

CONSTITUTION OF INDIA

Unit Structure:

- 1.1 Introduction
- 1.2 History of Indian Constitution
- 1.3 Role of the Constituent Assembly
- 1.4 Objective Resolution
- 1.5 Members of the Drafting Committee
- 1.6 Importance of Constitution
- 1.7 Preamble to the Indian Constitution
- 1.8 Philosophy and Ideals Mentioned in the Preamble
- 1.9 Importance and Significance
- 1.10 Salient Features of Indian Constitution

1.1 INTRODUCTION:

In a democratic system the power of ruling the people is in the hands of the government whom the citizens have voted. Constitution is a book of Role of Law where all citizens are given equal rights and duties to fulfill. It is a mirror which shows the rulers of the democratic how to rule govern administer control and dominate its people.

1.2 HISTORY OF INDIAN CONSTITUTION:

After the victory of the freedom struggle that Indians won from the British rulers Indian leaders were posed with the biggest challenge how and what will be source the of law in India. Laws in India was already introduces by the Britisher's in India in various form. Our learned leaders Mahatma Gandhi Dr Bhimrao Ambedkar Jawaharlal Nehru and others had travelled the world for the educational purpose around the globe and were well versed with the various world systems across. The knowledge of French |Revolution American Revolution struggle of Africa for the equal rights of its citizens gave a new path for our Indian leader's to ponder upon.

1.3 ROLE OF THE CONSTITUENT ASSEMBLY

The British government passed the Independence of India Act 1946 which is also known as the 'Cabinet Mission'. It provided for appointment of a elected members from Provincial Legislative Assembly for the constituent assembly to make the constitution. It met for the first time on 9th December, 1946 and elected the senior most members Dr. Sachchidanand Sinha as its pro- tem chairman. Latter Dr. Rajendra Prasad was elected as full time President and H. C. Mukherjee as the Vice- President of constituent assembly. Originally, it consisted of 389 members, including 93 from princely states and 296 from British India. After partition, the members from Pakistan regions have left the assembly, hence it was reorganized.

1.3.1 The main functions of the Constituent Assembly were as follows:

- a. Framing the Constitution
- b. Enacted laws and involved in the decision making process.
- c. It adopted the national flag on 22nd July, 1947
- d. It accepted and approved India's membership of the British Commonwealth in May, 1949.
- e. It adopted National anthem on 24th January, 1950.

The Constituent Assembly was sub divided into many committees to stir the task of making of the constitution. They were as follows:

- I. Constitution Making Union Powers Committee.
- II. Union Constitution Committee
- III. Provincial Constitution Committee
- IV. Drafting Committee
- V. Advisory Committee on Fundamental rights and minorities
- VI. Rules of procedure committee
- VII. Steering Committee

Among above eight major committees, Drafting Committee headed by Dr. B. R. Ambedkar was most significant, which drafted the constitution. It consisted of seven members namely B.R.Ambedkar, Alladi Krishnaswami Ayyar, N.Gopalswami Ayyangar, K.M. Munshi, Mohammad Saadulla, B.L.Mitter and D.P.Khaitan. The Drafting committee elected B .R .Ambedkar as its Chairman.

1.4 OBJECTIVE RESOLUTION

The objective resolution was moved on December, 13, 1946 by Pandit Jawaharlal Nehru. It provided the philosophy and guiding principles for framing the constitution. Later on it became the part of Preamble. The resolution was unanimously adopted by the

Constituent Assembly on 22nd January, 1947. It declared India to be a sovereign and democratic republic, which would ensure complete justice, equality, fraternity and liberty to its citizens.

1.5 MEMBERS OF THE DRAFTING COMMITTEE:

The constituent assembly appointed a committee known as Drafting committee consisting of seven members namely Alladi Krishnaswami Ayyar, N.Gopalswami Ayyangar, B.R.Ambedkar ,K.M. Munshi ,Mohammad Saadulla , B.L.Mitter and D.P.Khaitan. The Drafting committee elected B .R .Ambedkar as its Chairman.

1.6 IMPORTANCE OF CONSTITUTION:

The constitution is the most important aspect for a country because it protects individual freedom and its fundamental principles governs any Democratic country. The role of Constitution is to place the governments power in the hands of the citizen's .It limit's the power of the government and establishes a system of checks and balances. In a Democratic country the rights and duties are in the hands of irs governing authority that is the government whom the citizens have elected. Constitution lays down the limits and restrictions on the power which can be used against the citizen of its own.

Dr. Bhimrao Ambedkar who is very rightly known as The Chief Architect of the Indian Constitution. Dr Ambedkar with his immense Excellency and great contribution towards the study of various constitution's of the world. Dr Babasaheb Ambedkar always fought for equal rights for all the communities. He was aman of caliber foresightedness and of good courage. He made a deep study of various constitution of the world and his approach was very social towards the framing of the Indian constitution. He was very critical about the various social evil that prevailed in the Indian society. He had a vision for India to be a place for all and everyone without discriminating on the basis of caste gender religion or any other diversification.

1.7 PREAMBLE TO THE INDIAN CONSTITUTION:

Every constitution has a philosophy and ideals of its own. It is a general practice to express those in a compact introductory note of selective chosen words known as the preamble .The spirit and ideals for which the constitution stands are succinctly crystallized in the preamble. in this sense the preamble is the declaration of ideals and objectives underlying the constitution .The preamble is the soul of the constitution, yet legally speaking it is

not a part of the constitution To have a look in the underlying philosophy of the constitution is the Preamble is indispensable. The philosophy and the ideals which the constitution has, if India solemnly resolves to achieve has been set very beautifully and in a poetic language in the Preamble.

1.8 PHILOSOPHY AND IDEALS MENTIONED IN THE PREAMBLE:

The ideals mentioned in the preamble express the philosophy of the constitution of India .The aims objectives spirit and the ideology for which the constitution stands finds expression in the preamble .The philosophy underlying the constitution of India as appeared has its source in the historical objective resolution moved by Jawaharlal Nehru in the constituent assembly on 22 January 1947.

The preamble the most vital part of our constitution begins as follows:

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

JUSTICE, social, economic, and political;

LIBERTY of thought expression, belief, faith and worship;

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

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

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

1.9 IMPORTANCE AND SIGNIFICANCE:

Even though the preamble is extra-legal and it cannot be enforced in a court of law, yet the preamble is the most important and significant aspect of the constitution for the reasons below:

1. The preamble is a commitment, a pledge and an undertaking that assures a rebirth of India.
2. It serves as a key to the constitution. Whenever a particular provision appears to be ambiguous the preamble is consulted so that the said provision can be explained in the light of the preamble.

3. It acts as a guiding star in the interpretation of the Constitution.
4. The Preamble specifically states the moral basis and the sources of the constitution.
5. It resolves about the nature of the Republic that the constitution seeks to establish.

1.10 SALIENT FEATURES OF INDIAN CONSTITUTION:

The constitution of India was adopted in the constituent assembly on 26th November 1949. The constitution came in to force from 26th January 1950. Many aspects from various other countries constitution was included to suit our prevailing situation in India. That is why we can say that our constitution is equipped with choicest features of other constitution. A note can be made that since the adoption of the Indian constitution several changes in the form of amendments have been made with the proper procedure followed by the Parliamentarians.

Following are various features of the Indian constitution:

1. Considered to be the lengthiest constitution of the world:

The most important feature of our Indian constitution is that it is very vast. In the entire world Indian constitution is the lengthiest and written constitution of the world. As compared to American constitution Indian constitution is considered to be longest written constitution which consists of American constitution which has 7 articles, 24 sub-articles and about 7000 words only. The Indian constitution even after so many amendments contains 395 articles, innumerable sub-articles and 12 schedules.

2. A written constitution:

Indian constitution is considered as the written constitution. It is impossible and not practical that no constitution can be totally written in a single document. We can partially say that Indian constitution mostly written in character; but not written in totality. For example the British constitutional practices with respect to parliamentary system are in vogue in India, though not written down in the constitution. Therefore Indian constitution occupies a prominent place in the category of written constitution.

3. Parliamentary system of Government:

The Indian constitution has the provision for a Parliamentary or Cabinet system of government with all its features. The Indian constitution follows similar pattern of cabinet system which Britisher's also follow. The cabinet system provides an elected President as the head in place of a hereditary king or queen.

Following are various characteristics for the parliamentary system in India:

- I] cabinet is collectively responsible to parliament which is supreme;
- II] Parliament makes laws and grants money to the government; imposes taxes and determines administrative policies;
- III] The president is the constitutional head, but the cabinet is responsible to parliament holds the real power;
- IV] There is a very close relation between parliament and cabinet.

4. Federal Structure:

There is a provision in the Indian constitution for a federal structure. We have a dual polity a government at the Centre and one for each of federated state. There is a clear cut division of the power between state and the Union governments has been made by providing three lists in the constitution-

I] Union list ii] State list iii] Concurrent list.

Subjects over these lists shall be enjoyed by the Union, the States and by both the governments respectively. Subjects which are not included in any of the three lists are dealt with by the Union government. Though India is federal in structure, it takes a quasi-federal shape due to the existence of several unitary features in the constitution.

5. Sovereign socialist secular Democratic Republic:

The preamble to the constitution resolved to constitute India is an Independent and Sovereign state. it is republic in the sense that the country is ruled not by an king or queen but is ruled by the elected representative of the people for a definite fixed term. The term socialism stands for democratic socialism and a welfare state. India very strongly affirms Secularism by guaranteeing freedom of conscience and free profession, practice and propagation of religion to all.

6. Directive Principles of state policies:

Incorporation of directive principles in the constitution is a salient feature of our constitution. It is the duty of the state to follow these principles both in the matter of administration and in making laws. These principles embody the objectives which the state should pursue in the governance of the state. The directive principles contain certain economic and social rights which are, however not justifiable in the court of law.

7. Fundamental rights:

Fundamental rights play the most vital role in a citizen's life of a country. Fundamental rights are into 6 categories' namely right to equality and individual liberty. These rights also ensure right to

religion, rights against exploitations, cultural and educational rights and right to constitutional remedies. The fundamental rights in India are however conspicuous by the absence of any economic rights.

8. Single citizen:

The constitution of India recognizes uni-citizenship. It means that India though being federal provides for single citizenship of the state to which a person belongs. In India there is no dual citizenship. We are all citizens of India.

9. Partly rigid and flexible:

It is observed that written constitutions are mostly rigid in form. Indian constitution seems to be rigid because of being written but in real it is not rigid it is flexible at the same time. Generally there are three methods which are followed for making any amendments in the constitution.

First method is in some cases amendments are made by simple majority by the Union parliament.

Second method in certain cases a two-thirds majority of the present and voting members of the Union Parliament is necessary.

Third method in some other cases the consent of at least half of the federated states are needed together a two-thirds majority of the present and voting members of Parliament.

10. Secularism:

Constitution of India declares India as a secular state. In India we do not have a state-religion and the state observes neutrality towards all religions. The state does not patronize any particular any particular religion. In India the people of different religions are treated equally by the state and they are equal in the eye of law.

11. Interests of minorities are safeguarded:

Though India follows Secularism with the whole heart but it protects the rights of several backwards castes and tribes and the backward minorities which lag behind in social and economic development. It has been observed that no other constitution other than India has safeguarded the interests of the minorities.

12. Contains emergency provision:

Constitution of India provides elaborated provision for tackling the challenges of external aggression or armed rebellion (art.352), failure of constitutional machinery in states (art.356), and financial disorder (art.360). The Indian constitution has embedded the President power to proclaim emergency under the above three

heads. Emergency provision is a special feature of the Constitution of India.

13. Language Provisions in the Constitution:

India being a multi-lingual state language poses a special problem to the makers of our Constitution. In India there are approximately more than 1018 spoken languages, including 63 non-Indian languages. Language is a very sensitive issue and hence it is needed that the problem of language should be solved peacefully. The problem of language is the complicated issue due to which Indian constitution incorporates a chapter providing the provisions for languages.

14. Supremacy of the Constitution:

Indian Constitution is considered as the supreme authority of the Law of the Land for India. The best example was when the Supreme Court held in the *Golak Nath Vs the State of Punjab*, 1967 and in *Minerva Mills Vs Union of India*, 1980 that there was certain basic features of the Constitution which could not be taken away or altered.

15. Separate Constitution for Jammu and Kashmir:

In India we have only one Constitution in which it incorporates the constitutional systems of both Union and the States. The only exceptional case is Jammu and Kashmir. Under Article 370 of the constitution of India the state of Jammu and Kashmir has a constitution of its own dealing with only the internal constitutional aspects of the state of Jammu and Kashmir. This special arrangement for Jammu and Kashmir was made under historical compulsion.

16. A Borrowed Constitution:

The Unique Feature of Indian constitution is that it is based on borrowed material. Our fundamental rights largely follow's the USA model; and the Directive principles of state policy are on the lines of the provision of the constitution of the Republic of Ireland. Along with all this most of our provisions are borrowed from the British made Government of India Act, 1935. We have also adopted British system of Administration and Bureaucracy, British Parliamentary Practice etc. Therefore it is said that our constitution is part of British heritage and Legacy.

Questions for Practice:

1. Explain the role of British laws in making of Indian constitution.
2. Describe the objective resolution and preamble.
3. What are the salient features of the Indian constitution?

References :

1. Utpal Roy, Introduction to Political Science, Calcutta Book House, 2011.
2. B.K. Gokhale, Political Science, Himalaya Publishing House, 2008.
3. M. Laxmikanth, India Polity, 5th Edition.



CITIZEN AND CONSTITUTION

Unit Structure

2.1 Introduction:

2.2 Philosophy and Ideals Mentioned in the Preamble

2.3 Rights and Duties

2.4 Directive principal of State policy

2.1 INTRODUCTION:

In a democratic system the power of ruling the people is in the hands of the government whom the citizens have voted. Constitution is a book of Role of Law where all citizens are given equal rights and duties to fulfil. It is a mirror which shows the rulers of the democratic how to rule govern administer control and dominate its people

2.2 PHILOSOPHY AND IDEALS MENTIONED IN THE PREAMBLE:

The ideals mentioned in the preamble express the philosophy of the constitution of India .The aims objectives spirit and the ideology for which the constitution stands finds expression in the preamble .The philosophy underlying the constitution of India as appeared has its source in the historical objective resolution moved by Jawaharlal Nehru in the constituent assembly on 22 January 1947.

The preamble the most vital part of our constitution begins as follows:

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

JUSTICE, social, economic, and political;

LIBERTY of thought expression, belief, faith and worship;

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

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

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

Citizenship is the status of a person recognised under the law as being a member of the state.

However, the citizenship Act of 1955 and its amendments deal with acquisition and termination of citizenship. Moreover, the Constitution has also provided citizenship rights for overseas citizen of India, Non-resident and persons of Indian Origin. The term citizenship refers to the enjoyment of full membership of any community or state in which a citizen; enjoys civil and political rights. It can be defined as a legal relationship of an individual with a particular state which is expressed by pledging his loyalty towards state and by carrying out duties like paying taxes, serving in the army during need, respecting national principles and values etc.

2.3 RIGHTS AND DUTIES:

Every state is known by the rights it maintains. Rights are those conditions of social life which are essential for the development of human personality and help man to be the best of himself. This is the end of every state. It is therefore, by maintaining rights that the state can serve the purpose for which it came into existence and continues to exist. Rights may accordingly on the words of Laski, be defined as claims recognised and if necessary enforced by the state.

Rights arise from the social nature of man. It is the recognition of common objective, good life by all. Good life is the essence of rights. It is in this context that Laski defines rights as those conditions of social life without which no man seeks, in general, to be himself at his best. If there is no society there can be no rights. The state thus recognises, maintains and co-ordinates rights of its citizens. It is the function of the state to see that everyone enjoys his rights equally and along with others.

The state in modern world believes and promotes various rights to its citizen to create faith.

Following are certain rights which are given to the citizens of a country:

1. **Civil rights:** Civil rights concern the life and property of individuals. Civil rights are generally regarded as fundamental

because they constitute elementary conditions of social life. Without them civilised life is not possible and man does not get sufficient scope for the enrichment of his life. They consist in the right to life and property the right to contract the right to worship and religion the right to speech opinion and assembly. In a democratic State civil rights are duly safeguarded against any possibility of encroachment either by government or by individuals.

2. **Political Rights:** The following are some of the political rights provided by the state to its citizen:

i] The right to vote:

Every citizen in a democratic country possesses the right to vote. This right he exercises by casting his vote at the time of election. But this right is not granted to all citizens residing in a state. Aliens and certain criminals are devoid of the right to vote.

ii] The right to be elected:

Every adult has got the right to be elected in a democratic country. He can be the representative of the people in the Parliament.

3. The right of Public office:

All the citizens will be provided with equal opportunity in the matter of employment. No distinction shall be made on the grounds of race, caste, sex, place of birth or religion, etc.

Following are certain freedom in a democratic country to its people:

1. The right to criticise the government:

For a healthy democracy the people must enjoy the right to criticise the government. A part from the ruling party opposition is the strongest weapon of a democratic government where people who are elected through democratic process have all the right to question the governments various policies.

2. Various theories of Rights:

Rights have always been part of any civilised society in any part of the world. In fact social contract theory is also one of the promulgator of the rights and duties of the individuals in a society. Social contract theory itself is based on give and take policy where the people or the society surrender certain rights to a group of people and in return it's the authority or group of people in authority promise to protect them and their various rights in return. The various theories of rights emphasize on right to life right to liberty and right to property. All these rights are also an important part of our fundamental right.

Let's examine what are various qualities of an Ideal Citizen:

Self control:

A good citizen is one who always controls his emotions and passion. He has to keep in mind that along with him and his family there are members in the society who also occupy a certain piece of land temporarily or permanent resident without differentiating on the basis of caste creed gender language colour.

Sincere performance of Duties:

A good and ideal citizen is one who is devoted to his duties. Whatsoever duties are assigned to him he should perform them faithfully and not with the idea of avoiding them in anyway. If he fails to perform his duties honestly he shall be doing injustice to his State.

Public service Spirit:

A good citizen is one who works with the public service spirit. He should not consider himself alone but view the nation as a whole. His education and wisdom can only be of national unity when that is used, with that end in view. If there is no spirit for public service in an individual he cannot claim himself to be a good citizen.

Demand of Rights:

Along with performing his duties a good citizen is the one who is also aware of his rights along with his duties. He suppose to remind the government if Government become or uses arbitrary power against its citizens.

Right use of Office:

A citizen who possesses a good and authoritative office due to his qualification and calibre must not make it an office of profit rather render service to his fellowmen. He is being given this right to use his power and authority for benefit of other citizen

FUNDAMENTAL RIGHTS:

Fundamental rights are the rights granted by the Constitution as special protection to the citizens of the country. Governments which are democratic are bound to ensure that fundamental rights are not denied to its citizens. Fundamental rights are those rights which are important for intellectual, moral and spiritual development of individuals. As these rights are fundamental or essential for existence and all round development of individuals, hence called as Fundamental Rights. These are enshrined in Part iii [Articles 12 to 35] of the Constitution of India. These includes individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, religious and cultural

freedom, peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus, mandamus, prohibition, certiorari and quo warranto.

Fundamentals rights apply universally to all citizens, irrespective of race, birth place, religion, caste or gender. The Indian Penal Code [IPC] and other laws prescribe punishments for the violation of these rights, subject to the discretion of the judiciary. Though the rights conferred by the constitution other than fundamental rights are also valid rights protected by the judiciary, in case of fundamental rights violations, the Supreme Court of India can be approached directly for ultimate justice as per article 32. The Rights have their origins in many sources, including England's bill of rights, the United States Bill of Rights and Frances Declaration of the Rights of Man. There are six fundamental rights recognised by the Indian constitution:

RIGHTS TO EQUALITY Articles 14 -18

RIGHT TO FREEDOM Article 19-22

RIGHT AGAINST EXPLOITATION Article 23-24

RIGHT TO FREEDOM OF RELIGION Article 25-28

CONSTITUTIONAL & EDUCATIONAL RIGHTS Article 29-30

RIGHT TO CONSTITUTIONAL REMEDIES Article 32-35

Following are the features and Characteristics of Fundamental Rights:

1. The Fundamental rights are not absolute. They are subject to reasonable restrictions. They strike a balance between individual liberty and social Security. But the reasonable restrictions are subject to Judicial review.
2. All the Fundamental Rights can be suspended except the fundamental rights guaranteed under article 20 and 21.
3. Right to freedom is automatically suspended during Emergency. Some of the Fundamental rights are of the Indian citizens only, but some can be enjoyed by both citizens and aliens.
4. Fundamental Rights can be amended but they cannot be abrogated. The abrogation of Fundamental Rights will violate the basic structure of the Constitution.
5. Fundamental Rights are both positive and negative. The negative rights prevent the state from making discrimination.
6. Some Fundamental rights are available against the state. Some rights are available against individuals.

7. Some Fundamental Rights may not be available to personnel serving in the defence forces. They cannot enjoy all the fundamental rights.
8. The fundamental rights are social and political in character. No economic rights have been guaranteed to the Citizens of India, although without them the other rights are of little or of no significance.

RIGHT TO EQUALITY Article 14-18:

The right to equality includes equality before the law, the prohibition of discrimination on grounds of religion race caste gender or place of birth equality of opportunity in matters of employment the abolition of untouchability and abolition of titles. It is the right of every citizen to be treated equal in the eyes of law without considering the social financial status. Nobody should be differentiated on the basis of male and female when the Law treats everyone equal no body no governing authority nor can any power or position make changes in the treatment.

RIGHT TO FREEDOM Article 19-22:

The right of freedom includes freedom of speech and expression assembly association or union or cooperatives movement residence and right to practice any profession or occupation. This right gives its citizen to move freely in any part of India without any restriction or hurdle. It also ensures that people can also opt for any occupation of their choice if they possess the Qualification for the same which is required. Also people can shift anywhere for their profession or occupation in any state of their choice within the boundaries of India. The most important right is speech which enables its citizens to speak for and against the policies framed by the parliamentarians for its people. The human emotions can be well articulated through their expression could be anger happiness sadness or may be aggression. It gives a confidence to then people saying that their opinions also matter in the administration. Human being is a social animal is being cited by many philosopher's and social scientist in fact forming associations based on various aspects of choice likes thinking or any other aspect is correctly protected in this right.

RIGHT AGAINST EXPLOITATION Article .23-24:

The right against exploitation prohibits all forms of forced labour, child labour and trafficking of human beings. This right also protects the rights of female's labours who were paid less wages than males even though their kind of work and working hours were same. Females are the easiest targets for a male dominant society for exploitation. They are the one who are considered as the

weakest section of the society. There are so many cases against in regard to sexual harassment at work place on women. Favours over time promotion increment are some of the reasons where females become easy targets for the Capitalist or owners of manufacturing units, seniors, managers and co-workers as well. Such right protects the females from all such exploitation.

RIGHT TO FREEDOM OF RELIGION Article. 25-28:

The right to freedom of religion includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes. Right to religion is the most important freedom and liberty as religion is the soul of every Indian. Every individual has the right to select the religion of his own choice follow beliefs and practice. Here comes the basic right of every citizen that he or should be given freedom to select his or her belief or stay away from any religious practice which is known as [atheist] forcing an individual to follow practices hampers the right to freedom of religion.

CULTURAL AND EDUCATIONAL RIGHTS Articles .29-30:

Cultural and educational rights preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational Institutions of their choice. India is a diverse country with number of culture language food pattern dressing sense because of which it ads variety to our day today life. Every culture is unique in itself and all cultures are highly rich it could be celebrating festivals beliefs [not regarding anything related to superstition]. Dialect which is language the most important aspect by which human beings connect with each other. Every region every state has its own different language and medium of communication. According to the State authority every child who is lives in India has right to free and compulsory education. It means that a child who is with the age gap of 6 to 14 is entitled to get free and compulsory education in every government run schools which is basically primary and secondary education. No one should be rejected on the basis of gender caste creed language colour or race.

RIGHT TO CONSTITUTIONAL REMEDIES. Article.32-35:

The right to Constitutional Remedies is present for enforcement of fundamental rights. This right to privacy is an intrinsic part of Article 21 [The right to Freedom] that protects the life and liberty of the citizens. Every citizen is entitled to such a provision where a citizen has the right to get solutions to his problems. It is one of the most important fundamental right to possess constitutional remedies.

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchabilities and thus prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour [a crime]. They also protect cultural and educational rights of religious and linguistic minorities by allowing them to preserve their language's and also establish and administer their own education institutions. They are covered in Part III [Articles 12 to 35] of the Indian Constitution.

FUNDAMENTAL DUTIES:

Along with fundamental rights come fundamental duties. It plays a very important role in the proper functioning of the government where the government provides certain rights to its people and citizens follow certain duties in return. The concept of Political Obligation is very much directly related to duties. The constitution (Forty second) amendment Act, 1976, broke new grounds by introducing the innovative concept of Fundamental Duties of the Indian citizens in the Constitution. For this purpose, a new part iv A consisting of Article 51 A has been added to the constitution.

Following are various Fundamental duties:

1. To abide by the constitution and respect its ideal and institutions;
2. To cherish and follow the noble ideals which inspired our national struggle;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities,
6. To renounce practices derogatory to dignity of women,
7. To value and preserve the rich heritage of our composite culture;
8. To protect and improve the natural environment including forests, lakes, rivers, and wild-life and to have compassion for living creatures;
9. To develop the scientific temper, humanism and the spirit of inquiry and reform;
10. To safeguard public property and to abjure violence;

11. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

The importance of the fundamental duties is as follows:

1. The Fundamental Duties are non-controversial in nature:

Politicians of different views agree on the utility and importance of Fundamental Duties. They are in the best interest of the country and awaken patriotism among the citizens.

2. The Fundamental Duties create consciousness among the people:

The fulfilment of the fundamental duties is voluntary and not compulsory. They will slowly awaken the conscience of the people to do their duties.

3. The Fundamental Duties are the ideals and the guidelines for the individual:

These rights are ideal in nature and lead the citizen in the right direction. The environment of selfishness is rampant in the country. There is no balance between the interests of the society and individual. This tendency is eroding the society. Fundamental duties would serve as an ideal behaviour to all of them.

A citizen of India is entitled with many rights privilege's benefits and so on but the most important part lies with his duties. Duties are the heart of citizen of any country as when the State provides various rights it also expects certain duties to be performed by the society and its people.

2.4 DIRECTIVE PRINCIPLES OF STATE POLICY:

INTRODUCTION:

Inspired by the Constitution of Ireland, the Directive Principles contain the very basic philosophy of the Constitution of India, and that is the overall development of the nation through guidelines related to social justice, economic welfare, foreign policy, and legal and administrative matters. The Directive Principles are codified versions of democratic socialist order as conceived by Nehru with an admixture of Gandhian thought.

However, the Directive Principles cannot be enforced in a court of law and the State cannot be sued for non-compliance of the same. This indeed makes the Directive Principles a very

interesting and enchanting part of the Constitution because while it does stand for the ideals of the nation, these ideals have not been made mandatory.

These lay down that the State shall strive to promote the welfare of people by securing and protecting as effectively as it may, a social order, in which justice-social, economic and political-shall form in all institutions of national life. The directive principles are not enforceable in court it plays an important role in development and progress of nation and society. Directive Principles of State Policy and Fundamental Rights under Indian Constitution provides concrete base for social and economic justice in India.

Importance of Directive Principles of State Policy:

Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. They aim at achieving social and economic democracy for establishing a welfare state. Directive Principles are classified under the following categories: Gandhian, economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments and peace and security.

The Constitution lays down certain Directive Principles of State Policy, which though not justifiable, are 'fundamental in governance of the country', and it is the duty of the State to apply these principles in making laws.

Fundamental Rights are justifiable, as they can be enforced, whereas the directive principles are non-justifiable, in that, they are not enforceable in the court of law. While fundamental rights establish political democracy, directive principles set social and economic democracy.

The vision of the five National Goals and Directive Principles compelled post-independence governments to deliver social, economic and political development with consideration to equality, economic self-reliance, national sovereignty and protection of the natural environment.

Types of Directive Principles or Division of Directive principles:

Socialist Directives:

This part contains the directives for securing the welfare of the people of India, equal distribution of the material resources of the country protection of the fundamental rights of the children and youth, equal pay for equal work, education etc.

Gandhian Directives:

Under these directives are the guidelines for organising village panchayat, prohibition of intoxicating drinks and cow slaughter, secure living wage, decent standard of life, and to promote cottage industries, to provide free and compulsory education to all the children up to 14 years of age.

Liberal Intellectual Directives: In this section there are guidelines for uniform civil code throughout the country and the legislatures to follow in issuing orders or making laws

There are a total of **21** DPSPs in the Indian Constitution.

1. An article 36 & 37 doesn't contain any directive but deal with the definition of State and significance of directive principles respectively.
2. Articles 38 to 51 actually contain the DPSPs. And then the following directives under Articles- 39A, 43A, 43B and 48A- are added by various constitutional amendments. So a total of **18** DPSPs are in Part IV of the Indian Constitution. These are divided into three broad categories: Socialistic Principles, Gandhian Principles and Liberal-Intellectual Principles.
3. **3** DPSPs are outside Part IV of the Constitution. They are contained in Articles 335, 350A and 351.

APPLICABILITY:

Directive Principles of State Policy are the guidelines or principles given to the federal institutes governing the state of India, to be kept in citation while framing laws and policies. These provisions are the Fundamental for the governance of the country and are not enforced by any court. They can be amended by Special Majority. The Rights have legal sanctions and the principles ensure moral and political sanctions. The Rights tend to secure welfare of the individual while welfare of the community is promoted by the principles. Almost all the Rights are directly enforceable but separate legislation is required for implementing the principles.

In a nutshell, the Directive Principles consist of the following guidelines for the States: The State should strive to promote the welfare of the people. Maintain social order through social, economic and political justice. The State should strive towards removing economic inequality.

Inspired by the constitution of Ireland the Directive principles contain the very basic philosophy of the constitution of India and that is the overall development of the nation through guidelines

related to social justice economic welfare foreign policy and legal administrative matters. The Directive principles are codified versions of democratic socialist order as conceived by Nehru with a combination of Gandhian thought.

Features:

In short the directive principles consist of the following guidelines for the states:

- The state should strive to promote the welfare of the people
- Maintain social order through social economic and political justice
- The state should strive towards removing economic inequality
- Removal of inequality in status and opportunities
- To secure adequate means of livelihood for the citizens
- Equal opportunity for both men and women
- Prevention of child abuse
- Ensure proper working conditions and a living wage
- Assistance to the needy including the unemployed sick disabled and old people
- The state should endeavour towards a uniform civil code for all the citizens of India

Conclusion:

However the Directive principles cannot be enforced in a court of law and the state cannot be sued for not fulfilling the guidelines. This indeed makes the Directive principles a very interesting and enchanting part of the Constitution because while it does stand for the ideals of the nation these ideals have not been made mandatory.

References:

1. Durga Das Basu: An Introduction to the Constitution of India.
2. P.M. Bakshi: Constitution of India



THE LEGISLATURE AND JUDICIARY

Unit Structure

- 3.1 Objectives
- 3.2 Introduction
- 3.3 The Union Legislature
- 3.4 The Lok Sabha

3.1 OBJECTIVES:

The objective of this Unit is to make the students understand the Union Legislature of India that is the Parliament of India consisting of the two houses the Lok Sabha and the Rajya Sabha. It becomes important to understand these topics as it is in the Parliament that the laws are formulated for the entire country. The unit tries to make the students aware about the basic organization, functions, presiding officers of both the houses.

3.2 INTRODUCTION.

The term legislature can be defined as the organized body having the authority to make laws for a political unit. India has both Union as well as State legislatures. The Parliament of India is the legislative branch of the Indian Government. There exists two models of legislature – the Parliamentary form of government and the Presidential form of government. India after Independence has adopted the Parliamentary form of government, which is also described as the 'Westminster' model of government.

3.3 THE UNION LEGISLATURE

The Indian Parliament according to the article 79 consists of:

- a. The President.
- b. The Lok Sabha or the House of People
- c. The Rajya Sabha or the Council of States.

1) THE RAJYA SABHA/ COUNCIL OF STATES.

1.1 - Composition of the Rajya Sabha.

The Rajya Sabha also known as the Council of States is the Upper house of the Indian Parliament. The Constitution of India has

fixed the maximum membership of Rajya Sabha at 250. Out of 250 members, 238 members are elected indirectly from the states and the Union territories of India. The elections to the Rajya Sabha are indirect in nature as the members of the various state legislative assemblies elect the members on the basis of proportional representation by means of single transferrable vote system. The seats to various states are allotted on the basis of population and hence they vary from state to state. For instance, Uttar Pradesh sends 31 members to the Rajya Sabha while Maharashtra sends 19. However, out of the seven Union territories of India only two i.e. Delhi and Puducherry have representation as the other union territories have little population to receive nomination. The President nominated 12 members who have special knowledge or practical experience in various fields like art, literature, science and social service.

1.2 - Duration.

The Rajya Sabha is a permanent body and hence it cannot be dissolved. One-third of the members of the Rajya Sabha retire every second year. Fresh elections are conducted for the vacant seats and the presidential nominations take place at the beginning of every third year. The retiring members can be re-elected or re-nominated for any number of times. The Representation of People's Act of 1951 has provided that the term of office of a member of the Rajya Sabha shall be for six years.

1.3 -Qualifications of the Members of Rajya Sabha.

1. He/ She should be a citizen of India.
2. He/ She must not be less than 30 years of age.
3. He / She must subscribe and oath or affirmation stating to bear true faith and allegiance to the Constitution of India and uphold the sovereignty and integrity of India.
4. He/ She must possess other qualifications as prescribed the Parliament from time to time.

1.4 Disqualifications of the members of the Rajya Sabha.

According to the Constitution, a person can be disqualified as an elected member if:

1. If he/ she hold any office of profit under the Union or state government.
2. If he/ she is of unsound mind and is so declared by the court.
3. If he/ she is not a Indian citizen and if he/ she has acquired the citizenship of the foreign state.
4. If he/she is so disqualified under any law made by the Parliament of India.

1.5 Rajya Sabha – Officials.

The Vice President of India is the presiding officer of the ex-officio chairman of the Rajya Sabha. The Deputy Chairman of the Rajya Sabha is elected from amongst the members of the Rajya Sabha and discharges the duties in the absence of the Chairman.

The Chairman of the Rajya Sabha can be removed from his office only if he/ she is removed as the Vice President of India. In case of any periods, when the Vice President is required to act as the President, he/ she refrain from performing the duties of the Chairman of the Rajya Sabha. The Chairman is not the member of the Rajya Sabha. He/ She however can cast a vote in case of a tie.

The Deputy Chairman of the Rajya Sabha is elected by the members of Rajya Sabha from amongst themselves. He/ She performs the duties or the functions of the Chairman when the office falls vacant or in case or absence or if the Chairman is required to act as the President.

1.6 :Special Powers of the Rajya Sabha.

The Rajya Sabha has been accorded special powers by the Constitution that is not enjoyed by the Lok Sabha.

1. According to article 249, the Rajya Sabha can authorize the Parliament to make a law on the subject enumerated in the state list.
2. According to article 312, the Rajya Sabha can authorize the Parliament to create a law relating to the All India Services.

CHECK YOUR PROGRESS

Q. Explain in detail the Upper house of the Indian Parliament?

3.4 THE LOK SABHA.

1 Composition of the Lok Sabha/ House of People.

The Lok Sabha is the lower house of the Union legislature of India. The maximum strength of the Lok Sabha is 552 members out of which 530 members are elected by the states while 20 members are elected from the Union territories, and the rest 02 members are nominated by the President from the Anglo- Indian Community. The representatives from the states are directly elected by the people on the basis of Universal Adult Franchise. According to the Union territories (Direct Election to the House of People) Act 1965, the members to the Lok Sabha are chosen directly by the people.

2. Duration

The lok sabha is not a continuing chamber. The normal term of the lok sabha is for five years from the date of its first meeting after the general elections. The president is authorized to dissolve the Lok Sabha any time. The term of the lok sabha can be extended during the period of emergency for one year at a time. However, the extension can't continue after six months after the emergency has ceased to operate.

3 Territorial Constituencies.

For the purpose of conducting direct elections to the Lok Sabha the country is divided into territorial constituencies. For this each state is allotted seats on the basis of its population. For instance, Uttar Pradesh a highly populated state sends 80 members to the Lok Sabha, Maharashtra sends 48 members while sparsely populated states like Mizoram and Nagaland send 01 member each.

4 Reservation of Seats.

The Constitution of India provides for the reservation of seats to the Schedule Caste and the Schedule Tribes on the basis of the population. Originally, the provision of reservation was made for ten years however time and again it has expanded by amendments to the constitution. The 95th Amendment to the Indian Constitution has extended it till 2020.

5 Qualifications of the members of Lok Sabha.

1. He/ She should be a citizen of India.
2. He/ She must not be less than 25 years of age.
3. He / She must subscribe and oath or affirmation stating to bear true faith and allegiance to the Constitution of India and uphold the sovereignty and integrity of India.
4. He/ She must possess other qualifications as prescribed the Parliament from time to time.

5. He/ She must possess other qualifications as prescribed the Parliament from time to time.

6 Disqualifications of the members of Lok Sabha.

According to the Constitution, a person can be disqualified as an elected member if:

1. If he/ she hold any office of profit under the Union or state government.
2. If he/ she is of unsound mind and is so declared by the court.
3. If he/ she is not an Indian citizen and if he/ she has acquired the citizenship of the foreign state.
4. If he/she is so disqualified under any law made by the Parliament of India.

7 Lok Sabha- Officials.

The Speaker and the Deputy Speaker constitute the officials of the Lok Sabha.

Speaker of the Lok Sabha.

The presiding officer of the Lok Sabha is called as the Speaker. He/ She is elected by the Lok Sabha from amongst its members. The speaker is elected for a term of five years. The speaker remains in office during the life of the lok sabha however has to vacate the office if:

- a. If he / she ceases to be the member of lok sabha.
- b. If he/ she resigns.
- c. If he/ she is removed by a resolution supported by the majority members of the Lok Sabha after giving 14 days prior notice to the speaker.

8- Role, Powers, Functions of the Speaker.

1. To preside over the house and the meetings of the Lok Sabha.
2. To maintain the order and decorum of the house for the smooth conduct of the business.
3. To interpret the provisions of the (i) the Indian Constitution (ii) the rules of procedure and the conduct of the Lok Sabha.
4. To adjourn the house and also suspend it in case of absence of the quorum i.e. one-tenth of the total membership of the house.
5. In case of a tie, he / she can cast a vote.
6. To preside over the joint sitting of the two houses.

7. To appoint the chairman of all the parliamentary committees of Lok Sabha and supervise their functioning.
8. To certify if a bill is a money bill or not.
9. He/ She is the custodian of the rights and privileges of the members of the house.
10. To disqualify a member in case of defection.
11. To accept the resignation of the members of the house.
12. All the bills, motions, reports are introduced with the prior permission of the Speaker.

9 Deputy Speaker of the Lok Sabha.

The Deputy Speaker is also elected by the members of the Lok Sabha from amongst its members. The speaker remains in office during the life of the Lok Sabha however has to vacate the office if :

- a. If he / she ceases to be the member of Lok Sabha.
- b. If he/ she resigns by addressing the resignation to the Speaker.
- c. If he/ she is removed by a resolution supported by the majority members of the Lok Sabha after giving 14 days prior notice to the speaker.

The Deputy Speaker performs the duties when the Speaker's office falls vacant or the Speaker remains absent.

CHECK YOUR PROGRESS

Q. Explain in detail the lower house of the Indian parliament?

V. Legislative Procedure

The procedure followed in both houses to pass bills into act is same. The bills go through the same stages in both houses. Bills can be public bills- introduced by minister or private bills- introduced by anyone but a minister.

Quorum: Under article 100(3) of the Indian Constitution, the one tenth of the total membership of the house is called as Quorum. If there is Quorum, only then the business of the house can be transacted.

There are generally four types of bills that are introduced in the Indian Parliament.

1. Ordinary Bills

Bills that are concerned with any matter other than Financial Bills, money Bills and Constitutional Amendment Bills.

2. Money Bills:

These Bills deal with the taxes, public expenditure, consolidated and contingency funds, audit and accounting, etc.

3. Financial Bills

A Bill dealing with revenues or expenditure but is certified as Money Bill by the Speaker is a Financial Bill.

4. Constitutional Amendment Bills

The bills that are concerned with the amendment of the provisions of the Indian constitution.

1. Ordinary bills.

First Stage/ Reading of the bill:

It can be introduced by a minister or any member of the house in either house of the Parliament. The member who introduces the bill asks for the leave of the house. If granted he/ she introduces the bill by reading its title and objectives. No debates take place at the time of the introduction of the bill. The bill is then published in the Gazette of India. If any member opposes the bill, the member is asked to give the reason to oppose the bill and the question is put to vote. If the house is in favor of the introduction of the bill it then goes to the next stage. Thus, the introduction and the publication of the bill constitute the first stage.

Second Stage/ Reading:

This stage is describes as the most important stage as not only does the bill undergo a general discussion but it also assumed a detailed scrutiny and gets the final shape. Here, the house can take the bill for:

i. The General Discussion Stage

The printed copies of the bill are given to all house members and the house has the following options:-

- a. It may take the bill for immediate consideration .
- b. It can be referred to a select committee of the house (where the bill has originated).
- c. It can be referred to a joint committee of both houses.
- d. It can be circulated for public opinion.

In the first case i.e. if the bill is taken up for immediate consideration then amendments to the bills and clause by clause considerations to the bill are undertaken and voting takes place.

ii. The Committee Stage.

In this stage the bill is generally referred to the select committee, which examines the bill in detail discusses it clause by clause. It can also amend the provisions of the bill and after the scrutiny the committee reports the bill back to the house. Then, each clause is discussed and voting takes place separately, the members can also move amendments to the bill and if accepted the bill goes for the third reading.

Third Stage/ Reading:

In this stage the discussion is limited to the acceptance and rejection of the bill. If the majority members present and voting accept the bill, then it is regarded as passed by that particular house. Then, the bill is transmitted to the second house for its consideration and approval. The second house has to undergo all the stages as in the originating house. The second house has three options:

- a. It may pass the bill as send by the first house.
- b. It may pass the bill by certain amendments and return it to the first house for reconsideration.
- c. May reject the bill.
- d. May not take any action resulting in a deadlock between the two houses.

If the originating house accepts the amendments made by the second house then the bill is deemed to have been passed and is given to the President for his/her assent.

Whereas, if the first house does not accept the amendment or the second house rejects the bill or does not take any action for six months then there is a deadlock. It is resolved by the President who has the power to summon the joint meeting of both the houses. In the joint sitting if the majority of the members pass the bill then it is sent to the President for the assent. If not, then the bill lapses.

The Assent of the President.

After a bill is passed by both the houses either separately or through a joint sitting then it goes to the President for his/her assent to the bill. The President has the following options:

- a. May give the assent to the bill.
- b. May withhold the assent to the bill.
- c. May return the bill for reconsideration to the houses.

If the President gives the assent to the bill it becomes an Act. If the President withholds the assent then it does not become an act. If the President send back the bill for reconsideration and it is again passed by both the houses then the President has to give his or her assent.

Thus, the three readings together followed by the assent of the President are described as the Legislative or the law making procedure.

2. Money Bills.

Money bill is a bill that deals with the revenue and expenditure except a financial bill is a money bill. The Speaker of the Lok Sabha has the sole power to certify whether a bill is a money bill or not. The Constitution has laid down a special procedure to pass the money bills. The money bill can be introduced in the Lok Sabha only after the recommendation of the President. Such a bill is supposed to be introduced only by a minister and is hence called as the government bill.

If the money bill is passed by the Lok Sabha it then goes to the Rajya Sabha. The Rajya Sabha does not have the power to amend the bill or reject the bill, however it has the power to make certain recommendations to the Lok Sabha. It must return the money bill back to the Lok Sabha in 14 days with or without recommendations. The Lok Sabha has the power to accept or reject the recommendations. In any case, the bill is deemed to be

passed by the Lok Sabha. If the Rajya Sabha doesn't return the bill back in 14 days, then it deemed to have been passed by it.

Once the bill goes to the President for the assent, he/ she may either give the assent and it becomes an Act. The President can however withhold his assent but cannot return it back to the house for reconsideration. Usually the President gives the assent as the bill is introduced with the prior permission of the President.

CHECK YOUR PROGRESS

Q. Describe in detail the Legislative Procedure?

VI. Parliamentary Privileges.

Parliamentary privileges refer to the legal immunities, exemptions enjoyed by the members of both the houses. It also extends to the persons who can take part and speak in the proceedings of the house. Some of the privileges enjoyed by the members are:

- a. Freedom of speech in Parliament.
- b. The members enjoy freedom from arrest in any civil case 40 days before and after the adjournment of the house and also when the house is in session. It is not applicable to criminal cases and preventive detention.
- c. They are exempted from attending court as a witness or can refuse to give evidence when the Parliament is in session.
- d. No person shall be held liable for publishing any reports, discussions etc. of the house under the authority of the member of the house.

CHECK YOUR PROGRESS

Q. Explain the different Parliamentary privileges enjoyed by the Members of the Parliament?

VII Parliamentary devices to control the Executive.

1. **Question Hour:**

The first hour of a sitting of house is devoted to the Questions. Asking questions is an inherent right of members of Parliament. There are questions on every aspect of administration and activity of the government. Government policies in national as well as international spheres come into sharp focus. If the member is not satisfied by the answer received, he /she can request the presiding officer to open up the issue for a discussion.

2. **Zero hour**

The question hour is followed by the "Zero Hour". It starts at around 12 noon and members can, with prior notice to the Speaker before 10.00am by clearly stating the issue that has to be raised and taken for discussion during the zero hour.

3. **Short Duration Discussion**

As per the Rule of procedure and conduct of business in Lok Sabha under rule 193 there is a provision of Short duration discussion. It is a time where the members can raise questions in urgent issues of public importance.

4. **Calling Attention Motion**

With the prior permission of the presiding officer a member may call the attention of a minister on a particular issue that needs urgent hearing. The questions placed mainly pertain to the Union Government.

5. **Adjournment motion**

The adjournment motion is moved with the consent of the speaker. It is a motion adopted to set aside the normal functioning of the house and adopt issues that are of urgent public importance.

The main motive of this motion is to take the government at a task for the recent acts that have a serious consequence.

6. **No confidence motion**

In the house, the government is always supposed to enjoy the majority. They demonstrate their majority by moving the Motion of Confidence. This motion pertains to the ruling party and the council of Minister as they are collectively responsible to the house. However, passing a vote of no confidence against an individual member is not permissible. If the motion is passed then the government is bound to vacate the office.

CHECK YOUR PROGRESS

Q. Describe the various legislative devices to control the Executive?

VIII Parliamentary Committees.

The Parliament has voluminous functions to perform. It also lacks expertise and has to deliver in a short span of time. Hence, the Parliament is assisted by a number of committees to scrutinize the legislative and other issues. The parliamentary committees are classified into two categories:

a. Standing Committees- It refers to the committees that are constituted periodically or yearly and are continuous in nature.

The Standing committees are divided into six types:

i. Financial Committees : The financial committees consist of three important types :-

- **The Public Accounts Committee.**

This committee examines the annual accounts of the Government and the accounts showing appropriation of different sums granted by the Lok Sabha. It scrutinizes the report of the Comptroller and Auditor General (C.A.G.) in regard to the appropriation accounts of the Government.

- **The Estimates Committee.**

It examines the estimates in order to make suggestion in regard to economy and improvement in organizational, suggest alternative policies for bringing efficiency and economy in administration, examine whether the money is well laid out within the limits of the policy and the form in which the estimates are to be presented to the Parliament.

- **The Committee on Public Undertakings.**

It examines the reports and accounts of the Public Undertakings specified in the Rules of the Lok Sabha, the reports of the C.A.G. in regard to a Government undertaking, if the Government undertakings are being run according to appropriate principles and norms and other matters which may be referred by the Speaker to the Committee.

The Rules Committee of the Lok Sabha recommended setting up of 17 department related standing committees (DRSCs) in 1993. In 2004 the number was increased from 17 to 24.

The main motive of the DRSCs is to give more accountability to the Executive i.e. the Council of Ministers and the Parliament.

Besides these committees, there are committees which are classified as Other Standing Committees. They are as follows:-

i. **Committees to Inquire** – that includes – Committee on Petitions, Committee of Privileges and Ethics Committee.

ii. **Committee to Scrutinize and Control-** that includes Committee on Government Assurance, Committee on subordinate legislation, committee on papers laid on the table, committee on welfare for SC's and ST's, committee on Empowerment of women, Joint Committee on Offices for Profit.

iii. **Committee relating to the day to Day business of the house-** it consists of the Business Advisory committee, Committee on Private members bills and resolutions, the Rules Committee, and the Committee on absence of members from the sittings of the house.

iv. **House Keeping Committee/ Service Committees-**it consists of the General Purpose Committee, the House Committee, the Library Committee, and Joint Committee on salaries and allowances of members.

b. Ad Hoc Committees :

Ad hoc committees are divided into two types: Inquiry and Advisory Committees.

Inquiry Committee- Inquiry committees are constituted from time to time by either by the two houses or by the speaker or the chairman. It includes the following: Five year plans , Railway convention committee, etc.

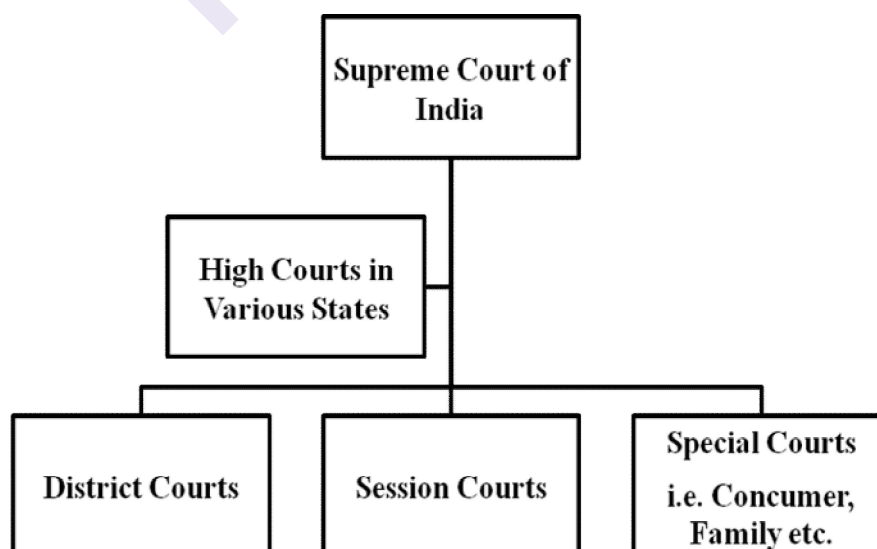
Advisory committee- it consist of select or the joint committees on bills that have to consider the report on bills. They are different from other ad hoc committees as the procedure to be followed by them is laid down in the Rules of procedure and directions by the speaker or the chairman.

CHECK YOUR PROGRESS

Q. Elaborate on the various Parliamentary Committees?

IX. The Judiciary of India

The Judicial structure of India consists of a three tier system i.e. the Supreme Court of India which is the apex court. Followed by it are the High Courts of various states whereas the last tier is the District and the Sessions court.



A. The Supreme Court of India

The inauguration of the Supreme Court of India took place on 28 January 1950. It succeeded the Federal Court of India that was set up by the Government of India Act 1935. It is the highest court of appeal in the entire country and the decisions of the court cannot be questioned. The jurisdiction of the Supreme Court of India extends throughout the country. Articles 124 to 147 of the Constitution of India deal with the Supreme Court of India and elaborate upon the organization, jurisdiction, independence etc.

i. Composition :

Initially the Supreme Court comprised of 01 Chief justice and 07 other judges. The Parliament has over the years increased the number of judges and at present the Supreme Court comprises of 01 chief justice and 30 other judges.

ii. Appointment of the Judges:

The President of India appoints the Judges and the Chief Justice of the Supreme Court of India. The President however consults other judges as he/ she deems fit before appointing the chief justice. The President is also required to consult the chief justice while appointing the judges.

The system of appointment and transfer of judges are decided by the collegiums system which came into being by the various interpretations of the constitutional provisions by the Supreme Court called as the Judges Cases. It is a system wherein appointments and transfers of judges are decided by a collegium. The collegiums of the Supreme court comprises of the Chief Justice of India and the four senior-most judges of the Supreme Court while the High Court Collegiums consist of the Chief Justice and four senior most judges of that particular court.

The 99th Amendment to the Constitution, 2014 and the National Judicial Appointment Commission Act, 2014 (NJAC) had replaced the collegiums system and established National Judicial Appointment Commission. However, in the year 2015 the Supreme Court of India declared both of them as null and void and continued with the previous system of collegiums.

iii. Qualifications

To be appointed as the judge of the Supreme Court a person should possess the following qualifications:

- i. He / She should be a citizen of India.
- ii. He/ She should have been a judge of high court or various high courts in succession for at least five years **or** he/ she should

have been an advocate of a high court various high courts in succession for at least ten years **or** in President's opinion he/ she should have been a distinguished jurist.

iv. Oaths

The Person appointed as the judge of the Supreme Court before entering the office has to take the following oath before the President of India:

- a. Bear true faith and allegiance to the Constitution of India
- b. Uphold the sovereignty and integrity of India
- c. Duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favor, affection or ill-will
- d. Uphold the Constitution and the laws

v. Tenure and Removal

The judge of the Supreme Court of India remains in office till he/ she attains the age of 65. The other ways when the judge vacates his/ her office before the completion of the tenure is:

- If he/ she resigns by addressing to the President of India.
If he/ she is removed by an order of the President supported by not less than 2/3 rd members present and voting of both the houses of the Parliament only in case of misbehavior or incapacity

vi. Salaries and Allowances

The salaries, pensions, privileges, etc are determined from time to time by the Parliament. They cannot be varied to their disadvantage except during the financial emergency i.e. Article 360.

vii. Seat of the Supreme Court

The Supreme Court's original seat is at Delhi; however the Constitution authorizes the chief justice to appoint another place or places as the seat of the Supreme Court.

viii. Practice after Retirement

The constitution has mandated that no person after retirement as a judge from the Supreme Court of India can practice in any court within the territory of India.

ix. Ad Hoc Judges

If there is a lack of quorum in the Supreme Court the Chief Justice can appoint a judge of the High Court as an ad hoc judge,

only after the consultation of the chief justice of that particular high court. Moreover, the judge who is appointed shall be qualified to be appointed as the judge of the Supreme Court of India.

x. Acting Chief Justice

The President of India is empowered to appoint a judge of the Supreme Court as the acting Chief Justice of India in following situations:

- a. If the office of the Chief Justice is vacant
- b. If the Chief Justice is absent temporarily
- c. The Chief Justice is unable to perform the duties allotted.

CHECK YOUR PROGRESS

Q. Describe the Structure of the Supreme Court of India?

I. Independence of the Judiciary.

The Supreme Court of India is the apex court and is also the guarantor and guardian of the fundamental rights of the citizens of India. Thus, the work assigned to the Supreme Court is very essential and so it should remain away from any encroachments, pressure and interferences of both the executive and the legislature. Hence, the Indian Constitution has made certain provisions to preserve the independence and the impartiality of the Supreme Court of India, which are as follows:

i. Appointment:

The Judges of the Supreme Court are appointed by the President of India in consultation with the judiciary. Thus, it curtails the absolute choice of the executive and makes sure that appointments are not political in nature.

ii. Tenure:

The judges of the Supreme Court enjoy a fixed tenure and can be removed by the President only on the ground mentioned in the Constitution.

iii. Service Conditions:

The salaries, allowances, privileges, leave and pensions of the judge are determined by the Parliament from time to time and cannot be changed to their disadvantage except during the financial emergency that allows them to discharge their functions impartially.

iv. Expenses on Consolidated Fund of India

The allowances, salaries, pensions, and administrative expenses are all charged from the Consolidated Fund of India which is non-votable in the Parliament.

v. Conduct of judges

The Constitution of India does not allow any discussion or debate in the parliament of India regarding the conduct of the judges in discharge to their duties. This can only be done when the impeachment motion is taking place.

vi. No practice after retirement

The judges of the Supreme Court of India are not allowed to plead before any authority or any Court in India after their retirement that preserves their dignity.

vii. Contempt of Court

The Supreme Court enjoys the power to maintain its dignity, authority and honor and therefore can punish any person for the contempt of Court. The decisions given and actions taken by the Supreme Court cannot be criticized or opposed by anyone in the country.

viii. Appointment of the staff

The executive cannot interfere in the appointments of the judges, servants. This power has been vested to the Chief Justice of India. Thus the Supreme Court is independent to decide its own staff.

CHECK YOUR PROGRESS

Q. Is the Judiciary in India independent? Explain in detail

II. Jurisdiction and the Powers of the Supreme Court of India.

The Supreme Court of India enjoys powers and extensive jurisdiction. The various jurisdictions enjoyed by the Supreme Court can be grouped as follows:

1. Original Jurisdiction

Supreme Court is the Highest Interpreter of the Constitution and settles the disputes between:

- a. Government of India and one or more states
- b. Government of India and State(s) on one side and State(s) in other side
- c. Between two or more states.

The Supreme Court has exclusive jurisdiction meaning no other court is entitled to decide such disputes in the country. However, the dispute should involve a question whether of law or fact on which depends existence of a legal right which the court is called upon to determine.

The Supreme Court is also entitled to declare any law as null and void or unconstitutional if it is an infringement of the Fundamental Rights of the citizens.

2. Writ Jurisdiction

The Supreme Court is the guarantor and defender of the fundamental rights of the people. If the fundamental rights are violated then the writ jurisdiction of the Supreme Court permits the Court to issue various writs enumerated in the article 32 of the

Indian Constitution. It consists of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. This writ also comes under the original jurisdiction of the Court however; it is not exclusive in nature meaning that even the High Courts in India have the power to issue such writs.

3. Appellate Jurisdiction

The Supreme Court is the highest court of appeal in the country. It hears the appeal against the judgments given by the lower courts in India. It enjoys the following appellate jurisdiction:

a. Appeal in Constitutional Cases:

An appeal can be filed in the Supreme Court against the decision given by the high court if the high court certifies that a particular case involves a substantial question of law that needs an interpretation to the Constitution of India.

b. Appeal in Civil Cases:

An appeal can be filed in the Supreme Court from any judgment of the High Court if it certifies that the case involves a question of general importance and that it needs to be decided by the Supreme Court.

c. Appeal in Criminal Cases

An Appeal can be filed in the Supreme Court against the judgment in a criminal proceeding of a high court if the high court – (i) has on appeal reversed an order of acquittal of an accused person and sentenced him/her to death (ii) has taken a case from the Subordinate Court, convicted the accused person and sentenced him to death (iii) certifies that the case is a fir one for appeal to the Supreme Court of India.

d. Appeal by Special Leave.

The Supreme Court has the power to grant a special leave in any issue from any judgment passed by a tribunal or any court in the country except Military tribunal and the Court Martial. It has four aspects: (i) it cannot be claimed a right as it is a discretionary power (ii) can be granted in any judgment both final and interlocutory.

4. Advisory Jurisdiction:

The article 143 of the Indian Constitution authorizes the President of India to seek the advice of the Supreme Court in (i)

question of a fact or law having public importance that is likely to arise or has already arisen. (ii) on any pre- constitutional treaty, agreement etc . Some examples of such an appeal are Delhi Laws Act, 1951, Sea Customs Act, 1963, Presidential Elections, 1974, Cauvery Water disputes Tribunal, 1992.

5. A court of Record :

The judgments, proceedings and acts of the Supreme Court are recognized as legal precedents and legal references. They are recorded for testimony. They are of evidentiary value and cannot be questioned when produced before any court.

6. Judicial Review

Judicial review means the power given to the Supreme Court to declare any legislative act or an executive order pertaining to both the central and the state government as null and void or unconstitutional if the act or the order contravenes any provision of the Indian Constitution.

CHECK YOUR PROGRESS

Q. Describe the powers and the jurisdiction of the Supreme Court of India?

B. The State Judiciary: High Court.

Below the Supreme Court of India, there prevails the High Courts. It has the top position in the judicial set up of the states. In 1862, the high Courts in India were set up at Calcutta, Bombay and Madras. The Indian Constitution provides for a high court in every state of India, however, the Seventh Amendment Act 1956 authorizes the Parliament for the establishment of a common court for two or more states of India. Currently, there are 24 high courts in India. Delhi is the only union territory to have a separate High Court.

Articles 214 to 231 in the VIth Part of the Indian Constitution deal with the High Courts of India.

i. Organization of high court

Every High Court consists of a Chief Justice and other judges appointed by President.

The number of judges for the High Courts is not specified in the Constitution and varies from State to State.

ii. Appointment of the Judges:

The President appoints the Chief Justice of the High Courts of India after consulting the Chief Justice of India and the Governor of that particular state. The President also appoints the judges of the High Courts in India after consulting the Chief Justice of the respective High Court. The President consults the Governor of all states in appointing the Chief Justice and Judges in case of a common High Court.

iii. Qualifications

A person can be appointed as a Judge of the High Court if:

He is a citizen of India

He has been held a judicial office for not less than 10 years in the territory of India ; or

He has been for at least 10 years an advocate of one or of two or more High Courts in succession.

iv. Oath or Affirmation

The person appointed as a judge of the High Court has to take an oath before the Governor of the particular state.

- a. Bear true faith and allegiance to the Constitution of India
- b. Uphold the sovereignty and integrity of India
- c. Duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favor, affection or ill-will
- d. Uphold the Constitution and the laws.

v. Tenure and Removal

The judge of the Supreme Court of India remains in office till he/ she attains the age of 62. The other ways when the judge vacates his/ her office before the completion of the tenure is:

- If he/ she resigns by addressing to the President of India.
- If he/ she can be removed by the President after an address supported by the special majority of each house of parliament (i.e. majority of the total membership of that house and a majority of not less than two-thirds members present and voting) only in case of proved misbehavior or incapacity.

vi. Acting Chief Justice.

The President can appoint a judge of the high court as the Acting Chief Justice if:

- The office of Chief Justice of the High Court is vacant
- If the Chief Justice is absent for a temporary period.
- If the Chief Justice of the High Court is not able to perform his/her duties.

vii. Acting Judges of the High Court.

The President of India has the power to appoint a qualified person as the acting judge of the High Court when:

- The judge of that high court is unable to perform his or her duties.
- That particular judge is appointed as the temporary Chief Justice of that High Court.

CHECK YOUR PROGRESS

Q. Describe the Structure of the High Court of India?

I. Jurisdiction and Powers of the High Court.

Like the Supreme Court of India, the High Court also enjoys extensive powers. The Indian Constitution does not lay down the detailed provisions of the High Court. It only provides that the High Court's powers and the Jurisdiction of the High Courts are to be the same as before the commencement of the Constitution. The High Court enjoys the following powers:

1. Original Jurisdiction.

It means the power of the High Courts to hear disputes in the following areas:

- Will, marriage, divorce, contempt of court etc.

- Disputes concerning the election of members to the State legislatures and the Parliament.
- Concerning revenue matters.
- Fundamental rights of the citizens and its enforcement etc.

2. Writ Jurisdiction

The Constitution of India under article 226 empowers the High Courts of India to issue writs. These writs are Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto which can be issued to enforce the fundamental rights of the citizens. It signifies that if the fundamental rights of the citizens are violated then the citizen can move to the High Court directly for which the High court can issue writs to any person, authority.

3. Appellate Jurisdiction

Apart from the Original and Writ jurisdiction the High Court also enjoys Appellate jurisdiction. It means it is a court of Appeal in both Criminal; Civil issues and hears decisions against the Subordinate Courts in its territorial jurisdiction.

4. Supervisory Jurisdiction

Over all the tribunals and the Courts (except the Military courts) in its jurisdiction the High Court enjoys the power of supervision or superintendence. It includes:

- High Court can call for returns,
- Issue and form rules and prescribe the procedure and practice for their working
- It also is authorized to describe the ways in which books, accounts etc are to be maintained.

5. Control over the Subordinate Courts

The various ways in which the High Court exercises its authority over the subordinate courts are:

- The Governor of the state consults the High Court of that State where appointments, promotions etc of the district judges etc are to be made.
- It also has the authority to withdraw a particular case which involves a substantial question of law and requires the interpretation of the Constitution from any subordinate court.

6. A Court of Record

Just like the Supreme Court of India the High Courts of India act as a Court of Record. The judgments given and the proceedings conducted are recorded for perpetual memory and

testimony. These records cannot be questioned by any subordinate courts.

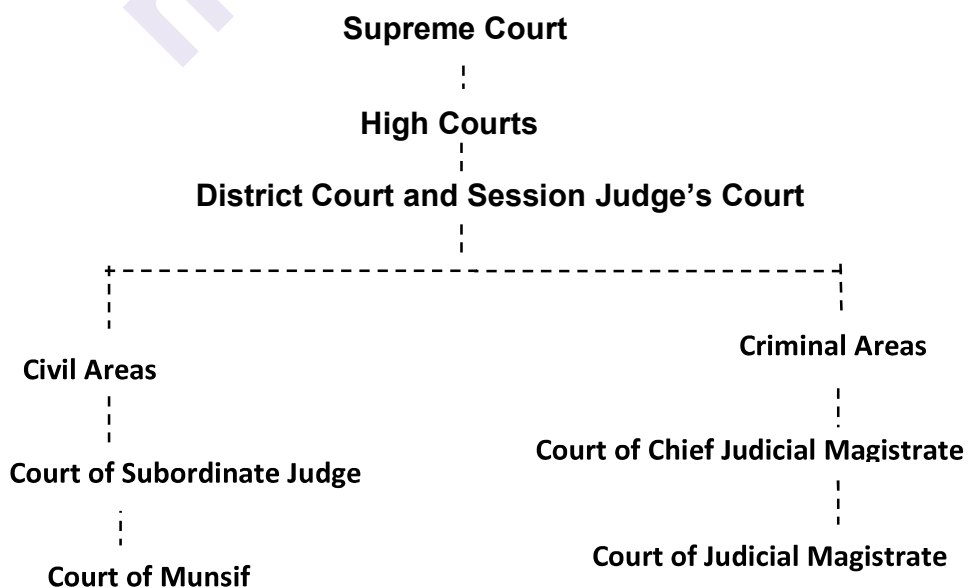
7. The Power of Judicial Review

Judicial review means the power given to the Supreme Court to declare any legislative act or an executive order pertaining to both the central and the state government as null and void or unconstitutional if the act or the order contravenes any provision of the Indian Constitution. Articles 32 and 226 describe the judicial review in the Constitution of India.

CHECK YOUR PROGRESS

Q. Describe the Jurisdiction and powers of the High Court of India?

C. Subordinate Judiciary In India



The organization of the subordinate judiciary is laid down by the States. Thus, the structure of the subordinate courts differs from state to state. Below the High Courts are the Subordinate Courts in every state. When the judge handles the civil cases, he or she is known as the district judge and when he or she handles the criminal cases he or she is called as the session's judge.

The district judge possesses not only the administrative but also the judicial powers however; he or she also has supervisory powers over the subordinate courts prevailing in the district. The Court of Subordinate Judge has all powers relating to civil suits while the Court of Chief Judicial Magistrate has all powers relating to the criminal suits. The Chief Judicial Magistrate can decide cases of imprisonment up to seven years. The Munsif Court falls below the Court of Subordinate Judge and possesses limited jurisdiction. Whereas, the Court of Judicial Magistrate can try cases with imprisonment up to three years.

CHECK YOUR PROGRESS

Q. Describe the Structure of the Subordinate Judiciary in India?

X Judicial Review.

The Indian Constitution has originally prescribed for Judicial Review in India unlike the US Constitution. The concept of judicial review came into existence for the first time in the Marbury vs Madison case 1803. Moreover, the concept of judicial review is a part of the basic structure of the Indian constitution and thus cannot be curtailed even by a constitutional amendment.

Judicial Review is the power of the judiciary to interpret the constitution and declare any law or order of the legislature and executive void, illegal or unconstitutional, if it found to violate the Constitution of India.

Need of Judicial Review:

For the following reasons there is a need of judicial review in the country.

- a. to maintain the supremacy of the Indian Constitution.
- b. to maintain the balance between the center and the states.
- c. to ensure that the fundamental rights of the citizens are protected.

Examples:

The Supreme Court has extensively used the power of Judicial Review in India. Some of the prominent examples are: The Golaknath case 1967, the Kesavananada bharati Case 1973, Minerva Mills's case, 1980. Recently, in the year 2015 the Supreme Court declared National Judicial Appointments Commission (NJAC) act, 2014 as null and void.

XI Judicial Activism and Public Interest Litigation:

The term Judicial Activism was first used by Arthur Schlesinger Jr. In India the concept of judicial activism was developed by Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai in the 1970s.

Judicial activism refers to the proactive role played by the judiciary to promote justice in the society and protect the rights of the citizens of the country. Moreover, it also implies that the judiciary forces the Legislature and the Executive organ of the Government to discharge its duties properly.

The concept of Public Interest Litigation is closely associated with judicial activism in India. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were the pioneers of PIL in India. In case of PIL, any person or an organization can move to the court for the enforcement of right of the any person or group of persons who due to their ignorance, poverty or any other reason couldn't approach the court. Earlier, only the aggrieved person whose rights were violated could move to the court.

Thus PIL can be defined as:

Public Interest Litigation (PIL), means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

XII. Let's Sum Up:

Thus, in this chapter we have studied about the Legislature and the Judiciary of India. The Lok Sabha and the Rajya Sabha comprise of the Indian Parliament and make laws for the nation. Therefore it is very important to understand the functioning of both the houses. The legislative or the law making procedure is described in detail for the various types of bills that prevail etc. The privileges enjoyed by the members of the Parliament are also mentioned and the various parliamentary committees that play an important role in formulation of a law. It in turn is the judiciary of India that checks if the laws made do not contravene the provisions of the Indian Constitution. Thus, the role of judiciary is pertinent as it is the guarantor of the fundamental rights of the citizens. The detailed structure of the Supreme Court the High Court and the Subordinate courts is discussed in the chapter.



munotes.in

THE EXECUTIVE

Unit Structure

- 4.1 Objectives
- 4.2 Introduction
- 4.3 The president
- 4.4 The Prime Minister
- 4.5 The Council Of Ministers
- 4.6 Local Self Government in India

4.1 OBJECTIVES:

The objective of this chapter is to make the students aware of the Executive branch of the Government that mainly comprises of the President, Prime Minister and the Council of Ministers. Moreover, the chapter also examines the process of democratic decentralization in the country and provides a detailed analysis of the 73rd and the 74th Constitutional Amendment Act.

4.2 INTRODUCTION

The Union executive of India comprises of the President, the Vice-President, and the Council of Ministers. The President is the first citizen of India and the head of the state. He/ She is a symbol of nation's unity and integrity. The Prime Minister is the head of the Government and exercises the real executive power as the President carries out the functions with the aid and advice of the Prime Minister and the Council of Ministers.

4.3 THE PRESIDENT.

a. Election

As per article 54 of the Indian constitution the President is supposed to be elected by an electoral college consisting of:

- The elected members of the Rajya Sabha as well as the Lok Sabha;
- The elected members of the Legislative Assemblies of the States;

- The elected members of the National Capital Territory of Delhi and Union Territory of Pondicherry.

Thus, it has to be understood that the nominated members of both the houses of Parliament, nominated members of the legislative assemblies, the legislative council (both elected as well as nominated members) , nominated members of Delhi and Pondicherry do not take part in the Presidential election process. If in case, the assembly stands dissolved, the members are not eligible to vote in the elections of the President even if the fresh elections are not conducted.

In India the system of Proportional Representation by means of Single Transferable Vote Method/System is followed in the elections of the President. Proportional representation is characterized by the fact that an electorate is directly proportional to the elected body. In Single Transferable Vote System, every elector gives first and the second preferences. If a candidate secures in the first counting absolute majority, he/ she is declared elected. However, the lowest polling candidate's second preference votes are transferred to the other candidates till the time a candidate crosses 50% of votes. According to the Constitution there shall be uniformity in the scale of representation of the different States at the election of the President and parity between the States as a whole and the Union.

b. Qualifications

The following are the qualifications needed for the office of President as per Articles 58 and 59 of the Indian Constitution.

- He/ She should be a citizen of India.
- He/ She should be 35 years of age or above.
- He/ She should be qualified to become a member of the Lok Sabha.
- He/ She shall not be a member of either House of Parliament.
- He/ She shall not be a member of a House of Legislature of any State.
- The President of India cannot hold any other office of profit under the Union, State or local governments.

In case a member of either House of Parliament or of a House of Legislature of any State is elected as the President then he shall be deemed to have vacated his seat in that House on the date he assumes the office of the President of India.

c. Term of Office

The President of India is elected for a term of five years from the date on which he enters his office. The office of the President of India may fall vacant on the following grounds:

- On the expiry of the tenure of Five years
- Addressing a letter of resignation to the Vice President of India.
- Impeachment- removal of the President.
- In case of death.

In case of a vacancy in the Office of President, the Vice-President of India acts as the President till the time a new President is elected which is within 6 months from the date of vacancy. Also, if any disputes arise due regarding the election of President they are to be settled by the Supreme Court of India. In this situation, the Vice President enjoys all the powers and immunities received by the President. Also, the President is eligible for re-election.

d. Oath

The President and every person acting as President or discharging the functions of the President before entering his/ her office make and subscribe an oath in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available.

The Oath is subscribed as follows:

"I, do swear in the name of God that I will faithfully execute the office of President of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India".

e. Impeachment

The procedure of impeachment or removal of the President of India is discussed in article 56 and 61 of the Indian Constitution. The constitution of India describes "Violation of Constitution" as the grounds for the impeachment process. The process can begin in any house of the Indian Parliament. The charges of impeachment should be signed by 1/4th member of the particular house where it initiated and a prior notice of 14 days has to be given to the President. Then, it has to be passed by not less than 2/3rd of the total members in the house. It is then sent to the other house which investigates the charges levied against the President. While the investigation is going, the President has the right to be present for such investigations. After the investigation, if the other house also passes the impeachment resolution by 2/3rd majority of the total membership of the house then the President stands impeached or removed from the office from the date on which the resolution is passed. However, in this process of impeachment, it has to be

noted that the nominated members of either house of the Parliament can participate while the elected members of the legislative assemblies of the states and the Union territories of New Delhi and Pondicherry cannot take part although they are a part of the election process.

f. Powers and Functions of the President.

According to article 53 of the Indian Constitution, **The executive powers of the Union shall be vested in the President and shall be exercised by him either directly or through the officers subordinate to him in accordance with this Constitution."**

The President of India enjoys the powers and performs functions as follows:.

i. Executive Functions

The President is at the head of the Union Executive and hence all the executive powers are exercised in his name.

1. The President enjoys the power to appoint the Judges of the Supreme Court and the High Courts, the Auditor General of India, the Attorney General of India, the Governors of the states. and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission, the Comptroller and Auditor General of India, the members of the Union Public Service Commission, the chief election commissioner and other election officers.
2. The President also enjoys the power to appoint the Prime Minister of India.
3. With the advice of the Prime Minister, the President appoints the Union Council of Ministers.
4. He summons the leader of the political party which has obtained an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry.
5. He/ She also enjoys the power to seek any information regarding the administration of the Union government, proposals for legislation from the Prime Minister .
6. He/ She can appoint a commission to check into the conditions of the Schedule Caste, Schedule Tribes and the Other Backward Classes.
7. The President directly administers the union territories with the help of administrators who are appointed by him/her.
8. He / she has the power to declare any area as a schedule area and enjoys the power with respect to Schedule and the tribal area.

ii. Legislative Powers and Functions

1. The President shall summon and prorogue the parliament from time to time, can dissolve the lower Chamber of Parliament, the Lok Sabha. He/ She can also call for a joint sitting of both the houses of the Parliament which shall be presided by the Speaker of Lok Sabha.
2. The President may address either or both House of Parliament, at the first session after general election and at the first session of each year.
3. The President may send messages to either House, or to both Houses of the Parliament
4. The President nominates a number of members in both Houses i.e in Lok Sabha 02 members from the Anglo Indian Community and 12 members in Rajya Sabha having special and practical knowledge of literature, science, art and social services.
5. The President also has the power to appoint a member of the Lok Sabha to preside over the house in case the office of both the Speaker and the Deputy Speaker fall vacant. Similarly, he/ she can appoint a member of Rajya Sabha to preside over the house in case the office of the Chairman and the Vice Chairman remain vacant.
6. A bill passed by both the Houses of Parliament requires the assent of the President to become an Act. The President may
 - a. Give his/ her assent to the bill.
 - b. Withhold the assent
 - c. Return the bill (except money bill) for reconsideration.
 1. But, if the President returns the bill back for reconsideration and it is passed again then he/ she does not have the option but to give his/ her assent to the bill.
 2. In certain cases, prior sanction of the President is required for initiating any bill for example the bill for formation of a new State or altering the boundaries of the existing State or States. Apart from this to introduce the Money bill prior permission is necessary of the President of India.
 3. A bill passed by a State Legislature can also be sent for the consideration of the President by the Governor of that State.

iii. **Power to Promulgate Ordinances**

When both Houses of Parliament are not session, the President enjoys the power to promulgate such Ordinances as per the needs of the circumstances. However, such an ordinance shall have the same force and effect like that of an Act of Parliament. Such an ordinance shall cease to operate unless passed by both Houses of Parliament within the stipulated period.

iv. **Financial Powers and Functions**

1. The President causes the annual budget of the Union Government to be laid before Parliament every year.

No proposal for spending money or raising revenues for purposes of government can be introduced in Parliament without previous permission of the President.

v. **Emergency Powers of the President**

Three kinds of Emergencies can be proclaimed by the President as per the Indian Constitution:

1. National Emergency (Art. 352)
2. Failure of Constitutional Machinery in a State or State Emergency (Art. 356);
3. Financial Emergency (Art. 360)

vi. **Military and Diplomatic Powers:**

The President is the supreme commander of the Armed forces and appoints the chiefs of Army, Navy and Air Force. It means that though the President has the power to take action as to declaration of war or peace or the employment of the defense force but is subjected to the approval of the Parliament.

vii. **Diplomatic Powers of the President of India:**

1. The president receives ambassadors, High Commissioners and diplomatic envoys from foreign nations.
2. All international treaties and international agreements are made in the name of the President but are subjected to the approval of the Parliament.
3. The President has the powers of appointing Indian Ambassadors to other countries.

viii. **Judicial Powers:**

The President has the power to grant pardon reprieves, respites & remission of punishment or to suspend remit or commute the sentence of any person convicted of any offence.

1. In all cases where the punishment & sentence is by court martial.

2. In all cases where the punishment or sentence for an offence against a law relating to a matter to which the, executive power of the Union extends.
3. In all cases where the sentence is a death sentence.

Check your Progress:

1. Explain the office of the President of India?
2. Describe the various powers and functions of the President of India?

4.4 THE PRIME MINISTER

The Prime Minister is the head of the Government. He/ She is appointed by the President of India. The President calls the leader of majority party in the Lok Sabha to form the government.

The powers enjoyed and functions performed by the Prime Minister are as follows:

a. In Relation to Council of Ministers

The Prime minister is the head of the council of Ministers. In case of his/her death or resignation, the entire Council of Ministers stands dissolved.

1. Although the President of India appoints the Council of Ministers, it is the Prime Minister who recommends exercises the persons to be appointed as Ministers.
2. The meetings of the council of ministers are presided over by the Prime Minister.
3. The Prime Minister has the power to ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

4. Allotment and re shuffling of portfolios among the ministers is done by the Prime Minister.

b. In Relation to the President

1. He is the principal channel of communication between the president and the council of ministers.
2. He advises the president with regard to the appointment of important officials like attorney general of India, comptroller and auditor general of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

c. In Relation to Parliament

The prime minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the president with regard to summoning and proroguing of the sessions of the Parliament.
2. He can recommend dissolution of the Lok Sabha to president at any time.
3. He announces government policies on floor of the House.

d. Other Powers & Functions

In addition to the above-mentioned three major roles, the prime minister has various other roles. These are:

1. He is the chairman of the Planning Com-mission (now NITI Aayog), National Development Council, National Integration Council and Inter-State Council,
2. He plays a significant role in shaping the foreign policy of the country.
3. He is the chief spokesman of the Union government.
4. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
5. He is the crisis manager-in-chief at the political level during emergencies. He is leader of the party in power and the political head of the services.

Check your Progress:

1. Describe the office of the Prime Minister of India?
2. Explain the different functions of the Indian Prime Minister?

4.5 THE COUNCIL OF MINISTERS

The Council of Ministers headed by the Prime Minister of India is the actual executive authority in the country. Article 74 and 75 of the Indian Constitution deal largely with the council of ministers.

Article 74 of the Constitution reads as follows:

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advises. Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advises tendered after such reconsideration

(2) The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75 on the other hand deals with the tenure, appointment, responsibility, qualifications, oath, salary and allowances of the ministers.

a. Collective Responsibility

The principle of collective responsibility is the underlying principle of Parliamentary form of government. Article 75 of the Indian Constitution states that the council of Ministers are collectively responsible to the Lok Sabha for their acts of omissions and commissions. In case the motion of no confidence has been passed in the Lok Sabha then all the council of ministers resigns alongwith the ministers in Rajya Sabha. The President can be advised by the Council of Ministers to dissolve the Lok Sabha on the ground that Lok Sabha no longer represents the views of the electorate.

Collective responsibility also implies that Cabinet decisions bind all Cabinet ministers and thus it is the duty of each and every minister to support the cabinet decisions in and out of the Parliament. If the minister disagrees then he or she can resign.

b. Individual Responsibility.

Art. 75 also talks about individual responsibility. It mentions that Ministers shall hold office during the pleasure of the President meaning that the President has the power to remove a particular minister while other ministers continue to enjoy the confidence of the Lok Sabha. This can be done only on the advice of the Prime Minister. An Individual Minister continues to be a member of the Council of Ministers till he or she enjoys the confidence of the Prime Minister. If the Prime Minister is not satisfied with the work of a Minister or when there is a difference of opinion he or she can demand resignation from any Minister or the Prime Minister may advise President to dismiss the minister.

i. Composition of the Council of Ministers.

The composition of the Council of Ministers is divided into three categories. They are the Cabinet Minister, Ministers of State and Deputy Ministers. The Prime Minister is at the apex of the Council of Ministers.

The Cabinet Ministers: The cabinet ministers are the ministers responsible for important ministries of the central government. It includes ministries like home affairs, defense, finance, external affairs etc.

The Ministers of State:

They are second category of ministers. A minister of state may hold an independent charge of a small department or is attached to a Cabinet Minister. They are required to work under the cabinet ministers in case of attachment. If they exercise an independent charge then they exercise same power and perform similar functions in relation to the ministries or departments as the cabinet ministers do. But, it is to be noted that they are not the members of the cabinet and do not attend the meetings of the cabinet unless invited.

Deputy Ministers:

The deputy ministers are attached to the Cabinet Ministers or the Ministers of State. They thus do not have an independent charge or any department or a ministry. They also do not attend the cabinet meetings.

Kitchen Cabinet

The cabinet is highest decision-making body in the formal sense is, a small body consisting of the prime minister as its head

and some 15 to 20 most important ministers. However the real center of power is inner Cabinet or Kitchen Cabinet has become real centre of power. This informal body consists of the prime minister and two to four influential colleagues in whom he has faith. It gives advises on important political and administrative issues. This body also makes crucial decisions. It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister:

Check your Progress:

1. Write in brief about the Council of Ministers?
2. Explain the Collective and Individual Responsibility of the Council of Ministers?

73rd Amendment Act to the Constitution of India.

Mahatma Gandhi believed in Gram Swaraj and he pleaded for the decentralization of power to the villages. He believed that the villages should govern themselves by elected panchayats in order to be Self-sufficient. The Constitution of India made no provisions for establishment of local self-government. However, Article 40 in the Directive Principles of the State Policy stated for the Organization of village panchayats.

The Community Development Program was initiated in the year 1952 and in 1953 the National Extension Scheme was launched. Later the Government of India appointed various committees to suggest measures for the process of democratic decentralization. The committees that prominently contributed towards it were: Balwantrai Mehta Committee, Ashok Mehta Committee, GVK Rao Committee, LM Singhvi Committee, Thungon Committee, Gadgil Committee.

The Government of Rajiv Gandhi introduced the 64th Constitutional Amendment bill in the Lok Sabha in 1989 in order to make Panchaytai Raj System a part of the Constitution. It

was not approved by the Rajya Sabha. However, the Narsimharao Government introduced the 73rd Constitutional Amendment Act, 1992 which came into force on 24th April 1993.

The act added new part IX-A to the Constitution of India and is entitled as “The Panchayats”, consisting of Articles 243 to 243 O. The act also introduced Schedule XI to the Constitution which deals with the article 243 G.

i. Features of the 73rd Constitutional Amendment Act, 1992.

a. Gram Sabha :

The act provides for a Gram Sabha. Gram Sabha would be the foundation of Panchayati Raj. All the persons registered in the electoral roll of the village in the area of the Panchayat are the members of the Gram Sabha. It exercises powers and performs functions at the village level as the state legislature may determine.

b. Three Tier System:

The act establishes a three tier system of Panchayati Raj in every state of India. At the village, intermediate and district levels. According to act, a state having a population not exceeding 20 lakh can establish Panchayat at an intermediate level.

c. Election of the members and Chairpersons:

The act provides for direct elections of the members of Panchayats at the village, intermediate and district levels. However, the chairpersons of panchayats at the intermediate and district levels should be indirectly elected by the elected members.

d. Reservation of Seats:

The act provides for reservation of seats for the SC's and ST's in every Panchayat in proportion of their population to the total population. The act also requires the state legislature to provide for reservation to the office of chairperson in panchayat for the members of the SC and ST.

The act also mandates for the reservation of 1/3rd of total member of seats for women (including the number of seats reserved for women from the SC's and ST's). Also, not less than 1/3rd seats of the total number of offices of chairperson should be reserved for women.

e. Duration of Panchayats:

According to the act, the duration of office would be of five years at every level of the Panchayat. It can be dissolved before the completion of the term and fresh elections should be conducted (a) before the expiry of the duration of five years (b) if it is dissolved then before six months from the date of dissolution. Apart from this if a new Panchayat is constituted in place of dissolved Panchayat then it will be on office only for the remaining period. Thus, it would not enjoy a full term.

f. Disqualification :

A person shall be disqualified for being a member of a Panchayat, if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned; and if he is so disqualified by or under any law made by the Legislature of the State.

g. State Election Commission:

The act has vested the state election commission with the superintendence, direction and control of preparing the electoral rolls and conducting the elections to the Panchayat. For this purpose, a state election commissioner would be appointed by the Governor. The state election commissioner can be removed from office only as per the grounds prescribed for the removal of the judge of the high court of the state.

h. Powers and Functions of the Panchayats.

The State Legislatures have been given the powers to confer on Panchayats such powers and authority as may be necessary to enable them to function as institutions of self-government. They can be given the responsibility of preparing plans and implementation of schemes for economic development and social justice. The 11th Schedule of the Constitution describes the various powers and functions:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.

9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets."

i. Finance Commission:

The State Government is required to appoint a finance commission every five years, to review the financial position of the Panchayat and to make recommendation on the following issues :

- a. The Distribution of the taxes, duties, tolls, fees etc. levied by the state which is to be divided between the Panchayats.
- b. Allocation of proceeds between various tiers.
- c. Taxes, tolls, fees assigned to Panchayats.
- d. Grant in aids.

j. Applications to Union Territories:

Provisions of Panchayats shall be applicable to the UTs in same way as in case of the states but the President may make any modifications in the applications of any part.

k. Exempted States and Areas :

The provisions of part IX are not applicable to the following: Entire states of Nagaland, Meghalaya and Mizoram, Hill areas in the State of Manipur for which District Councils. The provisions of the district shall not apply to the hill areas of the District of Darjeeling in the State of West Bengal which affect the Darjeeling Gorkha Hill Council.

l. Continuance of Existing laws.

The act also mandates that all state laws relating to Panchayats shall be in force until the expiry of one year from the commencement of this act. Thus, the states were required to adopt the new system of Panchayat within one year from 24th April 1993.

74th Amendment Act to the Constitution of India.

The urban local government in India signifies the governance of urban area. It is to be done by the people through their elected representatives. The system of urban governance came into practice in India by the 74th Amendment Act to the Indian Constitution.

The historical roots of Urban local government can be traced back to 1687-88 when the first municipal corporation was set up at Madras and subsequently in 1726 municipal corporations were set up in Bombay and Calcutta. 1870 Lord Mayo's resolution made arrangements for strengthening the municipal institutions in India. However, it was Lord Ripon's resolution of 1882 that is called as the Magna Carta of local self government and Lord Ripon is called as the father of local self government in India.

The Government of India Act 1919 introduced the system of dyarchy and the local self-government became a transferred subject under the charge of an Indian Minister. However, under the Government of India Act 1935, local self government was declared as a provincial subject.

On the 6th August 1989, the Government headed by Mr. Rajiv Gandhi introduced the 65th Constitutional Amendment Bill. It was passed by the Lok Sabha but got defeated in the Rajya Sabha and hence lapsed. Similarly, in 1990 the VP Singh Government introduced the revised bill but it could not be passed as the Lok Sabha was dissolved. It was the government under the leadership of PV Narsimharao that introduced the modified Municipalities bill which emerged as the 74th Constitutional Amendment Act of 1992 and came into force from 01st June 1993.

The 74th Amendment Act added a new Part IX A to the Indian Constitution. It is entitled as “The Municipalities” and contains provisions from Articles 243 P to 243 ZG. It has also inserted the 12th Schedule to the Constitution and deals with article 243- W.

Features of the 74th Amendment Act to the Indian Constitution.

1. Three Types of Municipalities :

The act provides for the constitution of the following three types of municipalities in every state.

1. A nagar panchayat for a transitional area, that is, an area in transition from a rural area to an urban area.
2. A municipal council for a smaller urban area.
3. A municipal corporation for a larger urban area.

2. Composition:

The act provides for direct elections of all the members of a municipality by the people of the municipal area. Each municipal area shall be divided in territorial constituencies known as wards. The manner of election of the chairperson of a municipality may be prescribed by the State Legislature. The representation of the following persons in a municipality is also determined by the act:

- a. Person having special knowledge or experience in municipal administration. They would however not has the rights to vote in the meeting of municipality.
- b. The members of the Lok Sabha and the state legislative Assembly representing constituencies which comprise wholly or partly the municipal area.
- c. The members of the Rajya Sabha and the state legislative council registered as electors with the municipal area.
- d. The chairpersons of committees (other than wards committees).

3. Ward Committees

The act prescribes for the constitution of a ward committee that would comprise of one or more wards in the area of the municipality having a population of 3 lakhs or more.

4. Reservation of Seats:

The Act prescribes for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area. Reservation is provided for not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging to the SCs and the STs).

The state legislature has the power to provide for the manner of reservation of offices of chairpersons in the municipalities for the SCs, the STs and the women and can also make provision for the reservation of seats in any municipality or offices of chairpersons in municipalities in favour of backward classes.

5. Duration of Municipalities:

According to the act term of office for every municipality is of five years but is subjected to dissolution the completion of its term. Fresh election to constitute a municipality shall be completed (i) before the expiry of its duration, of five years; or (ii) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

6. Disqualifications:

A person shall be dis-qualified:

(i) under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or (ii) under any law made by the state legislature.

7. State Election Commission:

The State Election Commission is entrusted with the superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections of the municipalities.

8. Powers and Functions:

The state legislature has the power to endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self- government.

It may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to (i) the preparation and implementation of plans for economic development and social justice.

The 12th Schedule of the Indian Constitution describes 18 functional items:

- 1) Regulation of land use and construction of land buildings.
- 2) Urban planning including the town planning.
- 3) Planning for economic and social development
- 4) Urban poverty alleviation
- 5) Water supply for domestic, industrial and commercial purposes
- 6) Fire services
- 7) Public health sanitation, conservancy and solid waste management
- 8) Slum improvement and up-gradation
- 9) Safeguarding the interests of the weaker sections of society, including the physically handicapped and mentally unsound
- 10) Urban forestry, protection of environment and promotion of ecological aspects
- 11) Construction of roads and bridges
- 12) Provision of urban amenities and facilities such as parks, gardens and playgrounds
- 13) Promotion of cultural, educational and aesthetic aspects
- 14) Burials and burials grounds, cremation and cremation grounds and electric crematoriums
- 15) Cattle ponds, prevention of cruelty to animals
- 16) Regulation of slaughter houses and tanneries
- 17) Public amenities including street lighting, parking spaces, bus stops and public conveniences
- 18) Vital statistics including registration of births and deaths

9. Finances:

The state legislature may (i) authorize a municipality to levy, collect and appropriate taxes, duties, tolls and fees; (ii) assign to a municipality taxes, duties, tolls and fees levied and collected by state government; (iii) provide for making grants-in-aid to the municipalities from the Consolidated Fund of the state; and (iv) provide for constitution of funds for crediting all moneys of the municipalities.

10. Application to Union Territories:

The President of India may direct that the provisions of this Act shall apply to any union territory subject to such exceptions and modifications as he may specify.

11. Areas Kept Out:

The Act does not apply to the scheduled areas and tribal areas of the Indian Constitution. It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.

12. District Planning Committee:

Every state shall have at the district level, a District Planning Committee to consolidate the plans prepared by Panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole.

13. Metropolitan Planning Committee:

Every metropolitan area shall have a Metropolitan Planning Committee to prepare a draft development plan. Metropolitan area is an area having a population of 10 lakh or more, comprised in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas

14. Continuance of Existing Laws and Municipalities:

The act prescribed that all the state laws concerned with municipalities shall continue to be in force until the expiry of one year from the commencement of this Act. The states were required to adopt a new system of municipalities in maximum period of one year from 1st June 1993.

However, all municipalities existing immediately before the commencement of this Act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

II. Types of Urban Governments:

The act also prescribes for the constitution of eight kinds of urban local bodies for administration of the urban areas. The types of bodies are Municipal Corporations, Municipality, Notified Area Committees, Town Area Committee, Cantonment Board, Township, Port Trust, Special Purpose Agency.

Conclusion

Thus, the executive of India consisting mainly of the President, Prime Minister and the Council of Ministers have a huge responsibility dealing with various aspects of the execution of the policies. On the other hand the 73rd and the 74th Amendments to the Indian Constitution have strengthened the process of decentralization in the country and has improved the working of both the rural and urban local governments in the country.

QUESTIONS;

1. Explain in detail the provisions of the 73rd Amendment to the Indian Constitution?
2. Describe the various functions of the Panchayats as prescribe by the 73rd Amendment?
3. Write a note on the 74th Amendment to the India Constitution?
4. Explain in detail the 12th Schedule of the Indian Constitution?

