

Federal Form of Government

Philosophy of Federalism

Professor **Rashidun Khan** said that Indian society is federal, it is a coalitional. It means society is comprised of various linguistic groups, religious groups and federalism maintains unity in diversity. Federal government is based on the concept of sharing of power. Division of power ensures the recognition of diversity and regionalism. States are not only administrative units but it is a cultural unit too and the federal government and state government are equal or co-ordinate to each other because both are deriving their power from constitution. Therefore Sarkaria Commission said that federalism is not accepted for administrative efficiency more over federalism is an ideology and philosophy.

Federal Form of Government

- **Division of Power:** Powers are divided in **two set of** government. Federal government and state government draw their powers from the constitution. 7th schedule of the Indian constitution ensures division of power. Federal government set up two sets of government, or **dual government**.
- **Decentralization of Power:** Division of Power promotes decentralization of power. Federal government establish multiple and autonomous units, which draw its powers from the constitution. For example federal government of USA is comprised of 50 states, 28 states exist in Indian federation.
- **Equal Partner:** Federal government and state government is **co-ordinate** to each other. State government does not receive their power from the central government. But states get its power from the **constitution**.
- **Written and supreme constitution:** Division of power is maintained through written constitution. Either center or state government cannot alter the division of power.
- **Bicameral House:** Two houses are mandatory for federal government one house **represent the state**, in federal government. **Rajya Sabha** represents the state in Indian constitution. And **Lok Sabha** reflects will of the people.
- **Independent Judiciary:** Division of power can result into the dispute. Therefore independent and **neutral** dispute settlement mechanism is judiciary. Neither the federal government nor the State Government is entitled to settle the dispute.
- **Protect the Diversity:** **Prof. Rashiduddin Khan** says that Indian Society is Federal therefore India opted for Federal form of Government. Same view is held by **Prof. M. P. Singh** who said that Indian Federal System accommodates diversity of Ethnicity. Federal government is democratic method to accommodate the **diversity** of the society. Formation of various states fulfills the need of cultural diversity. State can adopt their own language as an official language. It protects **regional aspiration**. Therefore in a large and democratic nation like **India**. Federal government is helpful to maintain **unity in diversity**.

Unitary Form of Government

Democratic government can be classified as parliamentary and **presidential** on the basis of relationship between legislatures and executive. Government may be unitary or federal on the basis of **Geographical Division of Power**.

1. **Single constitution:** Constitution recognized **one centre of power** in unitary government. Smaller states in size like Britain and Sri Lanka adopted unitary government. Unitary government means one capital, single citizenship, and centralized administration.

2. **Units are subordinate:** Other provinces or units can be established for administrative efficiency. But units are **subordinate** to the central government. Unites or provinces are not **auto autonomous**.
3. **Centralization of Power:** Provinces do not receive their power from the constitution. Provinces are **dependent** over the central government for exercising their power. **Delegation of power** is the discretion of central government.

USA Model of Federation

- **Federation is Result of Contract:** USA is **classical** model of federal government. Formation of federal government in USA is result of **contract** among the independent and severing states. **Independent** states decided to form a **common government**, which is also known as federal government. In USA, states formed the federation. Power of federal government is decided by the states therefore state government is powerful in USA federation.
- **Power Sharing:** USA federation is comprised by **50 states**. Each state keeps its **own constitution**. Governor of state **is elected by** the people of the state. Dual Citizenship is the feature of USA federal system and state services are also divided.
- **Powerful State:** USA constitution only contains **federal list**. **Residuary** powers belong to the state government. Residuary powers means unwritten powers the constitution.
- **Indestructible Federation and Indestructible State:** State cannot **secede** from federation. And Federal government cannot change the name, boundary of state, without the **consent** of state.
- **Equality among the States:** Equal power is **shared** between federal government and the state government. In addition to that states are **also equal**. Each state sends **two representatives** to senate, in the upper house of USA, congress (Parliament). Size and population of the 50 state is not same but their **representation is equal**.

Unionist Model of Federation

Canadian federation is not result of **contract among** the states, likewise of USA federation. State was carved out from the federation. There is **common (Single)** constitution for centre and states. Residuary powers belong to centre government. Central government appoints the governor in the states. Central Government enacts a law over **state list**, in favour of **national interest**. Canadian supported strong federal government. Thus, they prefer the term **union** rather than federation representation of every state is ensured in upper house according to population. Equal representation a state is not adopted in Canada. Union in Canadian constitution **denotes two features-**

1. Federation is not result of contract among the states.
2. It is an indication of strong federal government.

Federation and union

It can be used **interchangeably** distinction between federal and union is technical in nature. It only shows the historical differences, during formation of the federal government, Because Canadian constitution not result is of comfort. Federation and union shares **common features like-**

- Division of power.
- Federal government and states is co-ordinate and equal.
- States drive their powers from constitution.
- Written and supreme constitution.
- Independent and autonomous judiciary.
- Presence of upper house.

Nature of Indian Federation

After the partition of India, tendency of disintegration existed in India. The Insurgency is in **Nagaland** in North-East. Hostile approach of Pakistan towards Kashmir necessitated the formation of **strong union** government. **Sardar Vallabhbhai Patel** supported strong federal government for **unity**

and integrity of India. **Dr. Ambedkar** also recommended for powerful union government. He said that strong federal government is essential for the **welfare of scheduled caste** and scheduled tribes. Indian society is federal because it is comprised of various language, religion, region and culture. Therefore federal government is best option for accommodating the diversity of India. Therefore, constituent assembly prefers for strong federal government.

Article - 1 of the Indian constitution says that India that is **Bharat** shall be **union of states**. Indian constitution contains all features of **federal government like-**

- Division of Power.
- Written Constitution.
- Independent Judiciary.
- Rajya Sabha as upper house.

But term union is inserted in the constitution. Federal is not written anywhere in the constitution. Union indicates the strong Federal Government. Supreme Court in **S. R. Bommai case** (1994) said that federalism is the basic structure of the constitution. Federal government is not merely an administrative tool to run the government.

Quasi Federation

K. C. Wheare describes Indian Federal system as quasi federal system. The strong federal government is against the federal spirit. For him United States of America is the classical model of federation. However, Indian parliament is entitled to enact law over state list. Emergency provision further centralized the power of union. In the initial decade function of Indian Federation, Planning Commission and Dominating Role of Congress Party makes union government more powerful.

Federation with National Interest

Alexandrowicz says that Indian Constitution is federal, where national interest is primary. Article - 249 refers about national interests. Term national interest shows that division of power is less important than serving the interest of the nation.

Cooperative Federation

Granville Austin is of the view that Indian Constitution is Federal which promotes cooperative federalism. The presence of concurrent list in 7th schedule indicates about the cooperation. Article - 263 also speaks about the cooperation. Financial Administrative Cooperation is enviable due to Constitution provision of Cooperation.

Federal with Strong Union Government

Ivor Jennings says that Indian Constitution is Federal with strong centralizing tendencies. Indian Constitution combines the feature of centralization and de-centralization. **Paul R. Brass** also said the emergency provisions is result of the fear of dis-order, which result into formation strong Union Government. **Alfred Stepan** is of the view that Indian Federalism is the example of **holding together** federalism however; U. S. Federation is the model of **coming together** federation. This view is more appropriate for describing the nature of Indian Federation.

Centralizing Features

Union implies the strong federal government which includes the following features-

- **State can be destroyed:** Union cannot be destroyed but name, boundary and size of state is subject to **alteration**, under **Article - 3**. **Consent of state** is not binding upon the union government.
- **Division of Power favour the Strong Union:** 7th schedule maintains the division of power. But **concurrent list** strengthen the union government. Union and state governments are capable to frame a law over concurrent list. In case of **conflict** between union and state, union law prevails over state laws. Entry, not mentioned in 7th schedule is known as **residuary powers**, which lies in the hand of union government.

- **Command of union over administration:** **Governors** of state are **appointed** by the union government. **All India services** also centralise the power of union. Union government is authorized to give **instructions** to the states.
- **Lack of Financial Autonomy:** Revenue of state is not sufficient for the welfare programmes of states. **States depends** upon the **grant** of the union government under **Article - 275**.
- **Nature of state is Unified:** Federal government is comprises of division of power. But **Judiciary** is not divided between union and the state. **Citizenship** is single. **Integrated auditing** and **common election** commission exist in India for union and states.
- **Common Constitution:** States do not have their **own constitution**. There is common constitution for union and state. Power of union enhances due to **single constitution**. Because parliament is empowers to amend the constitution with few exception.

Unitary During Emergency

Indian constitution is federal in **normal time**. But it becomes unitary during emergency period. National emergency is mentioned in Article - 352. Provision of financial emergency is incorporated in Article - 360.

Critical Evaluation

Due to above mentioned centralizing tendency, critics said that Indian federation is **quasi-federation**. Some went to extent of saying that India is having **unitary government**, with **few federal features**. **Sarkaria Commission** rightly pointed out that strong federal government is not antithetical to autonomy of state. Granville Austin is of the view that National Interest is primary in federation of India. Moreover it is cooperative federation.

The Constitutional Provision of Re-organization of State

Article - 3 of Indian constitution makes a base for reorganizing of state in India. According to Article - 3 parliament is entitled to change the name boundary of states in India the consent of state is not mandatory for changing name and boundary of state and this feature of Indian federalism has strengthening the power of Union Government. Critics said that this is anti-federal provision in the Indian constitution where union is capable to destroy the existence of state it is opposite to the feature of U.S. federal system, where federation state both cannot be destroyed.

M.P. Singh said that India's federation is the existence of ethnic federalism and since society of India is diverse where regional aspirations are high. The demand of formation of new state is obvious but parliament cannot change the name and boundary of state arbitrarily that is reason Chandigarh is created as UT due to conflicting demand of Punjab and Haryana.

Parliament can make a new state but these states are not occupying the subordinate position under union government but they enjoy their autonomous power from 7th schedule.

Synthesis of Regionalism with National Integration

Regional movement in India is emerging in the form of Sons of the Soil Movement linguistic reorganization of state became helpful for recognizing the regional aspirations. Since India is most diverse heterogeneous plural society. Federal government is accepted India for accommodating that **regional identity**, which is also ethnic identity and once states were form on the basis of language India became more stronger because regions realize the sense of autonomy.

We can give an opposite example of **Sri Lanka** where separation of regional identity became the cause of civil war in Sri Lanka. **De-centralization** is essential in democracy which can be done with the formation of new states and **Unity is not uniformity or homogeneity**.

Development and Formation of Smaller State

First two phases of reorganization of states in India was primarily based on ethnicity. Since 1991 politics of development became primary factor in Indian politics along with the ethnic identities. The politics of development becomes primary in the present political context of India. Andhra Pradesh and Uttarakhand are unable to make their capital after the formation of new state. C.M of

Andhra Pradesh has proposed the formula of 3 capitals which is still a bone of contention. Smaller states like Goa, Chhattisgarh after witness political instability and the states of North Eastern Region are still lacking behind in the race of economic development. It seems that size is not related with economic development.

Good governance, better infrastructure, suitable locations and sometimes the diaspora migrated from state may be crucial factor behind economic development of state. Goa and Mizoram both are smaller state but Goa is more developed due to capacity of attracting the tourist. Every large state may not be under developed and Maharashtra is best example which registered economic development despite the having larger size. Most of the coastal states in India are developed due to their better connectivity with trade and commerce.

Democracy and the Formation of Smaller State

Decentralization is always better for the democratic governance and the formation of the smaller state result into the making of smaller size of district. Smaller states are having better representation in their assemblies. Moreover state capital becomes closer to people, high court of the state can setup near to the people and it is better for employment of local too.

However C. P. Bhamri said that demand of smaller state in India is an **unending demand** therefore formation of smaller state is not solution for every problem of state and strengthening the **Panchayati Raj** is better for ensuring de-centralization. Earlier P.M of India gave a slogan for **Minimum Government, Maximum Governance**.

Centre-State Relations

Centre-State relation in the constitution is drawn from the government of India Act, 1935. Act enumerated three lists namely Centre-State and concurrent list. However residuary powers were allocated to Governor General.

Law Making Power of Parliament

Under Article - 245 Parliament is entitled to make a law for the whole territory of India. **Territory is comprised of-**

1. States.
2. Union territory.
3. Any acquired territory.

Extra -Territorial Power of Parliament: Parliament is capable to make laws for Indians, who are residing in **foreign country**. This is known as extra-territorial power. Parliament can grant voting rights to **non-resident Indians** too, under **Article - 245**.

Law Making Power of State Legislature: State legislature is empowered to make law for **state only**. Haryana state legislature can enact a law for **Haryana** only. **Geographically** law making power of state legislature is limited under **Article - 245**.

Division of Power in 7th Schedule: Parliament shall enact law over **union list** state legislature shall make law for state list. **Concurrent** list is available for both, union and the states, according to **Article - 246**.

7th schedule is inserted for complementing the Article - 246. **Union list** includes the issues of **national importance** like defense, foreign affairs, banking and aviation, Union list contains 97 entries. States list incorporates 66 entries including police, public order, health, prison, agriculture. **Concurrent** list is comprised of social Economic planning, electricity, newspaper, Labour welfare, Education, forest, civil and criminal procedure code. **Residuary Powers** belong to parliament.

Amendment in the List

Parliament is entitled to amend the list. Although transferring any entry from **state list** to **concurrent** list, increases the power of union government. Entry like education, forest, population

control was shifted from state list to concurrent list by 42nd Amendment in 1976, by Indira Gandhi government.

Interpretation of List

7th schedule ensures division of power between union and state. But division leads to dispute too, which is settled by the Supreme Court. Court propounded the **following principles while interpreting the list-**

- (i) **Pith and Substance:** Content of law is more important than **title of law**. While interpreting the list, Court Examine the content of enacted law. Title is not the parameter for determining the entry.
- (ii) **Colourable Legislation:** Union and state government cannot encroach the entries, mention in the 7th schedule indirectly sometime government try to encroach the power of other unit of government, from back door, indirectly.
- (iii) **Harmonious Construction:** Three lists are incorporated in the 7th schedule. It should be interpreted in a harmonious manner. AIIMS belong to **union list** health comes under the **state list**. However population control is mentioned in **concurrent** list. All are interrelated with each other. Thus it should be seen in light of harmony.

Autonomy of State

Federal form of government, gives autonomous power for states. State legislative assembly is **directly elected** by the people. Council of minister is drawn from the assembly, headed by chief minister. State legislative assembly is entitled to make law over state list. State Government Administer the subjects of **state** list. State government can levy the taxes, collect and appropriate over the state list describes in 7th schedule. Thus **chief minister** is not subordinate to Prime minister but they are **equal partners**.

A. Tendency of centralization in legislative domain

- (i) **Residuary power of Legislation:** Article - 248 gives parliament **exclusive power** for enacting a law over union list. The entries or subject which is not mention in 7th schedule is considered as residuary powers. Residuary powers are given to the states in federal system of USA. Residuary powers belong to union in India.
- (ii) **Primacy of Union over Concurrent List:** Indian constitution incorporates the term union. India is union of states. And union indicates towards **centralization** of power and **national interest**. 7th schedule ensure division of power which enumerates concurrent list too. Union government and state government both are entitled to enact a law over **concurrent list**. For example concurrent list includes the **criminal law**. Therefore union government and state government enacted a law for punishment in case of rape. But in case of conflict between union law and state law, union law shall prevail (Article - 254). Over the law made by the states.
- (iii) **Governor's Right to Reserve the Bill:** Governor is entitled to reserve any bill passed by state legislator for the consideration of the **president**, under **Article - 200**. Governor shall reserve the bill of state which undermines the power of **High Court**. Practically governor reserve the state bill of various kinds like religious conversion bill of Rajasthan government is reserved by governor for the consideration of president. Bill passed by state legislator over concurrent list becomes **primary** if it receives assent of the **president**. (**Article - 201**) State bill is given primacy over union bill. But later parliament is capable to enact a new law and amend or repeal the law made by legislative assembly of the state over **concurrent list**.
- (iv) **National Interest and Power of Parliament:** **Division of power** is the basic character of the federal government. But Indian constitution promotes **national interest** which cannot be divided between union and states. The notion of national interest strengthens the power of union government. Parliament can enact a law over **state list** for **whole** or **any part** of the territory of India under **Article - 249**. Parliament can enact a law after the resolution supported by not less than **2/3rd** of the members present and voting by **council of states**. Council of state supports the resolution because it is necessary in national interest. Law enacted the parliament shall remain in force for not **more than one year**. Further it can be

extended for **one year** with approval of **Rajya Sabha** (council of states). After expiry of resolution the law shall be valid for **six months**.

- (v) **Parliamentary Legislation with Consent of States:** Two are more than two states can request from parliament for making a law over state list under **Article - 252**. Parliamentary act is applicable only for **those states that** passed resolution in that regard. Other states can **also request** for extension of act over them by passing such resolution. Repealing or amendment in act is not permitted by state legislative assembly. Parliament is eligible for repealing or amendment in the act. **Time limitation** is not mentioned in Article - 252. It means act made by parliament is applicable over state until or unless parliament brought about change in law.
- (vi) **International Agreement:** Foreign affairs belong to unions list therefore union Government Participate in international organizations **Article - 253** allow parliament to make any law for the implementation of any **treaty, agreement or convention**. Law made by parliament is applicable for whole or any part of territory of India. Parliament shall also make a law related to application of any decision made at any **international conference, association or other body**.
- (vii) **Federal Government becomes Unitary during Emergency:** Indian constitution is federal in nature during normal times. But becomes Unitary during **Emergency**. Division of power is **suspended** during national emergency. Although state legislative assembly and **council of minister exist during national emergency** but parliament is entitled to make a law over **state list**. In other words the **state list** becomes **concurrent list**. Suspension of division of power means federal system change into unitary government.

In case of **failure of constitutional machinery**, state legislative assembly, dissolves and council of minister and chief minister, no longer hold their office. It is popularly known as **president rule**. Due to **dissolution** of state assembly, division of power is suspended automatically. Therefore parliament is capable to enact law over state list. It means state list becomes concurrent list. That is reason Indian constitution **combines federal features** as well as **unitary** character.

B. Centralization in Administrative Relation

Administrative or executive division of power follows the legislative division of power. It means entries mentioned in union list are administered by union government. And subject of state list is administered by state government. **Personnel** of state government are responsible for the administration of the state. But tendency of centralization exist in administrative relation.

- (i) **Appointment of Governor:** **President** is constitutional head of the union government. President is **elected** by an electoral college comprised of elected member of parliament and elected members of state assembly and union territory. Similarly **governor** is a constitutional head of the state government but appointed by union government. Governor is elected by the people of state in **USA**. Governor act as and **representative** of union government. Therefore governor act according to **direction** of union government which undermines the power of elected chief minister.
- (ii) **Instructions from Union Government:** State Governments are considered as an **equal partner** in federal government. State Government derives their power from the constitution. Thus state governments are **co-ordinate** to the union government. Under **Article - 257** union government is empowered to give direction for the **state government in field of –**
- Construction or maintenance of means of communication of **national or military importance**.
 - Protection of railway within the state. Apart from Article - 257 presidents shall issue instructions for **education to children belonging to linguistic minorities** in the mother tongue at the primary stage. Under **Article - 350 (A)**. President shall appoint officers for linguistic minorities. And report of officer for linguistic minorities is send for the state government under **Article - 350 (B)**. It shall be the duty of union government to promote the spread of **Hindi language under Article - 351**.

Union government power of giving directions to the state government appears antithetical to the **autonomy of the state**. It is taken from the government of **India Act, 1935**. Under the act

governor general gave special instructions for state government. This further enhances the power of union government in the federal government.

Deployment of Central Arm Forces: Union government shall deploy the **arm forces** or other forces for the assistance of the state government. This provision is included in the constitution by **42nd Constitutional Amendment in 1976**. Although Janata Party government repealed the provision by 44th constitutional amendment in 1978 because public order belong to **state list** in 7th schedule. Police is also the subject of state government, therefore deployment of arm forces seems inappropriate according to federal spirit. Recently West Bengal government opposed the decision of central government for deployment of central arm reserve force (CRPF) in the West-Bengal.

(iii) **All India Services:** Federal governments allow the two sets of the government. Therefore two types of services exist in **USA**. Federal services for the federal government and state services for the state governments operate in **USA**. Indian constitution incorporates **all India services** apart from union and state services. All India service is not divided between union and state, Because all India services is controlled by the Union Government. For example **All India Administrative Services (IAS)** and **All India Police Services (IPS)** and **Indian Forest Services (IFS)** are subject to control of union government. IAS is under control of **Ministry of Personnel**. IPS works under the purview of **Home Ministry** of Union government. IFS are subject to control of **Ministry of Environment Forest** and climate change of union government.

Union governments provide training for members of all India services. Promotion and sacking of officer is also the responsibility of union government. Members of all India services are deployed in **states**. **Chief Secretary** is administrative head of state government but he belongs to the all India services. **Director General of police (DGP)** is head of the police of state government associated with all India services. Therefore all India services undermine the importance of state services. It is against the **federal form of government**. **Deputation** of members of all India services is also determines by the union government. IPS officers of the West Bengal can be deputed in Central Bureau of Investigation (CBI) for some time which is known as the deputation.

According to critics all India service is against the **regional diversity** of India. It undermines the regional language. Divisions of power demand division of personnel too, Although all India services is helpful for maintaining unity and integrity of state. All India services **Article - 312** promotes **cooperative federalism** between union and state. It maintains a link between Union and States.

A. Financial Relations (Fiscal Federalism)

Financial division of power is influenced by the **government of India Act, 1935**. Union and state are autonomous and equal with each other. Therefore **7th schedule** is the base of financial relations between union and state. Union government shall **levy and collect the taxes** mention in the union list. Union governments also utilize the taxes appropriated (collected) by union government. The **Concurrent Powers** of taxation also belongs to the union government. Union list incorporates the entries like income tax, corporate tax and Custom Duty.

State government is entitle to levy, collect, and appropriated taxes on state list. State list comprises of taxes on profession and trade, taxes on consumption of sales of electricity. And alcohol for human consumption and taxes on agriculture and petroleum product is also part of state taxation. Financial Division of Power follows the **legislative division** of power. Therefore it appears that union and state are independent in terms of levying taxation and collection of taxes.

Apart from the taxation, union government runs various public sector industries. Union government receives the income from Public Sector Undertakings (PSU) like Oil and Natural Gas Corporation (ONGC). Similarly state government also runs small scale industries and handicraft industries. State government receives the income from these industries.

Stronger Financial Power of the Union Government

Union government is capable to levy, taxes on important subjects like income tax, corporate tax and custom. Union government can also borrow the money from foreign nations and from

international organizations under **Article - 292**. State government is not entitled to **borrow** many from **foreign country** and international organizations. Minerals and mines are also subject of the union list and state government only receives royalty from the union government.

State Governments are like Municipalities

Due to the **weak financial** position of state government critics said that state government is **not autonomous** financially. State governments are **dependent** over union government for the financial assistance. Like municipality does not have its autonomous financial power and they are dependent over the state government for financial assistance. Legislative and Administrative powers without financial autonomy is meaningless. It is worth noting that responsibility of state is associated with the **welfare activities**. **Health** is major responsibility of state government. Although **education** belongs to concurrent list but imparting education is a most important job of state government. But Resources of State Government is not **sufficient**.

Financial Resources of State Government

- **Revenue from taxation:** State governments levy the taxes and collect, appropriate the taxes on the entries of state list in the 7th schedule. It is insufficient for carrying out welfare programme of the state. But **North-eastern states** are heavily dependent over the **grant** from the union government. **Ninety percent** of revenue of Nagaland is funded by the Union Government. The state like **Bihar** is unable to generate sufficient revenue for the expenditure of welfare. **West Bengal** government is under the debt crisis therefore financial autonomy of state is still lacking.
- **Grant from the Union Government:** According to **Article - 275** union governments provides grant for the states on the recommendation of finance commission. Technically **grant** taken by the state from union goes against **autonomy of states**. It also means the financial resources of state are not sufficient. Dependence of state over union for grant is opposite to the idea **equality and autonomy** of states.
- **Centrally Sponsored Scheme:** Union government launched various **Centrally Sponsored Schemes (CSS)** like mid-day meal, Ujjwala Yojana. States have raised their resentment against Centrally Sponsored Schemes (CSS). Because the **priority of Centrally Sponsored Schemes (CSS)** may be different from the preference of states. For example Delhi government runs her own health scheme therefore refuse to accept Ayushman Bharat Yojana run by **union government**. Centrally Sponsored Schemes (CSS) also imposes **terms and conditions** over the state government which is against the autonomy of states. Welfare function is a task of state government therefore Centrally Sponsored Schemes (CSS) launched by central government encroaches the power of states. Although the basic cause of conflict between union and state over **Centrally Sponsored Schemes (CSS) is Political**.
- **Division of Central Taxes:** It is interesting to be noted that the central taxes levy by the union government and collected by the union government is divided between union and state, under **Article - 270**. Central Tax means income tax, corporate tax, and custom mention in the union list in 7th schedule. By **80th constitutional amendment (2000)** all central taxes is divided between union and states. But **surcharge and cess** is not divided between union and state.
- **Control of Mines:** State government receives the royalty from mining. Because mining is a part of **union list** Jharkhand is a rich state in terms of mines but it is still economically backward state.

Financial relations during emergency

Under **Article - 360** financial emergencies can be imposing in India by the president. Legislative assembly, council of ministers and chief minister continue to exist during financial emergency. But division of financial power between union and state is **suspended**. Apart from that the power of union government **increases in following way-**

- Grant receive by state government can be suspended.
- Union government can issue **instructions** to states regarding the financial expenditure.

- Money bill passed by state legislative assembly can be reserved for the consideration of the president.
- During financial emergency state government will have to depend on their own resources for expenditure, because union government is unable to support the state government.

Financial Relations in age of liberalization

Federal form of government is based on the principle of **equality** and autonomy between **union and state**. Same time it also promotes **equality between** states too, because all the states derive same power from 7th schedule. But states are not equal in terms of **economic strength**, population and area. **Kerala, Maharashtra, Gujarat, Goa, Punjab** are rich state. Orissa, Bihar, Uttar Pradesh are considered as **backward states** in terms of per capita income. In present age of privatization and market economy, investors are preferring investment in **rich states**. Therefore **economic disparity** increases day by day between the states. This led to raising demand of **special status** state by Bihar government. Social and ethnic conflict is also visible between the states due to migration of the people.

Disparity is also growing **within the state**, for example **Marathwada** region is not getting enough investment in Maharashtra. However **Mumbai** is attracting investment. Therefore demand of **separate** state and **regionalism** is bound to emerge. And it is putting strain over federal system in India. In the post liberalization age subject like **irrigation, agriculture, electricity, transportation** need urgent reform. Irrigation, transportations are included in **state list**. Without **cooperation** between union and state economic reform and ease of doing business is not possible. Better **fiscal management** is required by the state government. State Governments are adopting the **populist** programs like free of cost water and electricity. It is creating further burden on the exchequer of state government.

Make in India Program is incomplete without the proper cooperation between union and state. We do not have any substitute of liberal Economic Policies. Strengthening state economy is needed for strong federation. Therefore state cannot rely over the **grant given** by union government. **Good governance** is needed for the better fiscal management of the state. Conflict between union and state or between states is detrimental to economic development of India.

Finance Commission

Constitutional Provisions

Supreme Court is entitled to settle to **dispute** between union and states. But division of taxes is not the job of **judiciary**. Under **Article - 280** Finance commission is instituting for maintaining **fiscal federalism**. President shall constitute a finance commission, comprised of a **chairperson** and **four other members**, under Article - 280. President shall appoint chairperson and four other members within **two years** for the commencement of this constitution, although first finance commission is **setup in 1951** under chairpersonship of K. C. Niyogi. President shall constitute finance commission every **fifth year** or at such earlier time.

Eligibility and terms and condition

Eligibility and terms and condition of chairperson and members are not mention in Article - 280. This Article authorized **parliament** to determine the qualification of members by law. Therefore parliament enacted a law in 1951 for determining the **qualifications of chairperson and members-**

- Chairperson who had has experience in **public affairs**.
- One member, are, or have been, or qualified to be **appointed as judge of High Court**.
- As special knowledge of the **finances and accounts of union government**.
- Have had wide experience in **administration or financial matters**.
- Have special knowledge of **economics**.

Duty of Finance Commission

- All **central** taxes are divided between union and states under Article - 270. Therefore Article - 280 tells about **distribution** of net proceeds of taxes between **union and states**. Same time allocation of **taxes between various states**.

- Principle which should govern the **grant-in-aid** from consolidated fund of India, to states.
- Measures needed to argument (increases) the **consolidate fund** of state to supplement the resources of the **panchayat** on the basis of the recommendation made by finance commission of the state. It is added by **73rd constitutional amendment act, 1992**.
- The measures needed to argument the consolidate fund of state to supplement the resources of the municipalities in the state on the basis of the recommendation made by finance commission of the state. It is included in the constitution by **74th amendment, 1992**.
- Any other matter referred to the commission by the president in the interest of the **sound finance**. It is popularly known as **terms of reference**. Ease in doing of business, better implementation of central sponsored scheme, and debt crises of state government were terms of reference in **15th finance commission**. President always ask for **new terms** of reference in every finance commission.

The report of finance commission is laid before each **house of parliament** by the **president**, and also laid an explanatory memorandum as to the action taken on the report of finance commission. Parliament by law authorizes commission to determine **procedure** and **powers** for their functioning.

Nature of Finance Commission

Finance commission is a **quasi-judicial** body because it perform **partial judicial** role. Division of taxes is **partial administrative** role. Therefore commission includes a member qualify to appointed as judge of High Court. Constitution does not allow Supreme Court to settle dispute related to finance commission and distribution of taxes.

Role of Finance Commission

- **Vertical Division of Taxes**

Role of finance commission is crucial in **fiscal federalism** in India. Commission maintains **equality** among the various state and address the problem of regional disparity. 15th finance commission allocated **41 percent** share in total central taxes to states. Earlier the share of states was 42 percent. Centrally sponsored scheme were **downsized** and share of state in central taxes increased. It is better for the financial autonomy of state. Because centrally sponsored scheme **by pass** the power of state government. Local government receiving direct funding from union government under centrally sponsored scheme.

- **Horizontal division of taxes**

Finance commission allocates more shares of central taxes to the backward states. In other words **Orissa and Bihar** receives more shares of central taxes. Although rich state like **Punjab** and **Maharashtra** contribute more in the **central** taxes. It proves that strong federal government is **beneficial** for the poorer states. 15th finance commission first time introduce the **population base of year 2011**. Because North Indian states like Uttar Pradesh and Bihar registered huge population growth after **1971**. Population growth of southern Indian states became stable after **1971**. The population base of year 2011 benefits the **northern states**. Therefore it is protested by southern states. They said that northern state for rewarded for their **population growth**. And southern states are penalized for their **fiscal management**.

Indicators	Weight
Demographic performance	12.5
Population	15.0
Income distance	45.0
Area	15.0
Forest and Ecology	10.0
Tax Effort	2.5

- **Population Base**

First time 14th finance commission accepted population base of year, **2011**. Now the population base of 1971 is scrapped. Year, 2011 to be accepted as the base year for allocation of

central taxes among the states. Populated states should not be **penalized** for their population growth. But the concern of **southern state** is needed to be addressed. Therefore fiscal management, good governance and development of infrastructure should be given equal importance for the distribution of taxes among the states.

Finance Commission works to fulfill three principles-

1. **Equality** refers the attempt to bridge the regional disparity among the states.
2. **Need** is the second principles where poor states receive more assistance.
3. **Efficiency** is equally important for distribution of central taxes. Thus tax effort is considered is included for rewarding the southern states.

• Asymmetric Federalism

Louise Tillin said that Indian Federation is asymmetric because various states enjoy some special powers which are not able for others. Federation of USA is symmetric where each state enjoys equal power from constitution. According to Indian constitution north-eastern states are given **special autonomy** under **Article - 371** and in **6th schedule**. Power of every state is not same in Indian federation. The states dominated by tribal population are also accorded unique powers under **5th schedule**. Therefore division of taxes also demands special attention towards the backward states. Maintaining **equality** is the responsibility of finance commission.

Special Status States

The Idea of special status states is propounded by **5th planning commission**. Constitution does not recognize the concept of special status state. 5th planning commission suggested for special economic assistance to the states, **which are-**

- Hilly and having tough terrain.
- Low population density and dominant tribal population.
- Strategic location on international boundary.
- Weak financial position of states.
- Lack of development in economy and infrastructure.

In beginning three states, **Assam Meghalaya, Jammu & Kashmir** were included under special status states. Subsequently **Arunachal Pradesh, Himachal Pradesh, Manipur, Mizoram, Tripura, Sikkim** were also recognized as special status states. Uttarakhand also included in this category in year **2003**. Uttarakhand is carved out as a separate state from Uttar Pradesh in 2000.

States belonging to special status receives **90 percent** as grant and **10 percent** as a loan. However other states receive 70 percent in form of grant and 30 percent in form of loan. Union Government often written off their loan. Special status states also enjoy the provision of tax holiday and exemption from taxation. Therefore it is easier for these states to attract investment. The former governor of Reserve Bank of India (RBI) **Raghu Ram Rajan** suggested for applying multiple indicators for identify **special status** states. It is also highlighted by the government in the budget speech of 2013. Special status of states should fulfill the **new parameters like-**

- State income in comparison to Average national income.
- Per capita income.
- Literacy rate.
- Human development indicators.

Now **Orissa** and **Bihar** are less developed state still they are not getting the advantage of special status of states. Special status states are not panacea for all problems of backward states. Grant provided by union government is not sufficient because backward states like Bihar and Uttar Pradesh are unable to **attract foreign direct investment (FDI)**. In Present age of privatization and liberalization states should focus over good governance for economic development.

Cooperative Federalism

Federal form of government stands on the principle **division of power** and **sharing of Power**. Primarily division of power and cooperation appears antithetical with each other. But cooperation does not negate the division of power. It shall not change the division of power envisages in 7th

schedule. Cooperative means cooperation in **administrative domain** and over **financial issues**, Although **Concurrent list** in 7th schedule laid down the base of **cooperation**. Practically union government and state government both run for the welfare of the people. And economic development requires cooperation between union and state. Railway belongs to union list and land is part of state list. Therefore cooperation is needed for the successful operation of railway.

The constitutional Provisions

Cooperative federalism developed in USA due to practical condition but Indian constitution incorporate the features of cooperative federalism under **Article - 263**. **President** shall establish a council for serving the **public interest** under **Article - 263**. Same article tells about **duty of council-**

- (i) enquiring into and advising upon disputes which may have arisen between states,
- (ii) Investigating Subject related to **common interest of-**
 - Some states or;
 - All states;
 - Union and one state;
 - Union and more than one state;
 - And **discussing** the subject too.
- (iii) Council shall recommend for the better **coordination of policy** and action associated with above mention subjects.

Role

President established interstate council in **1990** first time. President shall also define the nature and duties of council. Organization and procedure of council shall be determined by the president under **Article - 263**. **V. P. Singh government** first time established the interstate council. Lok Sabha election of year, **1989** is significant because no party commanded majority in Lok Sabha **first time** in the history of Indian elections. **Regional parties** were becoming stronger and they demanded autonomy of states. It is equally important to be noted that **Sarkaria Commission recommended** for setting up of interstate council. For furthering of cooperation between union and states.

Council consider on recommendations of **Punchhi commission**. Common interest refers to standard of **education**, **problem of internal security** and **terrorism**. These problems can be solved through cooperation between union and states. Council is a **dispute settlement mechanism** too. River water dispute can be address with the help of council. **Maoist insurgency** can be rooted out with the help of various states because **public order** and **police** belong to **state list**. And there is absence of cooperation between states.

Structure

Interstate council is a **constitutional body** but structure of the council is not written in the constitution. Structure is setup by the order of president in 1990. **Council comprised of-**

- Prime minister is chairperson,
- Six cabinet ministers of union government nominated by Prime Minister,
- Chief ministers of all states;
- Chief ministers of all union territory (UT) with having state legislative assembly,
- Administrators of UT not having state assembly.

Standing Committee

Since council is a large body in terms of members therefore standing committee is setup for the smooth functioning of council. Standing committee is headed by **home minister** nominated by **prime minister**. **Four cabinet ministers** of union government are members of the standing committee. Apart from cabinet ministers **9 chief ministers** of states are the members of standing committee.

Drawback

It should be restructured on the lines of GST council where vote of states is equally important in comparison to the union. It is setup in year, 1990 but only 11 meetings are held till now. The meeting of committee held in 2016 after gap of 10 years. Absence of regular meeting is basic drawback of the council. Now the secretariat of council is located in **home ministry**. Therefore union government becomes powerful. Importance of state should be considered in decision making process.

Statutory provision

Zonal Council

Indian federation is reorganized in 1956 on the recommendation of **Fazal Ali** commission. Linguistic homogeneity was strong base of reorganization of states. For promotion of **co-ordination** and **cooperation** among the states zonal council it setup by **parliamentary act in 1956**. Council is aiming for discouraging the tendency of regionalism, separatism, and looking for strengthening **unity** and **integrity** of India.

Structure

Members

The chairperson of council is headed by **home minister** of the union government. Chairperson is not entitled to **vote** but exercise **casting** vote. And chief minister of every zone is member of the zone. They act as **deputy chairperson** for **one year** in a **rotation**. Zone is also comprised the **two ministers** from every zone and they are nominated by the **governor** of state. Two members of union territory are also drawn council, if union territory (UT) is part of zone. Timing and date of meetings of zone shall be decided by the chairperson. The secretariat of zone is located in **ministry of home** of union government.

Advisory members

Advisory members are not entitled to vote in the meeting. They do not take participation in meetings. **Chief Secretary** of every state is a member of zone. **Development commissioner** of every state participates in meeting. One member is also nominated by **Niti Aayog**.

Standing Committee

Standing committee of zone is comprised of **chief secretary** of every state included in zone. Members of **Niti Aayog** and ministers of union government can also invite for meeting.

Various Zones

Zonal council is **statutory body** enacted by parliamentary act. **According to act 5 Zone** exist-

1. Northern Zone

- States - Haryana, Himachal Pradesh, Punjab, Rajasthan,
- UT - Jammu & Kashmir, National capital territory of Delhi, Union territory of Chandigarh, Laddakh.

2. Central Zone

States: - Chhattisgarh, Uttarakhand, Uttar Pradesh, and Madhya Pradesh.

3. Eastern Zone

States: - Bihar, Jharkhand, Orissa and West Bengal.

4. Western Zone

- States - Goa, Gujarat, Maharashtra.
- UT - Daman and Diu, Dadara and Nagar Haveli.

5. Southern Zone

- States - Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu.
- UT – Puducherry.

Role

Socio-Economic Planning

Various states are divided on the geographical basis. States are also created on the basis of **linguistic homogeneity**. But creation of separate state does not address the **common** social economic problems exist in the region. Zonal council promotes **cooperation** among the state over issues of women empowerment and welfare of tribal community. Providing **education** and **health** are common objective of all the states.

Interstate Transportation

For making of national highways cooperation among the state is essential. Launching high speed train between Mumbai and Ahmedabad requires cooperation between Maharashtra and Gujarat. River Bridge is needed for maintaining connectivity between Uttar Pradesh and Madhya Pradesh.

Border Dispute

Creation of smaller state results into border dispute between various states. Border dispute still exist between **Karnataka** and **Maharashtra**. Because **Belgaum** is part of Karnataka but dominated by Marathi language speaking people. Time and again Maharashtra demanded the accession of Belgaum in Maharashtra, which is opposed by Karnataka. **River dispute** between **Punjab** and **Haryana** is long standing problem. Zonal council can be utilizing for solving these political problems.

Issues Related to Minorities

Language problem still exist in states. We cannot assume of one language one state. Therefore linguistic minorities exist in various states. And cooperation between states is necessary for addressing the issue of linguistic minorities.

Drawback of Zonal Council

It appears that the function of interstate council and zonal council is over lapping with each other. Fix date and schedule of meeting is not followed in council. Meeting depends upon the discretion of **chairperson**. The secretariat of council is located in Home Ministry which strength the power of home ministry.

North-Eastern Council

Reorganization of North-Eastern state is not based on the recommendation of Fazal Ali commission. **Nagaland** is carved out of Assam in year, 1963 due to insurgency in North-Eastern states. In 1972 **Meghalaya**, **Manipur** and **Tripura** were also recognized as states. Earlier **Manipur** and **Tripura** were UT and given the status of state. Meghalaya is separated from Assam due to demand of **Khasi and Jaintia** Tribes. In year, 1987 Mizoram is created as a separate state from Assam for fulfilling the autonomy of **Mizo tribes**. North-Eastern frontier agency also accorded the status of state namely Arunachal Pradesh in 1987.

Due to **ethnic reorganization** of state in North-East parliament set up North-Eastern council for promotion of cooperation between states. Parliament passed North-Eastern council **act in 1971** it is further amended in year, 2002. Council is set up in year, 1972 includes **Assam**, **Manipur**, **Meghalaya**, **Nagaland**, **Mizoram**, **Tripura**, **Arunachal Pradesh**. **Sikkim** is also included in **2002**.

Structure

Council is chaired by person nominated by **the president** of India according to parliamentary act. As of now president nominate **home minister of union government** as chairperson of the council. **The minister of North-Eastern region** development of union government is nominated as **deputy chairperson**. President also appoints **three members** associated with **planning and economic development**. The **governors** of all **8 states** and **chief ministers** of every state (8) are members of the council. Secretariat of council is located in **Shillong**.

Role

Socio-Economic planning

Council plays a vital role for the planning of development of North-Eastern region. Ministry of North-Eastern Region Development receives the advice for economic planning of entire region. The union ministry of North-Eastern region development is **unique** because it combines all ministries together for the development of North-East. Due to formation of smaller states **coordination** and **cooperation** of states is essential. It is an institution of planning.

Inter-state Transportation

North-Eastern region is a hilly area therefore **connectivity** is necessary. By year, 2020 entire North-Eastern region is connected through **railway**. The North-Eastern region is gateway for act east policy. Bogibeel Bridge is a major project of infrastructure. Project **Udan** is strengthening Connectivity in the North-East from air.

Flood Control

North-Eastern region is having vast potential of generation of hydro-electric power. Council is promoting the **tourism** and the **development**. Power project is helpful for the flood control too. North-Eastern region is still infected by the problem of insurgency. In Absence of security development is incomplete. Political instability also affects the development of North-East. State are smaller therefore prone to become unstable. Ethnic conflict also affects the pace of development.

Ethnic and Asymmetric Federalism

M. P. Singh says that Indian federalism is ethnic federalism comprises of various linguistic community, religious groups and recesses. Ethnic diversity is too much in northern eastern and more over Indian federalism is a symmetric too because relation of union with various states are not some, USA Constitution is a model of symmetric federation.

State belong to schedule –VI are getting more autonomy in comparison to rest of state because VI schedule describe about Tribal area and it incorporates district autonomous council which is given legislative, administrative, financial and judicial power too. Nagaland is receiving the special autonomy under article 371(A), which restrict that the laws made by parliament shall not be applicable in Nagaland without consent of legislative assembly of the state in the following issues -

- Social customs and tradition belonging to Naga community
- Provision for criminal activities
- Marriage
- Issues belonging to land and tradition of Nagas community.

National Institution for Transforming India (NITI Aayog)

NITI Aayog is established in India on first January, 2015, by the resolution of **cabinet** of union government. It replaced **planning commission** set up in year, 1950 for the development of human and physical resources of India. India adopted socialist economic policy in 1950. Market

COMPOSITION OF NITI AAYOG

The Narendra Modi-led National Democratic Alliance government on Thursday announced the replacement of the 65-year-old Planning Commission with a new institution called Niti Aayog that will ensure greater participation of state governments in policymaking—thus fostering cooperative federalism—and will be more attuned to the nation's contemporary needs.

● FULL-TIME ORGANIZATION



● GOVERNING COUNCIL

Chief ministers and Lt governors of Union territories

● REGIONAL COUNCIL (formed on a need-basis)

Chief ministers and Lt governors of Union territories

● SPECIAL INVITEES

Experts, specialists, practitioners with domain knowledge

economy is preferred in 1991 which was major change in economy of India. Therefore India opted for privatized and liberal economic model. States demanded more roles for making a plan of the development of India. It is worth noting that social economic planning is incorporated in concurrent list of 7th schedule.

Nature

It is an **expert body** for making long term plan for economic development of India. It is **specialized** institution which work as **think tank** for the making of planning it is **advisory** in nature. Civil servants or bureaucrats are not included in NITI Aayog.

Structure

NITI Aayog is headed by the **Prime Minister**. **Vice Chairperson** is also appointed in NITI Aayog. Economist is appointed as **vice chairperson** of NITI Aayog. NITI Aayog is comprised of **two full time members**. In addition those **four cabinet ministers** of union government are ex-officio members of NITI Aayog. Other **three specialists** can be invited from time to time. However **chief executive officer (CEO)** of NITI Aayog is an **IAS officer**. **Governing council** is a unique in NITI Aayog comprised of chief ministers of all states. Chief Ministers of Union Territories (UT) and Administrators of UT is without Legislative Assembly. **Regional council** will also setup from time to time.

Cooperative Federalism

States are autonomous and equal in the federal setup of India. **Governing council** of Aayog is comprised of all **states**. Therefore state are given the **equal share** in formulation of planning. The committee for poverty alleviation and clean India mission is headed by **chief ministers** of the states. Equal share of state is significant in making of planning because the need of every state is different. Therefore **one size does not fit for all**. It means planning without equal share of states becomes ineffective. **Rajasthan** is facing the problem of drought.

However **Orissa** is looking for better connectivity. Thus decentralized planning is promoted by governing council which is complimentary to the basic feature of federal system. Aayog also provides for the regional council. All the states of **Himalayan region** are included in **regional council**. For southern states regional council may be setup for addressing their problems.

Competitive Federalism

Classical definition of federal government is based on the concept of division of power and USA constitution is a model of division of power but by 1930 economic crisis of USA created an opportunity of cooperation between federal government and state government.

Competitive federalism means promotion of competition for **economic development** and **investment** among various states. NITI Aayog becomes catalyst for promotion of **good governance** in states. Aayog publish various **indicators of state** related to the development of infrastructure. It also highlights the progress of **human development index** of various states. In the present age of **liberal** and **privatized economy** competition is going on for **attracting tourist** in states. Prime minister of India visualized Indian **federation as a team of India**. Therefore competition is not antithetical to cooperation. Both exist side by side in federal system of India.

Goods and Services Tax (GST)

Federalism is a dynamic concept which keeps changing according to changing political economic environment. The economic policy of liberalization and privatization is adopted India since 1991. It impacted the relation between central government and state, Although Indian constitution incorporates the base of liberal economy. **Article - 301** tells about the **trade, commerce and intercourse** throughout territory of India. GST included in Indian constitution by **101 Constitutional Amendment**. GST is applicable over **indirect taxes** like **excise tax, service tax** and **taxation** over toll, entertainment tax. GST is not applied over **direct taxes** like income tax and corporate tax. GST

shall promote the idea of “**One Nation, One Tax**”. Because the state taxes over state list like entertainment, toll tax, shall be uniform throughout the territory of India.

Law Making Power

101st constitutional amendment is a new scheme of division of power included in constitution. And **Article - 246 (A)** is added in the constitution. Parliament is entitled to make a law regarding GST over the subject of union list. And every state legislator is given the power to enact a law related to GST over **state list**. Union government and state government are given the **equal power** for making a law on GST because federal government is run on the principle of **equal power sharing**. Parliament can exercise exclusive power to making a law regarding GST over **interstate trade** or commerce.

Interstate GST (IGST)

Union government shall be levied and collect IGST on **interstate trade** or commerce according to **Article - 269 (A)**. The division of IGST is ensured by the recommendation of **GST council**. Parliaments enact the law for division of IGST according to recommendation of GST council.

GST Council

Structure

GST council indicates about the cooperative federalism because council includes the representation of both union government as well as state government. According to **Article - 279 (A)** council includes-

- The **union finance minister** as a chairperson of council,
- **Union minister** of state in charge of revenue or finance,
- The minister in charge of finance or taxation or any other minister nominated by each **state Governments** are members.

The members of council shall choose one of the members amongst themselves as **vice chairperson**.

Functioning of GST Council

Every decision of GST council shall be taken at a meeting by majority of not **less than 3/4th votes**. **Weightage voting** is applied in voting of GST council. **Weightage voting means-**

- The vote of central government shall have a weightage of **1/3rd** of total vote cast. It means union government is given **33 percent vote share**.
- The vote of all the states putting together shall have a weightage of **2/3rd of total vote** cast. Therefore all 28 states entitle to cast **67 percent** vote. However 75 percent vote is require for any decision which is 3/4th majority. And without **cooperation** between union and state decision is impossible. Therefore it promotes cooperative federalism.

Article - 279 (A) Tells about the **quorum of GST** council which is **one half of the total number of members**. Council shall also determine its procedure and function. No act or proceeding of GST council shall be invalid due to **any vacancy**, any defect in the appointment of the member. Decision of council shall not be invalid due to any procedural fault.

Role of GST

Council shall make recommendation to the union and the states on the **following subject -**

- The taxes, cess, surcharge levied by union government and states and local bodies, which may be subsumed in the GST.
- Goods and services exempted from GST or the goods and services subjected to GST.
- Model GST laws for IGST
- **Thresh hold** limit of turnover below which GST may be exempted.
- Floor rates of GST.
- Any **special rate** for specify period to rates additional resources during any natural calamity or disaster.

- Special provision with respect to the states of **Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.**
- Any other matter related to GST.

GST over Petroleum Products

Alcohol is exempted from GST due to opposition of state government, because alcohol is a major source of earning of **state governments**. **Article - 279 (A)** includes GST levied on petroleum crude, high speed diesel, motor spirit (popularly known as petrol), natural gas and aviation turbine fuel. GST over these subjects depends upon the **decision of GST council**. No constitution amendment is needed for imposition of GST over above mention items. Till today GST is not imposed over **petroleum products** due to concern of states. It again proves that without cooperation between union and states, economic development shall not be sustainable.

Dispute Settlement Mechanism

Supreme Court is responsible for settling the dispute between union and states. However the dispute related to **financial matters** is kept away from the preview of **Supreme Court**. However Article - 279 (A) tells about an **alternative dispute settlement mechanism** through GST council. It says that **dispute related to-**

- GST between the government of India and one or more states.
- Between the government of India and any states on one side and one or more other states on the other side.
- Between two or more states.

Conclusion

GST is a beginning of the new history in Indian federation. GST speaks about cooperative federalism between union and states. It is equally beneficial for union and states. Initially GST was opposed by the rich and industrial states like **Gujarat and Tamil Nadu**. Since GST is **destination base tax** therefore industrial states produce more goods. More goods are consumed in populated state like **Uttar Pradesh and Bihar**. Thus it is advantageous for the consuming states. In reality it is better for entire India, which is smoothening the transportation of goods across India. **National interest** is more important than interest of any particular state.

New Federalism

- M.P Singh said that India Party system become federal after 1989 because the rise of regional parties more over regional parties are not now but their national role of regional parties is new and coalition government was essentially a federal government comprises of various political parties.
- According to constitutional scheme PM is more important than the CM but during coalition era CM'S become more important than PM. Therefore the confrontation between union government and state government disappears automatically.
- After May 2014 there was rise of one dominated party system laid by BJP (Subhash Palekar) but government is trying to consolidate the cooperative federalism in form of;
 - a) Formation of NITI Aayog
 - b) Decision of GST Council
 - c) CM Of Various state are holding their office according to their support in respective state which appears that state are not agent in the hand of union government.

Although article says that union government is attacking over the federal structure because control agencies like ED, CBI is being misused by the union government and Non- BJP CMS are being targeted by these central agencies.

Dispute of Federal System

Inter-state River Water Dispute

1. Constitutional Provision

In a federal form of government Supreme Court is responsible for settling dispute related to union and states and between states. But **Article - 262** authorize to parliament for making a law regarding the use, distribution or control of the waters, of any interstate river or river valley. Article - 262 also empower the parliament to keep away water dispute beyond jurisdiction of **Supreme Court** or any other court. According to 7th schedule of Indian constitution water, **water supply, irrigation, canal, drainage** and water storage is belongs to state list. Although **interested rivers** and **river valley** is mention in the **union list**.

2. Statutory Provisions

Due to reorganization of **state 1956**, various river water disputes emerged in India. Therefore parliament passed the interstate river water dispute **act, 1956**. This act is further amended in year, 2019 for settling the interstate river water dispute in more effective manner. **Basic tenets of act are follows-**

- **Dispute Resolution Committee (DRC)**
Water dispute are more **technical** and **political** in nature. And dispute can be resolved on the basis of give and take principle. It shall not be produce before **tribunal** in first instance but it will be given to Dispute Resolution Committee (DRC). Dispute Resolution Committee (DRC) is comprised of a chairperson and expert member. It will settle the dispute within **one year**. In case of necessity six month period can be extended.
- **Permanent tribunal**
Dispute shall be refers to the tribunal in case of failure of Dispute Resolution Committee (DRC) Various tribunals were setup for adjudicating of different water disputes. According to recent amendment there shall be only **one permanent tribunal** for resolving all existing water dispute. All existing tribunal will be dissolved. And water dispute pending before such existing tribunal will be transfer to the new tribunal. There may be **multiple benches** in one permanent tribunal.
- **Structure of Tribunal**
The tribunal will comprise of **chairperson**, **vice chairperson**. In addition to that, **three judicial members** and **three experts** will serve as a member of tribunal. The every bench is comprised of **chairperson** or **vice chairperson**, with a judicial member and expert member.
- **Time Bound resolution**
Tribunal must decide the dispute within the time frame work of **two years**. If needed the time period can be extended by **one year**. Thus it should be settled within period of **three years**.
- **Decision of the tribunal**
Decision of tribunal will have the same validity as an order of **Supreme Court**. Therefore it is **final** and **binding** on the parties included in dispute. **Publication** of decision is not required in official gazette. But the decisions of tribunal come in force without the publication of decision of tribunal.
- **Data collection bank**
Union government will create an office or agency for maintaining the data of every **river basin** at national level.

Judiciary and Water Dispute

Parliamentary act is provider that water disputes are kept away from the preview of Supreme Court. Recent amendment act also highlighted that the decision of tribunal shall have the same force, like decision of **Supreme Court**. But water dispute is inspired by the **political interest**. No separate Authority exists for the **enforcement** of decision. Therefore problem is likely to emerge in the future. Supreme Court can grant **special leave petition (SLP)** under **Article - 136**. Supreme Court can grant the permission to make appeal before Supreme Court from the decision of tribunals. It is also worth

noting that Supreme Court is exercising special power for **completion of justice under Article - 142**. Thus Supreme Court can entertain petition regarding water dispute under Article - 142. Hence the door of Supreme Court is still open for resolving the water disputes.

Water Dispute and Interstate Council

Water dispute are not **legal dispute** therefore rule of Supreme Court is limited in resolving the dispute. **Interstate council** is setup in year 1990, which can be utilized for resolving the water disputes. **Zonal council** is also working in India since 1956. Very purpose of this council is to promote **cooperative federalism**, apart from resolving the dispute. The growing number of water dispute shows that cooperative federalism is yet to be strengthening in India.

Political Party System and Federal Disputes (Federal Dynamics)

- Constitution tells about **division of power** in 7th schedule. **Supreme Court** is given the task to settling dispute related to the federal system. But actual relation between union and state and between various states can be fully understood in context of **political relation**. Relation between union and state is bound to become **cooperative**, if **same party** rules in **union** and **state**. But union government is run by one party and state government is controlled by opposition party, then dispute is bound to emerge. **BJP** is ruling over Centre and **TMC** is running the West Bengal government. Therefore tussle between union and state starts. However **BJP** Government Control the union government and **BJP** running **UP government** too. Therefore more cordial relation is visible.
- After independence congress party was ruling both in union as well as in states. It was an example of **Unitary Party System**. Indian constitution is federal but **federal party system** emerged in India after 1989. Federal party system means **Coalition Government**. It is comprised of various political groups therefore represent the **Multiple Centre** of power. New federal system emerges in India after 1989. State government became stronger. **Misuse of-**
 - (i) Article – 356.
 - (ii) Office of governor.
 - (iii) Article – 200.
 - (iv) Deployment of central arm forces in states.
 - (v) All India services.

Become rarest of the rare. Coalition Government represents various political parties in power which is more suitable for federal form of government. **Dominance of one party** in central government strengthens the power of union government. But **coalition Government** enhances the power of **chief ministers** of states. Same party in the union and states promotes cooperative federalism.

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Parliamentary Form of Government

A Democratic form of government can be classified into a parliamentary and presidential form of government. Indian Parliamentary system has been sourced from the British parliamentary system. Therefore like the British parliament, Indian parliament also comprises two houses. In Britain they call it, the House of Commons and the House of Lords, whereas we call it Lower House (Lok Sabha) and Upper House (Rajya Sabha). As per Article - 79, the Parliament consists of the President, the Lok Sabha and the Rajya Sabha.

A government has **three organs**; the Legislature, the Executive and the Judiciary. Of these three organs, legislature and executive derive their powers from the Parliament. Thus, Parliament occupies a central position. Rajya Sabha and Lok Sabha together constitute Legislature. All the executive power is vested in the president thus parliament is the combination of legislature and executive. Fusion of legislature and executive is the significant feature of parliamentary form of government.

House of People

Politics of Representation

House of people represents the will of the people and according to RPA of 1951 FIRST PAST THE POST (FPTP) method is applied for holding election of Member of Parliament.

Law commission suggested for the adaptation of list system for at least half of the Lok Sabha of seats of India, which will ensure the better representation of minorities. Shankar and Rodrigues's view that in terms of representative function of parliament the process of Indian parliament is positive because earlier there was dominance of upper caste in Lok Sabha but gradually member of parliament belong to OBC, SC and ST maintain domination in the Lok Sabha and now member of parliament is coming from rural background and belonging to agriculture as a profession this makes house of people more democratic. But parliament still faces a daunting task as far as representative functions of parliament are concerned in the **following areas** –

- Having fresh delimitation and ensuring the better representation of north and south.
- **Criminalization of politics** and **Politicization of Criminals** is new challenge for Indian democracy.
- Representations of minorities are not sufficient.

Deliberative Function

Parliament represents the **will of the people**. Member of Parliament can ask the questions, move motions and resolution as a mechanism for knowing the opinion of parliament.

Parliament is highest law making body in the meantime discussion and deliberation is essential for passing of any law and here role of parliamentary committee becomes vital for maintaining control over the executive. But Pratab Bhanu Mehta said that every bill is not referred for the consideration of the parliamentary committee, where as in Britain every bill must be referred for the consideration of parliament.

In case of One Party dominance in the parliament fewer bills are referred for consideration of parliamentary committee even biological diversity bill is passed by the parliament within the time of 10 minutes.

Critics also pointed out that the procedure of voice voting should be repealed and division of vote must be referred in the proceedings of parliament Shankar and Rodrigues's pointed out that a

joint session was held in 1961, despite the presence of majority of congress in both houses. In the recent years there is a tendency of decline in functioning of parliament due to frequent disruption in the proceeding of the parliament. Rising no of ordinances is also a matter of concern for the deliberative role of parliament. According to Article – 123 president shall issue an ordinance in emergency conditions where parliament is not available for law making but now the excessive use of ordinance indicates about the by passing of parliament.

Revising of ordinance is new tendency where ordinance is not a law for time being but it becomes permanent law which undermines the role of parliament.

Accountability Function

The most important dimension of accountability is **Financial Accountability** According to Indian constitution no money can be withdrawn from the consolidated fund of India without approval of parliament. Parliament, particularly the house of the people tables the **cut motion** on demand for grants. Parliament made an additional provision for tightening the control over scrutiny of demand for grants through the **departmental committee**, which came into existence in 1993. Departmental Committee also examines any proposed bill by executive and annual departmental report of every ministry.

Due to frequent disruptions in the parliamentary discussion, the demand for grants are suspended from time to time and then government is bound to take the route of **Guillotine**, which marginalized the role of parliament in order to maintaining control over the executive. CAG and PAC also examine the expenditure done by executive and submit to parliament.

Features

1. **Responsibility of the executive**
Parliamentary form of government emphasizes on responsibility, unlike a presidential form which prioritizes over stability. Lok Sabha is entitled to pass a no-confidence motion against the Council of Ministers (Article - 75 (3)). Executive or Council of Ministers (CoM) does not enjoy the privilege of a fixed term. Council of Ministers continues in office till it receives the confidence of Lok Sabha. Atal Bihari Vajpayee government lasted only for 13 days in 1996, because it could not get confidence of Lok Sabha.
2. **Cabinet Rule**
Parliamentary form of government is also known as cabinet government. Each and every decision is taken by the cabinet, collectively. The Cabinet is headed by the Prime Minister.
3. **Collective responsibility**
Lok Sabha can pass a no-confidence motion against the entire council of ministers. Collectively they swim collectively they sink a well-known principle of parliamentary government. Whole council of ministers shall defend the action of each minister. In a case, when any minister failed to get through the demand for grants in Lok Sabha. The Council of ministers is bound to resign.
4. **Individual Responsibility**
A minister shall hold office during pleasure of the president (Article - 75 (2)). Thus the individual minister is responsible towards the president. In practice, ministers are responsible to the parliament in general and Lok Sabha in particular. The Prime Minister is free to reshuffle his cabinet.
5. **Prime Position of the Prime Minister**
Prime Minister is considered as the first among equals, often described by the British constitutional experts as 'Primus inter pares'. The Prime Minister heads the cabinet meeting and decides the agenda. The Prime Minister allocates the portfolios amongst the ministers. However, the number of ministers has been limited to a maximum cap of 15 Percent as per the 91st constitutional amendment. The Prime Minister can reserve any ministry for himself. Ministry not allocated to any minister shall be in the control of the Prime Minister. As per the

age old parliamentary convention, The Ministry of personnel, public grievances and pension is headed by the Prime Minister himself. He also heads the department of atomic energy and ocean development.

6. Nominal and Real Executive

The president is the nominal executive (De jure), whereas the prime minister is the real executive (De facto). All the decisions are made in the name of the president however these decisions are exercised by the prime minister. Thus, the Prime Minister is the real executive. The President shall appoint the Prime Minister as per Article - 75 (1).

7. Fusion of Power

Executive or council of ministers is drawn from the parliament. Therefore, nobody can become minister, without being a member of parliament except in the case where he/she acquires the membership of either of the house within a time period of 6 months from the date of his/her appointment else he/she ceases to be a minister.

Prime Ministerial Government

Ivor Jennings has called the parliamentary system as the cabinet system. A cabinet system essentially means the prime ministerial form of government. Parliamentary government or prime ministerial government is not mentioned in Indian constitution. Features of parliamentary government exist in the constitution and prime ministerial government is the practical form of parliamentary government which **denotes the following features –**

8. Prime Minister is the Nucleus of Power

Though all the executive decisions are taken in the name of the president but the real power is vested in the Prime Minister. Since the Prime Minister is the head of the cabinet thus all the executive decisions are exercised by him. The position of Prime Minister became more pronounced in the 1970s, particularly during the tenure of Smt. Indira Gandhi on account of an overwhelming majority. In the late 1980s during the tenure of Late Shri Rajeev Gandhi, Prime Minister's Office (PMO) got primacy over the cabinet secretariat; therefore the office of Prime Minister's Office (PMO) became the periphery of power.

9. Formation of Cabinet

The president appoints the ministers based on the recommendation of the prime minister. However, the allocation of portfolios is done by the prime minister himself. The ministers are chosen from both the houses of the parliament. There are four categories of ministers namely the union cabinet minister, minister of state, union minister (Independent charge) and deputy minister. All the four are collectively called council of ministers. However, a cabinet is the subset of the council of ministers as it consists of the prime minister and union cabinet ministers alone.

10. Election of Prime Minister

The Prime Minister is usually the leader of the majority party in Lok Sabha. However, he/she may also be from the Rajya Sabha (as in the case of Dr. Man Mohan Singh). The majority party chooses the leader of the house.

11. Rising Role of Prime Minister's Office (PMO)

Cabinet secretariat plays a vital role in the parliamentary form of government. It maintains co-ordination between various ministries. Prime Minister's office has now virtually overshadowed the cabinet secretariat. It becomes a super secretariat. Principal Secretary to the Prime Minister becomes more powerful than the cabinet secretary.

Conclusion

Prime ministerial government emerges due to command of one party majority in Lok Sabha. Prime ministerial government is more similar to the presidential form of government. Concentration of power is not better for democracy, but ultimately **the will of the people** is supreme in democracy.

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Presidential Form of Government

President Occupies Central Role

President is directly elected by the people; thus responsible towards the people. President is the head of the executive. Ministers are subordinate to the president. The President can appoint any one as minister and sack the minister at any time. President chairs the cabinet meeting.

Separation of Power

United States of America (USA) is a classical model of presidential form of government. Ministers should not be part of parliament. Parliament is known as congress in the USA. Parliament cannot pass no-confidence motion against the ministers. President cannot dissolve the parliament. Election for president is held separately for 4 year. However elections for congress are held separately and their tenure is also separate.

Single Executive

The President is the constitutional head as well as administrative head too. All the power is vested in the president. Ministers are dependent on the president for their power. All decisions or policies are taken by the president. Ministers work according to the instructions of the president.

Fixed Term Responsibility

Stability of the government is the unique feature of the presidential form of government. Due to separation of power, parliament cannot bring a no-confidence motion against the president. President is elected for 4 years. He cannot dissolve the congress (parliament). Thus presidential term is fixed and the midterm election is not held in the USA.

Importance of Specialist

The President is allowed to choose the ministers according to his own wish. Ministers must not be the Member of Parliament. Ministers are responsible towards the president. They are not accountable towards parliament. Ministers do not sit in parliament. Members of parliament cannot ask questions to the minister. Therefore popularity and election is not the base of choice of ministers.

Comparison

S. No.	Parliamentary Government	Presidential Government
1.	President is constitutional head.	President is both constitutional and administrative head.
2.	Collective responsibility.	Nothing like collective responsibility exists.
3.	PM is administrative head or real head.	No place for office of PM.
4.	Cabinet Government, which taken decision.	President takes the decision, rather than the cabinet.
5.	Power lies in group like cabinet.	Power vest in the president.
6.	Day to day responsibility.	Fixed term responsibility.

Reasons behind Parliamentary Form of Government

1. Flexibility

The council of ministers is a part of parliament. Thus the probability of conflict between executive and parliament is minimized. Separation of power in the USA leads to dispute between executive and parliament. Founding fathers of Indian constitution tried to avoid the clash between two organs of the government.

2. Responsibility

Formers of Indian constitution said that responsibility is a more important feature of democracy than stability. Parliament can replace the council of ministers at any time.

3. Useful for Diverse Society

Power vest is in group not in individual in parliamentary government. The Cabinet is the Centre of Power. The cabinet can accommodate the diversity of region, religion and language. Members of cabinet belong to north, south India, they also comprise of Hindu, Muslims too. However power concentrates in an individual in the presidential form of government.

4. Historical Experience

Parliamentary government is introduced in India by the British government. India has been practicing the parliamentary government since 1935.

Parliament of India

Second Chapter of the Vth Part of the constitution begins with the constitution of parliament. There shall be a parliament of Union which shall consist of the president and two houses of parliament. Council of state and House of the people, are two houses mentioned in Article - 79. Article talks about the composition of the council of states. Popularly known as the upper house, but such a phrase is not written in the constitution.

Composition of the Council of States

According to Article - 80 the strength of the council of states is 250. Not more than 238 representatives come from states and union territories, in council of states. In addition to that 12 members are nominated by the President in council of states. Article - 80 does not distribute seats of council of states among the states and Union territory. Schedule 4th is complementary to Article - 80. The 4th schedule describes the number of seats allocated for states and Union territory 225 seats are given to the states. 8 seats are allocated for Union territories according to the 4th schedule. 233 seats are filled up in the elections. 12 members are nominated by the president.

Nomination

12 members of council of states are nominated by the president Person having special knowledge or practical **experience in-**

- Literature,
- Science,
- Art, and
- Social Service.

Idea of nominated members is drawn from England. The House of Lords in England is a non-elected body. It represents the Wisdom and quality in the parliament. Democracy is not a game of number only. Some people may not be interested in contesting the elections. But their experience in social life may be beneficial for the entire nation. Sachin Tendulkar was nominated in Rajya Sabha on

grounds of art and social service, although he was a cricket player. Scientist, poet, persons belonging to film and theatre may be nominated in the Rajya Sabha. All the 12 members do not retire at the same time. Thus nomination shall not be held at one point of time, but once two other members are nominated.

Allocation of Seats

The allocation of seats was made on the basis of the population of each state; On the basis of census available at the time of passage of the constitution. In case of a state having a population of over 5 million, one seat is given on the basis of per million for the first five million. Additional one seat is given for every additional two million or part thereof exceeding one million.

Lack of Delimitation

Members of the council of states, represent the states. They do not represent any particular constituency, they represent the entire state. Thus seats allocated for council of state, does not change according to changing the population of state. 16 members have represented the West Bengal council of state since 1950. First council of states constituted in April, 1952. Although actual members of council of states was 204, when it was constituted for the first time in 1952. By 1956 strength of council of states went up to 220. Seats of council of states rose due to reorganization of states in 1956. Again various new states were formed in 1960, 64, 1966, 1972, therefore strength of council of state, became 231 by 1972. Seats of council of states have gone up to 233 in 1987, due to formation of Goa. As new states share of state in council of states reduced to 229 after J & K changed into union territory in 2019.

Election

Members of the council of states are elected by elected members of the legislature assembly of the state, under Article - 80. Thus members of the council of state are not directly elected by the people. It is an indirect election Article - 80, incorporates a system of proportional representation by means of single transferable vote. Representation of Union territory in the council of states shall be determined by the Law enacted by the Parliament.

Proportional Representation

Proportional representation refers to each political party in given representation in council of state, according to their strength in the Legislative assembly of state. Parliament enacted representative of peoples Act, 1951 for conducting the elections of council of states. For maintaining proportional representation representative of peoples Act, 1951 (RPA), **incorporates a formula mention below-**

- (i) Election of 1 seat = Total valid votes/Seats to be fulfilled + 1.....
A total valid vote refers the elected members of the council of states.
- (ii) Election for more than 1 seat.
Ensuring the proportional representation, formulae changes for more than 1 seat,
$$= \frac{\text{Total Valid votes} \times 100}{\text{Seats to be fulfilled} + 1}$$

Mode of Voting

Elected Members of legislative assembly, cast the vote in election of council states. They cast a single vote but put their preferences, Member of legislative assembly put their preferences, if 4 seats are to be fulfilled in the council of states. Any person can cast single preferences too.

Quota and Single Transferable

In proportional method of representation, quota is determined. Whosoever obtained the quota gets elected. Quota is derived according to the formulae for election of more than one seat. Suppose that elected members of legislative are 100. And 4 seats to be fulfilled then quota 2001.

Formulae

Let us assume that strength of political parties in 100 member's legislative assembly.

Let us consider **over scenario**-

- A. Party - 65 ($65 \times 100 = 6500$)
- B. Party - 30 ($30 \times 100 = 3000$)
- C. Party - 05 ($5 \times 100 = 500$)

In four vacant seats of council of states party (A) gets 3 seats and party (B) receives 1 seat. Party (C) could not get a seat due to lack of quota that is 2001. All four seats are fulfilled according to first preferences votes. Thus transfer of votes is not required.

Let us **assume scenario**;

- A. Party - 60 ($60 \times 100 = 6000$)
- B. Party - 30 ($30 \times 100 = 3000$)
- C. Party - 10 ($10 \times 100 = 1000$)

Quota 2001 is required for securing one seat. Party (A) got 2 seats, party (B) captured (1) seat, but one seat was not finalised. Now we need second preference voting for deciding the 4th seats. Party (C) secures 1000 votes of quota, thus unable to win a seat. 1000 voting quota shall be transferred to other parties. Party (C) gets the minimum number of first preference votes. Other preferences (Second preferences) of party (C) shall be transferred to other parties.

Let us assume;

- (A) 200
- Party (C) – 1000
- (B) 800

Party (C) is the first preference of 10 voters. Same 10 voters gave their second preference to (B) 800 and next preference to (A) 200; now second preferences votes of party (C) are added in the quota of other parties.

- (A) Party - 60 $\square 6000 + 200 = 6200$
- (B) Party - 30 $\square 3000 + 800 = 3800$

Finally 4th seats are taken away by party (A).

Open Ballot

Representation of People's Act, 1951 (RPA) was amended in 2003, which provided an open ballot in the voting of council of states, during voting for election of council of states. Each political party appoints its agent. Members of legislative assembly show their vote only to the agent of his political party. MLA is not permitted to show his/her vote to any other person, otherwise his vote becomes invalid. The Honourable Supreme Court in Kuldeep Nayar Case (2006) said that provision of open ballot is constitutional. Court argued that MLA votes in the election of council of states, thus it is an indirect election. From 2003, onwards election for council of state was held on the basis of open ballot.

Residence

The Council of states represents the state; it does not represent the people. Thus *Representation of People's Act, 1951 (RPA)* initially mentioned that only the resident of that state was allowed to represent the state in council of states. But *Representation of People's Act, 1951 (RPA)* was amended in 2003; any citizen residing in the territory of India is entitled to represent the state in the council of state. The Supreme Court observed that amendment in *Representation of People's Act, 1951 (RPA)* is constitutional and valid, in Kuldeep Nayar Case (2006).

Nomination

Representation of People's Act, 1951 (RPA) is passed by the parliament for complementing Article - 80. *Representation of People's Act, 1951(RPA)* outlined the comprehensive provision of election of council of states, including the process of nomination. Ten thousand rupees must be deposited for contesting the election of council of states. In addition to that 10 percent of elected members of legislative assembly or 10 members of legislative assembly proposes is required

whichever is less. It is applicable for the person belonging to the national party and regional party. An independent candidate requires 10 elected members of legislative assembly, as proposers. One proposer can propose the name of more than one candidate.

Invalid Votes

Invalid vote is also determined according to *Representation of People's Act, 1951*(RPA). MLA putting the same preference for two candidates, vote becomes invalid, Elected MLA showing his/her votes other than an agent of a particular political party, stands invalid. If a voter is not using the pen prescribed by the Election commission of India, his/her vote is treated as invalid by Election commission of India.

NOTA

NOTA refer to the name of the above options in the Elections. It is implemented by the Supreme Court in the **People's Union of Civil Liberties (PUCL)** Case. But provision of NOTA is not applicable in the elections of council of states. Ordinary citizens do not take part in the elections of Council of states. Elected MLA participate in the elections, thus NOTA is not applicable in the indirect elections of the council of states.

Tenure

Council of state is a permanent house. It never dissolves. Tenure of a member is 6 years one third members of council of states retire every two years, after the constitution of council of states lottery held in 1954 and 1956 for retiring members of council of states. They could not complete their full tenure for 6 years. Presently, if any member resign from the council of states before 6 years. New member of the council of state is elected for the remaining period. Farewell is commenced in council of states every two years.

Anti-Defection Act

Anti-defection act is not applicable over election of council of states. Members of legislative assembly of state participate in the election of council of states. Thus it becomes the internal procedure of the legislative assembly. Horse trading is the basic problem of election of the council of states.

Principle of Equality of States

The U. S. federal system is based on the principle of equality of states. Equal 2 seats are allocated for every 50 states. But the council of states in India does not follow the principle of equality of states, however Sikkim receives one seat. The Council of state in India represents the state on the basis of population. Each state enjoys equal power in 7th schedule, over the state list. But unequal representation favours a bigger state. Under Article - 312, a new All India Services can be created by 2/3 members of majority of present and voting and council of states. The smaller states automatically marginalised U. P. (31), Maharashtra (19), and Tamil Nadu (10), Both Bihar and West Bengal keeps (16) each. Smaller states like Nagaland, Manipur, Tripura, Meghalaya, Sikkim, and Mizoram represent one seat only.

Council of State and Union Territory

Council of state also includes representation of J & K (4) Delhi (3) and Puducherry (1). Union territories are different from states. Representation UTs are against the spirit of federalism.

Nomination of Specialist

12 members nominated by the President in the council of states, do not represent any state. 12 members are nominated to the council of states based on the principle of functional representation. This also goes against the principle of federal form of government.

Composition of House of People

- House of people shall consist of not more than 530 members. They are chosen directly by the people from the territorial constitution in the states according to Article - 81.

- Not more than 20 members represent the Union territories chosen in such a manner as parliament by law provides.

Parliament passed *Representation of People's Act, 1951 (RPA)*. Parliament provided the method first past the post electoral system, both for states and Union Territories.

First Past the Post

Entire nation is divided in territorial constituencies of equal size in terms of population. Multiple parties or persons can contest the election from any constituency. But only one person wins the election. Whosoever gets the maximum votes declared as winner? It is worth noting that a majority of votes is not required. Thus it is a drawback of first past the post-system; it neglects the representation of minorities; the winner may get fewer votes than the losers, putting together.

Principle of Allocation of Seats

Readjustment implies **two features-**

1. Allocation of seats for states in the House of people, changes after each and every census. Census took place once in a decade.
2. Size of territorial constituencies also had undergone the change, after every census.

Strength of 1st House of People was 489. It was based on the census of 1951. Strength of the House of People has gone up to 484 after the census of 1961. Finally seats in the House of People went up to 543, after the census of 1971. Due to the increase in the seats of the House of People, seats allocated for states also change. If the number of seats changes for states territorial constitution automatically altered.

(i) Allocation of Seats

Although Article - 82 speaks for readjustment of seats after every census. 2011 is the year of last census. Population of India according to the census of 2011 stands up to approximately 121 crore. But the strength of the House of People is based on the census of 1971. Strength of the House of people remained intact after 1971. The Indira Gandhi government brought about constitutional amendment and seats of House of People were freeze up to year, 2000 by 42nd constitutional amendment. Again the 84th constitutional amendment was incorporated in 2002 which says that seats for the House of People shall change after the census of 2026. Size of the total population of India became double from 1971. But the strength of the House of People remains the same.

(ii) Changing in Size of Constituency

Strength of the House of People shall remain unchanged before the census of 2031. Size of the constituency within the state became imbalanced. Justice Kuldeep Singh Commission was appointed for redrawing the boundary of the constituencies within the state commission appointed in 2002.

(iii) Paradox of Representation

According to the 2011 census the population of U. P. is 16.5 crore and the population of Tamil Nadu stands at 6 crore. Thus U. P. should get 10 more seats than current number is of 80. Tamil Nadu shall be in an advantageous condition strength of Tamil Nadu shall be reduced to 31 from existing 39. Readjustment can create further division between North and South. This will prove a bigger problem for federalism in India. Total population of India stands to 54 crore in 1971. House of People comprises of 543 seats based on census of 1971. Total population of India is 121 crore according to census of 2011. Population growth is faster in northern states.

(iv) Delimitation of Seats

Delimitation implies the change in allocation of seats for states; and changing the boundary of a constituency. According to the mandate of Article - 82, four delimitation commissions have been set up so far. First delimitation commission was set up in 1952. The delimitation commission was also set up in 1962, 1972 and 2002. Commission was established in 2002, and was unique, because it did not

change the composition of the House of People. It merely changed the boundary of the constitution. In addition to that it made a peculiar situation, because the strength of the House of People is based on the census of 1971. But the boundary of the constituency is based on the census of 2001.

Delimitation Commission

Article - 82, authorises parliament to make an authority to complete the task of readjustment of the boundary of the House of the people. Parliament passed representation of people Act, 1950 and delimitation commission act. An independent body, namely delimitation commission is created for readjustment of seats of House of People and legislature assembly of the state.

Delimitation Commission act incorporates **following structure-**

- One member who shall be a person who is or has been a judge of the Supreme Court as chairperson appointed by the Central Government.
- Chief Election Commission or an election commissioner nominated by the CEO.
- State Election Commission of that state.
- 5 members of Lok Sabha of that state and 5 members of Legislative assembly of the concerned state. State having less than 5 members of Lok Sabha, all members will become associate members.

Reservation of Seats

Article - 80 tells about the composition of the House of the People. Same time Article - 330 incorporates reservation of scheduled caste and scheduled tribes in proportion to the population of SC/STs. According to the delimitation of 2002 reserved seats for scheduled caste (increased) to (84) and number of scheduled tribes have gone up to 47 in the House of the people, Although, provision of nomination of Anglo-Indian persons has been abolished in 2020. By the same constitutional amendment Article - 334 is also changed, now reservation shall be continued up to 80 years from the commencement of the constitution.

Inclusive Democracy

Although democratic is decision making is based on the principle of majority vote. But representation of each and every community must be ensured. Reservation is provided for obtaining the goal of inclusive democracy. People belonging to SC/STs are marginalised in the society. Demand of decent representation of women is also a long pending demand. Every structure should be democratic in the democratic form of Government. Now people belonging to backward class, SC/STs are enjoying majority in the House of the people. Thus parliament became more democratic.

Qualifications

Article - 84 prescribed about qualification for membership of parliament. Membership of parliament implies membership of both council of state and House of the people.

Constitutional Provision

Citizenship and Oath

Citizens of India are entitled to become a member of parliament they should make and subscribe to an oath and affirmation according to the format provided in schedule Third of the constitution. Merely winning an election does not qualify a person to become Member of Parliament. After oath a person is considered a member of parliament. **Following format is available in third schedule-**

- Will bear true faith and allegiance to the constitution of India.
- Uphold sovereignty and integrity of India.
- Will faithfully discharge my duties.

Age

For membership of the council of state, a person shall not be less than 30 years of age. In the case of Lok Sabha, a person shall not be less than 25 years of age. Thus the council of state is considered as the House of elders.

Statutory Provision

Citizenship, oath and age are constitutional for membership qualifications prescribed for membership of parliament in Article - 84. In addition, Article - 84 also authorises the parliament to prescribe some more qualification for membership of parliament. Parliament enacted Representation of people's Act, 1951 (RPA).

Registration

For membership of parliament an elector should be registered in any constituency across India. A voter is entitled to vote only in a constituency, where he/she is registered as a voter. Ex-Narendra Modi is registered as an elector in Vadodara constituency of Gujarat. Though he contested constituency from Varanasi but voted in Vadodara.

Not More Than Two Seats

Total number of constituencies of the House of people stands up to 543. According to Representation of people's Act, 1951 (RPA), no person is allowed to contest the election from more than two Constituencies.

Proposers

A member of a national or regional party is recognized by the election. Commission of India, requires one voter as a proposer from the same constituency. An independent candidate needs 10 proposers from the same constituency. An independent candidate needs 10 proposers, who are voters in the constituency. 25,000/ rupees should be deposited according to Representation of people's Act, 1951 (RPA). However, Candidates belonging to SC/STs community shall deposit 12,000/ rupees.

Duration of Houses of Parliament

Tenure

Council of state is continuing house. One third members retire every second year. Council of state never dissolves. Council of state never dissolves. However, the house of people shall continue for 5 years from the date appointment for its first meeting. But the House of people is subject to dissolution before 5 years by the President. Eleventh Lok Sabha was dissolved on 4.12.1997; however it was elected on 7.05.1996. The 12th Lok Sabha was dissolved within one year. It was elected in March, 1998 and dissolved in April, 1999. It is known as premature dissolution of Lok Sabha.

42nd Constitutional Amendment

Tenure of House of People extended up to 6 years from 5 years stipulated in Article - 83. Forty second amendments were brought about by Indira Gandhi Government in 1976; Although 5 year's tenure was restored in 197 by 44th constitutional amendment by Janata Party government.

Extension of Duration

Duration of House of people can be extended while proclamation of emergency is in operation, Parliament by Law for a period not exceeding one year at a time. Emergency announced on 25th June, 1975 was withdrawn on 21st March, 1977. Emergency continued for 21 months. Therefore one year is not the maximum duration. It can be extended for many years. At a time, it shall not be extended for more than one year. When proclamation ceases to operate, it shall not be extended for more than six months.

Parliamentary Functionary

Pro-tem Speaker

Every Member of Parliament takes an oath and affirmation before the president or some person appointed by the President. After the election in the new house of people, the President appoints the speaker for time being. President appoints the senior most members as pro-tem speaker for a short time. Pro-tem speaker is not chosen by the members of the House. Pro-tem speaker perform the **following functions**-

- Subscribe oath and affirmation for newly elected members of the House.
- Choosing the speaker of the House.

Pro-tem speaker is not appointed to the council of state; because the chairperson of the council of states subscribes to oaths and affirmation on behalf of the President.

Speaker

President fixed the date for election of speaker on the advice of the Ministry of parliamentary affairs. Normally speakers belong to the ruling party. For the election of the speaker one member propose the name and other second the name. Deputy speaker is also chosen by the members of House of the similarly as speaker is chose office of deputy speaker is given to principal opposition party. That convention began from 1977 by Janata Party Government. From 1980 onwards this tradition again discontinuous by the Congress Party. No fixed time limit is prescribed for choosing the deputy speaker. Nobody is chosen as deputy speaker in 16th Lok Sabha for 9 months; Because BJP does not want to give concession to Congress Party.

Panel of Chairperson

For smooth functioning of parliament, ten members are nominated by the speaker. According to convention, the speaker nominates one woman member and one member from the opposition party. In absence of speaker and deputy speaker, the panel of chairpersons presides over the sitting of the House. Provision of panel of chairperson is mentioned in the rule of Lok Sabha.

Leader of the House

The Prime Minister is considered as Leader of the House in Lok Sabha. During the Premiership of Dr. Man Mohan Singh, Prime Minister was not leader of the Lok Sabha, because Man Mohan Singh was the member of council of state. Leader of House the Council of state is nominated by Prime Minister who happens to be the senior most member of the Council of Minister. If Prime Minister is not a member of either house any other member of council of minister may be nominated as leader of the House. Nar Simha Rao (1991), Dev Gowda (1996) was not a member of either house, while being appointed as Prime Minister. Smooth transaction of business in parliament is ultimate responsibility of leader of the house. Whatever bill, motion is discussed in parliament is guided by the leader of House. Constitution does incorporate the provision of leader of House. It is written Lok Sabha rules and Rajya Sabha rules.

Leader of Opposition

Democracy promotes disagreement and dissent thus opposition stands for an alternate view. ‘**Constructive criticism**’ is the responsibility of opposition. It also offers an alternative policy options. Constitution does not speak for leader of opposition. It receives statutory status in 1977. Parliament enacted salary and allowances of leader of opposition in parliament Act, 1977. For getting recognition as opposition party, **one-tenth members** of strength of House are needed, According to rules of House of people. Opposition party stands for second largest party in House from numerical point of view, according parliamentary act of 1977. Thus number is not mandatory in act of parliament. It is reason behind the dispute over recognition of opposition party. **Ram Subhag Singh** became the first leader of opposition in the House of people in November, 1969, after the split of Congress Party in Congress (R) led by Indira Gandhi and Congress (O) was led by Ram Subhag Singh.

Recognition of the leader of opposition is beneficial due to **following facilities attached to office-**

- Allotment of block of seats in the House.
- Allotment of room in parliament.
- Allotment of committee rooms for holding party meetings.
- Supply of official documents.
- Nomination to parliamentary committee.
- Consultation for fixing the business of the house or any important matter before the house.

As of now the leader of opposition occupies a more important role in the appointment of Civil Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Central Information Commission (CIC) and Lokpal. Although in the initial decades of parliamentary democracy lack of opposition was visible due to domination of Congress. Recently in 15th and 16th House of people, nobody is appointed as leader of opposition, because of domination of BJP.

Whip

Whip is a member of House, who ensures the presence of the party members in the house. Whip maintains discipline in the house, members vote according to instruction of Whip. Chief Whip is the House of people for ruling party, is minister of parliamentary affairs. Chief Whip is associated by one or two ministers of state. A member of parliament who disobeys the party Whip may lose the membership, According to Anti-defection act. Provision of Whip is mentioned in rule of House of People or council of state. It is nowhere written in the constitution.

Secretary General

The Secretary General is not a constitutional office. It includes rules of the House of people and council of states. Separate secretariat exists for both Houses. Bunches of officers are required for running the house smoothly. Secretary-General is the top administrative officer of this secretariat. Proceeding of the house is conducted by Secretary General (SG) on the name of speaker. From summoning of parliament to functioning of parliamentary committee, the entire work of parliament is managed by Secretary General (SG). Secretary General (SG) is a Civil Servant appointment by speaker. Secretary General (SG) performs parliamentary functions and administrative tasks too. Administrative tasks include recruitment of staff for secretariat.

Role of Speaker

1. Conduct of Business

Entire proceeding of parliament is carried on in the name of speaker. For raising any issue or introduction of bill in House of people, permission of speaker is mandatory. Speaker maintains discipline and decorum in parliament. Speaker constitutes parliamentary community.

2. Umpire for House

Role of speaker is not bound party affiliation. Speaker regulates the proceeding of the house, but does not participate in the proceedings. He/she is not permitted to vote in the house, over any bill or resolution. In case deadlock occurs in the House, than speaker is allowed to vote, it is popularly known as casting vote. Till today, No speaker exercised the voting in history of Indian parliament, because deadlock never occurred in the House. When resolution for removal of the speaker is under consideration, speaker shall cast vote as member, it is known as voting in first instance.

3. Quasi-Judicial Power

Speaker is entitled to disqualify a member of parliament on ground of defection according to anti-defection Act. Somnath Chatterjee expelled 11 MPs on charge of corruption in year, 2006. It was landmark and historical decision because first time some member was expelled from the house.

4. Administrative Power

Speaker is the unique office and most important one in the parliamentary system. Speaker is the head of secretariat of House of people. The Secretary General assists the speaker in disposing the administration functions of the secretariat. The Speaker is the only Member of Parliament, who holds the office after dissolution of the House of the people. Speaker continues as the administrative head unless the new speaker enters his/her office.

Removal of Speaker

Speaker vacates his/her office, if he/she ceases to be a member of parliament. Speaker can resign from his office in writing addressed to the deputy speaker. Speaker may be removed from his office by resolution of the house of the people. Such a resolution should be passed by the majority of members present in the house. 14 days' notice is necessary for removal of the speaker from his/her office. Deputy Speaker tenders his/her resignation to the speaker.

Disqualification for Membership

Provision of disqualification is mentioned in Article - 102 of the constitution. Same provision is applicable for a member of both houses of parliament.

1. Office of Profit

A member of parliament is fit to be disqualified if he/she holds any office of profit under the Government of India or of any state. Parliament is authorised to declare any office outside of ambit of office of profit under Article - 102. Parliament enacted the Parliament (Prevention of Disqualification) Act, 1959. The legislative assembly of a state is permitted to enact its own law regarding disqualification.

- **Statutory Provision**

Neither, the constitution nor any statute of parliament defines the office of profit. Parliamentary act mentions those offices which are exempted from the list of offices of profit. Offices which are not incorporated in the act deem it to be an office of profit. A minister of the Union of state is not considered as an office of profit, because these offices are listed in the act.

- **Judicial Intervention**

Since any act cannot include each and every office. Thus dispute is bound to emerge regarding the office of profit. The offices which are not included in act shall be considered as office of profit on the following ground-

- Whether the government is appointing the authority.
- Government has power to terminate the authority.
- Government determines remuneration.
- Source remuneration.
- Power that comes from position.

These parameters are propounded by the Judiciary. Receiving remuneration may not be the sole ground for deciding about the office of profit, said by the Supreme Court in Jaya Bachchan Case (2006). Power comes from authority and is also a significant criterion. Parliament amended the act of 1959 retrospectively and included various offices within the act.

- **Justification of Office of Profit**

Members of Parliament exercise control over executive (Council of Minister) is the basic feature of parliamentary form of government. MPs point out the drawback of Government. They also criticise the policies of the government. Executive can offer the office of profit to MPs, for alluring them. In that case parliament cannot put pressure over the executive. It is also against the principle of separation of power.

Nexus between Corporate World and Members of Parliament

The Constitution bars the MPs from getting office of profit. Nowadays people belonging to the corporate world are entering parliament. They are looking for protection of their business interests rather than taking care of well-being the people. This becomes more harmful than occupying the office of profit.

2. Unsound Mind

Another disqualification is described in Article - 102. A member is disqualify if He or she is of unsound mind and stands so declared by a competent court. Court declares so on the basis of the medical report.

3. Undischarged Insolvent

Insolvent means a person is unable to pay his/her debt to the bank. Person may be discharged by the bank, when the bank recovers loan through ceasing the entire property of that person, in case, when the Bank fails to recover loan by seizing the property of the person. Bank, then recognises a person as undischarged insolvent.

4. Not Citizen of India

He/she is not a citizen of India or has voluntarily acquired the citizenship of a foreign state. He or she is under any acknowledgement of allegiance or adherence to a foreign state. Disqualification is decided by the president on the advice of the Election Commission of India.

5. Law Made by Parliament

Article - 102 enumerates four grounds of disqualification. In addition to that it empowers the parliament to enact law for determining the disqualifications. Parliament enacted Representation of Peoples Act, (RPA) 1951. A person may disqualify as MPs on the ground of corrupt practices mention in RPA, 1951. Indira Gandhi was disqualified by Allahabad High Court the year, 1975, on the ground of corrupt practices. Then Indira Gandhi was the Member of Parliament from *Rae Bareilly* in U. P.

Vacation of Seats

Member of Parliament can resign from parliament. Member of House of People give his/her resignation to speaker and member of council of state shall present his/her resignation to the chairperson of council of state. Article - 101 tells about vacation of seats and authorise parliament to enact a law for determining about vacations of seats. Parliament enacted representation of people's act, 1951 (RPA).

Simultaneously Election for Both House

If person is elected for both house same time, Person may retain either seats of House of People or council of state. Person shall inform his/her decision within 10 days, from the later of dates on which he is chosen. In case person is unable to inform Election Commission of India within 10 days. Seats of council of state falls vacant (RPA, 1951). In any case person cannot become member of both houses Member of Legislature of state, elected for House of people must resign his/her membership of Legislative of the state within 14 days his/her seat in House of people automatically falls vacant.

Absence of Member

A member of either house of parliament is absent for period of parliament is absent for period of 60 days, without permission of house his/her seat may be declared as vacant. Counting of 60 days exclude prorogue on adjournment House for more than four consecutive days. Suppose that the winter session of parliament continued for 20 days, thereafter the parliament was prorogued for 40 days. Forty days is not counted in 60 days. When the Budget session starts, again counting starts from 20 days onwards. Adjournment for one, two or three days shall be consented in 60 days. Normally adjournment for 5 days onwards happens in budget sessions. It is consented in 60 days.

Power and Privileges of MPs

Parliament maintains control over the Executive, on the Council of Ministers and House of people too. Privilege, power and immunity are granted for parliament due its special role and responsibility. Members of parliament ask questions to the members of the Council of Ministers. Parliament is entitled to bring about censure motion against the government. Thus special power is needed; it is incorporated in Article - 105.

Privilege Available for

- **House of Parliament:** When a member is detained by an executive order, or arrested on criminal charge, the speaker should be informed immediately. Each house has the power to punish its members for disorderly conduct. The House is empowered to control publication of proceedings. The House can prohibit the publication of any proceedings of parliament. House is the sole authority in the matter of examining the validity of proceedings. The House can exclude strangers from the House. House shall determine the nature and quantum of punishment.
- **Member of Parliament:** Freedom of speech is available for MPs within the House. Restrictions are not imposed over their freedom of speech. Members are given immunity, that they shall not be arrested in any civil cases. However this privilege is not extended for criminal cases. Members are not liable before any court of law, for whatever they said or voted in parliament. Members shall not be called as witness in the court of law. For example an ordinary citizen speaks against the sovereignty of India can be prosecuted in court of law. But members of parliament are given the immunity.
- **Parliamentary Committee:** Parliamentary committee is composed of the members of parliament. Thus all privilege and immunity given for parliament is extended for communities too, under Article - 105. Any evidence or person summoned by committee also receives the benefits of privilege. Person or officers who refused the direction of the committee is considered a breach of privilege.
- **Privilege is not absolute:** Privilege of parliament is essential for community conduct of Business of House. Article - 105 points out restrictions **over the privilege like;**
 - (i) Subject to provisions of this consultation, privilege is available. It clearly indicates that the constitution incorporates fundamental rights and equality before law.
 - (ii) Judicial review is an extension of the principle of protection of fundamental rights.
 - (iii) Rules, regulation, decorum of parliament cannot be violated in the name of privilege.
- **Lack of Codification**

Article - 105 gives a brief description of privileges, **which includes;**

 - (i) Freedom of speech.
 - (ii) Not liable to court for said and vote in parliament.

Comprehensive list of privileges is not written in the constitution. Article - 105(3) says that parliament shall define the privilege from time to time. Members and House shall enjoy those privileges, which was available before commencement of the constitution. It is added in the constitution by 42nd Amendment. 42nd Amendment deleted the sentence of Article - 105 which stated that parliament shall enjoy similar privilege like use of British parliament (House of Commons).

How Breach of Privileged is decided?

Due to lack of a written list of privilege ultimately parliament decides about issues related to breach of privilege. Any member can raise the issue on the floor of the house. Speakers in the House of people or chairperson in council of states refer this matter before the privilege committee. Committees exist in the both houses. Decision of the committee is formal about the breach of privilege. Same committee is authorised to give punishment to the person.

Debate Related to Privilege

- **Contempt and Privilege**

Privilege is helpful for smooth functioning of parliament. Members cannot attend the session of parliament in case of arrest. Obstructing the functioning of parliament or committees amount to breach of privilege, but using unparliamentary language against the members are corrupt or criminal, should be taken as contempt; Although parliament never made distinction between privilege and contempt.

- **Judicial Review**

Proceeding of parliament is not subject to judicial review. In first instance it appears paradoxical. But constitution incorporates fundamental rights, and judicial review. In case of conflict between fundamental rights and parliamentary privilege Supreme Court delivered land mark Judgment in Keshav Singh Case ((1964). Parliamentary Privilege is more important than a citizen's right of freedom of speech and expression. Thus parliament can prohibit the publication of proceedings of parliament. Judiciary is bound to protect the right to life and personal liberty of citizens, under Article - 21. Parliament cannot punish anyone arbitrarily, said the Supreme Court in Keshav Singh case. But the fact of the matter is parliament is not willing to accept any Judgment of the Supreme Court.

- **Expulsion of Members**

Speaker of the Lok Sabha Somnath Chatterjee expelled 11 members of the house in 2006, in charge of corruption. Decision of speaker is validated by Supreme Court in Raja Ram Pal Case (2007) court said that it is part of proceedings of parliament, which is away from ambit of Judicial review. It is worth noting that provision of expulsion is not mentioned in the constitution or anywhere in statutes of parliament.

- **Corruption and Privilege**

No confidence Motion was brought about against Nar Simha Rao in 1993. Members of Jharkhand Mukti Morcha (JMM) supported the government during the motion. It is alleged that members of Jharkhand Mukti Morcha (JMM) received bribery in exchange for voting. A case was lodged against them in the Anti-Corruption Act, 1988. The Supreme Court said that anything said or voted in parliament comes within the privilege of parliament. Parliament is entitled to investigate the issue, not the court. Judgement of the Supreme Court in Jharkhand Mukti Morcha (JMM) Case (1990) was widely criticised because corruption cannot be justified on the name of privilege.

- **Privilege and Conduct of Members**

Privilege of parliament can be violated by members of council of Ministers including Prime Minister. In a case they are communicating wrong information to parliament. Breach of privilege may be by a member of parliament too. Like Bhagwant Man (M. P. of Aam Aadmi Party (AAP)) was guilty of breach of privilege during 16th Lok Sabha. Privilege is not encroaching upon by ordinary citizens. Unruly behaviour of MPs is more dangerous for privilege of parliament.

- **Codification**

Codification of privilege will minimize the likelihood of emergence of dispute. Australia codified the privilege and prescribed that contempt is different from privilege. Inflammatory speech against the parliament is considered as contempt not breach of privilege. Penalty for violating the privilege is also fixed. Thus it can be codified in India too.

Sessions of Parliament

The President shall from time to time summon each house of parliament to meet at such time and place as he thinks fit, according to Article - 85. In practice the president summons each house of parliament according to aid and advice of the Council of Ministers. According to Article - 85 the gap should not be more than 6 Months between the last sitting of the session and first sitting of next

session. Putting simply, the interval between Budget session and Monsoon Session should not be more than 6 Months. Parliament made rules according to this provision of the constitution. A rule made by House of people says that **three session of parliament is commended namely;**

- (i) **Budget session:** Budget session, this commences in February and March. It is the lengthiest and most important session of parliament.
- (ii) **Monsoon Session:** It is held in the month of July and August.
- (iii) **Winter session:** Winter sessions are normally organised in the month of November.

Fixed Number of Sitting

Neither constitution nor rules of the House of people prescribe the beginning of parliamentary session from a fixed date. 3rd January is the fixed date for the beginning of house in the USA. We can increase the number of sitting days of parliament by introducing fixed dates. Session postponed due to fear of criticism of the opposition party. Although a fixed date of beginning of the session may create some problems. For example Budget session of parliament of year, 2020, was out short due to corona virus. Flexibility of date appears better than fixed beginning dates. Budget session of 2019 is commenced in June due to the General election.

Special Session

Apart from the normal sessions of parliament, Special sessions can also be summoned. Ex. - A special session was convened in the year, 2000 on completion of 50 years of enforcement of the constitution. Special session was also held during the introduction of GST in 2016.

Prorogation

President is also entitled to prorogue the house. Prorogue means discontinuation of a session or interval between two sessions. Prorogation of the house is done on the aid and advice of the Council of Ministers.

Dissolution

Article - 85 also authorises the president to dissolve the house of people. Former Prime Minister V. P. Singh failed to get the confidence of the House of people in 1990. Subsequently he had to resign from the office of Prime Minister. He also recommended for dissolution of Lok Sabha. President R. Venkat Raman refused to dissolve the House of People. President Indra Kumar Gujaral as Prime Minister changing of the government has nothing to do with dissolution of the House of people. Normally after completion of 5 years, which is tenure of the House of people, it is automatically dissolved by the President.

Tenure of 16th Lok Sabha existed for June 3rd, 2019. Election results for 17th Lok Sabha were declared on 23rd May, 2019. Thereafter the 16th Lok Sabha was dissolved on 25th May, 2019. 17th Lok Sabha consisted on 24th May, after a list of newly elected members of Lok Sabha was presented to the president by Election Commission of India. First session of parliament began on 16th June, 2019.

Functions of Parliament

1. Law making

Conduct of Business is not written in the constitution Parliament is entitled to frame its own rules and regulations under Article - 118. The House of people enacted its own rules and procedure for conduct of business in 1952. However the council of states framed her own rules in the year, 1964.

- **Informal Beginning**

Council of Ministers plays a crucial role in the making of laws. First the cabinet decides on making a law, and then the cabinet passes a resolution in that regard. Subsequently the concerned ministry prepares a draft for enacting a law. If law is related to internal security, then law is drafted by the Minister of Home Affairs. Each draft related to making of law, shall be presented before the ministry of law and justice ministry to examine the legal dimension of law, whether the proposed law

shall be sustained in court of law. After approval of ministry of law and Justice it is send to ministry of parliamentary affairs. Minister of parliamentary affairs consults speaker or chairperson for introduction of Bill in the House. Speaker or chairperson finalize date and time with consultation of secretary-general of house.

- **First Reading**

Procedure for making of law is mentioned in the rules of House of people not in the constitution. First reading means introduction of bill in the house. Copies of the bill are printed in two lots, printed copies and circulated to members at least two days before the date of introduction. Date of introduction. Date of information is also printed on the bill. Bill is printed both in English and in Hindi language, although bill is published after introduction in house. But in special cases speaker may order the publication of bill in Gazette before introduction of bill in the House. The code of criminal procedure (Amendment) bill, 1953 was permitted to be published, before introduction to be published, before introduction of Bill.

A minister who desires to introduce a bill has to give seven days' notice in writing of his intention to introduce the Bill. After circulation of printed copies bill is included in the list of business on the day appointed for introduction of the bill, speaker calls the minister in charge, which moves the motion for leave to introduce the bill. Bill related to reorganisation of Jammu and Kashmir was not listed in the business of parliament on that day. Bill was introduced in house without availability of printed copy. This becomes an issue of dispute.

Normally bill is not opposed at introduction level on in first reading. MPs willing to oppose the bill can give notice to by 10 AM on day it is listed for introduction. Bill can be opposed on the ground that it falls outside of Jurisdiction of parliament. The prevention of communal violence bill, 2014 was opposed on the ground of legislative competency. Then decision to introduce the bill was deferred. In case, when minister is adamant on introduction of bill, then it is put for voting. A new practice started in 1993 in the history of Indian parliament. Departmentally related standing committees were constituted in order to strengthen parliamentary security over executive function. After the introduction of the bill it is sent to the departmentally related standing committee. Report of the committee is persuasive in nature.

Second Reading

It is the longest and most important stage of passage of any bill in parliament. It includes the following levels;

- Committee.
- Report.
- Consideration.

Second stage begins with discussion over the principles of the bill. The Constitution of the committee is not viable on every bill. It can go straight for consideration for a house. For minute scrutiny it is presented before a parliamentary committee.

Committee Stage

Due to the large strength of the House, parliament finds less time to scrutinize over the bill. Parliament lacks time and consideration over bills. Thus bills are given to committees. Bill can be passed to **two types of parliamentary committees** -

1. **Select Committee:** It consists of members belonging to only one house. If a bill is introduced in the House of people members of committees is drawn only from the House of People. Number of committees is not fixed; it depends upon the house.
2. **Joint Committee:** Joint committee implies the member of committee is taken from both houses. Ratio of people and council of state is 2:1. Joint committee is better, which takes the opinion of both houses. It saves time too. No time limit exists for the presentation of the report of the parliament committee.

Report Stage

Committee presents its report to parliament. It is possessive in nature. Meanwhile Parliament can take opinion of the people on Bill. For electricity the opinion of people, speakers or chairpersons give instructions for printing the news in various newspapers across India. Speakers of various states also ensure the publication of issues in various newspaper reports of public opinion is also tabled before parliament.

Consideration

2nd Reading begins with consideration (discussion) on principles of bill. After receiving a report of committee and public opinion, clause by clause consideration begins. Members of each political party are allocated certain time in discussion according to their strength in parliament.

During consideration, an amendment in the bill is also proposed. Acceptance of amendment is decided by voice vote in the House. Although critics oppose the provision of voice vote, instead they support division of vote.

Third Reading

Third stage is simplest where houses pass the bill with simple majority. Voice vote is commenced for rejection or acceptance of the whole bill. Voting does not take place for discussion or amendment in bill. Normally bills are never blocked in third reading.

Bill Transmitted in Next House

Once a bill is passed from one house, say, House of People, then it is transmitted to the next house (Council of State). If it is introduced in council of state then the next house shall be the House of people of the next house passes the bill as it is, without any amendment. It is considered passed from both houses; other options are also available for the next house. It can suggest an amendment in Bill. Consequently the bill is again sent to the first house (where bill introduced); if first House agrees on amendment suggested by the next house. Bill is supposed to be passed from both houses.

Deadlock

It is interesting to note that procedure for passing a bill is not written in the constitution. But provision of deadlock is incorporated in Article - 108 of the constitution. If a bill is passed by first house and **transmitted to next house-**

- The bill is rejected by the next house.
- First house is disagreed from amendment proposed by next house.
- More than 6 Months, lapsed from the date of reception of the bill, but next house did not pass the bill.

Due to dead lock bill may lapsed or president may summon joint sitting of parliament, under Article - 108.

Joint Sitting

President may notify about his/her intention of summoning the joint sitting. It is obvious that president call for joint sitting is possible with aid and advice of Council of Minister. Joint sitting shall be chaired by speaker. Deputy speaker shall chair the sitting in absence of speaker and Deputy Speaker the sitting shall be preside by Deputy Chairperson of Council of states. Sequence of chairperson in Joint sitting is not mentioned in Article - 108, but it is incorporated in rules of House of People. For passage of bill majority of the total number of members of both house present and voting. If present members of House of people is 300 and present members of council of state is 200 then majority mark is 251, required for passage of bill. Majority of each separate house is not needed. Joint sitting of House of in an exceptional provision till today there bill were passed through Joint sitting.

Dowry Prohibition Act, 1961

Both Houses were disagreed over the practice and definition of dowry. Congress commanded majority in the both houses even then disagreement occurred deadlock between two houses indicated that, freedom of speech and expressions were valued in the house.

Banking Services Commission Act, 1978

Congress was no longer power in Union government. Janata Party commanded majority in the House of people but congress enjoying the majority in the council of states. Deadlock between two houses was resulted due to political revelry.

Prevention of Terrorism Act, (POTA) 2002

Coalition government known as National Democratic Alliance (NDA) was headed by **Atal Bihari Vajpayee**. POTA was brought about for regulating and controlling the terrorist activities. However congress was in stronger position in council of state. For resolving the deadlock joint sitting was summoned.

Opposition of Joint Sitting

Cumulative majority is needed for passage any bill during Joint Sitting. It autonomically undermines the role of the council of states. Voice and objection of the council of state is overruled. It is important to remember the relevance of the council of states.

2. Represent the State in Federal Structure

Law made by parliament is applicable across India. Council State reflects the perspective of the state, which should not be overlooked. Parliament must work in time with federal spirit.

- **House of Elders**

Members of the council of states are the ones who are senior and expert in various fields. Council of states is composed of senior lawyers, scientists and famous sports personalities too. Views and opinions of the house carry more weight. Counting the numbers is a partial meaning of democracy. Wisdom expertises are equally important.

- **House of Revision**

House of people represents the will of the people. Laws enacted by one house need revision. Even the House of people can enact law in haste too. Council of state utilizes more minute and comprehensive observation. Thus the opinion of the council of state does matter.

- **Integration**

The Council of states and House of people should not be segregated strictly with each other. Both houses are complementary with each other. For instance chairperson of council of states is elected by the members of both houses. Moreover departmental parliamentary committees are comprised of both houses. Members of both houses are given due representation in Joint Parliamentary committee.

- **House of Obstruction**

Constitution criticism is the primary role of opposition. Opposition also suggests alternative policies too. Nowadays a tendency is emerging. Council of states is obstructing each and every act of the House of people due to serving the interest of party politics. Separate parties are commanding majority in two Houses, and dispute becomes visible. The Council of states must repeat the will of people. Citizenship amendment bill, abolition of Triple Talaq bill was deliberately blocked by Council of states. Thus Joint sitting is constitutional provision, which may be utilized for breaking down deadlock.

Private Members Bill

Bill introduced by a Member of Parliament other than a minister, is a private member bill. Both, an elected member as well as a nominated member can move such a bill. Members may be from the ruling party or the opposition party. Private members bill appears a healthy practice, which any

member of parliament participates in Law-making monopoly of ministers in law making undermine the power of parliament.

Procedure

Procedure for Private member bill is different. For private member bill the period of notice of a motion for leave to introduce a private member bill (PMB) is one Month. Speaker may allow motion for leave to introduce PMB for less than one Month. A member can give notice of not more than four bills during a session. Drafting the bill is the responsibility of the member himself/herself. Two and half hours of Friday allocated for private members bills. Member who introduces the bill becomes the member in charge of the Bill.

Problems and Prospects

In the last 70 years of functioning of parliament only 14 private members bill passed by parliament and became act. Interestingly 328 private members bills were introduced in parliament during the 14th Lok Sabha. Most of the private members bill is unable to travel beyond the first reading. Only 14 bills were discussed in all 328 bills introduced in the House, none were passed by the house. All bills were lapsed. For strengthening the private members bill, the day of introduction of the bill should be changed. Friday is the last working day of parliament, when most of the members rush towards their constituency. More absence is visible on Friday in parliament. There is need stringent regulation over the private members bill, which is brought before the house for seeking the attention of the house.

Nevertheless Privy Purse was abolished by private members bill through 26th constitutional amendment. Voting age was reduced from 21 to 18 by the 61st constitutional amendment bill with help of private member bill. Apart from ordinary law, making private member bills can be utilized for constitutional amendment too.

Delegated Legislation

Laws made by executive or bureaucracy are known as delegated legislation. Parliament Delegate the law making power to executive. Parliament enacted Disaster Management Act, 2006 (Section - 6) of act delegate power to executive and accordingly National authority shall have the responsibility for laying down policies, plans and guide lines. Delegated Legislation is also known as subordinate legislation. Executive is subordinate to legislative. By-laws, rules, regulation notification made by executive are subordinate to parliament. Bylaws are supplementary law for example the Essential commodities act, 1955 does not specify the number of essential commodity. It is quantified by the government known as by laws. Government can issue a notification via publication /gazette and introduce new essential commodities too, for example during the pandemic the government expanded the list of essential commodities.

- **Need of Delegated Legislation**

Parliament makes Skelton of any law. It makes broad outlines of law, rest of things are left out for executive to fill in the blanks. Parliament cannot enact each and every element of **law due to following reasons-**

- Lack of time.
- Technicality in making of law.
- Absence of expertise.
- Difficulty in operationalization.

Law is executed by executive; therefore executive makes rules and regulations better than legislative. Age of information technology and nuclear technology is a challenge for lawmakers, which requires expert assistance from bureaucrats, in law making.

Criticism

A law made by the executive goes against the spirit of separation **of power**, inherent in the constitution. Power of bureaucracy increases manifold on the behest of delegated legislation. Bureaucracy is responsible for none. Parliament is responsible towards people. Bureaucracy is an unelected body, which must not override the elected body like parliament. Rising speed of delegated legislation shows the decline of parliament.

3. Parliamentary Control

Parliament exercise controls over executive through parliamentary committee on sub-ordinate legislation. Committee exists in the both houses separately. Committee scrutinizes the rules regulation or by laws made by parliament. Therefore bureaucracy can violate the mandate of parliament. Moreover three organs of the government are complimentary with each other. Strict division of power is impractical. Government running becomes difficult in absence of delegated legislation.

Lapse of Bill

Interestingly procedure for passage of bill is not mentioned in the constitution. But procedure for lapse is incorporated in the constitution under Article - 107.

Prorogation

A bill pending in parliament shall not lapse by reason of prorogation of the house, under Article - 107. Normally passage of bill takes more than 6 Months thus discontinuation of house does not input the bill by this logic. Adjournment does not have adverse impact on bill.

Bill Pending in Council of State

Bill pending in council of state, which has not been passed by the House of people, shall not lapse on dissolution of the House of the people. Thirty four bills that originated in council of state, are still pending out of which one bill, that is the Delhi Rent Amendment Bill 13 originated and pending council state originated and pending council state since, 1997. Two other bills are pending in the council of states introduced during 1998 to 2004. Bill pending from last 20 years chairperson of council of state **Muppavarapu Venkaiah Naidu** said that bills pending in council of state from last 5 years should be lapsed. It requires amendment in the constitution.

Bill Pending in House of People

Any bill pending in the House of People lapse due to dissolution of House of People Bill pending in House people, whether it originated in house of people or originated in council of state shall lapsed. Any Bill passed by the council of state pending before the house of people is bound to lapse. For example Motor Vehicle (Amendment) Bill, citizenship (amendment) bill was passed by 16th House of people. But lapsed because they could not passed by the council of state. Again the bill was introduced in 17th Lok Sabha and passed by Council of state bill was stuck in council of state. It was again passed by 17th Lok Sabha. Same exercise was repeated again and again which consumed enormous time of Lok Sabha 22 bills were lapsed due to dissolution of 16th Lok Saha, because of bills was blocked by Council of state. Amendment of the constitution is more pragmatic.

Joint Sitting

If the President has notified the holding of Joint sitting before dissolution of Lok Sabha, does not lapse. Joint sitting shall be commenced over the bill after reconstitution of new Lok Sabha, after election.

Bill Pending for Presidential Assent

Any bill passed by the both houses and pending before the President for assent shall not lapse. President returns as bill to the council of state for reconstruction shall not lapse.

4. Control over Finance

Budget is a popular French term, which implies a leather bag, filled with papers. Constitution does not incorporate the term budget, although it is widely used in the rules of Lok Sabha Article -

112 of the constitution states the word annual financial statement, which is popularly known as budget. Parliament controls the financial expenditure of the executive through budget.

Procedure

Procedure for passage of budget is not mentioned in the constitution. It is written in the rules of Lok Sabha.

Presentation

President causes to be laid before both the house of parliament in annual financial statement, or estimated receipts and expenditure of the government of India. The budget is presented to the Lok Sabha on such day as President directs. No fixed date is prescribed for presentation of Budget. Earlier budget presented in last week of February, as now it is presented in the first week of February. There is no question hour on the day of presentation of the General Budget.

Budget Speech

General Budget is presented to Lok Sabha by minister of Finance. The Budget speech of the minister consists of two parts. Part - A, dealing with General economic survey of the country, and Part - B, containing the taxation proposals for the ensuing financial year. Sets of the Budget papers for circulation to members are supplied to the secretariat of the both houses, of parliament by the finance minister.

Discussion

No discussion of the budget takes place on the day it is presented to the House. Normally discussion is taken up after a week after the presentation of general budget. The House is at liberty to discuss budget as a whole or any question of principle in the budget. The Minister of finance shall reply at the end of the budget general discussion includes launching of various schemes and taxation.

Departmental Committee

A new history began in the parliament of India, with introduction of departmental committees, since, 1993, departmental committees examined the demand for grants minutely.

Discussion on Demand for Grants

Demands for Grants are not generally moved in the house by the minister concerned. It is moved by chair. The house speaker fixes day and timing for each ministry to move their demands for grants before the house, Because Budget must be passed within a definite time schedule. Whenever discussion is commenced over demands for grants, members of each political party are given time according to that strength in the parliament; Opposition point out drawbacks in the administrative machinery as well as financial propriety.

Cut Motion

Members of opposition party bring about cut motion. It is only a form of initiating discussion on the demand. If opposition successfully passes the cut motion in the Lok Sabha. It means council of minister lost the confidence in the Lok Sabha. Normally council of minister enjoy the confidence council of minister enjoy the question of passage of cut motion there are **three variation of cut motion-**

1. **Policy Cut:** Object of motion is to disapprove policy of ministry. This once is the most serious cut according to that amount of the demand be reduced to Rs. 1/-. Suppose that ministry is asking for 500 crore, and parliament want to give merely one rupees member can suggest can alternative policy, because expenditure is correlated with policies.
2. **Economy Cut:** It refers to the motion where the amount of demand is to be reduced by a specific amount. Amount shall be determined by the Lok Sabha opposition can raise the matter of reduction in the demand reduction of on item in the demand may asked.
3. **Token Cut:** Various types of cut motions are described in the rules of Lok Sabha. Where a motion that the amount of the demand be reduced by Rs. 100/-. If the Ministry is asking for 500 crore, then parliament will deduct Rs. 100/- in the 500 crore. It reflects specific grievances,

which is the responsibility of the government. Members can give notice one day before the demand is likely to be discussed.

Parliament utilizes numerous mechanisms to maintain control over the council of ministers, like question hours and various motions and resolutions. But financial control is the vital one. Money belongs to taxpayers in democracy, ultimately the council of ministers should be held accountable, while spending money.

Guillotine

Speaker fixed the time table for discussion on demand for grants. Few demands on grants may not be discussed in parliament due to frequent disruptions or of scarcity of time. Thus demand for grants, which were put for voting without discussion is known as guillotine. It is a French term, implies for speedy execution of death. Increasing guillotine is a sign of decline of parliament. Guillotine did not allow parliament to come up with cut motion. Eventually financial control council of minister undermined the role of parliament.

Charged Expenditure on Consolidated Fund of India

Ministry table demands for grants in two head-

1. Charged expenditure on consolidated fund of India.
2. Other expenditure proposed to be made from consolidated fund of India.

Charge expenditure on consolidated fund of India is discussed in both houses. But it is not submitted to vote in Lok Sabha, consequently cut motion is not applied on charged expenditures consolidated fund of India. Article - 112 includes the following expenditure as charge **expenditure on consolidated fund of India-**

- Emoluments and allowance of the president and other expenditure related to his office.
- The salaries and allowances of chairperson and deputy chairperson of council of state and the speaker and deputy speaker of Lok Sabha.
- Debt charges for which the government of India is liable.
- Salaries, allowance and pension payable to or in respect of Judges of the Supreme Court.
- Pension payable to or in respect of the Judge of any High Court.
- Salaries allowance and pension to or in respect of CAG.
- Any sum required to satisfy any Judgement, decree or award of any court or orbital tribunal.
- Any other expenditure declared by this constitution or by parliament by law to be so charged.

(i) Appropriation Bill

After passage of demands for grants. Parliament allows the council of ministers to withdraw money from the consolidated fund of India. Demand for grants is presented by each ministry separately but an appropriation bill is passed by parliament collectively.

(ii) Finance Bill

Till now all stages of budget are hinting towards expenditure, but the finance bill is related to receipts of money. Proposal of taxation for next financial year is tabled in Lok Sabha in form of finance bill. With passage of finance bill budget seems to be passed by Parliament.

Power of Council of State in Budget

Council of state occupies a lower position in the making of budget. Demand for grants can be discussed in the council of state, but it is not entitled to vote. Cut motion cannot be brought about in the council of state. Appropriation bill and finance bill is money bill under Article - 110. Council of state suggests the amendment in money bill. But acceptance or rejection depends upon House of people. Council of state is merely a delaying house as far as money bill is concerned. Council of state can block the money bill for 14 days, thereafter it seems to be passed by the both houses.

Residuary Part of Budget

Since budget is an estimated expenditure and estimated income, thus money allotted for particular may not be sufficient or new services emerged in due course of time which is not mentioned in the budget. **Later parliament approves this expenditure-**

- **Supplementary Grant:** Entire procedure of budget is not mentioned in the constitution. But supplementary and other grants are written in Article - 115. Amount allotted for particular services in the current financial year is found to be insufficient. Suppose that project of High speed train got budgeting support of 1,000 crore, meanwhile amount may not be sufficient then again finance minister come up with supplementary demand for each every ministry presented by the finance minister collectively. Supplementary demand may be presented twice or thrice in a financial year.
- **Additional Grant:** Due to enactment of new service in current financial year, which is not part of the budgetary estimate Minister of finance came up with additional demand after the formation of two new union territories namely Jammu and Kashmir and Ladakh.
- **Excess Grant:** Supplementary additional and excess grants are incorporated in Article - 115. Money has been spent on any service during a financial year in excess of the amount granted for that service is not new but expenditure has actually been incurred. It is presented to the parliament after the end of the financial year, in which the expenses were made. While legislative sanction is obtained before incurring expenditure under budgetary and supplementary grants. The demand for excess grant is presented to the legislature after expenditure has been incurred. However upon scrutiny of the accounts at the end of the financial year, the audit may find some expenditure has been in excess of the grant. The Constitution provides for their regulations by legislature. Although this excess expenditure is examined by the public account committee.
- **Votes on Account:** The financial year starts from April, 1st to March; 31st. Money allocated by the budget of the previous year gets lapsed by 31st March. Vote on account is a permission to withdraw money from the consolidated fund of India. It is interim permission of parliament to spend the money. Earlier it became a custom to take vote on account for 2 Months. Because the budget passed by the end of May. As of now practice of vote of account abolished, due to passage of budget by the 31st March.
- **Vote of Credit:** Article - 116 includes votes on account, vote of credit and exceptional grant. Vote of credit is a grant to meet an unexpected demand upon the resources of India. Character of service is indefinite, which cannot state in detail in budget. It is a kind of blank cheque given by parliament to council of Minister.
- **Exceptional Grants:** Exceptional grants simply means it is not stated in the budget. It does not include in the current services of any financial year.

(iii) Money Bill

Article - 110 contains the provisions of the money bill, although the decision of the speaker is final, whether a bill is a money bill or not. Money bill is related to three funds described in the constitution that are consolidated, contingency fund and public account. Taxation and borrowing naturally comes within the domain of the money bill. **Let's see the definition of Article - 110 -**

- **Taxation:** Imposition, abolition remission (reduction) alteration or regulation of any tax. Thus finance bill seeks for imposition of taxation or alternation. Therefore it comes within the domain of the money bill.
- **Borrowing:** Regulation of borrowing of money or giving any guarantee by the Government of India, or any amendment respect to any financial obligation of India.
- **Custody:** The custody of the consolidated fund of India or contingency fund of India. Payment of money in to or the withdrawal of money from any such fund. Money received by taxation and borrowing becomes the part of a consolidated fund. No money can be withdrawn from consolidated funds except with permission of parliament. Contingency fund is under control of the president. Amount of the contingency fund is fixed by parliamentary act.
- **Appropriation:** Appropriation of money out of consolidated fund of India. Therefore appropriation bill is considered as money bill.

- **Charged Expenditure:** Declaring of any expenditure to be expenditure charged or consolidated fund of India or increasing the amount of any such expenditure.
- **Receipt of Money:** Receipt of money on account of consolidated fund of India or the public account of India or the custody or issue of such money on the audit and accounts of union or of a state. Any matter related to above mention classes.

Procedure for Money Bill

Procedure for passage of the money bill is different from an ordinary bill. The Money bill is tabled only in the House of people. Money bill is presented in the house of people, with previous recommendation of the President. Council of state can recommend an amendment in a money bill, but acceptance of amendment is the privilege of the House of people. No provision of joint sitting is permitted in the money bill. President shall not send the money bill for reconsideration of the parliament. Nevertheless the president shall either give assent or withhold the assent, on money bill.

Financial Bill

Article - 117 incorporates the financial bill. It is worth noting that a financial bill is not a finance bill which is in fact money bill. Let us consider the subject matter of the fundamental bill.

(i) Subjects Matter

Financial bill includes one element of the money bill described in Article - 110 in addition to that it also incorporate administrative dimensions. Financial bill combines the element of money bill and a partly ordinary bill. Financial bill combines the element of money and ordinary bills. It is partly a money bill and partly an ordinary bill. Financial bills may include taxation plus administrative subjects.

(ii) Procedure

It can only be tabled in House of people. Financial bill shall be presented in House of people with previous consent of the President. These procedures are similar to money bill. But other procedure resembles with an ordinary bill. Because council of state can bring about amendment in the bill, thus joint sitting is bound to happen. Procedure of Financial bill also combines the feature of money bill and an ordinary bill.

Financial Bill 2nd Type

Article - 117 tells about two categories of financial bill.

(i) Subject Matter

This category of financial does not include any element of money bill described in article from the consolidated fund of India; it is worth noting that it expenditure not appropriation from the consolidated fund of India. Article - 110 contains appropriation from the consolidated fund of India.

(ii) Procedure

The 2nd category of financial bill contains only one procedure of financial bill. President shall recommend the consideration of the bill. Previous recommendation is not mandatory, the rest of the features belong to ordinary bills. It can be introduced in either house. Council of state is equally powerful to bring about amendment in the bill. Thus joint sitting is permissible.

Anti-Defection Act

Defection is a major problem of parliamentary democracy in India. Instability occurs frequently due to defection and it shapes the faith of people in democracy. Defection applies for Member of Parliament or member of state legislative. Defection is popularly known as Aya Ram, Gaya Ram, due to defection of MLA of Haryana multiple times in a Single day.

Constitution Provision

10th Scheduled is added in the constitution by 52nd constitutional amendment by Rajiv Gandhi government. It creates a new ground for disqualification of Member of Parliament under 102 and

disqualification of MLA under Article - 191. In fact popularly it is known as act but in reality it is not act instead a constitutional provision.

Meaning of Defection

- **Elected Member:** MPs or MLA has voluntarily given up his membership of a political party. Voluntarily giving up refers to resignation from the party, and leads to disqualification of members from the party.
- **Independent Member:** A member of the House absent from voting, or votes against the direction of the party. Party has not accepted action of members within 15 days, disqualified from the house. A person not belonging to a political party, elected as an independent candidate shall be disqualified, if he/she joins any political party.
- **Nominated Member:** Nominated member becomes, disqualifies, if person joins any political party after expiry of 6 Months. Thus anti-defection is applied for both elected and non-elected members of political parties and independent candidates too.

Merger

Split is recognised as defection, split refers to some members of a party who are willing to leave the party. Merger is not considered as defection, but 2/3 elected members of such party agrees for merger. In smaller states, where the number of political parties is less, merger becomes frequent. Merger allows a kind of wholesale defection said by critics. Merger can form a new party too.

Exception

Anti-defection act is not applicable over speaker, Deputy Speaker of the house of the people. Deputy Chairperson is away from the ambit of anti-defection act chairperson or deputy chairperson of council of state, speaker and deputy speakers of legislative assembly of state. Speaker can voluntarily resign from membership his/her party. He/she is free to join any other political party after ceasing the office of speaker.

Authority for Adjudication of Disqualification

Speaker or chairperson is given the authority to pronounce the decision whether any member of house is subject to disqualification. Moreover no court shall have any jurisdiction in respect of or any matter connected the disqualification of a member. Speaker is considered as impartial and neutral while running the house, but role and decision of speaker is highly disputed. Speaker gives verdict according to fulfilling the interest of political party. Due to misuse of office of speaker, while deciding about disqualification. It is recommended that power to disqualify and member should be transferred to President and Governors respectively. They should act according to aid and advice of Election Commission of India.

Judicial Intervention

Constitution says that decision of speaker is final, which cannot be challenged in any Court of law. Further Article - 122 prescribe that validity of any proceeding in the parliament shall not be called in question on ground to any alleged irregularity of procedure. No member or office of parliament is liable before Court for any conduct of business or maintaining order in parliament. But now office of speaker is subject to judicial review. Decision of speaker may not be final said Supreme Court in **Kihoto Hollohan Case (1993)**.

Judgement of speaker in connection of with disqualification does not come within the domain of procedure of house. Disqualifying the members is a quasi-Judicial act, which is subject to judicial review. It is true that speaker shall determine the procedure but procedure should not be invalid. Disqualification of member is not a procedural issue. There is different between irregular procedure and illegal procedure. Changing the time of question hour in parliament is an example of irregular procedure. Running the house in absence of quorum is illegal procedure.

Functioning of Parliament

Primary objective of anti-defection act is to maintain stability in the parliamentary forum of government or the contrary anti defection act is undermining the freedom of speech of MPs/MLA in the house; which is available in Article - 105 and Article - 194 to members in house. Anti-defection act is doing more harm than advantage for the functioning of parliamentary form of government. Voting is against the instructions of the party means losing the membership of house. Therefore level and quality of discussion and debate declined automatically. Anti-defection act is constitutional said by Supreme Court in Kuldeep Nayar Case (2006).

We can serve the twin purpose of stability and freedom of 5 speeches in the provision. And acting against the party line does attract disqualification when the government is not about to fall. Anti-defection act is permissible in a case of confidence motion, no-confidence motion, where government can be thrown from power. Selective use of anti-defection acts is the need of the hour. It must not apply to debate and discussion over any ordinary bill or bill related to constitutional amendment in the house.

More Stringent

Anti-defection act is like a double edged sword. Critics said it is harmful for parliamentary democracy. On the other hand demand for more full proof provision is also raised. When a member voluntarily gives up the membership of part, the member is disqualified automatically. If a member is expelled by party then he/she is not disqualified. Member sits in a house as an unattached member. Mass resignation is new growing trend, seen recently in Karnataka and M. P. Act does not speak about resignation of a member from house. Period of disqualification is valid till re-election or tenure of house, whichever comes earlier. Longer period of disqualification is the need of the hour.

Parliamentary Committee

Meaning

As name suggest parliamentary committee are comprised of members of parliament elected or nominated. Committees are microcosm of parliament, which ensures the representation of members from each and every political party in house according to their strength in house. A parliamentary committee is appointed by speaker. It functions under the direction of speaker/chairperson of house. Present the report to speaker, committees receives secretariat assistance by the parliament. Decision of speaker is final, whether any committee is qualified to be a parliamentary committee.

Utility

Parliament transacts a great deal of its business through committees. Committees are permanent; however parliament sits in three sessions. Thus parliament always faces a crunch of time. Parliament is divided on party lines, committee work as a unit. Communities' functions behind the camera, division on party lines becomes invisible. Committees provide a hand of expertise to parliament. Rules of prorogation are not applied for committees. Parliamentary committees can summon anybody for security and the investigation function of parliamentary committees is the same like the function of parliament. Committees unified the members of council of state and House of people.

Sitting and Quorum

Sitting of the parliamentary committees is held in private. No outsiders or strangers are allowed to sit in the sitting of committees. Meetings of parliamentary committees held only in parliament not outside of parliament. Although informal meeting is permitted during study. Committee is capable of summoning any person before the sitting committee.

Ministers and Committees

Parliamentary committees are small proto type of parliament. According to the principle of division of power, minister belongs to the member of executive. Thus minister should not become member of parliamentary committees. If a member of the committee on petition on public account or

estimate or public undertakings or subordinate legislation or Government assurance or welfare of SC/STs or empowerment of women or departmentally related committees is appointed as minister, ceases to be a member of committee. But minister may become part of other committees. Above mentioned communities play significant role, for controlling the council of minister or execution.

Term of Office

- **Not Exceeding One Year:** A parliamentary committee nominated by speaker, hold office for a period not exceeding one year includes committee on private members bills committee on papers laid on table, committee on government assurances committee on subordinate legislation committee on empowerment of women committee on absence of members from sitting of house, committee on welfare of SC/STs, library committee and House committee. It is worth noting these are standing (permanent) committee, which work throughout the year but members of committee change after one year. There is need of change in the provision of one year tenure. One member joins the committees, they given experience and expertise. Retirement after one year is not a wise idea. Term and tenure of committees. Term and tenure of committees should be increased.
- **Till Restructuring:** The business advisory committees, Rules Committee on petition, committee of privilege do not exist for one year. Committees are nominated by speaker, continues under it is not reconstituted by speaker.
- **Elected not Exceeding One year:** Members of the committee on Public accounts, committee on Estimate committee on public undertaking, committee on welfare of SC/STs are elected by house. Terms should not exceed one year. Elections for committee shall be held according to proportionate representation with single transferable votes. Normally members of parliamentary committee and elected in the month of April joint committee of office of profit is also elected by the house. Term of office of profit committee countries according to tenure of House of People.
- **Ad hoc Committee:** Standing committee are permanent committees although members of committee may retire after one year. Whenever a bill is table in parliament can constitute a committee for consideration over bill. Terms of these committees are not fixed. They are abolished. It is different from standing committees. Railway convention committee is only ad hoc committee which is set up from time to time to evaluate the progress of dividend for railway. Otherwise ad hoc committees do not set up twice on again.

Department Related Standing Committee (DRSC)

Evolution

Council of Ministers should be accountable towards parliament. Parliamentary committees are brain of parliament which keeps tight control over functioning of executive. In 1989 only three ministers demand for grants were discussed and demands in respect as many as 34 ministries were guillotined. For strengthening administrative and financial accountability rules committee proposed to set up three subject committees in 1989 during 8th Lok Sabha. Finally departmentally related standing committees were set up in 31st March, 1993. Thus there subject committees ceased to exist. 17 Department Related Standing Committee (DRSC) were set up in 1993. Moreover in 2004 number of Department Related Standing Committee (DRSC) were increased from 17 to 24. Among 24 Department Related Standing Committee (DRSC), 16 committees are subject to control of Lok Sabha and 8 are under subject to control of council of State.

Composition

From 2004 onwards membership in Department Related Standing Committee (DRSC) was reduced from 45 to 31 members. 21 members are drawn from Lok Sabha however 10 members are taken from council of states. Chairperson and speaker appoint the chairperson of committee. A minister cannot be nominated as a member of Department Related Standing Committee (DRSC).

Term

Term of each Department Related Standing Committee (DRSC) is fixed one year from the date of its inception.

Functions

The functions of each of the **standing committee** are-

- To consider the demand for grants of each minister and table a report in parliament, although the report of Department Related Standing Committee (DRSC) is persuasive in nature. It does not censure the government. Thus Department Related Standing Committee (DRSC) strengthened financial accountability and reduced the problem of guillotine.
- To examine such bills related to concerned ministers as are referred to committee by chairperson or speaker. Thus sitting up ad hoc committees on each and every bill is not mandatory. Because the Department Related Standing Committee (DRSC) ensures a permanent (standing) committee to examine the bill.
- Every ministry prepares an annual report, which is tabled in the house. Annual report describes the functioning of the ministry. Department Related Standing Committee (DRSC) considers the annual report of the ministries and makes a report for parliament.
- To consider national basic long term policy documents, although Department Related Standing Committee (DRSC) do not consider the matters of day to day administration of ministries.

Role of Parliamentary Committees

(i) Financial Accountability

Council of ministers should be accountable towards parliament is the basic feature of parliamentary form of government. Financial accountability is the most important, which is impossible without a public account committee, estimate committee and committee on public undertaking.

Public Account Committee (PAC)

It comprises 22 members, 15 are drawn from Lok Sabha and 7 are taken from council of states. PAC is chaired by a member of the opposition party. PAC receives assistance from CAG. It checks on unwise methods of expenditure and financial irregularity. It also examines the reason behind excess expenditure, money shown in account was legally granted by parliament to the ministry. Expenditure items approved by parliament cannot be spent from other items. Committee never questions the policy made by the government.

Estimate Committee

Estimate committee is composed of the members of Lok Sabha makes estimate committee. The fundamental objectives of examination by the committee are economy and efficiency in administration. It also ensures that money is laid out within the limits of policy implied in the estimate. Although the committee never convents over policies. But it recommends whether a particular policy is not producing the desired result. Committee is entitled to suggest any alternative policies for improving efficiency and economy in administration.

Committee on Public Undertaking

It was formed in 1964. Composition of this committee is similar to the composition of the public account committee. 15 members are drawn from the House of People and 7 members come from the council of states. Committee examines the reports and account of such PSU, which is given to the committee. It also scrutinizes reports of CAG regarding PSUs. Autonomy and efficiency of PSU are other issues looked into by committee in fact it performs the role of public account committee and Estimate related to functioning of PSUs.

(ii) Conduct of Business

Smooth functioning of parliament becomes impossible without help of parliamentary committees. Business advisory committee allocates date and timing for discussion over the bill. It also

allots timing for discussing motions and resolutions. Rules Committee recommended for change in the procedure of conduct of business in parliament change in the timing of question hour is the responsibility of the rules committee. Thus the ex-officio chairperson of both committees is speaker. Any new issue emerges before parliament which cannot be given to any existing committees. Then it is allotted to the General purpose committee. General purpose committee considers and advises the speaker on the matter concerning the affairs of the House.

Inquiry

Committee on petitions examines about the petitions presented by member of house with consent of speaker. It addresses the grievances of members. Committee on petitions also compiles various suggestions and letters regarding the bill present in the parliament. Committee on privilege examines about breach of privilege.

(iii) Scrutiny

Whenever minister assures parliament about some policies, action, while speaking on motions and resolutions ministers assures the house. Whether these assurances were fulfilled is examined by committee on Government assurances. Committee on subordinate legislation scrutinise rules, regulations made by executive.

Facility of Members

House committee ensures facility of accommodation for members of Parliament. Responsibility of Library committee is to provide books in library and sitting facilities for Member of Parliament.

(iv) Welfare Functions

Parliament committee on the welfare of scheduled caste and scheduled tribes was constituted in 1988. Committee is comprised of 30 members including 20 from Lok Sabha and 10 from council of states. Term for member is not exceeding then one year. Committee considers the report of national commission for scheduled caste and national commission for scheduled tribes. Committee also examines about measure taken by Union Government and State Government for well-being the community. It also keeps on eye over implementation of constitutional provisions for well-being of SC/STs. Committee on the Empowerment of woman is constituted in 1997 during 8th Lok Sabha. Committee is comprised of 30 members (20+10). The term of committee does not exceed one year. It consider over report of National Commission for women. Action of Union Government initiated for empowerment of woman is also looked into by committee.

Joint Parliamentary Committee (JPC)

According to rules of the House of people, various standing committees are Joint Committee like Public Account committees and departmentally related standing committees. Some joint committees are also set up for examining the bill tables in the House. This Joint Committee is an ad hoc in their functioning. But a new tradition began in the history of parliament in 1987; When a Joint Parliamentary Committee (JPC) was established for ignoring a case of corruption. Members of the Committee are also decided by the Joint Parliamentary Committee (JPC). First Joint Parliamentary Committee (JPC) was formed in 1987 for investigating the matter of corruption related to purchase of Bofors Cannons.

Again Joint Parliamentary Committee (JPC) was reconstituted for inquiring about a scam in the share market in year, 2003. Recently demand for sitting up Joint Parliamentary Committee (JPC) was raised in the year, 2018 for inquiring about allegation of corruption in the purchase of Rafale Fighter Jets from France. Speakers, did not conceded the demand, thus Joint Parliamentary Committee (JPC) was not constituted. Public account committee is standing committee which looked into the matter financial irregularity. Then why demand of Joint Parliamentary Committee (JPC) is raised. But scope of inquiry of Joint Parliamentary Committee (JPC) may be broader than PAC. Some expendire are beyond the scrutiny of PAC, but ambit of inquiry of Joint Parliamentary Committee

(JPC) shall be determined by the parliament. We cannot rule out possibility of setting the political score behind the demand of constitution of JPC.

Exclusive Committees of Council of State

- Business advisory.
- Committee on Petition.
- General purpose committee.
- Councilor on subordinate legislation.
- Committee on Privileges.
- Committee on Government assurance.
- Rules Committee.
- Ethics Committee.

Drawback of Parliamentary Committee

- **Absenteeism:** Most of the members of parliamentary committee do not attend the meetings of parliamentary committee regularly chairperson of committee are also absent frequently. M. Venkaiah Naidu suggested that if members of committees are absent from two consecutive meetings of the committee they should be replaced from committee.
- **Lack of Fixed Numbers of Meetings:** No fixed time limitation is enacted for the committee to present its report. Number of meetings is not decided too. Thus it depends upon the committee of meetings should be fixed to making committees more effective.
- **Lack of Expertise:** Committee is created for increasing expertise and effectiveness. But members do not show much interest in reading and research. Without knowledge of members committee becomes handicapped.
- **Term is less:** Term of most of the committee is not exceeding one year. Once they gain some experience and expertise, they retire from committee. Therefore terms of the committees should be increased at least for 3 years or more than that.
- **Persuasive:** The recommendation of committee is not binding on the government, but it is merely advisory. Therefore nobody takes the report of committee seriously.
- **Party Division:** Every political party is given the due representation in the parliamentary committee. But committees are away from party loyalty and direction from the party. During 15th Lok Sabha chairperson of PAC Dr. Murali Manohar Joshi was removed from the chair of the committee. Dispute the allocation spectrum.

Parliamentary Forums

Parliamentary committees are result of rules made by the house of the people and council of states. Thus committees have statutory sanctions. However forums are informal mechanism of consultation of members of parliament with ministers and experts. Forum does not have any statutory basis. Committee present their report before parliament but forum is kind of training programme for Member of Parliament. Committee enjoys the privilege of parliament, but forum does not enjoy any such privilege.

Meaning

It is a kind of workshop or seminar organised for enhancement of the knowledge of Members of Parliament. The forum gives an opportunity to Member of Parliament to interact with subject experts and officers of ministry. In order to develop deeper insight of subjects, the Forum trains the MPs, sensitize them about various subjects, which is helpful for Member of Parliament to raise issues on the floor of house. Member becomes more informed with help of experts, ministers and members of NGO. This ensures better understanding of critical national issues present before the parliament.

Resolution

Conduct of Business in Parliament is carried out in form of resolution. Resolution is an opinion of the house. Resolution may be expressed in form of will or action of house. It is one of the procedural devices to raised discussion in Lok Sabha on a matter of general public interest.

(i) Categories of Resolution

- Resolution may be an expression of opinion of the house. These are not binding over the Government.
- Resolution may be in form of statute, for example tabling a bill in parliament is an example of resolution. Private members bill or bill regarding the reorganization of J & K is a resolution.
- Parliament can control her own proceeding through resolution.

(ii) Types of Resolution

There are **three types of resolutions**;

1. Private Member Resolution: Private members bill is an example of private members resolution.

2. Government Resolution: Resolution approving international treaty, convention or agreement where union government is a part. Resolution regarding the approval of certain policies of the government like a national rural health mission is approved by parliament. Recommendation of certain committees also comes within the ambit of resolution.

3. Resolution under the Constitution: Under Article - 61, resolution is required to (impeach) president from his/her office. Removal chairperson and deputy chairperson of the council of state needs move in form resolution. Speaker and deputy speaker of the house of people is also removed from their office through resolution. Term resolution is mentioned in the constitution repeatedly council of state passes a resolution for enacting any law by parliament in state list under Article - 249. Similarly the council of state passes a resolution for creation of an all India service under Article - 312. Approval of proclamation of emergency under Article - 356 is approved by parliament in form of resolution.

To conclude resolution is required to make an act, pass constitutional amendment in parliament, sometime impact of resolution may be not statutory or constitutional. It may be in the form of expressing the will of the people too.

Motion

Motion refers to proposal submitted to the house for knowing the decision of House. For example motion is required for choosing the speaker of house. Member initiation of any action is motion. Motion is brought out by mover, who is member of house motion.

Types of Motion

According to rules of house motion can be categories in **three varieties**-

1. Substantive Motion
2. Substitute Motion
3. Subsidiary Motion

1. Substantive Motion

It is an independent motion and self-contained motion, capable of expressing a decision of House. Substantive motion must be put to vote of the house. Substantive motion is needed for impeachment of president, removal of Judges of Supreme Court and High Court.

2. Substitute Motion

Subsidiary motion or substitute motion is different from substantive motion. Substitute refers to replacement of original motion. However, subsidiaries come in the form of support of original motion whenever any policy or situation or statement is replaced, other motion do not come over the ordinary bill or constitutional amendment bill. It is a related policy statement or situation.

3. Subsidiary Motion

Motion which depends upon other motion or relates to other motion is considered as subsidiary motion. When members of house move a motion that the bill be taken into consideration,

then the Bill should be referred to the Select or Joint Committee, and comes within the domain of subsidiary motions. Motion for amendment in a bill is an example of subsidiary or secondary motion.

Comparison of Motion and Resolution

It is pertinent to note that every self-contained or substantive motion is resolution. Any decision of parliament begins in form of motion and concludes in form of resolution. A motion is requisite to remove judge from his/her office, when judge is removed by the special majority of House it becomes resolution. Motion is the first stage of removal of judge and resolution is the final on last stage of removal of Judge. Therefore difference between motion and resolution is of procedure than of substance every resolution begins as motion but each motion may not be concluded in resolution due to rejection of house.

Types of Motion

President is part of parliament not a member of parliament under Article - 87 President Addresses both house assembly together. It is worth nothing that it assembled together is not a joint sitting of parliament. Assembling together is not considered as sitting of parliament since it is not presided by the speaker. Both houses assemble together after the commencement of the first session after every general election to the House of people. First session of each year is also addressed by the President.

- **Motion of Thanks:** Few days after the president address the motion is proposed by a member and seconded by another member. Members of every political party take part in discussion. Subsequently voting takes place. Although Prime Minister replied the debate before voting. If the council of ministers lost in voting, then it will be assumed that Council of Ministers has lost confidence in the house. But the government does not fall automatically due to losing in voting. Government is given a chance to prove confidence in the house. Voting in council of states does not impact the prospect of the government.
- **Adjournment Motion:** it deals with any matter of Urgent Public Importance. Speaker prepares a list of business of each for transacting the function of house. Adjournment implies disruption or interruption of normal routine business of parliament. Union government failed to perform duties, which is responsibility of Government under law and constitution. Motion is aiming for criticizing the government. It is also understood as a censure of the government. The matter raised during this motion -
 - Must be definite, it means matter should be specific and factual.
 - Matter must be urgent, it means it occurred recently.
 - Matter must of public importance it should not be related to individual grievances.

Adjournment motion is not normally allowed during budget discussion or during the discussion on the motion of thanks. Issues related to state government, where union government is not responsible is unfit for raise through adjournment motion. Normally adjournment motion is taken up at 4.00 PM. It is not permitted in the council of state because it censures the government.

- **Censure Motion:** Certain policies and action of the minister on council of ministers can be criticized by the House of the people censure motion must set out the grounds or charge on which it is based.
- **No Confidence Motion:** Collective responsibility is the basic element of parliament form of government Article - 75(3) states the council of minister shall collectively responsible towards House of people. Rule - 198 of Lok Sabha tells about no-confidence motion. It becomes fairly clear that no motion is incorporated in the constitution. They are described in the **rules of House of people-**

(i) Conditions

- No less than 50 members of the House of people should support the motion.
- After receiving leave from the house. It required to be taken up within 10 days.
- No ground is needed for bringing about motion.
- Decision taken with simple majority, therefore we should take note of that council of minister requires confidence of house rather than majority of House.

- No-confidence motion cannot be brought about twice in same session but no limitation is imposed on numbers of motion during term of house of people. While a maximum number of six motions of no-confidence each was debated in 3rd and 4th House of people.

(ii) Motion and Dissolution of House of People: Passage of non-confidence motion does not result into the dissolution of House of People. It only signifies the change of council of ministers. After passage of motion council of minister are bound to resign immediately. They will not be granted any opportunity, further. No confidence motion was passed against the V. P. Singh Government in 1990, thereafter Chandra Shekhar become new Prime Minister House of people was remain intact.

(iii) Political Goal: First no-confidence motion was brought about against the Nehru government in 1963. Although commended complete majority in the House of people. But popularity of government was due to Indo-China war of 1962. Warning motion was introduce for influencing the will of the people. Again non-confidence motion granted in the House of people during 16th Lok Sabha. Narendra Modi government was enjoying comfortable majority in the House of People. Thus primary purpose of motion was to influence the public opinion, because 17th Lok Sabha election countdown began at that time. Non-confidence motion consumes at least 2 or 3 days of House. Therefore when a party is in comfortable majority in house, motion fulfills only political goal maximum 15 no-confidence motion is encountered by Indira Gandhi Government.

(iv) Confidence Motion: Confidence motion nowhere mention in the constitution, or in rules of House of people. It began due to emergence of minority government or coalition government. No confidence motion is introduced by the opposition. But confidence motion is presented by Prime Minister himself/herself, on instruction of the President. Then President Neelam Sanjeev Reddy asked Prime Minister Choudhary Charan Singh to prove confidence in the House in 1979. Prime Minister resigned rather than willing to face House of People. He was the first Prime Minister of India who never went in House of People, during his premiership. Similarly Narsimha Rao was asked to show confidence in the house although congress had 244 members in the House of people, due to support of some other parties and absence of parties. Confidence is proved with simple majority. Thus government has less than 272 members in the house can prove confidence in the house. Council of state has nothing to do with these motions.

(v) Calling Attention on Matter of Urgent Public Importance: Member of House of people gives a notice to secretary-general at 10.00 AM Members may call attention of concerned ministers. Thereafter minister reply the attention. Others members are also allowed to raise the question and subsequently minister reply these questions. Minister may buy time to answer the reply calling attention motion is practiced as in the council of state too. Calling attention motion is more frequently utilized than adjournment motion; because adjournment motions censure the government. Calling attention motion does not censure the government or criticize the government. Both Calling attention motion and adjournment motion can be raised on matter of urgent public importance. Calling attention motion regarding misuse of social media and fake news is raised in the house.

(vi) Discussion on Matters of Urgent Public Importance for Short Duration: Since adjournment motion amounts to criticize or censure the government. Thus, for discussing matters of urgent public importance, short duration discussion in introduction since, 1953. There is no formal motion before the house, nor is there any voting. Members of the house can give a notice, and has to be supported by the signature of at least two other members. It is utilized both in council of state and house of people. Situation of law and order in Delhi is raised through short duration discussion. Time duration allotted for discussion is 2.30 hours. Concerned ministers reply to the debate at last. Notice for short duration discussion under Rule - 193 or under Rule - 184 or statement to be made in house by ministers. These are provisions of voting under Rule - 184 and voting is not permitted in Rule - 193. Thus the government avoids organizing discussion under Rule - 184. Short duration discussion is equally applicable in the council of state and House of People.

(vii) Questions: Government becomes accountable through questions in parliament. Questions hour give an opportunity to know about administrative **functioning of the Union Government-**

- **Timing:** Question hour begins in the house of people between 11.00 AM to 12.00 Noon. Now the timing of question hour is changed in the council of state. Question hour begins from 12.00 Noon to 1.00 PM in the council of states.
- **Period for Notice:** 15 days advance notice is required for asking a question in parliament. Members give notice to the secretary-general and secretary forward questions to concerned ministers. Ministry again sends the answer to secretary, who includes the questions in the list of business.
- **Number of Questions:** 20 oral or starred questions 230 written (**unstarred**) questions can be asked in the House of people 15 oral or starred questions can be asked in the council of state and 175 written or unstarred questions are permitted in a day. No members can have more than 5 question both for oral and written answers. Since 20 oral questions are permitted in House of People in single day. In case secretary general receives more notice for oral question. Then lottery is used for finalised the name speaker call the name of members one by one, they ask the question from concerned ministry. List of questions for oral answer is printed on Green paper and that for written on white paper.
- **Supplementary Questions:** Supplementary questions can be asked only on oral (starred questions). A member who asked the question is entitled to ask two supplementary questions. Speaker may allow other members to ask one supplementary question.
- **Short Notice Questions:** A question related to matters of urgent public importance may be asked by a member on shorter than 15 days' notice. Provision of oral answers is the rule for short notice questions. Although it is an exceptional provision only one question is allowed in a day for short notice questions. Speaker takes consent of the conceived minister, whether the minister is capable of replying to the answer in a short time.
- **Division of Ministry:** Ministries of government of India have been divided into 5 groups. These groups have been allotted Mondays, Tuesday and Wednesday, Thursday and Friday respectively. The grouping is done in such a way that each minister has one day fixed in the week for the answering questions in both house.

Half-An-Hour Discussion

It is commercial in last 30 minutes of sitting thus known as half an hour discussion. Member may ask more clarification or information on stared questions, unstarred questions. Discussions are normally held there sitting in a week, namely Monday, Wednesday and Friday speaker or chairperson accepts the notice due to sufficient public importance.

17th Lok Sabha

267 MPs will be in Lok Sabha for their first term. From the outgoing Lok Sabha, 230 MPs were re-elected. Further, 45 have been members of earlier Lok Sabha. The number of MPs re-elected is significantly higher than in the last general election. The average age of an MP is 54 years. The 17th Lok Sabha has 12 percent of MPs below the age 40 years. This is more than that of the 16th Lok Sabha which had 8 percent of MPs below the age of 40 years. This bucks the longer term trend of Lok Sabha getting older. The proportion of MPs below 40 years of age has steadily declined from 26 percent in the 1st Lok Sabha. On average, women MPs are 6 years younger compared to male MPs in the 17th Lok Sabha. In the 17th Lok Sabha, 27 percent of MPs have studied till 12th class. In comparison, 16th Lok Sabha had 20 percent MPs who had studied till 12th class. Since 1996, at least 75 percent of representatives of each Lok Sabha have been graduates. 716 women candidates contested the General Election. Out of which, 78 women MPs have been elected to the 17th Lok Sabha. In 2014, 62 women MPs were elected. The representation of women MPs in Lok Sabha is slowly improving from 5 percent in the 1st Lok Sabha to 14 percent in the 17th Lok Sabha. Though the percentage of women MPs has increased over the years, it is still lower in comparison to some countries. These include Rwanda (61 percent), South Africa (43 percent), UK (32 percent), USA (24 percent), and Bangladesh (21 percent). 39 percent of MPs have listed their occupation as political and

social work. 38 percent are engaged in agricultural activities. 23 percent MPs are businessmen. Only 4 percent of MPs are lawyers.

Revival of One party Dominated System and Parliamentary form of Government

Suhas Palshikar said that rise of BJP is again reviving one party dominated system in India and again there is no opposition party in the house of people and the rise of P.M is very much visible due to strong emergence of one party system. According to parliamentary form of government Council of Ministers becomes custodian of power but now P.M has been emerging as centre of power and elections are also held on the name of P.M which is closer to the feature of presidential form of government.

With the rise of power of P.M principle secretary of P.M becomes more important than cabinet secretary and the size of PMO has grown many fold which is undermining the role of central secretariat. Now PMO is launching the Gati Shakti scheme which is a digital platform for unifying 16 ministries of Union government in order to promoting Ease of doing business and good governance but same time it has been enhancing the power of P.M and PMO.

Conclusion

Marginalization of Power of P.M is not good for Parliamentary democracy but concentration of power in hands of P.M is equally problematic. There is need of more balance and harmonious relation between P.M, Council of Ministers and parliament.

17th Lok Sabha Profile

Criminal Record

- The BJP has 116 MPs or 39 percent of its winning candidates with criminal cases, followed by 29 MPs (57 percent) from the Congress, the Association for Democratic Reforms (ADR) said.
- Nearly half of the newly-elected Lok Sabha members have criminal charges against them, a 26 percent increase as compared to 2014, according to the Association for Democratic Reforms (ADR).
- Of the 539 winning candidates analysed by the Association for Democratic Reforms (ADR), as many as 233 MPs or 43 percent have criminal charges.
- The BJP has 116 MPs or 39 percent of its winning candidates with criminal cases, followed by 29 MPs (57 percent) from the Congress, 13 (81 percent) from the JDU, 10 (43 percent) from the DMK and nine (41 percent) from the TMC, the Association for Democratic Reforms (ADR) said.

Religion

- In terms of religious composition, 90.4 percent of the MPs of the new Lok Sabha are Hindus. There are five more Muslims elected than in 2014, which brings Muslims' representation to 5.2 percent (from 4.2 percent). Other religious minorities, such as Sikhs and Christians, represent 4 percent of the MPs.

Caste

- In terms of caste, the composition of the 17th Lok Sabha is practically identical to the 16th. 155 of the 542 elected Parliamentarians, or 28.6 percent, are upper caste Hindus, the same number as in 2014.
- The number of parliamentarians from intermediary castes has reduced from 83 to 77 i.e. 14.2 percent of the parliament.

Party-wise professions: Comparing BJP & INC Winners

Looking at the professions filed by the 303 BJP winners in their self-declared affidavits, we find that most of the winners have declared some form of agriculture as their primary professions, while a smaller share of Indian National Congress's (INC) elected MPs have declared the same.

Parliamentary Sovereignty

The idea of parliamentary sovereignty implies that the parliament has the supreme power and thus can make any kind of changes in the functioning of the state of government. Despite adopting the idea of parliamentary system from the British, the Indian constitution makers made sure to tailor it as per the needs and demands of Indian society. Thus India chose not to have a supreme parliament rather adopted the idea of constitutional supremacy. Following aspect explain why and how India does not uphold the idea of parliamentary sovereignty -

- (i) **Nature of constitution:** Unlike the Unwritten constitution of the British, the written constitution of India makes sure that the powers of the government are pre-decided and thus the chances of going beyond these limits are restricted.
- (ii) **Nature of Polity:** The Indian constitution prescribed for a federal system unlike the British Unitary system. Thus the division of power between the union and the states makes sure to prevent concentration of power in the parliament.
- (iii) **Amending power:** Article - 368(2) provides that for certain cases where the constitution is to be amended it is necessary to have it ratified by at least half of the states. This is different from the British system where the well-established principles of constitution can be changed without much effort.
- (iv) **Judiciary:** The independent Judiciary system of India makes sure to prevent parliamentary supremacy. It has the power to declare any legislation made by the parliament as 'ultra vires' under article - 13(2). Moreover the doctrine of basic structure of constitution also adds power to the judiciary system to be able to prevent unconstitutional legislations.
- (v) **Republic:** unlike the British system where the head of the state is a monarch and thus has no real tools to go against parliament. The Indian system is democratic Republic and thus the head of the state that is the president is given powers such as the Veto power to take actions which do not necessarily go along with the parliament decisions, for example the former president Zail Singh used his pocket Veto power to prevent Indian post office amendment act from being adopted.

The Debate of decline of Parliament

The term decline of parliament has come into use in the recent times in the context that the quality of parliamentary session, the contribution of parliament members, the nature of debates and discussions in the parliament, behavior of both the government and the opposition, the individual behavior of the members in the parliament and many such aspects which defined the parliamentary system have been deteriorating. Thus the critics point out that there has been a decline in the functioning of the parliament.

While on the other hand scholars like Shankar and Rodgriues point out that considering the changes in social profile of the parliamentarians we can say that the parliament has improved rather than decline. They point out the growing representation from the backward classes of the Indian society in the parliament. Growing number of representatives from agriculture backgrounds, etc. explains that the parliament has become more inclusive and representative. Thus the question of decline does not rise.

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