for constitution of Mahadayi Water Disputes Tribunal consisting of a Chairman and two Members nominated in this behalf by the Chief Justice of India from among the persons who at the time of such nomination are Judges of the Supreme Court or High Court.

The Mahadayi Water Disputes Tribunal would adjudicate the water dispute between the State of Goa and Karnataka.

Cauvery 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 States, Chief Ministers of Union territories having Legislative Assemblies and Administrators of Union territories not having Legislative Assemblies, Governors of States under President's Rule, six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister and two Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister as permanent invitees.

Art.263 reads as follows:

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of -
(a) inquiring into and advising upon disputes which may have arisen between States;
(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

The Council in its first meeting in 1990 had considered the recommendations made by the Sarkaria Commission on Centre-State Relations. Keeping in view the complexities of the issues involved and their wider implications, it was decided by the Council that the recommendations would be first examined by a Sub-committee of the Council and thereafter considered by the Council. In its second meeting, the Council broadly endorsed the recommendations of the Sarkaria Commission as finalised by the Sub-committee. In the same meeting, the Inter-State Council decided to set up a Standing Committee for having continuous consultation and processing of all matters for consideration of the Inter-State Council. Accordingly the Standing Committee was set up in 1996.

The Inter-State Council has held ten meetings so far and has taken important decisions on 171 of the 247 recommendations of the Sarkaria Commission. Some of the major decisions of the Council are as follows

a) The Council approved the Alternative Scheme of Devolution of Share in Central Taxes to States as recommended by the Standing Committee.

b)Articles 355 and 356 of the Constitution of India was another matter

c) The Council decided that on the subject of delay in State Bills referred for President's consideration, there should be time-bound clearance of Bills referred. The Bills should not be reserved for President's consideration in a routine manner

d) The Council decided that the issue regarding the use of articles 256, 257 and 365 of the Constitution should be remitted to the Sub-Committee deliberating on the issues of article 356.

The Ninth ISC meet was held in mid-2005 with the theme of good governance and last meeting was in 2006.

ISC is the only Constitutional body to deal with federal issues and disputes, apart from the Supreme Court and the river water dispute panels set up under Art.262.

Zonal Councils

The idea of creation of Zonal Councils was mooted by the first Prime Minister of India, Pandit Jawahar Lal Nehru in 1956 when during the course of debate on the report of the States Re-organisation Commission, he suggested that the States proposed to be reorganised may be grouped into four or five zones having an Advisory Council "to develop cooperative working" among these States. This suggestion was made by Pandit Nehru at a time when linguistic reorganization led to bitterness and hostilities.As a remedy to this situation, it was suggested that a high level advisory forum should be set up to minimise the impact of these hostilities and to create healthy inter-State and Centre-State environment with a view to solving inter-State problems and fostering balanced socio economic development of the respective zones. There are five zonal councils

i. The Northern Zonal Council, comprising the States of Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, NCT of Delhi and U.T. of Chandigarh;

ii. The Central Zonal Council, comprising the States of Chhatisgarh, Uttaranchal, Uttar Pradesh and Madhya Pradesh;

iii. The Eastern Zonal Council, comprising the States of Bihar, Jharkhand, Orissa, Sikkim and West Bengal;

iv. The Western Zonal Council, comprising the States of Goa, Gujarat, Maharashtra and the Union Territories of Daman & Diu and Dadra & Nagar Haveli; and

v. The Southern Zonal Council, comprising the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territory of Pondicherry.

The seven North Eastern States i.e. (i) Assam (ii) Arunachal Pradesh (iii) Manipur (iv) Tripura (v) Mizoram (vi) Meghalaya and (vii) Nagaland are not included in the Zonal Councils and their special problems are looked after by the North Eastern Council, set up under the North Eastern Council Act, 1972. Sikkim was added to the NEC recently.

The Zonal Council for each zone consists of the following members :

(a) the Chief Minister of each of the States included in the zone and two other Ministers of each such State nominated by the Governor;

(b) where any Union Territory is included in the zone, two members from each such territory nominated by the President;

Further the Zonal Council for each zone has the following persons as Advisers to assist the Council in the performance of its duties :

(a) one person nominated by the Planning Commission;
(b) Chief Secretaries of the States included in the Zone;
(c) Development Commissioners of States included in the zone.

Union Ministers are also invited to participate in the meetings of the Zonal Councils depending upon necessity. The union home minister is the chairman of each of these councils. . The Chief Ministers of the States included in each zone act as Vice Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.

Each Zonal Council has set up a Standing Committee consisting of Chief Secretaries of the member States of their respective Zonal Councils. These Standing Committees meet from time to time to resolve the issues or to do necessary ground work for further meetings of the Zonal Councils. Senior Officers of the Planning Commission and other Central Ministries are also associated with the meetings depending upon necessity. The Secretariat explores centre-State, inter-State and zonal issues which are to be deliberated by the Councils or the Standing Committees.

The Zonal Councils provide an excellent forum where irritants between Centre and States and amongst States can be resolved through discussions and consultations. Being advisory bodies, there is full scope for free exchange of views in their meetings. Though there are a large number of other fora like the National Development Council, Inter State Council, Governor's/Chief Minister's Conference and other periodical high level conferences held under the auspices of the Union Government, the Zonal Councils are different, both in content and character. They are regional fora of cooperative endeavour for States linked with each other economically, politically and culturally. Being small and high level bodies, specially meant for looking after the interests of respective zones, they are capable of focussing attention on specific issues taking into account regional factors while keeping the national perspective in view.

The main objectives of setting up of Zonal Councils are as under :

- national integration;
- balancing regionalism with federalism
- Enabling the Centre and the States to co-operate and exchange ideas and experiences; and
- Establishing a climate of co-operation amongst the States for successful and speedy execution of development projects.

Broadly these Councils are expected to :

Promote a cooperative approach to facilitate economic and social planning and the execution of development schemes particularly inter-State projects;

(ii) Deal with matters arising out of the re-organisation of States such as border problems, integration of services, linguistic minorities, inter-State transport, roads, etc.;

(iii) Initiate measures of common interest in the field of social and economic planning, and exchange of information, statistics and experience available with each State to the best common advantage;

(iv) Tackle common law and order problems and devise uniform policies regarding administration of civil and criminal law; and

(v) Deal with common problems like floods, drought, scarcity, local cess, etc.

The scope of functions of these Zonal Councils is very wide, as they can discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest. These Councils have been set up with the objective to provide a common meeting ground in each zone for ensuring resolution of Inter-State problems, fostering balanced regional development and building harmonious Centre-State Relations.

The issues that were discussed in the meetings of the Zonal Councils included internal security, police modernization, communal harmony and disaster management,coastal security, narcotics control,naxalism, river water sharing, woman and child trafficking and farmers' suicides .The criticism is that the Zonal Councils do not meet as frequently as it may be required.

Eastern Zonal Council meeting 2013

The 20th meeting of Eastern Zonal Council, comprising of the States of West Bengal, Odisha, Bihar and Jharkhand, was held at Kolkata in April. Shri Sushilkumar Shinde, Union Home Minister chaired the meeting which was hosted by the Chief Minister of West Bengal. Governor of Jharkhand attended the meeting.

Ms. Mamata Banerjee, Chief Minister highlighted the strategic location of the States of the Eastern region and emphasised the need for enhanced cooperation and coordination among the member States on various issues of common importance. The Union Home Minister explained

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 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 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.
Next meeting of the Council is to be held later this year in Odisha.

Northern Zonal Council
Northern Zonal Council meeting was held in 2012 July.Mr. P. Chidambaram, Union Home Minister, Mr Shivraj Patil, Administrator, UT Chandigarh and Mrs Sheila Dikshit, Delhi Chief Minister, Mr Prem Kumar Dhumal, Himachal Pradesh Chief Minister and Mr Ashok Gehlot, Rajasthan Chief Minister were also present .

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.

NEC

The North Eastern Council (NEC) came into being by an Act of Parliament, the North Eastern Council Act, 1971 to act as advisory body in respect of socio-economic development and balanced development of the North Eastern Areas consisting of the present States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The NEC started functioning in the year 1972 . In 2003 Sikkim became the 8th member of the Council. The members of the NEC consist of the Governors and the Chief Ministers of the eight Member States.

Functions

The North Eastern Council was constituted for performing the following functions

- To discuss any matter in which some or all of the States represented in the Council have common interest and advise the Central Government and the Governments of the States concerned as to the action to be taken on any such matter, particularly with regard to

any matter of common interest in the field of economic and social planning; inter-State Transport and Communications; Power or Flood-control projects of common interest.

- To formulate and forward proposals for securing the balanced development of the North Eastern Areas
- To review, from time to time, the implementation of the projects and schemes included in the Regional Plan
- To review progress of expenditure and recommend to the Central Government the quantum of financial assistance to be given to the States entrusted with implementation of any project included in the Regional Plan.
- To review, from time to time, the measures taken by the States represented in the Council for the maintenance of security and public order and recommend to the concerned State Governments further measures necessary in this regard

The Council acts as a funding agency as well as a planning agency.

National Integration Council

The government reconstituted the National Integration Council (NIC).

The 147-member NIC, headed by the prime minister, has union ministers, chief ministers of states and union territories, heads of political parties, eminent media persons, public figures, representatives of business and women's representatives as members.

The NIC was set up in 1961 by the then prime minister Jawaharlal Nehru following a National Integration Conference to find ways and means to combat the evils of communalism, casteism, regionalism linguism and to formulate definite conclusions in order to give a lead to the country.

The NIC held its first meeting in 1962. The council has held 15 meetings so far, with the last meeting in 2011 focused on communal harmony.

In 2010 the government established a standing committee of the National Integration Council. Home Minister P. Chidambaram was appointed chairman and four Union Ministers and nine Chief Ministers were appointed members. The committee would decide on agenda items for future council meetings.

The NIC meetings discuss various issues relating to national integration and communal harmony in the context of the various disputes, regionalism, communalism, role of educational institutions and responsibility of the mass media, among others.

Interstate trade and commerce

The free flow of trade, without geographical barriers, is a sine qua non for economic prosperity. Our federal constitution guarantees it. We have an arrangement that aims to harmonize and facilitate inter-State trade and commerce without hindrances. Hence, inter-State trade and commerce and some elements of intra-State trade and commerce are a Central responsibility. For example, Part XIII (Articles 301 through 307) is devoted exclusively to trade

and commerce. Several other matters, incidental or necessary to trade and commerce, are also a Central responsibility, through exclusive or concurrent jurisdiction. Article 19 guarantees to every citizen the right to carry on any trade, business or profession, subject to reasonable restrictions, which may be imposed in the interest of the general public..While there is a general declaration in the Indian Constitution that trade and commerce should be free, the Centre and the States (especially the former) have the power to regulate.

Articles 301 to 307 deal with 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 public interest."

Article 301 is general in scope and enacts that "subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free". After having stated the general nature of the freedom of trade and commerce, the Constitution details the limitations to this freedom. There are five such limitations:

(1) Parliament may impose restrictions in any part of the territory of India in the public interest (Art. 302). The purpose of this provision is to allow the Government of India to restrict the movement of goods so as to safeguard a well-balanced economy and the proper organisation and ordering of supplies of goods and services.

Famine may be raging in one part of the country while there is plenty in another part, as has been the experience of the country in regard to food during the last several decades.

If Parliament has no effective powers to check such abnormal situations, freedom of trade and commerce, instead of a blessing, will become a menace to the freedom of life itself.

(2) Although Parliament is empowered to restrict the free movement or articles of trade and commerce, normally the laws passed by Parliament in this context ought to be non-discriminatory in character. In other words, it should not prefer one State to another. But when any part of the country is suffering from scarcity of goods, Parliament may, meet such a situation; pass even a discriminatory law (Art. 303).

(3) A State Legislature may impose on goods imported from other States any tax if similar goods produced in that State also are taxed in a like manner. A State Legislature is also authorised to impose reasonable restrictions on the freedom of trade and commerce with or within that State as may be required in the public interest (Art. 304).

But this is subject to Central control. According to this, any Bill who seeks to introduce such restrictions can be introduced in the State Legislative only with the previous sanction of the President.

The President will have the opportunity to see that the legislation is in the public interest and the restriction imposed is reasonable.

The fact that every restriction should be reasonable in relation to its objective leaves the Supreme Court with adequate power to examine and adjudicate upon the reasonableness of such restrictions and declare those that are unreasonable in its view invalid.

(5) Finally, under Article 307, Parliament is empowered to appoint such authority as it considers appropriate for carrying out the purposes of Articles 301 to 304 and to confer on that authority such powers and duties as it thinks necessary.

Speaking on this provision, Ambedkar said, "(It) is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the U.S.A.

The federal debate 2013

There are 2 ways in which the present federal system is looked at for future course.

- Largely status quo- retaining the present federal structure with some amendments to the Constitution to make it more relevant to present day requirements because the nation building process is not yet complete and serious challenges continue to confront the nation. The country and society are one and not as an aggregate of regional identities.
- principle of federalism needs to be redefined. States need to be empowered more in the backdrop of the changing nature of polity, economy and society. The Centre's role as defined in the Constitution needs to be curtailed and restricted. This was highlighted in the debate in the two houses of Parliament on the Lokpal and Lokayukta Bill(Art.252 vs Art.253); NCTC; GST etc

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 stalling 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

impact them. Similarly, when the issue of border trade with China came up for discussion, 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.

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

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 economies 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 growth 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 he present context, some questions arise: whether the principle of federalism in India is being used as a mere ruse 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 fracturing 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 Panchayats.

Comptroller and Auditor General of India

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

State audit in its present form was introduced first time in Great Britain by a Parliamentary Act as an integral part of parliamentary control over national finance in 1866.The Act required all departments for the first time, to produce annual accounts known as appropriation accounts. (appropriation is legally authorized money being drawn and spent for a specific purpose) The Act also established the position of Comptroller and Auditor General (C&AG) The results of C&AG's investigations were considered by a dedicated parliamentary committee called the Committee on Public Accounts thus establishing a system of parliamentary financial control.

The system of Government accounting and auditing and the organisational structure of the Indian Audit and Accounts department (IAAD) as it exists today in our country is patterned similarly and is , thus, the legacy of British rule.

Constitutional and Statutory Position of CAG

We have to go back to 15th century to find the origin of the word "comptroller," which means "financial officer."

The Constitution gives special status to Comptroller & Auditor General (C&AG) as laid down in Articles 148 to 151. The Act gives authority to C&AG to audit all expenditure from and receipts into the Consolidated fund of India and the States. It also authorises C&AG to audit the receipts and expenditure of bodies or authorities substantially financed by loans or grants from government. Article 151 of the Constitution prescribes that Audit Reports on the accounts of Union and the States be submitted to President and the Governor of the State respectively who shall cause them to be laid in the Parliament and respective State Legislatures.

The organisations subject to the audit of the Comptroller and Auditor General of India are:

- All the Union and State Government departments and offices including the Indian Railways and Posts and Telecommunications.
- About 1200 public commercial enterprises owned by the Union and State governments, i.e. government companies and corporations.
- Around 400 non-commercial autonomous bodies and authorities owned or controlled by the Union or the States.
- Over 4400 authorities and bodies substantially financed from Union or State revenues

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

Importance of CAG

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

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

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

Independence

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

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

Audit Duties

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

The statutory duties of the CAG include audit of

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

There is special arrangement for the audit of Government companies i.e. where equity participation is 51 per cent or more. The primary auditors of these companies are Chartered Accountants, appointed by the Union Government on the advice of the CAG. The CAG gives directions to the Chartered Accountants on the manner in which the audit should be conducted. He is also empowered to comment on or supplement the reports of the primary auditors. In addition, he has the right to conduct audit of accounts of such companies and report the results of audit to Parliament and State Legislatures.

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

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

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

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

The annual accounts of the Government, comprising the Union Government Finance Accounts and the Appropriation Accounts, are prepared by the Controller General of Accounts. These

documents are presented before the Parliament after their statutory audit by the Comptroller and Auditor General of India.

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

Audit covers both the voted and charged expenditures.

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

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

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

CAG and Policy

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

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

In such cases, it is within the CAG's mandate, as the instrument of accountability, to comment on such a policy. Be it underselling government shares in PSEs or not adopting auction process of selling natural resources or adopting tax amnesty schemes with a moral hazard- CAG's audit on these matters contributes to public policy.
Further, CAG is bound by his (or her) oath of office to uphold the Constitution. He has to comment on policy matters that *prima facie* seems unconstitutional. If the government were to formulate a scheme or policy that selectively confers benefits from public funds on an individual or group to the exclusion of others on no stated grounds, or on grounds which seem questionable, it is CAG's duty to point this out.

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

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

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

Nature of Audit

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

Regularity Audit (Compliance or Financial)

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

Supplementary audit

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

Propriety audit

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

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

CAG's report in 2012 regarding land allotment in Andhra Pradesh brought out the fact that in a large number of cases of land allotment, the State Government ignored the prescribed procedures and disregarded "canons of financial propriety" leading to loss of precious money that would otherwise have gone into government coffers.
Efficiency Audit

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

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

Performance Audit

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

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

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

Environmental audit

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

CAG and Internal Audit

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

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

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

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

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

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

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

There are following limitations on the powers of CAG

- its report is post-facto- that is, after the expenditure is incurred and has only prospective value in improving systems and procedures
- secret service expenditure is outside its audit purview(which is incurred in cultivating informers and on collecting data on intelligence, etc. on duty evasion, anti social activities, smuggling activities, etc) and comes within administrative audit. Some departments like police, customs etc have some money authorized for secret service.
- CAG conducts audit as per the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. At the time of this legislation, concepts like public private partnership (PPP) were non-existent. Rules have not undergone significant change and CAG does not have the power to audit public-private-partnership (PPP) investments
- The Act governing the CAG does not provide for auditing funds that are given to an NGO or elected local bodies. CAG can seek the direction and permission of the Governor of a state to audit the local bodies and panchayatiraj institutions. Thus, CAG does not have full authority to audit them.

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

The Comptroller and Auditor General of India (CAG) has been empowered to evaluate all non-government organisations (NGOs) and other agencies involved in the government's social sector schemes.In 2013, The Planning Commission decided that approvals for all social sector projects

undertaken by various NGOs, normally outside the purview of CAG, will come with the rider that they will be subject to audit, if required.
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 empowers it to audit only traditional government departments and public sector companies.

Cag and Mnrega audit 2013

The CAG carried out sample checks in over 3,800 gram panchayats in 182 districts of 28 states for the flagship rural job guarantee scheme MGNREGA . It pointed lout many irregularities like 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 employment in a year. UP, Bihar and Maharashtra, which are home to nearly 50% of the country's below poverty line (BPL) population, accounted for only 20% of total expenditure under the scheme. The performance in 2012-13 is believed to be even worse.
The CAG report revealed several irregularities in implementation of the scheme like multiple job cards in the name of one person, jobs cards not issued in thousands of cases, diversion of funds etc.The audit also found that plans of social audits were more on paper. The CAG also carried out interviews of 38,000 beneficiaries and more than 75% of them reported that social audit was never conducted in their village.

There were many positives pointed out. One is that the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) resulted in empowerment of women and fostering social equity in the State. The potential benefit of convergence of the MGNREGS with other rural development schemes had not been tapped for creation of sustainable outcomes.

Cag audited the NRHM accounts in UP on the request of the UP government in 2011 and came out with the report in 2012.

Need for more powers to CAG and the Reasons

Since the 1971 Act was passed, many changes have taken place. 73rd and 74th amendments to the Constitution have been adopted, adding a layer of decentralised governance — and hence expenditure management — to the institutions of the state. Liberalisation of Indian economy is another development and has meant public money is increasingly utilised in joint ventures and public-private partnerships. Because of lack of mandate, the CAG feels unable adequately to audit this vast area of public economic activity. Civil society is gaining space and the role of NGOs is increasing.
Comptroller and Auditor General of India (CAG) has written to the Centre seeking to bring non-governmental organisations (NGOs), public-private partnership (PPP) projects and the District Rural Development Agency (DRDA) under its purview.

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

The CAG also wants to audit of projects which are being built on the PPP model . In these projects, the Government's equity is less that 49 per cent. But if the value of land provided by the Government for the project is added, then it can shoot up to as high as 80 per cent in some projects. Governments have little insight into the financial details of these projects, as they are implemented by private companies.In many infrastructure projects, private companies increase user charges, but the logic behind the increase is never shared with the Government. The new powers will help in unravelling the reasons behind the hike.

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

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

Separation of accounts from audit

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

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

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

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 use of new methods for gathering audit evidence such as beneficiary/stakeholder surveys, physical inspection, audio visual recordings,statistical sampling etc.

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 (NREGS), 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, dealing 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 undertakings, 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 commonly perceived sense, CAG audit remains a Government process largely confined to Government officials and Government auditors. Social audit, on the other hand, in its current connotation, seeks to make the audit process more transparent and seeks to take audit findings to a wider public 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 - Panchayati Raj Institutions (PRIs), Urban Local Bodies (ULBs) and other special purpose agencies set up by the Government for implementation of specific schemes.

New Accountability Concerns

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 entrusting the implementation of varioussocio-economic developmental schemes to autonomous agencies/societies. More often than not, Central Government schemes 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 structure. In these cases, as indeed at PRI and ULB levels also, local accountability structures are either non-existent or are very fragile.From the audit point of view, 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 entitiesis nebulous, compared to his jurisdiction over traditional Government Departments.

Statutorily, audit of local self government institutions is a States subject and the primary (external) audit of PRIs and ULBs is with the State Local Funds Audit Department (LFAD), or with the designated auditors as specified in the State laws, with the exception of few states.

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.

Further, despite the joint physical verifications with Departmental authorities, and beneficiary surveys, the primary focus of the CAG's performance audits remains, in mostcases, 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 requirements (necessary in order to ensure the rigour and credibility of our audit findings) as well as manpower constraints. In other words, Cag cannot accept unauthenticated oral evidence except as supplemental to core audit evidence.

Social audit concepts are becoming increasingly popular and relevant. 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 frauds has been recognised. It was also felt that with the ever increasing outlays on the social sector programmes and the decentralised implementation, particularly by the rural and urban local self-government institutions, the participation of local stakeholders and civil society in monitoring the implementation of the programmes cannot be ignored.

Social audit initiatives fall into two categories – social audits carried out by Gram Sabhas/Panchayats or local level Vigilance and Monitoring Committees as stipulated by the Government in the guidelines of various social sector programmes, and those carried out by Civil society groups. In both these types, the social auditors are in a position to obtain direct feedback from beneficiaries on a large scale through Gram Sabha meetings, Jan Sunwais, Sammelans and other oral evidence gathering methods to ascertain the outputs of social sector programmes and pinpoint grassroot level failures.

Considering the significant contribution by various social audit groups in ensuring accountability of the programme managers and implementing 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, ARWSP,NRHM, MDM etc.

Cag studied the social audit practices of Gram Sabhas and civil society organisations and explored the modalities of assimilating social audit concepts and techniques in to the audit of CAG of India within the framework ofthe existing mandate.

Cag is considering the issue of positioning of social audit within the three basic categorisations of audit viz. financial, compliance and performance audits. The objectives of social audit revolve around empowerment of the beneficiaries and directly affected stakeholders of the public sector programmes in matters of planning, implementation,delivery of services, appraisal, corruption and frauds, impact, etc. The social audit procedures provide a voice to the people to participate and be heard. Above all,social auditprovides close to complete transparency to the entire gamut of programme management and renders the impact sustainable. It enables the

people to view the decision making process and criteria adopted for various elements ofthe programme.

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 fundamental types of audits. Therefore,social audit cannot be a substitute for the public audit by but can be subsumed within one or more of them to enhance the quality of the audits by CAG of India. Thus, social audit ought to be viewed as a technique or procedure to broaden the depth or spread of audit by Cag rather than a distinct form of audit. Use of social audit techniques or the social audit findings should be viewed as a means to strengthen Cag audit rather than a substitute for CAG's audits.

Strengths of Social Audit

Focus on outputs in social audit process, the directness of its inquisitions and the instantaneous interface and interlocution it provides among the beneficiaries and stakeholders of social sector 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 thedemocratic 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 appraisal mechanism

Limitations of Social 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 audit framework. The scope ofsocial audits is intensive but highly localised and covers only certain selected aspects out of a wide range of audit concerns in 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 socialsector programmes. Even in these cases, the monitoring is informal and unprocessed. Moreover, the documentation of social audits is not in a form as to provide consistentevidence. The findings of social audit, unless carried out on a representative basis, cannot be either generalised or estimations over the entire population be made.

Partnership between Social Audit and CAG's Audit

Social audits afford an opportunity to strengthen the micro level scrutiny of the programme 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 performance audits of social sector programmes. It can also be placed in the mainstream of compliance audits of the social sector programmes to assist verification of compliance to the rules and assurance against frauds, corruption and misappropriation. Further, it can facilitate

association of CAG's auditors with local fund auditors and Gram Sabhas in certification of accounts of local governments.

Procedures should be established to necessarily build social audits into the scope of audit by way of utilisation of voluntary or commissioned social audits. A protocol may be established for sustainable ongoing partnership with the major social audit organisations within the country and their findings used in developing the findings and conclusions as a standard procedure in all audits of the social sector programmes. In turn, Cag can provide for assistance in capacity building of the social audit groups and encourage social audits in the States where it has not taken off in a significant manner.

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 public accountability in partnership with SAIs like Cag , whether in a formal or in an informal process, as it has the real potential to enhance accountability and align public services to citizens' needs in important areas like achievement of Development Goals. Policy makers recognized the wide spectrum of collaboration between civil society groups and audit institutions – from direct participation in audits to focus on demanding follow-up action on audit findings and putting pressure for implementation of audit recommendations , identification of entities that should be the subject of audits and independent audits.

It is said that Cag should take the social audit and social auditors on board for serving the cause ofpublic 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 professional developmentlevel,they would also be benefited through their exposure to the techniques and objectives of the audits by the CAG of India. Cag can benefit as of its biggest limitations of not being able to reach the beneficiaries for their perception and verification of delivery of the programmes, including the existence of the community assets and their actual utilisation can be overcome in an effective manner.

Space for social audit has been created both by the Constitutional Amendments which ordained that accounts of a Gram Panchayat be placed before a GramSabha, and by the RTI Act 2005. State Governments of Rajasthan and 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 activitiesin the social audit processin these States. The experience in Rajasthan hasshown 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 butthe prime driving force of good governance.

Electoral System in India

India is the most populous democracy in the world with about 75 cores of voters. Being a three-tiered democracy- central, state and local layers of governance-, the depth of democracy is great. India is a great example of representative democracy where periodical elections that are free and fair in which people vote without any coercion or fear, is the norm.All social groups are free to participate in elections without any discrimination.

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 o 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.

Constitutional provisions, supplemented by laws made by Parliament and the Rules made by the Election Commission are the basis for the conduct of elections.

Part XV of the Constitution (Art.324-329) contains provisions related to elections. There are two RPAs:

- Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls and
- Representation of the People Act, 1951 which deals, in detail, with all aspects of conduct of elections and post election disputes.

Other laws that confer powers on the EC are Presidential and Vice-Presidential Elections Acts, 1952, Government of Union Territories Act, 1963, Government of the National Capital Territory of Delhi Act, 1991 and the Rules and Orders under them.
Further, the Supreme Court of India held that where the enacted laws are silent or inadequate, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner.

Constitutional provisions
Art. 324 broadly speaks of the functions of the Election Commission and its composition. It confers the power of superintendence, direction and control of elections in the Election Commission. It includes the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and State Legislature; and elections to the offices of President and Vice-President of India.

The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. President appoints the Chief Election Commissioner and other Election Commissioners subject to any law made by Parliament.

When any Election Commissioner is appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission.

Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint, after consultation with the Election Commission, such Regional Commissioners as he may consider necessary to assist the Election Commission .

President determines the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners, subject to the provisions of any law made by Parliament.

The manner of removal of the CEC and the ground for removal are the same as the Supreme Court judge- parliamentary vote followed by the Presidential decision. The conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff that is necessary for the conduct of the elections

Art. 325 says that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament and State Legislature. It establishes equality among citizens for being enrolled as voters by affirming that no person shall be ineligible for inclusion in the electoral roll on grounds of religion, race, caste or sex.

326 lays down adult suffrage as the basis for elections to the House of the People and to the Legislative Assemblies of States .The following are the qualifications to vote

- Should be a citizen of India
- Should be not less than eighteen years of age.
- is not disqualified under this Constitution or any law made by the appropriate Legislature on the grounds of
  1. non-residence
  2. unsoundness of mind
  3. crime or
  4. corrupt or illegal practice.

However, right to vote is not implied in Art.326. It is a statutory right under the RPA 1950.

Art. 327 confers on Parliament the power to make provision with respect to elections to federal and state Legislatures, subject to the provisions of the

Constitution, on all matters relating to elections to Parliament or Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies etc.

Art. 328 confers on the State Legislature power to make laws with respect to elections to such Legislature, subject to the provisions of the Constitution and any law made in that respect by Parliament. Such powers include the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

Art.329 bars interference by courts in electoral matters.—Notwithstanding anything in the Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;
(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Any elector or candidate can file an election petition on grounds of malpractice during the election An election petition can only be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

Election Commission

Since 1993, the Election Commission of India is a three-member body, with one Chief Election Commissioner and two Election Commissioners. It was not a multi member body from the beginning. It was a single - member body when it was first set up in 1950 till 1993 except for a brief period between 1989 October and 1990 January. In 1993 it became a three-member Commission and has remained so since then. Article 324(2) empowers the President of India to fix from time to time the number of Election Commissioners other than the Chief Election Commissioner.

The Chief Election Commissioner and the two Election Commissioners draw salaries and allowances at par with those of the Judges of the Supreme Court of India .

The Chief Election Commissioner or an Election Commissioner holds office for a term of six years from the date on which he assumes his office or till he attains the age of 65 years, whichever is earlier.

The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Act, 1991, as amended, provides that if the CEC and his colleagues differ in opinion on any matter, such matter shall be decided by the opinion of the majority. CEC has no special role in decision making.

Are the commissioners and the CEC equal?
Former CEC N. Gopalaswami's suo motu recommendation to the President to remove Mr Navin Chawla from the post of Election Commissioner in 2009 raised legal questions as to whether he is Constitutionally competent to do so.

In S.S. Dhanoa vs Union of India (1991), the Supreme Court held: "The Chief Election Commissioner does not... appear to be primus inter pares, i.e. first among the equals, but is intended to be placed in a distinctly higher position ."

The position of the apex court evolved in the case of T.N. Seshan vs Union of India(1995). It held that the CEC and the ECs are equal. CEC is given the power of recommending the removal of ECs and it is intended to shield them and not use it against them. He can not use it suo moto as he is an equal of them.

While functioning as the CEC, he acts as the Chairman which means he presides over the meetings, conduct the business of the day, ensure that precise decisions are taken and correctly recorded and do all that is necessary for smooth transaction of business.

Functions of Election Commission
It has administrative, advisory and quasi-judicial functions.

Administrative functions
Under Article 324(1) of the Constitution of India, the Election Commission of India, interalia, is vested with the power of superintendence, direction and control of conducting the elections to the offices of the President and Vice-President of India. Detailed provisions are made under the Presidential and Vice Presidential Elections Act, 1952 and the rules made thereunder.
The same Article 324 also vests in the Commission the powers of uperintendence, direction and control of the elections to both Houses of Parliament. Detailed provisions are made under the Representation of the People Act, 1951 and the rules made thereunder.
Article 324 (1) also vests in the Commission the powers of superintendence, direction and control of the elections to both Houses of the State Legislature. Detailed provisions are made under the Representation of the People Act, 1951 and the rules made thereunder.

EC appoints the following :
The Election Commission of India nominates or designates an Officer of the Government of the State/Union Territory as the Chief Electoral Officer in consultation with that State Government/Union Territory Administration. the Chief Electoral Officer of a State/ Union Territory is authorised to supervise the election work in the State/Union Territory subject to the overall superintendence, direction and control of the Election Commission.
The Election Commission of India designates an Officer of the State Government as the District Election Officer in consultation with the State Government. The District Election Officer supervises the election work of a district.
The Election Commission of India nominates or designates an officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government/Union Territory Administration. In addition, the Election Commission of India also appoints one or more Assistant Returning

Officers for each of the assembly and parliamentary constituencies to assist the Returning Officer in the performance of his functions in connection with the conduct of elections.
The Returning Officer of a parliamentary or assembly constituency is responsible for the conduct of elections in the parliamentary or assembly constituency concerned
EC appoints the officer of State or local government as Electoral Registration Officer (ERO).The Electoral Registration officer is responsible for the preparation of electoral rolls for a parliamentary / assembly constituency.
Under the Representation of the People Act 1951, the Election Commission of India nominates officers of Government as Observers (General Observers and Election Expenditure Observers) for parliamentary and assembly constituencies. They perform such functions as are entrusted to them by the Commission. The amendments made to the Representation of the People Act, 1951 in 1996 make the observers statutory appointments. They report directly to the Commission.
EC's other administrative functions are

- Under Art.324, EC is made responsible for the free and fair elections in the country for elections to Parliament, State Legislature, President and Vice President of India
- Under Art.324, EC has the duty to prepare and revise the electoral rolls
- Political parties have to be registered with the Election Commission.
- Election Commission decides the election schedules for the conduct of elections, general elections or bye-elections; location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.
- EC enforces the Model Code of Electoral Conduct that is mutually agreed upon by the political parties
- Defines the national political party and State political party and accords recognition .EC declares other parties as registered-unrecognised parties.
- in case of a dispute as to which party is to be given a particular symbol, it is the Election Commission that decides
- it enforces limits on expenditure on elections
- it postpones(for any reason like floods, cyclone etc) or orders repoll or countermands elections
- if President's rule is to be extended beyond one year, EC should certify that elections can not be held in the State(44th Amendment Act)
- During the elections, vast powers are assigned to the election commission enabling it to work as a civil court. According to Art.329b, courts do not intervene in election matters after the electoral process has begun
- either the CEC or an EC nominated by the CEC is an ex officio member of the Delimitation Commission

BLO

Enrolling of all eligible voters and removing the names of the dead and shifted voters from electoral rolls are two important tasks in the updating of the electoral rolls.. As we do not have compulsory voting in our country, the enrolment of eligible voters did not always receive the attention it deserves. Besides, there was no focused attention paid to the process of removal of the names of bogus, dead and shifted voters from electoral rolls. As the result, the inaccuracy of 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

bogus-voting. Often, names were repeated. With up-to-date software, EC is able to easily eliminate such duplication all over the country.The ECI 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.

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.

Advisory Jurisdiction

Under the Constitution, the Commission also has advisory jurisdiction in the matter of

- post election disqualification of sitting members of Parliament and State Legislatures. For example, for holding office of profit.
- cases of persons found guilty of corrupt practices at elections which are dealt with by Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period.

The opinion of the Commission is given to the President or the Governor as the case may be and is binding.

Quasi-Judicial jurisdiction

The Commission has the power to disqualify a candidate who has not lodged an account of his election expenses within the time and in the manner prescribed by law. The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

Political Parties & the Election Commission

The Election Commission of India is the authority to register political parties under Sec.29A of the Registration of People Act. All political parties are registered with the Election Commission under the law. Some parties are merely registered and some are recognized as national and state parties if they comply with the criteria that the EC lays down. The EC may enforce inner party democracy in their functioning by making it compulsory to hold organizational elections at stated intervals.

It has quasi-judicial jurisdiction :settlement of disputes between the splinter groups of a recognised party based on which symbol may be attached or frozen.

The Model Code of Conduct is voluntarily agreed to by the parties who have given power to the EC to enforce the same so that there is level playing field among them- among the big and small parties and also the ruling and opposition parties. EC's power to enforce the MCC is recognized by the courts and also acquires force by precedent.

Election Machinery

The Commission has a separate Secretariat at New Delhi. Two Deputy Election Commissioners who are the senior most officers in the Secretariat assist the Commission. They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure.

At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government. He is, in most of the States, a full time officer and has a team of supporting staff.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers perform election work. They all perform their functions relating to elections in addition to their other responsibilities.

The workforce for conducting a countrywide general election to Lok Sabha consists of nearly five million polling personnel and civil police forces so that about 70 crore electorate can vote in about 8 lakh polling booths. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and half to two months.

The Secretariat of the Commission has an independent budget, which is finalised directly in consultation between the Commission and the Finance Ministry of the Union Government.

For parliament elections, Central Government bears the expenditure . State Government pays for the elections to State Legislature. In case of simultaneous elections to the Parliament and State Legislature, the expenditure is shared equally between the Union and the State Governments. For Capital Equipment, expenditure related to preparation for electoral rolls and for Electors' Identity Cards too, the expenditure is shared equally.

Election Process

The Commission announces the schedule of elections before the formal process begins. With the announcement of schedule, the Model Code of Conduct for guidance of candidates and Political Parties comes into effect. The formal process for the elections starts with the notification calling upon the electorate to elect Members of a House. As soon as notification is issued, candidates can start filing their nominations in the constituencies from where they decide to contest. These are scrutinised by the Returning Officer of the constituency concerned after the last date for nomination is over. The validly nominated candidates can withdraw from the contest within two days from the date of scrutiny.

At least two weeks are given for political campaign before the actual date of poll. A separate date for counting is fixed and the results are declared for each constituency by the Returning Officer. The Commission announces list of Members elected and issues Notification for the due Constitution of the House. With such notification, the process of elections is complete and the President, in case of the Lok Sabha, and the Governors of the concerned States, in case of Vidhan Sabhas, can then convene the respective Houses to hold their sessions. The process takes 5-to 8 weeks for the national elections, 4 - 5 weeks for separate elections only for Legislative Assemblies.

Independence of the EC

Independence of Election Commission and its insulation from executive interference is guaranteed by the following provisions

- The term of office of the Chief Election Commissioner and other Election Commissioners is six years from the date he assumes office or till the day he attains the age of 65 years, whichever is earlier.
- Art. 324(5) says that Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a judge of the Supreme Court and conditions of his service shall not be varied to his disadvantage after his appointment. The other Election Commissioners cannot be removed from office except on recommendation by the Chief Election Commissioner.
- The Chief Election Commissioner and Election Commissioners are entitled to the same salary and other facilities, like rent free accommodation, as are provided to a judge of the Supreme Court
- Conditions of service of the CEC and ECs can not be altered to their disadvantage after their appointment.

It must be stated that unlike the judges of SC and HCs; CAG and the members of the UPSC, the administrative expenditure of the EC or the salaries , allowances and pensions of the CEC and ECs are not charged on the Consolidated Fund of India.

Recommendations to make the EC more independent and effective

- Moily Commission (SAR)(2007) recommends that there should be a collegium for appointment of Chief Election Commissioner and other Commissioners. It should be headed by Prime Minister consisting of Lok Sabha Speaker, Leader of Opposition in Lok Sabha, Law Minister and Rajya Sabha Deputy Chairperson.Same was earlier recommended by the NCRWC

- The same constitutional protection to all Election Commissioners as is available to the Chief Election Commissioner

- all such functions concerning the Secretariat of the Election Commission, consisting of officers and staff at various levels, such as their appointments, promotions, etc., be exclusively vested in the Election Commission on the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts etc., and

- EC budget be Charged on the Consolidated Fund of India.

Recognition and Reservation of Symbols

The Election Symbols (Reservation and Allotment) Order 1968

EC is responsible for allotment of symbols to the political parties based on whether a political party is recognized -as national or state party – or unrecognized and is merely a registered party. EC lays down the definition of national and state party.

Following is the definition of a national political party

- it secures at least six percent(6%) of the valid votes polled in any four or more states, at a general election to the House of the People or, to the State Legislative Assembly; and
- in addition, it wins at least four seats in the House of the People from any State or States.

OR

- it wins at least two percent (2%) seats in the House of the People (i.e., 11 seats in the existing House having 543 members), and these members are elected from at least three different States.

OR

- A party recognised as a State party in a minimum of four States (added in 2005)

State party is one that

- secures at least six percent (6%) of the valid votes polled in the State in a general election to the Legislative Assembly of the State concerned; and
- in addition, it wins at least two seats in the Legislative Assembly of the State concerned.

OR

- it wins at least three percent (3%) of the total number of seats in the Legislative Assembly of the State, or at least three seats in the Assembly, whichever is more.

OR

- In a general election to the LS in the State, it should win at least one seat for every 25 Lok Sabha seats, or any fraction thereof, allotted to that State

OR

- In a Lok Sabha general election from the State concerned, the candidates set up by the party should secure at least 6 per cent of the total valid votes polled in the State, and in addition, the party should win at least one seat in the Lok Sabha from that State in the said general election. (added in 2005).

OR

At the last general election to the House of the People or the Legislative Assembly of the State, the candidates set up by the Party have secured not less than eight percent of the total valid votes polled in the State(In 2011, the last one was a new definition added for the State Party as some parties complained that even after winning 8% or more of vote, they are still denied the status of State party.This is the only definition where votes matter irrespective of seats).

National political parties are six: INC, BJP, Nationalist Congress Party, BSP, CPI and CPI(M). There are about 50 state parties. RJD lost its status recently.A party, that loses its recognition, shall not lose its symbol immediately, but shall be given the facility to use that symbol for some time to try and retrieve its status. However, the grant of such facility to the party to use its symbol will not mean the extension of other facilities to it, as are available to recognised parties, like, free time on Doordarshan/AIR, free supply of copies of electoral rolls, etc.

Elephant symbol

AGP, BSP, PMK and SSP to share 'elephant' as election symbol

The Asom Gana Parishad, Bahujan Samaj Party, Pattali Makkal Katchi and Sikkim Sangram Parishad have elephant as their symbol. BSP is a national party while others are state parties. Inevitably, it led to disputes.They resolved the dispute over the use of the elephant as their election symbol as follows:

The elephant will serve as the BSP's symbol in all states and Union territories except Assam, Puducherry and Sikkim -- while the AGP, PMK and SSP will have its use in their respective states. If BSP contests in these states, it will have the elephant symbol.

YSR Congress and Fan symbol

The party chose ceiling fan symbol. It contested bypolls in 18 assembly constituencies and 1 Lok Sabha constituency in June 2012- they fell vacant as the MLAs from these constituencies revolted against their parties and were either disqualified under anti defection law or resigned. However, YSRC was not a state party according to the definition of EC and so there was an apprehension that all candidates of the party would not get the same symbol. But all YSR Congress contestants could get the same symbol as EC made the rule that sitting members could choose the symbol of their choice.

Common symbol

National parties and state parties could have the symbol of their choice in all the constituencies where they are contesting. However, the registered but unrecognised parties can not have such a common symbol till 2011 when the EC changed the rule

Hitherto those parties were given symbols by draw of lots in individual constituencies if more than one candidate asked for a particular symbol. Consequently, these parties were unable to get uniform symbols in all the constituencies they contested.

To avail themselves of the concession, under the revised provisions of the Election Symbols (Reservation and Allotment) Order, 1968, such parties will have to contest the general elections from at least 10 per cent of the constituencies in a State, subject to a minimum of 5 Assembly constituencies in a State having less than 50 Assembly Constituencies, and two Parliamentary Constituencies in a State having less than 20 Parliamentary constituencies.

They should intimate the choice of 10 symbols from the list of free symbols.

This concession will be only a one-time facility for the Lok Sabha or the Assembly elections.

Models of Representation System

FPTP system

FPTP system is one where there are single member territorial constituencies contested usually by two or more candidates.. The winner is one who gets the largest number of votes- more votes than the nearest rival- called plurality of votes . It is in contrast to the term `majority ' of votes which is one vote more than 50% of the total valid votes polled.

The plurality voting system which is in vogue in India, UK, Canada and the USA, is is also called winner-takes-all system . An extended type of the FPTP is one prevailing in France where there are two rounds. The second round of elections is held when the first round does not produce a winner who collects simple majority of votes polled- 50% plus . In the next round, the two highest vote getting contestants fight for 50% plus vote. Whoever polls the majority is declared the winner.It is also called the "two-ballot" or "runoff election" system-the second

round being called the run off round.Francois Hollande won such run off in 2012 to become the President of France. In the run ff election, evils like caste based and religion based voting can not succeed. However, minorities have less chance of getting 50% plus 1 of the vote.
FPTP system is adopted for the following reasons:

- simple to administer
- country being huge and the electorate being largely not very literate, it is the most convenient and suitable system
- relatively inexpensive

However, the `first-past-the-post' system prevailing in our country is found to be distorted for the following reasons

- There are certain States in India where there are three or four recognized political parties, more or less evenly balanced. In such a situation , the winning candidate in many constituencies secures no more than 30% or less of the valid votes polled. Those who cast the remaining 70% of the vote are unrepresented. 145 MPs were elected to the 15th LS in 2009 with less than 20% votes
- The first-past-the-post (FPP) system creates a distortion between the votes polled by a party and the eats it secures in the legislature. The votes polled by the ruling party may be marginally more than the nearest rival but the seats secured by the ruling party may be substantially more.
- another situation is also evidenced where a political party polling a substantial portion of votes in a general election is not able to get a single seat in the Parliament/state legislature in the State .

The remedies are the form of PR and semi PR systems

Proportional system of representation

Proportional system of representation has been discussed in the chapters on RS and President and VP elections: a quota is set for a candidate to win the election. Quota depends on the number of candidates to be elected- the more the number the less the quota. It means that

- in a single member constituency, quota is 50% plus one which is fair as the candidate with majority of votes is elected
- in a constituency with more than one candidate to be elected, quota is proportionally less. Thus, it facilitates the election of those candidates who may never be able to obtain a majority of votes as they are in a minority . But they are in sufficiently adequate numbers to have their candidates elected as the quota is far less than 50% of the vote polled.

In the PR system, as indicated above, there are advantages like minorities, women, regional and caste groups can have their representatives which can be progressive and at the same time be divisive also.The disadvantages can be that there will be greater social divisions and polarization. Criminalization of politics can become worse as the threshold is lower and can be achieved with money and muscle power.
A variant of PR system is list proportional representation system. Every party puts up a list and contests elections. It is allotted seats according to the votes it polls. If it gets 25% of votes, it is allotted 25% of seats. Thus, an important lacuna of the FPTP is filled- the vote-seat mismatch. Voters may vote directly for the party, as in Israel, or they may vote for candidates and that vote will add up to the party, as in Turkey and Finland.

List system is of two types

- closed list where the list is decided by party leadership. It may encourage sycophancy and representative-voter link may suffer
- open list order of candidates in the list is determined by the voters at large

PR system may be based on single transferable vote (STV) as seen in the Presidential elections in India which is designed to minimize wastage of votes and provide results without further rounds of elections.

Semi proportional system

There may be a semi-proportional system as recommended by the Law Commission in the 170th report in 1999. It may also be called the AMS.The Additional Member System (AMS) is a branch of voting systems in which some representatives are elected from territorial constituencies and others are elected under list system. Voters have two votes, one for the party and the second for the candidate in a constituency. The constituency representatives are elected under the first-past-the-post voting system. The party representatives are elected by a party vote. As explained above, where the party gets 20% of the vote, it gets 20% of the seats from the seats specially meant to be filled under the list system in addition to the normal seats filled by the FPTP. For example, in the case of India, LS has a total membership of elected members at 543. In addition, 250 members may be filled by the List system.

Law Commission recommended that 25% of the number of members in Lok Sabha or Legislative Assemblies of the States should be filled on the basis of list system, Accordingly, in the Lok Sabha as well as in the State Legislative Assemblies, the present strength should be increased by 25% of the existing strength. The increased strength should be filled on the basis of list system. The list system should be confined only to recognised political parties (RPP).

In support of semi-proportional system in India

Not a single party , since the first general elections in 1952, formed government by commanding over 50 per cent of the polled votes. All the governments at the Centre had more people voting against them than supporting them. The closest to reach the majority mark was the Rajiv Gandhi government in 1984 that polled 48.1 per cent with 415 seats. The lowest was the 1998, the NDA government whose alliance polled 36.2 per cent. In 2004, both the Congress and the BJP together polled only 40 per cent. If democracy is the rule of the majority, then that has not yet been established.

This merits a serious consideration of the proportional representation system where people vote for parties, which, in turn, send to Parliament the number of MPs on the basis of the vote they get- 10% vote means 10% of the total membership in terms of seats.

When a party or alliance rules on the basis of majority vote and not just seat, its moral authority is more. This issue was debated in the Constituent Assembly, but in its wisdom, it adopted the British 'first past the post' system. The 1928 Motilal Nehru Committee report had recommended the system of proportional representation as the best answer to reflect India's diversity.

On the debit side, however, critics show the example of Italy's governmental instability, as a result of proportional representation. But it can be amended to suit India conditions and render stability.

In the Indian context, therefore, a combination of proportional representation with the present form may be ideal as recommended by the Law Commission in 1999.

Electoral/political reforms for Stable Government

- Bonus seats as in the case of Greece where the largest single party gets 50 bonus seats .For example, the New Democracy Party that was marginally ahead of the Syriza party got 50 more seats as bonus and was able to form the government with other parties like Pasok in the 300 member Greek Parliament. Otherwise, there would be another round of election
- Constructive vote of no confidence in the LS where the ruling party loses only if there is an alternative. Otherwise, it continues even after losing the vote. However, even as it guarantees stability, it is against Art.75.3. It can create strange and quarelling coalitions without any policy convergences.
- Presidential system with a security of tenure is a systemic change that may not be warranted because parliamentary system has been functioning well.

Electoral reforms

The success of Indian democracy has been globally applauded but loopholes in the foundation- the electoral system , remain. Since good governance begins with elections in a parliamentary democracy like ours, the need for a completely free and fair election process needs emphasis. The need for electoral reforms arises from the following reasons

- Make all constituencies have more or less the same number of electorate for representative justice
- Help electorate vote fearlessly
- De-criminalise the polity
- Use new technologies like ICE for more genuine participation by voters
- Establish level playing field among political parties

The Government reformed the electoral system in many ways in the last few decades as given below

- Lowering the voting age to 18 years by amending Art.326
- Introduction of voter identity cards
- Introduction of electronic voting machines
- Making the EC a multi member body as provided by Art.324
- Limited introduction of state finding of elections by making suitable laws like the Election and Other Related Laws (Amendment) Act 2003
- No candidate can contest to Lok Sabha from more than two constituencies
- Delimitation of constituencies for Lok Sabha and Assemblies on the basis of 2001 census
- Section 8 of the RPA 1951 has been interpreted by the EC in such a way as to debar a convicted person from contesting even while an appeal is pending in the apex court

Many committees have studied and reported on electoral reforms with important recommendations. The Joint Parliamentary Committee on Amendments to Election Law headed by Shri Jagannath Rao (1971), the Tarkunde committee set up by Lok Nayak Jai Prakash Narayan(1974), Dinesh Goswami committee (1990), V R Krishna Iyer committee (1994), Indrajit Gupta committee (1998) are some such committees. The 15th Law Commission recommended amendments to Constitution and the Representation of People Act, 1951 in its 170th report (1999).

Some more electoral reforms that are recommended and are under consideration are

- None of the above option
- Recall
- Inner party democracy
- Paid news
- Strengthening the EC
- Non-serious candidates to be discouraged.
- Forfeiture of security deposit for failure to secure less than $1/4^{th}$ 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 vacancy.
- Lowering the age of candidates contesting elections to the Legislative Assembly and Lok Sabha from 25 years to 21 years and in case of elections to the Legislative Councils and Councils of States from 30 years to 25 years.
- Change of present electoral system to Mixed system(semi-proportional system like the additional member constituencies) Making voting compulsory.
- Amendment of Anti-Defection Law to make the President and the Governor in consultation with the EC the authority to disqualify for defection.
- proliferation of parties needs to be stopped with the EC given the power to deregister a party which it does not have now. For example, a communal party . Although canvassing of votes in the name of religion had been barred, political parties, including the recognised ones, continue to play the communal card.
- If a person contests election from two constituencies and wins from both. In such a situation he vacates the seat in one of the two constituencies. The consequence is that a bye-election would be required from one constituency involving avoidable labour and expenditure on the conduct of that bye-election. Law should be amended to provide that a person cannot contest from more than one constituency at a time or he should bear the expenditure of the bye election.
- restrictions on exit polls and opinion polls
- prohibition of surrogate advertisements in print media. Many bodies emerge before elections and give huge advertisements in newspapers with false identities to influence electoral behavuiour in the name of secularism, socialism and so on, They are not genuine bodies and it constitutes surrogate advertisement.
- negative/neutral voting in the form of a provision enabling a voter to reject all the candidates in the constituency if he does not find them suitable.

- government sponsored advertisements should be outlawed
- composition of election commission and constitutional protection of all members of the commission. Same protection should be given to the ECs as the CEC.
- expenses of election commission to be treated as .charged on Consolidated Fund o India

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-M, CPI and BSP have been substantially funded indirectly by the Central government and they have the character of public authority under the RTI Act as they perform public functions.After the order of the full bench of CIC, the parties will be answerable to the citizens regarding their source of funding, how they spend money and choice of candidates for elections, among other issues.

Section 2(h) of the RTI Act defines 'public authority' as follows:-

"Public authority" means any authority or body or institution of self-Government established or constituted,

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or made by the appropriate Government, and includes any-

- body owned, controlled or substantially financed
- non-Government Organisation substantially financed, directly or indirectly, by funds provided by the appropriate Government

The CIC admits that neither (a), (b), (c) and (d) applies to political parties. 'They have not been established or constituted by and under the Constitution; nor by any other law made by Parliament or the State Legislature; nor are these bodies owned or controlled by any appropriate government.'

But on grounds of sub-clauses (i) and (ii), which pertain to substantial funding- tax-free money raising; land fr party office; AIR/DD time etc.

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.

Thus, there is a raging debate about whether they can be classified as public authorities under RTI Act 2005.

However, there are advantages to the electoral democracy and the values of transparency and good governance if political parties come under the RTI like

financial transparency; why they are not giving tickets to women can be asked;their opaqueness about their internal workings gets corrected -for instance on inner party elections or selection of candidates.

Moily Commission on electoral reforms

The six-member Commission headed by the former Chief Minister of Karnataka, Veerappa Moily made the following suggestions in its report titled " Ethics in Governance' (2007)

- partial state funding of elections should be available
- tightening of anti-defection law. Power of disqualification of MPs and MLAs on grounds of defection should be taken away from the Presiding Officers and be vested with President and Governors on the advice of the Election Commission. Such an amendment to the law is said to be necessary in the light of the long delays seen in some recent cases
- a collegium should be given the power of appointment of Chief Election Commissioner and other Commissioners. Collegium should be headed by Prime Minister and should consist of Lok Sabha Speaker, Leader of Opposition in Lok Sabha, Law Minister and Rajya Sabha Deputy Chairperson
- Special Election Tribunals should be constituted at the regional level to ensure speedy disposal of election petitions and disputes within a stipulated period of six months. Each Tribunal should comprise a High Court judge and a senior civil servant with at least five years of experience in the conduct of elections. Its mandate should be to ensure that all election petitions are decided within a period of six months as provided by the law. The Tribunals should normally be set up for a term of one year only, extendable for a period of six months in exceptional circumstances
- Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the EC.

Some electoral reforms conducted in the last decade

The introduction of electoral Identity Cards and preparation of photo voter rolls, stricter enforcement of the Model Code of Conduct, large-scale deployment of central paramilitary forces, the appointment of general and expenditure observers, clear and strict directions of the Election Commission regarding the conduct of party meetings, gradual introduction of Electronic Voting Machines and use of technology in various administrative matters such as videography of elections and secret cameras in sensitive polling stations are some of the salient features introduced by the Election Commission since the '90s.Enhancing voter awareness by declaring January 25, the day the EC came into force in 1950, as the voter awareness day.

These reforms have paid off as can be seen from the high voter turnout in the 2011 and 2012 assembly elections- 75-80%. The reasons for the same are- increasing awareness; fearless voters due to better security that the EC ensured by videography etc; simple voting through EVMs; gravity of issues like corruption; good performance like in Kerala by Achutanandan govt; dynasty issues as in Tamil Nadu with DMK party.

- BLO
- Vulnerability mapping

Model Code of Conduct

The model code of conduct was brought into force in 1967 after the political parties, in discussion with the EC , unanimously agreed to the contents. For example: ministers should not sanction from the discretionary fund once elections are announced. EC can take action against a party that violates the model code after the party is given reasonable time to defend itself. The Code was issued by the EC in 1991 and has since been amended many times.

The objective of the code is to ensure that political parties do not misuse official resources when they are in power. The code seeks to establish a level playing field among the parties. The code comes into effect immediately after the announcement of the elections by the EC and will cease with the declaration of the result.

EC is given the power to conduct free and fair elections under Art. 324 and thus has the implied authority to enforce the Code.

The code prescribes broad guidelines about the conduct of the parties, particularly for the ruling parties at the Centre and the States. Some points of the Code are:

- No party or candidate shall cause tension between different castes and communities, religious or linguistic
- criticism of other political parties, when made, shall be confined to their policies and programme, past record and work.
- Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties
- the party in power whether at the Centre or in the State shall not use its official position for the purposes of its election campaign
- issue of advertisement at the cost of public exchequer shall be scrupulously avoided
- Ministers and other authorities shall not sanction grants/payments out of discretionary funds

If a recognized political party violates the model code, EC has the power to suspend or withdraw recognition of the party

The Code is not given a statutory status as there is a voluntary desire on the part of the parties to obey the same.

Model Code of Conduct comes into force on the date of announcement of election schedule by the Election Commission.

Critics believe the code obstructs government initiatives for too long a period.

Elections and money power

Contesting elections requires enormous financial resources . Political communication and mobilization in a vast and populous country like ours is very expensive .National political parties contest upto 543 seats to the Lok Sabha. On average, a person contesting for the seat of a member of parliament spends five rupees on a voter and the average MP constituency has 15 lakh voters in it, bringing the total minimum necessary funds to Rs. 75 lakh. Such huge money

cannot be raised from public at large and so the party depends on other sources like corporate funding which can be inimical to democracy and the integrity of the candidate.

Since smaller parties find it difficult to contest if the role of money in elections is excessive, there needs to be regulation of money power.

Following steps have been taken

- fixing the expenditure limits
- making bribery a corrupt practice for the giver and taker
- making donations transparent
- 5% of the profits of the companies(other than government companies) are permitted for the donation to parties.

Steps that are suggested are .

- Holding of simultaneous elections for LS and Legislative Assemblies, logistics permitting.
- Reduction of campaign period
- State funding of elections

A candidate is not free to spend as much as he likes on his election. The law prescribes that the total election expenditure shall not exceed the maximum limit prescribed under Conduct of Election Rules, 1961. Limit are set by the Union Government. EC is only an advisory body. If limits are exceeded, it would also amount to a corrupt practice under R. P. Act, 1951.
The limit for expenditure is fixed by the Government and is revised from time to time. At present the limit of expenditure for a parliamentary constituency in bigger states like U. P, Bihar, Andhra Pradesh, Madhya Pradesh is Rs. 40 lakhs.
The limit of election expenditure for an assembly constituency in the above bigger states is Rs. 16 lakhs.
The maximum limits of election expenditure vary from State to State. The lowest limit at present for a parliamentary constituency is Rs. 10 lakhs for the constituency of Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.
Under section 77 of the R.P.Act, 1951, every candidate at an election to the House of the People or State Legislative Assembly is required to keep, either by himself or by his election agent, a separate and correct account of all expenditure in connection with the selection incurred or authorised by him or his election agent between the date on which he has been nominated and the date of declaration of result, both dates inclusive. Every contesting candidate has to lodge a true copy of the said account within 30 days of result of the election.

In every state the account of election expenses shall be lodged by a contesting candidate with the District Election Officer of the district in which the constituency from which he contested lies. In the case of Union Territories, such accounts are to be lodged with the Returning Officer Concerned.

If a candidate is contesting from more than one constituency, he has to lodge a separate return of election expenses for every election which he has contested. The election for each constituency is a separate election.

Under section 10A of the RP Act, 1951, if the Election Commission is satisfied that a person has failed to lodge an account of election expenses with the time and in the manner required by or under that Act and he has no good reason or justification for the failure, it has the power to disqualify him for a period of 3 years for being chosen as, and for being, a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State.

Acceptance of money to vote for a candidate is a corrupt practice of bribery under Section 123 (1) of R. P. Act, 1951. It is also an offence under section 171-B of Indian Penal Code and is punishable with imprisonment of either description for a term which may extend to one year or with fine or both.

Media and elections

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 Legislative Assembly of Karnataka between 7am and 5.30pm on May 5 would be prohibited.Further, the EC stated that under Section 126 (1)(b) of the Representation of People Act, 1951, displaying any election matter including results of any opinion poll or any other poll survey, in any electronic media would be prohibited during the period of 48 hours ending with the time fixed for conclusion of poll in connection with the elections in Karnataka.

Paid news

Candidates contesting an election have limits of permissible election expenditure within which publicity is difficult to pay for. Therefore, they resort to bribing the newspapers and other electronic media to print about them. These stories are paid for though it costs far less than an advertisement and carry more value. However, it is a violation of journalistic and representative ethics. It misleads the readers too and viewers too. But it is not an offence under RPA 1951. Therefore, the EC recommendation is made to classify it as a crime.

Umlesh Yadav

The Election Commission of India's disqualification of Umlesh Yadav, sitting MLA from Bisauli in Uttar Pradesh, is a landmark order . Ms Yadav was disqualified under Section 10-A of the Representation of the People Act 1951 for a period of three years for failing to provide a "true and correct account" of her election expenses. She had failed to include in her official poll accounts the amount she spent on advertisements, shown as news, in two Hindi dailies, Dainik Jagran and Amar Ujala, during her 2007 election campaign. She should have shown it in her election expenditure under Section 78 of the Representation of the People Act. EC therefore disqualified her after auditing her election expenses statements.

It must be clarified that she did not lose her seat and face disqualification for paid news. It was a case of improper accounts.

Political parties and their finances

Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. 2nd ARC advocated that this needs to be acted upon early. The audited accounts should be available for information of the public domain. Although in an amendment made -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.

Election Commission has recently got the Institute of Chartered Accountants of India (ICAI) to draw up guidelines concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties.

The Law 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.

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.

Simultaneous Polls for State Assemblies and Parliament

None of the Above Option

(Discussed in the Class)

Election and Other Related Laws (Amendment) Act 2003

The Election and Other Related Laws (Amendment) Act 2003 was made to reform the law related poll funding and party finances.

It provides a strong incentive for open contributions to political parties.In the absence of tax incentives, most companies preferred to fund parties clandestinely for a variety of reasons — on account of the ubiquitous black economy, for fear of retribution from rival parties etc. For the first time, the law now provides for full tax exemption to individuals and corporates for all contributions to recognised political parties. All contributions of Rs 20,000 and above must be disclosed by the party to the Election Commission, and such information will be in the public domain.

State funding is now available to registered parties in the form of allocation of time on the electronic media.

State Funding of elections

State funding of elections has been under consideration in India for more than three decades. It is advocated on the following grounds

- Money is required for the political parties to communicate to the people and educate them and mobilize them on various public issues
- If state funding is absent, corruption can creep into the political system and the integrity of the candidates may be seriously compromised even before he is elected

- the amount of money needed to run a successful election campaign is substantial and prevents smaller parties from exerting their small proportion of influence on the outcome. Smaller parties are a vital part of a democracy, as they ensure that a complete spectrum of opinions is represented. Thus, state funding is required to establish level playing field among the parties
- it prevents the influence of foreign money from influencing the parties

It is , however, opposed on the ground that public money need not be used to fund political parties when there are urgent challenges like public health, education etc.

The following committees recommended state funding of elections

- Joint Parliamentary Committee (1971-1972)
- Tarakunde committee set up by Jaiprakash Narayan (1974)
- Dinesh Goswami committee (1990).
- multi-party parliamentary committee under the chairmanship of Indrajit Gupta(1998) was set up to look into the question of state funding of elections.

Indrajit Gupta Committee on State Funding of elections

The committee said that state funding of elections would bring in an element of equality to electoral contests, particularly because it would help remove the disadvantage faced by parties which represent the socially and economically weaker sections and which often have limited access to big donors.

Indrajit Gupta Committee Recommendations

- State funding should be confined to recognized national and state parties.
- State should meet some essential expenses of political parties during election campaigns and provide them administrative support during the period between elections
- It should be in kind and take the following form of materials and other facilities for fighting elections like: a specified quantity of petrol or diesel to run vehicles during an election campaign; a specified quantity of paper to prepare election literature and voter identity slips; postal stamps for a specified sum of money; copies of the electoral roll in a constituency; electronic media time; rent-free accommodation for party headquarters in New Delhi and every recognised State party may be provided the same facility in the respective state capitals; one rent-free telephone with subscriber trunk dialling facility etc.
- A separate Election Fund should be created with an annual contribution at the rate of Rs.10 a voter, for the total electorate of about 60 crores, since grew to 75 crores by 2013) by the Centre and a matching amount contributed by all State governments together.
- in order to be eligible for state funding, political parties and their candidates should have submitted their income tax returns up
- political parties should accept all donations above Rs.10,000 in the form of cheques or drafts and disclose the names of the donors.

How to reduce election expenditure

- the State and Parliamentary level elections should be held at the same time
- the campaign period should be reduced considerably

- candidates should not be allowed to contest election simultaneously for the same office from more than one constituency

Inner party democracy

Political parties in India are influenced by dynastic politics. No regular periodical elections are held to elect the organizational office bearers. Polls are postponed. Information regarding crucial party stand is not disseminated among cadres. Decisions are taken by a handful of top leaders. This does not augur well for democracy. Therefore, there needs to be amendments to RPA 1951 for regular elections.

Criminalization of Politics

Criminalization of politics refers to persons with criminal record entering legislature at national, state and local levels through the electoral process by money and muscle power. When law breakers become law makers the adverse consequences are in the form of corruption; demoralization of bureaucracy; loss of faith in the democratic system by the common man; weakening of rule of law and so on..

The reasons for increasing criminalization of politics is the poverty and illiteracy of people; pressure on courts and the consequent delay in settlement of disputes; political parties prefer winnability to ethics and so criminals are given tickets as they can mobilize money and muscle power to intimidate the voters for votes.

Politicisation of crime is related to it. It means justification of crime for political reasons. It has many shades. Crime justified for communal reasons- if it is used against rival group. Similarly, for ethnic reasons, crime is justified. For example, many caste groups set up militias. Political parties safeguard their criminals and pressurize and oppose those of the opponents. State machinery is used to protect some criminals and foist cases against others depending upon their loyalties.

Section 8 of RP Act

The section relates to disqualification of candidates from contesting in an election to Parliament or State Legislature for specified offences.

1 Section 8 (1) relates to various offences like under the Prevention of Insults to National Honour Act. 1971 and if a person is convicted under these laws, six years of disqualification from contesting from date of conviction will be in force. It is not considered as to what is the quantum of punishment.
2 Section 8(2) deals with some economic crimes and also dowry and sati for which the same punishment as above is given if the person is sentenced for not less than six months.
3 Section 8(3) covers all other offences (for example, offences under Prevention of Corruption Act) and says that if a sentence is for a period of atleast 2 years , the convicted person is disqualified to contest for a period of six years from the date of release
4 Section 8(4) applies to sitting legislators. A sitting legislator who is convicted is not barred from contesting for a period of three months from the date of conviction during which time he can appeal; or if an appeal is made in three months, till such time that the appeal is disposed off.

The EC interpreted the Section stringently in 1997. The effect is: earlier during the pendancy of appeal, the nomination of the convicted person was accepted while it is not so since 1997. After the High Court convicted and sentenced a person for at least 2 years, the person in question is disqualified from contesting even while an appeal is pending in the Supreme Court. He can only contest if the Supreme Court finds him innocent. The interpretation is found to be necessary to minimize criminals in the political system.

Section 8 of the RP Act quoted above discriminates between a sitting legislator and others in the sense that the former, even if convicted can contest while the appeal is pending, and others can not. According to the EC and other experts , the discrepancy needs to be removed.

ADR case

Reports of the Law Commission(1999) and Vohra Committee(1995) recommended that citizens should have information related to their representatives which is best made available while the candidate files his nomination papers in a election to Lok Sabha or Legislative Assembly. .

A Public Interest Litigation (PIL) was filed by ADR(Association for Democratic Rights) in 1999 in the apex court for implementation of the said reports and for a direction to the Election Commission to make mandatory for every candidate to provide information regarding

- criminal antecedents, if any
- educational qualifications
- asset-liability details of himself and his family.

It led to a landmark Supreme Court Judgement in 2002 endorsing the prayer of the ADR. Parliament made an Act in this regard in 2002 but diluted the verdict of the Supreme Court- requiring disclosure of criminal background, but not of financial and educational background. The Act was challenged .

The Supreme Court in a second landmark Judgement in 2003 declared the Act unconstitutional and restored its earlier order. Subsequently, the Election Commission issued orders implementing the judgement

Adjudication of Election Disputes

Section 80 and 80-A of the Representation of Peoples Act, 1951, provide that election petitions be filed only in the respective High Courts. Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

The concern is that the High Courts, given their backlog of cases, take too long to deal with election petitions, final disposition often not happening till after the term of the elected representative is over. This phenomenon is so rampant that the Second Administrative Reforms Commission, in its report —Ethics in Governance‖ (2007) observed, —such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering

the election petitions infructuous.The NCRWC, the Election Commission, and the Second Administrative Reforms Commission, all have recommended setting up of Special Election Benches for fast disposal of election related cases.

Proxy Voting

The word proxy means "to act on behalf of another. It is allowed in India for defence personnel since 2003.The need for proxy voting arises from the fact that the campaigning period is reduced to 14 days. Ballot papers can be printed only after withdrawal of the nominations before being dispatched to the far off locations. For example, a soldier from Kerala posted to Tripura has to be sent the ballot postally and must mail it to the returning officer in Kerala within less than a fortnight which very often is found impossible.

Representation of the People Act 1951, says that the voting shall be secret ballot but section 60 of RPA permits special provisions for certain classes of people. Thus, on the strength of Section 60, proxy voting is permitted.Proxy voting is when a soldier in the Indian armed forces authorizes another person to vote on his behalf. He can nominate any eligible voter from his constituency . A soldier's proxy nomination is done only once in his service period. However, if he is unhappy with the proxy, or the proxy dies, the nomination can be revoked.One person can be the proxy for two soldiers.If a soldier does not want to nominate someone as his proxy, he can opt for postal ballot. There are 2.5 m defence personnel who benefit from proxy voting. IFS officers do not have this facility. They vote by postal ballot if they are posted abroad.

Exit polls banned

The Election Commission (EC) banned dissemination of results of opinion polls during 48 hours before the poll and put a blanket ban on exit polls till the last phase is over in the event of multi-phase elections.

The EC's move comes against the backdrop of the Supreme Court leaving it to the discretion of the EC to decide on laying down guidelines on opinion and exit polls till the government frames regulation on the issue. The government had in 2008 amended the Representation of the People Act (RPA), 1951 to curb publication of exit polls during elections till the conclusion of the final phase of voting so that it does not "influence" the voters. Government's move to amend the RPA is seen as an effort to ensure that polls, which are generally spread over several phases, are free and fair.

Shorter election process

There is still a case for a shorter election process. While the counting process is now quickened with the introduction of Electronic Voting Machines, the multi-phase polling process virtually brings the government to a standstill for close to three months. The election itself is held within the space of a month, but from the time the election is announced, which is when the Model Code of Conduct comes into effect , to the time the new Lok Sabha is constituted, it is about three months. No major policy decision can be taken, and welfare schemes and development works are suspended till after the new government takes office. The shorter the period of a lame-duck government, the better it is for governance. True, security considerations, geographical conditions and manpower requirements necessitate the staggering of the election. But the Election Commission in recent years has been quick to make good use of technology and devise

efficient ways of human resources management. Even under the existing constraints, a shorter election process will be within the realms of possibility and in the interest of all.Campaign period can be cut short.

None of the above

The option of not voting for any candidate is available even if the electronic voting machines (EVMs) do not have a button with the 'none of 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 pending with the government. This issue is also pending before the Hon'ble Supreme Court." However, 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 about the decision, and the latter will then make entries in the "register of electors" to the effect that the particular voter has decide not to vote for any candidate.The polling officer will then put his/her signature under such entries. This provision is under rule 49-O of the Conduct of Election Rules 1961. However, it does not go to determine the results. Rest is discussed in the class.

Online voting

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 1some went to e-Booths set up by the commission, to cast their votes online.

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.

The questions marks are about secrecy of voting; reliability of the e-systems;voter may be under the influence of others etc.

2009 Elections: Snapshot

714 million people -- more than twice the population of the United States -- are eligible to vote in the world's biggest democratic exercise.420 millions voted – about 60% of turnout.
More than 800,000 polling stations are set up for a five-phased vote over several weeks, watched over by 2.1 million security personnel.

Around 1.1 million electronic voting machines were used across the nation. These were first introduced for a general election in 2004, when millions of illiterate voters pressed a button next to a symbol of the party of their choice.
Ballot boxes were also used -- some were transported by elephants and camels to remote voters.
In 1996, before the introduction of electronic voting machines, 8,000 metric tonnes of paper were used to print ballots.

A quarter of the 543 lower house elected MPs have criminal cases pending against them. More than half the cases are for serious offences including murder, rape and corruption.

SYMBOLS

Symbols range from an elephant, a hand, or a hammer, sickle ,bicycle, a bow-and-arrow, a pair of spectacles or a telephone.

Free symbols made available by Election Commission to independents and unrecognized parties included bangles, a cricketer, a coat hanger and a ceiling fan.

Polling station No. 29 (Dharampur) in the remote Arunachal Pradesh state that borders China had just one voter in 2004.

Four thousand six hundred and seventeen candidates from over 300 political parties and Independents competed for 543 parliamentary seats.

Voter turnout was a little less than 60% in 2009.

Assembly elections in 2012 also saw huge turnout and it held the lesson that regionalist parties are on the rise. Same is the message with the AP by polls in 2012 June.

Right to vote

Part XV of Indian Constitution which deals with elections ; Representation of People Acts 1950 and 1951 and various other provisions of the constitution stipulate the Qualifications and conditions and to vote in India. Constitution of India says that no one shall be ineligible for inclusion in the electoral roll on grounds of religion, race, caste or sex. Every citizen who is not less than eighteen years of age shall be entitled to be registered as a voter unless disqualified under the Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice.

Art. 326. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who
is a citizen of India and who is not less than eighteen years of age (reduced from 21 years by the Sixty-first Constitution Amendment Act, 1988) on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or
corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Right to vote, however I not a Constitutional right nor a Fundamental Right. It is a statutory right. Read ahead.

The 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 registration if any person becomes disqualified his/her name shall be struck off from the rolls. Section 19 lays down minimum 18 years of age & ordinary residence in the constituency as conditions for registration.

Section 62, 1951 Act 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 disentitlement will not apply to those confined under any preventive detention law. A person under trial but who is on bail can vote.

The Constitution identifies disqualification only on grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice.

Communication for election tracking(COMET)

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

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.

Disaster relief

In India, the financing of disaster relief is an important aspect of federal fiscal relations. There are significant variations in the disaster proneness profiles of different states and wide regional disparities in terms of levels of economic development. This implies that the coping capacity of a majority of the states to deal with disasters on their own is inadequate. This is compounded by the fact that the poorer states are often the most disaster prone. The financing of disaster relief has, as a result, come to be firmly accepted as a joint endeavour of the Central and State Governments. Finance Commissions been asked bythe President under the ToR to give recommendations.

The pre-FC XIII system of financing relief expenditure, thus, mainly revolved around the CRFs maintained at the state level and the NCCF at the Central level. Both these funds target immediate relief measures and exclude measures for mitigation or post-calamity reconstruction. The CRF is a resource available to the states to meet the expenses of relief operations for a range of specified calamities. The NCCF is a national fund to provide assistance to states for calamities of rare severity, beyond the coping capacities of the states' CRFs. While the total amount of assistance for the CRFs is decided byFinance Commissions based on the needs of individual states, the NCCF has a dedicated source of funding through a special duty on selected items.

Calamity Relief Fund

They are used to meet the expenditure for providing immediate relief to victims of cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloud burst and pest attack. The essential features of the CRFs are as follows:

i) The fund is maintained in the public account of the state.

ii) Seventy-five per cent of the fund is financed by the Centre and 25 per cent by the respective states.

It is renamed State Disaster Response fund by the FC XIII.

The National Calamity Contingency Fund has a core corpus of Rs. 500 crore and is replenished through the National Calamity Contingent Duty imposed on cigarettes, pan masala, beedis, other tobacco products and cellular phones. It is maintained in the public account. It is renamed National Disaster Response Fund by the FC XIII.

Additional Central Assistance : In order to finance post-disaster reconstruction which is not covered under the NCCF, Additional Central Assistance (ACA) has been given to states in recent years, particularly for the Gujarat earthquake of 2001, the Indian Ocean tsunami of 2004, the Kashmir earthquake of 2005 and the Kosi floods of 2008 in Bihar.The 2013 Uttarakhand floods may also be given a similar package due to their magnitude and severity.

The Governor

The pattern of Government provided for the states is similar to that of the Central Government. The reason for the similarity is that at both the levels of government, there is parliamentary system of government in which a ceremonial head and a real head constitute the executive. For the Union Government, Presidency is ceremonial and the effective head of the government being the Prime Minister heading the Council of Ministers. For the State Government, Governor is the counterpart of the President of India and the Chief Minister heading the Council of Ministers is the mirror image of the Prime Minister.

Historical background

The Government of India Act 1858 transferred the responsibility of administration of India from the East India Company to the British Crown. It made the Governor of the province an agent of the Crown working through the Governor General. The Montagu-Chelmsford reforms (1919) made small changes in the provincial government with insignificant level of responsible government being introduced. The Government of India Act 1935 gave provincial autonomy with the Governor being required to act on the advice of the Council of Ministers. However, the Governor continued to exercise substantial discretion for which he was accountable only to the Governor General.

After India achieved Independence, The GOI Act 1935 was adapted and enforced till the new Constitution was drafted and adopted. The Adaptation Order 1947 dropped all references to the discretionary powers and made the Governor function completely according to the advice of the Council of Ministers.

Constituent Assembly(1947-49) debated various aspects related to the institution of Governor which essentially can be grouped under two heads

- Whether the Governor should be elected or nominated and
- Discretionary powers of the Governor.

The idea of elected Governor is discarded for the following reasons

- It defeats the very purpose of the institution of Governor as it should be an independent Constitutional office which is not possible if the Governor is a political office
- Political deadlock between the offices of the Governor and that of the Chief Minister which can paralyse the Government
- In case the Governor and the Chief Minister belong to the same political party, Governor can not perform his discretionary powers honestly and impartially
- Governor can develop his own populist vested interest which can compromise his duties involving security of the state from internal and external threats
- Jawaharlal Nehru explained to the Constituent Assembly that two more reasons can be cited to ignore the idea of a elected Governor: it may lead to provincial separatist tendencies ;and there will be far fewer common links with the centre.

Art.153 to 167 of Part VI deal with the State Executive of which Governor is the titular head and the Chief Minister heading the Council of Ministers is the political and real head.

Article 153 of the Constitution requires that there shall be a Governor for each State. It means that there shall not be a vacancy in the office of the Governor. Thus, the incumbent Governor of the State continues even after the five year tenure is over till a new Governor is appointed by the President as the Art.156 mandates. The Constitution (Seventh Amendment) Act, 1956 made a change in the Art.153 to the effect that one person can be appointed as Governor for two or more States. The need for it was felt in the wake of the reorganization of states in 1956 which in turn made many amendments to the Constitution necessary in the areas relating to the High Courts and High Court Judges, the executive power of the Union and the States etc.

Article 154 vests the executive power of the State in the Governor..

Article 155 says that "The Governor of a State shall be appointed by the President by warrant under his hand and seal".

Article 156 provides that "The Governor shall hold office during the pleasure of the President". The term of the Governor is prescribed as five years. There is a controversy about whether the five year term is more important that the reference to the pleasure of the President of India. In order to understand the debate clearly, the contents of Art.156 are to be followed as they are available in the Constitution:

156. Term of office of Governor

1) The Governor shall hold office during the pleasure of the President.
2) The Governor may, by writing under his hand addressed to the President, resign his office.
3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

As can be seen from above contents of Art.156, the meaning of the sequence of the above provisions is that President's pleasure is more important that the five year term.

Art. 157 lays down two qualifications for the office of the Governor:

- he should be a citizen of India and
- must have completed the age of thirty-five years.

Art.158 stipulates the conditions of Governor's office as the following:

- Governor shall not be a member of either House of Parliament or State Legislature, and if such a member is appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- The Governor shall not hold any other office of profit.
- The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in

that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

- Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
- The emoluments and allowances of the Governor shall not be diminished during his term of office.

In 2010, the salary of Governor was raised to Rs.1,10,000 a month . It has also been decided to award pensions, for the first time, to former Governors.

Art.159 prescribes the oath/affirmation which a Governor has to take before entering upon his office, in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available to faithfully discharge the functions of the Governor of .....*(name of the State)* and will to the best of his ability preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of .....*(name of the State)* "

Executive Powers: The executive power of the state is vested in the Governor. He exercises it either directly or through officers subordinate to him. It has been held that ministers are officers subordinate to him. The executive power of the state extends to all matters with respect to which the State Legislature has power to make laws. All executive action is expressed to be taken in the name of the Governor. All orders, instruments, etc. are authenticated in the manner specified in the rules made by the Governor.

The Governor appoints the Council of Ministers, Advocate General, Chairman and the members of the State Public Service Commission. The Governor appoints the Chief Minister and other ministers are appointed by him on the advice of the Chief Minister. The Governor has the power to nominate one member from the Anglo-Indian Community, if he is of the opinion that the community needs representation in the Assembly. The Governor has the power to nominate one-sixth of the members of the Legislative Council of State. The persons to be nominated are require to have special knowledge and practical experience in respect of Literature, Science and Arts etc.

Legislative Powers: The Governor is the part of the legislature (Art.168). According to this Article, the Legislature of a State shall consist of the Governor and the Legislative Assembly. Where, however, the Legislature consists of two Houses, the upper House too is a part of the Legislature.The Governor has the right to address the legislature and to send messages to it. The Governor may from time to time summon, prorogue or dissolve the Legislative Assembly. The Governor has the power of causing to be laid before the legislature, the Annual Financial Statement(Budget). Without his recommendation no demand for grant can be made by the legislature. The Governor reserve Bills for the assent of the President made by the Legislature. In this regard, Art. 200 and 201 are very important and they are as follows:

Art. "200:Assent to Bills -- When a Bill has been passed by the Legislature of a State , it shall be presented to the Governor who may accept or reject the Bill.In the case of Bills other than

Money Bills, he may return to the Legislature for reconsideration. He may also reserve the Bill for the consideration of the President.

When a Bill is returned to state legislature by the Governor, the Bill must be repassed to be accepted by the Governor.

Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, derogate the powers of the High Court. In essence as per the Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options, namely, (a) he assents to the Bill; (b) he withholds assent; (c) he reserves the Bill for the consideration of the President; or (d) he returns the Bill to the Legislature for reconsideration.

Art.201. Bills reserved for consideration

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent in case of a Money Bill. In other Bills, he may return the Bill for repassage. Once it is returned, the state legislature should consider it within 6 months and sent for Presidential consideration.It need not be assented to by the President and he may return it again and again. Thus, it is an absolute veto. Also, there is no time limit within which the President should take a decision.

There have been instances where Bills have been pending with the President for periods up to six years or more. It may be mentioned here that a careful reading of Article 201 shows that even a Money Bill can be reserved for the assent of the President.

Governor's suspensive veto

The Gujarat Local Authorities Laws (Amendment) Bill, 2009, which offers 50 percent reservation for women along with making voting in local bodies compulsory was repassed by the assembly in 2011 after the Governor returned it for reconsideration and repassage.The bill was first introduced in the Assembly in December 2009 and passed by majority vote.It was however, returned by the governor in April 2010 with remarks that "forcing voter to vote is against the principles of individual liberty".

Governor Kamla had returned the bill to the government for reconsideration with her comments."The present bill violates the freedom which a citizen is entitled to enjoy under Article 21 (personal liberty) of the Constitution.She had also asked the government to separate the issue of women's reservation in local body polls from it.The options for the Governor now are to sign or keep it for Presidential consideration.

President's absolute veto

President Pratibha Patil withheld her assent to the controversial Gujarat Control of Terrorism and Organised Crime Bill, 2003 (GUJCOC) following state government's refusal to make amendments to it."The President has withheld her assent from the Bill on January 22, 2012 as the state government had not made any amendments in the said Bill as per the directives contained in Presidential message to the earlier Bill."

Gujarat Control of Terrorism and Organised Crime Bill, 2003, as passed by the State Legislature was reserved by the Gujarat Governor for consideration of the President.The proposed law was earlier rejected by the Centre on the ground that it was not in line with its new legislation dealing with terrorism like Unlawful Activities (Prevention) Amendment Act- it allows or disallows bail by the judge only if Public Prosecutor agrees to it.

Clemency Powers:

Article 161 confers on the Governor the power to grant pardon, reprieve, respite or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matters to which the executive power of the state extends. It is largely equal and parallel to the powers of the President. The latter's powers relate to laws made by the Parliament. The difference however is that the President can pardon a death sentence while the Governor can only commute it to life term. Governor can not entertain cases of court martial. The clemency granted or not granted by Governor can not be appealed against to the President. But courts can intervene- High Court and Supreme Court.In case of violation of state law that attracts death penalty, President can be approached.

Governor's Discretionary Powers

Following are the provisions of Art.163 which contains the discretionary powers.

Art.163. Council of Ministers to aid and advise Governor.-

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Art.163 explicitly recognizes Governor's discretionary powers- that there are situations in which the Governor has to act without the aid and advice of the Council of Ministers. There are two types of such situations:

1. circumstances thrown up in the functioning and process of legislative democracy
2. where the Constitution confers such powers.

In the first class are the following situations as mentioned in the Sarkaria Commission report

a. choosing the Chief Minister
b. testing majority
c. dismissal of the Chief Minister
d. dissolving the Assembly
e. recommendation of the President's Rule(Art.356)
f. reserving the Bill for Presidential consideration (Art.200)
g. returning a Bill for re-passage to the Legislature

In the second class are the Constitutional powers where Governor's discretion is required in the exercise of the powers.. The Constitution of India contains certain provisions expressly providing for the Governor to act—

- in his discretion; or
- in his individual judgement
- special responsibility or
- independently of the State Council of Ministers

a. Discretionary powers

- Governors of all states- Reservation for the consideration of the President of any Bill which, in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill (Art. 200):
- The Governors of Arunchal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim,and Tripura have been entrusted with some specific functions to be exercised by them in their discretion(Articles 371A, 371F and 371H and in Sixth Schedule).

b. Individual judgement:

- The Governors of Arunachal Pradesh and Nagaland have been entrusted with a responsibility with respect to law and order in their respective states. In the discharge of this responsibility, they are required to exercise "individual judgement" after consulting their Council of Ministers.

c. Independently of the Council of Ministers

- Governors as Administrators of Union Territories(U.T) — Any Governor, on being appointed by the President as the administrator of an adjoining UT, has to exercise his functions as administrator, independently of the State Council of Ministers.

d. Special responsibility

- Similarly, the Special Responsibility Powers of Governor are as follow:Articles 371(2) And 371C(1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively. The presidential Orders so far issued under these Articles have provided that the concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion. It has to be noted that these Articles themselves do not expressly provide for the exercise of discretion by the concerned Governors. Thus, these presidential Orders are instances of a Governor being required to act in his discretion "under" the Constitution.

Development Boards

There are three Development Boards constituted in Maharashtra State:

1. The Vidarbha Development Board
2. The Marathwada Development Board
3. The Rest of Maharashtra Development Board.

The special responsibility entrusted with the Governor of Maharashtra under the Constitution is for ensuring :-

- equitable allocation of funds for development in the three regions and
- equitable arrangements for providing adequate facilities for technical education and vocational training and adequate opportunities for employment in the services under the control of the State Government in the three regions

The responsibility of the Governor under Article 371(2) has been stated in the Development Boards Order 1994.

CAB 118 Passed: Responsibility for Governor

The Constitution 118th Amendment Bill, 2012 was passed by the Parliament.A resolution to make special provisions for the Hyderabad-Karnataka Region was passed by the Legislative Assembly and Legislative Council of Karnataka in March 2012.. The resolution aims to establish an institutional mechanism to develop the region and promote inclusive growth. It aims to reduce inter-region and inter-district disparity in the State of Karnataka. This Bill was introduced in Parliament to give effect to this resolution.

The Act seeks to insert Article 371J in the Constitution to empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region. As per the Statements of Objects and Reasons of the Bill, this Region includes the districts of Gulbarga, Bidar, Raichur, Koppal, Yadgir and Bellary.

The President may allow the Governor to take the following steps for development of the region: (i) setting up a development board for the Region; (ii) ensure equitable allocation of funds for development of the Region; and (iii) provide for reservation in educational and vocational training institutions, and state government positions in the Region for persons from the Region.

Art.371(2)

The Constitution of India was amended in 1956 enabling the President of India under Article 371(2) to provide for the special responsibility of the Governor of Maharashtra for the establishment of Development Boards for Vidarbha, Marathwada and rest of Maharashtra regions. in 1994 President issued an Order assigning to the Governor of Maharashtra the special responsibility under Article 371(2) of the Constitution.The Presidential Order entrusted the Governor of Maharashtra with the special responsibility for the establishment of separate Development Boards for Vidarbha, Marathwada and the rest of Maharashtra. The order also specified the composition of Boards, the term of office and allowances payable to the Chairmen and members, functions of the Development Boards and responsibility and powers of the Governor.The Development Boards are set up for 5 years at a time and their term is being extended by 5 years each time.

There are three Development Boards constituted in Maharashtra State.

1. The Vidarbha Development Board
2. The Marathwada Development Board
3. The Rest of Maharashtra Development Board.

The special responsibility entrusted with the Governor of Maharashtra under the Constitution is for ensuring :-

- equitable allocation of funds for development expenditure over the three regions subject to the requirements of the State as a whole; and

- equitable arrangements for providing adequate facilities for technical education and vocational training and adequate opportunities for employment in the services under the control of the State Government in the three regions subject to the requirements of the State as a whole.

Governor and the CM

Article 164(1) says "The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and shall hold office during the pleasure of the Governor".

Art.164 says the following:

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minster, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Role of Governor

Governor's role is largely similar to that of the President of India, Constitutionally. Politically, historically, so long as one party formed the Government at the centre and also in the states, the functions of the Governors remained ceremonial. When different parties headed the Government at the Centre and in States, some Governors acted in partisan manner and as agents of the Union Government. It all started in 1952 when in Madras C . Rajagopalachari was asked by Governor Sri Prakash to form the Government though the Congress lacked a clear majority. In 1959 the communist government of Kerala led by E.M.S. Namboodripad was dismissed on the report of the Governor, though the ministry commanded majority in the legislature, on the flimsy ground that it had lost the confidence of the people.

In 1967, new political era started with the formation of SVD Governments which were Coalition Governments in most northern States. Central Government used the governor to dismiss the state governments though there were no reasons other than political ones: Ajoy Mukharji's Government in Bengal(1967), Charan Singh's Government in UP(1969), Mahamaya Prasad Sinha's Government in Bihar , Govind Narayan Singh Government in MP; RN Singh Dev Government in Orissa . West Bengal Governor Dharm Vira dismissed the Ajoy Mukherjee Government on the belief that the United Front ministry of Ajoy Mukherjee lost its majority as some of legislators defected. He proposed to the Chief Minister to call a session of

the Assembly to test majority which the Chief Minster refused and so the ministry was dismissed.
In 1969, Charan Singh ministry was dismissed by Governor Gopal Reddy without offering the CM a chance to prove his majority even as the Assembly was in session.
Governor of UP Romesh Bhandari did not invite the largest single party in 1997 and imposed the President's rule which the Allahabad High Court found objectionable.
In 1998, Kalyan Singh Ministry in UP was dismissed and Jadadambika Pal ministry was sworn in . Justice was done when the SC ordered that a special session of the Assembly be held and majority ascertained.
In Andhra Pradesh, in 1984 Governor Ramlal dismissed the Ministry of N.T. Rama Rao which later won the confidence of the Assembly. In Goa the Governor dismissed the D'Souza ministry and installed Ravi Naik as the Chief Minister in 1994 with hardly any justification for his act.

Today the situation is different as coalitions at the centre are the norm and regional parties make up a huge part of the coalition. National parties need them. Therefore, Governor can not work against the state government under regional parties.

Governor: Some perspectives
Sri M.C. Setalvad, the first Attorney General of India, pointed out when he was consulted by Dr. Rajendra Prasad (in connection with the Hindu Code Bill controversy): "Governor's discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor... For a centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly – these are unconstitutional acts and run counter to parliamentary system. In all his constitutional 'functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammeled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions".

Recommendations of Sarkaria Commission
The Commission headed by Justice R.S. Sarkaria, a former Judge of the Supreme Court, was constituted to "examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate". Commission first examined the historical background to the institution of Governor, the constitutional provisions concerning the Governor and the scope of these provisions and then pointed out the three main facets of Governor's role. The three facets so pointed out are: (a) as the constitutional head of the State operating normally under a system of Parliamentary democracy; (b) as a vital link between the Union Government and the State Government; and (c) as a representative of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article 356(1)]. Sarkaria Commission took note of the criticism with respect to the role of the Governor and also set out the matters in which the Governor has to act in his discretion- as mentioned above.
The Commission says that the role of Governor is of vital importance having multi-faceted role, that Governor is linchpin of constitutional apparatus, that Governor's office assures continuity of

Government and that it should not be dispensed with. Recommendations of the Sarkaria Commission in regard to the institution of Governor are briefly the following:-The person to be appointed as a Governor –

1 should be an eminent person;
2 must be a person from outside the State;
3 must not have participated in active politics at least for some time before his appointment;
4 he should be a detached person and not too intimately connected with the local politics of the State;
5 he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
6 His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a statement explaining the circumstances leading to such removal or resignation, as the case may be;
7 After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be; and
8 At the end of his tenure, reasonable post-retirement benefits should be provided.

Sarkaria Commission further recommended that in choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

1 The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
2 The Governor's task is to see that a government is formed and not to try to form a government which pursue policies which he approves.
3 If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minster.
4 If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

(i) an alliance of parties that was formed prior to the Elections.
(ii) the largest single party staking a claim to form the government with the support of others, including 'independents'.
(iii) a post-electoral coalition of parties, with all the partners in the coalition joining the government.
(iv) a post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents' supporting the government from outside.
(v) The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.

It was also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

The other recommendations made by the Sarkaria Commission are that the issue of majority support should be allowed/directed to be tested only on the floor of the House and nowhere else and that in the matter of summoning and proroguing the Legislative Assembly, he must normally go by the advice of Council of Ministers but where a no confidence motion is moved and the Chief Minister advises proroguing the Assembly, he should not accept it straightaway and advise him to face the House. The Report also recommended certain measures in the matter of dissolution of the Assembly. The Report recommended that while sending *ad hoc* or fortnightly reports to the President, the Governor should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

The discretionary power of the Governor as provided in Article 163, it was recommended, should be left untouched.

In 1979, a Constitution Bench of the Supreme Court categorically ruled in *Hargovind vs Raghukul Tilak* that the governor cannot be "regarded as an employee of the Government of India...He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India".

All the above principles are being followed at the Union level too where coalitions have been recurring for about two decades and there are no Constitutional rules to follow in this regard.

Removing the Governor: Constituent Assembly debates

Krishnamachari unequivocally stated in the Constituent Assembly that "we do not want ... to make the governor of a province an agent of the Centre at all".

Professor K.T. Shah, in the course of the debates, stressed that "we must not leave the governor to be entirely at the mercy or pleasure of the president and so long as he acts in accordance with the advice of the constitutional advisers of the province he should, I think, be irremovable during his term of office".

Shibbanlal Saksena apprehended that in the absence of safeguards "he (the governor) will be purely a creature of the president, that is to say, the prime minister and the party in power at the Centre. When once a governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the president at his whim...Such a governor will have no independence..."

B.R. Ambedkar's answer to these criticisms is highly significant. He emphasised that it was "quite unnecessary to burden the Constitution with all these limitations stated in express terms...I therefore think that it is unnecessary to categorise the conditions under which the president may undertake the removal of the governor". Thus Dr Ambedkar clearly visualised that the power of removal of a governor was conditional, not absolute.

The power of removal, although apparently absolute, is subject to an implied limitation, namely, that it can be exercised only in cases of violation of the Constitution or for the commission or

omission of acts by the governor which render him or her unfit to occupy the gubernatorial office. The doctrine of implied limitation has been recognised by our Supreme Court.

Dr. B.R. Ambedkar, the chairman of the drafting committee, said: "Under the parliamentary system of government, there are only two prerogatives which the King or the Head of the State may exercise. One of them is the appointment of the Prime Minister and the other is the dissolution of the House." To a query about the position of the Governor in a State, Ambedkar said: "The position of the Governor is exactly the same as the position of the President."

However, the norms of appointment and the credibility of the office of Governor deteriorated fast to become a major cause of disharmony in Centre-State relations. The Study Team (October 1967) of the Administrative Reforms Commission on Centre-State Relationship stated: "The post came to be treated as a consolation prize for what are sometimes referred to as 'burnt out' politicians. Instead of these being treated as sinecures, they should be given due recognition as vital offices in the federal fabric of Indian Administration".

The Committee of Governors appointed by President V.V. Giri affirmed in its report (1971): "Moreover, under the Constitution, just as a State is a unit of the Federation and exercises its executive powers and functions through a Council of Ministers responsible to the Legislature and none else, the Governor, as the Head of the State, has his functions laid down in the Constitution itself, and is in no sense an agent of the President" (page 8).

The Rajamannar Committee Report (1971) recommended: "He (the Governor) should not be liable to be removed except under proved misbehaviour or incapacity after inquiry by the Supreme Court."

The Sarkaria Commission Report on Centre-State Relations (1988) noted: "Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office. Criticism has been levelled that the Union government utilises the Governors for its own political ends. Many Governors looking forward to further office under the Union or active role in politics after their tenure came to regard themselves as agents of the Union" .

In Hargovind Pant v Dr. Raghukul Tilak (AIR 1979, SC), a Constitution Bench comprising five Judges of the Supreme Court observed: "Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot be regarded as an employee or servant of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office, which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State".

In his monumental work, Constitutional Law of India, eminent jurist H.M. Seervai said: "As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because in the honest discharge of his duty, the Governor takes action which does not fall in line with the policy of the Union Ministry. The removal of the Governor

under such circumstances would otherwise mean that the Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution".

Supreme Court on Governor term 2010: B P Singhal case

A five-judge constitution bench of the Supreme Court objected to the removal of four NDA-appointed governors in 2004 by the UPA immediately after coming to power.

The reason given for removal was that they were not in sync with the policies and ideologies of the UPA government. The court held that if the reasons for removal were irrelevant, malafide or whimsical, they could invite judicial intervention.

Justice Raveendran, writing the unanimous 56-page judgment, said: "Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union government or the party in power at the Centre. Nor can he be removed on the ground that the Union government has lost confidence in him."

The Bench felt that no reasons need to be ascribed for the summary dismissal of governors as they continue in their post as long as they enjoyed the pleasure of the President.But, it sounded a caution. "Having regard to the nature of functions of the governor in maintaining Centre-state relations, and the flexibility available to the government in such matters, it is needless to say that there will be no interference unless a very strong case is made out," it said and ruled that where the apex court feels the power to dismiss a governor had been exercised arbitrarily, it would intervene.

Punchi Commission on governor

Given the status and importance conferred by the Constitution on the office of the Governor and taking into account his key role in maintaining Constitutional governance in the State, it is important that the Constitution lays down explicitly the qualifications or eligibility for being considered for appointment. Presently Article 157 only says that the person should be a citizen of India and has completed 35 years of age.

The Sarkaria Commission recommendations in this regard are endorsed.

The Punchi Commission is of the view that the Central Government should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit lest appointments to the high Constitutional office should become a constant irritant in Centre-State relations and sometimes embarrassment to the Government itself.

Punchi Commission further says the following: Governors should be given a fixed tenure of five years and their removal should not be at the will of the Government at the Centre. The phrase "during the pleasure of the President" in Article 156(i) should be substituted by an appropriate procedure under which a Governor who is to be reprimanded or removed for whatever reasons is given an opportunity to defend his position and the decision is taken in a fair and dignified manner befitting a Constitutional office.

It is necessary to provide for impeachment of the Governor on the same lines as provided for impeachment of the President in Article 61 of the Constitution. The dignity and independence of the office warrants such a procedure. The "pleasure doctrine" coupled with the lack of an appropriate procedure for the removal of Governors is inimical to the idea of Constitutionalism

and fairness. Given the politics of the day, it can lead to unsavory situations and arbitrariness in the exercise of power. The procedure laid down for impeachment of President can be made applicable for impeachment of Governors as well.

Sanction of the Governor for Prosecution of Ministers

In terms of Section 197 of the Criminal Procedure Code, only with the accord and consent of the Governor can criminal prosecution be commenced against a Minister of a State. The question which arises is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Indian Penal Code. The recent controversy surrounding the Lavlin case in Kerala where the Governor accorded sanction to proceed with prosecution despite advice to the contrary by the council of ministers is a case in question.

Article 163 of the Constitution of India binds the Governor to the advice of the CM heading the Council but gives hi discretionary powers.

In the case of Samsher Singh v. State of Punjab, [1975] Supreme Court held that "We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. These situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House, (b) the dismissal of a Government which has lost its majority in the House; but refuses to quit office; (c) the dissolution of the House, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister).

Thus, a seven Judges' Bench of the Supreme Court has held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. However, in the case of Madhya Pradesh Special

Police Establishment v. State of Madhya Pradesh & Ors., (2004) SC held that there may be situations where to safeguard democracy, Governor may have to act independently of the Council of Ministers. For example, if he apprehends the bias of the Council. If Governor does not use his discretion in such areas like sanctioning prosecution, there will be break down of rule of law;democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted."

Governor: Does he have more powers than the President?
Discussed in the Class

Doctrines

The doctrine of colourable legislation says that what a legislature can not do directly , it can not do indirectly either. That is, it can not exceed its competence in the garb of extraordinary purpose etc.

Doctrine of pith and substance allows the law to be considered valid even if some parts are beyond competence, if the essence of it is within the Constitutional purview of the legislature.

The doctrine of territorial nexus says that the object to which the law applies need not be physically located within the territorial boundaries of the state,but must have a sufficient territorial connection with the state.A state may levy a tax on a person, property ,object or transaction not only when it is situated within its territorial limits, but also when it has a sufficient and real territorial connection with it.

Doctrine of ancillary powers says that when the legislature can make laws on a particular subject, it also acquires ancillary powers. For example, the power to search and seize along with the power to tax.

Doctrine of Separation of powers says that the government's powers are separated between the three organs and they check and balance one another so as to protect the freedoms of the people of the country.

Doctrine of Eminent domain says that the Government can acquire any private property for a public purpose.

Doctrine of Occupied field says that the federal government can occupy a particular area of legislation without leaving any scope for the provincial government. For example, in the concurrent list of Indian Constitution.

Doctrine of Basic features lays down the immutability of certain features that the judiciary considers basic-Keshavananda Bhari case 1973.

Doctrine of Harmonious construction says that where there is seeming conflict between two aspects of the Constitution, the courts should try to reconcile the two initially, before pronouncing upon the precedence of one over the other. For example, in October 2010, Apex Court said about the hawkers' rights: " The hawkers and squatters or vendors' right to carry on hawking has been recognised as a fundamental right under Article 19 (1) (g) of the Constitution. At the same time, the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19 (1) (d)." The two have to be harmonized by regulation.Similarly, DPSPs and FRs could be armoniously constructed in case of a collision. Also, the privileges and immunities of Parliament members and the FRs of people.

Doctrine of reading down says that the judiciary should divest the vagueness that a law may have to see if it is within the Constitutional competence of the legislature.

Doctrine of federal supremacy says that in case of a conflict between the federal and the state laws, the former prevails.

Doctrine of "adverse possession" is as follows: If a person moves into possession of property, improves it and possesses it in a public manner, then after a certain amount of time he will acquire title to the property even though it is actually owned by someone else. The idea for adverse possession has at its root that land should not lie idle. If it does, it is wasted to the community. Therefore, if someone moves onto the land and makes it productive, that person may earn the right to claim it as his or her own.

Doctrine of substance over form

Doctrine of look at and look through

Doctrine of subsidiarity

All the above are done in the class with examples.

Fifth and Sixth Schedules

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

Fifth Schedule of Indian Constitution

It has provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes . The major features of the Fifth Schedule are

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

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

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

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

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

Fifth Schedule and the powers of the Governor

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

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

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

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

Tribes Advisory Council

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

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

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

Laws applicable to Scheduled Areas

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

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

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

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

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

President of India and Scheduled Areas

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

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

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

Amendment of the Schedule

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

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

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

List of States with Schedule V Areas in India

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

List of States with Scheduled Tribes but not Fifth Schedule Areas (Excluding Sixth Schedule States)

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

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad,Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Devgarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Sirol (partly tribal areas)

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

Sixth Schedule

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

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

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

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

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

Mendha Lekha, in Gadchiroli district in Maharashtra

In 2011 became the first village in the country to secure community forest rights (CFR) - following the passing of the historic Forest Rights Act (FRA) in December 2006. Until then, forests were governed by the Indian Forest Act, 1927, a colonial law that gave the government the right to unilaterally declare any area a 'reserved forest' or 'protected forest', after which no one except the state had rights to the forest's produce. Thus the residents of Mendha Lekha, living in a reserved forest, had no right to pluck even a leaf from the thick clusters of bamboo that surrounded their village.

The passing of this law by the British - mainly to provide themselves unhindered access to Indian timber - was a blow for the hundreds of thousands of forest dwelling tribals who depended largely on the forests around them for livelihood. The FRA recognises the individual forest dweller's right to live in and cultivate forest land he had been occupying. It also allows the government to grant community forest rights to village gram sabhas, thereby permitting them to manage the forest around them and utilise its 'minor produce'. (Cutting trees and selling the timber is not allowed.).Mendha Lekha secured CFR over 1,800 hectares of forest surrounding it, special. The villagers also prepared a biodiversity register listing the flora and fauna of the forest

they had been given control over. Once it was ready, the village was given a 'transit passbook' that allowed the gram sabha to transport bamboo out of the village.

Community Forest Rights

Community forest rights recognized under the Forest Rights Act are important for securing livelihoods of the forest communities and for strengthening local self governance of forests and natural resources. Since implementation of the Forest Rights Act recognition of Community Forest Rights has remained a major challenge.

In 2013, 18 gram sabhas in Maharashtra have been allowed to sell tendupatta (tendu leaves) under CFR. Earlier, they were given Rs 3 lakh as revenue by the forest dept. But when they auctioned on their own, they got Rs 2 crore.

Pesa

Panchayats(Extension to Scheduled Areas) Act, 1996 or PESA is a law enacted by Government of India to cover the "Scheduled areas", which are not covered in the 73rd amendment or Panchayati Raj Act of Indian Constitution. It was enacted to enable Gram Sabhas to self govern their natural resources. It is an Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas."Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution. The Act extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas.(see the List elsewhere in the material)

The Indian Constitution protects tribal interests through the Fifth and Sixth Schedules.

While the Sixth Schedule, applicable in Assam, Meghalaya, Tripura and Mizoram, gives tribal people freedom to exercise legislative and executive powers through an autonomous regional council and an autonomous district council, the Fifth Schedule, applicable in all the other identified tribal regions, guarantees tribal rights over land through a Tribal Advisory Council in each State.

PESA devolves power to the village-level gram sabhas, paving the way for participatory democracy.

The Bhuria Committee in 1995 formulated a three-tier structure to extend the panchayati raj functions in the scheduled areas. The lowest but most important constituent of the structure is the village-level gram sabha, which will exercise command over natural resources, resolve disputes and manage institutions such as schools and cooperatives under it. Above it will be a gram panchayat, an elected body of representatives of each gram sabha, also to function as an appellate authority for unresolved disputes at the lower level. At the top of it will be a block- or taluk-level body.

When it was enacted, PESA was seen as a legislative revolution as it empowered gram sabhas to take decisions on important and contested tribal matters such as enforcing a ban on the sale and consumption of intoxicants, ownership of minor forest produce, power to prevent alienation of

land and to restore unlawfully alienated land, management of village markets, control over moneylending, an land acquisition. Along with this, it m. le it mandatory for all legislation in the scheduled areas to be in conformity with the customary law, social and religious practices and traditional management practices of the community.

PESA comes under the Fifth Schedule, which mandates tribal advisory councils to oversee tribal affairs and also gives extensive powers to the Governors of each State to intervene in matters where they see tribal autonomy being compromised. TAC has Chief Minister as the chairperson.

Pesa has not functioned to the level envisaged . There are many reasons but one is that two different ministries, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs, have overlapping influence on the implementation of PESA and coordinationhas been a problem.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The law concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India.Its advocates say that it will redress the "historical injustice" committed against forest dwellers, while including provisions for making conservation more effective and more transparent. (elaborate discussion elsewhere)

Bastar tribals and the demand for Sixth Schedule type of elected bodies

India's population consists of 100 million tribal people who have constitutionally been addressed via two distinct avenues. The Fifth Schedule applies to an overwhelming majority of India's tribes in nine States, while the Sixth Schedule covers areas that are settled in the northeastern States bordering China and Myanmar. Bastar district in Chhattisgarh is governed by the Fifth Schedule, but it wants to move into the Sixth Schedule.

The Sixth Schedule gives tribal communities considerable autonomy; The States of Assam, Tripura, Meghalaya, and Mizoram are autonomous regions under the Sixth Schedule. The role of the Governor and the State are subject to significant limitations, with greater powers devolved locally. The District Council and the Regional Council under the Sixth Schedule have real power to make laws on the various legislative subjects, receiving grants-in-aids from the Consolidated Fund of India to meet the costs of schemes for development, health care, education, roads and regulatory powers to state control. The mandate towards Devolution determines the protection of their customs, better economic development and most importantly ethnic security.

The Fifth Schedule does not have such local councils that are elected. The 1996 PESA orPanchayats (Extension to the Scheduled Areas) Act should have been a landmark for the tribal communities. It mandates the state to devolve certain political, administrative and fiscal powers to local governments elected by the communities. This became exclusive to the Fifth Schedule areas, to promote tribal self-government. PESA was meant to benefit not only the majority of tribals but also extended to cover minority non-tribal communities. It guarantees tribes half of the seats in the elected local governments and the seat of the chairperson at all hierarchical levels of the Panchayat system.

Constitutional Safeguards for STs

Educational & Cultural Safeguards

Art. 15(4)

Art. 29:- Protection of Interests of Minorities (which includes STs as they may be considered cultural/linguistic minorities);

Art. 46:- The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art. 350:- Right to conserve distinct Language, Script or Culture;

Art. 350:- Instruction in Mother Tongue.

Economic Safeguards

Art.244:- Clause(1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.

Art. 275:- Grants in-Aid to specified States (STs&SAs) covered under Fifth and Sixth Schedules of the Constitution.

Political Safeguards

Art.164(1):- Provides for Tribal Affairs Ministers in Jharkhand, , MP, Chattisgarh and Orissa;

Art. 330:- Reservation of seats for STs in Lok Sabha;

Art. 337- Reservation of seats for STs in State Legislatures;

Art. 334:- 10 years period for reservation (Amended several times to extend the period.);

Art. 243:- Reservation of seats in Panchayats.

Art. 371:- Special provisions in respect of NE States and Sikkim

Service Safeguards

(Under Art.16(4) etc)

Anti-defection law

Defections are a source of political instability; breach or representative faith and indicate power-hunger among legislators. Therefore, they need to be prevented and punished.

The Anti-defection Law made by the Constitution (Fifty-Second Amendment) Act, 1985 aims to do that. It amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and State legislatures respectively and inserted a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions regarding disqualification from membership of Parliament and the State Legislatures on the ground of defection, from the political party to which the Member belongs.

Anti-Defection Law details the grounds of defection and also prescribes disqualification for the defectors for being Members of the House. The grounds of defection are as under:

- If a member of the House belonging to a political party voluntarily gives up his/her membership of that political party.
- If he/she abstains from the voting or votes contrary to the direction issued by the political party to which he/she belongs in the House.
- If he/she defects from his/her party to any party after elections.
- If the nominated member joins any political party after six months after taking his seat.
- An independent Member who joins a political party after his/her election.
- Member who acts in defiance of party direction (Party Whip) and if such defiant action is not condoned by the Chief Whip within 15 days. The Chief Whip may condone the same and recommend to the Speaker/Chairman that the member should not be disqualified
- Originally, the law protected ` bulk defections' in the nature of split (one-third of legislature party).However, Constitution (Ninety-first Amendment) Act, 2003 made splits illegal too..

Exemptions

Disqualification on ground of defection does not apply in case of merger of political parties. A party may merge with another or the two may form a new party. If 2/3rds of the members of the legislature party decide to merge with another party, neither the 2/3rds nor the remaining 1/3rd lose membership. The 1/3rd exist as a separate group. ("Legislature party" means members of the party in the legislature)

- The provisions of disqualification, under the Tenth Schedule, do not apply to a member who on his election as the Speaker or the Deputy Speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha, or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly voluntarily gives up his membership of the political party to which he belonged immediately before his election or rejoins such political party after he ceases to hold such office.

The Chairman/Speaker has been given the final authority to decide questions of disqualification of a member of a House under the provisions of the Tenth Schedule to the Constitution.

There is a category of members that has no place in the law. The law does not talk of consequences of expulsion of a member from the party. The ruling of the Speaker is that he should be considered `unattached' member. He however, can not join a political party.

There is another grey area in the law. It talks of members. One becomes a member only after he is sworn in. The moot point is whether the law applies to him from the time of the declaration of the result till he is sworn in.

With the addition of Tenth Schedule to the Constitution by the Anti-Defection Law, political parties received Constitutional recognition which they did not have earlier. They had no Constitutional identity before. Chief Whip also receives Constitutional recognition.

Over the years, it was observed that these provisions have been circumvented by the legislators to avert disqualification. The provision of split has been grossly misused to engineer multiple divisions in the party, as a result of which the evil of defection has not been checked in the right earnest. Further it is also observed that the lure of office of profit plays dominant part in the political horse-trading resulting in spate of defections and counter defections. Therefore it was outlawed in 2003 as mentioned above.

91st Amendment Act

The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170 Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have recommended outlawing split. The NCRWC is also of the view that a defector should be penalised for his action by debarring him from holding any public office as a Minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and States and this practice had to be prohibited by law and that a ceiling on the number of Ministers in a State or the Union Government be fixed. In the light of the above, the 93rd Amendment Act was made with the following changes

- Split is not valid
- Article 361A was amended to the following effect: A member disqualified for defection is disallowed to hold any remunerative political post for rest of the life of the House or till he is reelected which ever is earlier.The expression "remunerative political post" means any office that is wholly or partly owned by Government and the salary for such office is paid out of the public revenue
- Size of the Council of Ministers should not be more than 15% of the strength Lower House. Art.75 and 164 have been amended to this effect. However, in case of smaller States like Sikkim,Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of 12 Ministers is proposed.

Kihoto Hollohan

In 1992, the Supreme Court, in its majority judgment in Kihoto Hollohan vs Zachillha and others, upheld the validity of the Tenth Schedule but declared as invalid paragraph 7, which excluded judicial review . The basis for nullification of Para 7 is that the Bill was not ratified by half the state legislatures which was necessary to restrict judicial review under Art.368. Doctrine of severability was applied and rest of the Act was declared valid.

In the same verdict, the apex court ruled that the Speaker/Chairman acted as a `tribunal' while adjudicating on the issue of disqualification for defection.

The Supreme Court observed that the anti defection law strengthened democracy and the representative functions. It did not stifle the freedom of the legislators. However, the orders of the Chief Whip that are binding on the legislator pertain only to the following

- Confidence or no-confidence motion and
- On a policy matter that is a core of the party manifesto.

The limitation is necessary for balancing the conscience of the legislator with the need to be true to the electorate.

The Kihoto verdict resulted when the anti defection was challenged as invalid for restricting the freedom of the legislators by making the directions of the Chief Whip of the party binding

Karnataka HC upholds MLAs disqualification

The Karnataka High Court upheld the Legislative Assembly Speaker's order disqualifying five independent MLAs.The five independent MLAs were ministers in the Karnataka government before they submitted their memorandum along with 11 other BJP MLAs to the Governor expressing lack of confidence in the chief ministership of BS Yeddyurappa.11 BJP MLAs and 5 independents were disqualified on eve of a trust vote in October 2010.

The High Courts said that when an independent member of a legislative assembly becomes a part of the ministry in a government dominated by a single party, he loses his independent character and becomes liable to disqualification on the ground of defection.

Five independent members of the Karnataka Legislative Assembly who had declared their support to the BJP government, and were inducted into the Council of Ministers, were disqualified by the Speaker of the Assembly under Paragraph 2(2) of the Tenth Schedule to the constitution.

The question was whether the five petitioners in this case had "joined" the BJP. If they did, they would be liable to be disqualified. The court held that they had joined , for the following reasons:

(1) Becoming Ministers:

(2) Attending Party Meetings Otherwise than as Independent Members:

(3) Receiving the Whip sent by the Chief Whip of a Party:

(4) Participating in Rallies:

The High court held that voters can file complaints against defection despite Rule 6(2) of the Rules, since: "The voters of [a].constituency should not be placed in a helpless situation if none of the members of the House complains about the illegal defection. Therefore, every voter of the

constituency should have an opportunity to oppose the illegal defection by bringing it to the notice of the Speaker. "

Supreme Court interim verdict

Independent MLAs joining the Cabinet does not mean that they have merged with the ruling party and thus cannot be held guilty under the anti-defection law if they subsequently withdraw support to the Government, the Supreme Court has ruled.

The apex court passed the significant interim ruling while dealing with the appeal filed by five Independent legislators challenging their disqualification by the Karnataka Speaker for withdrawing support to the B.S. Yeddyuruppa government.

The apex court had quashed their disqualification on the ground that they were not given sufficient opportunity by the Speaker to present their case before the action was taken against them.

The apex court rejected the Speaker's contention that by joining the Cabinet the Independent MLAs have sacrificed their individual identities.

Prajarajyam Party merger 2012

The party of film actor Chiranjeevi merged with the Congress in 2012.

Odisha 2012

NCP(Nationalist Congress Party) Legislature Party comprising four MLAs merged with the ruling BJD in 2012.

Andhra Pradesh 2013

Fifteen rebel MLAs belonging to Andhra Pradesh's ruling Congress and main opposition Telugu Desam Party were disqualified in June 2013 for voting in favour of a no-confidence motion moved by TRS against the Kiran Kumar Reddy government in March 2013.

These MLAs had defied party whips. The legislators were disqualified by state Assembly Speaker under Rule 2 (1) (b) of the Tenth Schedule for voting on the against the party whip on the no-trust motion on March 15.

This is the second instance during the current assembly when a group of MLAs was disqualified en masse. In March , 2012, Speaker had disqualified 16 rebel MLAs belonging to Congress for voting against the Reddy government on a TDP-sponsored no-confidence motion.

PARLIAMENT OF INDIA

Indian democracy based on the Westminster model (British model of democracy is referred as the Westminster model).Where the importance of Parliament in the political system is central. Preamble to the Indian Constitution begins with "We, the people .." which confers sovereignty on the Parliament as 'people' in an indirect democracy means the representative body.

Art.79. says that there shall be Parliament for the Union which shall consist of the President and two Houses to be known as the Rajya Sabha or the federal chamber or Council of States or Upper House and the Lok Sabha or the popular chamber or Lower House or House of the People. Even though the President of India is not a member of the parliament, he is a part of the Parliament for the following reasons.

- In a parliamentary system, the Executive is a part of the Legislature unlike the Presidential form of democracy where there is a strict separation between the two institutions.
- Bills passed by the Parliament need Presidential assent before they become laws.
- President performs certain other legislative duties like summoning and proroguing the Parliament; recommending the introduction of certain Bills in the Parliament etc.,.

In Constitutional Law, President –in- Parliament, is a term used to refer to the President in his legislative role, acting with the advice and consent of the two Houses of the Parliament. It is similar to Crown-in-Parliament which means the Crown acting with the advice and consent of the British Parliament.

Role of the President of India vis a vis Parliament

The President is the constitutional head of Republic of India. He is elected by an electoral college that includes elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the states. The President performs the following constitutional functions vis a vis Parliament.

- He invites the leader of the majority party to form the Government after a new Lok Sabha is duly elected.
- He summons the House of Parliament to meet from time to time.
- He has the power to prorogue a session of either of the two Houses and dissolve the Lok Sabha.
- The President has to assent to a Bill before it can be a law.
- If the either or two Houses are not in session, the President can promulgate Ordinances having the same validity as a law passed in Parliament.
- The President has the right to address either or both Houses of Parliament.
- The President has the power to call both Houses for a joint sitting/session in case a dispute arises over passing a Bill.
- He nominates 12 members of the Rajya Sabha and has the right to nominate upto two members from the Anglo Indian community to the Lok Sabha if they are under – represented, in his opinion.

Thus, President is a constituent part of the Parliament.

Rajya Sabha

It is the federal house representing the states.

Maximum strength (sanctioned strength) of Rajya Sabha is two hundred and fifty (250), of which 238 are to be elected and 12 are nominated by the President of India. The actual strength of Rajya Sabha is two hundred and forty five (245), of which 233 are elected and 12 are nominated by the President. The actual strength also known as total membership. All state and the two Union Territories of Delhi and Puducheri (UTs with Assembly) are represented in the Rajya Sabha. The allocation of the seats in Rajya Sabha is contained in the Fourth Schedule to the constitution.

Article 80 provides that the Rajya Sabha shall consist of:

- Twelve members nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service: and
- Not more than two hundred and thirty – eight representatives of the states and of the Union Territories.

The elected members of the (233 Members) Rajya Sabha are elected by the elected members of the Assemblies of States and two Union Territories of Delhi and Puducheri in accordance with the system of proportional representation by means of the single transferable vote. Of the UT's, only NCT of Delhi and Puducheri are represented in Rajya Sabha. No other UT has an assembly and so has no representation in the Rajya Sabha.

While the nominated members of Rajya Sabha have right to vote in the election of the Vice-President of India, they are not entitled to vote in the election of the President of India.Conventionally, nominated members do not become ministers.

The Council of States was set up under the Constitution in 1952. Dr.Radhakrishnan was the first Chairman of Rajya Sabha. He was the longest serving Chairman (1952 – 62). Currently (2013) there are 26 women members in Rajya Sabha.

The allocation of sets to be filled by the representatives of the State/ Union Territories as laid down in the Fourth Schedule to the Constitution is as follows:

1	Andhra Pradesh	18
2	Arunachal Pradesh	1
3	Assam	7
4	Bihar	16
5	Chhattisgarh	5
6	Goa	1
7	Gujarat	11
8	Haryana	5
9	Himachal Pradesh	3

10	Jammu and Kashmir	4
11	Jharkhand	6
12	Karnataka	12
13	Kerala	9
14	Madhya Pradesh	11
15	Maharashtra	19
16	Manipur	1
17	Meghalaya	1
18	Mizoram	1
19	Nagaland	1
20	Orissa	10
21	Punjab	7
22	Rajasthan	10
23	Sikkim	1
24	Tamil Nadu	18
25	Tripura	1
26	Uttaranchal	3
27	Uttar Pradesh	31
28	West Bengal	16
29	The National Capital Territory of Delhi	3
30	Puducheri	1
	Total	233

Eligibility

A candidate for election in Rajya Sabha

- Should be a citizen of India
- Above 30 years of age and
- Possessing such other qualifications as may be prescribed by law of Parliament.

Rajya Sabha is not subject to dissolution; one – third of its members retire every two years. Thus, it is a permanent body. Normally a member is elected for six years; but a member elected against a mid-term vacancy (casual vacancy), serves only for the remaining period.

Rajya Sabha when it was constituted in 1952 had 216 members – 12 nominated by the President and the remaining 204 elected to represent states. President, after consultation with the Election Commission made an order in 1952 for curtailing the term of office of some of the members so that as nearly as one – third of the members retire after every two years. Election Commission by drawing of lots decided who should retire and when. That is how the initial order was established.

Rajya Sabha Reforms

In 2003, Parliament made an amendment to the Representation of People's Act, 1951 to make two crucial changes

- To do away with the domicile/ residency condition
- To replace secret ballot with open ballot.

Section 3 of Representation of the People Act said that a candidate seeking election to Rajya Sabha should be "ordinarily resident" in the State that he wants to represent. By amending this Section of RPA, the Government opens the contest for a resident "anywhere in the Country"

Government explained that the purpose of the first change was to remove the anomaly in the eligibility criteria for both the Houses of Parliament – a candidate for Lok Sabha can contest from anywhere in the country but it is not so for Rajya Sabha.

The residency rule for Rajya Sabha became controversial when the Election Commission questioned the genuineness of the domiciliary credentials of some members of Rajya Sabha. In a large number of cases, representatives from various states in Rajya Sabha were those who traditionally were not resident in that state, but for the purpose of election to the Rajya Sabha, got enrolled as voters in that particular state by acquiring property otherwise. The residency clause was flouted frequently by many.

Regarding adoption of open ballot, the reason is , in the context of the growing money power in Rajya Sabha elections, secrecy was thought to conceal corruption and so open ballot was introduced.

The amendments were challenged in the Supreme Court on the ground that 'basic structure' of the constitution is violated as federalism is a basic feature. It is argued that only those belonging to a State can represent it well.

In 2006, a five – judge Constitution bench of the apex court in the Kuldip Nayyar Vs Union of India (2006) case gave the following verdict

- Residence is not a constitutional requirement but a matter of qualification prescribed by Parliament in exercise of its power under Article 84 and so the question of violation of basic structure does not arise.
- As long as the State has a right to be represented in the council of states by its chosen representative, who is a citizen of the country, it cannot be said that federalism is affected.
- Constitution does not provide that voting for an election to the council of states shall be by secret ballot. The manner of voting in the election to the Council of States can be regulated by the statute.

The court said that since the amendments have been brought into avoid cross voting, to wipe out the evil of corruption and to maintain the integrity of the democratic set-up, they can be justified by the State as a reasonable restriction under Article -19(2) of the Constitution on the assumption

that voting in such an election amounts to freedom of expression under Article 19 (1)-A.Chairman

The Vice – President is the ex officio Chairman of Rajya Sabha (Art.64). In fact, the Vice President draws his salary as the Chairman of the Rajya Sabha which in his ex – officio role that is, by virtue of being the Vice President of India, he functions as the Chairman of Rajya Sabha. The Vice – President is elected by the members of an electoral college consisting of all the members of both Houses of Parliament, both elected and nominated – in accordance with the system of proportional representation by means of the single transferable vote. The Vice – President holds office for a term of five years from the date on which he enters upon his office.

As the Presiding officer, the Chairman of the Rajya Sabha is the guardian of the prestige and dignity of the House. He safeguards the privileges and immunities of the members individually and the House collectively. He issues warrants to execute the orders of the House, where necessary. For example, to punish anyone who commits contempt of House.

Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes (Art.100.1).However, during proceedings for his removal, he does not preside at that sitting. He cannot also vote on such resolution.

The Constitution also lays down certain powers and duties of the Chairman

- He is empowered to adjourn the House or to suspend its sitting in the event of absence of the quorum.
- In case of resignation of a member from the House, the Chairman is required not to accept the resignation; if he is satisfied that such resignation is not voluntary or genuine.
- Under the Tenth Schedule to the Constitution, the Chairman determines the question as to disqualification of a member of the Rajya Sabha on ground of defection. He also makes rules for giving effect to the provisions of that Schedule.
- Enforce respect for privileges and
- The Chairman may permit a member who is unable to express himself in Hindi or English, to address the House in his mother tongue.

Various powers are conferred on the Chairman under Rules of Procedure of the Rajya Sabha in connection with admissibility of motions etc. The Chairman's consent is required to raise a question of breach of privilege in the House.

Parliament Committees where members are drawn from Rajya Sabha, whether set up by the Chairman or by the House, work under his guidance. He appoints Chairman and nominates members to 8 Departmentally related Standing Committees and they are under his administrative control. He himself is the Chairman of the Business Advisory Committee, Rules Committee and the General Purposes Committee.

The Chairman's rulings cannot be questioned or criticised and to protest against the ruling of the Chairman is a contempt of the House and the Chairman.

The Chairman does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer. However, on a point of order raised or on his own, he may address the House at any time on a matter under consideration with a view to assisting members in their deliberations.

Maintenance of order in the House is a fundamental duty of the Chairman and he has disciplinary powers like suspension of member and may also adjourn the sitting of the House in case of grave disorder.

Some statutes also confer duties on the Chairman

- Rules made under the Salary, Allowances and Pension of Members of Parliament Act, 1954, do not take effect until they are approved and confirmed by the Chairman and the Speaker.
- Under the judges (inquiry) Act, 1968, the Chairman has to constitute a Committee, upon receipt a motion for the removal of a judge of the Supreme Court or of a High Court, for investigation into the grounds on which the removal of a judge is prayed for.

The Rajya Sabha Secretariat functions under the control and direction of the Chairman.

Deputy Chairman

The Deputy Chairman is elected by the members of Rajya Sabha from among themselves. While the office of Chairman is vacant, or during any period when the Vice - President is acting as, or discharging the functions of the President, the duties of the office of the Chairman are performed by the Deputy Chairman, He /She has the same powers as the Chairman when presiding over a sitting of the House.

The Deputy Chairman can speak in the House, take part in its deliberations and vote as a member on any question before the House, but He / She can do so only when the Chairman is presiding. When the Deputy Chairman himself / herself is presiding, he /she cannot vote except in the event of equality of votes – casting vote to break the tie.

The Deputy Chairman holds office from the date of his / her election and vacates the office if he /she ceases to be a member of the House. He /She may resign his /her addressing the letter to the Chairman. The Deputy Chairman may also be removed from his/ her office by a resolution of the House passed by a majority of all the members of the House. Fourteen day's notice is required of the intention to move such a resolution.

The salary of the Deputy Chairman is charged on the Consolidated Fund of India and is not subjected to the vote of the Houses.

Chairman pro tem

When the offices of the both Chairman and the Deputy Chairman are vacant, the duties of the office of the Chairman are performed by such member of the Rajya Sabha as the President may appoint for the purpose (Art.91). The member so appointed is known as the Chairman pro tem. For the first time in the Rajya Sabha when the Vice – President (Shri B.D.Jatti) was acting as the

President and the post of Deputy Chairman held by Shri Godey Murahari having fallen vacant in 1977 as the latter was elected to the Lok Sabha, the Vice – President acting as President appointed Shri Bansari Das, a member of Rajya Sabha, as Chairman pro tem until the Deputy Chairman was chosen. The election of the Deputy Chairman took place soon after and the pro tem Chairman vacated the office.

Leader of the opposition is the Leader in the Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and recognised as such by the chairman of the Rajya Sabha.

Panel of Vice – Chairmen
The Chairman, from time to time nominates from amongst the members of the House, a panel of not more than six Vice – Chairmen. In the absence of the Chairman and the Deputy Chairman, one of them presides over the House.

The Vice – Chairman, when presiding over a sitting of the House, has the same powers as the Chairman when so presiding. He is; however, free to participate fully in all discussions in the House. A Vice – Chairman while presiding cannot vote in the first instance, and has to exercise a casting vote in the case of an equality of votes.

Non – panel member presiding
When neither the Chairman nor the Deputy Chairman nor a Vice – Chairman is present to preside, such other member as may be determined by the House acts as the Chairman. The practice is that the outgoing presiding officer requests a member to take the Chair with the approval of the House.

Leader of the House
The leader of the House is an important parliamentary functionary who assists the Presiding Officer in the conduct of the business. Leader of Rajya Sabha is the Prime Minister, if he is a member of the House, or a Minister who is the member of the House and nominated by the Prime Minister to function as the Leader of the House.

The Prime Minister, Manmohan Singh, who is a Rajya Sabha member, is the leader of Rajya Sabha, while Arun Jaitley former Union Minister, is the leader of Opposition.
Each House of the Parliament of India has a Leader of the Opposition. It got statutory recognition through the *Salary and Allowances of Leaders of Opposition in Parliament Act, 1977* which defines the term 'Leader of the Opposition' as that member of the Lok Sabha or the Rajya Sabha who, for the time being, is the Leader of that House of the Party in Opposition to the Government having the greatest numerical strength and recognized, as such, by the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha.The post carries status of cabinet minister

Casting Vote
Casting vote is the vote cast to break tie – when there is equality of votes. Under the constitution, the Chairman exercises only a casting vote in the case of equality of votes. However, if any sitting of the House a resolution for the removal of the Chairman from his office is under

consideration, he is not to preside at that sitting. He cannot also vote at all on such resolution or on any other matter during such proceedings. While the former (casting vote being given) helps in the conduct of business and legislation, the latter (casting vote being denied) is because the Chairman is not a member of the House.

Utility of Rajya Sabha

- It represents states and thus has federal purpose
- It is the permanent House and so has benefits for the country like it can ratify proclamation of Emergency when the Lok Sabha is not in session or dissolved. It means the proclamation can continue.
- At the same time, it can ensure that emergency provisions are not misused . Unless Rajya Sabha ratifies the proclamation of emergency and President's rule independently , it does not come into force. Thus, the interests of States can be protected.
- Constitution cannot be amended unless Rajya Sabha, sitting independently of the Lok Sabha passes the Bill. That is, there is no joint session in case of deadlock. Thus, the national and states" interests are protected.
- It has 12 nominated members who add to the quality of parliamentary proceedings and policy making.
- It enables law making to become more sober when the representatives of the people are carried away by emotional issues, an advantage all second chambers in a bicameral legislatures have.

Thus, Rajya Sabha has enormous utility in the parliamentary democracy of ours.

Non – federal features of Rajya Sabha

The non – federal features of the Rajya Sabha are

- All states do not have same number of representative's n the Rajya Sabha like in the US Senate.
- Rajya Sabha has no special powers with regard to certain of states (Art.3) and thus cannot defend the principal 'indestructibility' of the state concerned.
- Art.249 is also unfederal as the big 10 states can over run the rest while passing the resolution thus denying equality to states.

Vote in the House

In Rajya Sabha, as in Lok Sabha generally four methods of voting are adopted

- Voice vote
- Counting
- Division by going into Lobbies.
- Division by automatic vote recorder.

Voice vote

On the conclusion of a debate, the Chairman puts the question before the House and invites those who are in favour of the motion to say "Aye" and those against the motion to say "No". Then the Chairman says: "I think the Ayes or the Noes, (as the case may be) have it".

Count

If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit, ask the members who are far "Aye" and those for "No" respectively to rise in their places and, on a count being taken, he may declared the determination of the House. In this case, also, the names of the voters are not recorded.

Division

A division is one of the forms in which the decision of the House is ascertained. As mentioned above, normally, when a motion is put to the House members for and against it indicate their opinion by saying "Aye" or "No" from their seats. The Chair goes by the voices and declares that the motion is either accepted or negatived by the House. If member challenges the decision, the Chair orders that the lobbies be cleared- all non-members are told to leave the House. Then the division bell is rung. After the bell stops, all the doors to the Chamber are closed and nobody can enter or leave the Chamber till the division is over. Then the Chair puts the question for second time and declares whether in its opinion the "Ayes" or the "Noes", have it.

When a division is about to be taken, only members of the House have the right to be present. In other words, the lobby has to be cleared for a division.

If the opinion so declared is against challenged, the Chair asks the votes to be recorded by operating the Automatic Vote Recording Equipment.

The following is special to Rajya Sabha

Special Mention

Under the rules of Procedures and Conduct of Business in the Council of States, members are allowed to make special Mentions in Rajya Sabha. If a Minister so desires, he may make a statement on the subject with the permission of the Presiding Officer. The main advantage of this device is to bring to the notice of the House and the Government the matters and happenings of urgent public importance which take place in or outside the country.

Motion of Papers

There is no provision for adjournment in Raya Sabha as the Council of Ministers is responsible only to the Lok Sabha (Art.75.3). But there is a "Motion for Paper", like in the House of Lords in Britain. Adjournment motion sets aside the announced business of the House in preference for discussion on a matter of urgent public importance which in the end is voted upon.

Under a "Motion for Papers", the Council could discuss any matter of real public importance and the right of the reply is given to the member moving the motion.

LOKSABHA

Lok Sabha is composed of representatives of the people chosen by direct election on the basis of universal adult suffrage. The maximum strength of the House envisaged by the Constitution is 552: 530 members to represent the States, 20 members to represent the Union Territories and not more than two members of the Anglo – Indian community to be nominated by President, if, in his opinion, the community is not adequately represented in the House. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

The actual strength of the Lok Sabha at present is 545 members including the Speaker and two nominated members – referred to as the total membership.

Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting. However, while a Proclamation of Emergency is in operation, this period may be extended by Parliament for a period not exceeding one year at a time and not extending beyond a period of six months after the proclamation has ceased to operate.

The Constitution of India came into force on January 26, 1950. The first general elections under the new Constitution were held during the year 1951 – 1952 and the first elected Parliament came into being in April, 1952, the Second Lok Sabha in April, 1957, the third Lok Sabha in April, 1962, the Fourth Lok Sabha in March, 1967, the fifth Lok Sabha in March, 1971, the sixth Lok Sabha in March, 1977, the Seventh Lok Sabha in January, 1980, the Eight Lok Sabha in December, 1984, the Ninth Lok Sabha in December, 1989, the Tenth Lok Sabha in, June, 1991, the Eleventh Lok Sabha in May, 1996, the Twelfth Lok Sabha in March, 1998, the Thirteenth Lok Sabha in late 1999, 14th Lok Sabha election were held in 2004, 15th LS in 2009 and the 16th LS elections are due by 2014 March.

Presiding Officer

Lok Sabha elects one of its members as its Presiding Officer and he is called the Speaker. He is assisted by the Deputy Speaker who is also elected by Lok Sabha. The conduct of Business in Lok Sabha is the responsibility of the Speaker.

The Speaker

In the Lok Sabha, both Presiding Officers – the Speaker and the Deputy Speaker are elected from among its members by a simple majority of members present and voting in the House. No specific qualifications are prescribed for being elected the Speaker. The Constitution only requires that he should be a member of the House. One of the first acts of a newly constituted House is to elect the Speaker. Usually, a member belonging to the ruling party is elected the Speaker. But in times of coalition governments, as in India since 1996, a member of a party other than the ruling coalition can be elected the Speaker. For example, Somnath Chatterjee CPI (M), who belongs to a party that only, gives 'outside' support to the coalition.

The Speaker pro tem (sworn in by the President to swear in the newly elected members of House) presides over the sitting in which the Speaker is elected, if it is a newly constituted House. If the election falls later in the life of a Lok Sabha the Deputy Speaker presides.

Term of Office

The Speaker holds office from the date of his election till immediately before the first meeting of the Lok Sabha which is newly constituted after the dissolution of the one to which he was elected. He is eligible for re – election. On the dissolution of the Lok Sabha, although the Speaker ceases to be a member of the House, he does not vacate his office. The Speaker may, at any time, resign from office by writing under his hand to the Deputy Speaker. The Speaker can

be removed from office only on a resolution of the House passed by a majority of all the then members of the House. It is mandatory to give a minimum of 14 day's notice of the intention to move the resolution.

At the commencement of the House or from time to time, the Speaker shall nominate from amongst the members a panel of not more than ten Chairmen, anyone of whom may preside over the House in the absence of the Speaker and the Deputy Speaker.

The Speaker has extensive functions to perform in matters administrative, judicial and regulatory. His decisions are final and binding.

Under the Constitution, the Speaker enjoys a special position,

- He certifies Money Bill and it is final (Art.110)
- Presides over joint sittings which are summoned to resolve a disagreement between the two Houses
- Decides on granting recognition to the Leader of the Opposition in the Lok Sabha
- Following the 52nd Constitution amendment 1985, the Speaker is vested with the power relating to the disqualification of a member of the Lok Sabha on grounds of defection.

Though he himself a member of the House, the Speaker does not vote in the House except on those rare occasions when there is a tie – equality of votes. Till date, the Speaker of the Lok Sabha has not been called upon to exercise this unique casting vote. When proceedings are taking place for his removal, he does have a vote except when there is a tie.

Speaker and Committees

The Committees, constituted by him or by the House, function under the overall direction of the Speaker. The Chairman of most Parliamentary Committees are nominated by him. Committees like the Business Advisory Committee, the General Purpose Committee and the Rules Committee work directly under his Chairmanship.

He is the ex officio President of the Indian Parliamentary Group (IPG), set up in 1949, which functions as the National Group of the Inter – Parliamentary Union (IPU) and the main branch of the commonwealth Parliamentary Association (CPA).

It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. He symbolises the dignity and power of the House. His unique position is illustrated by the fact that he is placed very high in the warrant of Precedence in our Country, standing next only to the President, the Vice – President and the Prime Minister. Speaker's salary and allowances are charged on the Consolidated Fund of India.

Pro tem Speaker

Speaker pro Tempore or temporary Speaker, the senior most member of the Lok Sabha is appointed and sworn in as the Pro tem Speaker by the President so that the newly elected members are administered oath by him. They in turn elect the Speaker. Pro tem Speaker continues till the new Speaker is elected. The Constitution does not specify any functions for the Pro tem Speaker.

Somnath Chatterjee who was the senior most MP of the 14th Lok Sabha was administered oath as pro tem Speaker by President APJ Abdul Kalam in June 2004, enabling him to preside over the proceedings of the first two days of the House when new members took oath. He was later elected Speaker of the House when he ceased to be the pro tem Speaker.
Manikrao Hodlya Gavit representing the Nandurbar constituency in Maharashtra was elected for the consecutive 9th time and was appointed as Protem Speaker of 15th Lok Sabha by President Pratibha Patil in 2009.

Procedures in House
The Rules of Procedures and Conduct of Business in Lok Sabha and Directions issued by the Speaker from time to time regulate the procedure in Lok Sabha. For various items of business to be taken up in the House the time is allotted on the recommendations of the Business Advisory Committee.

Time of Sitting
When in session, Lok Sabha holds its sittings usually from 11 A.M. to 1.P.M and from 2 P.M. to 6 P.M.

Question Hour
Generally, the first hour of a sitting of Lok Sabha is devoted to Questions and that hour is called the Question Hour. It has a special significance in the proceedings of Parliament.
Asking of questions is an inherent and unfettered parliamentary right of members. It is during the Question Hour that the members can ask questions on every aspect of administration and Governmental activity. Government policies in national as well as international spheres come into sharp focus as the members try to elicit pertinent information during the Question Hour.
The Government is, as it were, put on its trial during the Question Hour and every Minister whose turn it is to answer questions has to stand up and answer for his or his administration's acts of omission and commission. Through the Question Hour the Government is able to quickly feel the pulse of the nation and adapt its policies and actions accordingly. It is through questions in Parliament that the Government remains in touch with the people in as much as members are enabled thereby to ventilate the grievances of the public in matters concerning the administration. Questions enable Ministries to gauge the popular reaction to their policy and administration. Questions bring to the notice of the Ministers many an abuse which otherwise would have gone unnoticed. Sometimes questions may lead to the appointment of a commission, a court of enquiry or even legislation when matters raised are grave enough to agitate the public mind and are of wide public importance.(More ahead)
Zero Hour

Zero hour has no basis in the Parliament rules. It developed by convention to enable members to raise matters of public importance on the floor of the House. Zero hour immediately follows question hour. It begins at 12 'o' clock after Question Hour which is from 11.00 AM to 12 noon.

Though called although euphemistically called Zero Hour, it may last for more or less than an hour.

Zero hour is observed in both the House s of the Parliament.

Motions and Resolutions

'Motion': Process of passage and Different types of Motions.

A motion is a proposal for eliciting decision or expressing the opinion of the House on a matter of public importance. Every question to be decided by the House must be proposed as 'Motion'. The consent of the Presiding Officer is essential to initiate a motion. A motion is so called as it sets the House in motion the business of the House essentially takes place on the basis of motions.

Government motions involve seeking approval of the House for a policy of the government. Private members motions focus on eliciting of the House on a particular matter.

Motions fall into three principal categories:

- Substantive Motions
- Substitute Motions
- Subsidiary Motions.

A substantive motion is a self – contained independent proposal. It is drafted in such a way as to be capable of expressing the decision of the House. Some examples of a substantive motion are: the motion of thanks on the President's Address, motion of no – confidence, motion of elections, motion for impeachment of persons in high authority.

A substitute motion is moved in the place of the original motion. It proposes an alternative to the original motion.

Resolutions

A Resolution is a procedural means to initiate a discussion on any matter of general public interest. A Resolution is actually a Substantive Motion.

Resolution may be classified as private members resolutions, Government resolutions and statutory resolutions (provision in the Constitution or an Act of Parliament). Government resolutions are initiated by ministers. Statutory resolutions may be moved either by a minister or by a private member. For example , Information Technology Act Rules 2011 were sought to be amended by Rajya Sabha but the move failed. Similarly, the statutory resolution related to FDI in multi brand retail.

Difference between a motion and a resolution

All Resolutions fall in the category of Substantive Motions, mostly. But all motions are, as seen above, not substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon, for example, the resolution to impeach the President of India. All substantive motions need not be voted upon.

Relative position of the two Houses

The Constitution envisages that both Lok Sabha and Rajya Sabha have equal status and position. The two Houses at the same time enjoy special powers as given below.

The Lok Sabha has the following special or exclusive powers

- Union Council of Ministers is collectively responsible to Lok Sabha (Art.75.3)
- Budget is presented in Lok Sabha (Art.112)
- Demands for grants can be introduced only in the Lok Sabha
- Money Bill (Art.110) or a Financial Bill (Art.117.1) can be introduced only in the Lok Sabha.
- Speaker's decision about whether a Bill is a Money Bill or not is final
- Prime Minister generally comes from the Lok Sabha
- Estimates Committee has its entire 30 members drawn from the Lok Sabha.
- Lok Sabha has 545 members which is substantially more than that of Rajya Sabha. Its numerical superiority helps in the joint session of the Parliament which is presided over by the Speaker.
- A joint session is presided over by the Speaker and in his absence the Deputy Speaker of Lok Sabha
- Lok Sabha has the power of moving a resolution for the discontinuation of national emergency as provided by the 44th Amendment Act (Art.352)

The Rajya Sabha has special or exclusive powers which are contained in Articles 249, 312, 352, 356 and 360.

- Under Article 249, the Rajya Sabha can enable the Parliament, by passing a resolution supported by two – thirds of the members present and voting, that Parliament should make Laws with respect to any matter enumerated in the State List specified in the resolution, in national interest.
- Resolutions can be passed by the Rajya Sabha by a majority of 2/3 rds of the members present and voting, under article 312, for the creation of one or more All – India services by the Parliament, if it is deemed to serve the national interest. The services such as the Indian Administrative Services, Indian Police Service, Indian Forest Service and All – India Judicial Service are All Indian Services.
- Under articles 352, 356 and 360, the Rajya Sabha can approve the Proclamations of emergency – national, state and financial respectively – initially or extended them subsequently while Lok Sabha is not in session or under dissolution.

Except the above, there is equality between the two Houses:

- The Constitution requires the laying of a number of papers on the Table in both the Houses, notably amongst them are the Budget, supplementary demands for grants, Ordinances and Proclamations issued by the President, reports of Constitutional and statutory functionaries such as the Comptroller a Auditor – General, the Finance

Commission, the Commissioners for the Scheduled Castes and Schedule Tribes, the Backward Class Commission, the Commissioner for Linguistic Minorities and the Union Finance Commission.

- Both Houses also participate in matter of elections of the President and the Vice – President
- Both participate in impeachment of the President, a Judge of the Supreme Court or of a High Court and CAG.

Differences between Lok Sabha and Rajya Sabha

The following are the differences

- Members of Lok Sabha are directly elected on the basis of universal adult franchise. Members of Rajya Sabha are elected by the elected members of Sate Assemblies in accordance with the system of proportional representation by means of the single transferable vote.
- The normal life of every Lok Sabha is 5 years while Rajya Sabha is a permanent body and the member has a term of 6 years
- Rajya Sabha has a nominated component – 12 members of intelligentia which Lok Sabha does not have. LS has nominated anglo-indians if they are not sufficiently represented in the opinion of the President.

Vacation of seats

If a member of one House becomes a member of the other House, his seat in the first House becomes vacant from the date on which he is elected to the other House. If he is elected a member of the State Legislature, he ceases to remain a Member of Parliament, unless he resigns his membership from the State Legislature within a period of 14 days from the date of publication of the result in the State Gazette. If a person is chosen a member of the both the Houses but has not taken his seat in either of them, then he has to intimate in writing to the Election Commission, within 10 days of the publication of the result as to in which House he wishes to serve and there upon his seat in the other House becomes vacant. If he fails to give such intimation, his seat in the Rajya Sabha become vacant after the expiration of that period. If a person is elected to more than one seat in the House, then all the seats becomes vacant, unless he resigns within 14 days all but one of the seats.

If a member does not attend the House for 60 days consecutively without the permission of the Presiding Officer, his seat may be declared as vacant. Following reasons also can cause Vacancy

- He holds any office of profit
- Declared to be of unsound mind or un discharged insolvent
- Voluntarily acquires citizenship of another country
- His election is declared invalid by the court
- He is expelled by the House
- He becomes President, Vice – President etc.,
- Disqualified for defection by the Presiding Officer

Sessions of Parliament

The Rajya Sabha is not subject to dissolution unlike the Lok Sabha which, unless sooner dissolved, continues for five years from the date appointed for its first meeting.

The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting the next session.

The President may from time to time prorogue the Parliament or either House – prorogation means the termination of a session and normally follows the adjournment sine die of the House by the Presiding Officer.

A session is the period of time between the meeting of a Parliament and its prorogation. During the course of session, either House may be adjourned for a few hours, days or weeks by the Presiding Officer for any reason. The period between the prorogation of the Parliament and its reassembly in a new sessions in a year, namely Budget session in the months of February – March, April and May; Monsoon session in the months of July – August and winter session in the months of November – December.

Since 1994, the Budget session runs like this: after the general discussion on the Budget in the House is over and vote on account is passes (Art.116) by the third week of March, the Houses are to be adjourned for a fixed period (about a month) and the committees have no consider the Demands of Grants of the assigned Ministries during one month period.

Prorogation and its effects

"Prorogation means the end of a session". "A prorogation terminates a session; an adjournment is an interruption in the course of session". Usually prorogation follows the adjournment of the House sine die. The time – lag between the adjournment of the House sine die and its prorogation varies between 2 and 10 days. It is not necessary that both Houses should be prorogued simultaneously. Prorogation is done by the President.

The prorogation affects different categories of business pending before the House as follows:

Bills:

Article 107(3) of the Constitution expressly provides that a Bill pending in Parliament shall not lapse by reason of the prorogation of the House. This saving also covers Bills pending before a Select or Joint Committee of the House(s). Notices of intention to move for leave to introduce Bills also do not lapse on prorogation and no fresh notice is necessary in the next session for that purpose.

Motions and Resolutions:

On the prorogation, all pending notices except those relating to introduction of Bills as mentioned above, lapse and fresh notices must be given for the next session. This covers notices of motions, calling attention, resolutions, amendments etc,.

Effects of dissolution of Lok Sabha

All the business pending before Lok Sabha lapses on its dissolution. However, the dissolution of LS also affects the business pending before the Rajya Sabha to a certain extent, as indicated below:

- Bills pending in the Rajya Sabha which has not been passed by the Lok Sabha shall no lapse
- Bill which is pending in the Lok Sabha lapses
- Bill passed by the Lok Sabha and is pending in the Rajya Sabha lapses

- Under Article 108 (5), a joint sitting of both Houses to resolve a deadlock on a Bill will be held notwithstanding the fact that a dissolution of the Lok Sabha has intervened since the President has notified his intention to summon the Houses to meet in a Joint Sitting.
- Bills originating in the Rajya Sabha which are still pending in that House do not lapse.
- Bills originating in the Rajya Sabha which having been passed by the House and transmitted to the Lok Sabha and pending there lapse
- Bills originating in Rajya Sabha and returned to that House by the Lok Sabha with amendments and still pending there on the date of its dissolution, lapse.
- A Bill passed by two Houses of Parliament and sent to the President for assent does not lapse.
- A Bill returned by the President to the Rajya Sabha for reconsideration of the Houses does not lapse if the dissolution of the Lok Sabha takes place without the Houses having reconsidered the Bill. The Indian Post Office (Amendment) Bill, 1986, as passed by the Houses of the Parliament was submitted to the President for his assent. The Bill remained pending before him till the dissolution of the Eight Lok Sabha in 1989. The President returned the Bill to the Rajya Sabha later for reconsideration of the Houses and its survived Lok Sabha dissolutions till it was withdrawn in 2002.
- On the dissolution of the Lok Sabha, Joint Committees become defunct except the Statutory Joint Committees. Members of the Rajya Sabha elected to serve on the committee on Official Language which consist of members of both Houses continue to remain on that Committee notwithstanding the dissolution of the Lok Sabha. Only the members of the Lok Sabha on that Committee cease to be members of the Committee on the dissolution of that House. The reason for this position is that the Official Language Committee derives its authority from an Act of Parliament and the term of the members on that Committee is co – terminus with their term as members of the House.

Parliament Control over Finance

Ours is a Parliamentary System of Government based on Westminster model. The Constitution represents the principle 'no taxation without representation'.

Principles of the system of Parliamentary control over finance

- Legislative prerogative over taxation
- Legislative control over expenditure and
- Executive initiative in financial matters

There are specific provisions in the Constitution of India containing these principles:

- Article 265 provides that 'no tax shall be levied or collected except by authority of law'
- No expenditure can be incurred except with the authorisation of the Legislature (article 266).
- President shall, in respect of every financial year, cause to be laid before Parliament, Annual Financial Statement (article 112).

These provisions of our Constitution make the Government accountable to Parliament.
With the emergence of Welfare State, role of Government expanded to provide social service to citizens like education, health, employment and housing. Government requires adequate financial resources to do so. Given the huge welfare role that the Government takes on and the security functions it has to perform, resources are necessarily scare, the need for budgeting arises to allocate scare resources to various Governmental activities.

The Budget
The 'Annual Financial Statement', laid before both the Houses of Parliament constitutes the Budget of the Union Government. President is responsible for having the Budget presented to the Lok Sabha (Art.112). But, according to Article 77 (3), the Finance Minister has been responsible by the President of India to prepare the Annual Financial Statement and pilot it through the Parliament. This statement takes into account a period of one financial year. The Financial year commences on the 1st April each year. The statement embodies the estimated receipts and expenditure of the Government of India for the financial year.

There is no single Budget for the entire country as the states have their own budgets. Even the budget of Government of India is divided into the Railway and the General Budget.

Railway Budget
The Budget of the Indian Railways is presented separately to Parliament and dealt with separately, although the receipts and expenditure of the Railway from part of the Consolidated Fund of India and the figures relating to them are included in the 'Annual Financial Statement'.

Stages Budget in the Parliament
In the Parliament, the budget goes through five stages

- Presentation of budget with Finance Minister's speech
- General discussion, after which there is adjournment of the Houses so that the Standing Committees can scrutinize the demands for grants for a month
- Voting on demand for grants in Lok Sabha
- Passing of appropriation bills
- Passing of finance bill.

The powers of Parliament in respect of enactment of budget are enshrined in the Constitution under Article 112 to 117. As per these, no demand for a grant or proposal for expenditure can be made except on the recommendation of the President. Parliament cannot increase tax though it can either reduce or abolish it. Charged expenditure is not to be subjected to Parliaments voting. Powers of Rajya Sabha are quite restricted in financial matters.

Along with the Annual Financial Statement, the Finance Minister submits the following 5 documents to the Parliament

- Key to the Budget document (various definitions and the Constitutional provisions)
- Budget at a glance (receipts and expenditure shown with various deficits and break ups)
- Receipt Budget
- Expenditure Budget

- Memorandum explaining the process in the financial bill (impact of tax proposals on government finance)

There is a proposal that the Government take a look at the recommendation of Administrative Reforms Commission of 1967 which suggested changing of the financial year from April 1 to 31st March to October 1 to 30th September. The reason is that the Government can have a more realistic estimate based on the impact of Monsoon. Moreover, the financial year for the business class starts from the time of Diwali.

Presentation

In India, the Budget is presented to Parliament on such date as is fixed by the President. The Budget speech of the Finance Minister is in two parts. Part A deals with general economic conditions of the country while Part B relates to taxation proposals. The General Budget is usually presented on the last working day of February i.e. about a month before the commencement of the financial year except in the year when General Elections to Lok Sabha are held. In an election year, Budget may be presented twice – first to secure vote on account for four months conventionally and later in full. The election year budget is called interim budget. It has the projected receipts and expenditure like any budget but has no new taxes proposed and approved.It is presented only if the elections are held in the first half of the calendar year. Since the incumbent Government does not have the moral authority to present a full budget, it presents interim budget which is nothing but the vote on account with the difference that period for which money is sanctioned by the Parliament in the interim budget is 4 months while normally the vote on account sanctions the amount for 2 months.

The General Budget is presented in Lok Sabha by the Minister of Finance. He makes a speech introducing the Budget and it is in the concluding part of his speech that the taxation proposals are made. The 'Annual Financial Statement' is laid on the Table of Rajya Sabha at the conclusion of the speech of the Finance Minister in Lok Sabha.

The Finance Bill which deals with the taxation proposals made by Government is introduced immediately after the Presentation of Budget. It is accompanied by a memorandum explaining the provisions of the Bill and their effect on the finances of the country.

Vote on Account

The general discussion on the Budget begins a few days after its presentation. Since Parliament will pass the Budget only by mid – May, there is a need to sanction an amount to the Government to maintain itself after the new financial year sets in on 1 of April. A special provision is, therefore, made for "Vote on Account" by which Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year (Art.116). It is generally 2 months worth of expenditure. But during election year, the Vote on Account may be for a period exceeding two months – normally four months.

Discussion

The Budget is discussed in two stages in Lok Sabha. First, there is the General Discussion on the Budget as a whole. This lasts for about 10-15 days. Only the broad outlines of the Budget and the principles and policies underlying it are discussed at this stage.

Consideration of the Demands by Standing Committees of Parliament

After the first stage of General Discussion on both Railway as well as General Budget is over, the House is adjourned, for a fixed period – usually a month. During this period, the Demands for Grants of various Ministries/Departments including Railways are considered by concerned Standing Committees. These Committees submit reports to the House. The Report of the Standing Committees are of persuasive nature. The report shall not suggest anything of the nature of cut motions. There are 24 such committees since 2004.

After the reports of the Standing Committees are presented to the House, the House proceeds to the discussion and Voting on Demands for Grants, Ministry wise. The time for discussion and Voting of Demands for Grants is allocated by the Business advisory committee headed by the Speaker in consultation with the Leader of the House. On the last day of the allotted period, the Speaker puts all the outstanding Demands to the Vote of the House. This device is popularly known as 'guillotine'. Guillotine, in other words, is passing the Demands for grants without discussion. It is done for want of time.

Lok Sabha has the power to assent to or refuse to give assent to any Demand or even to reduce the amount of Grant sought by Government. Introducing and voting on demands is confined only to Lok Sabha. In Rajya Sabha there is only a General Discussion on the Budget. It does not vote on the Demands for Grants.

Expenditure of two types:

- Charged expenditure. It includes the emoluments of the President and the salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha and the Speaker and the Deputy Speaker of Lok Sabha, Judges of Supreme Court, Controller and Auditor General of India and certain other items specified in the Constitution of India. Discussion in Parliament on 'changed' expenditure is permissible but such expenditure is not voted.
- Non -- charged expenditure. It is the votable expenditure. Only so much of the amount is subjected to the vote of Lok Sabha as is not a "charged" expenditure on the Consolidated Fund of India. The votable part is the demands for grants.

Cut Motions

Motions for reduction to various Demands for Grants are made in the form of Cut Motions seeking to reduce the sums sought by Government on grounds of

- Economy or
- Difference of opinion on matters of policy or
- To voice a grievance.

Cut Motions are divided into following three categories:

- Disapproval of Policy cut i.e., a motion "that the amount of the demand be reduced to Re.1" representing disapproval of policy underlying the Demand. A member giving notice of such a Cut Motion should indicate in precise terms, the particulars of the policy which he proposes to discuss. It is open to the member to advocate an alternative Policy.

- Economy cut i.e., a motion "that the amount of the Demand be reduced by a specific amount" representing the economy that can be effected. And
- Token cut i.e., a motion "that the amount of the Demand be reduced by Rs.100" in order to express a specific grievance.

It is generally the opposition party member who may seek to move a cut motion. Admissibly of the cut motion is entirely the discretion of the Speaker. There is speculation as to what will happen if the cut motion is passed. It is the consensus opinion that in such a situation, the Government needs to show that it has majority by bringing forward a 'confidence motion' under Rule 184 of the Lok Sabha. The government may have to redesign the budgetary demands for grants and re-present.

Appropriation Bill

After the Voting on Demands for Grants have been completed by late April or early May, Government introduces the Appropriation Bill. The Appropriation Bill is intended to give authority to Government to incur expenditure from the Consolidated Fund of India. The Appropriation Bill will appropriate the sums that the Lok Sabha granted by voting demands for grants. It also includes the charged expenditure. The procedure for passing this Bill is the same as in the case of other money Bills.

Finance Bill

The Finance Bill (one that contains taxation proposals and is presented as a part of the Budget) is introduced in Lok Sabha immediately after the presentation of the General Budget. Certain provisions in the Bill relating to levy and collection of fresh duties or variations in the existing duties come into effect immediately on the expiry of the day on which the Bill is introduced by virtue of a declaration under the Provisional Collection of the Taxes Act. Parliament shall pass the Finance Bill within 75 days of its introduction.

Budget is an important tool of legislative control over the executive. It is also an instrument of economic and social policies in line with the five year plan.

Financial Bills

They are contained in Art.117. There are two types:

Financial Bill 1 which is a Bill in which there are provisions related to a Money Bill but also those of an ordinary Bill. It has two features in common with the Money Bill:

- President's prior recommendations is necessary and
- It can be introduced only in the Lok Sabha

Other provisions are similar to the ordinary Bill.

Financial Bill B is an ordinary Bill with the different that, when it is passed, it entails expenditure from the CFI. As far as procedure is concerned, it is passed like a Money Bill but before the commencement of the second reading (Consideration, stage 2) in Both the Houses the recommendation of the President is necessary. For example, Food Security Bill (2013)

Supplementary, additional, token, excess and exceptional grants

Art.115 contains provisions related to Supplementary, additional and excess grants

- Supplementary grants may be made by the Parliament if the amount authorised in the budget passed originally for a particular service for the current financial is found to be sufficient.
- Additional grants may be made by Parliament for expenditure on some new service not contemplated in the annual financial statement for that year.
- Excess grants is made by Parliament if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year. In other words, it is a grant to retrospectively authorise excess of expenditure committed by the executive. CAG detects it while auditing the appropriation accounts and is satisfied that it

is justified and the PAC, on the basis of the CAG report, recommends such retrospective regularization.

- Token grant is one where the Department/Ministry has the money to spend on a new service. The availability of money is by way of representation – spending money sanctioned for one head within the same ministry with the permission of the Finance Ministry. But it seeks a token sum of Rs.1 from Lok Sabha.
- Exceptional grant is seeking money for a service that is not part of the current service of any financial year.
- Vote of credit means:to make a grant for meeting an unexpected demand upon there sources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stand with the details ordinarily given in an annual financial statement.

Budget of a State under President's Rule

Budget of a State under President's Rule is presented to Lok Sabha. The procedure followed in regard to the Budget of the Union Government is followed in the case of State Budget also with such variations or modifications, as the Speaker may make.

Money Bill (Art.110)

Bills which exclusively contain provisions for

- The imposition, abolition, remission, alteration or regulation of any tax
- The regulation of the borrowing of money or the giving of any guarantee by the Government of India
- The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund.
- The appropriation of moneys out of the Consolidated Fund of India.
- The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increase of the amount of any such expenditure.
- The receipt of money on the account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State or
- Any matter incidental to any of the matters specified above.

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Money Bill can be introduced only in Lok Sabha and on President's recommendation. Rajya Sabha can't make amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommended amendments in a Money Bill, but must return all Money Bills to Lok

Sabha within 14 days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha is not returned to Lok Sabha within the said period of 14 days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

President can assent to or reject a Money Bill but cannot return it for repassage.

Consolidated Fund of India

The fund constituted under Article 266 (1) of the Constitution of India into which all receipts, revenues and loans flow. All expenditure from the CFI is by appropriation Bill.

Public Account of India

It includes those moneys where the Government acts as a banker, for example, PF, small savings etc – Article 266 (2) of the Constitution of India. These funds do not belong to the Government. They have to be paid back at some time to their rightful owners. Therefore, expenditure from it is not required to be approved by Parliament. Some dedicated funds are also part of PAI, for example: Reserve Funds bearing interest (railway funds, telecommunication funds) and Reserve Funds not bearing an interest (the Central Road Fund, Sugar Development Fund). National Clean Energy Fund, National Investment Fund(since 2013) and NDRF are some topical examples.

Contingency Fund of India

Parliament has by law established a Contingency Fund placed at the disposal of the President to enable advances to be made by him out of it for the purpose of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law (Art.267). Earlier Contingency Fund was of Rs 50 Crore but was recently raised to Rs 500 Crore by Parliament.

Parliamentary control over public finance

The instruments of control that the Parliament has over the public finance are the following

- Art.265 says that no tax cane be levied and collected except by the authority of law
- Art.266 says that money can be drawn from the Contingency Fund of India only by an Appropriation Bill passed by Parliament
- Parliament, under Art.292, can regulate the barrowing power of the Executive on the security of the Contingency Fund of India.
- Based on Art.292 partly, FRBM Act was made in 2003 to bring public finance under parliamentary accountability – setting limits to borrowing and the FM having to explain to the Parliament on a quarterly basis the budgetary trends.
- Cut motions available to the Lok Sabha members during the passage of demands for grants can lead to compelling the Government to take up or drop any policy. However, cut motions have never been passed so far
- Budget under Art.112 is a socio – economic statement. Parliament can alter the priorities as it has to be approved by it to take effect other than the Constitutional provisions,

mentioned above, the following are the statutory and other developments that make the Parliamentary control over Government finance effect

- Outcome budget is being presented from 2004 – 05 onwards where for a given outlay the expected impact is socio – economic terms is qualified and declared. Parliament can hold the Government answerable for the achievement of the outcomes.
- Similarly, about 54 gender budget cells are set up by the ministries in the Union Government (2012). Parliament can seek explanation from the government as to how far it has progressed in adopting a gender perspective in public policy.
- Parliament financial committees – PAC, Estimates Committee and CPU exercise control on the executive by ensuring that the moneys spent are not wasted and are well targeted.
- Under parliamentary pressure, government is presenting the Tax Expenditure Statement since 2006 showing revenue foregone through tax breaks. In course of time, there will be greater parliamentary control on such losses of revenue through exemptions.

Thus, the control that the Parliament can exercise on public finance is enormous. Some controls are provided in the Constitution (Art.112, 265, 266, 292 etc) others are derived from statute and rules as shown above.

Parliamentary Control over the executive

Art.75.3 says that the Council of Ministers enjoys power till it has support in the Lok Sabha. Parliament controls the executive through a variety of means and instruments in order to enable people to have responsible and accountable Government. It takes place through the following instruments:

- Motions like confidence motion, adjournment motion , Rule 184 and Rule 193 in LS etc
- Questions of various types.

Adjournment motion

An Adjournment motion is moved to discuss a matter of urgent public importance and is available only in Lok Sabha and not in Rajya Sabha as it means severe criticism of the Government and is used to express dissatisfaction with the Government policies. Speaker's consent is necessary for moving the motion. After the motion is moved, it can be proceeded with only if 50 members endorse it. Speaker may not admit the motion in case there are other means of raising the matter for discussion. The motion shall not deal with any matter which is under adjudication by a court of law. BJP leader LK Advani moved an adjournment motion on black money in the Lok Sabha in 2011but it was defeated by a voice vote.

Non – confidence Motion

Art.75 (3) says that the Council of Ministers is collectively responsible to the Lok Sabha. The Council of Ministers is in power only as long as it enjoys the numerical majority of the Lok Sabha. The opposition parties have an instrument in the form of 'no confidence motion' to remove the Government. The procedure for the NCM is not a part of the Constitution but is given in Rules of Procedure and Conduct of Business of Lok Sabha. Rule 198 says that an NCM may be moved subject to the following conditions: leave to make the motion shall be asked for by the member when called by the Speaker; Speaker reads the motion to the House and if 50

members support it, it should be taken up on such day, not being more than ten days from the date on which the leave is asked for as he may appoint.

If leave is granted, the Speaker may allot time for the discussion of the motion. After members speak for and against the motion, Prime Minister replies before vote is taken. If the motion carries majority vote, the Government has to resign.

Following needs to be noted regarding the NCM

- No grounds need be mentioned to move the motion
- No conditions of admissibility are mentioned.

'Motion of Confidence' in the Council of Ministers

An essential tenet of the Westminster system is that the Government must be collectively responsible to the representative House. In India, the doctrine of collective responsibility of the Union Executive to the House of the people is specifically enshrined in the Constitution (Art.75.3). Loss of confidence of the popular House requires the Government to resign and facilitate installation of an alternative Government, if possible or the President dissolves the LS and general election to LS is held. The usual procedure to express want of confidence in the Council of Ministers is through a motion of no confidence under Rule 198 of the Rule of Procedure and Conduct of Business I Lok Sabha (as detailed above).

The device of confidence motion is of recent origin. There is no rule in the Rules of Procedure relating to Motion of Confidence in the Council of Ministers. The need of raising debate through such a motion arose in the late seventies with the advent of minority Governments and later, by mid -- 90's, formation of coalition Governments as a result of hung Parliaments. In the absence of any specific rule in this regards, such Motions of Confidence have been entertained under the category of motions stipulated in Rule 184 which are meant for raising discussions on matters of public interest in Lok Sabha.

In the case of a Confidence Motion, there is no requirement for seeking leave of the House. The one line notice of motion under Rule 184 that "The House expresses its confidence in the Council of Ministers" is given by the Prime Minister. When admitted by the Speaker, it is bulletined. The date and time for discussion is fixed in consultation with the Business Advisory Committee.

Confidence Motion and No – Confidence Motion have the same purpose, the Government has to determine its majority in Lok Sabha. The former is a Government is a Government initiative when called upon to do so by the President and the latter is moved by the opposition party member.

The notice of the first ever Motion of Confidence was given by the Prime Minister Ch.Charan Singh in 1979. This motion could not be moved as Ch.Charan Singh tendered the resignation. The first Motion of Confidence was moved by Shri V.P.Singh, the then Prime Minister in December, 1989 in the Lok Sabha which was adopted by the House by the voice on the same day. Since the ten Motions of Confidence have been moved (2013). The last such motion was in

the previous Lok Sabha in July 2008, after the Left parties pulled out support to UPA 1. The government won the motion.

Censure motion

Censure motion can be moved only in Lok Sabha under Rule 184. Speaker can disallow a censure motion. Grounds need to be mentioned unlike the NCM. It can be moved against an individual minister/s who need not resign if the motion is passed, unlike the NCM. Under the Rule 184, voting takes place at the end of the debate. Rule 184 is a way of Parliament enforcing accountability of the executive. In August 2011, opposition parties had demanded a debate with voting on the issue of rising prices. The motion that was moved did not require any specific action and only called upon the government "to take immediate effective steps to check inflation that will give relief to the common man." The motion was adopted after a seven-hour debate

Rule 184 and Rule 193 in Lok Sabha

Rule 184 is a censure motion as the debate ends with vote. It is classified as No Day yet named Motion in the Rules. It relates to any matter of general public interest. Speaker decides the admissibility of the motion. If the Government loses for any reason, it has to come forward with a confidence motion to establish its numerical majority. In 2002, in relation to the developments of Gujarat, opposition moved a censure motion under Rule 184 and the Deputy Speaker allowed the same. The Government won the motion. In 2012, November, on foreign direct investment in multi-brand retail, Lok Sabha Speaker Meira Kumar allowed a debate on FDI under Rule 184 that was followed by voting where the government had shown its majority.

Rule 193 allows a short duration discussion and is not followed by vote. The matter should be one of urgent public importance and the notice of the member to raise the issue should be supported by at least two other members. In the Lok Sabha in the winter session Nov – Dec 2007, four short duration discussions under Rule 193 were held on following issues:

- Proposal to setup Special Economic Zone in Nandigram, West Bengal and consequent large scale violence
- Indo – US nuclear agreement
- Need for harmonious functioning of three organs of the State i.e. legislature, judiciary and executive.
- Internal Security

In the budget session of 2013, Parliament took up five such discussions which included labour regulations, civil aviation policy, pollution of the River Ganga, foodgrains storage and Centre-state relations. Parliament spent about 9 per cent of the total productive time of that session on these debates. It is important to note that discussions under Rule 193 have no direct consequence and only require the minister to respond to the various issues raised.

Rajya Sabha Rules 167 etc

In the Rajya Sabha, debate under Rules 167 and 170 ends in voting while Rule 191 does not need voting.

However, censure motion of the Lok Sabha type does not exist in Rajya Sabha.

Question Hour

The first hour of every sitting of Lok Sabha is called the Question hour. Questions are of three types

- Starred
- Unstarred and
- Short Notice.

A Starred Question is one to which a member wants an oral answer in the House and which is distinguished by an asterisk mark. To a starred question, members can put supplementaries because the Minister is orally answering the question.

An unstarred Question is one which is answered in writing and no supplementary questions can be asked.

Minimum period of notice for starred / unstarred question is 10 clear days (that is excluding holidays).

Short Notice Questions

They do not require the normal period of notice of 10 days. They relate to matters of urgent public importance. A Short Notice Question may only be admitted if permitted by the Speaker. A short Notice Question is taken up for answer immediately after the Question Hour. A question may also be addressed to a Private Member provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the Business of the House for which that Member is responsible.

Half – an – Hour Discussion

A Half – an – Hour Discussion can be raised on a matter of sufficient public importance which has been the subject of a recent question.

During the discussion, the member makes short statement and not more than four members are permitted to ask a question each for further clarity. Thereafter, the Minister concerned replies. There is no formal motion before the House nor voting.

Rule 377

Under Rule 377 of the Rule of Procedure and Conduct of Business in the Lok Sabha, members are allowed to raise matters which are not points of order or which cannot be raised under any other Rule. Special Mentions in the Rajya Sabha are its counterpart.

Legislation or How a Bill becomes an Act

A Bill is the draft of a legislative proposal. It has to pass through three stages and receive the assent of the President before it becomes an Act of Parliament. It will come into effect after it has been notified by the Government Bills and those introduced by Members who are not Ministers, are known as Private Members Bills. Depending on their contents, Bills may further be classified broadly into

- Ordinary Bills
- Constitution Amendment Bills
- Money Bills

- Financial Bills A and B
- Other Bills where the procedure for passing of the Bill may be marginally different – for example, requiring the prior assent of the President (Art.3)

Process of passage of a Bill each House is as follows.

First Reading
The legislative process starts with the introduction of a Bill in either House of Parliament – Lok Sabha or Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the later case it is known as a Private Member Bill.

It is necessary for a member – in- charge of the Bill to ask for leave to introduce the Bill. A Minister has to give notice of 7 days and a Private member 30 days for seeking leave of the House for introduction. If leave is granted by the House, the Bill is introduced, this stage if known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker/Chairman may, in his discretion, allow brief explanatory statements to be made by the member who oppose the motion and the member – in – charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker/Chairman may permit a full discussion. Thereafter the question is put to the vote of the House. However, the motion for leave to introduce a Financial Bill or an Appropriation Bill is forthwith put to the vote of the House.

Publication in Gazette
After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill may, with the permission of the Presiding Officer, be published in the Gazette. In such cases, lave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

Reference of Bill to Standing Committee
After a Bill has been introduced, Presiding Officer of the concerned House can refer the Bill to concerned Standing Committee for examination and make report. If a Bill is referred to Committee, the Committee shall consider the principles and clauses of the Bill referred to them and make report. The Committee can also take expert opinion or the public opinion who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee has persuasive value.

Very rarely, a Bill may not be refered to the DRSC. For example, the Criminal Law Amendment Bill 2013 for want of time- if it was sent to the DRSC, time would have run out as the Ordinance was in need of conversion to legislation within 6 weeks of Parliament's reassembly

Second Reading or Consideration
The Second Reading consists of consideration of the Bill which in two stages.

First Stage: The First Stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to

- Refer Bill to a Select Committee of the House or a Joint Committee o the two Houses or
- To circulate it for the purpose of eliciting opinion or
- To straightaway take it into consideration.

If a Bill is referred to a Select /Joint Committee, the Committee considers the Bill clause – by – clause just as the House does. Amendments can be moved to the various clauses by members of the committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee.

If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Government of the States and Union Territories. Opinions so received are laid on the table of the House and the next motion in regard to the Bill must be for its reference to a Select /Joint Committee. It is not ordinarily permissible at this stage to move motion for consideration of the Bill.

Second Stage: The Second Stage of the Second Reading consists of clause – by – clause consideration of the Bill as introduced or as reported by Select /Joint Committee. Discussion take place on each clause of the Bill and amendments to clause can be moved at this stage.

Third Reading or Voting

Thereafter, the member – in – charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill or Voting. At this stage debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage.

In passing an ordinary Bill, a simple majority of members present is necessary. But in the case of Bill to amend the Constitution, special majority is necessary.

Bill in the other House

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

Consideration of the Bill at a Joint Sitting (Art.108)

If a Bill passed by one House is

- Rejected by the other House, or
- The House have finally disagreed as to the amendments to be made in the Bill, or
- More than six months elapse from the date of the receipt of the Bill by the other House without Bill being passed by it

The President may call a joint sitting of the two Houses to resolve the deadlock. If, at the joint sitting of the Houses, the Bill is passed by a majority of the total number of members of both the

Houses present and voting, with amendments, if any, accepted by them, the Bill is deemed to have been passed by both the Houses.

Assent of the President

When a Bill is passed by both Houses, the Bill is sent for the assent of the President.

The President may give his assent or withhold his assent to a Bill. The President may also return the Bill (except a Money Bill) with his recommendations to the House for reconsideration, and if the House pass the Bill again with or without amendments by a simple majority, the President cannot withhold his assent to the Bill (suspensive veto). For example, 'Office of Profit Bill' was returned for re passage by the President in 2006 after it was passed by the Parliament. When re passed and sent again, the President gave his assent.

The President however, is bound to give his assent to a Constitution Amendment Bill passed by the Houses of Parliament by the requisite special majority and, where necessary, ratified by the States (24th Amendment Act 1971).

Presidential veto powers are discussed in detail in the Chapter on President.

Joint sitting of the Houses

The Constitution of India envisages a mechanism for resolving disagreement between the two Houses in respect of a Bill, other than a Money Bill or a Constitution Amendment Bill. In case of a Money Bill, the powers of the Rajya Sabha are limited to retaining or delaying the Bill passed by the Lok Sabha for a period of 14 days only and recommending an amendment or amendments in the Bill which may or may not be accepted by the Lok Sabha. In case of a Constitution Amendments Bill, if the both Houses do not pass such a Bill in identical terms, in accordance with Article 368, there is an end of that Bill. It will have to be reintroduced.

When any other Bill deadlocked, the President may, unless the Bill has lapsed by reason of dissolution of the Lok Sabha, notify to the House by message, if they sitting, or by public notification, if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill.

The Speaker and in his absence the Deputy Speaker of the Lok Sabha or if he is also absent, the Deputy Chairman of the Rajya Sabha or if he / she too absent, such other person as may be determined by the member present at the sitting, presides over the joint sitting. Chairman cannot preside as he is not a member of Rajya Sabha.

The procedure of the Lok Sabha applies at a joint sitting. The quorum to constitute a joint sitting is one – tenth of the total number of members of the two Houses.

If at a joint sitting, the Bill referred to it, with such amendments, if any, as are agreed to in the joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it is deemed to have been passed by both Houses.

At joint no amendment can be proposed to the Bill, other than such amendments, if any, as become necessary by the delay in its passage and such other amendments as relate to matters

with respect to which the House have not agreed in their individual capacity. The decision of the presiding officer as to the admissibility of amendments is final. At a joint sitting, the Speaker or the person presiding as such shall not vote in the final instance, but shall have and exercise a casting vote in the case of equality of votes.

Joint sitting held so far

So far joint sittings have been held thrice in 1961, 1978 and 2002.

- The first joint sitting was held in 1961 to consider amendments to the Dowry Prohibition Bill 1959. Members of both Houses were united in their support for the Bill, but differed over specific nuances.
- The second joint sitting was held in 1978, after the Rajya Sabha rejected the Banking Service Commission (Repeal) Ordinance, 1977. The Bill was passed.
- The third joint sitting was held to make POTO into an Act in 2002 – Prevention Of Terrorism Bill. It became necessary as the Bill was rejected by the Rajya Sabha.

The joint sitting, sanctioned under Article 108 of the Constitution, was intended by the Constitution – makers as a way to resolve disagreements between the two Houses in matter of legislation. It gives another chance for the two Houses to reconcile their differences in national interest.

Parliamentary Committees

The Parliament work is increasingly becoming more technical and voluminous. It cannot, therefore, give close consideration to all the legislative and other matters before it, one of the reasons to setting up Parliamentary committees that do some of the parliamentary work. Committees also provide greater focus and expertise to the parliamentary work. Parliamentary Committees are of two kinds:

- Ad hoc Committees and
- Standing Committees.

Ad hoc Committees

Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit report. Ad hoc Committees are of two types

- Committees which are constituted from time to time to inquire into and report on specific subjects, (for example, Committees on Members of Parliament Local Area Development Scheme, Joint Committee on Bofors Contracts, Joint Committee to enquire into irregularities in securities and banking transactions, Joint Committee on Stock market Scam etc)
- Select or Joint Committees on Bills which are appointed to consider and report on a particular Bill. These Committees are distinguishable from the other Ad hoc Committees in as much as they are concerned with Bills and the procedure to be followed by them as laid down in the Rules of Procedure and Directions by the Speaker / Chairman.

Standing Committees

Apart from the Standing Committees, each House of Parliament has Standing Committees like the Business Advisory Committee, the Committee on Petitions the Committee of Privileges and the Rules Committee etc. They are elected or appointed every year or periodically and their work goes on, more or less, on a continuous basis.

Among the Standing Committees, the three Financial Committees – Committees on Estimates, Public Accounts and Public Undertakings – constitute a distinct group as they keep vigil over Government expenditure and performance. While members of the Rajya Sabha are associated with Committees on Public Accounts and Public Undertakings, the members of the Committee on Estimates are drawn entirely from the Lok Sabha.

Other Standing Committees in each House, divided in terms of their functions, are

(i) Committees to Inquire

- Committees on Petition examines petition on Bills and on matters of general public interest and also entertains representations on matters concerning subjects in the Union List and
- Committee of Privileges examines any question of privilege referred to it by the House or Speaker / Chairman.

(ii) Committees to Scrutinise

- Committees on Government Assurances keep track of all the assurances, promises, undertakings, etc., given by Ministers in the House and pursue them till they are implemented.
- Committees on Subordinate Legislation scrutinises and reports to the House whether the power to make regulations, rules, sub – rules, by laws, etc., conferred by the Constitution or Statutes is being properly exercise by the delegated authorities.

(iii) Committees relating to the day – today Business of the House

- Business Advisory Committee recommends allocation of time for items of Government and other business to be brought before the Houses.
- Committee on Private Member's Bills and Resolutions of the Lok Sabha classifies and allocates time to Bills introduced by private members, recommends allocation of time for discussion on private members resolutions and examines Constitution amendment Bill before their introduction by private members in the Lok Sabha. The Rajya Sabha does not have such a committee.
- Rules Committee considers matters of procedure and conduct of Business in the House and recommends amendments or additions to the Rules
- Committee on Absence of Members from the Sittings of the House of the Lok Sabha considers all applications from members for leave or absence from sittings of the House. There is no such Committee in the Rajya Sabha.

- Committee on the Welfare of the Scheduled Castes and Scheduled Tribes, on which members from both Houses serve, considers all matters relating to the Welfare of the Scheduled Castes and Scheduled Tribes which come within the purview of the Union Government and keeps a watch whether constitutional safeguards in respect of these classes are properly implemented.

(iv) Committees concerned with the provision of facilities to members

- General Purpose Committee considers and advices Speaker / Chairman on matters concerning affairs of the House, which do not appropriately fall within the purview of any other Parliamentary Committee.
- House Committee deals with residential accommodation and other amenities for members.

(v) Joint Committee on Salaries and Allowances of Members of Parliament, constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954, apart from framing rules for regulating payment of Salary, allowances and Pension to Members of Parliament, also frame rules in respect of amenities like medical, housing, telephone, postal, constituency and secretarial facility.

(vi) Joint Committee on Offices of Profit examines the composition and character of committees and other bodies appointed by the Central and State Governments and Union Territories Administrations and recommends what offices ought to or ought not to disqualify a person from being chosen as a member of either House of Parliament

(vii)The Library Committee consisting of members from both Houses considers matters concerning the Library of Parliament.

(viii) In 1997, a Committee on Empowerment of Women with members from both the Houses was constituted with a view to securing, among other things, status, dignity and equality for women in all fields.

(ix) In 1997, the Ethics Committee of the Rajya Sabha was constituted. The Ethics Committee of the Lok Sabha was constituted in 2000.

Watchdog Committees

Of special importance is a class of Committees which act as Parliament's 'Watchdogs' over the executive. These are the

- Committees on Subordinate Legislation
- Committees on Government Assurances
- Committee on Estimates
- Committee on Public Accounts

- Committee on Public Undertakings and
- Departmentally Related Standing Committees.

The Committee on Estimates and Committee on Public Accounts and the Committee on Public Undertakings and DRSC's play an important role in exercising a check over governmental expenditure and Policy formulation. For Subordinate Legislation, see ahead

Select and Joint Committees

After a Bill is introduced in the House, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the Houses. A motion has to be moved and adopted to this effect in the House. The decision is conveyed to the other House requesting them no nominate members of the House to serve on the Committee.

The Select or Joint Committee considers the Bill clause by clause. Amendments can be made by the Committee after the Bill has thus been considered the Committee submits its report to the House. The report of the committee is not binding but only guides the legislative process.

Departmentally Related Standing Committees

To make the parliamentary control more effective and focused, particularly in financial matters and public policy, and to make the Executive more accountable to the Parliament, Departmentally Related Standing Committees were set up first in 1993. They cover under their jurisdiction all the Ministries / Departments of the Union Government – each committee being given one or more ministries.

Similar system of Departmentally Related Select Committees was in existence in the United Kingdom unlike the Consultative Committees attached to various ministries which are informal in nature and are presided over by the Ministers concerned, the meetings of the Standing Committees under consideration are presided over by private members.

There are 24 DESC's with 31 members each – 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker and Chairman respectively. The term of the Members of these Committees shall not exceed one year.

The functions of these Committees would broadly include:

- Consideration of Demands for Grants
- Examination n of Bills referred to them Presiding Officers
- Consideration of Annual Reports
- Consideration of national basic long term policy documents tabled in the Parliament and referred to the Committee by the Chairman or the Speaker

It is agreed that there should be a separate Committee for the Ministry of Labour and Welfare and two separate Committees for the Ministry of Commerce and Industry.

It may be noted that a Minister is barred from being nominated as a member of a Standing Committee and if a member after his nomination to the Committee becomes a Minister, he ceases to be a member of the Committee from the date of his appointment.

The Reports of the Committees have persuasive value. In respect of reports on Demands for Grants and other subjects, the Ministry or the Department concerned is required take action on the recommendations and observations contained in the report and Action Taken Reports are presented to House.

The biggest achievement of the Standing Committees would be that the Demands for Grants of most of all Ministries / Departments of the Government would be scrutinised by members of Parliament. It will ensure greater participation of Members. Previously, because of paucity of time, the Parliament was able to discuss of Demands for Grants of only a few Ministries every year and the rest were guillotined.

Now after the general discussion on the Budget is over, the Parliament shall adjourn for a fixed period - about a month and the Committees shall consider the Demands for Grants during this recess. The Demands for Grants shall thereafter be considered by the Lok Sabha in the light of the Reports for these Committees.

The Standing Committees system is the latest innovation in the ever evolving process of Parliamentary surveillance over the Executive to ensure its accountability to the common man.

Criticism is that the reports of the committees are not being paid due attention. Guillotine process still continues.

Public Accounts Committee

The Committee on Public Accounts is constituted by Parliament each year for examination of accounts showing the appropriation of sums granted by Parliament for expenditure of Government of India.

It is the oldest Committee being in existence from 1921. The Committee consists of not more than 22 members comprising 15 members elected by Lok Sabha every year from amongst its members according to the principle of proportional representation by means of single transferrable vote and not more than 7 members of Rajya Sabha elected by the House in like manner are associated with the Committee. The Chairman is appointed by the Speaker from amongst its members. The Speaker, for the first time, appointed a member of the opposition as the Chairman of the Committee for 1967 – 68. This practice has been continued since then. A Minister is not eligible to be elected as a member of the Committee. If a member after his election to the Committee is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment.

Functions

The Appropriation Accounts relating to the Railways, Defence Services, P & T Department and other Civil Ministries of the Government of India and Reports of the Controller and Auditor General of India mainly from the basis of the deliberation of the Committee. In scrutinising the Appropriation Accounts and the Reports of the Controller and Auditor General, it is the duty of the Committee to satisfy itself:

- That the money shown accounts as having been disbursed were legally available for and, applicable to the service or purpose to which they have been granted.
- That the expenditure confirms to the authority which governs it, and
- That every re – appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

One of the duties of the Committees is to ascertain that money granted by Parliament has been spent by Government within the scope of the demand. If any money has been spent on a service in excess of the amount granted by the House for the purpose, the Committee examines with reference to the facts and circumstances leading to such an excess and makes such recommendations as it may deem fit. If it recommends retrospective authorization by Parliament of such grants, they are called 'excess grants' (Art.115)

The functions of the Committee extended however, "beyond, the formality of expenditure to its wisdom, faithfulness and economy". The Committee thus examines cases involving losses, nugatory expenditure and financial irregularities.

While scrutinising the reports of the Controller and Auditor General on Revenue Receipts, the Committee examines various aspects of Governments tax administration. The Committee thus examines cases involving under-assessments, tax evasion, misclassifications etc., identifies the loopholes in the taxation laws and procedures and makes recommendations in order to check leakage of revenue.

The Controller and Auditor General is the "friend, philosopher and guide" of the Committee. He attends the sittings of the Committee and assists it in its labours.

Since the Committee became a Parliamentary Committee under the control of the Speaker 1950, it has presented more than 1250 reports till today. PAC is one of the watchdog Committees of the Parliament.

Government takes action on the recommendations of the Committee. The Committee watches the implementation of its recommendations. In case where the Government has reasons to disagree with a recommendation of the Committee, the latter may, if it thinks fit, present a further report after considering the view of the Government.

Committees on Estimates

The Estimates Committee constituted for the first time in 1950, is a Parliamentary Committee consisting of 30 Members, elected every year by the Lok Sabha from amongst its members. The Chairman of the Committee is appointed by the Speaker from amongst its members. A Minister cannot be elected as a member of the Committee and if a member after his election to the Committee, is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment. The term of office of the Committee is one year.

Functions

The functions of the Estimate Committee are

- To report what economies, improvements in organisation, efficiency or administrative reforms, consistent with the policy underlying the estimates may be effected.
- To suggest alternative policies in order to bring about efficiency and economy in administration
- To examine whether the money is well laid out within the limits of the policy implied in the estimates, and
- To suggest the form in which the estimates shall be presented to Parliament.

The Committee does not exercise its functions in relation to such public Undertakings as are allotted to the Committee on Public Undertakings. It is called the continuous economic committee as it reports throughout the year on what savings can be made with what administrative reforms.

Committee on Public Undertakings
Constitution

The Committee on Public Undertakings is a Parliamentary Committee consisting of 22 members, fifteen elected by the Lok Sabha and seven by the Rajya Sabha from amongst their members according to the principle of proportional representation by means of a single transferable vote. The Chairman is appointed by the Speaker from amongst the Members of the Committee. A Minister is not eligible to become a Member of the Committee. If a Member after his election to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The term of the Committee does not exceed one year.

Functions

The functions of the Committee on Public Undertakings are :-

- To examine the reports and accounts of Public Undertakings specified in the Forth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha
- To examine the reports, if any, of the Controller and Auditor General of India on the Public Undertakings
- To examine, in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.

The Committee selects from time to time for examination such Public Undertakings or such subjects as they may deem fit and as fall within their terms of reference.

JPCs to investigate corruption and other issues

Joint Parliamentary Committee (JPC) is a type of ad hoc Parliamentary committee constituted by Parliament.Joint Parliamentary Committee is formed when motion is adopted by one house and it is supported or agreed by the other house.Another way to form a Joint Parliamentary committee is that two presiding chiefs of both houses can write to each other, communicate with each other and form the joint parliamentary committee.The Lok Sabha members are double compared to Rajya Sabha.The strength of a JPC may be different each time.Members are elected by the respective Houses according to proportional system of representation as in the case of JPC on 2G issue.

JPC can obtain evidence of experts, public bodies, associations, individuals or interested parties suo motu or on requests made by them. If a witness fails to appear before a JPC in response to summons, his conduct constitutes a contempt of the House.

The JPC can take oral and written evidence or call for documents in connection with a matter under its consideration. Ministers are not generally called by the committees to give evidence. However, in case of the Irregularities in Securities and Banking Transactions probe again, an exception was made, with the JPC, with the permission of the Speaker, seeking information on certain points from ministers and calling Ministers of Finance and others

So far, the following JPCs were set up

- Bofors scandal (1987)

- Harshad Mehta Stock market scam (1992)
- Ketan Parekh share market scam (2001)
- Soft drink pesticide issue (2003)
- 2G spectrum scam (2011)
- Chopper scam 2013

The fifth JPC has been constituted in February 2011 to probe 2G scam. It has 30 members. Speaker Meira Kumar nominated one among the members as chairman of the JPC- P.C. Chacko. Members were elected by the two Houses by PR system where parties were represented in the JPC according to their strength.

VVIP Chopper scam (2013)

The Government has moved a motion in the Rajya Sabha in February ,2013, which was adopted by voice vote-for formation of a JPC "to inquire into the allegations of payment of bribes in the acquisition of VVIP helicopters by the Ministry of Defence from M/s Agusta Westland and the role of alleged middlemen in the transaction." The JPC will have 10 members from the Rajya Sabha and 20 from the Lok Sabha.

Parliamentary Privileges

Privilege is an exemption from the general law. It is a special right. Parliamentary Privilege consists of the rights and immunities which the two House of Parliament and their members posses to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of parliament would be correspondingly diminished. Members enjoy some of the privileges and immunities while the session is on and other all the time while they remain as members Privileges are contained in Articles 105 and 194 for Parliament and state legislatures respectively.

There are two related expressions in this context – 'Breach of Privilege' and 'Contempt of the House'. The differences between these two are the following:

When any of the privileges either of the Members individually or of the House in its collective capacity are disregarded or attacked by any individual or authority, the offence is called a breach of privilege. Any obstruction or impediment put before House or its members in due discharge of their duties, or which have a tendency of producing such result, may amount to contempt of the House. Thus, breach refers to specific privilege being breached. Contempt is a general expression both are by and large synonyms

Constitutional provisions

The Constitution specifies some of the privileges in Art.105. They are

- Freedom of speech in Parliament where the restrictions under Art.19.2 do not apply but the parliament may prescribe its own rules (Art.105.2). However, members cannot discuss the personal conduct of a judge of Supreme Court or High Court unless proceedings for impeachment are being held (Art.121).
- Immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof
- Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure (Art.122)

Statutory Provisions

Apart from the privileges specified in the Constitution (Art.105), the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion. However, the protection does not apply in criminal and preventive detention cases.

Privileges based on Rules of Procedures and Precedents

The House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of Law, relating to the proceedings of the House without the permission of the House.

Consequential powers of the House

Each House enjoys powers necessary for the protection of its privileges and immunities. The powers are

- To commit persons or, whether they are members or not, for breach of privileges or contempt of the House.
- To regulate its procedure and conduct of its business
- To prohibit the publication of its debates and proceedings and
- To exclude strangers

Penal powers of the House

The House has the power to determine as to what constitutes breach of privilege and contempt. A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment, or by admonition (warning) or reprimand. Two other punishments may also be awarded to the members for contempt, namely, 'suspension' and 'expulsion' from the House.

In 2005, Parliament expelled 11 members – 10 from Lok Sabha and one from the Rajya Sabha – whose conduct was found to be 'unethical and unbecoming' of Members of Parliament. For the first time in the annals of Parliament, the membership of the 11 MP's was terminated by voice

Vote, following the sting operation on the cash – for – questions scandal. The Rajya Sabha agreed with the recommendations of its Ethics Committee while the Lok Sabha endorsed the report of the Pawan Kumar Bansal Committee set up go into the allegations.

Keshav Singh Case 1964

Keshav Singh had published a pamphlet maligning a member of the State Legislative Assembly. The House found him guilty of contempt and sentenced him to prison for 7 days. He challenged this order before High Court, which granted him interim bail. The House declared that the judges who issued interim orders were themselves guilty of contempt of the House and liable to be punished. The judges moved the petition before the High Court, which sat in a full bench and stayed the orders of the House. As this confrontation seemed to be spiralling out of control, the Union Government requested the President to refer the matter to the Supreme Court under Art.143. The key argument before the Supreme Court was about the scope and nature of the power of legislative privileges. While the State Legislative Assembly contended that this power was independent of the other provisions, the petitioner argued that the power, like all others in the constitution, was subject to the fundamental rights of citizens. The court concluded that it had the power to review warrants issued by the Legislature for compliance with the due process requirements under Article 21, among others, thereby asserting the supremacy of the Constitution in general, and Art.21 in particular, over the exercise of the privileges powers.

The Supreme Court verdict in Presidential Reference under Art.143 essentially held that the powers and privileges conferred on State Legislatures by Art 194 (3) were subject to the fundamental rights. The Supreme Court in another case held that Art. 19(1)(a) would not apply and Art.21 would. The Court further held: In dealing with the effect of Art 194 and the conflict pertaining to the fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction that is to reconcile the two.

JMM Case

The case relates to certain MP's belonging to the Jharkand Mukti Morcha and others allegedly taking bribes to vote for the Rao Government to save it from defeat in no confidence motion in 1993.

Supreme Court upheld Art.105 which says that MP's cannot be questioned for what they or the manner of their vote in the Parliament by the judiciary. In the same judgement, Supreme Court had also ruled that MP's were public servants under the Prevention of Corruption Act.

The Hindu Case 2003

The Tamil Nadu Assembly passed resolution in 2003 sentencing the publisher and four journalists of The Hindu to 15 days simple imprisonment for breach of privilege of the House after Privileges Committee of the House pronounced them guilty.

2011

Key members of Anna Hazare's core team — Arvind Kejriwal, Prashant Bhushan and Kiran Bedi —received breach of privilege notices from the Rajya Sabha for their alleged remarks

against Parliamentarians during their anti-corruption campaign on the Ramlila grounds in 2011.They received the notices for "breach of privilege/contempt of the House."They were accused of using derogatory words against MPs during the agitation.

Codification of Privileges

Constitution says (Art.105) that powers, privileges and immunities of each House of Parliament and of the members and Committees thereof shall be such as may from time to time be defined by Parliament. Constitution (44th Amendment) Act, 1978 dropped the reference to the House of the Commons that was originally there. The original reference was that where the privileges are not defined, they are similar to those of the House of Commons. However, no law defining the privileges has been made by Parliament so far.

The Lok Sabha Privileges Committee headed by Kishoore Chandra Deo (2008)in the report on 'Parliamentary Privileges – Codification and related matters,' said that there is no need to codify the privileges as the existing frame work did well: there had been only one case of admonition, two cases of reprimand and one case of expulsion for commission of breach of privileges and contempt of the House.

Miscellany Whip

The Concise Oxford Dictionary describes a 'Whip' as an 'official appointed to maintain discipline among, secure attendance of, and give necessary information to, members of his party.' He is central to the working of Parliament is the Whip. Though not officially recognised in the Rules of Procedures of the House, the efficient and smooth running of the parliamentary system depends largely upon the Whips.

Each party has a Whip or a number of whips depending on its numerical strength in the House. Government Chief Whip has the main function to ensure that the Government business is transacted in accordance with the planned program. In managing the smooth passage of Government business, the Government Chief Whip has to ensure majority in every vote. He also has to ensure that there is always sufficient attendance of members to form a quorum and more particularly to give support to their own chosen speakers.

In Indian Parliament the Minister of Parliamentary Affairs is the Chief Whip of Government. He is assisted by a few ministers of State drawn from both the Houses. In the Rajya Sabha the Minister(s) of State in the Ministry of parliamentary Affairs holds (hold) the position of the Government Whip. Under the Constitution (52nd Amendment) Act, a member who votes or abstains from voting contrary to the whip (called 'Direction' in the Act), runs the risk of losing his seat in the House. Thus, the written notice which a whip sends to members has assumed a constitutional status.

Secretary – General

Next to the Chairman and Deputy Chairman, the third important officer in the Lok Sabha / Rajya Sabha is the Secretary – General. He discharges all the administrative and executive functions on behalf of an in the name of the Presiding Officer. The Secretary – General is a permanent officer of the House and is appointed by the Presiding Officer.

Parliament sits on an average 80 -90 days in a year.

Private Member's Bill

Private Members are those members of the Parliament who are not minister. They may also move a legislative proposal or Bill.

In Lok Sabha, the last two and a half hours of a sitting on every Friday are generally allotted for transaction of "Private Members Business", i.e., Private Members Bill, Private Members Resolution.

If there is no sitting of the House on a Friday, the Speaker may direct that two and half hours on any other day in the week may be allotted for the transaction of Private Members Business.

A Member who wants to introduce a Bill has to give prior notice thereof. The period of notice/ for introduction of Bill is one month unless the Speaker allows introduction at a short notice. President's recommendation, if necessary, for introduction and/or consideration of the Bill should also be applied for by the member. Where a Bill, if enacted, is likely to involve in expenditure from the Consolidated Fund of India, a financial memorandum given an estimate of the expenditure involved has to be appended to the Bill by the Member. In case the Bill contains proposal for delegated legislation, a memorandum regarding delegated legislation is also required to be appended to the Bill.

The Primary responsibility for drafting of Private Members Bill is that of the members concerned. The Lok Sabha Secretariat nevertheless renders necessary assistance in putting the Bill in proper form so that it is not rejected on technical grounds.

A member cannot introduce more than four Bills during a session
When a Bill originating in the Lok Sabha is transmitted to the Rajya Sabha, in case of a Private Members Bill, a member of Rajya Sabha authorised by the Lok Sabha Member in Charge of the Bill introduces the Bill.

Bills seeking to amend the Constitution, apart from being subject to the normal rules applicable to Private Members Bills, have also to be examined by the Committee on Private Members Bills and Resolutions and only those Bills which have been recommended by the Committee are put down in the list of Business for introduction.

Parliament data shows that no Bill piloted by a Lok Sabha private member has been passed in over 43 years, since 1970.

278 pending Private Member's Bills are there in the Lok Sabha by 2013.

The last Private Member's Bill that was passed and went on to become a law was the Enlargement of the Appellate (Criminal) Jurisdiction of the Supreme Court Bill, 1968, moved by independent MP from Lucknow Anand Narain Mulla.

Manish Tiwari,, when he was not a minister , moved a Private member's Bill to bring the intelligence agencies under parliamentary oversight.