

MODULE1

MAKING OF INDIAN CONSTITUTION

Unit Structure

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1.0 OBJECTIVE

- This Unit is design to make students to introduce basic aspects of Constitution of India.
- To understand Basic and salient features of Constitution.

1.1 INTRODUCTION

The constitution of a country is generally described as its fundamental law of the state. It represents the vision and values of the nation. It is a living organization of functioning Institutions.

The Indian Constitution is not a product of a political revolution but of the research and deliberations of body eminent representatives of the people. For our present purpose we need not to go beyond the years 1858, when the British Crown assumed sovereignty over India from East Indian Company. Even we need not to mention the details of constitutional history which has started from the government of India Act 1858. The 1858 that was the starting point of domination of the principle of absolute Imperial control. The act of 1861 provided Governor Generals executive council. The Indian council Act 1892 introduced Provincial Legislative Councils. The First attempt for introducing a representative and popular element was made by the Morley Minto reforms i.e. Indian Council Act of 1909.

This act recognized the principal of indirect election and introduces principle of communal representation by giving separate representation to Muslims. The important landmark in the constitutional development of India is The Act of 1919 which was based on Montagu Chelmsford reforms report. The erst while Legislative council was replaced by bicameral legislature. The act also introduced Diarchy system in eight major Provinces.

However the Act failed to fulfill the aspirations of the people of India. This led to an agitation by the Congress. As a result of this a commission was appointed under the chairmanship of John Simon to review the reforms.

Three round table conferences were held to consider and examine the demands of Indian leaders. A joint committee was appointed for the purpose. The Government of India Act 1935 was introduced on the basis of this report. This act was a remarkable feature of Indian constitutional history. The act prescribed a Federal structure for India. Diarchy at the Centre level. The central legislature was made by bicameral. The division of Legislative powers between the centre and the provinces are some of the significant features of the Act of 1935. However the act of 1935 incorporated various provisions which were later became the part of Indian Constitution. The Indian Independence Act of 1947 set up two independent dominions as India and Pakistan and the constituent assembly of each Dominion gave complete freedom to frame and adopt any constitution for their respective Nations

1.2 MAKING OF INDIAN CONSTITUTION

The task of framing the constitution of sovereign democratic nation is performed by a representative body of its people. The concept of constituent assembly has been linked with the growth of National Movement in India. The first definite reference to a constituent assembly was made by Mahatma Gandhi in 1922.

A national convention was called on 24th April 1923 under the presidency of Sir Tej Bahadur Sapru. This convention drafted the Commonwealth of India bill'. The draft was submitted to all parties' conference held at Delhi in January in 1925 under the president ship of Mahatma Gandhi.

The bill was introduced in house of commons but was defeated. But it was a major effort by the Indians to outline a constitutional system for India.

Later on the adoption of famous Motilal Nehru resolution in 1924 and 1925 on the national demand was a historical event in the constitutional history of India.

The failure of the Simon Commission and the Round table conference, which led to the enactment of the Government of India Act 1935 to satisfy Indian aspirations, accentuated the demand for a constituent assembly of the people of India. This demand was reiterated by the All-India national convention of Congress legislators in March 1937. The demand for constituent assembly was for the first time authoritatively at theory is considered by the British government or indirectly through August after 1940.

The situation of world war II was forced the British Govt. to consider the demand of constituent Assembly Sir Stafford Cripps, a cabinet member of British Govt. visited India and given a draft declaration on this proposal . This is popularly known as ‘Cripps Mission Plan’. But due to separatist movement of Muslim league and some other political movements the Cripps Mission plan was rejected.

After the rejection of Cripps proposal (and followed by the Quit India movement) various attempts were made to recognize the two parties (Congress and Muslim League) but remained unsuccessful. British Govt. send a three cabinet member delegation and put forward its own proposal for constituents Assembly to be elected to draft the constitution and suggested a basic framework for Indian Constitution.

Elections to the constituent Assembly was held for 296 seats and completed by July-August 1946. The Congress won 208 seats and Muslims League 73. And rest of the seats won by independents and other minor parties. This constituent Assembly (which was elected for undivided India) held its first sitting on 9th Dec 1946. A draft Resolution of objectives which was moved by Nehru on 13th Dec 1946 was finally adopted by the CA on 22nd Jan 1947.

With the partition and independence of country on 14-15 Aug 1947, the constituent Assembly of India become free from the fetters of the cabinet mission plan; and became a fully sovereign body. As a result the CA reassembled on 31st Oct 1947. The proposed constitution had been lined by various committees of Assembly with other native and additional proposals in the form of a ‘Draft Constitution of India which was submitted to the president of Assembly. On 21st Feb 1948, The clause by clause consideration of the Draft constitution was completed on 16th Nov 1949 and on the next day CA took up the third reading of the constitution. Dr. B.R. Ambedkar moved a motion ‘that the constitution as settled by the Assembly be passed’. The motion was adopted on 26 th Nov 1949 and it was adopted and passed on the same day saying that the people of India enact and gave to themselves the constitution of the Sovereign democratic Republic of India. The constitution was finally signed by members of the CA on 24th Jan 1950 along with the signature of Dr. Rajendra prasad who was president of constituent Assembly.

Dr. B. R. Ambedkar, the chairman of Drafting Committee said that the journey is not an end. The good or bad constitution does not depend on the nature of the constitution it is the people and political parties to decide and depend upon hoe they will setup as their politics.’’

The constitution kept growing for better or worse and acquire newer and newer. Meanings by the manner in which and men by whom it was worked from time to time. The story continues

Review Questions:

- 1) How the constituents Assembly were set up?
- 2) Take a brief review of the working of constituent Assembly
- 3) Discuss the role of Dr. B.R. Ambedkar in drafting the constitution.

1.3 SALIENT FEATURE OF THE CONSTITUTION

The constitution of India is remarkable for many outstanding features which distinguish it from other constitutions in the world, though it is prepared after ransacking of all the known constitutions of the world and most of the provisions are substantially borrowed from others. The only new things is removed faults and to accommodate it to the needs of the country. However many of the original features have been modified by making various amendments. From time-to-time, Some of the important features of the constitution can be noted down as per the following

1) Size of the constitution:

Indian constitution is the longest constitution ever given to any nation. It is a comprehensive document and includes many matters which could legitimately be the subject matters of ordinary legislation. The original constitutional contained as many as 395 Articles and 8 schedules. After the various amendments and repealing of several provisions, it controls 448 Articles and 12 schedules with 104 amendments till 25th Jan 2020.

2) Written constitution

Constitution may be written or unwritten like USA and UK respectively. Indian constitution is a written document. Prepared by the constituent Assembly. Our constitutions is more full of words than other constitutions because it has embodied the modified results of judicial decisions made elsewhere interpreting comparable provisions, on order to minimize uncertainty and litigation.

3) Rigid and Flexible:

Federal constitutions are usually classified as rapid constitution because of their difficult amending process. Indian constitution may be said to be a combinations of rigid and flexible e.g. few of the provisions of the constitution can be modified by the parliament by simple majority; some provisions require ratification by the state legislature. In some cases the constitution has given power to parliament to supplement the provisions by legislation. The constitution thus ensures adaptability by prescribing variety of modes.

4) Federal or unitary:

The classic example of Federal constitution is USA and unitary constitution is of UK's constitutions. The federal constitutions is usually written and rigid and divides power between Federal govt. and Federating units, where as in unitary constitution all powers are vested in the central govt. The Indian constitution is described as Quasi federal constitution, Federal in structure but unitary in spirit. Reasons for this unique, unitary – federal mix are to be found in the history of India. The text of the constitution does not anywhere use the term 'federal or federation. The Supreme Court has spoken sometimes as quasi federal and sometimes unitary.

5) Parliamentary System:

It has been stated that the form of government introduced by our constitution both at the union and the states is the parliamentary govt. of the British type. India has adopted a Republic therefore an elected president is the Head of the union and all govt. actions are taken in the name of president. The president has no act in accordance with the aid and advice of the council of ministers. The principle of ministerial responsibility to the legislature which is a part of British System, embodied in the provisions of our constitution.

6) Parliamentary sovereignty – Vs Judicial Supremacy:

The harmonization between parliamentary sovereignty and judicial supremacy is a unique achievement of our constitution makers. An absolute balance of power between various organizations of the govt. has been maintained. Pandit Nehru had appropriately said that, "No judiciary can stand over the sovereign will of the parliament, it can pull up that sovereign will if it goes wrong. "Our constitution thus places parliamentary supremacy as much as that is possible within the bounds of the written constitution.

7) Independent Judiciary:

The constitution establishes an independent judiciary with powers of judicial review. The high courts and Supreme Court form a single integrated judicial structure with jurisdiction over all laws. Judiciary is a custodian of individual's rights and freedom and the constitution. Therefore the review of legislation to determine its vires vis a vis the constitution. The Supreme Court also functions as the arbiter of any disputes in regard to jurisdiction and distribution of powers between the states and union.

8) Adult Franchise:

The adoption of universal suffrage (Act 326) without any qualification is a bold experiment in India with an overwhelming illiteracy. The concept of popular sovereignty underlined by the preamble is realized by this provision. The only effective medium of peoples sovereignty in modern democracy is adult franchise with an independent electoral machinery. This bold experiment has been crowned with success in the 16 general

elections since 1952 and several state legislature elections. The constitution has abolished the communal representation (which was introduced during British period)

9) Single Citizenship:

The constituent Assembly was fully aware about the spirit and objectives of National freedom movement. In keeping with this aim to credit, India as united and integrated nation, the concept of single citizenship was essential despite of the federal character of our constitution. There is only Indian citizenship and no states have right to issue separate identify to the people. All citizens have equal rights without decimation.

10) Fundamental Rights:

It is a remarkable features of or constitution. Fundamental rights are incorporated in part III (Art 12 to 35) of the constitution. They are resistive against the state. Any executive action depriving on individual citizens can be challenged in the court of law. It will be held unconstitutional and invalid unless it is covered by the restrictions spelled out by law. FRs is not absolute. A balance between the rights of citizens and interests of society has been maintained. The remedies for enforcing these rights have been provided by Art 32. Any law or executive order which offends against fundamental rights is liable to be declared void by the Supreme Court or high courts.

11) Directive Principle of state policy:

This provision has been inspired by the Irish precedent and a unique feature of our constitution. The intention of incorporating these provisions in the constitution is to give directives to the state for formulating its socio-economic policies and welfare schemes. Most of these directives aim to establish of socio-eco democracy which is pledged for in the preamble. These directives are not enforceable in the courts and do not create any justiciable rights in favor of the individuals. However these principles have assumed greater relevance and importance not only for the legislatures but also in the eyes of the judiciary.

12) Fundamental Duties:

The 42nd Amendment to the constitution added a new part under the head of fundamental duties. It lays down a code of 10 duties. The fundamental rights without corresponding duties are meaningless. There is no provision in the constitution for direct enforcement of any of these duties not for any sanction to present their violation

13) Preamble:

It is a very unique feature of Indian constitution. No other world constitution has preamble type provision. It reflects the philosophy and values on which the Indian democracy is based. The preamble servers two purposes. Firstly it indicates the source from which the constitution derives its authority. Secondly it also states the objects which the constitution seeks to establish and promote. Combining the ideals of

political, social and economic democracy with that of equality and fraternity the preamble seeks to establish what mahatma Gandhi described as the India of my dreams Namely-

“ An India in which the poorest shall feel that it is their country in whose making they have an effective votes..... and India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability or the crax of intoxicating drinks and drugs. Women will enjoy the same rights as men.”

Review Questions:

1. Discuss the unique and cret standing features of the constitution of India
2. Comment on The Parliamentary sovereignty and basic structure of the constitution.
3. Discuss the following concepts
 - i) Universal adult franchise
 - ii) Single citizenship
 - iii) Federal and unitary constitution.

1.4 THE PHILOSOPHY OF THE CONSTITUTION

Every constitution has a Philosophy of its own. Indian constitutions has embodies. The fundamental values, the aims and objectives which the founding fathers enjoined the polity to strive to achieve in the preamble. Historically speaking Pt Nehru moved an objectives Resolution which was adopted in the constituent Assembly on 22nd Jan 1947 and which inspired the shaping of the constitution. Through all its subsequent stages. Nehru said that ‘Resolution was something more than a resolution’. It is declaration a firm resolve, a pledge and undertaking and for all of us, a dedication.’’ The ideals embodied in the preamble. The text of the preamble can be read as following.

ii) We the people of India, having solemnly resolved the constitute India into Sovereign, Socialist secure democratic Republic and to secure all its citizens.

Justice social, economic and political Liberty of thoughts, expressions, belief, faith and worship equality of status and of opportunity and to promote among them all.

Fraternity assuming the dignity of the individual and the unity and integrity of the nation.

In our constituent Assembly this twenty sixth day of Nov 1949 do hereby adopt enact and give to ourselves this constitution.

The importance and utility of the Preamble has been pointed out to seven decision of our Supreme Court. Though itself it is not enforceable in a court of law. The preamble to a written constitution seeks to establish and promote and also aids the legal interpretation of the constitution where the language is found ambiguous. In *Bharti Bhavan V/S state of Mysore* case the Supreme Court held the view that the scope of the Directive Principles and Fundamental Rights could be better understood in the light of the objective enshrined in preamble. In *Keshavanand Bharti V/S Kerala state* the majority of the judges referred to the Constituent Assembly debates and held that the preamble was part of the constitution. Any provisions of the constitution could be amended under Article 368 only within the broad contours of the preamble and of the constitution.

Let us discuss in brief meaning of words used in the text of preamble.

1. We the people:

The constitution of India unlike the preceding Govt. of India Acts is not a gift of the British Parliament. It is ordained by the people of India through their representatives assembled in a Sovereign Constituent Assembly which was competent to determine the political future of the country. The words 'We the people of India' thus declare the ultimate sovereignty of the people of India and that the constitution rests on their authority.

2. Sovereignty:

A sovereignty state as one, where there resides within itself a supreme and absolute power acknowledging no superior. The constitution of India does not contain any specific provision in regard to the vesting of sovereign powers. The words 'we the people' itself expresses the sovereign power vested to the people of India. India ceased to be a dominion of British on 26th Jan 1950 and became Sovereign nation. The Sovereignty belonged to the whole people of India. And not to these of separate states. The membership of common wealth Association does not threaten to our sovereignty. However we have to keep in mind that the mutual limits to the concept of sovereignty.

3. Democratic:

The picture of democratic Republic which the preamble envisages is democratic not only from the political but also from the socio eco stand point. It envisages democratic from the govt and democratic society infused with justice liberty, equality and fraternity. As a form of govt. we have chosen a representative form of democracy with adult franchise and parliamentary form of govt. The constitution holds out equally to all citizens in the matters of choice of their representatives, who are to run the

government. Our democratic republic stands for the good of all the people embodied in the concept of welfare state. As Dr. Ambedkar explained in his concluding speech in the constituent Assembly that political democracy cannot last unless there lies at the base of it social democracy.

4. Re-public:

The concept of Republic is that of a state, in which the people are supreme, there is no privileged class and all Public offices are open to every citizen without any discrimination. There are no hereditary rulers and the head of the state is elected by the people for a fixed term. We have an elected president as the head of the union.

The words 'socialist' secular and integrity are inserted in the constitution by the 42nd Amendment Act 1976, in the text of preamble. Though the preamble part is not enforceable in the court of law, it was amended with an intention to provide more clarity to our social and economic objectives. No one has objected to this amendment.

5. Socialist:

As mentioned above, this word was inserted to the preamble by the 42nd Amendment Act 1976. Though the word 'socialism' is vague. Our Supreme Court has observed that its principle aim is to eliminate inequality of income and status and standard of life. The constitution 45th Amendment Bill attempted to define 'socialist' to mean free from all forms of exploitation. After addition of the word 'Socialist' in the preamble the courts in their interpretation of the constitution could expectedly learn in favourship eliminating economic inequality and abolition of forms of exploitation.

6. Secularism:

The Secular objective of the state has been specifically expressed by inserting the word 'Secular' in the preamble. There is no provision in the constitution making any religion official. The liberty of belief, faith and worship is promoted by the constitution (see Art 25, 29). The state does not owe loyalty to any particular religion as such it is not irreligious or antireligious. The vision of the founding fathers was that of a Nation transcending all diversities of religion, caste and creed. It seems

That the term secular be clearly defined by the constitution and firm Legislation has to be passed and prevent the misuse of religion for political interests.

7. Justice:

The preamble promises justice to all citizens. Justice means harmonization of interests between individuals and groups and on the other hand interests of the community of course the concept of Justice is very wide. Social justice implies that all citizens are treated equally irrespective of their status in society. Economic justice would require that the rich and poor are treated alike and efforts to be made in bridging the gap between them.

(See Art 39). Political justice means equal share to all citizens in the right to participation in the political process without any distinction on race, caste etc. (see Art 16).

8. Liberty:

Liberty was conceived as absence of interference in individual freedom by the right to liberty of thought expression, belief etc. (Art 19). Democracy cannot be established without liberty written is necessary for force and civilized existence. However liberty should be coupled with social restraint and subordinated to the liberty of the greatest number of common happiness.

9. Equality:

Guarantee of certain rights is meaningless, unless all inequality is banished from the social structure and even individual is assured of equality of status and opportunity for the development of best in him. Equality has legal, political, social and economic aspects. This is secured by the constitution. (See Art 14,15,16,17,18,) The political equality is guaranteed by providing universal adult franchise (A 326)

10. Fraternity:

The ideals of justice, liberty and equality are relevant and meaningful only in as much as these promote a common feeling of brotherhood. The fundamental rights and directives Principle plays a vital role by making various socio-economic provisions to establish human dignity. Removing of social and economic disparity is the only way of maintaining dignity of individual.

12. Unity and the integrity of the Nation:

Unity amongst the inhabitants of this vast subcontinent, torn asunder by a multitude of problems and fissiparous forces, was the first requisite for maintaining the independence of the country as well as to make the experiment of a democracy successful. The ideal of unity has been buttressed by adding the words 'and integrity' of the Nation. (42nd Amendment Act 1976). But neither the integration of the people nor a democratic political system could be ensured without infusing a spirit of brotherhood amongst the heterogeneous population of this country.

13. Conclusion:

Thus an analysis of the various concepts and terms preamble shows that the noble words of preamble represent the quintessence, the philosophy and the soul of entire constitution of India. The preamble contained the basic features of the constitution. Combining the ideals of political, social and economic democracy with that of equality and fraternity the preamble seeks to establish what Mahatma Gandhi describes as the India of my dreams.

Review questions:

1. What is the importance and place of ‘Preamble ‘of the constitution?
2. Which new concepts have been added in the ‘preamble’ by the amendment in the constitution?
3. What is the real meaning of ‘we the people and ‘Republic’ incorporated in the ‘Preamble?’
4. Discuss the following concepts
 - 1) Socialist
 - 2) Secular
 - 3) Fraternity

1.5 FUNDAMENTAL RIGHTS

Introduction:

In UK’s unwritten constitution there is no code of fundamental Rights. However this does not mean there is no recognition of these basic rights. This individual liberty is secured by judicial decisions. In USA the American Bill of rights is equally binding upon the legislature as upon the executive. The result has been the established of judicial supremacy in UK.

In India the Simon Commission and joint parliamentary Committee had rejected the idea of enacting declaration of fundamental rights on ground that ‘abstract declarations useless. there exist the will and the means to make them effective’. But Nationalist opinion, since the time of Nehru Report was definitely in favor of Bill of Rights Regardless of the British opinion the makers of our constitution adopted fundamental Rights to safeguard liberty of Indian people and to strengthen our democratic system. According to Justice Bhagvati,’ our fundamental Rights represent the basic values cherished by the times and are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.

General Features:

General features of fundamental Rights can be summarized (in short) as per the following

a) Roots in freedom struggle:

Roots of these rights are found in our freedom struggle movement. Nehru Report was the documentary evident for the demand of basic rights.

b) Rights are justifiable:

The rights which are incorporated in the constitutions are justifiable in the court of law. The judiciary is the protector of rights and liberty of the people. Ways and means are provided by the Constitution (Art 32) for this purpose.

c) Reflecting social Reality:

Our fundamental Rights are not only a code of Rights and liberty. We consider that democracy is not only a political form but a way of life. This has properly reflected in the part III of the Constitution.

d) Elaborated provisions:

While incorporating the chapter of fundamental Rights in the constitution makers have taken care of elaborating each and every right in detail with exceptions and limitations (some of the limitations have been added by the parliament by laws of amendment).

e) Positive and Negative:

Freedom or Rights have two sides which tell us what to do and what not to do, these are positive and negative aspects of rights. The restrictions or limitations on the rights are visible sides of it. The rights and freedom has to be enjoyed with social concern.

Fundamental Rights in the Constitution:

The constitution of India has embodied number of fundamental Rights in part III of the Constitution. The constitution itself classifies the fundamental Rights under seven groups as follows.

- i) Right to equality (Art 14-18)
- ii) Right to freedom (Art 19-22)
- iii) Right against exploitation (Art 23, 24)
- iv) Freedom of Religion (Art 25-28)
- v) Cultural and educational rights (Art 29-30)
- vi) Right to property (Art 31) Eliminated by the 44th Amendment Act so that only six freedoms are remained.
- vii) Rights to constitutional remedies (Art 32-35)

Let us take a survey of all these rights in particular (Article wise)

Part III of the constitution which contains the most elaborate chapters of human rights. These are, as described by Justice Gajendra gadkar as the “Very foundation and Cornerstone of democratic way of life ushered in this country by the constitution.”

Under art 12 the definition of ‘state is given which includes the government and parliament of India, Government and legislatures of the state, all local authorities and other authorities under the control of government of India.

Art 13 declares all laws and executive orders in force immediately before the commencement of the constitution inconsistent with the fundamental rights to be ultra-vires and void to the extent of such inconsistency.

All the fundamental rights are subject to reasonable restrictions and limitations imposed by law or by court decision from time to time. The Supreme Court has authorized to decide the reasonableness of the restrictions imposed by the parliament by law.

I Right to Equality. (Art 14-18):

- Art 14 – Equality before Law Equal Protection of the laws
- Art 15 – No discrimination against any citizens on grounds of religion race, caste sex of place of birth?
- Art 17 – Untouchability and its practices in any form is punishable Offence
- Art 16 – Equality of opportunity in matters of public employment?
- Art 18 – Abolition of titles?

The principle of equality does not mean that every law must have universal application for all persons who are not by nature attainment or circumstance in the same position as the varying needs of different classes of persons often require separate treatment. The principle does not take away from the state the power of classifying persons for legitimate purposes.

Some reasonable restrictions on Right to equality-

- 1) In offences relating to women, they may be placed in more favorable position.
- 2) To differentiate between civil and military personnel in some cases.
- 3) Making special provisions for women and children.
- 4) To prescribe certain condition for employment
- 5) Making adequate reservations for socially and economically disadvantaged groups.

II Right to freedom (Art 19-22):

Art -19 embodies seven freedoms as under.

- a) Freedom of speech and expression.
- b) Freedom to assemble
- c) Freedom of forming associations
- d) Freedom of movement
- e) Freedom of residence/settlement
- f) Right to property (deleted by 44th amendment act 1978)
- g) Freedom of profession/occupation

Art 20 – Protection in respect of conviction for offences

Art 21 – Protection of life & personal liberty

Art 22 – Protection against assets and detention

Right to freedom guaranteed in this section is subject to reasonable restrictions imposed by the state by law, relating to defamation, contempt of court, decency or morality security of the state friendly relations with foreign states incitement to an offence, public order and maintenance of the sovereignty and integrity of India. The expression reasonable restrictions seek to strike a balance between the freedom of an individual and society. The reasonableness should be determined from both the substantive and procedural stand point. There is no specific provision in our constitution guaranteeing the freedom of press because it is included in the wider freedom of expression. Which is guaranteed by Art 19 (I) (a) The right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Likewise the other rights of personal liberty are subject to reasonable restrictions by law.

III Right against Exploitation:

Art 23 – Prohibition on traffic in human beings and forced labour.

Art 24 – No child below the age of 14 yrs. shall be employed to work in any factory or any hazardous employment.

The whole idea is not to allow the state or anyone to compel a person to work against his/her will or to misuse the human in any way. The only exception is compulsory service for public purposes. These rights are included in keeping with the human rights concepts and United Nations norms.

IV Right to freedom of Religion (Art 25-28):

Art 25 – All persons are equally entitled to freedom, of conscience and Right to freely profess, practice and propagate religion of his/her choice.

Art 26 – Every religious groups have right to manage their religious Affairs.

Art 27 – No person shall be compelled to pay any taxes/ expenses of any particular religion.

Art 28 – Forbids totally any religious instruction being imparted in educational institutions maintained by state funds.

India under the constitution is a 'secular state' i.e. A state which observes an attitude of neutrality and impartiality towards all religions. There is no state religion in India. The state will neither establish a religion of its own nor confer any special patronage upon any particular religion.

The ambit of the freedom of religion has been widened by the judicial interpretation. It should be pointed out that the court has the right to

determine whether a particular rite is regarded as essential by the tenets of a particular religion and to interfere if a particular practice offends against public health or morality.

In this context the word secular is a dubious word capable of diverse meanings. The state of confusion has been set at rest by the Supreme Court which states that secularism does not mean that the state should be hostile to religion but it should be hostile to all religions. The neutrality of the state would be violated if religion is used for political purposes. It is in this sense that secularism is to be regarded as basic feature of the constitution.

V. Cultural and Educational Rights:

Art 29 – Guarantees to every citizens residing anywhere in India having Distinct language script or culture the right to conserve the same.

Art 30 – All minorities whether religious or linguist shall have the right to establish and administer educational institutions of their choice.

However it does not mean right to mal administration. The right is subject to regulatory power of the state. Clause 2 of the Art 30 provides that in the matter of giving aid, the state shall not discriminate against minority managed institutions.

Vi- Right to Proerty (Art 31):

Art 31 – The original article includes the right to acquire property (legally) to hold and to dispose it freely with a reasonable restriction.

When the question arises of paying the compensation for the acquiring private property for public purpose by state by law, underwent serious changes as a result of amendments of the constitution, 4th, 17th 25th and finally 44th amendments.

The 44th Amendment act 1978 repealed articles 19(1) (f) and article 31 from the category of fundamental rights completely with effect from 20th June 1979. Instead in part XII the of the constitution a new chapter, chapter IV and a new article 300 A was added to provide that No person shall be deprived of his property save by authority of law Art 300 A gives protection against executive action and not against legislative decision.

VII Right to constitutional Remedies:

Abstract declaration of fundamental Rights in the constitution are not useful without the means to take them effective. The power of the courts to enforce obedience to the fundamental rights depends not only on impartially and independence of judiciary but also on the effectiveness of

the instruments available to it compete such obedience against the state or any other person or authority.

The Indian constitution lays down some provisions for the enforcement of fundamental rights guaranteed by the constitution. Art 32 is the corner stone of the entire edifice set up by the constitution. It provides a guaranteed remedy for the enforcement of those rights and this itself made a fundamental right included in part III. These are provision in the constitution for empowering courts other than the Supreme Court or the high courts to issue the writ by making a law of parliament. But no such law has yet been passed. With the result that no courts other than Supreme Court or high courts have got the power to issue these writs noted below.

1. Habeas Corpus:

Habeas corpus literally means to have a body. This writ is in the nature of an order calling upon the person who has detained another to produce the later before the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment.

2. Mandamus:

Literally means a command. It commands the person to whom it is addressed to perform some public or quasi- public legal duty which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy.

3. Prohibitions:

The writ of prohibition is a writ issued by the Supreme Court or a High court to an inferior court forbidding the later to continue proceedings therein in excess of its jurisdiction. It is available not only against druidical authorities but also against administrative authorities. Hence prohibition is not available against public officers who are not vested with judicial functions.

4. Certiorari:

The prohibition is available at an earlier stage certiorari is available at a later stage on similar grounds. The object of both is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdictions which it does not possess. High court can issues a writ of certiorari to quash the decision of the inferior tribunal and the Supreme Court can also issue the writ in such cases, provided some fundamental right has also been infringed by the order complained against.

5. Quo-Warranto:

It is a proceeding whereby the court enquiries into the legality of the the claim which a party asserts to a public office and to oust him from its enjoyment if the claim be not well founded. Quo-warranto is a very powerful instrument for safeguarding against the usurpation of public officers.

The fundamental rights guaranteed by the constitution will remain suspended while a proclamation of emergency is made by the president under Art -352.

Review Questions:

1. Justify the Indian demand for guaranteed fundamental Rights can parliament amend them?
2. Critically examine the concept of equality before law.
3. Discuss the various writs guaranteed under Art 32
4. What is the position of Right to poverty today?
5. What is Reasonable Restrictions? Who decides it and to what extent?
6. Define and discuss the meaning of secular state?

1.6 FUNDAMENTAL DUTIES

Duty is an inalienable part of right. The two represent the two sides of the same coin, what is duty for one is another's right and vice versa. If all men have right to life a duty is also cast upon all men to respect human life and not to injure another person. Gandhi it sought to emphasis the socio economic responsibilities of all citizens. It was in keeping with his ideas that the constitution 42nd Amendment Act 1976 added to the constitution a new part IV A titled fundamental Duties after. The original part III and IV.

The new part IV a Consisted Article. 51 A incorporates the following then duties. It shall be the duty of every citizen of India.

- 1) To abide by the constitution and respect the national flag and the national anthem.
- 2) To cherish and follow the noble ideas which inspired our national struggle for freedom.
- 3) To 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 the spirit of common brotherhood amongst all the people of India.
- 6) To value and preserves the rich heritage of our composite culture.
- 7) To protect and improve the natural environment
- 8) To develop the scientific temper and spirit of inquiry.
- 9) To safeguard public property and to abjure violence.

- 10) To strive towards excellence in all spheres of individuals and collective activity.

In this context it would be better to remove a misnomer involved in the expression. Composite culture in clause (F) of article 51A. The Supreme court pointed out that, Though the people of this country differed in a number of ways they all were proud to regard themselves as participants in common heritage and that heritage eternally is the heritage of Sanskrit.

There is no provision in the constitution for direct enforcement of any of these duties nor for any sanction to prevent their violation. But it is expected that in determining the constitutionality of any law, if a court finds that it seeks to give effect to any of these duties it may consider such law to be reasonable in relation to Art 14 or 19 thus save such law from unconstitutionality. It would also serve as a warning to reckless citizens against anti social activities. The only way to bring about adherence to fundamental duties is through public opinion and education.

1.7 UNIT END QUESTIONS

1. What is the place of Fundamental Duties in Indian Constitution?
2. Discuss the relationship between fundamental rights and fundamental duties.
3. How the fundamental Duties are enforced?

MODULE 2

FEDERATION IN INDIAN CONSTITUTION

Unit Structure

2.0 Objectives

- 2.1 Federal Structure
- 2.2 Re- organization of State
- 2.3 Emerging trends in Centre- State Relations

2.0 OBJECTIVES

- To understand the concept of federal structure in Indian Constitution.
- To understand the process of reorganization and formation of Indian states.
- Emerging trends in Centre- state relations, areas of conflict and cooperation.

Chapter Scheme:

a. Federal Structure

- 1. Introduction
- 2. Meaning and Definition
- 3. Characteristics of Indian Federalism
 - 2.1 Political Dualism
 - 2.2 Division of Power
 - 2.3 Bicameralism
 - 2.4 Strong Centre
 - 2.5. Integrated and independent judiciary
 - 2.6 No equality of States representation
- 4. Conclusion

b. Re- organization of State

- 2.1 Introduction
- 2.2 Formation of Indian State after independence
- 2.3 Demands for Linguistic States
- 2.4 Formation of New States
- 2.5 Conclusion

3. Emerging trends in Centre- State Relations

- 3.1 Introduction
- 3.2 Emerging Trends of Cooperation between Centre and State
- 3.3 Emerging Trends of Conflicts between Centre and State

3.4 Role of Commissions and Institutions

3.5 Conclusion

A. Federal Structure

1. **Introduction**
2. **Meaning and Definition**
3. **Characteristics of Indian Federalism**
 - a. **Political Dualism**
 - b. **Division of Power**
 - c. **Bicameralism**
 - d. **Strong Centre**
 - e. **Integrated and independent judiciary**
 - f. **No equality of States representation**
4. **Conclusion**

1. INTRODUCTION

The political structures of (Mostly democratic) Nations are described either as 'federal' or 'unitary' for the purpose of governance. The main objectives of this arrangement is to define, distribute and coordinate the sphere of power and functions of the center and the federating units. In the federal system the federating units derive their power from center, but are free in several matters. In the Unitary system they are completely dependent upon Union government. India is a 'quasi-federal' state. It is a federal nation, with unitary bias.

Whereas, in a federal system of government the power have been divided between central and federating units or states. The power in a federal government is divided by the constitution itself, and both in their respective jurisdiction independently. Norway, China, Britain, France, Japan, Italy, Belgium, Sweden, Spain etc. are some of the examples of the unitary government. Whereas, Brazil, Russia, Canada, Argentina, Switzerland, Australia, US are some of the examples of the federal form of government. India has adopted a mixed model comprising the best features from both types of systems. The very first Article 1 of the Indian constitution terms, 'India, that is Bharat shall be the union of the states.'

Thus the constitution describes India, as the 'Union of States'. According to Dr. B. R. Ambedkar, 'the phrase 'Union of States' have been preferred to 'Federation of States' to indicate two things:

- (a) The Indian federation is not the results of an agreement among the states like the American federation,
- (b) The state have no right no right to secede from the federation. The federation is Union because it is indestructible.

2. MEANING

In the state of West Bengal vs Union of India (1962), the Supreme Court held that the 'Indian constitution is not federal. But in 1994 a nine-judge Bench of Supreme Court held that 'federalism is a part of the basic structure of the Constitution. Therefore, on many occasions, the court and scholars have concluded that, the Indian federal system is not a copy of USA. The 7th Schedule of legislative entries (Art. 246) clearly concludes that, 'Constitution is unitary'. Art. 245 to 254 of legislative powers of state and center provides for guidelines. The power to admit, create Art. 2), alter the boundaries (Art. 3) a new state lies with Indian parliament. This is why the Constitution is often described as 'quasi-federal'.

There are 98 subjects (originally 97) in the Union List, on which Parliament has exclusive power to legislate. The State List has 59 subjects (originally 66) on which states alone can legislate. The Concurrent List has 52 subjects (originally 47) on which both the Centre and states can legislate. In case of a conflict, the law made by Parliament prevails (Article 254).

Federalism is a type of government in which the power is divided between the national government and other governmental units. It contrasts with a unitary government, in which a central authority holds the power and a confederation, in which states for example are clearly dominant. That is why the unitary and federal government are the most popular form of political administration. In unitary form of governments, all the powers are concentrated in national government. The regional or provincial units derive their power from national government. It depends up to the administrative and political suitability of a country to adopt federal or unitary model of polity. That is why it is regarded as a 'quasi - federal' country. It is federal in form because of dual governments at center and state, dual legislature being Indian parliament and states legislature but unitary in spirit for having single constitution, citizenship, judiciary, role of governor etc.

3. DEFINITION

The Indian federal system is based on Canadian model and not on American model.¹ Some of the leading experts of Indian constitution have defined the Indian federal system as under:

Dr. B. R. Ambedkar observed that, 'the constitution is a Federal constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, nor are the states the agencies of the union deriving powers from it'(Ambedkar).

K. C. Wheare described the constitution of Indian, 'Quasi Federal'. Further, he remarked that, 'Indian Union is a Unitary state with subsidiary federal

features rather than a federal state with subsidiary unitary features’ (Where, KC).

Granville Austin called the Indian federalism as a ‘co-operative federalism’ (Austin).

Therefore, the Indian federalism stands as an distinguished model of governance, with a fine balance between ‘Federal’ and ‘Unitary’ system. The makers of Indian constitution shaped and modified the best existing laws before adopting to suit Indian conditions.

4. CHARACTERISTICS OF INDIAN FEDERAL SYSTEM

The Indian federal system took shape to suit the diversity and socio-cultural distinctions to accommodate the needs and aspiration of wide and large nation. The unique features of Indian Federalism is as follows:

A. Political Dualism:

The Federal system is technically made of two level of polity and administration. First level is national government, which has the responsibility of major national area like Defense, Currency and Coinage, Foreign Policy and international relations amongst many. The second level of government is state government. It has the responsibility to implement the national policies and work for the welfare of the people within its jurisdiction. In India the Union government is run by the council of ministers headed by the Prime Minister (Art. 74 (1)), who solicits ‘aid and advise’ to the President of India (Art. 75 & Art. 78). Similar arrangements are made at state level also. The state government is run by a council of ministers headed by the Chief Minister. The governor is given the position of head of the state as an overseer of the administration on behalf of the President of India. Similarly, the legislative powers are also divided.

B. Division of Power:

The Seventh Schedule of the Constitution contains three lists that distribute power between the Centre and states (Article 246). The Indian Parliament has right to make the law on 98 (originally 97) items of union list. The state government can make the law in the 59 (originally 66) items. There is third list known as concurrent list with 52 (originally 47) items. This detailed constitutional arrangements are helpful to provide a detailed administration in a vast diversity like India. All the Legislative, Administrative and Financial powers are divided.

C. Bicameralism:

The parliamentary democracy in India is inspired by the British Parliamentary government also known as Westminster model. It has two houses. House of Lords (Upper House) and House of Commons (Lower House) of the parliament. Indian parliament consists of Upper House and Lower House, also known as Lok Saba and Rajya Sabha. The members of Lok Sabha are directly elected by the people for a term of 5 years.

Whereas, the members of Rajya Sabha are elected by the elected Members of Legislative Assemblies from all the states and Union Territories for a term of 6 years. India has 29 states and 7 union territories. The states are unicameral, except for Maharashtra, Uttar Pradesh, Karnataka, Andhra Pradesh, Telangana and Bihar have bicameral legislature. They have Legislative Assembly and Legislative Councils. Thus, India follows bicameral legislative system.

D. Strong Centre:

Indian federal system is a 'federal state with unitary bias'. The constitutional arrangements are made in such a way, where the balance of power is tilted towards the union government. It can be understood in terms of Legislative, Administrative and Financial relations between the Union and State governments. As far as legislative powers are concerned, the center and state have their respective lists of legislative powers. But in case of any conflict between the law made by the union and state, the union law prevails. In fact in concurrent list also the union has an upper hand. The administrative bureaucracy i.e. IAS, IPS and other class one services officers are recruited by the UPSC and sent to states to work as a top decision makers. The state has power to allocate them duties and transfer within the state. Their services are controlled by the Central government only. In terms of financial arrangements, the union controls maximum revenue sources. Through Legislative, Executive and Financial controls the Union government dominates the power and will of the states, i.e. Role of Governor, list of legislative powers, Role of All India Services officers, Finance Commission, NITI ayog etc. Therefore, In Indian federal system the balance is tilted towards the center.

E. Integrated and Independent Judiciary:

Article 124 to 147 of Indian Constitution provides for an independent single integrated judiciary. It also provides for establishment of an independent judiciary. The apex judiciary that is Supreme Court of India heads all the judicial institutions. Right from District or Session court to High Court to Supreme Court the judicial system functions as one single hierarchy. The apex judiciary has got the power to review and interpret the Constitution. It settles the disputes between the states and center or between the states. The judiciary is completely independent. The terms and conditions of services and benefits are exempted from vote of parliament. Judges are secured from any kind of political or administrative interference. They enjoy fixed tenure and perks as per the Constitutional guideline.

F. No Equality of states representation:

In a pure federal state the center and have equal political representation. In US the principle of equality of representation of states in the Upper house is fully recognized. Thus the American senate has 100 members, two from each state. However, Indian parliament and states have different pattern of representation. It is based on the population of the state. Highly populated states like UP, Bihar, Maharashtra have greater representation

and small states like Sikkim, Nagaland, Manipur have less seats in assembly and parliament. UP sends 80 MPs in Lok Sabha and 31 seats in Rajya Sabha, whereas Sikkim has only one each in both the houses. Thus unequal representation is another unique feature of Indian federalism.

Check Your Progress:

1. Explain the concept of ‘Federal’ and ‘Unitary’ model of governments.
2. What are the main characteristics of Indian Federalism?

II. CENTRE - STATE RELATIONS IN INDIA

Chapter Scheme

1. Introduction
2. Legislative Relations
3. Administrative relations
4. Financial Relations
5. Conclusion

INTRODUCTION

The constitution of India is federal in nature with unitary bias. It has carefully laid down the procedure of separation of Legislative, Administrative and Financial power between centre and state. However, there is no separation of Judicial power. Hence, India has a single integrated judiciary. The centre and state are given full liberty in their areas of functions. But in case of any excess or violation of the constitution it is possible to restrict them. Thus, the constitution provides a detailed roadmap for the conduct of the centre - state relation in India. The centre - state relations can be studied as follows:

- **Legislative Relations (Art. 245 to 255 of Part XI)**
- **Administrative Relations (Art. 256 to 263 of Part XI)**
- **Financial Relations (Art. 268 to 293 of Part XII)**

The scheme for demarcation of powers through three list. The union list details the subjects on which Parliament may make laws. The state list gives details of subjects under state legislature and the concurrent list has subjects in which both Parliament and state legislature have jurisdiction. The constitution also provides primacy to Parliament on concurrent list items. If there is a conflict, a central law will override a state law.² still there are laws enacted by the Union Parliament which leads to conflict between the Centre and state. For example, the Right to free and

compulsory Education Act. was passed by Parliament in 2009. The provision of financial burden on states are a matter of concern and dispute. Another challenge before the centre arises is of maintaining the uniformity of law while implementing it in different states with different conditions. The Centre - state relationship, thus can be examined as under:

1. Legislative Relations (Art. 245 to 255 of Part XI):

Article 245 to 255 of Part XI of the Indian Constitution provides for the main provisions of the centre- state legislative relations. Besides, these articles, there are other provisions as well regulating this area. The Centre - state legislative relations cover the territorial extent of this legislation. In that, the states have been authorized to legislate within the territorial limit of that particular region. Also the President of India and Governor of the state have power to direct the government to not to apply any particular law in the state.

It provides for distribution of the legislative subjects as:

(I) Union List : Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the list. The union list has 100 items (originally 97) like defence, banking, foreign affairs, atomic energy, communications, census etc. The state do not have power to make laws in the union list. However, if any such legislation required by more than two states, it can be represented in Rajya Sabha for the purpose of making laws therein.

(II) State List: The state list has got 61 subjects (originally 66 subjects). 'in normal circumstances' the state has exclusive power to make laws in this list. Sometimes in case of emergency, the Union Parliament or the President of India through an ordinance make a law in the state list also.

(III) Concurrent List: There are certain subject which are important for both Centre and State governments. Such subjects have been kept under the concurrent list. At present 52 subjects are kept in this list (originally 47 subjects).

Also there are provisions for Parliamentary legislation in the state list, in cases of issue being a matter of national or international importance or the subjects between two or more states.

Administrative Relations (Art. 256 to 263 of Part XI):

Art. 256 to 263 deals with the provisions of administrative relations between the center and the states. It has specifically distributed the administrative power as following:

- I. The state has absolute liberty over its administration, except in case of 'special circumstances'. The state have their own cadre of staff, recruited for this purpose. Also the union government is duty bound to manage the administrative affairs of central government, with the help of All India Services officers.

- II. As per Art. 365 of the constitution, the state are under obligation to follow the central governments administrative guideline. Also, 'if the president is satisfied that the constitutional machinery in the state has failed, through a report of governor or otherwise' he may impose President Rule under Art. 356 of the constitution.
- III. Center may also issue directives and advisory to the states for cooperating with the centre government and following the laws made therein
- IV. As per Art. 263 the President can establish an inter- state council to investigate and discuss the subjects of common importance.

2. Financial Relations (Art. 268 to 293 of Part XII):

The financial powers of the Centre are greater than those of the states. However, the extent of power to legislate laws are as following:

- I. The union Parliament has only got the power to levy taxes on the subjects, which is mentioned in the list.
- II. The state government can impose taxes on the subjects it deals with state subjects only.

Nevertheless, the clear cut division of sources of revenue between the federal and the state governments makes each other financially independent of each other. Therefore, the Constitution has made elaborate provisions regarding distribution of the revenue between centre and the states. They are as under:

1. Duties levied by the Union but Collected and appropriated by the states:

Stamp duties and toilet preparations are levied by the Government of India, collected and appropriated by the states, within their territorial jurisdiction. Union territories are exempted from such provisions under Art. 268.

2. Taxes Levied and Collected by the Union but Assigned to the states, within which they are imposed. It includes Succession duty on non-agricultural property, Estate duty on non- agricultural land, Terminal taxes on goods and passengers carried by railways, air or sea.

3. Taxes Levied and collected by the union and distributed between the union and the states: It aims at the equitable distribution of the revenue. For example income tax - other than agricultural income, excise duties as per Union list etc.

4. Surcharges: The parliament is however, authorized to levy surcharge on the taxes mentioned above.

5. Grants in aid: Parliament may make grants in aid from the consolidated fund of India to such states as are in need of assistance,

particularly for the promotion of welfare of tribal areas, including special grants to Assam.

6. Loans: The Union government may make loan to any state or give guarantee with respect to loans raised by any states.

7. According to Art. 301, freedom of trade, commerce and intercourse throughout the territory of India is guaranteed, but the Parliament has the power to impose reasonable restrictions in public interest.

Finance Commission: Although the constitution has made efforts to allocate every possible source of revenue either to the union or the states. However, they are very broad classifications. Therefore, the Constitution provides that, “Finance Commission is to be constituted by the President every 5 years. The Chairman must be a person having ‘experience in public affairs’. other four members must be appointed from amongst the following:

- I. A Judge of High Court or any person who is qualified to be a judge in a High Court.
- II. A person having knowledge of the finances and accounts of the government.
- III. A person having work experience in financial matters and administration.
- IV. A person having special knowledge of economics.

Conclusion:

The centre- state relations are at the core of the Indian federal system. The centre and state governments are duty bound to cooperate with each other in order to secure the welfare of the people and give them a good government. The centre and states work together in the matters like environment, education, infrastructure development and welfare of the backward sections of the society. Thus it can be safely said that, Indian constitution is essentially federal in formation but unitary in functioning. It is one of the unique political system that exists and has strengthen over the period of tie since Independence.

Question for exercise:

1. Write a detailed note on the concept and essential features of federalism.
2. What are the important features of the center - state relations in India?
3. Examine the areas of conflicts and cooperation between the center and states.

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a. Re- organization of State

- 2.1 Introduction
- 2.2 Formation of Indian State after independence
- 2.3 Demands for Linguistic States
- 2.4 Formation of New States
- Conclusion

2.1 INTRODUCTION

Modern Indian state is a product of reconciliation and re – organization post-Independence. The process of reorganization of Indian of India as a nation was a unique and tough job. As far as India as a nation is concerned, it was Chankya who laid down the foundations of *Bharatvashra* (a geographical and demographic expression for the people from Ancient Gandhar – todays Afghanistan to edges of Himalaya – todays Nepal) in the form of *Mauryan* Empire. After that many kingdoms ruled various parts of India. After that during medieval era many aggressors came from Arab world who ruled India for more than 800 years. Then came the British who ruled from 1765 to 1947. The struggle for Independence that began in 1857 strengthened the feeling of nationalism and sovereign nationhood. It led to a great fight for independence in violent as well as non- violent ways. Finally, British left India in administrative and political turmoil. Then there was the problem of the princely states, almost 500 of them, each ruled by a maharaja or a nawab, each of whom had to be persuaded to join the new nation. The problems of the refugees and of the princely states had to be addressed immediately. In the longer term, the new nation had to adopt a political system that would best serve the hopes and expectations of its population.

2.2. PROCESS OF CREATION OF STATES IN INDIA

To create a new state in India President of India recommends to the parliament to initiate the process of creation of a state. In case of bifurcation of any existing state, the legislature of such state sends a proposal passed by its legislature to the President of India. Then As per **Art. 3** of the Indian Constitution a Bill is tabled in Parliament. There are various reasons behind formation of a new state in India ranging from Social-Economic, Political, and Administrative, Cultural- Linguistic etc. like the states Jharkhand, Uttarakhand and Chhattisgarh were created in 2000 on socio-political basis. The states of Maharashtra, Gujarat, Andhra Pradesh were created on linguistic grounds. States of Nagaland, Mizoram, Manipur, Tripura were created for a mixture of reasons. Besides full flagged states there are Autonomous regions like Gorakhaland Hill Council, Bodo Hill Council etc. which enjoys a limited administrative and legislative autonomy from the state of its location to address the socio-economic and administrative issues of the area.

2.3 FORMATION OF INDIAN STATE AFTER INDEPENDENCE

After 1947, India was reorganized. British left the country as British Ruled India and Princely states (more than 500). Sardar Valabhbhai Patel was given the responsibility of the herculean task of integration. Initially the state were merged and acquired and divided into Part – A British India, Part – B princely rules states and Part – C the residual territory. In 1956, the Seventh Amendment to the Constitution and the States Reorganization Act was passed with an aim to reorganize the states on linguistic and administrative line. However the demand of linguistic states for Marathi speaking people and Telgu speaking people was intensified and took a violent turn. In Maharashtra 105 people were martyred while demanding for '*sanyukta maharashtra*' (unified Maharashtra) in 1956. Much before that in 1953 Gandhian leader Pottu Sreeramulu started fast unto death and died after 56 days. It has built a lot of public pressure on government to create the states on the basis of language. Thus on the basis of the recommendations of State Reorganisation Commission in 1956, 14 states and 6 UTs were created. The chronology of states' bifurcation in India after 1956:

- 1960 - Bombay state split into Maharashtra and Gujarat
- 1963 - Nagaland carved out of Assam
- 1966 - Haryana and Himachal Pradesh carved out of Punjab state
- 1972 - Meghalaya , Manipur and Tripura were formed
- 1975 - Sikkim became part of Indian union
- 1987 - Goa and Arunachal Pradesh became states (earlier these were UTs)
- 2000 - Uttaranchal (out of UP), Jharkhand (out of Bihar) and

Chhattisgarh (out of Madhya Pradesh) were formed
 2014 - Telangana (out of Andhra Pradesh), became India's 29th state.

The **28 Indian States and their capitals** are as follows.

States Name	Capital	Founded Date
Andhra Pradesh	Amaravati	1 Nov, 1956
Arunachal Pradesh	Itanagar	20 Feb, 1987
Assam	Dispur	26 Jan, 1950
Bihar	Patna	26 Jan, 1950
Chhattisgarh	Raipur	1 Nov, 2000
Goa	Panaji	30 May, 1987
Gujarat	Gandhinagar	1 May, 1960
Haryana	Chandigarh	1 Nov, 1966
Himachal Pradesh	Shimla	25 Jan, 1971
Jharkhand	Ranchi	15 Nov, 2000
Karnataka	Bengaluru	1 Nov, 1956
Kerala	Thiruvananthapuram	1 Nov, 1956
Madhya Pradesh	Bhopal	1 Nov, 1956
Maharashtra	Mumbai	1 May, 1960
Manipur	Imphal	21 Jan, 1972
Meghalaya	Shillong	21 Jan, 1972
Mizoram	Aizawl	20 Feb, 1987
Nagaland	Kohima	1 Dec, 1963
Odisha	Bhubaneswar	26 Jan, 1950
Punjab	Chandigarh	1 Nov, 1956
Rajasthan	Jaipur	1 Nov, 1956
Sikkim	Gangtok	16 May, 1975
Tamil Nadu	Chennai	26 Jan, 1950
Telangana	Hyderabad	2 Jun, 2014
Tripura	Agartala	21 Jan, 1972
Uttar Pradesh	Lucknow	26 Jan, 1950
Uttarakhand	Dehradun (Winter) Gairsain (Summer)	9 Nov, 2000
West Bengal	Kolkata	1 Nov, 1956

At Present **India now has 28 States and 8 Union Territories**. The erstwhile state of Jammu and Kashmir has been bifurcated into two Union Territories (UT) of J&K and Ladakh. The newly formed union territories have been formed under a reorganization act passed by the Parliament on 5-6 August 2020. At present India has 8 Union Territories.

Union Territories Names	Capital	Founded on
Andaman and Nicobar Islands	Port Blair	1 Nov, 1956
Chandigarh	Chandigarh	1 Nov, 1966
Dadra & Nagar Haveli and Daman & Diu	Daman	26 Jan, 2020

Delhi	New Delhi	9 May, 1905
Jammu and Kashmir	Srinagar (Summer)Jammu (Winter)	31 Oct 2019
Lakshadweep	Kavaratti	1 Nov, 1956
Puducherry	Pondicherry	1 Nov, 1954
Ladakh	Leh	31

2.4 DEMANDS FOR LINGUISTIC STATES AND ROLE OF COMMISSIONS APPOINTED

After independence India was integrated and merged into ABC category as an ad-hoc arrangement. The plan to rearrange the nation on the administrative and financial lines. However, the identity based pressure on union government made them to rearrange the states on linguistic and cultural line. It kept on becoming strong due to social and economic disparities and financial backwardness. To address the demands from various regions several commissions were appointed. Following commissions were prominent amongst them.

Dhar Commission 1948:

Dhar Commission was appointed under Justice S K Dhar to examine the possibilities of formation of linguistic states. The commission acknowledged the importance of linguistic aspirations, but suggested that historical, geographical and economic factors were more important for the formation of state. It concluded that administrative convenience should be given priority over linguistic considerations. But its suggestions were opposed nationwide. This led to appointment of another commission.

JVP Committee 1948:

The JVP was named after its members Jawaharlal Nehru, Vallabhbai Patel and Pattbhi Sitaramayya. It was appointed in December, 1948 and submitted its reports in April 1949. The JVP committee out rightly rejected the demands of formation of linguistic states. However, it left the option of reconsideration of linguistic demands.

Formation of Andhra 1953:

Veteran Gandhian leader Potti Sriramulu went on hunger strike with a demand f creation of separate Telagu speaking state. But the government was adamant on its stand. However, he died after 56 days hunger strike. The situation become very violent in Telagu speaking regions. Under this pressure the union government carved out te state of Andhra Pradesh from Madras province.

Fazal Commission 1953:

Fazal Ali Commission was appointed on 22 December, 1953. The Prime Minister announced appointment of the commission. K M Panikkar and H N Kunzru were other members. This commission submitted its report in

1955. It recommended formation of 16 states and 3 union territories. But the government did not accept the recommendation.

While accepting Commission's recommendation to do away with the four-fold distribution of states as provided under the original Constitution, it divided the country into 14 states and 6 union territories under the States Reorganization Act 1956.

Diversion of the State of Bombay:

The demand of Sanyukta Maharashtra state was very strong in Maharashtra. Formation of Andhra Pradesh intensified the demands of unified Maharashtra with Bombay as its capital. The demand was accepted and separate state of Maharashtra came into existence on 1st May 1960. Bombay province was divided into two separate states namely Maharashtra and Gujarat.

Formation of Nagaland:

Nagaland was carved out of Assam in 1963. The territory of Nagaland was kept under control of Governor of Assam in 1961. The distinct culture, language and tradition was main driving force behind the demand, which resorted to militant methods also.

Territories from France and Portuguese:

Some of the Indian territories under foreign rule even after 1947. The people of India and the Government were continuously agitating against foreign rule on Indian Territory. As a result of that, the acquisition of Chandernagore, Mahe, Yaman and Karekal from France, and the territories of Goa, Daman and Diu from the Portuguese, these were either merged with the neighbouring states or given the status of union territories.

PEPSU (Shah Commission):

PATIALA AND EAST PUNJAB STATES UNION (PEPSU) was an amalgamation of , eight East Punjab princely states of Patiala, Jind, Nabha, Kapurthala, Faridkot, Kalsia, Malerkotia and Nalagarh. It was inaugurated by Sardar Vallabhbhai Patel, Deputy Prime Minister of India on 15 July 1948. Maharaja Yadavinder singh of Patiyala was appointed as first Governor or *Rajpramukh*. Further in 1966 Indian Parliament passed Punjab Reorganization Act. It was a step taken to implement the recommendations of Shah Commission. Also there was tremendous pressure from Haryana and Himachal Pradesh regions for creation of separate states. This Act led to the formation of Punjab, Haryana and Himachal Pradesh with Chandigarh as the capital of Punjab and Haryana and Union Territory as well. Thus the number of Indian states rose to 17.

2.5 FURTHER FORMATION OF THE STATE

1. In 1969, the state of Meghalaya was created out of the state of Assam. Initially, the state was given autonomous status within Assam, but

subsequently it was made a full-fledged state. This raised the strength of Indian states to 18.

2. In 1971, with the elevation of the union territory of Himachal Pradesh to the status of a state, the strength of Indian states rose to 19 and then to 21 with the conversion of the Union Territories of Tripura and Manipur into states.
3. In 1975, Sikkim was admitted as a state of the Indian Union. Initially, Sikkim was given the status of an associate state but was subsequently made a full-fledged state.
4. In 1986 it was decided to give Mizoram, a Union Territory of India, the status of a full-fledged state. However, it actually acquired the status of a state in February 1987 and became the 23rd state of the Indian Union.
5. In February 1987 Arunachal Pradesh, another Union Territory of India, was also given the status of a state and became the twenty-fourth state of the Indian Union.
6. In May 1987 the state of Goa was created by separating the territory of Goa from the Union territory of Goa, Daman and Diu. While Daman and Diu continued to be a Union Territory, Goa became the 25th state of the Indian Union. Three new states of Chhattisgarh, Jharkhand and Uttaranchal were created in November 2000.

CONCLUSION

It is noteworthy that the administrative consolidation of various princely states proved to be very helpful in consolidation of more than 500 princely ruled states. But the strong leadership and management skills of the Iron Man of India Sardar Patel has single handily completed the mammoth project of Indian reorganisation.

Questions for Practice

1. Explain the process of reorganisation of Indian States post-Independence.
2. Examine the role of various commissions on state reorganisation.
3. What is the process of formation of a new state in India?

EMERGING TRENDS IN CENTRE- STATE RELATIONS

- 3.1 Introduction
- 3.2 Emerging Trends of Cooperation between Centre and State
- 3.3 Emerging Trends of Conflicts between Centre and State
- 3.4 Conclusion

INTRODUCTION

The Constituent Assembly has a long and intense discussion on the issue of nomenclature of the Indian federal system. Finally, the term ‘Union of State’ was adopted. Article 1 of the Constitution says, ‘*India, that is Bharat shall be the Union of States.*’ Whereas, the legislative, administrative and financial powers and functions have been divided in three lists, namely Union list, State list and Concurrent list.

Union List: The subjects of national importance, such as, defence, foreign affairs, money and banking, communication, national highways, shipping, ports, airways, regulation of oilfields and mineral development. Inter – state rivers and macro- economic management.

State List: It contains the subjects of regional importance, such as, public order, agriculture, irrigation, public health and sanitation, roads and bridges and industries other than those declared by Parliament to be of strategic importance are assigned to states.

Concurrent List (Art. 254): Concurrent List are criminal law, administration of justice, contracts, forests, economic and social planning, population control and family planning, education and newspapers.

Despite a fine arrangement of division of power, the constitutional arrangements are clearly inclined towards a strong center. That is why it is also regarded as ‘semi- federal’ or ‘quasi- federal’ state. The centre enjoyed exclusive jurisdiction of making the law in all the lists, including Union, concurrent, residuary and some times in the state list too, in order to give effect to international treaties and agreements.

However, over the period of 75 years lot of new trends emerged in the Indian political, economic and social system which has resulted both in co-operation as well as confrontation between the union and state. Most of the disputes have taken place on role of Governor (Art. 356), financial Powers and sharing of resources, center encroachment upon states powers and sometimes different party rules in center and states results into political conflicts. The main trends which have emerged between the centre – state relations can be examined as following:

Emerging Trends in Centre – State Relations

Trends in Executive Power:

After independence the Congress party rules the centre as well as most of the states. Therefore, the political dominance of Congress party led to create a sense of cooperation and toing the lines of centre. Therefore, the Centre – State relations between 1950 – 1967 was dominated by the Union government. The Union government would interfere into small and big decision. After 1967 the second phase of centre state relations has undergone through tremendous political pulls and push. The rise of regional parties and leaders posed a direct challenge to Congress party and the central government led by Indira Gandhi. Finally, the national emergency was imposed by using Art. 352 of the Constitution. The governments in seven non- Congress ruling states were suspended. It was the beginning of a new episode in centre- state relations (after Kerala episode in 1959), where the Governors exercised the power under Art. 356 and suspended the state governments led by the oppositions parties.

In 1977 when Janata Party came to power, it suspended Nine Congress party led state governments. Thus a revenge taking rivalry had ensued which is alive today as well. During emergency 42nd Amendment to the constitution was made, which has largely affected the centre- state relations. To ease the strain between centre and state, Sarkaria Commission (details given above) was appointed. But most of its recommendations were not accepted by then central government.

After 1990 the country entered into a multi – party electoral system which was dominated by the regional parties. These parties were strongly raising the issues of regional disparity and economic backwardness. It was largely supported by people who were driven by identity politics too.

The Administrative and Legislative powers of the Central and State government are provided in Art. 73 and 162 of the Indian Constitution. Along with that Article 257 (1) provides that, the State shall not prejudice its powers in such a way that poses the challenge to the authority of the Union or the Constitution. Also Article 73 (1) provides power to the Union government to exercise power against the will of the state government in the matters of external treaties and foreign relations.

The financial relations between Union and State is mediated by institutional mechanisms such as Finance Commission by Article 280. Art. 275 (1) provides for grant-in-aid of the revenues of such States and Parliament may determine to be in need of assistance. Article 282 enables the Union or a State to make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of a State, as the case may be, may make laws. The borrowing powers of the Central and State Governments are regulated by Articles 292 and 293 under which States can borrow from sources outside India only with the prior consent of the Government of India.

- i. Cooperation - for political power, problem solving, economic development, security.
- ii. Conflict - over political power, policy, resources, projects etc.
- iii. Competition - for political support, resources, projects, investments;
- iv. Dependence - for political support, resources, technical know-how, policy, security, etc.;
- v. Autonomy - for sociocultural identity, political space, economic policy and development; and
- vi. Innovation - for consultation, cooperation, problem solving.

3.4 MECHANISM TO SOLVE DISPUTE

The Supreme Court has used two mechanisms to solve the dispute between Centre and states over the entry list in Seventh Schedule. The mechanisms are Doctrine of Pith and Substance and Doctrine of Colourable Legislation. The Doctrine of Pith and Substance says that the constitutionality of legislation is upheld if it is largely covered by one list and touches upon the other list only incidentally.

The doctrine relates to finding out the true nature of a statute. Pith denotes the 'essence of something' or the 'true nature', while substance states the most significant or essential part of something. The Doctrine of Colourable Legislation tests the competence of the legislature against an enacted law. This doctrine states the fact that what cannot be done directly, cannot also be done indirectly. The doctrine restricts the overstretching of the constituted power of the legislature in a disguised, covert or indirect manner

CONCLUSION

The aim of the Indian Constitution is to establish either collaborative or cooperative federalism. Through the division of powers between the Centre and the States, a certain autonomy is granted to the States to ensure that the administration at the grass-root level remains efficient. Simultaneously, the Centre exercises its power over the States to maintain a balance. There are several challenges in the way of maintenance of a federation but the key solution is healthy debate and discussion between the parties involved.

QUESTIONS FOR PRACTICE

1. Explain the federal structure of Indian state.
2. Discuss the relations between Union and State.
3. Elaborate the process of reorganization of Indian State
4. Examine the recent trends in Centre- State relations.

MODULE 3

PARLIAMENTARY INSTITUTIONS

Unit Structure

- a. Union Executive : President, Prime Minister, Council of Ministers
- b. Role and Significance of the Parliament
- c. Judicial independence and judicial activism, debate between judiciary and Parliament.

OBJECTIVES

- To understand the concept of Parliamentary Democracy.
- To understand the position of President, PM and Council of Ministers.
- To understand the organization and judicial interdependence
- To understand the division of power between Legislature and Judiciary

Chapter Scheme:

- a. Union Executive : President, Prime Minister, Council of Ministers

3.1 INTRODUCTION

India is a parliamentary democracy. It has the legacy of British administration and Westminster model of democracy. However, unlike British democracy India has an elected President as the head of the state and executive. As such the President is the nominal head. The constitution of India provides that, 'there shall be a Council of Ministers, headed by the Prime Minister to give aid and advice to the president.'

According to Dr. B. R. Ambedkar, '*At the head of Indian Union there is a functionary called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of government prevalent in America and the form of government envisaged under the Indian constitution... under the Indian Constitution the President occupies the place as the British Monarch under the English Constitution. He is the head of the State but not of the government. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device or a seal by which the nation's decisions are made known.*' (Constituent Assembly Debates, Vol. VII. Pp. 33 -34).

3.2 PRESIDENT

The Article 52 of the Constitution provides a detailed provision for qualification, election and impeachment of the President of India.

President of India is the head of State of the Republic of India. He is the formal Head of the Nation. Along with Administrative head, he is the head of all the armed forces of India. Part – V of the Constitution provides for the Union Executive. Article 53 of the Constitution says that the President is empowered to exercise his authority but through the union Council of Ministers. Article 54 explains the role of the President as the head of Legislature, Executive, Armed forces and protector of the Constitution of India. The President of India is expected to be see everyone equal in the eyes of law. Without any prejudice, the president gives justice to States, Union or very citizen in India.

3.2.1. Election of the President:

Qualifications of the President:

A candidate has to meet some qualifications to be elected as the president.

Those qualifications of the President are:

- i. He should be an Indian Citizen
- ii. His age should be a minimum of 35 years
- iii. He should qualify the conditions to be elected as a member of the Lok Sabha
- iv. He should not hold any office of profit under the central government, state government, or any public authority.

Article 54 provides that, the President shall be elected by the members of an electoral college consisting of the:

- i. The elected members of both the Houses of Parliament
- ii. The Elected members of the Legislative Assemblies of the State.
- iii. As per Article 55, 'the state includes the National Capital territory of Delhi and Union territory of Pondicherry.

- The value of the vote of an MLA is given below:

$$\begin{aligned} & \text{Value of the vote of an MLA} \\ &= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000} \end{aligned}$$

- The value of the vote of an MP is given below:

$$\begin{aligned} & \text{Value of the vote of an MP=} \\ & \frac{\text{Total value of all MLAs of all state}}{\text{Total number of elected members of parliament}} \end{aligned}$$

However, there are certain members of union and state legislature who can not participate in the election of president of India.

- i. Nominated Members of Lok Sabha (2) and Rajya Sabha (12)
- ii. Nominated Members of State Legislative Assemblies
- iii. Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
- iv. Nominated Members of union territories of Delhi and Puducherry

3.2.2 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.

3.2.3 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.

3.2.4 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".

3.2.5 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. So far not a single President has been removed through impeachment. However, it was presented against President R. Venkatraman and withdrawn latter.

3.2.6 Powers and Functions:

The Power and functions of president of India are always subject to the aid and advice of the council of ministers headed by the PM. Therefore, the powers of President are nominal, that is why he is regarded as the rubber stamp. Unlike the president of USA, the president of India is not that powerful.

i) Executive Powers of President:

Every action and agreement taken by the Government of India is done in his name. He has power to make appointments like attorney general of India, CAG, Election Commissioner, Chairman of UPSC, State governors, chairman of finance Commission and other constitutional bodies. The council of ministers, headed by the Prime Minister to give aid and advise to the President of India. He seeks administrative information from the Union Government.

ii) Legislative Powers of President:

The President is a part of Parliament. No Bill can become an Act without receiving signature of the President. The President addresses the joint sessions of Parliament before commencement of each session. He causes

to lay down the bills and reports before the parliament. The president also nominates 12 members of Rajya Sabha and not more than 2 members of Lok Sabha from the Anglo- Indian community.

iii) Financial Powers of President:

The president has significant power in financial matters. He recommends the money bill. Without presidents recommendations the money bill cannot be introduced. He also causes the Union Budget to be laid down before the Parliament. Also, any demands for grant can be considered only if it is recommended by the president of India. Most importantly the Contingency Fund of India is under his control.

iv) Judicial Powers of President:

The president of India makes appointments for the apex judiciary. The Chief Justice of India, Judges of Supreme Court and High Court are appointed by the President of India. President can seek advice from CJI and other Judges of Supreme Court but such advises are not binding on him.

v) Pardoning power:

Under Article 72 the President has the power to grant pardon against punishment for an offence against union law, punishment by a martial court, or death sentence. However, before taking any decision on such matters the President makes a reference to the home ministry as well as to the legal experts.

vi) Diplomatic Powers of President:

All the international treaties and representations of Republic of India are made on behalf of the President. Though, the Prime Minister and Council of Ministers have a greater say in this matter but it is concluded in under the hand and seal of the President of India.

vii) Military Powers of President:

The President of India is commander in chief of all the defence forces. The appointments of Chief of Defence Staff (CDS, Chief of Army, Chief of Navy and Chief of Air Force are done by the President of India. Any decision related to war and peace are taken in the name of President of India. The peace keeping forces sent to UNO are sent by him.

viii) Emergency Powers of President:

In case of any external invasion, internal civil war, armed rebellion or any such calamity that has nationwide impact and beyond control of existing administrative machinery, a national emergency under Article 352 is proclaimed. So far the national emergency has been proclaimed only once in between 1975 – 1977 during Indira Gandhi government.

Constitutional Emergency/ Presidents rule in a state is proclaimed by the President under Article 356. The constitution clearly says that, 'if the president is satisfied by a report of the Governor or otherwise that, 'the constitutional machinery in the state has failed' the President can proclaim

his rule. Art. 365 says that whenever a state fails to comply with or to give effect to any direction from the center, it will be lawful for the president to proclaim his rule. In such a situation the Governor acts as a Chief Executive of administration on behalf of the President.

Article 360 of the Constitution provides that, in case of a situation in which the financial stability or credit of India or any part of its territory is threatened, Financial Emergency can be declared.

ix) Ordinance Making Power of the President:

Article 123 deals with the ordinance making power of the President. The President has many legislative powers and this power is one of them. He promulgates an ordinance on the recommendation of the union cabinet. To read more on Ordinance Making Power of the President.

x. Veto Power of the President:

The President of India does not have any formal veto power. However, the President of USA enjoys veto power which makes him stronger than the Senate and Congress. But in case of Indian President there is no such formal arrangement in the constitution. Though, except finance bill, he can withhold the bill till anytime. It is on the President of India to reject the bill, return the bill or withhold his assent to the bill. The choice of the President over the bill is called his veto power. The Veto Power of the President of India is guided by Article 111 of the Indian Constitution. To continue reading Veto Power, check the linked article.

3.3 CONCLUSION

Thus the President of India holds very important position in Indian parliamentary system. He/She performs multiple roles from being the first citizen of India to the head of the Republic of India. However, the President depends upon the aid and advice of the Council of Ministers headed by the PM. It makes the position of president weaker than the Prime Minister of India. This is done deliberately to restrict the President from becoming a dictator.

Questions for practice

- a. Explain the position of the President in the Constitution.
- b. Describe the process of Election and conditions of office of President.
- c. What are the powers and functions of the President of India?

PRIME MINISTER

- i. Election of PM
- ii. Powers and Position of PM
- iii. Relation of PM with President and Council of Ministers

3.4.1 INTRODUCTION

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.

3.4.2 Questions for Practice:

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

3.5 THE COUNCIL OF MINISTERS

- Concept of Council of Minister and Cabinet system
- Composition of Council of Ministers
- Powers and Functions of Council of Ministers.
- Conclusion

3.5.1 Concept of Council of Minister and Cabinet system:

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 advice 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 advice 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 along with 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.

3.5.2 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 I 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.

Questions for Practice:

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

3.6 ROLE AND SIGNIFICANCE OF THE PARLIAMENT

- Introduction
- Composition of Parliament
- Powers and Functions of Parliament
- Conclusion

I. 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 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.

II. 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 exist 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.

III 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 are 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 of 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.

IV. 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 Scheduled Caste and the Scheduled 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 are 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.

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.

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.

1) 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.

1. 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 with hold his assent but cannot return it back to the house for re consideration. Usually the President gives the assent as the bill is introduced with the prior permission of the President.

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.

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 to 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 Ministers 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.

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, 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.

Question for Practice:

- 1 Elaborate on the various Parliamentary Committees?
 - 2 Describe the various legislative devices to control the Executive?
 - 3 Explain the different Parliamentary privileges enjoyed by the Members of the Parliament?
 - 4 Describe in detail the Legislative Procedure?
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3.7 JUDICIAL INDEPENDENCE AND JUDICIAL ACTIVISM, DEBATE BETWEEN JUDICIARY AND PARLIAMENT

- Introduction
- Indian Judiciary: Structure and Compositions
- Powers and Functions of Judiciary
- Judicial Activism
- Debate Between Judiciary and Parliament
- Conclusion

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 elaborates 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 collegium 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 collegium.

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.

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.

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 fit 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.

B. The State Judiciary: High Court.

Below the Supreme Court of India, there prevail 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.

iv. 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.

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.

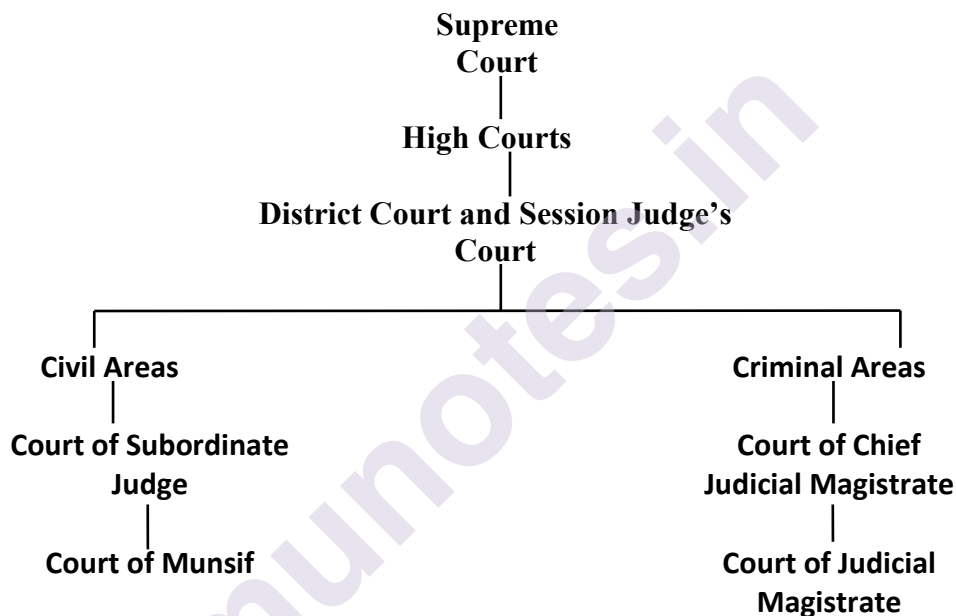
1. A Court of Record:

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.

2. 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.

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 sessions 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.

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 case, 1980. Recently, in the year 2015 the Supreme court declared National Judicial Appointments Commission (NJAC) act, 2014 as null and void.

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.”

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.

QUESTIONS FOR PRACTICE

1. Describe the Structure of the Supreme Court of India?
2. Is the Judiciary in India independent? Explain in detail
3. Describe the powers and the jurisdiction of the Supreme Court of India?
4. Describe the Structure of the High Court of India?
5. Describe the Jurisdiction and powers of the High Court of India?
6. Describe the Structure of the Subordinate Judiciary in India?

MODULE IV

STATE AND LOCAL GOVERNMENTS

Unit Structure

- 4.1 Formation & re-organization of states
- 4.2 State Executive
 - 4.2.1 Governor
 - 4.2.2 Chief Minister & council of Ministers
- 4.3 State Legislature
- 4.4 Rural Local Self Government
- 4.5 Urban Local Self Government

4.0 OBJECTIVE

- To understand the Organisation of federal structure
- To understand the Role of State legislature
- To understand the power and duties of Local self-government.

4.1 FORMATION & RE-ORGANIZATION OF STATES

Introduction:

The history of Indian states can be traced back to the British period pre British India was divided into various princely states. When the East India Company established its political hold on the longer part of Indian sub-continent, The Company divided the territory into three presidencies viz. Bengal Madras and Bombay some princely states were merged with British presidencies and some princely states were independent for their internal governance and British representative had complete control over these princely states. The first central govt. came into existence in 1973. Later on certain changes were made in the bifurcation of Bengal. Punjab becomes a separate province in 1849. They also restructure Oundh in 1856 central provinces in 1861 Assam in 1874 and north western frontier provinces in 1901. After independence the NEFA and Sindh became part of Pakistan. Anyway there is long history of Indian Princely states and British provinces. It must be remembered that the provinces were created for administrative convenience they were administrative units.

After Independence:

At the time of the application of Indian constitution (26 Jan 1950) The Indian states were classified as part A,B,C and D, Earlier Governor's provinces were included in part A, The part B was o princely states and part C consisted some small princely states and commissioners provinces and part D comprised of Andaman islands.

Re-organization of states:

The demand goes back to the year 1903. The participation of Bengal was an important Land mark in the history of freedom movement. The Nehru report of (Motilal Nehru) was in favor of reorganization of province on linguistic basis. The Simon commission report was not in favor of redrawing the map of India. The Indian National congress retired its demand for re organization states on linguistic basis by passing resolutions in 1927, 1937 and 1938.

A Linguistic provinces commission under the chairmanship of S K Dar (Known as Dar Commission) was setup to examine the question of formation of the new provinces. However the Dar commission did not get a favorable reception in the country. Therefore the congress appointed its own committee popularly known as JVP committee though was favor in re-Organisation of states but felt that it was not an appropriate time to do. Considering the pressure and subsequent agitation for the formation of Andhra state the committee favored its opinion. As a result of this Andhra state came into existence on 1st Oct 1953.

States Re-Organisation Commission:

The demand for new states got intensified hence the central government appointed a SR'c under the chairmanship of justice Fazal. (Known as Fazal Commission) The Govt. of India did not accept all the recommendations of the commission. However some new states formed. (About 15 new states) But there was a dispute regarding Gujrat and Maharashtra. The Sanyukt Maharashtra samiti agitated for the creation of separate state of Maharashtra (along with Bombay) and finally Gujrat and Maharashtra separate state have been formed by Re-structuring some states. At present Indian union have 28 states and 09 which territories.

4.2 THE STATE EXECUTIVE

Indian constitution provides for a federal govt. having separate systems of administration for the union and its units viz the states. The constitution contains provisions for the governance of both. It lays down a uniform structure for the state govt. in part VI of the constitution which is applicable to all the states. Broadly speaking the pattern of govt. in the states is the same as that of union viz a parliamentary system. The executive head of the state Governor, and exercises head of the state Governor, and exercises powers in accordance with the council of ministers headed by chief minister.

4.2.1 The Governor:

The institution of Governors in the present form could be attributed to the British regime. The Governor under British rule was more powerful and controlling office of the province. The Govt. of India act 1935 occupied a central position in the administration of provinces.

Constitutional provisions:

The executive powers of the state are vested in the office of the Governor. All executive actions of the state have to be taken in the name of the Governor. There shall be a Governor for each state and the same person can be appointed for two or more states (Art 153) The Governor is appointed by the president (Art 155). The prescribed term of office for a Governor is five years, but he holds office at the pleasure of the president (art 156). The pleasure of the president is not justifiable. The Governor is entitled to revive such emoluments, allowances as may be determined by the parliament from time to time, as specified in the "Governors (Emoluments, allowances and privileges) act 1982. The governor has no diplomatic or military powers. He is not answerable to any court of law for the exercise of his powers. The executive powers of the state are vested in the Governor (ART 154) and the exercised by him or any subordinate as per the provisions of the constitution. The Governor exercises his powers with the advice of the ministers.

Powers of the Governor:

The powers and responsibilities of the Governor can be summarized as per the following-

A) Legislative powers:

The Governor is not a member of legislature but is a part of legislature just as the president is a part of parliament. (Art 164). He has right of addressing and sending messages and summoning, proroguing and dissolving in relation to state legislature. In case of vacant post of speaker/dy speaker he can appoint of the concerned houses. All the bills that are passed by the state Legislature receive assent of the Governor before they become law. He is empowered to withhold his assent of the Governor before they become law. He is empowered to withhold his assent the bills except money bill which introduced with the prior approval of the Governor (ART 202) and of making demands for grants and recommending money bills (Art 207). He is also empowered to issue ordinances when the legislature is not in session.

b) Executive powers:

The Governor is a constitutional head of the state executive to act on the advice of the council of ministers (Art 163). The Chief Minister is appointed by the Governor (a majority party leader) and the other ministers on the advice of chief minister. The Governor appoints Advocate General of the state chairman and members of SPSC and Judges of subordinate courts (Art 165, 166, 283 and 284) The Governor may nominate to the legislative council (where it exists) one sixth members from among persons having special knowledge or practical experience in science, literature art tec. (Art 171 (3) (e) and (5). He has right to keep the president informed about the activities of the state govt.

c) Financial, Judicial and other powers:

The Governor is required to cause to be laid before the house of the legislature the annual financial statement. A money bill cannot be introduced without the prior approval of the Governor.

The Governor has the powers to grant pardons, reprieves, respites, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which executive power of the state extends (Art 161). He is also consulted by the president in the appointment of the chief justice and the judges of the high court of the state.

The Governor has no emergency powers but he has the power to make a report to the president whenever he is satisfied that a situation has arisen in which the govt. of the state cannot be carried on in accordance with the provisions of the constitution (Art 356)

There are certain areas where the Governor may have to use his own wisdom and discretion e.g.

- a) Appointing a new chief minister where no single party commands majority support
- b) Dismissing a ministry where it refuses to resign even after losing majority support
- c) Dissolution of the assembly on the advice of CM who has lost majority support etc. The Governor has right to receive reports from accountant General, SPSC etc. He is also the ex officio Chancellor of the universities in the state.

Position of the Governor:

If it true that the position of Governor assumes importance from all perspective, as unlike the office of the president. The Governor possesses certain discretionary powers. The Governor exercises his discretion in various issues as discussed above. While exercising discretionary powers, he will not be required to act according to the advice of his ministers.

Right from the day on which the constitution came into force, the office of the Governor has been a point of debate, mainly because that there are a number of incidences where the Governor has misused the powers mainly the discretionary powers. There are opinions of politicians and constitutional experts that the office of the Governor has been used by the ruling party at the Centre for safeguarding the political interests of the party at the Centre. The mode of appointment of the Governor has favored to the political party at the Centre. It has become a Centre of politics for the ruling party at the Centre to control and harass the opposition parties who are ruling the states. It is criticized that Raj Bhavan is a Centre to please the leaders at New Delhi. The office of the Governor has become a place for re installation of defeated politicians or retired bureaucrats (who are in favor of political party at the Centre) It is also felt that the Governor's office is a show piece for central govt. Smt. Sarojani Naidu once quoted

that the Governor is a bird in a golden cage Mr. Paltabhi Sitaraman once said that 'I had no function to perform except making fortnightly reports to the president'. The office of the Governor witnessed devaluation of its image. The democratic norms are openly fluted and conventions are thrown to the winds specially while dealing with the states that did not have governments. From the ruling party at the centre. A share controversy has arisen many times upon the question whether the govt. has power to dismiss the council of ministers in the state and impose president's rule.

This practice of dismissing the state govt. by the Governor has started from 1959 when the communist govt. in Kerala under EMS Nambudripad toppled in 1959 by V.V. Giri the then Governor of Kerala. The Governor of Punjab could not dare to demand the resignation of CM Pratap Singh Kairo even after the Das Commission found him guilty of corruption. The misuse of office of the Governor to dismiss the state govts frequently used by the centre after 1967 when non-congress govt. came in power in many states. In 1967 the Governor of West Bengal dismissed the United Front Ministry. In 1970 the Governor of UP G. Gopal Reddy dismissed the Charan Singh Ministry. In both the occasions the chief ministers were not given an opportunity to prove their majority. These are a long history of dismissing the state governments of non-congress states right from 1959. However this is not the case only with Congress but the non-congress parties which came in power at the Centre is not an exception to this type of practice. It is not always necessary that the Governors have to dismiss the state ministries but there are other ways of harassing the state govt. by the Governor. The recent (2020) controversy between the Chief Minister and Governor in Maharashtra is an ideal example of this type of controversy.

The controversies arose due to changed political situations. The Governors are playing double role i.e. Constitutional head and agent of Centre, which is not happy expression of Governors position. Practically speaking the Governor is not only figure head. The exact range of his powers depends upon the political situation that exists in the state. In case of political disharmony and instability Governors role become much larger and important.

The appointment of governors has raised controversy and his removal has generally public debate. The changing nature of Indian politics i.e. the rise of coalition politics has influenced the functioning of Governor to a large extent. Everything was smooth when the same party rule continued at the Centre and in the states but when the regional parties started to occupy power in the states the governor got embroiled in the politics of the central government.

There is no provision in the Constitution for the removal of the governor on account of the change of power at the Centre. But the convention

established on the same line. For number of times the Governors are asked to resign or removed when there is a change in power at the Centre.

However the misuse of the office of the Governor have come down due to intervention supreme court (SR Bommai case 1994) The judiciary set down certain checks in the misuse of Art 356. Various commissions and committees attempted to weed out the theory issues about the Centre state relations. The Sarkaria commission recommended that the Governors report (before using Art 356) should be given wide publicity in the media so that the people can understand the ground of dismissal of govt. The Supreme Court emphasized that parliament should ratify the presidential proclamation before goes into effect. However the role of the Governor still continues to be a thorny issue in the Centre state relations. Act this has led to the decline of the image of the Governor.

Review Questions.

1. Describe the evolution of the institution of the Governor.
2. Discuss the powers and functions of the Governor.
3. Critically examine the role of the Governor in state admn.
4. How the Governors are appointed and removed.
5. Governors have misused their office examine the statement with some illustrations.

4.2.2 Chief Minister and Council Of Ministers:

The Governor of a state is the constitutional head and chief minister is the real head of the state.

Appointment of CM and council of Ministers. Every state has a council of Ministers, with the chief minister as its head which aids and advice the Governor in the conduct of affairs of the state (Art163). The Chief Minister occupies a position akin to that of the PM at the Centre. The Chief Minister is appointed by the Governor the Leader of the Majority party in the state Legislative assembly. The other ministers are appointed by the Governor on the advice of the CM. The council of ministers are collectively responsible to the Legislative assembly (ART 164) Any person appointed as minister (including CM) ceases to be a minister if he is not or does not remain for a period of six consecutive months a member of a state legislature.

Role and position of Chief Minister:

The CM for all practical purpose is the head of the council of minister. He is considered to be the captain of the team. It is a prerogative of the CM to

formulate any major policy and got the approval. The council of ministers maintains secrecy regarding its deliberations. CM is the chief spokesperson of the government.

The major functions of the CM are mainly appointment and dismissal of the ministers, conducting meetings and discussing the plans and policies and action plan of the govt. with the council of ministers, to maintain relations and continuous contacts with the central govt. etc. Being accountable to the state legislature he has to maintain cordial relations with the legislature to inform the policies and decisions of the council of minister from time to time and get the sanction of legislature where ever necessary. The CM has also do play an administrative role and to see that all dept are managed effectively and efficiently. The chief secretary provides all the necessary administrative support to the CM.

The real position of CM depends on his personality political experience and maturity, administrative capability position in the party organization. The Position of CM is stronger if he is a leader of single majority party than the coalition govts. The weak CM works as a puppet in the hands of senior political Leaders in the party. The CM of a coalition govt. is virtually a prisoner of circumstances. During congress dominated era the CMs were reduced to the status of chief mangoes of the party led by the PM. The position of CM during Nehru era was comparatively strong because the CMS had sound footing in their respective states. Nehru's attitude towards states was real democratic and federal in nature. The great and tall personalities were at the helm of affairs in the states during that period.

However this tradition was discontinued during and after smt. Indira Gandhi era. The Chief Ministers of congress Party really made a puppet to work as agents of Central govt at the state level. The Chief Ministers were changed or replaced without any reason. Principally the chief minister is to be selected by the majority party MLAs of the assembly but it has become a practice that the CMs are decided by the OM or at the CMs are decided by the PM or at the central level. The chief ministers have no authority to select the members of council of ministers unless it is approval by the party leader at the Centre.

In case of coalition govt. the position of c.m. is always weak. It depends on the relationship between coalition partners. The present trend of coalition policies decides to strengthen or weaken the position of chief minister.

Council of Ministers: The constitution does not specify the number of minister to be in corporate in the council of ministers. Generally the council of ministers consists of three tiered structure i.e. Cabinet ministers, ministers of state and deputy ministers. In small states the two tier system is preferred. The cabinet ministers are given separate charge of any department. Deputy minister-ship is generally a training position, given to

the newly added minister. The cabinet minister occupies a significant position in the council of minister. The cabinet is a small body consists of very important departments. The decisions of the cabinet meeting are binding to all.

Constitutionally the ministers are appointed by the Governor on the advice of Chief Minister. But as we have seen that the chief minister of a single party leader has to acquire consent of party leader at central level, he has little choice in making his own council of ministers. Whereas in coalition government chief minister political parties while making the council of ministers.

Apart from the above two situations there are other factors to be considered while making the council of ministers. In Indian situation, the factor like caste, religion, region, rural urban minority and claims of senior and or political leaders (who are influential or trouble shooter) The behavior of some ministers also has become a serious issue now a days. They develop favorites and exercise under influence on service personnel. The relationship between political masters and bureaucracy is a problematic issue in administration. The ministerial responsibility has been more individual than collective. A compact and competent council of minister is the pre requisite for purposeful governance in the state.

Review Questions.

1. The Chief Minister is the real head of the state admin explain with examples
2. Critically examine the role and position of the chief ministers.
3. How the council of minister is formed?
4. Define collective responsibility.
5. Examine the relationship between
 - a) Governor and chief minister
 - b) Chief Minister and council of ministers.

4.3 STATE LEGISLATURE

The Constitution provides for a legislature for every state in the Indian union. The legislature of every state include the Governor and Legislative Assembly, however these is a provision for legislative council (Second Chamber) not for all the states but can be created by the amendment by parliament by simple majority. The procedure for creation of second

chamber includes that the legislature Assembly of the concerned state form a resolution by special majority (i.e 213) followed by an act of parliament. (Art 169). At present Legislature. The size of the Legislative council is not more than 1/3rd of the membership of Legislative Assembly but not less than 40 (Art 171) . The parliament has right to decide the composition. Broadly speaking 5/6 of the total number of members of the council is indirectly elected and 1/6 are nominated by the Governor. 5/6 the members which are indirectly elected represent various types of constituencies created for this purpose viz, local body's graduates, teachers and members of legislative assembly.

Composition of legislative Assembly:

The members of the state legislative Assembly is directly elected by the voters on adult franchise from territorial constituencies. The number of members of the Assembly shall not be more than 500 and less than 60. There shall be proportionately equal representation according to population in respect of each territorial constituency within a state (Art 110) Governor has the power to nominate one member of the Anglo Indian Community if they are not adequately represented in the assembly (Art 333). The duration state not dissolved earlier. A citizen of India not less than 25 years of an age is qualified to be members of assembly and 30yrs for council. He should possess the other qualifications prescribed under any law made by parliament (ART 173) the disqualifications are laid down in Art 191. MLCs are elected on the basis of proportional representation by means of single transferable vote (Act 171)

Presiding Authorities:

The presiding authorities of both the houses are elected by members of the respective houses. Legislative Assembly presiding authorities are known as speakers and Dy speakers whereas the council presiding authorities are known as chairman and Dy chairman. Both of them can be removed from office by the respective house majority members present and voting.

Powers and functions of State Legislature:

The state Legislature is a Law making authority for the state. It makes laws an any subjects enumerated in the state list. Regarding money bills in the second chambers (Council) it cannot be originated. In case of disagreement between the two houses on any bill, there is no provision for joint sitting. In case of dead lock on any bill (Except money bill) the assembly can wait for three months to pass or amend the same by the council. Otherwise it is deemed to be passed in the form in which the assembly has passed the bill.

The state Legislature exercises control over executive by way of asking questions moving various motions etc. The executive is responsible to legislative assembly only.

Members of state Legislature participate in the election of presiding authorities of the respective houses.

Members of state Legislature are more influential than the members of parliament, because they are more nearer to the people. They have frequent contact and communication with the people in their constituencies. They can easily understand the problems and needs of the voters directly or with /through their political workers. The success or failure of MLA moreover depends on how he works in his constituency. It is expected that he should try to bring the development schemes/projects of Centre /state to his constituency and see that the overall development of the constituency is done. He should maintain social harmony by making contacts with the people. Now days the legislative members are holding various positions on the socio-economic organisations, educational institutions, co-operative organizations and so on. The hold of MLA on these socio eco networks in the constituency help him to understand the development needs of the area.

Criticism:

The powers of the state Legislatures from the point of view of state autonomy are very limited. In most of the states there has been no effective opposition which has enabled the ruling parties to work in a high handed manner. The ruling party shows scant regard for the opposition. Perfection has also been a major drawback in the working of the legislatures. The increasing attitude of indifference of Legislative members towards the functioning of legislature has deteriorated the quality of legislative work. Due to increasing rampant indiscipline the smooth working of state legislature becomes extremely difficult state Legislatures have tended to become mere forums of declamatory politics than of serious engagement in the overview of govt's polices. The number of MLAs who can be identified as expert and effective parliamentarians is decreasing alarmingly. Losses are scarcely filled in by new comers corrupt and criminal elements have entered into the Legislatures which has resulted into the deterioration of the quality of state Legislatures.

Review Questions.

1. Describe the composition of state Legislature
2. Write a note on presiding officers of state Legislatures.
3. Explain the powers and functions of state Legislature.
4. Critically examine the role and position of state legislature.

4.4 LOCAL SELF GOVERNMENT

The Pre independence local self govt. institutions are their origin in the British rule and the post independent institutions are built upon what was created during the British rule.

The municipal institutions were the first to be created by the rule of East India Company by the orders of the court of directors. The first municipal corporation setup in India was Madras in 1688. The presidency towns of Calcutta and Bombay had their own corporations in 1772 and 1793 respectively. Other such local bodies were created after 1842.

Relating to Rural local self govt. there were early attempts to organize them in Bombay and Madras presidencies in the 19th Century. In 1871 and 1874 new municipal acts were passed providing for elective municipal bodies. In 1882 Lord Ripon issued his famous resolution of local self govt. which continued to be the basis of local self govt. till 1947.

After independence some states have introduced local self govt. system with certain changes. There was no uniform system LSG in India. The Constitution has made a provision in ART 40 (i.e. Directive principles of state policy) and directed the states, to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of local govt.”

A) Rural Local Self Govt. or Panchayat Raj:

Evolution – In India the institution of panchayats has a hoary history. The quest for the revival of villages in free India was supported by several innovations aimed at institutions building. The first such experiment was the community Development Programme. (CDP) inaugurated on 2nd Oct. 1952. The second experiment was the National Extension Service (NEX) launched in 1953. Both the programmes were trapped within the control of the bureaucracy which could not appreciate that the initiative for development must be left with the people. To redress this balanced the govt of India appointed a committee under the chairmanship of Balwant rai Mehta to examine the working of CDP and NES Mehta Committee Suggested (1957) a three tier system of Panchyati Raj from village to district level with multi-level linkages be created. Most of the states accepted the Mehta Committee recommendations- with or without alternations Rajasthan was the first state to launch PR system in the state in 1959. Andhra Pradesh followed the same. Thereafter a majority of the states passed. The necessary legislation to setup PRIS.

After the formation of Maharashtra state (1960) Govt. of Maharashtra appointed a committee in 1961 under the chairmanship of the men revenue minister V.P. Naik to examine the recommendations of Mehta committee and suggest suitable PR system for Maharashtra. The Naik committee suggested a three tier system PR with some modifications in the scheme of Mehta Committee. Govt. of man accepted the scheme of Naik Committee and the same has been implemented in Maharashtra w.e.f. may 1962. The important thing is that the Maharashtra Patterns of PRIs have been so successful that other states have followed the same pattern and while making the 73rd amendment the Maharashtra pattern is accepted as a uniform model for the country.

In 1977 the Janta Government appointed a committee (Ashok Meththa Committee) with a view to reviving and strengthening the PR system. However due to collapse of Janta govt in 1980, no progress could be registered in this direction.

The 73rd constitutional Amendment:

With a view to strengthening the Rural and urban local self govt. system and recognizing its place in the constitution the 73rd amendment was passed by the parliament. In 1986 the Singhavi Committee (of Dept of Rural Development) recommended constitutional status to the PRIs. In 1989 64th amendment bill was introduced for this purpose but could not be passed in the Rajya Sabha. In June 1990 a conference of Chief Ministers discussed the reforms in the PR structure. However due to the political upheavals that amendment bill could not get through. When the congress govt. came in power a modified bill of amendment was introduced in the parliament (73rd amendment) and was passed in Lok-sabha on 6th December 1993, And in Rajya sabhas on 23rd December 1992. The amendment came into force on 24th April 1993. Many states have by then amended their own acts. Features of 73rd amendment-

The ideas of 73rd amendment are inserted in the part IXth in the constitution which relates to PRI's containing articles 243 to 243 -0. These provisions are in the nature of basic provisions which are to be supplemented by the laws made by the respective state legislatures, which will define the details as to the powers and functions of the various organs just mentioned.

- 1) Part IX of the constitution envisages a three tier system of the panchayat. Village level, The District panchayat at district level and panchayat samiti at block /taluka level (where the population is above 20 lakhs)
- 2) Members of village panchayats are directly elected by the voters from territorial constituencies in the panchayat area. The electorate has been named as gram Sabha.
- 3) Reservations in PRIS- one third of the total seats in PRIS will be reserved for women. Reservation of seats for SC/ST will be in proportion to their population.
- 4) A state may by law make provision for similar reservation of the offices of the chairpersons in the PRIS.
- 5) There shall be mandatory periodic elections every five years under the supervision, direction and control of the state election commission and where super sealed in midterm election within six months.
- 6) The political parties have been allowed to play an effective role in election and working of PRIs.
- 7) State Legislatures have the legislative power, to confer on the PRIs such powers as may be necessary to enable them to function as institution of self-government (Art 245 G-H) The eleventh schedule

distributes powers between the state legislature and panchayats. The list contains 29 items.

- 8) The state govt. shall appoint a finance commission to review the financial position of PRIs and to make recommendations to distribute taxes, duties, tills leviable by the state which may be divided between them and to provide grant-in-aid to the PRIs.
- 9) The courts shall have no jurisdiction to examine the validity of law, relating to delimitation of constituencies made under art 243 K.
- 10) PRIs will prepare plans for economic development on the subjects enumerated in the 11th schedule.

The present PRIs are certainly a step forward in the direction of decentralization of powers to the people at gram root level.

Structure of PRIs:

A broad framework of PRIs has been provided by the 73rd amendment act. It is proud and privilege for us to mention that the PR structure envisaged by this amendment is more or less equal to that of PR structure in Maharashtra. It is mainly a three tier structure.

Gram Sabha:

Gram Sabha exists as a statutory body in almost all the states. The 73rd amendment gives a constitutional status to this gram root institution under the new provisions two meetings of the gram sabha must be called in a year. The Quorum for Gram Sabha meeting is fixed at 1/10 of the total members. The budget and programmer of the Panchayat are framed keeping in view the suggestions made in the Gram Sabha.

II) Gram Panchayat:

The GP is the executive committee of the Gram Sabha. The members of the GP are elected on the basis of about franchise. The tenure of GP is five years. Age limit for contesting these elections is 21 years. The Panchayat is expected to meet once in 15 days. The presiding officer is known as the Sarpanch in most of the states, in some states he is directly elected by the Gram Sabha. The Panchayats have wide range of functions to perform, as they are important agencies of rural govt. The income of Panchayats varies from state to state. The financial resources are limited hence they are mainly depending on program grants and grand in aid from the higher authority. The need therefore is to argument the resources of the Panchayats. Now days some central govt. schemes grants are directly transferred in the Panchayat accounts.

III) Panchayat Samiti:

The Panchayat samiti represent the middle level tier in the three tier structure of PRIs. If functions at the block/Taluka level. There are variations in the composition and functions of pan-sam in various states. Each district is divided into several blocks/talukas and each block /taluka has one panchayat samiti. There is no uniformity in the composition of

panchayat samitti in the states. Generally there are two types of models are exists in the country. Firstly in some states, panchayat samitti consists of associate and coopted members along with the sarpanch of the panchayat samiti areas as exfoliate members. The MPs and MLAs are known as associate members. The pan samitis are coordinating bodies between Zilla Parishad and village panchayats. Secondly the pan-samitis are directly elected bodies. (eg. In Maharashtra) generally two members from one ZP constituencies are elected and members elected from sarpanch constituency. These is also or provision for co-opted and associate membership. The pan samiti is the principal executive body responsible for the implementation of development programmes in the area. The pan-samiti has generally performs two types of functions i.e. Civic functions and development functions.

The tenure of pan-samiti is five years. The presiding officers are namely Sabhapati and Upa-Sabhapati, who are elected by the elected members among themselves. The pan-samiti works through committee system. The BPO is the administrative head of pan samiti who works along with the team of development functionaries. The finance sources of pan-samiti. Generally include taxes level collected from the area and grants from ZP state and central govt.

IV) Zilla Parishad:

ZP is the apex body in the system of democratic decentralization. There is variety of Nome nature in various states. The members of ZP are elected directly by the people and its tenure is five years. It has executive powers along with taxing powers. It works through committee system. The presiding authorities.(i.e. president, vice president and chairmen of various committees) are elected by the members from among themselves. There is a provision for associate and coopted members. The MPs and MLAs in the district are also associate members of ZP except Maharashtra) The Sources of revenue are taxes, non-tax revenue grants from state and central and special development grants. The ZP being an executive body has been entrusted with civic and development functions. The ZP prepares its own budget and development plan. The development plan is approved by the DPDC. The CEO (an IAS or equivalent) is true administrative head of the ZP. He works with his team of development officers. The ZP works through committees and depths.

V) Role of PRIs:

The 73rd amendment has heralded a new era for PRI. The PRIs have been provided additional legitimacy and vitality. The participation of women and weaker, The participation of women and weaker sections is indeed commendable. The participation of women and vitality. The participation of women and weaker sections is indeed commendable. The strengthening of finance (to some extent) induced to make themselves self-sufficient. The PRIs are playing and making contribution in rural development. These institutions have enhanced the political consciousness of the rural people.

It is true that the PRIs have accelerated the process of decentralization and development. But still the PRIs are various genuine problems which need to be attended. Inadequate finances is a major problem. In spite of several legal and statutory efforts, the powers are not yet properly decentralized. Many states have not established finance commission hence the PRIs are not getting their proper dues from the state. No adequate powers are given to perform their development functions. Finance is not only the problem but adequate autonomy to work is necessary. Under interference of state and local MPs and MLAs is a barrier in the way.

When it is said that the PRIs have created political consciousness among the people, another side of the coin which has jeopardized the social network and harmony i.e. political factions on the basis religion, caste etc has damaged the social cohesiveness. Use of money and muscle power in elections has generated conflicts among people. Corruption, dishonesty and unlawfulness have trickled down from the top instead of development. Bureaucratization is also a major hindrance in the process of rural development.

PRIs have succeeded in creating political democracy at the gram root level but it has remained unsuccessful in establishing social and economic democracy.

4.5 URBAN LOCAL SELF GOVT

D) Introduction:

Ancient India which was famous for its. 'Village republics were also a long of big and well administrated cities and towns. There are reference of Harappa and Mohenjodaro. The Kautilya has given a graphic description of Patliputra and Mauryas. The cities like Bombay, Calcutta, and Madras. The accelerated growth rate in urban population is the natural consequences of modernization and industrialization. According to the 1901 census it was 11.4% increasing to 28.23% by the 2001 census and is now currently 34% in 2017. According to the World Bank. According to survey by UN in 2030, 40+76% of the country's population is expected to reside in urban areas. In Maharashtra the urban population in last 10 years has increased by 45.22%. The growing urbanization has affected not only economic structure of the country but also its social and cultural profiles. The urban scene in India presents a scene of paradoxes- growth and decay, poverty and affluence, slums and mansions, illiteracy and educational excellence, parochial groups and universities associations, hope and despair etc.

The roots of municipal administration in India can be traced to 1687 when Madras Municipal Corporation was setup. The Royal charter of 1720 established a major court in three cities i.e. Madras Bombay Calcutta. In 1850 an Act was passed for British India permitting the formation of local committees. In 1882 Lord Ripon suggested reforms for establishing local bodies. He is considered as 'father of local self govt. in India. The

government of India act 1919 introduced the system of diarchy and the local govt. The act of 1935 emphasized provisional autonomy and declared local govt. as a provisional subject. The constitution of India does not provide any special provision for urban local self govt. is to be the seventh schedule of the constitution. The local self govt. being a subject of state list. All the state govt. has their own laws for the governance of urban local bodies. There is no uniformity in the types of local bodies in the state. (This Lacuna has been corrected to some extent by the 74th constitutional amendment.

The constitution 74th Amendment Act:

The 65th amendment bill brought before the parliament, sought to ensure municipal bodies with necessary powers and removing their financial constraints to enable them to function effectively as units of local govt. The bill envisaged three types of urban bodies i.e. Municipal Corporation, Municipal council and Nagar Panchayats. However due to political up heaves. The bill could not be passed. Later on the same bill with some modification was introduced in Loksabha in Sept 1991. It was passed by both the Houses in Dec. 1992 and then the bill was ratified by the State Legislatures. It received the assent of the president on 20th April 1993 and become law known as 74th Amendment Act 1992, which came into force on 1st June 1993.

The act introduced a new part viz part 11th in the constitution. This part deals with the provisions of urban local self govt. The 74th amendment act has given a constitutional status to the urban local bodies. (Called by common name municipalities.)

This part gives birth to two types of bodies –

- 1) Institutions of self govt. (Art 243 Q)
- 2) Institutions of Planning (Art 2432X and 243ZE)
- 3) The Institutions of self govt. are
 - a) Municipal Councils
 - b) Municipal corporations
 - c) Nagar Panchayats

Art 243 Q makes it obligatory for every state to constitute such units.

A) Municipal Councils:

A Municipal council is a statutory body created by an act of the state legislature. The criteria for setting it up vary from state to state. Broadly these are population, size, sources of income, industrial/commercial prospects of the city etc. The size of the municipal council (MC) is determined by the state govt. In Maharashtra there are three types of MCs based on population criteria. A class MCs more than 1 lakh, B class MCs –more than 50,000 and c class MCs –less than 50,000. However this criterion is not strictly followed due to rapid growth of urban population. The minimum number of councilors should be five and their tenure is five

years. A MC consists of elected associated and coopted members. The elected members are directly elected on adult franchise. Seats are reserved for SC/ST, women and other backward classes as per law. The chairperson of MC is elected by the councilors among themselves. The MCs have three authorities the council and its committee's chairmen /president and the chief executive officer.

The council decides all questions of policy matters and passes the budget. The council also manages its property and institutions. The major source of revenue property tax, professional tax terminal tax etc. and now the share of govt. allocated by the state govt. special project grants are also given by the state and central govt. The MCs are authorized to borrow money and run their own enterprises. MCs prepare development plans in regard to matters listed in the 12th schedule which contains 18 items.

Some of the provisions are similar to those contained in part IX eg. Reservations of seats, finance commission, election commission etc.

B) Municipal Corporations:

Municipal Corporations are set up only in big cities. The 74th amendment act provides that the area of different types of urban bodies would be specified by the Governor of the state taking into account the population density of the population revenue generated by the local body percentage of employment in non-agriculture activities and other factors. A municipal corporation has a statutory status as it is created by an act on the state legislature. In 1947 there were only three municipal corporations in the country i.e. Bombay, Madras and Calcutta. Now the number of Municipal Corporation has increased in all the states due to growing urbanization. In Maharashtra there are 26 Municipal corporations (till 2014). Some cities have separate acts of municipal corporations. However after the 74th amendment act various states have amalgamated the different acts and created one state act for all municipal corporations in the state.

The council of corporation consist of elected councilors whose tenure is five years. The municipal area is divided into wards for the purpose of election. The act also provides reservations for SC/ST / women and OBC classes. According to legal procedure for election of mayor is decided by the state legislature. The municipal corporation works through committees. The municipal commissioner is the CEO of the corporation works through committees. The municipal commissioner is the CEO of the corporation works through committees. The municipal commissioner is the CEO of the corporation he is appointed by the state govt. generally drawn from IAS cadre. He executes the decisions of the council. He prepares budget and also makes certain appointments. The list of functions to be performed by the municipal corporation are enumerate in the 12th schedule of the constitution. The corporation has authorized to long taxes. It is a major source of revenue and another major source is profit earned by municipal enterprises in addition to that various gran is also given by the state and Centre from time to time. Municipal corporations are

expected to play a crucial role in the formation of plans for local development and execution of state plans designed for local area.

C) Nagar Panchayat:

Together with the various forms of urban local govt. existing at present the amendment act also provides for setting up 'Nagar Panchayats.' It is constituted for a transitional area. Such an area is basically rural in character which over a period of time is likely to develop urban characteristics. Hence this urban local body would have to perform both rural and urban functions. A committee is constituted by the state govt. for the notified area.

D) Other:

There are other urban local bodies constituted for specific purpose for small towns where the municipal councils are not created. eg. Town area committee/ Mohalla committee. It is a semi municipal authority constituted for small towns. Secondly Township - the large size enterprises have setup townships which are administered by the municipal corporation or council which whose boundary they fall. Town Administrator is appointed to administer the area. Thirdly cantonment Board – This form of urban local govt. is a British legacy established under the cantonment act in 1924. They are centrally administered by the defence Ministry. These boards are mainly for military stations established in the area. It has three categories class I, II & III based on civilian population residuary in the area. In addition to these urban bodies multipurpose and single purpose agencies are also created by the state or central govt. by law to perform such assigned functions in the urban areas. E.g. Housing boards improvement trusts. MMRDA etc. Their powers and functions are decided by the respective government By law. These bodies generally bureaucracy dominated agencies fully autonomous and controlled by the govt. They perform their functions in co-ordination with urban local bodies in the area and experts appointed on the body.

III) Urban Local Government- Some Reflections.

The growing urbanization has affected not only economic structure of the country but also its social patterns and cultural profile. However inadequate attention has been paid to the governance of urban bodies. As a result of this municipal bodies have been anemic, inefficient and corrupt. Badly drafted municipal laws substandard personnel, poor finances and stringent central control have been the common maladies responsible for such maladministration to focus on attention on a few basic problems facing urban local bodies are varied. These can be summarized below with points only.

1. Proper decentralization of powers and functions
2. Need to increase people participation in the affairs.
3. Proper co- ordination between state govt. and local bodies' local bodies and special agencies.

4. Formulation and execution of town planning.
5. Curbing the growth and expansion of urban territories.
6. Development of urban infrastructure eg. Roads, Sanitation, water supply city transport, electrification etc.
7. Curbing down the unauthorized constructions and development of slums.
8. Corruption is a genuine problem not only at local levels but all level.
9. Unhealthy nexus of politicians-
10. Excess control of state govt. over local bodies.
11. Inadequate finances etc.

A critical problems in municipal admin arises mainly apatery of the state govt. towards local bodies. These bodies have been used as centers of politics rather than agencies of development.













REVIEW QUESTIONS

1. Account for the evolution of local self govt. in India.
2. Explain the history of PRIS in India
3. Describe the features of 72rd amendment act.
4. Discuss the structure and composition of panchayat raj institutions.
5. Critically examine the role of PRIs in rural development.
6. Account for the history of urban local govt. in India.
7. Discuss the major changes made by the 7th amendment act
8. Write a note in
 - 1) Municipal council
 - 2) Municipal Corporations
 - 3) Other urban Agencies.
9. What are the problem areas of urban local bodies?
10. Critically examine the issues and future prospects of urban development in India.

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