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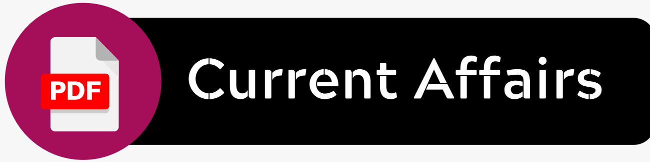

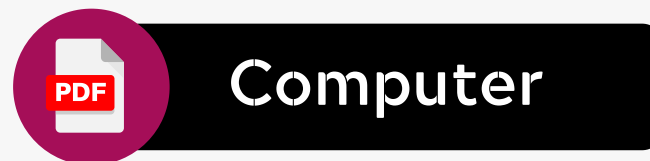

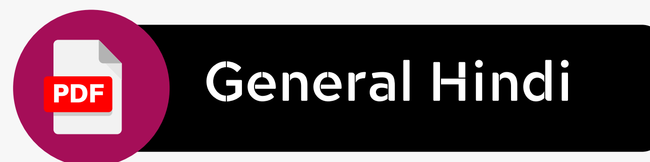

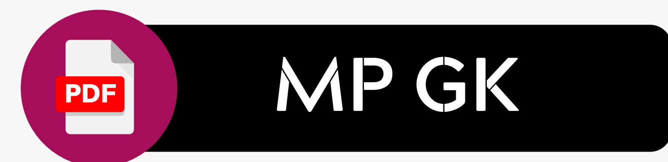

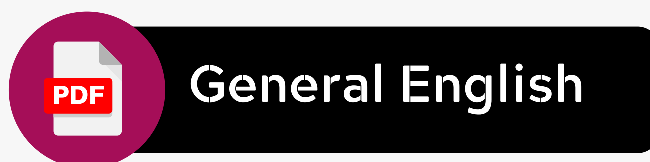

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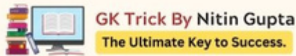

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Why Do We Need A Constitution

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What is a constitution? What are its functions? What role doesitper formsociety? How does a constitution relate to our daily existence?

The first function of a constitution is to provide a set of basic rules allow for minimal coordination amongst members of a society.

Specification of decision making powers

A constitution is a body of fundamental that principles according to which a state is constituted or governed. But what should these fundamental rules be? And what makes-them fundamental? Well, the first question-you will have to decide is who gets to decide what the laws governing the society should be? You may want rule X, but others may want rule Y. How do we decide whose rules or preferences should govern us? You may think the rules you want everyone to live by are the best; but others think that their rules are the best. How do we resolve this dispute? So even before you decide what rules should govern this group you have to decide: Who gets to decide?

The constitution has provide an answer to this question. It specifies the basic allocation of power in a society. It decides who gets to decide what the laws will be. In principle, this question, who gets to decide, can be answered in many ways: in a monarchical constitution, a monarch decides; in some constitutions like the old Soviet Union, one single party was given the power to decide. But in democratic constitutions, broadly speaking, the people get to decide. But this matter is not so simple, Because even if you answer that the people should decide, it will not answer the question: how should the people decide? For something to be law, should everyone agree to it? Should the people directly vote on each matter as the ancient Greeks did? Or should the people express their preferences by electing representatives? But if the people act through their representatives be elected? How many should there be?

This is the function of the constitution. It is an authority that constitutes government in the first place.

In the Indian Constitution for example, it is specified that in most instances, Parliament gets to decide laws and policies, and that Parliament itself be organised in a particular manner Before identifying what the law in any given society is, you have to identify who has the authority to enact it. If Parliament has the authority to enact laws,

there must be a law that bestows this authority on Parliament in the first place.

Limitations on the powers of government

But this is clearly not enough. Suppose you decided who had the authority to make decisions. But then this authority passed laws that you thought were patently unfair. It prohibited you from practising your religion for instance. Or it enjoined that clothes of certain colour were prohibited, or that you were not free to sing certain songs or that people who belonged to a particular group (caste or religion) would always have to serve others and would not be allowed to retain any property. Or that government could arbitrarily arrest someone, or that only people of a certain skin colour would be allowed to draw water from wells.

You would obviously think these laws were unjust and unfair. And even though they were passed by a government that had come into existence based on certain procedures there would be something obviously unjust about that government enacting these laws. Constitutions limit the power of government in many ways. The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to violate. The exact content an interpretation of these rights varies from constitution to constitution. But most Constitutions will protect a basic cluster of rights. Citizens will be protected from being arrested arbitrarily and for no reason. This is one basic limitation upon the power of government. Citizens will normally have the right to some basic liberties: to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc. and practice, these rights can be limited during times of national emergency and the constitution specifies the circumstances under which these rights may be withdrawn.

So the third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them.

Aspirations and Goals of a Society

Most of the older constitutions limited themselves largely to allocating decision-making power and setting some limits to government power. But many twentieth century constitutions, of which the Indian Constitution is the finest example, also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society. The Indian Constitution was particularly innovative in this respect.

Societies with deep entrenched inequalities of various kinds, will not only have to set limits on the power of government, they will also have to enable and empower the government to take positive measures to overcome forms of inequality or deprivation.

For example, India aspires to be a society that is free of caste discrimination. if this is our society's aspiration, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal. In a country like South Africa, which had a deep history of racial discrimination, its new constitution had to enable- the government to end racial discrimination. More positively, a constitution may enshrine the aspirations of a society. The framers of the Indian Constitution, for example, thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and

social self-respect — minimum material well being, education etc.

The Indian Constitution enables the government to take positive welfare measures some of which are legally enforceable. As we go on studying the Indian Constitution, we shall find that such enabling provisions have the support of the Preamble to our Constitution, and these provisions are found in the section on Fundamental Rights. The Directive Principles of State of Policy also enjoin government to fulfil certain aspirations of the people.

Fundamental identity of a people

Finally, and perhaps even most importantly, a constitution expresses the fundamental identity of a people.

The fourth function of a constitution is to enable the government to fulfil the aspirations of a society and create conditions for a just society.

This means the people as a collective entity come into being only through the basic constitution. It is by agreeing to a basic set of norms about how one should be governed, and who should be governed that one forms a collective identity. One has many sets of identities that exist prior to a constitution. But by agreeing to certain basic norms and principles one constitutes one's basic political identity. Second, constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms. The constitution sets authoritative constraints upon what one may or may not do. It defines the fundamental values that we may not trespass. So the constitution also gives one a moral identity. Third and finally, it may be the case that many basic political and moral values are now shared across different constitutional traditions.

If one looks at constitutions around the world, they differ in many respects — in the form of government they enjoin in many procedural details. But they also share a good deal. Most modern constitutions create a form of government that is democratic in some respects, most claim to protect certain basic rights. But constitutions are different in the way they embody conceptions of natural identity. Most nations are an amalgamation of a complex set of historical traditions; they weave together the diverse groups that reside within the nation in different ways. For example, German identity was constituted by being ethnically German. The constitution gave expression to this identity. The Indian Constitution, on the other hand, does not make ethnic identity a criterion for citizenship. Different nations embody different conceptions of what the relationship between the different regions of a nation and the central government should be. This relationship constitutes the national identity of a country.

The Authority of a Constitution

We have outlined some of the functions a constitution performs. These functions explain why most societies have a constitution. But there are three further questions we can ask about constitutions:

a) What is a constitution?

b) How effective is a constitution?

c) Is a constitution just?

In most countries, Constitution' is a compact document that comprises a number of articles about the state, specifying how the state is to be constituted and what norms it should follow. When we ask for the constitution of a country we are usually referring to this document. But some countries, the United Kingdom for instance,

do not have one single document that can be called the Constitution. Rather they have a series of documents and decisions that, taken collectively, are referred to a the constitution. So, we can say that constitution is the document or set of documents that seeks to perform the functions that we mentioned above.

But many constitutions around the world exist only on paper; they are mere words existing on a parchment. The crucial question is: how effective is a constitution? What makes it effective? What ensures that it has a real impact on the lives of people? Making a constitution effective depends upon many factors.

Mode of promulgation

This refers to how a constitution comes into being. Who crafted the constitution and how much authority did they have? In many countries Constitutions remain defunct because they are crafted by military leaders or leaders who are not popular and do not have the ability to carry the people with them. The most successful constitutions, like India, South Africa and the United States, are constitutions which were created in the aftermath of popular national movements. Although India's Constitution was formally created by a Constituent Assembly between December 1946 and November 1949, it drew upon a long history of the nationalist movement that had a remarkable ability to take along different sections of Indian society together. The Constitution drew enormous legitimacy from the fact that it was drawn up by people who enjoyed immense public credibility, who had the capacity to negotiate and command the respect of a wide cross-section of society, and who were able to convince the people that the constitution was not an instrument for the aggrandisement of their personal power. The final document reflected the broad national consensus at the time. Some countries have subjected their constitution to a full- fledged referendum, where all the people vote on the desirability of a constitution. The Indian Constitution was never subject to such a referendum, but nevertheless carried enormous public authority, because it had the consensus and backing of leaders who were themselves popular. Although the Constitution itself was not subjected to a referendum, the people adopted it as their own by abiding by its provisions. Therefore, the authority of people who enact the constitution helps determine in part its prospects for success.

The Substantive Provisions of a Constitution

It is the hallmark of a successful Constitution that it gives everyone in society some reason to go along with its provisions. A Constitution that, for instance, allowed permanent majorities to oppress minority groups with society would give minorities no reason to go along with the provision of the Constitution. Or a constitution that systematically privileged some members at the expense of others, or that systematically entrenched the power of small groups in society, would cease to command allegiance. If any group feels their identity is being stifled, they will have no reason to abide by the constitution. No constitution by itself achieves perfect justice. But it has to convince -people that it provides the framework for pursuing basic justice.

Do this thought experiment. Ask yourself this question: What would be the content of some basic rules in society, such that they gave everyone a reason to go along with them?

The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed. Does the Indian Constitution, broadly speaking, give everyone a reason to go along with its broad outlines?

Balanced institutional design

Constitutions are often subverted, not by the people, but by small groups, who wish to enhance their own power. Well crafted constitutions fragment power in society intelligently so that no single group can subvert the constitution. One way of such intelligent designing of a constitution is to ensure that no single institution acquires monopoly of power. This is often done by fragmenting power across different institutions. The Indian Constitution, for example, horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent statutory bodies like the Election Commission. This ensures that even if one institution wants to subvert the Constitution, others can check its transgressions. An intelligent system of checks and balances has facilitated the success of the Indian Constitution.

Another important aspect of intelligent institutional design is: that a constitution must strike the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances. Too rigid a constitution is Likely to break under the weight of change; a constitution that is, on the other hand, too flexible, will give no security, predictability or identity to a people. Successful constitutions strike the right balance between preserving core values and adapting them to new circumstances. You will notice the wisdom of makers of the Indian Constitution in the chapter on the Constitution as a living document (Chapter 9}. The Indian Constitution is described as 'a living' document. By striking a balance between the possibility to change the provisions and the limits on such changes, the Constitution has ensured that it will survive as a document respected by people. This arrangement also ensures that no section or group can, on its own, subvert the Constitutioit

MAKING OF THE INDIAN CONSTITUTION:

As far back as in 1928. Motilal Nehru and eight other Congress leaders drafted a constitution for India. In 1931, the resolution at the Karachi session of the Indian National Congress dwelt on how independent India's constitution should look, like. Both these documents were committed to the inclusion of universal adult franchise, right to freedom and equality and to protecting the rights of minorities in the constitution of independent India. Thus some basic values were accepted by all leaders much before the Constituent Assembly met to deliberate on the Constitution.

The familiarity with political institutions of colonial rule also helped develop an agreement over the institutional design. The Indian constitution adopted many institutional details and procedures from colonial laws like the Government of India Act 1935. Years of thinking and deliberation on the' framework of the constitution had another benefit. Our leaders gained confidence to learn from other countries, but on our own terms. Many of our leaders were inspired by the ideals of French Revolution, the practice of parliamentary democracy in Britain and the

Bill of right in the US. The socialist revolution in Russia had inspired many Indians to think o shaping a system based on social and economic equality. Yet they were not simply imitating what others had done. At each step they were questioning whether these things suited our country. All these factors contributed to the making of our Constitution.

The drafting of the document called the constitution was done by an assembly of elected representatives called the Constituent Assembly. Elections to the Constituent Assembly were held in July 1946. It held its first sitting on 9 December 1946 and re-assembled as Constituent Assembly for divided Indian on 14 August 1947. Its members were elected by indirect election by the members of the Provisional Legislative Assemblies that had been established in 1935. The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission. According to this plan:

- Each Province and each Princely State or group of States were allotted seats proportional of their respective population roughly in the ratio of 1:1.000000. As a result' the Provinces (that were under direct British rule) were to elect 292 members while the Princely States were allotted a minimum of 93seats.
- The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general, in proportion to their respective populations.
- Members of each community in the Provisional Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote
- The method of selection in the case of representatives of Princely States was to be determined by consultation.

Composition of the Constituent Assembly

As a consequence of the Partition under the plan of 3 June 1947 those members who were elected from territories which fell under Pakistan ceased to be members of the Constituent Assembly. The numbers in the Assembly were reduced to 299 of which 284 were actually present on 26 November 1949 and appended their signature to the Constitution as finally passed. The Constitution was thus framed against the backdrop of the horrendous violence that the Partition unleashed on the sub-continent. But it is a tribute to the fortitude of the framers that they were not only able to draft a constitution under immense pressure, but also learnt the right lessons from the unimaginable violence that accompanied Partition. The Constitution was committed to a new conception of citizenship, where not only would minorities be secure, but religious identity would have no bearing on citizenship rights. But this account of the composition of the Constituent Assembly that drafted the Constitution touches upon only the surface of how our Constitution was made. Although, the members of the Assembly were not elected by universal suffrage, there was a serious attempt to make the Assembly a representative body. Members of all religions are given representation under the scheme described above; in addition, the Assembly had twenty

six members from what then known as the Scheduled Classes. In terms of the Congress dominated the Assembly occupying as many as eighty-two per cent of the seats in the assembly after the Partition. The Congress itself was such a diverse party that it managed to accommodate almost all shades of opinion within it.

The Principle of Deliberation

The authority of the Constituent Assembly does not come only from the fact that it was broadly, though not perfectly, representative. It comes from the procedures it adopted to frame the Constitution and the values its members brought to their deliberations. While in any assembly that claims to be representative, it is desirable that diverse sections of society participate, it is equally important that they participate not only as representatives of their own identity or community. Each member deliberated upon the Constitution with the interests of the whole nation in mind. There were often disagreements amongst members, but few of these disagreements could be traced to members protecting their own interests.

There are legitimate differences of principle. And the differences were many: should India adopt a centralised or decentralised system of government? What should be the relations between the States and the centre? What should be the powers of the judiciary? Should the Constitution protect property rights? Almost every issue that lies at the foundation of a modem state was discussed with great sophistication. Only one provision of the Constitution was passed without virtually any debate: the introduction of universal suffrage (meaning that all citizens reaching a certain age, would be entitled to be voters irrespective of religion, caste, education, gender or income). So, while the members felt no need at all to discuss the issue of who should have the right to vote, every other matter was seriously discussed and debated. Nothing can be a better testament to the democratic commitment of this Assembly.

1. **Jhaverbhai Vallabhai Patel (1875-1950) born:** Gujarat. Minister of Home, Information and Broadcasting in the Interim Government. Lawyer and leader of Bardoli peasant satyagraha. Played a decisive role in the integration of the Indian princely states. Later: Deputy Prime Minister.
2. **Abul Kalam Azad (1888-1958) born:** Saudi Arabia. Educationist, author and theologian; scholar of Arabic. Congress leader, active in the national movement. Opposed Muslim separatist politics. Later Education Minister in the first union cabinet.
3. **T.T. Krishnamachari (1899-19741 born:** Tamil Nadu. Member Drafting Committee. Entrepreneur and Congress leader. Later: Finance Minister in the Union Cabinet.
4. **Rajendra Prasad (1884-1963) born:** Bihar Chairman of the Constituent Assembly. Lawyer, known for his role in the Champaran satyagraha. Three times the president of Congress. Later: the first President of India.
5. **JaIpal Singh (1903-1970) born:** Jharkhand a sportsman and educationist. Captain of the first national Hockey team. Founder President of Adivasi Maha Sabha. Later: founder of Jharkhand Party.
6. **H. C. Mookherjee (1887-1956) born:** Bengal. Vice— Chairman of the

Constituent Assembly. Reputed author and educationist. Congress leader. Member of All India Christian Council and Bengal Legislative Assembly. Later: Governor of West Bengal.

7. **G. Durgabal Desmukh (1909-1981) born:** Andhra Pradesh. Advocate and public activist for women's emancipation. Founder of Aridhra Mahila Sabha. Congress leader. Later: Founder Chairperson of Central Social Welfare Board.

8. **Baldev Singh (1901-1961) born:** Haryana A successful entrepreneur and leader of the Panthic Akali Party in the Punjab Assembly. A nominee of the Congress in the Constituent Assembly. Later: Defence Minister in the Union Cabinet.

9. **Kanhaiyalal Maniklal Munshi (1887-1971) born:** Gujarat. Advocate, historian and linguist. Congress leader and Gandhian. Later: Minister in the Union Cabinet. Founder of the Swatantra Party.

10. **Bhimrao Ramji Ambedkar (18'91-1956) born:** Maharashtra. Chairman of the Drafting Committee. Social revolutionary thinker and agitator against caste divisions and caste based inequalities. Later: Law minister in the first, cabinet of post-independence India. Founder of Republican Party of India

11. **Shyama Prasad Mukherjee (1901-1953) born:** West Bengal. Minister for Industry and Supply in the Interim Government. Educationist and lawyer. Active in Hindu Mahasabha. Later: Founder President of

12. **Jawaharlal Nehru (1889-1964) born:** Uttar Pradesh. Prime Minister of the interim government. Lawyer and Congress leader. Advocate of socialism, democracy and anti-imperialism. Later: First Prime Minister of India.

13. **Sarojini Naidu (1879.1949) born:** Andhra Pradesh. Poet, writer and political activist. Among the foremost women leaders in the Congress. Later: Governor of Uttar Pradesh.

14. **Somnath Lahiri (1901-1984) born**: West Bengal. Writer and editor. Leader of the Communist Party of India. Later: Member of West Bengal Legislative Assembly.

Procedures

The Constituent Assembly had eight major Committees on different subjects. Usually, Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad or Ambedkar chaired these Committees. These were not men who agreed with each other on many things. Ambedkar had been a bitter critic of the Congress and Gandhi, accusing, them of not doing enough for the upliftment of Scheduled Castes. Patel and Nehru disagreed on many issues. Nevertheless, they all worked together. Each Committee usually drafted particular provisions of the Constitution which were then subjected to debate by the entire Assembly. Usually an attempt was made to reach a consensus with the belief that provisions agreed to by 411, would not be detrimental to any particular interests. Some provisions were subject to the vote. The

Assembly met for one hundred and sixty six days, spread over two years and eleven months.

Inheritance of the nationalist movement

But no constitution is simply a product of the Assembly that produces it. An Assembly as diverse as the Constituent Assembly of India could not have functioned if there was no background consensus on the main principles the Constitution should enshrine. These principles were forged during the long struggle for freedom.

In a way, the Constituent Assembly was giving concrete shape and form to the principles it had inherited from the nationalist movement. For decades preceding the promulgation of the Constitution, the nationalist movement had debated many questions that were relevant to the making of the constitution the shape and form of government India should have, the values it should uphold, the inequalities it should overcome. Answers forged in those debates were given their final form in the Constitution. Perhaps the best summary of the principles that the nationalist movement brought to the Constituent Assembly is the Objectives Resolution (the resolution that defined the aims of the Assembly) moved by Nehru in 1946. This resolution encapsulated the aspirations and values behind the constitution. Based on this resolution our Constitution gave institutional expression to the fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity.

Institutional arrangements

The third factor ensuring effectiveness of a constitution is a balanced arrangement of the institutions of government. The basic principle is that government must be democratic and committed to the welfare of the people.

The Constituent Assembly spent a lot of time on evolving the right balance among the various institutions like the executive, the legislature and the judiciary. This led to the adoption of the parliamentary form aid the federal arrangement, which would distribute governmental powers between the legislature and the executive on the one hand and between the States and the central government on the other hand.

Provisions borrowed from constitutions of different countries

British Constitution	United States Constitution	Irish Constitution	French Constitution	Canadian Constitution
First Past the Post Parliamentary Form of Government The idea of the rule of law Institution of the speaker and his role Law making procedure	Charter of Fundamental Rights, Power of Judicial Review and independence of the judiciary	Directive Principles of State Policy	Principles of Liberty, Equality and Fraternity	A quasi-federal form of government (a federal system with-a strong central government The idea of Residual Powers

Philosophy of The Constitution

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Some people believe that a constitution merely consists of laws and that laws are one thing, values and morality, quite another. Therefore, we can have only a legalistic, not a political philosophy approach to the Constitution. It is true that all laws do not have a moral content, but many laws are closely connected to our deeply held values.

For example, a law might prohibit discrimination of persons on grounds of language or religion. Such a law is connected to the idea of equality. Such a law exists because we value equality. Therefore, there is a connection between laws and moral values. One should look upon the constitution as a document that is based on a certain moral vision, and adopt a political philosophy approach to the constitution. What do we mean by a political philosophy approach to the constitution? We have three things in mind.

- First, we need to understand the conceptual structure of the constitution. What does this mean? It means that we must ask questions like what are the possible meanings of terms used in the constitution such as 'rights', 'citizenship', 'minority' or 'democracy'?
- Furthermore, we must attempt to work out a coherent vision of society and polity conditional upon an interpretation of the key concepts of the constitution. We must have a better grasp of the set of ideals embedded in the constitution.
- Our final point is that the Indian Constitution must be read in conjunction with the Constituent Assembly Debates in order to refine and raise to a higher theoretical plane, the justification of values embedded in the Constitution. A philosophical treatment of a value is incomplete if a detailed justification for it is not provided. When the framers of the Constitution chose to guide Indian society and polity by a set of values, there must have been a corresponding set of reasons. Many of them, though, may not have been fully explained.

A political philosophy approach to the constitution is needed not only to find out the moral content expressed in it and to evaluate its claims but possibly to use it to arbitrate

between varying interpretations of the many core values in our polity. It is obvious that many of its ideals are challenged, discussed, debated and contested in different political arenas, in the legislatures. in party forums, in the press, in schools and universities. These ideals are variously interpreted and sometimes wilfully manipulated to suit partisan short term interests. We must, therefore, examine whether or not a serious disjunction exists between the constitutional ideal and its expression in other arenas.

Sometimes, the same ideal is interpreted differently by different institutions. We need to compare these differing interpretations. Since the expression of the ideal in the constitution has considerable authority it must be used to arbitrate in conflict of interpretation over values or ideals. Our Constitution can perform this job of arbitration.

Constitution as Means of Democratic Transformation

It is widely agreed that one reason for having constitutions is the need to restrict the exercise of power. Modern states are excessively powerful. They are believed to have a monopoly over force and coercion. What if institutions of such states fall into wrong hands who abuse this power? Even if these institutions were created for our safety and well-being, they can easily turn against us. Experience of state power the world over shows that most states are prone to harming the interests of at least some individuals and groups. If so, we need to draw the rules of the game in such a way that this tendency of states is continuously checked. Constitutions provide these basic rules and therefore, prevent states from turning tyrannical.

Constitutions also provide peaceful, democratic means to bring about social transformation. Moreover, for a hitherto colonised people, constitutions announce and embody the first real exercise of political self-determination. Nehru understood both these points well. The demand for a Constituent Assembly. He claimed represented a collective demand for full self-determination because; only a Constituent Assembly of elected representatives of the Indian people had the right to frame India's constitution without external interference. Second, he argued, the Constituent Assembly is not just a body of people or a gathering of able lawyers. Rather, it is a 'nation on the move, throwing away the shell of its past political and possibly social structure, and fashioning for itself a new garment of its own making.' The Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice.

This approach had the potential of changing the theory of constitutional democracy altogether: according to this approach, constitutions exist not only to limit people in power but to empower those who traditionally have been deprived of it. Constitutions can give vulnerable people the power to achieve Collective good.

Why do we need to go back to the Constituent Assembly?

Why look backwards and bind ourselves to the past? That may be the job of a legal historian — to go into the past and search for the basis of legal and political ideas. But why should students of politics be interested in studying the intentions and Concerns of those who framed the Constitution? Why not take account of changed circumstances and define

a new normative function of the Constitution?

In the context of America — where the Constitution was written in the late 18th century— it is absurd to apply the values and standards of that era to the 21st century. However, in India, the world of the original framers and our present day world may not have changed so drastically. In terms of our values, ideals and conception, we have not separated ourselves from the world of the Constituent Assembly. A history of our Constitution is still very much a history of the present.

Furthermore, we may have forgotten the real point underlying several of our legal and political practices, simply because somewhere down the road we began to take them for granted. These reasons have now slipped into the background, screened off from our consciousness even though they still provide the organizational principle to current practices.

When the going is good, this forgetting is harmless. But when these practices are challenged or threatened, neglect of the underlying principles can be harmful. In short, to get a handle on current constitutional practice, to grasp their value and meaning, we may have no option but to go back in time to the Constituent Assembly debates and perhaps even further back in time to the colonial era. Therefore, we need to remember and keep revisiting the political philosophy underlying our Constitution.

WHAT IS THE POLITICAL PHILOSOPHY OF OUR CONSTITUTION?

It is hard to describe this philosophy in one word. It resists any single label because it is liberal, democratic, egalitarian, secular, and federal, open to community values, sensitive to the needs of religious and linguistic minorities as well as historically disadvantaged groups, and committed to building a common national identity. In short, it is committed to freedom, equality, social justice, and some form of national unity. But underneath all this, there is a clear emphasis on peaceful and democratic measures for putting this philosophy into practice.

Individual freedom

The first point to note about the Constitution is its commitment to individual freedom. This commitment did not emerge miraculously out of calm deliberations around a table. Rather, it was the product of continuous intellectual and political activity of well over a century. As early as the beginning of the nineteenth century, Rammohan Roy protested against curtailment of the freedom of the press by the British colonial state. Roy argued that a state responsive to the needs of individuals must provide them the means by which their needs are communicated. Therefore, the state must permit unlimited liberty of publication. Likewise, Indians continued to demand a free press throughout the British rule.

It is not surprising therefore that freedom of expression is an integral part of the Indian Constitution. So is the freedom from arbitrary arrest. After all, the infamous Rowlatt Act, which the national movement opposed so vehemently, sought to deny this basic freedom. These and other individual freedoms such as freedom of conscience are part of the liberal ideology. On this basis, we can say that the Indian Constitution has a pretty strong liberal character. In the chapter on fundamental rights we have already seen how the Constitution values individual freedom,

It might be recalled that for over forty years before the adoption of the Constitution, every single resolution, scheme, bill and report of the Indian National Congress mentioned individual rights, not just in passing but as a nonnegotiable value.

Social Justice

When we say that the Indian Constitution is liberal, we do not mean that it is liberal only in the classical western sense. In the book on Political Theory you will learn more about the idea of liberalism. Classical liberalism always privileges rights of the individuals over demands of social justice and community 'values.

The liberalism of the Indian Constitution differs from this version in two ways. First, it was always linked to social justice. The best example of this is the provision for reservations for Scheduled Castes and Scheduled Tribes in the Constitution. The makers of the Constitution believed that the mere granting of the right to equality was not enough to overcome age-old injustices suffered by these groups or to give real meaning to their right to vote. Special constitutional measures were required to advance their interests. Therefore the constitution makers provided a number of special measures to protect the interests of Scheduled Castes and Scheduled Tribes such as the reservation of seats in legislatures. The Constitution also made it possible for the government to reserve public sector jobs for these groups.

Respect for diversity and minority rights The Indian Constitution encourages equal respect between communities. This was not easy in our country, first because communities do not always have a relationship of equality; they tend to have hierarchical relationships with one another (as in the case of caste). Second, when these communities do see each other as equals, they also tend to become rivals (as in the case of religious communities). This was a huge challenge for the makers of the Constitution: how to make communities liberal in their approach and foster a sense of equal respect among them under existing conditions of hierarchy or intense rivalry?

It would have been very easy to resolve this problem by not recognising communities at all, as most western liberal constitutions do. But this would have been unworkable and undesirable in our country. This is not because Indians are attached to communities more than others. Individuals everywhere also belong to cultural communities and every such community has its own values, traditions, customs and language shared by its members. For example, individuals in France or Germany belong to a linguistic community and are deeply attached to it. What makes us different is that we have more open to acknowledged the value of communities. More importantly, India is a land of multiple cultural communities. Unlike Germany or France we have several linguistic and religious communities. It was important to ensure that no can community systematically dominates others. This made it mandatory for our Constitution to recognise community basted rights.

One such right is the right of religious communities to establish and run their own educational institutions. Such institutions may receive money from the government. This provision shows that the Indian Constitution does not see religion merely as a private' matter concerning the individual.

Secularism

Secular states are widely seen as treating religion as only a private matter. That is to say, they refuse to give religion public or official recognition. Does this mean that the Indian Constitution is not secular? This does not follow. Though the term 'secular' was not initially mentioned, the Indian Constitution has always been secular. The mainstream, western conception, of secularism means mutual exclusion of state and religion in order to protect values such as individual freedom and citizenship rights of individuals.

Again, this is something that you will learn more about in Political Theory. The term 'mutual exclusion' means this: both religion and state must stay away from the internal affairs of one another. The state must not intervene in the domain of religion; religion likewise should not dictate state policy or influence the conduct of the state. In other words, mutual exclusion means that religion and state must be strictly separated.

What is the purpose behind strict separation? It is to safeguard the freedom of individuals. States which lend support to organised religions make them more powerful than they already are. When religious organisations begin to control the religious lives of individuals, when they start dictating how they should relate to God or how they should pray, individuals may have the option of turning to the modern state for protecting their religious freedom, but what help would a state offer them if it has already joined hands with these organisations? To protect religious freedom of individuals, therefore, state must not help religious organisations. But at the same time, state should not tell religious organisations how to manage their affairs. That too can thwart religious freedom. The state must, therefore, not hinder religious organisations either. In short, states should neither help nor hinder religions. Instead, they should keep themselves at an arm's length from them. This has been the prevalent western conception of secularism.

Conditions in India were different and to respond to the challenge they posed, the makers of the Constitution had to work out an alternative conception of secularism. They departed from the western model in two ways and for two different reasons.

- Rights of Religious Groups First, as mentioned already, they recognised that intercommunity equality was as necessary as equality between individuals. This was because a person's freedom and sense of self-respect was directly dependent upon the status of her community. If one community was dominated by another, then its members would also be significantly less free. If, on the other hand, their relations were equal, marked by an absence of domination, then its members would also walk about with dignity, self-respect and freedom. Thus, the Indian Constitution grants rights to all religious communities such as the right to establish and maintain their educational institutions. Freedom of religion in India means the freedom of religion of both individuals and communities.
- State's Power of Intervention Second, separation in India could not mean mutual exclusion. Why is it so? Because, religiously sanctioned customs such as untouchability deprived individuals of the most

basic dignity and -self-respect. Such customs were so deeply rooted and pervasive that without active state intervention, there was no hope of their dissolution. The state simply had to interfere in the affairs of religion. Such intervention was not always negative. The state could also help religious communities by giving aid to educational institutions run by them. Thus, the state may help or hinder religious communities depending on which mode of action promotes values such as freedom and equality. In India separation between religion and state did not mean their mutual exclusion but rather principled distance, a rather complex idea that allows the state to be distant from all religions so that it can intervene or abstain from interference, depending upon which of these two would better promote liberty, equality and social justice. We have hitherto mentioned three core features these can also be seen as the achievements of our Constitution.

- First, our Constitution reinforces and reinvents forms of liberal individualism. This is an important achievement because this is done in the backdrop of a society where community values are often indifferent or hostile to individual autonomy.
- Second, our Constitution upholds the principle of social justice without compromising on individual liberties. The constitutional commitment to caste-based affirmative action programme shows how much ahead India was compared to other nations. Can one forget that affirmative action programmes in the U.S. were begun after the 1964 Civil Rights Movement, almost two decades after they were constitutionally entrenched in India?
- Third against the background of inter-communal strife, the Constitution upholds its commitment to group rights (the right to the expression of cultural particularity). This indicates that the framers of the Constitution were more than willing to face the challenges of what more than four decades later has come to be known as multiculturalism.

Universal franchise

Two other core features may also be regarded as achievements. First, it is no mean achievement to commit oneself to universal franchise, specially when there is widespread belief that traditional hierarchies in India are congealed and more or less impossible to eliminate, and when the right to vote has only recently been extended to women and to the working class in stable, Western democracies.

Once the idea of a nation took root among the elite, the idea of democratic self government followed. Thus, Indian nationalism always conceived of a political order based on the will of every single member of society. The idea of universal franchise lay securely within the heart of nationalism. As early as the Constitution of India Bill (1895), the first non-official attempt at drafting a constitution for India the author declared that every citizen i e anyone born in India had a right to take part in the affairs of the country

and be admitted to public office. The Motilal Nehru Report (1928) reaffirms this conception of citizenship, reiterating that every person of either sex who has attained the age of twenty-one is entitled to vote for the house of Representatives or Parliament. Thus from very early on, universal franchise was considered as the most important and legitimate instrument by which the will of the nation was to be properly expressed.

Federalism

Second, by introducing the articles concerning Jammu and Kashmir (Art. 370) and the North-East (Art, 371), the Indian Constitution anticipates the very, important concept of asymmetric federalism. We have seen in the chapter on federalism that the Constitution has created a strong central government. But despite this unitary bias of the Indian Constitution, there are important constitutionally embedded differences between the legal status and prerogatives of different sub-units within the same federation. Unlike the constitutional symmetry of American federalism, Indian federalism has been constitutionally asymmetric. To meet the specific needs and requirements of some sub-units, it was always part of the original design to have a unique relationship with them or to give them special status. For example, the accession of Jammu and Kashmir to the Indian union was based on a commitment to safeguard autonomy under Article 370 of the Constitution. This is the only State that is governed by its own constitution. Similarly, under Article 371A, the privilege of special status was also accorded to the North-Eastern State of Nagaland. This Article not only confers validity on preexisting laws within Nagaland, but also protects local. Many other States too, are beneficiaries of such special provisions. According to the Indian Constitution, then, there is nothing bad about this differential treatment. Although the Constitution did not originally envisage this, India is now a multi-lingual federation. Each major linguistic group is politically recognised and all are treated as equals. Thus, the democratic and linguistic federalism of India has managed to combine claims to unity with claims to cultural recognition. A fairly robust political arena exists that allows for the play of multiple identities that complement one another.

National identity

Thus, the Constitution constantly reinforces a common national identity. In the chapter on federalism, you have studied how India strives to retain regional identities along with the national identity. It is clear from what is mentioned above that this common national identity was not incompatible with distinct religious or linguistic identities. The Indian Constitution tried to balance these various identities. Yet, preference was given to common identity under certain conditions. This is clarified, in the debate over separate electorates based on religious identity which the Constitution rejects.

Separate electorates were rejected not because they fostered difference between religious communities as such or because they endangered a simple notion of national unity but because they endangered a healthy national life. Rather than forced unity, our Constitution sought to evolve true fraternity, a goal dear to the heart of Dr. Ambedkar. As Sardar Patel put it, the main objective was to evolve 'one community'.

PROCEDURAL ACHIEVEMENTS

All these five core features are what

might be called the substantive achievements of the Constitution. However, there were also some procedural achievements.

- First, the Indian Constitution reflects a faith in political deliberation. We know that many groups and interests were not adequately represented in the Constituent Assembly. But the debates in the Assembly amply show that the makers of the Constitution wanted to be as inclusive in their approach as possible. This open-endedness indicates the willingness of people to modify their existing preferences, in short, to justify outcomes by reference not to self-interest but to reasons. It also shows a willingness to recognise creative value in difference and disagreement.
- Second, it reflects a spirit of compromise and accommodation. These words, compromise and accommodation, should not always be seen with disapproval. Not all compromises are bad.

If something of value is traded off for mere self-interest, then we naturally have compromised in the bad sense. However, if one value is partially traded off for another value, especially in an open process of free deliberation among equals, then the compromise arrived in this manner can hardly be objected to.

We max' lament that we could not have everything but to secure a bit of all things important cannot be morally blameworthy. Besides, a commitment to the idea that decisions on the most important issues must be arrived at consenua1ly rather than by majority vote is equally morally commendable. The Preamble of the Constitution reads like a poem on democracy. It contains the philosophy on which the entire Constitution has been built. It provides a standard to examine and evaluate any law and action of government, to find out whether it is good or bad. It is the soul of the Indian Constitution.

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

JUSTICE, social, economic and political; **LIBERTY** of thought, expression, belief, faith and worship;

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

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation; **IN OUR CONSTITUTENT ASSEMBLY** this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AN? ?IVE TO OURSELVES THIS CONSTITUTION.**

WE, THE PEOPLE O' INDIA

- The constitution has been drawn up and enacted by the people through their representatives, and not handed down to them by a king or any outside powers.

SOVEREIGN

- People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India.

SOCIALIST

- Wealth is generated socially and should be shared equally by society. Government should regulate the ownership of land and industry to

reduce socio-economic inequalities.

SECULAR

- Citizens have complete freedom to follow any religion. But there is no official religion. Government treats all religious beliefs and practices with equal respect.

DEMOCRATIC

- A form of government where people enjoy equal political rights, elect their rulers and hold them accountable. The government is run according to some basic rules.

REPUBLIC

- The head of the state is an elected person and not a hereditary position.

JUSTICE

- Citizens cannot l discriminated on the grounds of caste, religion and gender. Social inequalities have to be reduced. Government should work for the welfare of all, especially of the disadvantaged groups.

LIBERTY

- There are no unreasonable restrictions on the citizens in what they think, how they wish to express their thoughts and the way, they wish to follow up their thoughts in action.

EQUALITY

- All are equal before the law. The traditional social inequalities have to be ended. The government should ensure equal opportunity for all.

FRATERNITY

- All of us should behave as if we are members of the same family. No one should treat a fellow citizen as inferior.

3

Fundamental Rights in the Indian Constitution

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Right to Equality

√ Equality before law
√ Equal protection of laws
√ Prohibition on discrimination on ground of religion

√ Equal access to shops, bathing ghats, hotels etc.
√ Equality of opportunity in employment
√ Abolition of titles
√ Abolition of untouchability

Right to freedom of religion

√ Freedom of conscience and profession;

√ Freedom to manage religious affairs; freedom to give religious instructions in certain institutions

Right against exploitation

√ Prohibition of forced labour;
√ Prohibition of employment of children in hazardous jobs

Right to liberty and Personal freedoms
Right to:
√ Speech and expression
√ Assemble peacefully
√ Form association
√ Move freely throughout the territory of India
√ Reside and settle in any part of India
Practice any profession or to carry on any occupation, trade or business.
√ Right to life and liberty;
√ Rights of the accused and convicts

Cultural and educational Rights of minority groups
√ Protection of language, culture of minorities;
√ Right of minorities to
√ educational institutions

Right to Constitutional remedy
√ Right to move the courts for issuance of writs

♣♣♣

During our freedom struggle, the leaders of the freedom movement had realised the importance of rights and demanded that the British rulers should respect rights of the people. The Motilal Nehru committee had. demanded bill of rights as far as back as in 1928. It was therefore, natural that when India became independent and the Constitution was being prepared, there were no two opinions on the inclusion and protection of rights in the Constitution. The Constitution listed the rights that would be specially protected and called them 'fundamental rights'.

The word fundamental suggests that these rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Fundamental Rights are so important that the Constitution itself ensures that they are not violated by the government.

Fundamental Rights are different from other rights available to us. While ordinary legal rights are protected and enforced by ordinary law, Fundamental Rights are protected and guaranteed by the constitution of the country. Ordinary rights may be changed by the legislature by ordinary process of law making, but a fundamental right may only be changed by amending the Constitution itself. Besides this, no organ of the government can act in a manner that violates them. Judiciary has the powers and responsibility to protect the fundamental rights from violations by actions of the government. Executive as well as legislative actions can be declared illegal by the judiciary if these violate the fundamental rights or restrict them in an unreasonable manner. However, fundamental rights are not absolute or unlimited rights. Government can put reasonable restrictions on the exercise of our fundamental rights.

Right to Equality:

It provides for equal access to public places like shops, hotels, places of entertainment, wells, bathing ghats and places of worship. There cannot be any discrimination in this access on the basis of caste, creed, colour, sex, religion, or place of birth. It also prohibits any discrimination in public employment on any of the above mentioned basis. This right is very important because our society did not practice equal access in the past.

The practice of untouchability is one of the crudest manifestations of inequality. This has been abolished under the right to equality. The same right also provides that the state shall confer no title on a person except those who excel themselves in military or academic field. Thus right to equality strives to make India a true democracy by ensuring a sense of equality of dignity and status among all its citizens.

Read the Preamble to our Constitution? You will find that the Preamble mentions two things about equality: equality of status and equality of opportunity. Equality of opportunity means that all sections of the society enjoy equal opportunities. But in a society where there are various kinds of social inequalities, what does equal opportunity mean?

The Constitution clarifies that the government can implement special schemes and measures for improving the conditions of certain sections of society: children, women, and the socially and educationally backward classes. You may have heard about 'reservations' in jobs, and in admissions. You would have wondered why there are reservations if we follow the principle of equality. in fact Article 16(4) of the constitution

explicitly clarifies that a policy like reservation will not be seen as a violation of right to equality. If you see the spirit of the Constitution, this is required for the fulfilment of the right to equality of opportunity.

Article 16 (4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

RIGHT TO FREEDOM

Equality and freedom liberty, are the two rights that are most essential to a democracy. It is not possible to think of the one without thinking of the other. Liberty means freedom of thought, expression and action. However it does not mean freedom to do anything that one desires or likes. If that were to be permitted then a large number of people will not be able to enjoy their freedom. Therefore, freedoms are defined in such a manner that every person will enjoy her freedom without threatening freedom of others and without endangering the law and order situation.

Article 21: Protection of life and personal liberty—No person shall be deprived of his life or personal liberty except according to procedure established by law.

Right to life and personal liberty

The foremost right among rights to freedom is the right to life and personal liberty. No citizen can be denied his or her life except by procedure as laid down under the law. Similarly no one can be denied his/her personal liberty.

That means no one can be arrested without being told the grounds for such an arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also, it is mandatory for the police to take that person to the nearest magistrate within 24 hours. The magistrate, who is not part of the police, will decide whether the arrest is justified or not.

This right is not just confined to a guarantee against taking away of an individual's life but has wider application. Various judgments of Supreme Court have expanded the scope of this right. The Supreme Court has ruled that this right also includes right to live with human dignity, free from exploitation. The court has held that right to shelter and livelihood is also included in the right to life because no person can live without the means of living, that is, the means of livelihood.

Preventive detention

Ordinarily, a person would be arrested after he or she has reportedly committed some offence. However there are exceptions to this. Sometimes a person can be arrested simply out of an apprehension that he or she is likely to engage in unlawful activity and imprisoned for some time without following the above mentioned procedure. This is known as preventive detention. It means that if the government feels that a person can be a threat to law and order or to the peace and security of the nation, it can detain or arrest that person. This preventive detention can be extended only for three months. After three months such a case is brought before an advisory board for review.

On the face of it, preventive detention looks like an effective tool in the hands of the government to deal with anti-social elements or subversives. But this provision has often been misused by the government. Many

people think that there must be greater safeguards in this law so that it may not be misused against people for reasons other than that which are really justified. In fact, there is a clear tension between right to life and personal liberty and the provision for preventive detention.

Other freedoms: You can see that under the right to freedom there are some other rights as well. These rights however are not absolute. Each of these is subject to restrictions imposed by the government.

For example right to freedom of speech and expression is subject to restrictions such as public order, peace and morality etc. Freedom to assemble too is to be exercised peacefully and without arms. The government may impose restrictions in certain areas declaring the assembly of five or more persons as unlawful. Such powers can be easily misused by the administration. The genuine protest against an act or policy of government by the people may be denied permission. However, if the people are aware and vigilant in regard to their rights and choose to protest against such acts of administration such misuse becomes rare. In the Constituent Assembly itself, some members had expressed their dissatisfaction about restrictions on rights.

Rights of accused

Our Constitution ensures that persons accused of various offences would also get sufficient protection. We often tend to believe that anyone who is charged with some offence is guilty. However, no one is guilty unless the court has found that person guilty of an offence. It is also necessary that a person accused of any crime should get adequate opportunity to defend herself or himself. To ensure a fair trial in courts, the Constitution has provided three rights:

- no person would punished for the same offence more than once,
- no law shall declare any action as illegal from a backdate, and
- no person shall be asked to give evidence against himself or herself.

RIGHT AGAINST EXPLOITATION

In our country there are millions of people who are underprivileged and deprived. They may be subjected to exploitation by their fellow human beings. One such form of exploitation in our country has been begar or forced labour without payment. Another closely related form of exploitation is buying and selling of human beings and using them as slaves. Both of these are prohibited under the Constitution. Forced labour was imposed by landlords, money lenders and other wealthy persons in the past. Some form of bonded labour still continues in the country, specially in brick kiln work. It has now been declared a crime and it is punishable.

The Constitution also forbids employment of children below the age of 14 years in dangerous jobs like factories and mines. With child labour being made illegal and right to education becoming a fundamental right for children, this right against exploitation has become more meaningful.

RIGHT TO FREEDOM OF RELIGION

According to our Constitution, everyone enjoys the right to follow the religion of his or her choice. This freedom is considered as a hallmark of democracy. Historically, there were rulers and emperors in different parts of

the world who did not allow residents of their countries to enjoy the right to freedom of religion. Persons following a religion different from that of the ruler were either persecuted or forced to convert to the official religion of the rulers. Therefore, democracy has always 'incorporated the freedom to follow the religion of one's choice as one of its basic principle'.

Freedom of faith and worship

In India, everyone is free to choose a religion and practice that religion. Freedom of religion also includes the freedom of conscience. This means that a person may choose any religion or may choose not to follow any religion. Freedom of religion includes the freedom to profess, follow and propagate any religion. Freedom of religion is subject to certain limitations. The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health. This means that the freedom of religion is not an unlimited right. The government can interfere in religious matters for rooting out certain social evils. For example in the past, the government has taken steps banning practices like sati, bigamy or human sacrifice. Such restrictions cannot be opposed in the name of interference in right to freedom of religion.

The limitations on the right to freedom of religion always produce tensions between followers of various religions and the government. When the government seeks to restrict some activities of any religious group, people of that religion feel that this is interference in their religion.

Freedom of religion becomes a matter of political controversy for yet another reason. The Constitution has guaranteed the right to propagate one's religion. This includes persuading people to convert from one religion to another. However, some people resent conversions on the ground that these are based on intimidation or inducement. The Consti-tution does not allow forcible conversions. It only gives us the right to spread information about our religion and thus attract others to it.

Equality of all religions

Being a country which is home to several religions, it is necessary that the government must extend equal treatment to different religions. Negatively, it means that government will not favour any particular religion. India does not have any official religion. We don't have to belong to any particular religion in order to be a prime minister or president or judge or any other public official. We have also seen that under the right to equality, there is a guarantee that government will not discriminate on the basis of religion in giving employment. The institutions run by the state will not preach any religion or give religious education nor will they favour persons of any religion. The objective of these provisions is to sustain and nurture the principle of secularism.

CULTURAL AND EDUCATIONAL RIGHTS

When we talk of the Indian society, the image of diversity comes before our minds. India is not made up of a monolithic society. We are a society that has vast diversity. In such a society that is full of diversity, there would be social sections which are small in numbers compared to some other groups.

Our Constitution believes that diversity is our strength. Therefore, one of the fundamental rights is the right of the

minorities to maintain their culture. This minority status is not dependent only upon religion. Linguistic and cultural minorities are also included in this provision. Minorities are groups that have common language or religion and in a particular part of the country or in the country as a whole, they are outnumbered by some other social section. Such communities have a culture, language and a script of their own, and have the right to conserve and develop these.

All minorities, religious or linguistic, can set up their own educational institutions. By doing so, they can preserve and develop their own culture. The government will not, while granting aid to educational institutions, discriminate against any educational institution on the basis that it is under the management of minority community.

RIGHT TO CONSTITUTIONAL REMEDIES

One would agree that our Constitution contains a very impressive list of Fundamental Rights. But merely writing down a list of rights is not enough. There has to be a way through which they could be realised in practice and defended against any attack on these rights.

Fundamental Duties of citizens

- In 1976, the 42nd amendment to the Constitution was passed. Among other things, this amendment inserted a list of Fundamental Duties of Citizens. In all, ten duties were enumerated. However, the Constitution does not say anything about enforcing these duties.
- As citizens, we must abide by the Constitution, defend our country, promote harmony among all citizens, protect the environment.
- However, it must be noted that our Constitution does not make the enjoyment of rights dependent or conditional upon fulfilment of duties. in this sense, the inclusion of fundamental duties has not changed the status of our fundamental rights.

Right to constitutional remedies is the means through which this is to be achieved. Dr. Ambedkar considered the right to constitutional remedies as 'heart and soul of the constitution', It is so because this right gives a citizen the right to approach a High Court or the Supreme Court to get any of the fundamental rights restored in case of their violation. The Supreme Court and the High Courts can issue orders and give directives to the government for the enforcement of rights.

The courts can issue various special orders known as writs.

Habeas corpus: A writ of habeas corpus means that the court orders that the arrested person should be presented before it. It can also order to set free an arrested person if the manner or grounds of arrest are not lawful or satisfactory.

Mandamus: This writ is issued when the court finds that a particular office holder is not doing legal duty and thereby is infringing on the right of an individual.

Prohibition: This writ is issued by a higher court (High Court or Supreme Court) when a lower court has considered a case going beyond its jurisdiction.

Quo Warranto: If the court finds that a person is holding office but is not entitled to hold that office, it issues the writ of quo warranto and restricts that person from acting as an office holder.

Certiorari: Under this writ, the court

orders a lower court or another authority to transfer a matter pending before it to the higher authority or court.

Apart from the judiciary, many other mechanisms have been created in later years for the protection of rights. You may have heard about the National Commission on Minorities, the National Commission on Women, the National Commission on Scheduled Castes, etc. These institutions protect the rights of women, minorities or Dalits. Besides, the National Human Rights Commission has also been established by law to protect the fundamental and other kinds of rights.

DIRECTIVE PRINCIPLES OF STATE POLICY

The makers of our Constitution knew that independent India was going to face many challenges. Foremost among these was the challenge to bring about equality and well-being of all citizens.

They also thought, that certain policy direction was required for handling these problems. At the same time, the Constitution did not want future governments to be bound by certain policy decisions. Therefore, some guidelines were incorporated in the Constitution but they were not made legally enforceable: this means that if a government did not implement a particular guideline, we cannot go to the court asking the court to instruct the government to implement that policy. Thus, these guidelines are 'nonjusticiable' i.e., parts of the Constitution that cannot be enforced by the judiciary Those who framed our Constitution thought that the moral force behind these guidelines would ensure that the government would take them seriously. Besides, they expected that the people would also hold the governments responsible for implementing these directives. So, a separate list of policy guidelines is included in the Constitution. The list of these guidelines is called the Directive Principles of State Policy.

DIRECTIVE PRINCIPLES

Goals

Welfare of the people; Social, economic and political justice;

Raising the standard of living; equitable distribution of resources;

promotion of international peace

Policies

Uniform civil code; Prohibition of consumption of alcoholic liquor;

Promotion of cottage industries;

Prevention of slaughter of useful cattle;

Promotion of village panchayats.

Non-justiciable rights

Adequate livelihood equal pay for equal work (for men and women)

Right against economic Exploitation. Right to work;

Right of children to free and compulsory education

What do the Directive Principles contain?

- The chapter on Directive Principles lists mainly three things:
- the goals and objectives that we as a society should adopt;
- certain rights that individuals should enjoy apart from the Fundamental Rights; and
- certain policies that the government should adopt.

You may get some idea of the vision of makers of our Constitution by looking at some of the Directive Principles shown below.

The governments from time to time tried to give effect to some Directive Principles of State Policy. They passed several zamindari abolition bills, nationalised banks, enacted numerous factory laws, fixed minimum wages, cottage and small industries were promoted and provisions for reservation for the uplift of the scheduled castes and scheduled tribes were made. Such efforts to give effect to the Directive Principles include the right to education, formation of panchayati raj institutions all over the country, partial right to work under employment guarantee programme and the mid-day meal scheme etc.

RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

It is possible to see both Fundamental Rights and Directive Principles as complementary to each other. Fundamental Rights restrain the government from doing certain things while Directive Principles exhort the government to do certain things. Fundamental Rights mainly protect the rights of individuals while directive principles ensure the well-being of the entire society.

However, at times, when government intends to implement Directive Principles of State Policy, it can come in conflict with the Fundamental Rights of the citizen.

However, keeping in mind the societal needs that are greater than the individual interests, the government amended the Constitution to give effect to the Directive Principles of State Policy. This led to a long legal battle.

The executive and the judiciary took different positions. The government claimed that rights can be abridged for giving effect to Directive Principles. This argument assumed that rights were a hindrance to welfare of the people. On the other hand, the court held the view that Fundamental Rights were so important and sacred that they cannot be limited even for purposes of implementing Directive Principles.

Right to Property

Behind the controversy about the relationship between rights and directive principles, there was one important reason: in the Constitution, originally, there was a fundamental right to 'acquire, possess and maintain' property. But the Constitution made it clear that property could be taken away by the government for public welfare. Since 1950, government made many laws that limited this right to property. This right was at the centre of the long debate over the relationship between rights and directive principles. Finally, in 1973, the Supreme Court gave a decision that the right to property was not part of the basic structure of the Constitution and therefore, parliament had power to abridge this right by an amendment. In 1978, the 44th amendment to the Constitution removed the right to property from the list of Fundamental Rights and converted it into a simple legal right under. article 300 A.

This generated another complicated debate. This related to the amendment of the Constitution. The government was saying that Parliament can amend any part of the Constitution. The court was saying that Parliament cannot make an amendment that violated Fundamental Rights. This controversy was settled by an important decision of the Supreme Court in Kesavananda Bharati case. In this case, the

court said that there are certain basic features of the Constitution and these cannot be changed by Parliament.

Conclusion

In the writings of Jotirao Phuley (1827-1890), a radical social reformer from Maharashtra, we find one of the earliest expressions of the view that rights include both freedom and equality. During the national movement, this idea of rights was further sharpened and expanded to constitutional rights. Our Constitution reflected this long tradition and listed the fundamental rights. Since 1950, the judiciary has functioned as an important protector of rights. Judicial interpretations have expanded the scope of rights in many respects. The government and administration of our country function within this overall framework. Rights enforce limitations on the functioning of the government and ensure democratic governance of the country.

4 Executive

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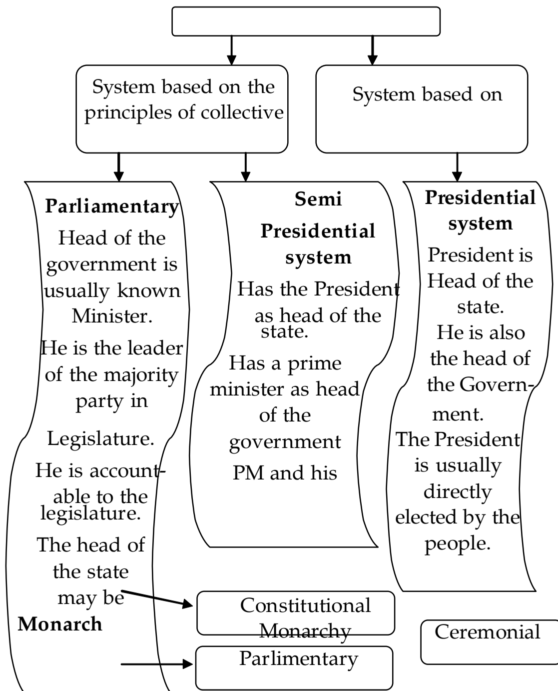
EXECUTIVE

In any organisation, some office holder has to take decisions and implement those decisions. We call this activity administration or management. But administration requires body at the top that will take policy decisions or the big decisions and supervise and coordinate the routine administrative functioning. You may have heard about the executives of bi companies, banks or industrial units. Every formal group has a body of those who function as the chief administrators or the executives of that organisation. Some office holders decide the policies and rules and regulations and then some office holders implement those decisions in actual day to-day functioning of the organisation. The word executive means a body of persons that look after the implementation of rules and regulations in actual practice.



In the case of government also, one body may take policy decisions and decide about rules and regulations, while the other one would be in charge of implementing those rules. The organ government that primarily looks after the function of implementation and policies adopted by the legislature. The executive is often involved in framing of policy. The official designations of the executive vary from country to country. Some countries have presidents, while others have chancellors.

♣♣♣

The executive branch is not just about presidents, prime ministers and ministers. It also extends to the administrative machinery (civil servants). While the heads government and their ministers, saddled with the overall responsibility of government policy, altogether known as the political executive, those responsible for day to day administration a called the permanent executive.

WHAT ARE THE DIFFERENT TYPES OF EXECUTIVE?

Every country may not have the same type of executive. You may have heard about the President of the USA and the Queen of England. But the powers and functions of the President of the USA are very different from the powers of the President of India. Similarly, the powers of the Queen of England are different from the powers of the King of Nepal. Both India and France have prime ministers, but their roles are different from each other.

To answer this question we will briefly outline the nature of executive existing in some of these countries. The USA has a presidential system and executive powers are in the hands of the president. Canada has a parliamentary democracy with constitutional m6narchy where Queen Elizabeth II is the formal chief of state and the Prime Minister is the head of government. In France, both the president and the prime minister a part of the semi presidential system.

The president appoints the prime minister as well as the ministers but cannot dismiss them as they are responsible to the parliament. Japan has a parliamentary system with the Emperor as the head of the state and the prime minister as the head of government. Italy has a parliamentary system with the president as the formal head of state and the prime minister as the head of government. Russia has a semi-presidential system where president is the head of state and prime minister, who is appointed by the president, is the head of government. Germany has a parliamentary system in which president is the ceremonial head of state and the chancellor is the head of government. In a presidential system, the president is the Head of state as well as head of Government. In this system the office of president is very powerful, both in theory and practice. Countries with such a system include the United States, Brazil and most nations in Latin America.

In a parliamentary system, the prime minister is the head of government. Most parliamentary systems have a president or a monarch who is the nominal Head of state. In such a system, the role of president or monarch is primarily ceremonial and prime minister along with the cabinet wields effective power. Countries with such system include Germany, Italy, Japan, United Kingdom as well as Portugal. A semi-presidential system has both a president and a prime minister but unlike the parliamentary system the president may possess significant day-to-day powers. In this system, it is possible that sometimes the president and the prime minister may belong to the same party and at times they may belong to two different parties and thus, would be opposed to each other. Countries with such a system include France, Russia, Sri Lanka, etc.

PARLIAMENTARY EXECUTIVE IN INDIA

When the Constitution of India was written, India already had some experience of running the parliamentary system under the Acts of 1919 and 1935. This experience had shown that in the parliamentary system, the executive can be effectively controlled by the representatives of the people. The makers of

the Indian Constitution wanted to ensure that the government would be sensitive to public expectations and would be responsible and accountable. The other alternative to the parliamentary executive was the presidential form of government. But the presidential executive puts much emphasis on the president as the chief executive and as source of all executive power. There is always the danger of personality cult in presidential executive. The makers of the Indian Constitution wanted a government that would have a strong executive branch, but at the same time, enough safeguards should be there to check against the personality cult. In the parliamentary form there are many mechanisms that ensure that the executive will be answerable to and controlled by the legislature or people's representatives. So the Constitution adopted the parliamentary system of executive for the governments both at the national and State levels.

Power and position of President

Article 74 (1): There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in the exercise of his functions, act in accordance with such advice. Provided that the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

According to this system, there is a President who is the formal Head of the state of India and the Prime Minister and the Council of Ministers, which run the government at the national level. At the State level, the executive comprises the Governor and the Chief Minister and Council of Ministers. The Constitution of India vests the executive power of the Union formally in the President. In reality, the President exercises these powers through the Council of Ministers headed by the Prime Minister. The President is elected for a period of five years. But there is no direct election by the people for the office of President. The President is elected indirectly. This means that the president is elected not by the ordinary citizens but by the elected MLAs and MPs. This election takes place in accordance with the principle of proportional representation with single transferable vote.

The President can be removed from office only by Parliament by following the procedure for impeachment. The only ground for impeachment is violation of the Constitution.

Do you know what the word shall means here? It indicates that the advice is binding on the President. In view of the controversy about the scope of the President’s powers, a specific mention was made in the Constitution by an amendment that the advice of the Council of Ministers will be binding on the President. By another amendment made later, it was decided that the President can ask the Council of Ministers to reconsider its advice but, has to accept the reconsidered advice of the Council of Ministers.

We have already seen that President is the formal head of the government. In this formal sense, the President has wide ranging executive, legislative, judicial and emergency powers. In a parliamentary system, these powers are in reality used by the President only on the advice of the Council of Ministers. The Prime Minister and the Council of Ministers have support of the majority in the Lok Sabha and they are the real executive. In most of the cases, the President has to follow the advice of the Council of Ministers.

“We did not give him any real power but

we have made his position one of authority and dignity. The constitution wants to create neither a real executive nor a mere figurehead, but a head that neither reigns nor governs; it wants to create a great figurehead...”

Discretionary Powers of the President

The President has no discretionary power under any circumstances? This will be an incorrect assessment. Constitutionally, the President has a right to be informed of all important matters and deliberations of the Council of Ministers. The Prime Minister is obliged to furnish all the information that the President may call for. The President often writes to the Prime Minister and expresses his views on matters confronting the country.

President’s role in Choosing the Prime Minister

After 1977, party politics in India became more competitive and there have been many instances when no party had clear majority in the Lok Sabha. What does the President do in such situations? No politi-cal party or coalition secured majority in the elections held in March 1998. The BJP and its allies secured 251 seats, 21 short of a majority. President Narayanan adopted an elaborate procedure. He asked the leader of the alliance, Atal Behari Vajpayee, “to furnish documents in support of his claim from concerned political parties.” Not stopping at this the President also advised Vajpayee to secure a vote of confidence within ten days of being sworn in.

Besides this, there are at least three situations where the President can exercise the powers using his or her own discretion. In the first place, we have already noted that the President can send back the advice given by the Council of Ministers and ask the Council to reconsider the decision. In doing this, the President acts on his (or her) own discretion. When the President thinks that the advice has certain flaws or legal lacunae, or that it is not in the best interests of the country, the President can ask the Council to reconsider the decision. Although, the Council can still send back the same advice and the President would then be - bound by that advice, such a request by the President to reconsider the decision, would naturally carry a lot of weight. So, this is one way in which the president can act in his own discretion.

Secondly, the President also has veto power by which he can withhold or refuse to give assent to Bills (other than Money Bill) passed by the Parliament. Every bill passed by the Parliament goes to the President for his assent before it becomes a law. The President can send the bill back to the Parliament asking it to reconsider the bill. This ‘veto’ power is limited because, if the Parliament passes the same bill again and sends it back to the President, then, the President has to give assent to that bill. However, there is no mention in the Constitution about the time limit within which the President must send the bill back for reconsideration. This means that the President can just keep the bill pending with him without ally tin limit This gives the ‘President an informal power to use the veto in a very effective manner This is sometimes referred to as ‘pocket veto’.

We saw that there is no time limit on the President for giving his assent to a bill. Do you know that such a thing has already happened? In 1986, the Parliament passed a bill known as Indian Post office (amendment) bill. This bill was widely criticised by many for it sought to curtail the freedom of the press.

The then President, Gyani Zail Singh, did not, take any decision on this bill. After his

term was over, the next President, Venkataraman sent the bill finally back to the Parliament for reconsideration. By that time, the government that brought the bill before the Parliament had changed and a new government was elected in 1989. This government belonged to a different coalition and did not bring the bill back before the Parliament. Thus, Zail Singh's decision to postpone giving assent to the bill effectively meant that the bill could never become a law!

Then, the third kind of discretion arises more out of political circumstances. Formally, the President appoints the Prime Minister. Normally, in the parliamentary system, a leader who has the support of the majority in the Lok Sabha would be appointed as Prime Minister and the question of discretion would not arise. But imagine a situation when after an election, no leader has a clear majority in the Lok Sabha. Imagine further that after attempts to forge alliances, two or three leaders are claiming that they have the support of the majority in the house. Now, the President has to decide whom to appoint as the Prime Minister. In such a situation, the President has to use his own discretion in judging who really may have the support of the majority or who can actually form and run the government.

The Vice President of India

The Vice President is elected for five years. His election method is similar to that of the President, the only difference is that members of State legislatures are not part of the electoral college. The Vice President may be removed from his office by a resolution of the Rajya Sabha passed by a majority and agreed to by the Lok Sabha. The Vice President acts as the ex-officio considerably increased the importance of the Chairman of the Rajya Sabha and takes over the office of the President when there is a vacancy by reasons of death, resignation, removal by impeachment or otherwise. The Vice President only until a new President is elected, B. D. Jatti acted as President on the death of Fakhruddin Ali Ahmed until a new President was elected.

Since 1989 major political changes have presidential office. In the four parliamentary elections held from 1989 to 1998, no single party or coalition attained a majority in the Lok acts as the President Sabha. These situations demanded presidential intervention either in order to constitute, governments or to grant a request for dissolution of Lok Sabha a Prime Minister who could not prove majority in the House. It may thus be said that presidential discretion is related to political conditions. There is greater scope for presidential assertiveness when governments are not stable and coalitions occupy power.

For the most part, the President is a formal power holder and a ceremonial head of the - nation. You may wonder why then do we need a President? In a parliamentary system, the Council of Ministers is dependent on the support of the majority in the legislature. This also means that the Council of Ministers may be removed at any time and a new Council of Ministers will have to be put in place. Such a situation requires a Head of the state who has a fixed term, who may be empowered to appoint the Prime Minister and who may symbolically represent the entire country. This is exactly the role of the President in ordinary circumstances. Besides, when no party has a clear majority, the President has the additional responsibility of making a choice and appointing the Prime Minister to run the government of the country.

Size of the Council of Ministers

Before the 91st Amendment Act (2003), the size of the Council of Minister was determined according to exigencies of time and requirements of the situation. But this led to very large size of the Council of Ministers. Besides, when no party had a clear majority, there was a temptation to win over the support of the members of the Parliament by giving them ministerial positions as there was no restriction on the number of the members of the Council of Ministers. This was happening in many States also. Therefore, an amendment was made that the Council of Ministers shall not exceed 15 percent of total number of members of the House of People (or Assembly the case of the States).

PRIME MINISTER AND COUNCIL OF MINISTERS

No discussion of government or politics in India, would normally take place without mentioning one office: the Prime Minister of India. The President exercises his powers only on the advice of the Council of Ministers. The Council of Ministers is headed by the Prime Minister. Therefore, as head of the Council of Ministers, the Prime Minister becomes the most important functionary of the government in our country.

In the parliamentary form of executive, it is essential that the Prime Minister has the support of the majority in the Lok Sabha. This support by the majority also makes the Prime Minister very powerful. The moment this support of the majority is lost, the Prime Minister loses the office. For many years after independence, the Congress party had the majority in the Lok Sabha and its leader would become the Prime Minister. Since 1989, there have been many occasions when no party had majority in the Lok Sabha. Various political parties have come together and formed a coalition that has majority in the House. In such situations, a leader who is acceptable to most partners of the coalition becomes the Prime Minister.

Formally, a leader who has the support of the majority is appointed by the President as Prime Minister. The Prime Minister then decides who will be the ministers in the Council of Ministers. The Prime Minister allocates ranks and portfolios to the ministers. Depending upon the seniority and political importance, the ministers are given the ranks of cabinet minister, minister of State or deputy minister. In the same manner, Chief Ministers of the States choose ministers from their own party or coalition. The Prime Minister and all the ministers have to be members of the Parliament. If someone becomes a minister or Prime Minister without being an MP, such a person has to get elected to the Parliament within six months. But remember that the most important feature of parliamentary executive is that the executive is routinely under the control and supervision of the legislature.

The Council of Ministers is collectively responsible to the Lok Sabha. This provision means that a Ministry which loses confidence of the Lok Sabha is obliged to resign. The principle indicates that the ministry is an executive committee of the Parliament and it collectively governs on behalf of the Parliament. Collective responsibility is based on the principle of the solidarity of the cabinet. It implies that a vote of no confidence even against a single minister leads to the resignation of the entire Council of Ministers. It also indicates that if a minister does not agree with a policy or decision of the cabinet,

he or she must either accept the decision or resign. It is binding o all ministers to pursue or agree to a policy for which there is collective responsibility. In India, the Prime Minister enjoys a pre-eminent place in the government. The Council of Ministers cannot exist without the Prime Minister. The Council comes into existence only after the Prime Minister has taken the oath of office. The death or resignation of the. Prime Minister automatically brings about the dissolution of the demise, dismissal or resignation of a minister only creates a ministerial vacancy. The Prime Minister acts as a link between the Council of Ministers on the one hand and the President as well as the Parliament on the other. It is this role of the Prime Minister which led Pt. Nehru to describe him as he linchpin of Government'. It is also the constitutional obligation the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation. The Prime Minister is involved in all crucial decisions of the government and decides on the policies of the government.

Thus, the power wielded by the Prime Minister flows from various sources: control over the Council of Ministers, leadership of the Lok Sabha, command over the bureaucratic machine, access to media, projection of personalities during elections, projection as national leader during international summitry as well as foreign visits. However, the power which the Prime Minister wields and actually puts into use depends upon the prevailing political conditions. The position of the Prime Minister and Council of Ministers has been unassailable whenever a single political party has secured majority in the Lok Sabha. However, this has not been the case when governments have been led by coalitions of political parties. Since 1989, we have witnessed many coalition governments in India. Many of these governments could not remain in power for the full term of the Lok Sabha. They were either removed or they resigned due to loss of support of the majority. These developments have affected the working of the parliamentary executive.

In the first place, these developments have resulted in a growing discretionary role of the President in the selection of Prime Ministers. Secondly, the coalitional nature of Indian politics in this period has necessitated much more consultation between political partners, leading to erosion of prime ministerial authority. Thirdly, it has also brought restrictions on various prerogatives of the Prime Minister like choosing the ministers and deciding their ranks and portfolios, Fourthly, even the policies and programmes of the government cannot be decided by the Prime Minister alone. Political parties of different ideologies come together both as pre-poll and post-poll allies to form a government. Policies are framed after a lot of negotiations and compromises among the allies. In this entire process, the Prime Minister has to act more as a negotiator than as leader of the government. At the State level, a similar parliamentary executive exists, though with some variations. The most important variation is that there is a Governor of the State appointed by the President (on the advice of the central government). Though the Chief Minister, like the Prime Minister is the leader of the majority party in the Assembly, the Governor has more discretionary powers. However, the main principles of parliamentary system operate at the State level too.

Legislature

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INTRODUCTION

Legislation are elected by the people and work on behalf of the people. Here you would study how elected legislature function and help in maintaining democratic government. You will also learn about the composition and functioning of the parliament and State legislature in India and their importance in democratic government.

Why do we need a Parliament?

Legislature is not merely a law making body. Lawmaking is but one of the functions of the legislature. It is the centre of all democratic political process. It is packed with action; walkouts, protests, demonstration, unanimity, concern and co-operation. All these serve very vital purposes; Indeed, a genuine democracy is inconceivable without a representative, efficient and effective legislature. The legislature also helps people in holding the representatives accountable. This is indeed, the very basis of representative democracy.

Yet, in most democracies, legislatures are losing central place to the executive. In India too, the Cabinet initiates policies, sets the agenda for governance and carries them through. This has led some critics to remark that the Parliament has declined. But even very strong cabinets must retain majority in the legislature. A strong leader has to face the Parliament and answer to the satisfaction of the Parliament. Herein lies the democratic potential of the Parliament. It is recognized as one of the most democratic and open forum of debate. On account of its composition, it is the most representative of all organs of government. It is above all, vested with the power to choose and dismiss the government.

Why do we need two Houses of Parliament?

The term 'Parliament' refers to the national legislature. The legislature of the States is described as State legislature. The Parliament in India has two houses. When there are two houses of the legislature, it is called a bicameral legislature. The two Houses of the Indian Parliament are the Council of States or the Rajya Sabha and the House of People or Lok Sabha. The Consti-tution has

given the States the option of establi-shing either a unica-meral or bicameral legislature. At present only five States have a bica-meral legislature?

Countries with large size and much di-versity usually prefer to have two houses of the national legislature to give representation to all sections in the society and to give representation to all geographical regions or parts of the country. A bicameral legislature has one more advantage. A bicameral legisla-ture makes it possible to have every decision reconsidered. Every decision taken by one house goes to the other house for its decision. This means that every bill and policy would be discussed twice. This ensures a double check on every matter. Even if one house takes a decision in haste, that decision will come for discussion in the other house and reconsideration will be possible.

RAJYA SABHA

Each of the two Houses of the Parliament has different bases of representation. The Rajya Sabha represents the States of India. It is an indirectly elected body. Residents of the State elect members to State Legislative Assembly. The elected members of State Legislative Assembly in turn elect the members of Rajya Sabha. We can imagine two different principles of representation in the second chamber. One way is to give equal representation to all the parts of the country irrespective of their size or population. We may call this as symmetrical representation. On the other hand, parts of the country may be given representation according to their population. This second method means that regions or parts having larger population would have more representatives in the second chamber than regions having less population.

In the U.S.A., every state has equal representation in the Senate. This ensures equality of all the states. But this also means that a small state would have the same representation as the larger states. The system of representation adopted for the Rajya Sabha is different from that in the USA. The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution. What would happen if we were to follow the American system of equality of representation in the Rajya Sabha? Uttar Pradesh with a population of 17.18.29 lakhs would get seats equal to that of Sikkim whose population is only 5.71 lakhs. The framers of the Constitution wanted to prevent such discrepancy. States with larger population get more representatives than States with smaller population get. Thus, a more populous State like Uttar Pradesh sends 31 members to Rajya Sabha, while a smaller and less populous State like Sikkim has one seat in the Rajya Sabha.

Members of the Rajya Sabha are elected for a term of six years. They can get re-elected. All members of the Rajya Sabha complete their terms at the same time. Every two years, one third members of the Rajya Sabha complete their term and elections are held for those one third seats only. Thus, the Rajya Sabha is never fully dissolved. Therefore, it is called the permanent House of the Parliament. The advantage of this arrangement is that even when the Lok Sabha is dissolved and elections are yet to take place, the meeting of the Rajya Sabha can be called and urgent business can be conducted.

Apart from the elected members, Rajya Sabha also has twelve nominated members. The President nominates these members. These nominations are made from among those persons who have made their mark in

the fields of literature, arts, social service, science etc.

LOK SABHA

The Lok Sabha and the State Legislative Assemblies are directly elected by the people. For the purpose of election, the entire country (State, in case of State Legislative Assembly) is divided into territorial constituencies of roughly equal population. One representative is elected from each constituency through universal, adult suffrage where the value of vote of every individual would be equal to another. At present there are 543 constituencies. This number has not changed since 1971. The Lok Sabha is elected for a period of five years. This is the maximum. We have seen in the chapter on the executive that before the completion of five years, the Lok Sabha can be dissolved if no party or coalition can form the government or if the Prime Minister advices the President to dissolve the Lok Sabha and hold fresh elections. Apart from law making, the Parliament is engaged in many other functions. Let us list the functions of the Parliament.

- **Legislative Functions:** The Parliament enacts legislations for the country. Despite being the chief law making body, the Parliament often merely approves legislations. The actual task of drafting the bill is performed by the bureaucracy under the supervision of the minister concerned. The substance and even the timing of the bill are decided by the Cabinet. No major bill is introduced in the Parliament without the approval of the Cabinet. Members other than ministers can also introduce bills but these have no chance of being passed without the support of the government.
- **Control Executive and ensuring its accountability:** Perhaps the most vital function of the Parliament is to ensure that the executive does not overstep its authority and remains responsible to the people who have elected them.
- **Financial Function:** Government is about spending a lot of money on various matters. Every Check your progress.
- Do you think that composition of Rajya Sabha has protected the position of States of India?
- Should indirect election of Rajya Sabha be replaced by direct elections? What would be its advantages and disadvantages?
- Since 1971 the number of seats in the Lok Sabha has not increased. Do you think that it should be increased? What should be the basis for this? Government raises resources through taxation. However, in a democracy, legislature controls taxation and the way in which money is used by the government. If the Government of India proposes to introduce any new tax, it has to get the approval of the Lok Sabha. The Financial powers of the Parliament, involve grant of resources to the government to implement its programmes. The government has to give an account to the Legislature about the money it has spent and resources that it wishes to raise. The legislature also ensures that the government does not misspend or overspend. This is done

through the budget and annual financial statements.

- **Representation:** Parliament represents the divergent views of members from different regional, social, economic, religious groups of different parts of the country.
- Debating Function: The Parliament is the highest forum of debate in the country. There is no limitation on its power of discussion. Members are free to speak on any matter without fear. This makes it possible for the Parliament to analyse any or every issue that faces the nation. These discussions constitute the heart of democratic decision making.
- Constituent Function: The Parliament has the power of discussing and enacting changes to the Constitution. The constituent powers of both the houses are similar. All constitutional amendments have to be approved by a special majority of both Houses.
- Electoral functions: The Parliament also performs some electoral functions. It elects the President and Vice President of India.
- Judicial functions: The judicial functions of the Parliament include considering the proposals for removal of President, Vice-President and Judges of High Courts and Supreme Court.

Powers of Rajya Sabha

We discussed above, the functions that are performed by the Parliament in general. However, in a bicameral legislature, there is some difference between the powers of the two Houses. Look at the charts showing the powers of Lok Sabha and Rajya Sabha.

Special Powers of Rajya Sabha

The Rajya Sabha is an institutional mechanism to provide representation to the States. Its purpose is to protect the powers of the States. Therefore, any matter that affects the States must be referred to it for its consent and approval. Thus, if the Union Parliament wishes to remove a matter from the State list (over which only the State Legislature can make law) to either the Union List or Concurrent List in the interest of the nation, the approval of the Rajya Sabha is necessary. This provision adds to the strength of the Rajya Sabha. However, experience shows that the members of the Rajya Sabha represent their parties more than they represent their States.

Powers exercised only by the Lok Sabha: Then, there are powers that only the Lok Sabha exercises. The Rajya Sabha cannot initiate, reject or amend money bills. The Council of Ministers is responsible to the Lok Sabha and not Rajya Sabha. Therefore, Rajya Sabha can criticize the government but cannot remove it. Can you explain why? The Rajya Sabha is elected by the MLAs and not directly by the people. Therefore, the Constitution stopped short of giving certain powers to the Rajya Sabha. In a democratic form as adopted by our Constitution, the people are the final authority. By this logic, the representatives, directly elected by the people, should have the crucial powers of removing a government and controlling the finances.

In all other spheres, including passing of non-money bills, constitutional amendments, and impeaching the President and removing the Vice President the powers of Lok Sabha and Rajya Sabha are co-equal.

HOW DOES THE PARLIAMENT MAKE LAWS?

The basic function of any legislature is to make laws for its people. A definite procedure is followed in the process of making law. Some of the procedure of law making are mentioned in the Constitution, while some have evolved from conventions. Follow a bill through the legislative process and you will clearly see that the law making process is technical and even tedious.

A bill is a draft of the proposed law. There can be different types of bills. When a non-minister proposes a bill, it is called private member's Bill. A bill proposed by a minister is described as Government Bill. Let us now see the different stages in the life of a bill.

Even before a bill is introduced in the Parliament there may be a lot of debate on the need for introducing such a bill. A political party may pressurize the government to initiate a bill in order to fulfill its election promises or to improve its chances of winning forthcoming elections. Interest groups, media and citizens' forums may also persuade the government for a particular legislation. Law making is thus not merely a legal procedure but also a political course of action. The preparation of a bill itself involves many considerations such as resources required to implement the law, the support or opposition that the bill is likely to produce, the impact that the law may have on the electoral prospect of the ruling party etc. In the era of coalition politics especially, a bill proposed by the government has to be acceptable to all the partners of the coalition. Such practical considerations can hardly be ignored. The Cabinet considers all these before arriving at a decision to enact a law.

Once the Cabinet approves the policy behind the legislation, the task of drafting the legislation begins. The draft of any bill is prepared by the concerned ministry. For instance a bill raising the marriageable age of girls from 18 to 21 will be prepared by the law ministry. The ministry of women and child welfare may also be involved in it. Within the Parliament, a bill may be introduced in the Lok Sabha or Rajya Sabha by a member of the House (but often a minister responsible for the subject introduces the bill). A money bill can be introduced only in Lok Sabha. Once passed there, it is sent to the Rajya Sabha.

A large part of the discussion on the bills takes place in the committees. The recommendation of the committee is then sent to the House. That is why committees are referred to as miniature legislatures. This is the second stage in the law making process. In the third and final stage, the bill is voted upon. If a non-money bill is passed by one House, it is sent to the other House where it goes through exactly the same procedure.

As you know, a bill has to be passed by both Houses for enactment. If there is disagreement between the two Houses on the proposed bill, attempt is made to resolve it through Joint Session of Parliament. In the few instances when joint sessions of the parliament were called to resolve a deadlock, the decision has always gone in favour of the Lok Sabha.

Article 109 Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introducted in the Council of States

If it is money bill, the Rajya Sabha can either approve the bill or suggest changes but cannot reject it. If it takes no action within 14 days the bill is deemed to have been passed. Amendments to the bill, suggested by Rajya Sabha, may or may not be accepted by the Lok Sabha. When a bill is passed by both Houses,

it is sent to the President for his assent. The assent of the President results in the enactment of a bill into a law.

HOW DOES THE PARLIAMENT CONTROL THE EXECUTIVE?

In a parliamentary democracy, the executive is drawn from the party or a coalition of parties that has a majority in Lok Sabha. It is not difficult for the executive to exercise unlimited and arbitrary powers with the support of the majority party. In such a situation, parliamentary democracy may slip into Cabinet dictatorship, where the Cabinet leads and the House merely follows. Only if the Parliament is active and vigilant, can it keep regular and effective check on the executive. There are many ways in which the Parliament can control the executive. But basic to them all is the power and freedom of the legislators as people's representatives to work effectively and fearlessly. For instance, no action can be taken against a member for whatever the member may have said in the legislature. This is known as parliamentary privilege. The presiding officer of the legislature has the final powers in deciding matters of breach of privilege. The main purpose of such privilege is to enable the members of the legislature to represent the people and exercise effective control over the executive.

Instruments of Parliamentary Control

The legislature in parliamentary system ensures executive accountability at various stages: policy making, implementation of law or policy and during and post implementation stage. The legislature does this through the use of a variety of devices:

- Deliberation and discussion
- Approval or Refusal of laws
- Financial control
- No confidence motion

Deliberation and discussion: During the law making process, members of the legislature get an opportunity to deliberate on the policy direction of the executive and the ways in which policies are implemented. Apart from deliberating on bills, control may also be exercised during the general discussions in the House. The Question Hour, which is held every day during the sessions of Parliament, where Ministers have to respond to searching questions raised by the members; Zero Hour where members are free to raise any matter that they think is important (though the ministers are not bound to reply), half-an- hour discussion on matters of public importance, adjournment motion etc. are some instruments of exercising control.

Perhaps the question hour is the most effective method of keeping vigil on the executive and the administrative agencies of the government. Members of Parliament have shown great interest in question hour and maximum attendance is recorded during this time. Most of the question aims at eliciting information from the government on issues of public interest such as, price rise, availability of food grains, atrocities on weaker sections of the society, riots, black-marketing etc. This gives the members an opportunity to criticize the government, and represent the problems of their constituencies. The discussions during the question hour are so heated that it is not uncommon to see members raise their voice, walk to the well of the house or walk out in protest to make their point. This results in considerable loss of legislative time. At the same time, we must remember that many of these actions are political techniques to gain concessions from

government and in the process force executive accountability.

Approval and ratification of laws: Parliamentary control is also exercised through its power of ratification. A bill can become a law only with the approval of the Parliament. A government that has the support of a disciplined majority may not find it difficult to get the approval of the Legislature. Such approvals however, cannot be taken for granted. They are the products of intense bargaining and negotiations amongst the members of ruling party or coalition of parties and even government and opposition. If the government has majority in Lok Sabha but not in the Rajya Sabha, as has happened during the Janata Party rule in 1977 and N.D.A. rule in 2000, the government will be forced to make substantial concessions to gain the approval of both the Houses. Many bills, such as the Lok Pal Bill have failed enactment, Prevention of Terrorism bill (2002) was rejected by the Rajya Sabha.

Financial control: As mentioned earlier, financial resources to implement the programmes of the government are granted through the budget. Preparation and presentation of budget for the approval of the legislature is constitutional obligation of the government. This obligation allows the legislature to exercise control over the purse strings of the government. The legislature may refuse to grant resources to the government. This seldom happens because the government ordinarily enjoys support of the majority in the parliamentary system. Nevertheless, before granting money the Lok Sabha can discuss the reasons for which the government requires money. It can enquire into cases of misuse of funds on the basis of the report of the Comptroller and Auditor General and Public Accounts committees. But the legislative control is not only aimed at financial propriety. The legislature is concerned about the policies of the government that are reflected in the budget. Through financial control, the legislature controls the policy of the government.

No Confidence Motion: The most powerful weapon that enables the Parliament to ensure executive accountability is the non-confidence motion. As long as the government has the support of its party or coalition of parties that have a majority in the Lok Sabha, the power of the House to dismiss the government is fictional rather that real. However, after 1989, several governments have been forced to resign due to lack of confidence of the house. Each of these governments lost the confidence of the Lok Sabha because they failed to retain the support of their coalition partners.

Thus, the Parliament can effectively control the executive and ensure a more responsive government. It is however important for this purpose, that there is adequate time at the disposal of the House, the members are interested in discussion and participate effectively and there is willingness to compromise amongst the government and the opposition. In the two decades, there has been a gradual decline in sessions of the Lok Sabha and State Legislative Assemblies and time spent on debates. Moreover, the Houses of the Parliament have been plagued by absence of quorum, boycott of sessions by members of opposition which deprive the house the power to control the executive through discussion.

Judiciary

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INTRODUCTION

Many times, courts are seen only as arbitrators in disputes between individuals or private parties. But judiciary performs some political functions also. Judiciary is an important organ of the government. The Supreme Court of India is in fact, one of the very powerful courts in the world. Right from 1950 the judiciary has played an important role in interpreting and in protecting the Constitution. In this chapter you will study the role and importance of the judiciary.

Why do we need an Independent Judiciary?

In any society, disputes are bound to arise between individuals, between groups and between individuals or groups and between individuals or groups and government. All such disputes must be settled by an independent body in accordance with the principle of rule of law.

This idea of rule of law implies that all individuals- rich and poor, men or women, forward or backward castes-are subjected to the same law.

The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles dispute in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures.

Independence of Judiciary

Simply stated independence of judiciary means that

- the other organs of the government like the executive and legislature must not restrain the functioning of the judiciary in such a way that it is unable to do justice.
- the other organs of the government should not interfere with the decision of the judiciary.
- judges must be able to perform their functions without fear or favour.

Independence of the judiciary does not imply arbitrariness or absence of account-

ability. Judiciary is a part of the democrat political structure of the country. It is therefore accountable to the Constitution, to the democrat traditions and to the people of the country.

The Indian Constitution has ensured the independence of the judiciary through a number of measures. The legislature is not involved in the process of appointment of judges. Thus, it was believed that party polities would not play a role in the process of appointments. In order to be appointed as a judge, a person must have experience as a lawyer and/or must be well versed in law. Political opinions of the person or his/her political loyalty should not be the criteria for appointments to judiciary.

The judges have a fixed tenure. They hold office till reaching the age of retirement. Only in exceptional cases, judges may be removed. But otherwise, they have security of tenure. Security of tenure ensures that judges could function without fear or favour. The Constitution prescribes a very difficult procedure for removal of judges. The Constitution makers believed that a difficult procedure of removal would provide security of office to the members of judiciary.

The judiciary is not financially dependent on either the executive or legislature. The Constitution provides that the salaries and allowances of the judges are not subjected to the approval of the legislature. The actions and decisions of the judges are immune from personal criticisms. The judiciary has the power to penalize those who are found guilty of contempt of court. This authority of the court is seen as an effective protection to the judges from unfair criticism. Parliament cannot discuss the conduct of the judges except when the proceeding to remove a judge is being carried out. This gives the judiciary independence to adjudicate without fear of being criticized.

APPOINTMENT OF JUDGES

The appointment of judges has never been free from political controversy. It is part of the political process. It makes a difference who serves in the Supreme Court and High Court- a difference in how the Constitution is interpreted. The political philosophy of the judges, their views about active and assertive judiciary or controlled and committed judiciary have an impact on the fate of the legislations enacted. Council of Ministers, Governors and Chief Ministers and Chief Justice of India-all influence the process of judicial appointment.

As far as the appointment of the Chief Justice of India (CJI) is concerned, over the years, a convention had developed whereby the senior-most judge of the Supreme Court was appointed as the Chief Justice of India. This convention was however broken twice. In 1973 A. N. Ray was appointed as CJI superseding three senior Judges. Again, Justice M.H. Beg was appointed superseding Justice H.R. Khanna (1975).

The other Judges of the Supreme Court and the High Court are appointed by the President after 'consulting' the CJI. This, in effect, meant that the final decisions in matters of appointment rested with the Council of Ministers.

This matter came up before the Supreme Court again and again between 1982 and 1998. Initially, the court felt that role of the Chief Justice was purely consultative. Then it took the view that the opinion of the Chief Justice must be followed by the President. Finally, the Supreme Court has come up with a novel procedure: it has suggested that the Chief Justice should recommend names of persons to be appointed in consultation with four senior-most judges of the Court. Thus, the Supreme Court has established the principle of collegiality in making recommendations for appointments. At the moment therefore, in

matters of appointment the decision of the group of senior judges of the Supreme Court carries greater weight. Thus, in matters of appointment to the judiciary, the Supreme Court and the Council of Ministers play an important role.

Removal of Judges

The removal of judges of the Supreme Court and the High Court's is also extremely difficult. A judge of the Supreme Court or High Court can be removed only on the ground of proven misbehavior or incapacity. A motion containing the charges against the judge must be approved by special majority in both Houses of the Parliament. Removal of a judge is a very difficult procedure and unless there is a general consensus among Members of the Parliament, a judge cannot be removed. It should also be noted that while in making appointments, the executive plays a crucial role; the legislature has the powers of removal. This has ensured both balance of power and independence of the judiciary. So far, only one case of removal of a judge of the Supreme Court came up for consideration before the Parliament. In that case, though the motion got two-thirds majority, it did not have the support of the majority of the total strength of the House and therefore, the judge was not removed.

Structure of the Judiciary

The Constitution of India provides for a single integrated judicial system. This means that unlike some other federal countries of the world. India does not have separate State courts. The structure of the judiciary in India is pyramidal with the Supreme Court at the top, High Courts below them and district and subordinate courts at the lowest level. The lower courts function under the direct superintendence of the higher courts.

Jurisdiction of Supreme Court

The Supreme Court of India is one of the very powerful courts anywhere in the world. However, it functions within the limitations imposed by the Constitution. The functions and responsibilities of the Supreme Court are defined by the Constitution. The Supreme Court has specific jurisdiction or scope of powers.

ORIGINAL JURISDICTION

Original jurisdiction means cases that can be directly considered by the Supreme Court without going to the lower courts before that. Cases involving federal relations go directly to the Supreme Court. The Original Jurisdiction of the Supreme Court establishes it as an umpire in all disputes regarding federal matters. In any federal country, legal disputes are bound to arise between the Union and the States; and among the States themselves. The power to resolve such cases is entrusted to the Supreme Court of India. It is called original jurisdiction because the Supreme Court alone has the power to deal with such cases. Neither the High Court's nor the lower courts can deal with such cases. In this capacity, the Supreme Court not just settles disputes but also interprets the powers of Union and State government as laid down in the Constitution.

Unsuccessful Attempt to Remove a Judge

In 1991 the first-ever motion to remove a Supreme Court Justice was signed by 108 members of Parliament. Justice Ramaswamy, during his tenure as the Chief Justice of the Punjab High Court was accused of misappropriating funds. In 1992, a year after the Parliament had started the impeachment proceedings, a high-profile inquiry commission consisting of Judges of Supreme Court found Justice V. Ramaswamy "guilty of willful and gross misuses of office. . . and

moral turpitude by using public funds for private purposes and reckless disregard of statutory rules" while serving as Chief Justice of Punjab and Haryana. Despite this strong indictment, Ramaswamy survived the parliamentary motion recommending removal. The motion recommending his removal got the required two-third majority among the members who were present and voting, but the Congress party abstained from voting in the House. Therefore, the motion could not get the support of one-half of the total strength of the House.

Writ Jurisdiction

Any individual, whose fundamental right has been violated, can directly move the Supreme Court for remedy. The Supreme Court can give special orders in the form of writs.

The High Courts can also issue writs, but the persons whose rights are violated have the choice of either approaching the High Court or approaching the Supreme Court directly. Through such writs, the Courts can give orders to the executive to act or not to act in a particular way.

APPELLATE JURISDICTION

The Supreme Court is the highest court of appeal. A person can appeal to the Supreme Court against the decisions of the High Court. However, High Court must certify that the case is fit for appeal, that is to say that it involves a serious matter of interpretation of law or Constitution. In addition, in criminal cases, if the lower court has sentenced a person to death then an appeal can be made to the High Court or Supreme Court. Of course, the Supreme Court holds the powers to decide whether to admit appeals even when appeal is not allowed by the High Court. Appellate jurisdiction means that the Supreme Court will reconsider the case and the legal issues involved in it. If the Court thinks that the law or the Constitution has a different meaning from what the lower courts understood, then the Supreme Court will change the ruling and along with that also give new interpretation of the provision involved.

Article 137…… the Supreme Court shall have power to review any judgment pronounced or order made by it. Article 144 …….. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

The High Court's too, have appellate jurisdiction over the decisions given by courts below them.

ADVISORY JURISDICTION

In addition to original and appellate jurisdiction, the Supreme Court of India possesses advisory jurisdiction also. This means that the President of India can refer any matter that is of public importance or that which involves interpretation of Constitution to Supreme Court for advice. However, the Supreme Court is not bound to give advice on such matters and the President is not bound to accept such an advice.

What then is the utility of the advisory powers of the Supreme Court? The utility is two-fold. In the first place, it allows the government to seek legal opinion on a matter of importance before taking action on it. This may prevent unnecessary litigations later. Secondly, in the light of the advice of the Supreme Court, the government can make suitable changes in its action or legislations.

Read the articles quoted above. These articles help us to understand the unified nature of our judiciary and the powers of the Supreme Court. Decisions made by the Supreme Court are binding on all other courts within the territory of India. Orders passed

by it are enforceable throughout the length and breadth of the country. The Supreme Court itself is not bound by its decision and can at any time review it. Besides, if there is a case of contempt of the Supreme Court, then the Supreme Court itself decides such a case.

JUDICIARY AND RIGHTS

The judiciary is entrusted with the task of protecting rights of individuals. The Constitution provides two ways in which the Supreme Court can remedy the violation of rights.

- First it can restore fundamental rights by issuing writs of Habeas Corpus; mandamus etc. (article 32). The High Courts also have the power to issue such writs (articles 226).
- Secondly, the Supreme Court can declare the concerned law as unconsti-tutional and therefore non-operational (article 13).

Together these two provisions of the Constitution establish the Supreme Court as the protector of fundamental rights of the citizen on the one hand and interpreter of Constitution on the other. The second of the two ways mentioned above involves judicial review.

Perhaps the most important power of the Supreme Court is the power of judicial review. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable. The term judicial review is nowhere mentioned in the Constitution. However, the fact that India has a written constitution and the Supreme Court can strike down a law that goes against fundamental rights, implicitly gives the Supreme Court the power of judicial review.

Besides, as we saw in the section on jurisdiction of the Supreme Court, in the case of federal relations too, the Supreme Court can use the review powers if a law is inconsistent with the distribution of powers laid down by the Constitution. Suppose, the central government makes a law which according to some States, concerns a subject from the State list. Then the States can go to the Supreme Court and if the court agrees with them, it would declare that the law is unconstitutional. In this sense, the review power of the Supreme Court includes power to review legislations on the ground that they violate fundamental rights or on the ground that they violate the federal distribution of powers. The review power extends to the laws passed by State legislations also. Together, the writ powers and the review power of the Court make judiciary very powerful. In particular, the review power means that the judiciary can interpret the Constitution and the laws passed by the legislature. Many people think that this feature enables the judiciary to protect the Constitution effectively and also to protect the rights of citizens. The practice of entertaining PILS has further added to the powers of the judiciary in protecting rights of citizens.

Right against exploitation? This right prohibits forced labour, trade in human flesh and prohibits employment of children in hazardous jobs. But the question is: how could those, whose rights were violated, approach the court? PIL and judicial activism made it possible for courts to consider these violations. Thus, the court considered a whole set of cases: the blinding of the jail inmates by the police, inhuman working conditions in stone quarries, sexual exploitation of children, and so on. This trend has made rights really meaningful for the poor and disadvantaged sections.

JUDICIARY AND PARLIAMENT

Apart from taking a very active stand on the matter of rights, the court has been active in seeking to prevent subversion of the Constitution through political practice. Thus, areas that were considered beyond the scope of judicial review such as powers of the President and Governor were brought under the purview of the courts.

There are many other instances in which the Supreme Court actively involved itself in the administration of justice by giving directions to executive agencies. Thus, it gave directions to CBI to initiate investigations against politicians and bureaucrats in the hawala case, the Narasimha Rao, case, illegal allotment of petrol pumps case etc. Many of these instances are the products of judicial activism.

The Indian Constitution is based on a delicate principle of limited separation of powers and checks and balances. This means that each organ of the government has a clear area of functioning. Thus, the Parliament is supreme in making laws and amending the Constitution, the executive is supreme in implementing them while the judiciary is supreme in settling disputes and deciding whether the laws that have been made are in accordance with the provisions of the Constitution. Despite such clear cut division of power the conflict between the Parliament and judiciary, and executive and the judiciary has remained a recurrent theme in Indian politics.

Immediately after the implementation of the Constitution began, a controversy arose over the Parliament's power to restrict right to property. The Parliament wanted to put some restrictions on the right to hold properly so that land reforms could be implemented. The Court held that the Parliament cannot thus restrict fundamental rights. The Parliament then tried to amend the Constitution. But the Court said that even through an amendment, a fundamental right cannot be abridged. The following issues were at the centre of the controversy between the Parliament and the judiciary.

- What is the scope of right to private property?
- What is the scope of the Parliament's power to curtail, abridge or abrogate fundamental rights?
- What is the scope of the Parliament's power to amend the constitution?
- Can the Parliament make laws that abridge fundamental rights while enforcing directive principles?

During the period 1967 and 1973, this controversy became very serious. Apart from land reform laws, laws enforcing preventive detention, laws governing reservations in jobs, regulations acquiring private property for public purposes, and laws deciding the compensation for such acquisition of private property were some instances of the conflict between the legislature and the judiciary.

In 1973, the Supreme Court gave a decision that has become very important in regulating the relations between the Parliament and the Judiciary since then.

This case is famous as the Kesavananda Bharati case. In this case, the Court ruled that there is a basic structure of the Constitution and nobody- not even the Parliament (through amendment)- can violate the basic structure. The Court did two more things. First, it said that right to property (the disputed issue) was not part of basic structure and therefore could be suitably abridged. Secondly, the Court reserved to itself the right to decide whether various matters are part of the basic structure of the Constitution. This case is perhaps the best example of how judiciary uses its power

to interpret the Constitution. This ruling has changed the nature of conflicts between the legislature and the judiciary. The right to property was taken away from the list of fundamental rights in 1979 and this also helped in changing the nature of the relationship between these two organs of government.

Some issues still remain a bone of contention between the two- can the judiciary intervene in and regulate the functioning of the legislatures? In the parliamentary system, the legislature has the power to govern itself and regulate the behavior of its members. Thus, the legislature can punish a person who the legislature holds guilty of breaching privileges of the legislature. Can a person who is held guilty for breach of parliamentary privileges seek protection of the courts? Can a member of the legislature against whom the legislature has taken disciplinary action get protection from the court? These issues are unresolved and are matters of potential conflict between the two. Similarly, the Constitution provides that the conduct of judges cannot be discussed in the Parliament. There have been several instances where the Parliament and State legislature have cast aspersions on the functioning of the judiciary. Similarly, the judiciary too has criticized the legislatures and issued instructions to the legislatures about the conduct of legislative business. The legislature see this as violating the principle of parliamentary sovereignty.

These issues indicate how delicate the balance between any two organs of the government is and how important it is for each organ of the government in a democracy to respect the authority of others.

Conclusion

We have studied the role of the judiciary in our democratic structure. In spite of the tensions that arose from time to time between the judiciary and the executive and the legislature, the prestige of the judiciary has increased considerably. At the same time, there are many more expectations from the judiciary. Ordinary citizens also wonder how it is possible for many people to get easy acquittals and how witnesses change their testimonies to suit the wealthy and the mighty. These are some issues about which our judiciary is concerned too. The Judiciary in India is a very powerful institution. This power has generated much awe and many hopes from it. Judiciary in India is also known for its independence. Through various decisions, the judiciary has given new interpretations to the Constitution and protected the rights of citizens. As we saw in this chapter, democracy hinges on the delicate balance of power between the judiciary and the Parliament and both institutions have to function within the limitations set by the Constitution.

Local Governments

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INTRODUCTION

In a democracy, it is not sufficient to have an elected government at the centre and at the State level. It is also necessary that even at the local level, there should be an elected government to look after look after local affairs.

Why local Governments?

Both these stories are not isolated incidents. They are representative of a larger transformation that is taking place across India especially after constitutional status was accorded to local government institutions in 1993.

Local government is government at the village and district level. Local government is about government closest to the common people. Local government is about government that involves the day-to-day life and problems of ordinary citizens. Local government believes that local knowledge and local interest are essential ingredients for democratic decision making. They are also necessary for efficient and people-friendly administration. The advantage of local government is that it is so near the people. It is convention for the people to approach the local government for solving their problems both quickly and with minimum cost.

Democracy is about meaningful participation. It is also about accountability. Strong and vibrant local governments ensure both active participation and purposeful accountability. It is at the level of local government that common citizens can be involved in decision making concerning their lives, their needs and above all their development.

It is necessary that in a democracy, tasks, which can be performed locally, should be left in the hands of the local people and their representatives. Common people are more familiar with their local government than with the government at the State or national level. They are also more concerned with what local government does or has failed to do as it has a direct bearing and impact on their day-to-day life. Thus, strengthening local government is like strengthening democratic processes.

Growth of Local Government in India

Let us now discuss how local government has grown in India and what our Constitution says about it. It is believed that self-governing village communities existed in India from the earliest times in the form of 'sabhas' (village assemblies). In the course of

time, these village bodies took the shape of Panchayats (an assembly of five persons) and these Panchayats resolved issues at the village level. Their role and functions kept on changing at different points of time.

In modern times, elected local government bodies were created after 1882. Lord Rippon, who was the Viceroy of India at that time, took the initiative in creating these bodies. They were called the local boards. However, due to slow progress in this regard, the Indian National Congress urged the government to take necessary steps to make all local bodies more effective. Following the Government of India Act 1919, village panchayats were established in a number of provinces. This trend continued after the Government of India Act of 1935.

The independence of India should mean the independence of the whole of India... Independence must begin at the bottom. Thus every village will be a republic... It follows therefore that every village has to be self-sustained and capable of managing its affairs. In this structure composed of innumerable villages, there will be ever widening, ever-ascending circles. Life will be a pyramid with the apex sustained by the bottom- Mahatma Gandhi.

During India's freedom movement, Mahatma Gandhi had strongly pleaded for decentralization of economic and political power. He believed that strengthening village panchayats was a means of effective decentralization. All development initiatives must have local involvement in order to be successful. Panchayats therefore were looked upon as instruments of decentralization and participatory democracy. Our national movement was concerned about the enormous concentration of powers in the hands of the Governor General sitting at Delhi. Therefore, for our leaders, independence meant an assurance that there will be decentralization of decision making, executive and administrative powers.

When the Constitution was prepared, the subject of local government was assigned to the States. It was also mentioned in the Directive Principles as one of the policy directives to all governments in the country. Being a part of the Directive Principles of State Policy, this provision of the Constitution was non-justifiable and primarily advisory in its nature.

It is felt that the subject of local government including panchayats did not receive adequate importance in the Constitution. A few reasons can be advanced here. Firstly, the turmoil due to the Partition resulted in a strong unitary inclination in the Constitution. Nehru himself looked upon extreme localism as a threat to unity and integration of the nation. Secondly, there was a powerful voice in the Constituent Assembly led by Dr. B. R. Ambedkar which felt that the faction and caste-ridden nature of rural society would defeat the noble purpose of local government at the rural level.

However, nobody denied the importance of people's participation in development planning. Many members of the Constituent Assembly wanted Village Panchayats to be the basis of democracy in India but they were concerned about factionalism and many other ills present in the villages.

Local Governments in Independent India

Local governments got a fillip after the 73rd and 74th Constitution Amendment Acts. But even before that, some efforts in the direction of developing local government bodies had already taken place. First in the

line was the Community Development Programme in 1952, which sought to promote people's participation in local development in a range of activities. In this background, athree-tier Panchayat Raj system of local government was recommended for the rural areas. Some States (like Guajrat, Maharashtra) adopted the system of elected local bodies around 1960. But in many States those local bodies did not have enough powers and functions to look after the local development. They were very much dependent on the State and central governments for financial assistance. Many States did not think it necessary to establish elected local bodies. In many instances, local bodies were dissolved and the local government was handed over to government officers. Many States had indirect elections to most local bodies. In many States, elections to the local bodies were postponed from time to time.

The Constitution of Brazil has created States, Federal Districts and Municipal Councils. Each of these is assigned independent powers and jurisdiction. Just as the Republic cannot interfere in the affairs of the States (except on grounds provided by the constitution), states are prohibited from interfering in the affairs of the municipal councils. This provision protects the powers of the local government.

After 1987, a thorough review of the functioning of local government institutions was initiated. In 1989 the P.K. Thungon Committee recommended constitutional recognition for the local government bodies. A constitutional amendment to provide for periodic elections to local government institutions, and enlistment of appropriate functions to them, along with funds, was recommended.

73rd and 74th Amendments

In 1989, the central government introduced amendments aimed at strengthening local governments and ensuing an element of uniformity in their structure and functioning across the country.

Article 243G. Powers, authority and responsibilities of Panchayats- ….., the Legislature of a State may, law, endow the Panchayats with such powers and authority….. with respect to-…. The matters listed in the Eleventh Schedule. Later in 1992, the 73rd and 74th constitutional amendments were passed by the Parliament. The 73rd amendment is about rural local governments (which are also known as Panchayati Raj Institutions or PRIs) and the 74th amendment made the provisions relating to urban local government (Nagarpalikas). The 73rd and 74th Amendments came into force in 1993. We have notice earlier that local govern-ment is a 'State subject'. States are free to make their own laws on this subject. But once the Constitution was amended, the States had to change their laws about local bodies in order to bring these in conformity with the amended Constitution. They were given one year's time for making necessary changes in their respective State laws in the light of these amendments.

73rd Amendment

Changes brought about by the 73rd amendment in Panchayat Raj institutions.

Three Tier Structure

All States now have a uniform three tier Panchayat Raj structure. At the base in the 'Gram Panchayat'. A Gram Panchayat covers a village or group of villages. The intermediary level is the Mandal (also referred to as Block or Taluka). These bodies are called Mandal or Taluka Panchayats. The intermediary level

body need not be constituted in smaller States. At the apex is the Zilla Panchayat covering the entire rural area of the District.

The amendment also made a provision for the mandatory creation of the Gram Sabha. The Gram Sabha would comprise of all the adult members registred as voters in the Panchayat area. Its role and functions are decided by State registration.

Elections

All the three levels of Panchayat Raj institutions are elected directly by the people. The term of each Panchayat body is live years. If the State government dissolves the Panchayat before the end of its five year term, fresh elections must be held within six months of such dissolution. This is an important provision that ensures the existence of elected local bodies. Before the 73rd amendment, in many States, there used to be indirect elections to the district bodies and there was no provision for immediate elections after dissolution.

Reservations

One third of the position in all panchayat institutions are reserved for women. Reservations for Scheduled Castes and Scheduled Tribes are also provided for at all the three levels, in proportion to their population. If the States find it necessary, they can also provide for reservations for the backward castes (OBCs).

It is important to note that these reservations apply not merely to ordinary members in Panchayat but also to the positions of Chairpersons or 'Adhyakshas' at all the three levels. Further, reservation of one-third of the seats for women s not merely in the general category of seats but also within the seats reserved for Scheduled Castes, Scheduled Tribes and backward castes. This means that a seat may be reserved simultaneously for a women candidate and one belonging to the Scheduled Castes or Scheduled Tribes. Thus, a Sarpanch would have to be a Dalit woman or an Adivasi woman.

Subjects listed in the eleventh schedule

1. Agriculture, …
3. Minor irrigation, water management and watershed development.

   ….

8. Small scale industries, including food processing industries.

   ….

10. Rural housing.
11. Rural housing.
11. Drinking water.

    ….

13. Roads, culverts,…
14. Rural electrification,…

    ….

16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development
26. Social welfare,…

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.

Transfer of Subjects

Twenty-nine subjects, which were earlier in the State list of subjects, are identified and listed in the Eleventh Scheduled of the Constitution. These subjects are to be transferred to the Panchayat Raj institutions. These subjects were mostly linked to development and welfare functions at the local level. The actual transfer of these functions depends upon the State legislation. Each State decides how many of these twenty-nine subjects would be transferred to the local bodies.

The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations in many states of India. In 1996 a separate act was passed extending the provisions of the Panchayat system to these areas. Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs, etc. Therefore, the new act protects the rights of these communities to marriage their resources in ways acceptable to them. For the purpose, more powers are given to the Gram Sabhas of these areas and elected village panchayats have to get the consent of the Gram Sabha in many respects. The idea behind act is that local traditions of self government should be protected while introducing modern elected bodies. This is only consistent with the spirit of diversity and decentralization.

State Election Commissioners

The State government is required to appoint a State Election Commissioner who would be responsible for conducting elections to the Panchayati Raj institutions. Earlier, this task was performed by the State administration which was under the control of the State government. Now, the office of the State Election Commissioner is autonomous like the Election Commissioner of India. However, the State Election Commissioner is an independent officer and is not linked to nor is this officer under the control of the Election Commissioner of India.

State Finance Commission

The State government is also required to appoint a State Finance Commission once in five years. This Commission would examine the financial position of the local government in the State. It would also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other. This innovation ensures that allocation of funds to the rural local governments will not be a political matter.

74th Amendment

74th amendment dealt with urban local bodies or Nagarpalikas.

What is an urban area? It is very easy to identify a big city like Mumbai or Kolkata, but it is not so easy to say this about some very small urban areas that are somewhere between a village and a town. The Census of India defines an urban area as having: (i) a minimum population of 5000; (ii) at least 75 per cent of male working population engaged in non-agricultural occupations and (iii) a density of population of at least 400 persons per sq. km. As per the 2001 census, nearly 28% of India's population lives in urban areas.

In many ways the 74th amendment is a repetition of the 73rd amendment, except that

it applies to urban areas. All the provisions of the 73rd amendment relating to direct elections, reservations, transfer of subjects, State Election Commission and State Finance Commission are incorporated in the 74th amendment also and thus apply to Nagarpalikas. The Constitution also mandated the transfer of a list of functions from the State Government to the urban local bodies. These functions have been listed in the Eleventh Schedule of the Constitution.

IMPLEMENTATION OF 73RD AND 74TH AMENDMENTS

All States have now passed a legislation to implement the provisions of the 73rd and 74th amendments. During the ten years since these amendments came into force (1994-2004) most States have had at least two rounds of elections to the local bodies. States like Madhya Pradesh, Rajasthan and a few others have in fact held three elections so far.

Today there are nearly 500 Zilla Panchayats, about 6,000 block or intermediary Panchayats, and 2,50,000 Gram Panchayats in rural India and over 100 city Corporations, 1400 town Municipalities and over 2000 Nagar Panchayats in urban India. More than 32 lakh members are elected to these bodies every five years. Of these, at least 10 lakhs are women. In the State Assemblies and Parliament put together we have less than 5000 elected representatives. With local bodes, the number of elected representatives has increased significantly.

The 73rd and 74th amendments have created uniformity in the structures of Panchayati Raj and Nagarpalika institutions across the country. The presence of these local institutions is by itself a significant achievement and would create an atmosphere and platform for people's participation in government.

Local bodies have very little funds of their own. The dependence of local bodies on the State and central governments for financial support has greatly eroded their capacity to operate effectively. While rural-local bodies raise 0.24% of the total revenues collected, they account for 4% of the total expenditure made by the government. So they earn much less than they spend. That makes them dependent on those who give them grants.

Conclusion

This experience suggests that local governments continue to be agencies implementing the welfare and development schemes of the central and State government. Giving more power to local government means-that we should be prepared for real decentra-lization of power. Ultimately, democracy means that power should be shared by the people; people in the villages and urban localities must have the power to decide what policies and programmes they want to adopt. Democracy means decentralization of power and giving more and more power to the people. The laws about local governments are an important step in the direction of democratization. But the true of democracy is not merely in the legal provisions but n the practice of those provisions.

Elections and Democracy

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All citizens cannot take direct part in making every decision. Therefore, representatives are elected by the people. This is how elections become important. Whenever we think of India as a democracy, our mind invariably turns to the last elections. Elections have today become the most visible symbol of the democratic process. We often distinguish between direct and indirect democracy.

A direct democracy is one where the citizens directly participate in the day-to-day decision making and in the running of the government. The ancient city-states in Greece were considered examples of direct democracy.

Many would consider local governments, especially gram sabhas, to be closest examples of direct democracy. But this kind of direct democracy cannot be practiced when a decision has to be taken by lakhs and crores or people. That is why rule by the people usually means rule by people's representatives.

In such an arrangement citizens choose their representatives who, in turn, are actively involved in governing and administering the country. The method followed to choose these representatives is referred to as an election. Thus, the citizens have a limited role in taking major decisions and in running the administration. They are not very actively involved in making of the policies. Citizens are involved only indirectly, through their elected representatives. In this arrangement, where all major decisions are taken by elected representatives, the method by which people elect their representatives becomes very important.

Election system in India: To Understand it better, let us look one dramatic instance.

In the Lok Sabha elections of 1984, the Congress party came to power winning 415 of the 543 Lok Sabha seats — more than 80% of the seats. Such a victory was never achieved by any party in the Lok Sabha. What did this election show?

The Congress party won four-fifths of the seats. Does it mean that four out of five Indian voters voted for the Congress party? Actually not. Take a look at the enclosed table. The Congress party got 48% of the votes. This means that only 48% of those who voted, voted in favour of the candidates put up by

the Congress party, but the party still managed to win more than 80% of the seats in the Lok Sabha. Lqok at the performance of other parties. The BJP got 7.4 per ç.ent votes but less than one per cent seats. How did that happen? This happened because in our country we follow a special method of elections. Under this system:

- The entire country is divided into 543 constituencies;
- Each constituency elects one representative; and

Votes and seats won by some major parties in Lok Sabha Election of 1984		
Party	**Votes (%)**	**Seats**
Congress	48.0	415
BJP	7.4	2
Janata	6.7	10
Lok Dal	5.7	3
CPI (M)	5.7	22
Telugu Desam	4.1	30
DMK	2.3	2
AIADMK	1.0	7
Akali Dal	1.0	7
AGP	1.0	7

- The candidate who secures the highest number of votes in that constituency is declared elected.

It is important to note that in this system whoever has more votes than all other candidates, is declared elected. The winning candidate need not secure a majority. of the votes. This method is called the First Past the Post (FPTP) system In the electoral race, the candidate who is ahead of others, who crosses the winning post first of all, is the winner. This method is also called the Plurality System. This is the method of election prescribed by the Constitution.

Example: The Congress party won greater share of seats than its share of votes because in many of the constituencies in which its candidates won, they secured less than 50% of the votes. If there are several candidates, the winning candidate often gets much less than 50% of the votes. The votes that go to all the losing candidates go 'waste', for those candidates or parties get no seat from those votes. Suppose a party gets only 25 per cent of the votes in every constituency, but everyone else gets even less votes. In that case, the party could win all the seats with only 25 per cent votes or even less.

Proportional Representation

In Israel once the votes are counted, each party is allotted the share of seats in the parliament in proportion to its share of votes. Each party fills its quota of seats by picking those many of its nominees from a preference list that has been declared before the elections. This system of elections is called the Proportional Representation (PR) system. In this system a party gets the same proportion of seats as its proportion of votes.

In the PR system there could be two variations. In some countries, like Israel or the entire country is treated as one constituency and seats are allocated to each party according to its share of votes in the national election. The other method is when the country is divided into several multi-member constituencies as in Argentina and Portugal. Each party prepares a list of candidates for each constituency, depending on how many he to be elected from that constituency. In both these variations, voters exercise their preference for a party and not a candidate. The seats in a constituency are distributed on the basis of votes polled by a party. Thus, representatives from a constituency, would and do belong to

different parties. In India, we have adopted PR system on a limited scale for indirect elections. The Constitution prescribes a third and complex variation of the PR system for the election of President, Vice President, and for the election to the Rajya Sabha and Vidhan Parishads.

How does PR work in Rajya Sabha elections

A third variant of PR, the Single Transferable Vote System (STV) is followed for Rajya Sabha elections. Every State has a specific quota of seats in the Rajya Sabha. The members are elected by the respective State legislative assemblies. The voters are the MLAs in that State. Every voter is red to rank candidates according to her or his preference. To be declared the winner, a candidate must secure a minimum quota of votes, which is determined by a formula:

Total Votes polled

______________________________ +1

Total number of candidates to be elected + 1

For example if 4 Rajya Sabha members have to be elected by the 200 MLAs in Rajasthan, the winner would require (200/ 4+1=40+1) 41 votes. When the votes are counted it is done on the basis of first preference votes secured by each candidate, of which the candidate has secured the first preference votes. If after the counting of all first preference votes, required number of candidates fail to fulfil the quota, the candidate who secured the lowest votes of first preference is eliminated and his / her votes are transferred to those who are mentioned as second preference on those ballot papers. This process continues till the required number of candidates are declared elected.

Why did India adopt the First system?

The answer is not very difficult to guess. If you have carefully read the box explaining the Rajya Sabha elections, you would have noticed that it is a complicated system which may work in a small country, but would be difficult to work in a sub-continental country like India. The reason for the popularity and success of the FPTP system is its simplicity. The entire election system is extremely simple to understand even for common voters who may have no specialized knowledge about politics and elections. There is also a clear choice presented to the voters at the time of elections.

Voters have to simply endorse a candidate or a party while voting. Depending on the nature of actual politics, voters may either give greater importance to the party or to the candidate or balance the two. The FPTP system offers voters a choice not simply between parties but specific candidates. In other electoral systems, especially PR systems, voters are often asked to choose a party and the representatives are elected on the basis of party lists, As a result, there is no one representative who represents and is responsible for one locality. In constituency based system like the FPTP, the voters know who their own representative is and can hold him or her countable.

More importantly, the makers of our Constitution also felt that PR based election may not be suitable for giving a stable government in a parliamentary system. This system requires that the executive has majority in the legislature. You will notice that the PR system may not produce a clear majority because seats in the legislature would be divided on the basis of share of votes. The FPTP system generally gives the largest party

or coalition some extra bonus seats, more than their share of votes would allow. Thus this system makes it possible for parliamentary government to function smoothly and effectively by facilitating the formation of a stable government. Finally, the FTPT system encourages voters from different social groups to come together to win an election in a locality. In a diverse country like India, a PR system would encourage each community to form its own nation-wide party. This may also have been at the back of the mind of our constitution makers.

The experience of the working of the Constitution has confirmed the expectation of the constitution makers. The FPTP system has proved to be simple and familiar to ordinary voters. It has helped larger parties to win clear majorities at the centre and the State level. The system has also discouraged political parties that get all their votes only from one caste or community. Normally, the working of the FPTP system results in a two-party system.

This means that there are two major competitors for power and power is often shared by these two parties alternately. It is difficult for new parties or the third party to enter the competition and share power. In this respect, the experience of FPTP in India is slightly different. After independence, though we adopted the FPTP system, there emerged a one party dominance and along with it, there existed many smaller parties. After 1989, India is witnessing the functioning of the multiparty coalitions. At the same time, gradually, in many States, a two party competition is emerging. But the distinguishing feature of India's party system is that the rise of coalitions has made it possible for new and smaller parties to enter into electoral competition in spite of the FPTP system.

RESERVATION OF CONSTITUENCIES

We have noticed that in the FPTP election system, the candidate who secures the highest votes in a particular constituency is declared elected. This often works to the disadvantage of the smaller social groups. This is even more significant in the Indian social context. We have had a history of caste based discrimination. In such a social system, the FPTP electoral system can mean that the dominant social groups and castes can win everywhere and the oppressed social groups may continue to remain unrepresented. Our Constitution makers were aware of this difficulty and the need to provide a way to ensure fair and just representation to the oppressed social groups.

This issue was debated even before independence and the British government had introduced 'separate electorates'. This system meant that for electing a representative from a particular community, only those voters would be eligible who belong to that community. In the constituent assembly, many members expressed a fear that this will not suit our purposes. Therefore, it was decided to adopt the system of reserved constituencies. In this system, all voters in a constituency are eligible to vote but the candidates must belong to only a particular community or social section for which the seat is reserved. There are certain social groups which may be spread across the Country. In a particular constituency, their numbers may not be sufficient to be able to influence a victory of a candidate. However, taken across the country they are a significantly sizeable group. To ensure their proper representation, a system of reservation becomes necessary. The Constitution provides for reservation of seats in the Lok Sabha and State Legislative Assemblies for the Scheduled Castes and

Scheduled Tribes. This provision was made initially for a period of 10 years and as a result of successive constitutional amendments, has been extended up to 2010. The Parliament can take a decision to further extend it, when the period of reservation expires. The number of seats reserved for both of these groups is in proportion to their share in the population of India. Today, of the 543 elected seats in the Lok Sabha, 79 are reserved for Scheduled Castes and 41 are reserved for Scheduled Tribes.

Who decides which constituency is to be reserved? On what basis is this decision taken? This decision is taken by an independent body called the Delimitation Commission. The Delimitation Commission is appointed by the President of India and works in collaboration with the Election Commission of India. It is appointed for the purpose of drawing up the boundaries of constituencies all over the country. A quota of constituencies to be reserved in each State is fixed depending on the proportion of SC or ST in that State. After drawing the boundaries, the Delimitation Commission looks at the composition of population in each constituency. Those constituencies that have the highest proportion of Scheduled Tribe population are reserved for ST. In the case of Scheduled Castes, the Delimitation Commission looks at two things. It picks constituencies that have higher proportion of Scheduled Caste population. But it also spreads these constituencies in different regions of the State. This is done because the Scheduled Caste population is generally spread evenly throughout the country. These reserved constituencies can be rotated each time the Delimitation exercise is undertaken.

The Constitution does not make similar reservation for other disadvantaged groups. Of late there has been a strong demand seeking reservation of seats in the Lok Sabha and State Assemblies for women. Given the fact that very few women are elected to representative bodies, the demand for reserving one-third seats for women is increasingly being articulated. Reservation of seats for women has been provided for in rural and urban local bodies. A similar provision for Lok Sabha and Vidhan Sabhas would require an amendment to the Constitution. Such an amendment has been proposed several times in the Parliament but has not yet been passed.

FREE AND FAIR ELECTIONS

The true test of any election system is its ability to ensure a free and fair electoral process. If we want democracy to be translated into reality on the ground, it is important that the election system is impartial and transparent. The system of election must also allow the aspirations of the voter to find legitimate expression through the electoral results.

Universal franchise and right to contest

Apart from laying down a method of elections, the Constitution answers two basic questions about elections: Who are the voters? Who can contest elections? In both these respects our Constitution follows the well established democratic practices.

You already know that democratic elections require that all adult citizens of the country must be eligible to vote in the elections. This is known as universal adult franchise. In many countries, citizens had to fight long battles with the rulers to get this right. In many countries, women could get this right very late and only after struggle. One of the important decisions of the framers of the

Indian Constitution was to guarantee every adult citizen in India, the right to vote.

Till 1989, an adult Indian meant an Indian citizen above the age of 21. An amendment to the Constitution in 1989, reduced the eligibility age to 18. Adult franchise ensures that all citizens are able to participate in the process of selecting their representative. This is consistent with the principle of equality and non-discrimination. Many people thought and many think so today that giving the right to vote to everyone irrespective of educational qualification was not right. But our Constitution makers had a firm belief in the ability and worth of all adult citizens as equals in the matter of deciding what is good for the society, the country and for their own constituencies. What is true of the right to vote is also true of right to contest election. All citizens have the right to stand for election and become the representative of the people. However, there are different minimum age requirements for contesting elections. For example, in order to stand for Lok Sabha or Assembly election, a candidate must be at least 25 years old. There are some other restrictions also. For instance, there is a legal provision that a person who has undergone imprisonment for two or more years for some offence is disqualified from contesting elections. But there are no restrictions of income, education or class or gender on the right to contest elections. In this sense, our system of election is open to all citizens.

Article 324: (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice- President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

Independent-Election Commission

Several efforts have been made in India to ensure the free and fair election system and process. The most important among these is the creation of an independent Election Commission to 'supervise and conduct' elections. In many countries, there is an absence of an independent mechanism for conducting elections Article 324 of the Indian Constitution provides for an independent Election Commission for the 'superintendence, direction and control of the electoral roll and the conduct of elections' in India. These words in the Constitution are very important, for they give the Election Commission a decisive role in virtually everything to do with elections. The Supreme Court has agreed with this interpretation of the Constitution. To assist the Election Commission of India there is a Chief Electoral Officer in every state. The Election Commission is not responsible for the conduct of local body elections. The State Election Commissioners work independently of the Election Commission of India and each has its own sphere of operation.

The Election Commission of India can either be a single member or a multi-member body. Till 1989 the Election Commission was single member. Just before the 1989 general elections, two election Commissioners were appointed making the body multi-member. Soon after the elections, the Commission reverted to its single member status. In 1993, two Election Commissioners were once again appointed and the Commission became multi-member and has remained multi-member since t en. Initially there were many apprehensions about a multi-member Commission. There was a sharp difference of opinion between the then Chief Election

Commissioner and the other Commissioners about who had how much power. The matter had to be settled by the Supreme Court. Now there is a general consensus that a multi-member Election Commission is more appropriate as power is shared and there is greater accountability.

The Chief Election Commissioner (CEC) presides over the Election Commission, but does not have more powers than the other Election Commissioners. The CEC and the two Election Commissioners have equal powers to take all decisions relating to elections as a collective body. They are appointed by the President of India on the advice of the Council of Ministers. It is therefore possible for a ruling party to appoint a partisan person to the Commission who might favour them in the elections. This fear has led many to suggest that this procedure should be changed. Many persons have suggested that a different method should be followed that makes consultation with the leader of opposition and the Chief Justice of India necessary for the appointment of CEC and Election Commissioners.

The Constitution ensures the security of the tenure of the CEC and Election Commissioners. They are appointed for a six year term or continue till the age of 65, whichever is earlier. The CEC can be removed before the expiry of the term, by the President if both Houses of Parliament make such a recommendation with a special majority. This is done to ensure that a ruling party cannot remove a CEC who refuses to favour it in elections. The Election Commissioners can be removed by the President of India. The Election Commission of India has a wide range of functions.

- It supervises the preparation of up-to-date voters' list. It makes every effort to ensure that the voters' list is free of errors like nonexistence of names of registered voters or existence of names of those non-eligible or non-existent.
- It also determines the timing of elections and prepares the election schedule. The election schedule includes the notification of elections, date from which nominations can be filed, last date for filing nominations, last date of scrutiny, last date of withdrawal, date of polling and date of counting and declaration of results.
- During this entire process, the Election Commission has the power to take decisions to ensure a free and fair poll. It can postpone or cancel the election in the entire country or a specific State or constituency on the grounds that the atmosphere is vitiated and therefore, a free and fair election may not be possible. The Commission also implements a model. code of conduct for parties and candidates, It can order a re-poll in a specific constituency. It can also order a recount of votes when it feels that the counting process has not been fully fair and just.
- The Election Commission accords recognition to political parties and allots symbols to each of them.

Special Majority

Special majority means:

- Two-thirds majority of those present and voting, and
- Simple majority of the total membership of the House.

The Election Commission has very limited staff of its own. It conducts the elections with the help of the administrative machinery. However, once the election process has begun, the commission has control over the administration as far as election related work is concerned. During the election process, the administrative officers of the State and central governments are assigned election related duty and in this respect, the Election Commission has full control over them. The EC can transfer the officers, or stop their transfers; it can take action against them for failing to act in a non-partisan manner.

Over the years, the Election Commission of India has emerged as an independent authority which has asserted its powers to ensure fairness in the election process. It has acted in an impartial and unbiased manner in order to protect the sanctity of the electoral process.

The record of Election Commission also shows that every improvement in the functioning of institutions does not require legal or constitutional change. It is widely agreed that the Election Commission is more independent and assertive now than it was till twenty years ago. This is not because the powers and constitutional protection of the Election Commission have increased. The Election Commission has started using more effectively the powers it always had in the Constitution. In the past fifty five years, fourteen Lok Sabha elections have been held. Many more State assembly elections and bye elections have been conducted by the Election Commission. The EC has faced many difficult situations such as holding elections in militancy affected areas like Assam, Punjab or Jammu and Kashmir.

It has also faced the difficult situation of having to postpone the election process mid-way in 1991 when the ex-Prime Minister Rajiv Gandhi was assassinated during campaigning. In 2002, the Election Commission faced another critical situation when the Gujarat Assembly was dissolved and elections had to be conducted. But the Election Commission found that unprecedented violence in that State had made it impossible to hold free and fair elections immediately.

ELECTORAL REFORMS

No system of election can ever be perfect. And in actual election process, there are bound to be many flaws and limitations. Any democratic society has to keep searching for mechanisms to make elections free and fair to the maximum. With the acceptance of adult suffrage, freedom to contest elections, and the establishment of an independent Election Commission, India has tried to make its election process free and fair. However, the experience of the last fifty five years has given rise to many suggestions for reforming our election system. The Election Commission, political parties, various independent groups, and many scholars have come up with proposals for electoral reform. Some of these suggestions are about changing the constitutional provisions discussed in this Chapter:

- Our system of elections should be changed from the FPTP to some variant of the PR system. This would ensure that parties get seats, as far as possible, in proportion to the votes they get.
- There should be a special provision to ensure that at least one third women are elected to the parliament and assemblies.

- There should be stricter provisions to control the role of money in electoral politics. The elections expenses should be paid by the government out of a special fund.
- Candidates with any criminal case should be barred from contesting elections, even if their appeal is pending before a court.
- There should be complete ban on the use of caste and religious appeals in the campaign.
- There should be a law to regulate the functioning of political parties and to ensure that they function in a transparent and democratic manner.
- These are but a few suggestions. There is no consensus about these suggestions. Even if there was a consensus, there are limits to what the laws and formal provisions can do. Free and fair elections can be held only if the candidates, the parties and those involved in the election process agree to abide by the spirit of democratic competition.

Apart from legal reforms, there are two other ways of ensuring that elections reflect the expectations and democratic aspirations of the people. One is, of course, that people themselves have to be more vigilant, more actively involved in political activities.

But there are limits to the extent to which ordinary people can engage in politics on a regular basis. Therefore, it is necessary that various political institutions and voluntary organisations are developed and are active in functioning as watchdog for ensuring free and fair elections.

Center State Relation

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The Constitution of India provides a dual polity with a clear division of powers between the Union and the States, each being supreme within the sphere allotted to it. The States in India are not the creation of the Centre nor do they draw their authority from the Union Government. On the other hand, like the Union Government, they draw their authority directly from the Constitution and are free to operate in the field allocated to them by the Constitution. At the outset, it may be noted that the Constitution of India has made most elaborate provisions regarding relationship between the Union and the States. This was done with a view to minimize the conflicts between the Centre and the States. But the actual operation of the Centre-State relations for all these years has given rise to a controversy about the wisdom of arrangements made under the Indian Constitution.Critics have expressed doubts about the existing arrangements and demanded reallocation and adjustment of the Centre-State relations. The relations between the Centre and the States can be conveniently studied under the following categories.

LEGISLATIVE RELATIONS

- The Union State relations in the legislative sphere have been dealt by Articles 245 to 254. The Constitution clearly provides that the Parliament shall have exclusive jurisdiction to make law for the whole or any part of the territory of India with regard to subjects mentioned in the Union List. This list contains 97 subjects like defence, foreign affairs, currency, union duties, communication, etc.
- On the other hand, the State enjoys exclusive power over the 66 items enumerated in the State List. This List contains subjects like public order, health, sanitation, agriculture etc. In addition, there is a Concurrent list containing 47 subjects like criminal law and procedure, marriage, contracts, trust, social insurance etc. over which both the Union and the State Governments can legislate.

- The constitution also vests the residuary powers (viz., enumerated in any of the three Lists) with the Central Government. It may be noted that in this distribution of powers, the Union Government has certainly been given a favoured treatment. It has not only been granted more extensive powers than the States, even the residuary powers have been granted to it contrary to the convention in other federations of the world, where the residuary powers are given to the States.
- If the law of the Union Government and the State Government come into clash with each other the former prevails. However, a State law on the Concurrent List shall prevail over the Central law if the same had been reserved for the consideration of the President and his consent had been received before the enactment of the Central law on the same subject. This clearly gives some leeway to the States.

Union's Power to Legislate on States' Subjects

Though under ordinary circumstances the Central Government does not posses power to legislation on subjects enumerated in the State List, but under certain special conditions the Union Parliament can make laws even on these subjects. In the following cases Union Parliament can legislate on the subject listed in the State List.

a. If the Rajya Sabha declares by a resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that the Parliament should make laws with respect to any matter, enumerated in the State List, specified in the resolution. After such a resolution is passed it is lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. Such a resolution remains in force for a period of one year and can be further extended by one year by means of a subsequent resolution. It may be observed that this provision has been used only in very few cases and has not added to the powers of the Parliament.

b. The Parliament can legislate on the subjects mentioned in the State List when the Proclamation of Emergency has been made by the President on grounds of internal disturbances or external aggression. However, the laws thus made by the Parliament shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiry of the said period. Thus, during emergency the Parliament can legislate on subjects in all the three lists and the Federal Constitution gets converted into unitary one.

c. The President can also authorise the Parliament to exercise the powers of the State legislature during the Proclamation of Emergency due to

breakdown of constitutional machinery in a state. But all such laws passed by the Parliament cease to operate six months after the Proclamation of Emergency comes to an end.

d. The Parliament can also be authorised to legislate on a state subject if the legislatures of two or more states feel it desirable that any of the matters with respect to which the Parliament has no power to make laws for the states should be regulated in such states by Parliament by law and if resolutions to that effect are passed by legislatures of those states. Thereafter, any act passed by the Parliament shall apply to such states and to any other state by which it is adopted afterwards by resolution passed in that behalf by the house, or, where there are two houses, by each house of the legislature of that state. The Parliament also reserves the right to amend or repeal any such act.

e. The Parliament can make law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Any law passed by the Parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the state list.

f. Certain bills passed by the state legislature have to be reserved by the Governor of the state for the consideration of the President. These bills become law only after the President gives his assent. The bills which the Governor must reserve for the consideration of the President relate to compulsory acquisition of property, or those which adversely affected the Powers of the High Court.

It is quite evident from the above discussion that the Union enjoys a position of superiority in the legislative sphere and at times the states are completely at its mercy.

ADMINISTRATIVE RELATIONS

- The administrative jurisdiction of the Union and the State Governments extends to the subjects in the union list and state list respectively, which clearly establishes the superiority of the Union Government in the administrative sphere as well. In addition, the Constitution contains a number of provisions which accord a position of superiority to the Union Government.
- Article 256 lays down that the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.
- Similarly, Article 257 of the Constitution provides that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to giving of such directions to a state as

may appear to the Government of India to be necessary for that purpose.

- In short, the Union Government can issue directions to the state Government even with regard to the subjects enumerated in the state list.

Union Power to Give Directions to States

- The Union Government can also give directions to the state with regard to construction and maintenance of the means of communication declared to be of national or military importance. It can also ask the state Governments to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.
- It can also issue them necessary directions regarding the measures to be taken for the protection of the railways within the jurisdiction of the state. It may be noted that the expenses incurred by the state Governments for the discharge of these functions have to be reimbursed by the Union Government.
- It may be noted that the state Governments cannot ignore the directions of the Union Government, otherwise the president can take the plea that the Government of the state cannot be carried on the accordance with the provisions of the Constitution and impose President's rule on the state. In such an eventuality the President shall assume to himself all or any of the functions of the state Government.
- The President of India can also entrust to the officers of the State certain functions of the Union Government. However, before doing so the President has to take the consent of the state Government. Further, the extra cost incurred by the states in the discharge of these obligations has to be reimbursed by the Union Government.

All-India Services

- The presence of the All India Services like the. Indian Administrative Services, and the Indian police Services etc. further accords a predominant position to the Union Government. The members of these services are recruited and appointment held by the Union Public Service Commission.
- The members of these services are posted on key posts in the states, but remain loyal to the Union Government. The right to create new All India Services also rests with the Union Parliament.
- The Union Parliament can create a new All India Service only if the Rajya Sabha passes a resolution by two-thirds majority of the members present and voting that it is necessary in the national interest to do so.

Water Disputes

- The Parliament has been vested with power to adjudicate any dispute or complaint with respect to the use, distribution or control of the waters of, or in any interstate river of river-valley. In this regard, the Parliament also reserves the right to exclude such

disputes from the jurisdiction of the Supreme Court or other Courts.

Responsibility of the Union

- Under the Constitution, it is the responsibility of the Union Government to protect the states from external aggression and internal disturbances. This leaves much scope for Centre's interference in the spheres of the state.
- The President can declare national emergency in case of war or possible threat of war as well as armed rebellion. During this emergency the Centre can give directions to the states as to the manner in which their executive power is to be exercised.
- The President can authorise the Parliament to make laws with respect to any matter including power to make laws conferring powers and imposing duties or authorising the conferring of power and the imposition of duties upon the Union officers and authorities of the Union as respects that matter unmindful of the fact, that the matter does not belong to the Union list. Similarly, it is the duty of the President to ensure that the government of the state is carried on in accordance with provisions of the Constitution.
- If the President is satisfied that the government of the state cannot run along constitutional lines, he can declare constitutional emergency in the state and assume to himself all or any of the functions of the Government of the state and all powers of the State other than those exercised by the legislature and High Court of the State.
- The President can also declare that the powers of the state legislature shall be exercised under the authority of the Parliament and make such incidental and consequential provisions as appear to him to be necessary or desirable for giving effect to the objects of the Proclamation.

Role of Governors

- The Central Government exercises effective administrative control over states through the Governors of State who are appointed by the President and hold office during his pleasure. The Governors can reserve certain bills passed by the State legislatures for the consideration of the President.
- President can also issue directions and orders to the Governor which are binding on him. Thus, the Centre can exercise effective control over the States through the Government to topple State Governments which are irksome to the Central Government.

Judicial System

- As the Constitution of India provides for a single judicial system both the Union and the State Governments are duty bound to give full faith and credit to public acts, records, proceedings and judicial decisions of the Supreme Court and the High Court. The manner in which these acts, records and proceedings have to

be preserved is determined by Parliament by law and the slates do not have any say in this regard.

- In the matter of appointment of the Chief Justice and the Judges of the Supreme Court as well as the High Courts, the states have no say. They are appointed by the President in consultation with the Chief Justice of India and such other judges of the supreme courts and the High Court as he deems fit to consult.
- The initiative for the removal of these judges also rests with the Parliament which can pass necessary resolution for their impeachment and recommend to the President to take necessary action. The States are in no way connected with the appointment or removal of the judges of the Supreme Court or High Court.

State Government's Power

- The State Governor can entrust conditionally or unconditionally certain functions with respect to the executive powers of the state to the officers of the Union with the consent of the Union Government (Article 258A).
- It may be observed that the original Constitution did not contain this provision. This provision was added through Seventh Amendment in 1956 in view of the objections by the Comptroller and Auditor-General over construction of Hirakund Dam by the Central Government on behalf of the Orissa Government and debiting of cost to the state accounts.

Impact of the 42nd Amendment Act

- A new turn was given to the Centre-State Relations in the administrative sphere by the Forty-Second amendment of 1976, which empowered the Central Government to deploy armed forces for dealing with any grave situation of law and order in the States.
- The contingents so employed were to act in accordance with the instructions of the Central Government and not to work under the direction, superintendence and control of the state government concerned, unless specifically directed by the Central Government. This change naturally greatly restricted the autonomy of the states and was resented by the states. Ultimately this provision was nullified by the 44th Amendment.
- It is thus, evident that in the administrative sphere the states cannot act in complete isolation and have to work under the directions and in cooperation with others of the federation.

FINANCIAL RELATIONS

Generally, in typical federation alongwith the distribution of legislative and administrative powers, the financial resources of the country are also so distributed as to ensure financial independence of the units. However, the Indian Constitution does not make a clear cut distribution of the financial resources and leaves much to be decided by the Central Government from time to time. The financial resources which have been placed at the disposal of the state are so meagre that they have to look up to the Union

Government for subsidies and contributions. The distribution of financial resources in India has broadly been made as follows.

1. **Taxes exclusively assigned to the Union:** Income from certain subjects like customs and export duties, income tax, excise duty on tobacco, jute, cotton etc., corporation tax, taxes on capital value of assets of individuals and companies; estate duty and succession duty in respect of property and other than agricultural land; and income from the earning departments like the railways and postal departments have been exclusively assigned to the Union Government by the Constitution.
2. **Taxes exclusively assigned to States:** Income from land revenue, stamp duty except on documents included in the Union List; succession duty and estate duty in respect of agricultural land; income tax on agricultural lands; taxes on goods and passengers carried by road or inland water; taxes on vehicles used on roads, animals, boats, taxes on the consumption or sale of electricity, tolls, taxes on lands and buildings; taxes on professions, traders, calling and employment; duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs, taxes on the entry of goods into local areas, taxes on luxuries, entertainments, amusements, betting and gambling, etc. has been assigned to the States.
3. **Taxes leviable by Union but collected and appropriated by the State:** The taxes on the following items are levied by the Union Government but the actual revenue from them is collected and appropriated by the States; (i) stamp duties on bills of exchange, cheques, promissory notes, bills of landing, letters of credit, policies of insurance, transfer of shares etc.; (ii) Excise duties on medicinal toilet preparation containing alcohol or opium or Indian hemp or other narcotic drugs.
4. **Taxes levied and collected by the Union but assigned to states:** The taxes in this category are levied and collected by the Union Government although they are subsequently handed over to the states where from they have been collected. Such taxes included duties in respect of succession to property other than agricultural land; state duty in respect of property other than agricultural land terminal taxes on goods or passengers carried by railways, sea or air, taxes on railway freights and fares; taxes other than stamp duties on transactions in stock exchanges and future markets; taxes on the sale or purchase of newspapers and on advertisements published therein; taxes on purchase or sale of goods other than newspapers where such sale or purchases take place in the course of inter-state trade or commerce.
5. **Taxes levied and collected by the Union but shared with the States:** Taxes on income other than agricultural income and excise duties other than those on medicinal and toilet preparations are levied and collected by the Union Government

but shared with the states on an equitable basis. The basis of distribution is determined by the Parliament through a law.

CENTRE - STATE RELATIONS: CONFLICT ZONE

Arising out of the nature of Centre - State relations as well as difference in political ideology of the ruling parties at the Centre and States, following major areas of tensions have emerged in Indian federalism.

- Role of Governor as a representative of the central Government with regard to appointing and dismissing State ministers and dissolution of the State Assemblies.
- Misuse of powers of imposition of President's Rule under Article 356.
- Reservation of Bills for the consideration of the President under Article 201.
- Sharing of finances, and central approval of state projects.
- Demand for autonomy by the States

Within these five major areas, there are several other issues of administrative and political processes that cause tensions in Centre - State relations

Role of Governor

- Such interferences by Governors in State Government affairs and abuse of their powers for partisan reason has been giving rise to a feeling of insecurity among State and demand for settling the issues of appointment and dismissal of Governors themselves, their compulsion to act on the advice of Council of Ministers, and definite code for the exercise of discretionary powers. Governors role in the government of particular state often based on ruling party of the centre , This is the reason the ruling party reshuffle the post whenever it forms new government .

Misuse of Article 356

- The provision for imposition of President's rule in States under Article 356 was made to deal with serious situations as a life saving device to be used as a measure of last resort. However, in practice this article has been so frequently used for purely partisan interests that it has become almost poisonous for Indian political system.
- The use of Article 356 rests on the subjective satisfaction of the President. President's rule can be imposed either on the recommendations of Governor or even without that, that is, on the satisfaction of President (Prime Minister) himself.
- In the same manner, the Prime Minister can also make use of Article 365 to ensure that the administration in State is carried on in accordance with the provisions of the Constitution, and if otherwise, dissolve the State Government on the basis of his own assessment of the representative character or otherwise.
- The Sarkaria Commission drawing attention to the repeated abuse of Article 356 has pointed out that during the period from 1951 to 1987, of the 75 occasions when the President's rule was imposed, only in

26 cases was President's rule inevitable. In resent past Bihar government was dissolved in the use of article 356.

Article 200 & 201

- The power of the Governor to reserve all bill, passed by the legislature for the President's assent is another cause of tension between the Centre and the State.
- This has especially been so in case where the Governor has reserved a bill against the advice of the State Ministry, presumably under the direction of the Central Government. The main purpose of this provision is that the Centre wants to keep a watch on the activities of the States.

Revenue

- One of the most controversial areas between the Centre and the State in a federal system is that of financial relations and the Indian federal system is no exception to this.
- The demand of the states for greater fiscal autonomy has now become one of the most debated issues of the Indian federation. The tension between Centre and States with regard to fiscal relations arises because of:
  - o Comparative powers of taxation,
  - o Statutory versus discretionary grants, and
  - o Economic planning.

Fiscal Matters

- Sources of revenue to the Centre are relatively elastic and expansive as against those of the states. The Centre also controls vast resources generated through deficit financing, loans from organized money market in the country as well as huge funds of foreign aid.
- The residuary powers of taxation are also vested with the Central Government. In addition to this, Constitution also authorizes the Centre to collect surcharges on taxes to raise additional funds in times of emerging.
- In practice surcharge has become a permanent feature of income tax structure. Another loophole in taxation system, on account of which states suffers, is the cooperate tax, which keeps on expanding and is in the exclusive purview of the Centre. The states therefore have to be dependent on Central assistance.

Grants - in - Aid

- With regard to sharing of resources and assignment of certain resources entirely to the State, Articles 280 and 281. provide for the appointment of an independent Finance Commission every fifth year or earlier as the President of India desires.
- The provision of Finance Commission was to regulate, co-ordinate and integrate the finances of the Government of India and the State Government. Originally, the Finance Commission was intended to cover all the financial transfers from the Centre to States.
- However, slowly Planning

Commission has also been brought in for the purpose and now it plays a rather important part in devolution of resources from the Centre to the States. Since the Planning Commission is a completely Central institution and the politically influenced States have a sense of discrimination in location of grants.

- States are sore not only because of the fact that the Planning Commission's authority to determine the scope and pattern of a major portion of Central assistance to States has relegated the role of Finance Commission to a subsidiary one but also because the Centre does not seem to be much serious even about the reduced role of the Finance Commission. In addition, provision for grants-in-aid by the Centre is purely a political and arbitrary means of devolution and centre has been making use of this more and more and that too in a controversial manner.
- Centre gives grant-in-aid to States under Article 281 on its discretion for undertaking welfare schemes, meet natural calamities or for removal of disparities etc. A close scrutiny of the Central relief to the States affected by natural calamities indicates that no well considered norms were followed in this regard. The Central teams preoccupied by political considerations have always assessed the damage done by droughts, flood, etc. in an ad hoc perfunctory manner.
- The States therefore, have sharply questioned the need for the Centre to wield heavy financial clout in the shape of discretionary grants. There are about the inherent danger of their being used as a political weapon against a State that happens to be out of favour with the Centre.

Economic Planning

- It is generally agreed that the process of planning in India has tended to push the political system to greater centralisation due to both the central control over resources for development and the preponderance of the centralised planning machinery.
- The gravest and most harmful consequence of the atrophy of the state's domain in the economic field is in regard to industries and economic planning.
- Similarly it is alleged that in the name of national planning, the centre for political considerations has been inordinately delaying viable and important state projects. On the contrary, Centre has been super-imposing its schemes on the States which deemed by State governments to be irrelevant to the conditions prevailing in the States

Demand for Autonomy

- The constituent units of the Indian Union i.e. the States have been developing a feeling of deprivation on the ground that the Centre has denied them the autonomy that has been guaranteed under the Constitution. Unfortunately despite changes in

Government, the trend towards centralization has not been weakend.

- In this context the demand for a greater and more meaningful devolution of power has been assertively and more stridently articulated over the years. The Administrative Reforms Commission (appointed in 1967) recommended that powers should be delegated to the maximum extent to the States.
- It also expressed the opinion that centralized planning had tended towards excessive interference in the freedom of States to work out their policies and programmes.
- The Commission made some recommen-dations with regard to the office of Governor and also suggested the need to establish an Inter-State Council under Article 263 of the Constitution. The recommendations of the Commission however remained on paper and process of centralization continued.

Sarkaria Commission

- The decades of the eighties witnessed a struggle to get the federal issue on the nation's agenda. And when the political challenge assumed new dimensions and tensions between the Centre and the States grew in sharpness, it became necessary to ease the situation.
- It was in this context that the Government of India announced on March 24, 1983 the appointment of a Commission to examine and review the working of existing arrangements between the Union and the States in regard to powers, functions and responsibilities in all spheres and recommend appropriate charges and measures.
- The Commission came to be known as the Sarkaria Commission on Centre-State Relations after the name of its Chairman R.S. Sarkaria. The Commission was asked to keep in view the social and economic developments that have taken place over the years as also the scheme and the framework of the Constitution and the need for preserving the unity and integrity of the country.
- The Sarkaria Commission in submitted its report on October 27, 1987. The Commission favoured a strong Centre as the only safe-guard to national integrity which was being threatened severely in the light of recent fissiparous tendencies in the body politics. But, the Commission did not equate strong Centre with centralisation of powers. Infact, it viewed centralisation as dangerous for national integration.

Salient Recommendations of Sarkaria Commission are:

- More extensive and generous use of Article 258 which gives powers to Union government to confer powers, etc. to State governments should be made than as hitherto being done.
- Any move to disband the All India Service or to permit the State government to opt out the scheme must be regarded as retrograde and

harmful to the larger interest of the country. The All India Services should be further strengthened and greater emphasis given on the role expected to be played by them.

- Amend Article 248 to provide the legislature of the state with exclusive power to make any law with respect to any matter listed in the Union List or Concurrent List. That is, the residuary power on the federation should lie with the states.
- Delete Article 249 that gives power to Parliament to legislate on the State List, by the concurrence of the Rajya Sabha on a matter deemed by it to be of national interest. This short circuit the amending process laid down in Article 368, and unilaterally transfers a subject from the State List to the Concurrent List. A better and more equitable alternative is any how available in Article 252 (1) even if it be cumbersome and time consuming.
- Amend Article 280 (regarding the Finance Commission), and provide for the transfer of seventy five per cent of the total revenue raised by the Centre from all sources, to the States.
- Delete Article 302 (regarding the power of Parliament to impose restrictions on trade and commerce with a State or between the States)
- Delete Articles 356 and 357 (Emergency provisions, giving right to the Centre to dissolve a State Assembly and dimpose Presidential rule).
- Delete Article 360 (Financial provision) that empowers the President to interfere in State administration, on ground of threat of financial instability.
- Delete Article 200 and 201 which empower the Governor to withhold assent to bills, and reserve them for Presidential approval.
- Amend Article 368, to ensure that no amendment of the constitution is possible without two thirds majority of the members of Parliament, present and voting.
- Amend Article 3, to ensure that the name and area of a State cannot be changed by Parliament without the consent of the state legislative concerned.
- Whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State government, individually, but also collectively. There should be regular consultations on the management of All India Services between the Union and the State governments.
- The Planning Commission and the National Development Council are to be reformed assuring at the same time of full and effective consultation with the States at all stages of the planning process so that they feel that their role in it is not that of a supplicant, but of an equal participant.
- Before the Union government deploys its armed and other forces in a state in aid of. the civil power otherwise than on request from the State government or declare an area within a State as disturbed, it is desirable that the State government should be consulted, wherever feasible, and its cooperation sought, even though prior consultation with the State government is not obligatory.

- Convention as to consultation with State governments in Concurrent List individually as well as collectively should be strictly adhered to except in extreme emergency.
- Article 356 (emergency provisions) should be used very sparingly in extreme cases as a measure of last resort when all available alternatives fail.
- An expert committee should be constituted to enquire into and revive from time to time in consultation with the States, the operational feasibility of the scope for levying taxes and duties under Article 269 and the complementary measures, the State governments would be required to (Taxes levied under this article are collected by the Union Government and assigned to the States).
- In order to ensure effective consultation with the State Chief Minister, in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending it.
- Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of parliament while the residuary subjects other than that of taxation should be placed in the Concurrent List.
- Safeguards should be incorporated in Article 356 to enable Parliament to revive continuance in force of a proclamation.
- The Constitution should be suitably amended to add the subject of taxation of 'advertisement broadcast by radio or television to the present Entry 92, List (Union list) and Article 269 (1) relating to duties and taxes levied and collected by the Union assigned to States.
- Inter State River Water Disputes Act may be amended to make it mandatory on the Union government to constitute a tribunal within one year of receipt of an application from a State and should be amended to empower the Union government to appoint a tribunal when it is satisfied that a case exists, to require States to furnish necessary data to the tribunal, to make the award of the tribunal effective within 5 years to give the award of the tribunal the same sanction and force as that of a decree of a Supreme Court.
- On top of this elaborate scheme of establishing cooperative Union State relations, was the recommendation relating to the setting up of a permanent Inter State Council under Article 263 of the Constitution to discuss many of the problems of common Union-State interest.
- Consisting of a General Body with Prime Minister as Chairman and all Union Cabinet Ministers and all Chief Ministers as members, and Standing Committee with the Prime Minister as chairman, Six Union Cabinet Ministers and Six chief Ministers one from each zone as members, such a Council is expected to provide a forum for discussion in an era among senior statesmen. The arrangement is expected to promote proper understanding and mutual confidence among the Chief Executive of the Union and the States.

- In the light the recommendations of the Sarkaria Commission, the Ministry of Home Affairs issued an order dated 28th May, 1990 by which an Inter-State Council was established under article 263 of the Constitution. A copy of the relevant notification is appended at the end of the chapter.
- The Inter-State Council consists of the Prime Ministers, Chief, Ministers of all States and Union territories with or without a Legislative Assembly and six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Ministers or Ministers of State having independent charge in the Union Government when any item under their charge comes up for discussion. The Prime Minister is the Chairman of the Council.

PUNCHHI COMMISSION ON CENTRE - STATE RELATIONS

The Commission has been set up to look into the new issues of Centre-State relations keeping in view the sea changes that have been taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.

Composition of Committee

Chairman: Shri Justice Madan Mohan Punchhi (Retd.) Former Chief Justice of India

Members

- Shri Dhirendra Singh, Former Secretary to the Government of India
- Shri Vinod Kumar Duggal Former Secretary to the Government of India
- Dr. N.R. Madhava Menon Former Director, National Judicial Academy, Bhopal, and
- National Law School of India, Bangalore
- Shri Vijay Shanker, IPS (Retd.) Former Director, Central Bureau of Investigation, Govt of India

The terms of reference of the Commission:

(i) The Commission will examine and review the working of the existing arrangements between the Union and States as per the Constitution of India, the healthy precedents being followed, various pronouncements of the Courts in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of governors, emergency provisions, financial relations, economic and social planning, Panchayati Raj institutions, sharing of resources; including inter-state river water and recommend such changes or other measures as may be appropriate keeping in view the practical difficulties.

(ii) In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years particularly over the last two decades and have due regard to the scheme

and framework of the Constitution. Such recommendations would also need to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty and illiteracy in the early decades of the new millennium.

(iii) While examining and making its recommen-dations on the above, the Commission shall have particular regard, but not limit its mandate to the following:

- The role, responsibility and jurisdiction of the Centre vis-a-vis States during major and prolonged outbreaks of communal violence, caste violence or any other social conflict leading to prolonged and escalated violence.
- The role, responsibility and jurisdiction of the Centre vis-a-vis States in the planning and implementation of the mega projects like the inter-linking of rivers, that would normally take 15-20 years for completion and hinge vitally on the support of the States.
- The role, responsibility and jurisdiction of the Centre vis-a-vis States in promoting effective devolution of powers and autonomy to Panchayati Raj Institutions and Local Bodies including the Autonomous Bodies under the 6th Schedule of the Constitution within a specified period of time.
- The role, responsibility and jurisdiction of the Center vis-a-vis States in promoting the concept and practice of independent planning and budgeting at the District level.
- The role, responsibility and jurisdiction of the Centre vis-a-vis States in linking Central assistance of various kinds with the performance of the States.
- The role, responsibility and jurisdiction of the Centre in adopting approaches and policies based on positive discrimination in favour of backward States.
- The impact of the recommendations made by the 8th to 12th Finance Commissions on the fiscal relations between the Centre and the States, especially the greater dependence of the States on devolution of funds from the Centre.
- The need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of Value Added Tax regime.
- The need for freeing inter-State trade in order to establish a unified and integrated domestic market as also in the context of the reluctance of State Governments to adopt the relevant Sarkaria Commission's recommendation in chapter XVIII of its report.
- The need for setting up a Central Law Enforcement Agency empowered to take up suo moto investigation of crimes having inter-State and/or international ramifications with serious implications on national security.
- The feasibility of a supporting legislation under Article 355 for the purpose of suo moto deployment of

Central forces in the States if and when the situation so demands.

- Union Government has extended the term of a Commission, which was set up to analyze the centre-state relations in the backdrop of the changes in the polity and the economy.
- The Commission headed by Justice M M Punchhi was set up in 2007 to look into the new issues of centre-state relations in view of the sea changes that have been taken place in the polity and economy since the Sarkaria Commission had last looked into these issues.
- The Commission was to examine and review, among other things, the working of the existing arrangements between the Centre and the States as per the Constitution, the healthy precedents being followed, various pronouncements of the courts with regard to powers, functions and responsibilities in all spheres.

FINANCE COMMISSION VS PLANNING COMMISSION

Indian Constitution has made an effort to allocate every possible source of revenue either to the Union or the states. For the purpose of allocation of certain sources of revenue, between the Union and the state Governments, the Constitution provides for the establishment of a Finance Commission. On the other hand, the Planning Commission is neither a constitutional body nor even statutory. Moreover, Planning Commission does not have representation of States. Mutual overlapping of these two bodies is often a source of tensions in Centre - State relations.

Finance Commission

The Constitution of India contains the following provisions regarding the Finance Commission:

1. The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.
2. Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.
3. It shall be the duty of the Commission to make recommendations to the President as to
   - The distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
     The principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
   - The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;

- The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;
- Any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

- Ever since the inauguration of the Constitution, Finance Commissions have been appointed at regular intervals regarding sharing of revenues between the Centre and the States. So far, thirteen (13) such Commissions have been set up.
- One notable feature of the Finance Commission has been that the terms of reference have been made wider and wider with each Finance Commission.
- Even issues like debt burden of the state, financing of relief expenditure and returns of public sector undertakings have been placed under the purview of Finance Commissions. Further, the Union Government has mostly accepted the recommendations of the Finance Commissions.
- Despite this liberal attitude of the Union Government in financial matters, certain states have disapproved of the existing arrangement for distribution of resources and emphasizes that the distribution of resources should be more progressive favoring the relatively poorer states.

Planning Commission

- The Planning Commission also plays a vital role in the financial relations between the Centre and the States. Though the Planning Commission is an extra-constitutional body it plays a leading role in deciding the outlays of the plans of the States as well as the Centre. It also decides how much money should be allotted to the various states for expenditure on various items.
- As the Planning Commission is headed by the Prime Minister (who acts as its chairman) and some of the important ministers of the Union Cabinet are also associated with it, has virtually become a handmade of the Central Government.
- The National Development Council, which was created in 1952 as an adjunct to the Planning Commission, to review the plans also works more or less as an agency of the Centre, even though the Chief Ministers of the State are also its members. It has been alleged that the Planning Commission plays more important role in the allocation of funds and grants to the state than the Finance Commission.

Controversy

- It has been alleged by critics that the role assigned to the Finance Commission has been greatly undermined to the creation of the

Planning Commission which has tended to play increasing role in determining the transfer of funds to the states. According to a study, more funds were transferred to the states through the Planning Commission and the Finance Ministry than the Finance Commission.

- The Finance Commission is only required to plug the non-development budgetary gaps in the finances of the states only, while the plan outlays are determined by the Planning Commission. Similarly the discretionary grants are also regulated by the Finance Ministry and the Planning Commission and the Finance Commission hardly play any role in this respect.
- It is clear from the above discussion that the states in India do not possess adequate finances and have to look to the Union Government for assistance. The increasing dependence on the Union Government inevitably results in the curtailment of their autonomy, which poses a serious threat to the existence of a federal structure. In view of the weak position of the state, in the financial sphere, there has been a growing demand for allocation of more financial resources to the states so that they may be able to enjoy greater autonomy.

Emergency Provisions

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♣ PROCLAMATION OF PRESIDENT'S RULE (ART. 356) 83
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The term 'Emergency' may be defined as "a difficult situation arising suddenly and demanding immediate action by public authorities under powers specially granted to them by the Constitution or otherwise to meet such exigencies".

Types of Emergency

Broadly, the Emergency provisions of the Constitution envisage two kinds of emergencies, viz.

(i) a National Emergency under article 352 due to threat of war, external aggression or armed rebellion and

(ii) Financial Emergency under article 360.

The third kind of situation, that is, the one under article 356 arising from a failure of the constitutional machinery in any particular State and necessitating President's rule.:

NATIONAL EMERGENCY (ART. 352)

Article 352 provides that if the President, after receiving a written communication of a Cabinet decision, is satisfied that a grave emergency exists whereby the security of India or any part thereof is threatened by war, external aggression or armed rebellion, he may issue a Proclamation of Emergency for the whole of India or part thereof. Every Proclamation of Emergency is required to be laid before each House of Parliament, and is to cease to operate at the expiration of one month from the date of its issue by the President unless it has in the meantime been approved by resolutions of both the House. However, once approved by Parliament, the Proclamation may continue in operation for six months at a time unless revoked by the President earlier by a subsequent Proclamation. Resolutions approving the Proclamation of Emergency or its continuance have to be passed by either House of Parliament by a majority of the total membership and not less than two third of those present and voting. Also, if the Lok Sabha passes a resolution disapproving the Proclamation or its continuance, it shall be revoked forthwith. If notice of a resolution signed by not less than one-tenth of the total membership is given to the President Speaker, a special sitting of the House shall be held within 14 days to consider it.. During the periods of Emergency, extraordinary powers may be assumed by the Union Government.

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Executive Powers of the Union During Emergency

Article 353, read with article 365 provides that once Emergency is proclaimed, the executive power of the union extend to giving of directions to any State in regard to the exercise of the executive power of the State and failure to comply with the directions would constitute enough justification for imposition of President's rule under Article 356. During the operation of Emergency, the legislative power of Parliament also extends to conferring powers and imposing duties by law on Union authorities in matters not otherwise included in the Union List. Under article 354, the application of provisions relating to distribution of revenues articles (268 to 279) may be suitably modified during the period of the operation of Emergency. Article 358, provides for the suspension of the provisions of 'article 19 during emergencies while article 359 authorises the, President to suspend by ordering the enforcement of all the Fundamental Rights guaranteed in Part III of the Constitution except the rights of protection in respect of conviction for offences and protection of life and liberty in articles 20 and 21.

The effect of the exercise of powers under articles 358 and 359 is that not only the legislature but also the executive can interfere with the Fundamental Rights of individuals except those under articles 20 and 21. Any law passed under articles 358 and 359 in order to be valid must contain a recital to the effect that it is in relation to the Proclamation of Emergency in operation. Also, all such laws shall cease to have effect to the extent of incompetency under the Fundamental Rights as soon as the Emergency ceases or the Presidential order ceases to have effect.

PROCLAMATION OF PRESIDENT'S RULE (ART. 356)

It is the constitutional duty of the Union to protect its States against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the Constitution (Article 355). If on receipt of a Report from the Governor or otherwise, the President is satisfied that the Government of the State cannot be carried on in accordance with the Constitution or that the constitution taking over any of the functions and powers of the State Government including those of the Governor and other State authorities. The satisfaction of the President, of course, means the satisfaction of the Union Government and President's rule is actually rule by the Union Government. If any State fails to comply with directions issued by the Union under article 256, 257 or 353, the President may hold that there has been a failure of constitutional machinery in that State and may take over the State Government under article 356.

Every Proclamation under Article 356 must cease to operate at the expiry of two months unless approved by resolutions of the two Houses of the Parliament. After Parliament's approval also, a Proclamation may continue for not more than six months at a time and not for more than a total of three years (except Punjab)

How the President's Rule affects State Legislatures?

The powers of the State Legislature may under the Proclamation become exercisable by or on the authority of Parliament. The State Assembly may be dissolved or kept under suspended animation. The president may take all other steps that may be necessary including suspension of the operation of any

constitutional provisions relating to any body or authority in the State except the High Courts. During the operation of President's rule under article 356, Parliament may confer the legislative power of the State on the President and authorise him to delegate these powers to other President and other authorities (Article 357)

FINANCIAL EMERGENCY (ART. 360)

The President is authorised by article 360 of the Constitution to declare by a Proclamation, Financial Emergency, if he is satisfied that the financial stability or credit of India or of any part of its territory is threatened. Such a Proclamation may be revoked or varied by a subsequent Proclamation. It has to be laid before both Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by resolutions of the two House.

Once approved by Parliament, unlike Proclamation under article 352, it may continue indefinitely until revoked or varied.

During the operation of Financial Emergency, the executive authority of the Union extends to the giving of directions to any State to observe certain specified canons of financial propriety and such other directions that the President may find necessary or adequate. These directions may include reduction of salaries and allowances of all those serving a State and reserving for the President's consideration all money Bills and other Bills under article 207 after these are passed by State legislatures. The President may also direct reduction in salaries and allowances of all those serving in connection with the affairs of the Union including judges of the Supreme Court and the High Courts.

11 Amendment of Constitution

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♣ AMENDMENTS IN BRIEF 85

Part XX of the Constitution of India deals with the Amendment of the Constitution. The Article 368 specifies the power of Parliament to amend the constitution and the procedure of it. It is also mentioned in the Article that there will be no limitation on the constituent power of the Parliament for amending it by adding, removing or improving the provisions made in it. The method of an amendment to the Constitution is considered to be a highly complicated procedure. Amendment can be made by various methods, which have been modeled based on the South African Constitution. Since the enactment of the Constitution of India on 26 November 1949, there have been 94 amendments made to it till 2006. Number of Bills are introduced before Lok Sabha and Rajya Sabha for further improving the Constitution.

AMENDMENT PROCEDURE

- By simple majority of the Parliament: Amendments in this category can be made by a simple majority of members present and voting, before sending them for the President's assent.
- By special majority of the Parliament: Amendments can be made in this category by a two-thirds majority of the total number of members present and voting, which should not be less than half of the total membership of the house.
- By special majority of the Parliament and ratification by at least half of the state legislatures by special majority. After this, it is sent to the President for his assent.

AMENDMENTS IN BRIEF

- **1st Amendment Act, 1951:** Amended Articles - 15, 19, 85, 87, 174, 176, 341, 342, 376. Inserted Articles - 31A, 31B. Added Schedule - IXth
- **2nd Amendment Act, 1952:** Amended Article - 81
- **3rd Amendment Act, 1954:** Amended Schedule - XIIth Schedule List III, Entry 33.
- **4th Amendment Act, 1955:** Amended Articles - 31, 31A, 305. Amended Schedule - IXth.
- **5th Amendment Act, 1955:** Amended Article - 3.
- **6th Amendment Act, 1956:** Amended Articles - 269, 286 Amended Schedule - VIIth Schedule - List II, Entry 54; List

I, 92A inserted.

- **7th Amendment Act, 1956:** Amended Art.1,80, 131, 153 158, 168, 222, 224, 230, 231, 232, 298, 371 and 1st, 4th and 7th schedule. Also amended Part VIII and inserted new Articles- 258A, 290A, 350A, 350B, 372A and 378A. It made consequential and minor amendments and repeals under Article 392.
- **8th Amendment Act, 1959:** Article 334 amended - '20 years' substituted for '10 years'.
- **9th Amendment Act, 1960:** Act further amend the Constitution of India to give effect to the transfer of certain territories to Pakistan in pursuance of the agreements entered into between the Governments of India and Pakistan in year 1958, 1959 and 1960.
- **10th Amendment Act, 1961:** Article 240 and First Schedule amended to incorporate Dadra and Nagar Havelli as a Union Territory.
- **11th Amendment Act, 1961:** Articles 66(1) & 71(3) amended to narrow down grounds for challenging validity of election of President or Vice-President.
- **12th Amendment Act, 1962:** Goa, Daman and Diu were included as a Union territory in the First Schedule with an amendment in Article 240.
- **13th Amendment Act, 1962:** Inserted Article 371A to make special provisions for the administration of the state of Nagaland.
- **14th Amendment Act, 1962:** French establishments of Pondicherry, Karikal, Mahe and Yanam became territories of the Indian Union with amendments in Articles 81(1)(b) and 240 as well as 1st and 4th Schedule. New Art. 239A was inserted.
- **15th Amendment Act, 1963:** Amended Articles 124, 128, 217, 222, 224, 226, 297, 311, 316 and 7th Schedule. New Art. 224A was inserted.
- **16th Amendment Act, 1963:** Amended Articles 19, 84, 173 and 3rd Schedule.
- **17th Amendment Act, 1964:** Amended Art. 31A, Entries 21-64 added to the IXth Schedule.
- **18th Amendment Act, 1966:** Added explanation to Art. 3, to clarify that the Parliament has the power to create a new state or Union Territory. Provision was made for formation of two states Punjab and Haryana.
- **19th Amendment Act, 1966:** Amended Art. 324 to clarify the duties of the Election Commission.
- **20th Amendment Act, 1966:** Art. 233A inserted to validate the appointment of District Judges.
- **21st Amendment Act, 1967:** Incorporated Sindhi language in the Eighth Schedule.
- **22nd Amendment Act, 1969:** Inserted new Articles 244A and 371B. Amended Part X and Article 275.
- **23rd Amendment Act, 1970:** Amending Arts. 330, 332, 333, 334 (to extend the period of reservation for Scheduled Castes and Tribes).

- **24th Amendment Act, 1971:** Inserting cl. (4) in Art. 13; amending Art. 368. The object of the amendment was to clarify that the Parliament has the power to amend every' part of the Constitution.
- **25th Amendment Act, 1971:** Amended Article 31 and inserted new Art. 31C.
- **26th Amendment Act, 1971:** Amended Article 366. Omitted Articles 291 and 362 and inserted a new Article 363A.
- **27th Amendment Act, 1971:** Amended Articles 239A and 240. Inserted new Articles 239B and 371C.
- **28th Amendment Act:** Inserted new Article 312A and omitted article 314.
- **29th Amendment Act, 1972:** Amended Ninth Schedule.
- **30th Amendment Act, 1972:** Amended Article 133.
- **31st Amendment Act, 1973:** Amended Articles 81, 330 and 332.
- **32nd Amendment Act, 1973:** Amended Article 371 and 7th Schedule. Inserted new Articles 371D and 371E.
- **33rd Amendment Act, 1974:** Amended Articles 101 and 190.
- **34th Amendment Act, 1974:** Adding items 67 -86 to the IXth Schedule.
- **35th Amendment Act, 1974:** Inserting Art. 2A and amending Arts. 80-81; adding Xth Schedule. Sikkim was made an associate state.
- **36th Amendment Act, 1975:** Made special provisions for Sikkim through amendment of 1st and 4th Schedule. Inserted a new Article 371F.
- **37th Amendment Act, 1975:** Amended Articles 239A and 240.
- **38th Amendment Act, 1975:** Amended Articles 123, 213, 239B, 352, 356, 359 and 360.
- **39th Amendment Act, 1975:** Amended Article 329 and 9th Schedule. Substituted a new Article for Art. 71 and inserted a new Article 329A.
- **40th Amendment Act, 1976:** Substituting Art. 297; adding entries 125 to 188 to Schedule IX.
- **41st Amendment Act, 1976:** Amended Article 316.
- **42nd Amendment Act, 1976:** Known as a "mini Constitution" in itself. Amended the Preamble and Articles 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 105, 118, 145, 166, 170, 172, 189, 191, 194, 208, 217, 225, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368, 371F and 7th Schedule. Also inserted new Articles- 31D 32A 39A 43A 48A 131A 139A 144A 226A 228A 257A and new Parts- IV A and XIV A. Substituted Articles- 103, 150, 192 and 226
- **43rd Amendment Act, 1977:** Omitting Arts. 31D, 32A, 131A, 144A; amending Art. 145. This amendment omitted many articles inserted by the 42nd Amendment Act. Some articles were changed.
- **44th Amendment Act, 1978:** The right to property was omitted from

fundamental right and made legal right. Amended Art. 352, 132, 134 and a new Article 134A inserted. Art. 21 and 22 further strengthened.

- **45th Amendment Act, 1980:** Extended reservation under Art. 334 from 30 to 40 years.
- **46th Amendment Act, 1982:** Amending Arts. 269, 286, 366. List I, relating to Sales Tax.
- **47th Amendment Act, 1984:** Added entries 189-202, to the Ninth Schedule.
- **48th Amendment Act, 1984:** Inserted provision to cl. (5) of Art. 256 to extend President's Rule in Punjab.
- **49th Amendment Act, 1984:** Amended Art. 244. Fifth & Sixth Schedules. Sixth Schedule was made applicable to Tripura.
- **50th Amendment Act, 1984:** Substituted Art. 33. Its scope was enlarged and many other forces were included in its ambit.
- **51st Amendment Act, 1984:** Amended Arts. 330, 332.
- **52nd Amendment Act, 1985:** Amended Arts. 101, 102, 190, 191; added Xth Schedule (anti-defection). It was declared that a member who defects from his party would become subject to disqualification.
- **53rd Amendment Act, 1986:** Added Art. 377G. Mizoram was made a state.
- **54th Amendment Act, 1986:** Amended Articles 125, 221 and 2nd Schedule.
- **55th Amendment Act, 1986:** Inserted a new Article 371H with special provisions for the State of Arunachal Pradesh.
- **56th Amendment Act, 1987:** Inserted Art. 371-I. Goa was made a state and provision for a state assembly was inserted, and Daman and Diu as a Union Territory.
- **57th Amendment Act, 1987:** As the 51st Amendment Act could not be fully implemented, the 57th Amendment Act was carried out.
- **58th Amendment Act, 1987:** Amended the heading of Part XXII and inserted anew Article 394A.
- **59th Amendment Act, 1988:** Amended Article 356 and insertion a new Article 359A.
- **60th Amendment Act, 1988:** Amended Article 276.
- **61st Amendment Act, 1988:** Amended Article 326.
- **62nd Amendment Act, 1989:** Amended Art. 334, to increase the period of reservation of seats for Scheduled Castes and Tribes for 10 years.
- **63rd Amendment Act, 1989:** The provision to clause (5) of Art. 356 and Art. 359A were omitted as the changes brought after 59th Amendment Act, 1988 were no longer required.
- **64th Amendment Act, 1990:** Amended Art. 356 to facilitate the extension of the proclamation issued under cl. (1) of Art. 356 on 11 May 1987 upto a total period of three years and six months in relation to Punjab.
- **65th Amendment Act, 1990:** Amended Art. 338 to provide for a National Commission for Scheduled Castes and Scheduled Tribes. Wide

powers given to the commission.

- **66th Amendment Act, 1990:** Inserted entries 203 to 257 in the IXth Schedule.
- **67th Amendment Act, 1990:** Amended Art. 356, 3rd provision, cl. (a) extending President's Rule in Punjab to 4 years.
- **68th Amendment Act, 1991:** It further amends clause 4; of Art. 356, amended by the 67th Amendment Act, 1990. The amended period extended to five years.
- **69th Amendment Act, 1991:** Inserted new Articles 239AA and 239AB.
- **70th Amendment Act, 1992:** Amended Art. 54 and 368 to include Members of Legislative Assemblies of Union Territories of Delhi and Pondicherry in the Electoral College.
- **72nd Amendment Act, 1992:** Inserted cl. (3B) in Art. 332.
- **73rd Amendment Act, 1992:** Gave practical shape to Art. 40. Added Part-IX and 11th Schedule and Articles 243A to 2430. Made Panchayati Raj Institutions constitutional.
- **74th Amendment Act, 1992:** Added Part-IX A, 12th Schedule and Articles 243P to 243ZG. Made constitutional provisions for Urban Local Government.
- **75th Amendment Act, 1993:** Inserted sub-cl. (h) in Art. 323B (2).
- **76th Amendment Act, 1994:** Inserted entry 237A in the IXth Schedule.
- **77th Amendment Act, 1995:** Amended Article 16.
- **78th Amendment Act, 1995:** Further added 27 entries to the IXth Schedule of the Constitution.
- **79th Amendment Act, 1999:** Substituted "Sixty Years" for the words in Art. 334.
- **80th Amendment Act, 2000:** Substituted new clauses for cls. (1) and (2) of Art. 269; new Article for Art. 270 and omitting Art. 272.
- **81st Amendment Act, 2000:** Inserted cl. (4B) in Art. 16.
- **82nd Amendment Act, 2000:** Inserted a Provision of Art. 335.
- **83rd Amendemnt Act, 2000:** Amended Article 243M.
- **84th Amendment Act, 2001:** Amended provisions to Art. 82 and 170(3) of the Constitution.
- **85th Amendment Act, 2001:** Amended Article 16.
- **86th Amendment Act, 2002:** Inserted new Art. 21A after Art. 21 to make education a fundamental right for children of age 6-14 year.
- **87th Amendment Act, 2003:** Substitution of figures "1991" by figures "2001" in cl. (3), in the provision in cl. (ii) of Art. 81, in 3rd provision in cl. (ii) of Art. 82, in cl. (2), in the Explanation, in the provision of Art. 170 and in cl. (3), in the Explanation, in the 3rd provision of Art. 170. Same substitution in the Explanation, in the provision of Art. 330.
- **88th Amendment Act, 2003:** Insertion of Art. 268A after Art. 268. In Art. 270 in cl. (1) substitution of words, figures and letter "Art. 268, 268A and 269" for "Art. 268 and 269". Insertion of entry 92C in VIIth Schedule in List I.

- **89th Amendment Act, 2003:** Amended Article 338 and inserteda new Article 338A.
- 90th Amendment Act, 2003: Insertion of provision in cl. (6) of Art. 332 of the Constitution.
- **91st Amendment Act, 2003:** Insertion of clause after cl. (1) in Art. 75 limiting the membership of council of ministers to fifteen percent of the total membership of the House of the People. And in Art. 164, insertion of clauses after cl. (1) limiting the membership of Council of Ministers in the state to fifteen per cent of the total numbers of the Legislative Assembly of that state.
- **92nd Amendment Act, 2003:** Addition of languages, "Bodo", "Dogri", "Maithili" and "Santhali" in the Eighth Schedule of the Constitution.
- **93rd Amendment Act, 2005:** Amended Article 15 to enable the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.
- **94th Amendment Act, 2006:** To provide for a Minister & Tribal Welfare in Jharkhand & Chhattisgarh.
- **95th Amendment Act ,2010:** To extent the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Sixty years to Seventy years
- **96th Amendment Act, 2011:** Substituted "Odia" for "Oriya"
- **97th Amendment Act, 2012:** Added the words "or Co-operative societies" in Article 19(1)(c) and inserted article 43 B.i.e. Promotion of Co-operative societies and added part-IX B i.e., the Co-operative, Societies.

Amendments which were Later Repealed

Some of the amendments introduced earlier have been repealed through subsequent amendments. This process started with the 43rd Amendment Act of 1977, which removed the restrictions imposed on the Supreme Court and the High Court jurisdiction with regard to the constitutional validity of laws and deleted the provisions regarding anti-national associations activities.

These restrictions and the provisions were introduced through the 42nd Amendment during emergency. When the Janata Party came to power at the Centre, it wanted to undo most of the constitutional changes introduced during the Emergency. The process was continued through the 44th Amendment Act also. Similarly, when Janata Dal came to power at the Centre in 1989, it repealed 59th Amendment through the 63rd Amendment, as the former empowered the Government to impose internal emergency in Punjab.

Seventh Schedule (Article 246)

Contents of The Chapter

♣ LIST I—UNION LIST 91
♣ LIST II-STATE LIST 95
♣ LIST III—CONCURRENT LIST 98

LIST I—UNION LIST

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
2. Naval, military and air forces; any other armed forces of the Union.

2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Central Bureau of Intelligence and Investigation.
9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation
12. United Nations Organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements

with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, naturalisation and aliens.
18. Extradition.
19. Admission into, and emigration and expulsion from, India; passports and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
22. Railways.
23. Highways declared by or under law made by Parliament to be national highways.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.
25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.
31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.
32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.
33. Omitted by 7th Amendment Act, 1956
34. Courts of wards for the estates of Rulers of Indian States.
35. Public debt of the Union.
36. Currency, coinage and legal tender; foreign exchange.
37. Foreign loans.
38. Reserve Bank of India.

39. Post Office Savings Bank.
40. Lotteries organised by the Government of India or the Government of a State.
41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
42. Inter-State trade and commerce.
43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies.
44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
45. Banking.
46. Bills of exchange, cheques, promissory notes and other like instruments.
47. Insurance.
48. Stock exchanges and futures markets.
49. Patents, inventions and designs; copyright; trademarks and merchandise marks.
50. Establishment of standards of weight and measure.
51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale for export, of opium.
60. Sanctioning of cinematograph films for exhibition.
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum,

the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the [Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for:
    (a) professional, vocational or technical training, including the training of police officers; or
    (b) the promotion of special studies or research; or
    (c) scientific or technical assistance in the investigation or detection of crime.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
67. Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.
68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.
69. Census.
70. Union Public Service; All-India Services; Union Public Service Commission.
71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.
73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.
74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

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76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation [(including vacations)] of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except
   (a) alcoholic liquors for human consumption;
   (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

92B. Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

93. Offences against laws with respect to any of the matters in this List.

94. Inquires, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

LIST II-STATE LIST

1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).
2. Police (including railway and village police) subject to the provisions of entry 2A of List I.
3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
6. Public health and sanitation; hospitals and dispensaries.
7. Pilgrimages, other than pilgrimages to places outside India.
8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
9. Relief of the disabled and unemployable.
10. Burials and burial grounds; cremations and cremation grounds.
11. Omitted by 42"d Amendment Act, 1976
12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.
13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
14. Agriculture, including agricultural education and research, protection

against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
16. Pounds and the prevention of cattle trespass.
17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
19. Omitted by 42"d Amendment Act, 1976
20. Omitted by 42"d Amendment Act, 1976
21. Fisheries.
22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.
23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
24. Industries subject to the provisions of [entries 7 and 52] of List I.
25. Gas and gas-works.
26. Trade and commerce within the State subject to the provisions of entry 33 of List III.
27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
28. Markets and fairs.
29. Omitted by 42nd Amendment Act, 1976
30. Money-lending and money-lenders; relief of agricultural indebtedness.
31. Inns and inn-keepers.
32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.
34. Betting and gambling.
35. Works, lands and buildings vested in or in the possession of the State.
36. Omitted by 7th Amendment Act, 1956
37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.
38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.
41. State public services; State Public Service Commission.
42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
43. Public debt of the State.
44. Treasure trove.
45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, *survey* for revenue purposes and records of rights, and alienation of revenues.
46. Taxes on agricultural income.
47. Duties in respect of succession to agricultural land.
48. Estate duty in respect of agricultural land.
49. Taxes on lands and buildings.
50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:
    (a) alcoholic liquors for human consumption;
    (b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
52. Taxes on the entry of goods into a local area for consumption, use or sale therein.
53. Taxes on the consumption or sale of electricity.
54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.
55. Taxes on advertisements other than advertisements published in the newspapers [and advertisements broadcast by radio or television].
56. Taxes on goods and passengers carried by road or on inland waterways.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on professions, trades, callings and employments.
61. Capitation taxes.
62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
64. Offences against laws with respect to any of the matters in this List.
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

LIST III—CONCURRENT LIST

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.
5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
6. Transfer of property other than agricultural land; registration of deeds and documents.
7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
8. Actionable wrongs.
9. Bankruptcy and insolvency.
10. Trust and Trustees.
11. Administrators-general and official trustees.

11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.

12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of court, but not including contempt of the Supreme Court.
15. Vagrancy; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the re ception or treatment of lunatics and mental deficients.
17. Prevention of cruelty to animals.

17A. Forests.

17B. Protection of wild animals and birds.

18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
20. Economic and social planning.

20A. Population control and family planning.

21. Commercial and industrial monopolies, combines and trusts.
22. Trade unions; industrial and labour disputes.
23. Social security and social insurance; employment and unemployment.
24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen s compensation, invalidity and old age pensions and maternity benefits.
25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.
26. Legal, medical and other professions.
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
28. Charities and charitable institutions, charitable and religious endowments and religious institutions.
29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Vital statistics including registration of births and deaths.
31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
33. Trade and commerce in, and the production, supply and distribution of,
    - (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
    - (b) foodstuffs, including edible oilseeds and oils;
    - (c) cattle fodder, including oilcakes and other concentrates;
    - (d) raw cotton, whether ginned or unginned, and cotton seed; and
    - (e) raw jute.

33A. Weights and measures except establishment of standards.

34. Price control.
35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
36. Factories
37. Boilers.
38. Electricity.
39. Newspapers, books and printing presses.
40. Archaeological sites and remains other than those '[declared by or under law made by Parliament] to be of national importance.

41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
42. Acquisition and requisitioning of property.
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

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Political System

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POLITICAL SYSTEM IN INDIA

India with a population of around a billion and an electorate of over 700 million - is the world's largest democracy and, for all its faults and flaws, this democratic system stands in marked contrast to the democratic failures of Pakistan and Bangladesh which were part of India until 1947. Unlike the American political system and the British political system which essentially have existed in their current form for centuries, the Indian political system is a much more recent construct dating from India's independence from Britain in 1947. India's lower house, the Lok Sabha, is modelled on the British House of Commons, but its federal system of government borrows from the experience of the United States, Canada and Australia.

- The Constitution was framed keeping in mind the socioeconomic progress of the country. India follows a parliamentary form of democracy and the government is federal in structure. In Indian political system, the President is the constitutional head of the executive of the Union of India.
- The real executive power is with the Prime Minister and the Council of Ministers. According to the Article 74(1) of the constitution, the Council of Ministers under the leadership of the Prime Minister is responsible to aid and assist the President in exercising the Presidents function. The Council of ministers is responsible to the Lok Sabha, the House of People.
- In states the Governor is the representative of the President, though the real executive power is with the Chief Minister along with his Council of Ministers. For a given state the Council of Ministers is collectively responsible for the elected legislative assembly of the state. The Constitution administrates the sharing of legislative power between Parliament and the State Legislatures. The Parliament has the power to amend the Constitution.
- Politics of India take place in a framework of a federal parliamentary multi-party representative democratic republic modeled after the British Westminster System. The Prime

Minister of India is the head of government, while the President of India is the formal head of state and holds substantial reserve powers, placing him or her in approximately the same position as the British monarch.

- Executive power is exercised by the government. Federal legislative power is vested in both the government and the two chambers of the Parliament of India. The judiciary is independent of the executive and the legislature.

Multi-party System

- A multi-party system is a system in which three or more political parties have the capacity to gain control of government separately or in coalition. Unlike a single party system (or a non-partisan democracy), it encouraged the general constituency to form multiple distinct, officially recognized groups, generally called political parties.
- Each party competes for votes from the enfranchised constituents (those allowed to vote). A multiparty system is essential for representative democracies, because it prevents the leadership of a single party from setting policy without challenge.
- If the government includes an elected Congress or Parliament the parties may share power according to Proportional Representation or the First-past-the-post system.
- In Proportional Representation, each party wins a number of seats proportional to the number of votes it receives. In first-past-the-post, the electorate is divided into a number of districts, each of which selects one person to fill one seat by a plurality of the vote.
- First-past-the-post is not conducive to a proliferation of parties, and naturally gravitates toward a two-party system, in which only two parties have a real chance of electing their candidates to office. This gravitation is known as Duverger's law. Proportional Repres-entation, on the other hand, does not have this tendency, and allows multiple major parties to arise.
- This difference is not without implications. A two-party, system requires voters to align themselves in large blocs, sometimes so large that they cannot agree on any overarching principles. Along this line of thought, some theories argue that this allows centrists to gain control. On the other hand, if there are multiple major parties, each with less than a majority of the vote, the parties are forced to work together to form working governments.
- Taiwan, Germany, Denmark, India, Indonesia, France, Kosovo, Israel and the United Kingdom are examples of nations that have used a multi-party system effectively in their democracies. In these nations, except the United Kingdom, multiple political parties have often formed coalitions for the purpose of developing power blocs for governing.
- India has a federal form of government, however, the central

government in India has greater power in relation to its states, and its central government is patterned after the British parliamentary system. Regarding the former, "the Centre", the national government, can and has dismissed state governments if no majority party or coalition is able to form a government or under specific Constitutional clauses, and can impose direct federal rule known as President's rule.

- India's political system is now 60 years old. For most of these 60 yrs. India have had Congress ruling at the centre. Later in the mid 70's we saw the launch of the Janata Party.
- Today India have several regional parties, each pandering to their own regional constituencies. This has completely changed the face of electoral politics in India.
- For most of the years since independence, the federal government has been led by the Indian National Congress (INC), Politics in the states have been dominated by several national parties including the INC, the Bharatiya Janata Party (BJP), the Communist Party of India (Marxist) (CPI(M)) and various regional parties. From 1950 to 1990, barring two brief periods, the INC enjoyed a parliamentary majority. The INC was out of power between 1977 and 1980, when the Janata Party won the election owing to public discontent with the corruption of the then Prime Minister Indira Gandhi.

National Parties

- Indian National Congress (INC, led by Party President Sonia Gandhi)
- Bharatiya Janata Party (BJP, led by Party President Nitin Gadkari)
- Bahujan Samai Party (BSP, led by Party President Mayawati)
- Communist Party of India (Marxist) (CPM, led by Party General Secretary Prakash Karat)
- Nationalist Congress Party (NCP, led by Party President Sharad Pawar)
- Communist Party of India (CPI, led by Party General Secretary AB Bardhan)
- Jagdeep Coalition (JDC, led by Party President Kirik Vedprakash)

Regional Parties

- All India Anna Dravida Munnetra Kazhagam (AIADMK, "All India Anna Federation for Progress of Dravidians") (Tamil Nadu, Puducherry)
- Dravida Munnetra Kazhagam ("Federation for Progress of Dravidians") (Tamil Nadu, Puducherry)
- Indian National Lok Dal ("Indian National People's Party") (Haryana)
- Maharashtra Navnirman Sena, Maharashtra
- Indian Union Muslim League (Kerala, registered as 'Muslim League Kerala State Committee')
- Indigenous Nationalist Party of Tripra (Tripura)

- Jammu and Kashmir National Conference (Jammu and Kashmir)
- Jammu and Kashmir National Panthers Party (Jammu and Kashmir)
- Jammu and Kashmir People's Democratic Party (Jammu and Kashmir)
- Janata Dal (Secular) ("People's Party (Secular)") (Karnataka, Kerala)
- Janathipathiya Samrakshana Samithy ("Association for Defence of Democracy") (Kerala)
- Jharkhand Mukti Morcha (JMM) ("Jharkhand Liberation Front") (Jharkhand, Orissa)
- Kerala Congress (Mani) (Kerala)
- Kerala Congress (Kerala)
- Lok Jan Shakti Party (Bihar)
- Lok Satta Party (Andhra pradesh)
- Maharashtrawadi Gomantak Party (Goa)
- Manipur People's Party (Manipur)
- Maraland Democratic Front (Mizoram)
- Marumalarchi Dravida Munnetra Kazhagam (Tamil Nadu)
- Meghalaya Democratic Party (Meghalaya)
- Mizo National Front (Mizoram)
- Mizoram People's Conference (Mizoram)
- Nagaland Peoples Front (Nagaland)
- Pattali Makkal Katchi (Tamil Nadu, Puducherry)
- Pragatisheel Indira Congress (PIC) , West Bengal)
- Praja Rajyam Party ("People's Rule Party") (Andhra pradesh)
- Rashtriya Lok Dal ("National People's Party") (Uttar Pradesh)
- Republican Party of India (Athvale)
- Republican Party of India (Gavai)
- Revolutionary Socialist Party (West Bengal)
- Shiromani Akali Dal (Party of Akal - Authority for the Political matters of Sikhs) (Punjab)
- Shiv Sena ("Army of Shivaji") (Maharashtra)
- Sikkim Democratic Front (Sikkim)
- Telangana Rashtra Samithi ("Telengana National Association") (Andhra Pradesh)
- Telugu Desam Party ("Telugu Nation Party") (Andhra Pradesh)
- Trinamool Congress ("TMC") (West Bengal)
- United Democratic Party (Meghalaya)
- United Goans Democratic Party (Goa)
- Uttarakhand Kranti Dal ("Uttarakhand Revolution Party") (Uttarakhand)
- Swadharm Parti ("A Indian Party") (All People Party) (India)
- Zoram Nationalist Party (Mizoram)

COALITION POLITICS

- A coalition government is one in which several political parties must cooperate in order to run a country or region. A coalition government is often times considered a very weak form of government because there is

no majority party. In such cases, the only way policy gets approved is by making concessions, hence the forming of a coalition.

- A coalition government, also known as a coalition cabinet, can be one of the most entertaining, and volatile, forms of government. Often, it may be hard to know how an issue is going to turn out, unlike countries where there are only two major political parties. In these cases, it is rare that a majority party does not have its way.
- Well-known countries run by coalition governments include Germany, Italy, India, Ireland, and Israel, among others. Once a parliament is seated in these countries, the difficult work of bridging gaps begins. In some cases, these gaps are bridged easier than others, as multiple parties may be in agreement on some issues. In other cases, where there is little agreement, building such a coalition government takes time.
- Some time a coalition government is a very inefficient way to govern. Also, it may, in some cases, increase the risk of underhanded deals and increase corruption, as more politicians are willing to make deals in order to get things accomplished. A coalition government can also have members that are very argumentative, even more so than other forms of government, simply because so much is at stake.
- However, despite the concerns, some feel that a coalition government has the best opportunity to promote real issues and solve everyday problems. This is because the coalition government is seen by some as the most accurate representation of the people's will. Also, proponents believe a coalition government can actually lead to greater unity because members of varying backgrounds and ideologies must come together and agree to create policy in the best interest of all.
- In addition to the regular, long-standing coalitions, a coalition government can also be created at times of national transition or crisis. In Iraq, for example, a coalition government was created in 2004 in an effort to bring the country together after the fall of Saddam Hussein s government. In this example, various leaders from different religious sects and regions of the country were brought together in an attempt to form policy that would be regarded as a benefit to the Iraqi people as a whole, not just one particular group.
- In India one party rule came to an end after 1967. Even in states also their was a change in political scenario. The dominance of congress came to an end. For the first time Janata Party came to power during the same period. The 1980's is a time where one can see the history of coalition politics. Coalition politics came to seen because of growth of many small regional parties. Slowly these regional parties started playing influential role in the national politics.

- No single party is getting majority to form a government in recent elections. Depending on the pre poll or post poll agreement between different parties, government can be formed. In this coalition politics these regional parties are playing very influential role. They are also influencing the policy making of the government.
- A coalition government is a cabinet of a parliamentary government in which several parties cooperate. The usual reason given for this arrangement is that no party on its own can achieve a majority in the parliament. However, a coalition government may also be created in a time of national difficulty or crisis. If a coalition collapses, a confidence vote is held or a motion of no confidence is taken.
- Since India is a diverse country with different ethnic, linguistic and religious communities, it also has diverse ideologies. Due to this, the benefit that a coalition has is that it leads to more consensus based politics and reflects the popular opinion of the electorate.
- In order to have stable coalitions, it is necessary that political parties moderate their ideologies and programmes. They should be more open to take others' point of view as well. They must accommodate each other's interests and concerns.
- But this is not what is happening in India. In India, parties do not always agree on the correct path for governmental policy. Different parties have different interests and beliefs and it is difficult to sustain a consensus on issues when disagreements arise. They often fail to see eye to eye with the government on many public policies. It makes decision making process slow.
- One way coalition politics is good and other way it is creating problem. Because of coalition politics stability is threatened and elections are held before five years only. But in other way it helps to bring all streams of people in the national politics. National policies will be influenced by regional ideas. Not only in the centre but also in states there is no stability of the government.
- With the replacement of the Dominant Party System of India, minority and/ or coalition governments in union level, have become the order of the day. Except for the Congress Minority Government of P.V. Narsimha Rao and National Democratic Alliance Government of Atal Behari Vajpayee, all such governments since 1989 have been unstable.
- Yet instability apart, coalition governments have been effective in enhancing democratic legitimacy, representativeness and national unity. Major policy shifts like neo-liberal economic reforms, federal decentring, and grass roots decentralization, in theory or practice, are largely attributable to the onset of federal coalitional governance.
- Coalition governments in states and

at the centre have also facilitated gradual transition of the Marxist-left and the Hindu-right into the political establishment, and thus contributed to the integration of the party system as well as the nation. The same major national parties which initially rejected the idea of coalition politics have today accepted it and are maturing into skilled and virtuoso performers at the game.

- In a rather short span of over a decade, India has witnessed coalition governments of three major muted hues: (a) middle-of-the-road Centrist Congress Minority Government of P.V. Narsimha Rao, going against its Left Centre of reputation, initiated neo-liberal economic reforms in 1991; (b) three Left-of-centre governments formed by the Janata-Dal-led National/United Front; and (c) two Right-of-Centre. coalition governments formed by the Bharatiya Janata Party-led National Democratic Alliance under Atal Behari Vajpayee, a votary of secular version of Hindu nationalism.
- In the wake of the decline of Congress Dominance, the fragmentation of the National Party System and the emergence of party systems at the regional level have turned India into a various patterns of coalition governments in the union as well as state level collation governments . State level coalition government had better edge over union level in India. The states like Kerala shows its firmness on collation governments.
- A coalition government is a cabinet of a parliamentary government in which several parties cooperate. Coalition governments are usually formed as no party can individually achieve a majority in the parliament. However, a coalition government may also be created in a time of national difficulty or crisis. If a coalition collapses, a confidence vote is held or a motion of no confidence is taken.
- India has had coalition governments at the Centre as well as in individual states since the last two decades. Since India is a diverse country with different ethnic, linguistic and religious communities, it also has diverse ideologies. Due to this, the benefit that a coalition has is that it leads to more consensus based politics and reflects the popular opinion of the electorate. The current UPA-Left arrangement had been formed after parliamentary elections in 2004. Though they have main adversaries in three states, this government was still a stable one till Left withdrew support on matters of nuclear deal.
- In order to have stable coalitions, it is necessary that political parties moderate their ideologies and programmes. They should be more open to take others' point of view as well. They must accommodate each other's interests and concerns. But this is not what is happening in India.
- In India, parties do not always agree on the correct path for governmental

policy. Different parties have different interests and beliefs and it is difficult to sustain a consensus on issues when disagreements arise. They often fail to see eye to eye with the government on many public policies. However, this is not to say that we have never had successful coalitions. Governments in Kerela and West Bengal and NDA at the Centre have been sucessful coalitions.

Criteria for Recognition of a Party

A political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) are, or the condition specified in Clause (B) is, fulfilled by that party and not otherwise, that is to say:

- has been engaged in political activity for a continuous period of five years; and
- has, at the last general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly of the State, returned:
- At least one member to the House of the People for every twenty-five members of that House or any fraction of that number from that State;
- At least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;
- That the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in the State to the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.
- If a political party is treated as a recognised political party in four or more States, it shall be known as a 'National Party' throughout the whole of India, but only so long as that political party continues to fulfill thereafter the conditions for recognition in four or more States on the results of any subsequent general election either to the House of the People or to the Legislative Assembly of any State.
- If a political party is treated as a recognised political party in less than four States, it should be known as a 'State Party' in the State or States in which it is so recognised, but only so long as that political party continues to fulfill thereafter the conditions for recognition on the results of any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in the said State or States.

Administrative Tribunals

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The 42nd Constitutional Amendment Act in 1976 introduced Article 323A according to which the Central and State Administrative Tribunals were set up. These Central and State Tribunals are set up to adjudicate cases related to recruitment, promotion, transfer and conditions of service of persons appointed to the Public services of the Union and the State Governments. The Parliament enacted the Central Administrative Tribunal (CAT) with branches in specified cities. Several cities also have the State Administrative Tribunals.

The Chairman and Vice-Chairman of the tribunal has the same status as that of the High Court Judges. The Chairman and Vice-Chairman's retirement age is 65 years. The other members' retirement age is 62 years. The service matters related to employees of the Public Sector Undertaking (PSU)s are brought under the Central Administrative Tribunal or State Administrative Tribunals by a notification.

- There are certain categories of employees who are not included in the purview of the Adminis trative Tribunals (ATs). They are mentioned below:
- The employees of the Supreme Court and the High Courts do not come under the purview of the Administrative Tribunals.
- Armed Forces personnel
- The employees of the Secretariat of the Lok Sabha and the Rajya Sabha are also exempted from the purview of the Administrative Tribunals.
- According to the 42nd Amendment Act, only the Supreme Court can entertain cases relating to service matters.
- The Chairman and other members of the CAT and SAT are appointed by the President of India after consulting the Chief Justice of India. The Chairman must be a Judge of the High Court or one who served for atleast two years as the High Court Judge or the Vice-Chairman of Tribunal.
- The Tribunals are set up to relieve the

Courts of overload load and expedite the process of justice both in the Central and in the State level.

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ADMINISTRATIVE REFORMS IN INDIA

Administrative reform is a continuing necessity in a society, more so when the society confronts a quantum jump in its basic framework of governance including, of course, its goals. Thus viewed India started its career of an independent nation-state with a profound contradiction. The polity which was adopted was new, entirely of its own making and choice.

But the instrument to implement its new tasks was inherited from the Raj and was thus continued from the past.

- Administrative reform is a consciously planned activity of manipulation of the public administration of the country with a view to making it fulfil its pre-set objectives. This view makes it obligatory to regularly evaluate the implementation of the planned change with a view to finding out whether the changes realize the preset goals. In other words, evaluation must

be viewed as a part of the process of administrative reform.

- However the term is gaining growing acceptance over the years. 'Administrative reform' has emerged as a standard expression in public administration, and is therefore preferred here. A view prevailed in the early years after Independence that consequent on fundamental changes in the polity and environment public administration will stir itself and imbibe appropriate orientations and set out to acquire new skills. Meanwhile, another development brought a new alliance into existence. One of the earliest decisions of Independent India was in regard to socioeconomic planning as the mode of the country's development.
- India adopted command type planning based as it was on an expanding network of control mechanisms. The colonially trained bureaucrat did not find himself out of place in the new regime. During the colonial period he was on top of the people; even under planning, his rule and domination remained unchanged but he was now ruling through license, quota and permits.

Evolution of the Indian Administrative System

- The public administrative system in India has a long history. Kingdoms existed in India several hundred years B.C.
- In the earlier era the civil servants performed the role of servants of the king. (Kautilya's Arthshastra describes the civil service of those days and lays down various norms 300 B.C. to 1000 A.D)
- During the medieval period they became State servants. The land revenue system was established during the Mughal period.
- The East Indian Company has a civil service to carry out their commercial functions.
- During the British rule they started as servants to the Crown, but gradually they started becoming 'Public Servants'. The British government set up the Indian civil service, primarily with the objective of strengthening the British administration in the UK. In this period the role of the civil services was to further the British interest, and the role was totally regulatory. Later on they assumed development roles also.
- After independence, the public services as we see today came into being.

Existing Administrative System in India

- The civil service system in post-independent India was reorganised.
- There are three tiers of administration-Union Government, State Governments and the Local governments.
- At the central level, the civil services include the All-India services, namely the Indian Administrative Service, the Indian Forest Service, and the Indian Police Service.
- There are various central services like the Indian Income Tax Service, Indian Railway Services etc.

- The State Governments have their own set of services.

Major Developments Impacting Administration

- Globalisation.
- Increasing disparities.
- Transformation of the world into a global village.
- Deregulation and privatization trends.
- Increasing awareness about human rights.
- State formerly interventionist, producer, regulator and seller now called upon to be a facilitator, promoter, and partner.
- Emergence of powerful technological solutions-computers and IT.
- Increasing expectations from the Governments to 'perform'.

After Independence

Several Commissions and Committees have gone into the subject, and suggested various measures. Major reforms have been brought about based on the recommendations of these. Some of the important studies/ reports are as follows:

- Report on Reorganisation of the Machinery of Government (1949) by Mr. Goplaswami Ayyangar: It recommended that the Central Ministries be bunched into Bureaus.
- The Gorwala Committee appointed by the Planning Commission. It gave a general report on Public Administartion
- Paul H. Appleby submitted two reports on Indian Administration. The O & M organisation and the Indian Institute of Public Administration were set up as a a result of the recdommendations.
- The Committee on Prevention of Corruption was set up under chairmanship of Mr. K Santhanam (MP). The Central Vigilance Commission was set up according to the committees recommendations.

Department of Administrative Reforms and Public Grievances is the nodal agency of the Government for Administrative Reforms as well as redressal of public grievances relating to the States in general and grievances pertaining to Central Government agencies in particular.

The Department disseminates information on important activities of the Government relating to administrative reforms best practices and public grievance redressal through publications and documentation. The Department also undertakes activities in the field of international exchange and cooperation to promote public service reforms.

- The mission of the Department is to act as a facilitator, in consultation with Central Ministries/Departments, States/UT Administrations, Organisations and Civil Society Representatives, to improve Government functioning through process re-engineering, systemic changes.
- Organisation and Methods, efficient Grievance handling, promoting

modernisation, Citizens Charters, award schemes, e-governance and best practices in government.

- A Commission on Review of Administrative Laws was set up by the Department of Administrative Reforms and Public Grievances on 8 May 1998 with a view to identify proposals for amendment of the existing laws, regulations and procedures having inter-sectoral impact and also for repeal of all dysfunctional laws.
- The various Ministries/Departments have decided to retain 822 Acts (which include 700 Appropriation Acts and 27 Reorganisation Acts). The remaining Acts are at various stages of processing.

IMPORTANT COMMITTEES

First Administrative Reforms Commission

The First Administrative Reforms Commission set up in January, 1966 was asked, in particular, to consider all aspects relating to the following subjects:

- The machinery of the Government of India and its procedures of work;
- The machinery for planning at all levels;
- Centre-State relationship;
- Financial administration;
- Personnel administration;
- Economic administration;
- Administration at the state level;
- District administration;
- Agricultural administration;
- Problems of redress of citizens grievances

Second Administrative Reforms Commission

- The Second Administrative Reforms Commission (ARC) was setup in 2005 under the Chairmanship of Shri Veerappa Moily to prepare a detailed blueprint for revamping the public administrative system. The Commission set up to suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government has finished its term on April 30, 2009.
- Governance is the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It consists of the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.
- Without good governance, no amount of developmental schemes can bring in improvements in the quality of life of the citizens. On the contrary., if the power of the state is abused, or exercised in weak or improper ways, those with the least power in the society - the poor- are most likely to suffer. In that sense, poor governance generates and reinforces poverty and subverts efforts to reduce it. Strengthening governance is an

essential precondition to improving the lives of the poor.

- The Tenth Plan document identified good governance as the single most important factor in ensuring that the Plan objectives are achieved. Among other things, decentralization of power and citizens' empowerment, effective people's participation through state and non-state mechanisms, greater synergy and consolidation among various agencies and programmes of government, civil service reforms, transparency, rationalization of government schemes and mode of financial assistance to states, improved access to formal justice system to enforce rights, reforms and strengthening of land administration and harnessing the power of technology for governance have been identified as the key priorities.

MEMBERS OF SECOND ARC

- Shri Veerappa Moily - Chairperson
- Shri V. Ramachandran - Member
- Dr. A.P. Mukherjee - Member
- Dr. A.H. Kalro - Member
- Dr. Jayaprakash Narayan - Member
- Smt. Vineeta Rai - Member-Secretary

The path-breaking Right to Information Act has come into effect recently. This new law applies to union and state agencies, local governments and even societies and trusts which receive public funds. This far-reaching law also provides for independent information commissioners, proactive disclosures and reporting mechanisms and has the potential to impact our governance process in a profound and positive way by empowering citizens.

In all, the Commission has presented the following 15 Reports to the Governsment:

- Right to Information-Master Key to Good Governance (09.06.2006)
- Unlocking Human Capital - Entitlements and Governance-a Case Study (31.07.2006)
- Crisis Management-From Despair to Hope (31.10.2006)
- Ethics in Governance (12.02.2007)
- Public Order-Justice for each peace for all. (25.06.2007)
- Local Governance (27.11.2007)
- Capacity Building for Conflict Resolution - Friction to Fusion (17.3.2008)
- Combating Terrorism (17.9.2008)
- Social Capital - A Shared Destiny (8.10.2008)
- Refurbishing of Personnel Administration - Scaling New Heights (27.11.2008)
- Promoting e-Governance - The Smart Way Forward (20.01.2009)
- Citizen Centric Administration - The Heart of Governance (30.3.2009)
- Organisational Structure of Government of India (19.5.2009)
- Strengthening Financial Management Systems (26.5.2009)
- State & District Administration (29.5.2009)

ADMINISTRATIVE REFORMS COMMITTEES

1. The Fifth Report from the Select Committee of the House of Commons on the Affairs of the East India Company 1812
2. The Public Service Commission 1886-87
3. The Royal Commission upon Decentralization 1907-09
4. The Govt. of India Clerks' Salaries Committee 1908
5. The Royal Commission on the Public Service in India 1914-17
6. The Report on Indian Constitutional Reforms 1918-19
7. Report of the Government of India Secretariat Procedure Committee 1919
8. The Indian Retrenchment Committee 1922-23
9. The Royal Commission on The Superior Civil Service in India 1924
10. The Reforms Enquiry Committee 1924
11. The Committee Appointed by the All-Parties Conference to Determine the Principles of The Constitution for India 1928
12. The Indian Central Committee 1929
13. The Indian Statutory Commission 7930
14. The Sub-Committee on Services (Indian Round Table Con ference) 1932
15. The Government of India Secretariat Committee 1937
16. The Committee of Organisation and Procedure 1937
17. The Committee on The Selectors and Training of Candidates for the India Civil Service 1944
18. Report on the Re-organisation of Central Government 1945-46
19. The Advisory Planning Board 1947
20. The Secretariat Re-organisation Committee 1947
21. The Central Pay Commission 1947
22. The National Committee 1948
23. The Economic Committee 1948
24. Re-organisation of The Machinery of Government 1949
25. Report on Public Administration 1951
26. Report on Efficient Conduct of State Enterprises 1951
27. Public Administration in India -Report of Survey 1953
28. The Railway Corruption Enquiry Committee 1955
29. The States Re-organisation Commission 1955

30. Examination of India's Administrative System with special reference to Administration of Governments' Industrial and Commercial Enterprises 1956
31. The Public Service (Qualification to Recruitment) Committee 1956
32. The Commission of Enquiry on Emoluments and Conditions of Service of Central Government Employees 1957-59
33. The Congress Parliamentary Party Sub-Committee on State Undertakings 1959
34. Report on Indian and State Administrative Service and Problems of District Administration 1962
35. The Committee on Prevention of Corruption 1962
36. The Committee on The Indian Foreign Service 1966
37. Interim Report of The Administrative Reforms Committee on Problems of Redress of Citizens' Grievances 1966
38. Report of The Study Team on Relations Between The Press and Administration 1966
39. Administrative Reforms Commission report on Public Sector Undertakings 1967
40. Administrative Reforms Commission Report on the Machinery of The Govt. of India and its Procedure at work 1967
41. Interim Report on Machinery for Planning 1967
42. Report of The Study Team on Financial Admn. 1967
43. Administrative Reforms Commission, Study Team on Promotion Policies, Conduct Rules, Discipline and Morale 1967
44. Report of the study team on Recruitment, Selection UPSC/State PSCs and Training 1967
45. Report of Working Group on Performance Budgeting 1967
46. Administrative Reforms Commission report on life Insurance Administration 1968
47. Administrative Reforms Commission Report on Railways 1968
48. Administrative Reforms Commission Report on Finance Account & Audit 1968
49. Administrative Reforms Commission Report on Economic 1968
50. Administrative Reforms Commission Report on Machinery for Planning 1968
51. Administrative Reforms Commission Report on State Administration 1969
52. Administrative Reforms Commission Report on Reserve Bank of India 1969
53. Administrative Reforms Commission Report on Centre- State Relationship 1969
54. Administrative Reforms Commission Report on Delegation of Financial and Administrative Powers 1969
55. Administrative Reforms Commission Report on Central Direct Taxes Administration 1969
56. Administrative Reforms Commission Report on Small Scale Sector 1969

57. Administrative Reforms Commission
    Report on Administration of Union Territories and NEFA — 1969
58. Administrative Reforms Commission Report on Personnel Administration — 1969
59. The Administrative Reforms Commission — 1969
60. Administrative Reforms Commission Report on Post and Telegraph — 1970
61. Administrative Reforms Commission Report on Treasuries — 1970
62. The Third Central Pay Commission — 1973
63. The Committee on Recruitment Policy and Selection Methods — 1976
64. Economic Administrative Reforms Commission — 1983
65. The Committee on Centre State Relations — 1988
66. The Committee to Review the Scheme of the Civil Services Examination (The Committee on The Civil Services Examination) — 1989
67. The National Development Council of Austerity — 1992
68. The Fifth Central Pay Commission — 1997
69. Expenditure Reforms Commission — 2000
70. Report of the Civil Service Examination Review Committee — 2001
71. Report of the Committee to Review in—Service Training of the IAS Officers — 2003
72. Surendra Nath's Committee Report — 2003
73. Committee on Civil Service Reforms — 2004

POLICE REFORMS

Reasons for Reforms

- There have been umpteen number of demands to reform the police system and laws as these are unable to deal with the contemporary challenges.
- Pro-reformists have been arguing that the 1856 Indian Police Act was framed in an age in which the crimes as witnessed these days were far . from imagination.
- The Supreme Court asked the government to bring about the police reforms soon.

Objectives of the reforms

- The most significant aspect of the proposed reforms is intended to be the mechanism to end external influence on the law enforcing body and improve the standards of police personnel.
- The aim is to make police efficient, effective, people friendly and accountable by ending corruption and breaking the cops' nexus with anti-social elements.

Soli Sorabjee Committee Recommendations

- A Government-appointed Committee Headed By renowned legal luminary Soft Sorabjee recently submitted its report to the government making a slew of recommendations.

- These include fixing a two-year tenure for director generals of police, creating separate wings of law and order and investigation and better working and living conditions for cops.
- The report significantly outlines the ways in which police can deal with the contemporary challenges like terrorism and insurgency.

National Security Commission

- There is a proposal to set up lie national security commission - for the selection and placement of chiefs of Central police organizations — to ensure that the DGPs of paramilitary forces like the BSF, CRPF, ITBP, SSB and CISF tire selected in a fair manner and have a fixed tenure of at least two years.
- The national security commission could he headed by the Union Home Minister and comprise heads of Central police organisations and security experts as members.
- In states, the State Sectuity Commission would act as a watch dog and be headed by the Chief Minister or Home Minister with a DGP as ex-officio secretary. The members of the panel would he chosen in a manner that would ensure Its complete independence.

State Police Complaint Authority

- State police complaint authority, to be headed by a retired Supreme Court or High Court judge. would look after the complaints of misconduct against officers of the rank of SP and above while the district complaint authority would look into complaints against officers of the rank of DSP and below.
- It will be headed by a retired District Judge. The head and other members of these authorities would he appointed by the state government in consultation with the Chief Justice of the high court and members would be drawn from a panel prepared by the Stale Human Rights Commission, Lokavukra and the State Public Service Commission.

Reforms in Criminal Justice System

Madhava Menon Panel Report

- A committee appointed by the Union Home Ministry on reforming the criminal justice system has suggested major changes. including multiple criminal codes based on the gravity of offence and setting up a separate national authority to deal with crimes impacting the county's security.
- The committee headed by Madhava Merton was appointed in May 2006.
- The report was submitted on 2 August 2007 to Union Home Minister Shivraj Patil. Observations:
- The panel took into account the widespread dissatisfaction with way crimes were investigated and criminals prosecuted. It noted that money and influence played significant role resulting in double standards. The rich often get away lightly and the poor are put to suffering. The registration of complaint for the poor is an ordeal.

Recommendations

- **One of the important recommendations is the creation of multiple criminal codes.**

- The committee wanted crimes to be reorganised into four distinct codes based on the gravity of injury and the response required to deal with it.
- Under the first two categories- social welfare offences code (SWOC) and correctional offences code (COC) offences- recourse to arrest should be an exception (except where violence is involved) and the elaborate prosecution system avoided.
- The third set of offences, to be included in the penal code (PC), is graver crimes punishable with imprisonment of more than three years and up to death.
- These cases require quick processing, ensuring the protection of human rights and greater accountability from law enforcement agencies. Finally, an economic offences code (EOC) should deal with crimes threatening the economic health and security of the country.
- Taking note of disparity in sentences for the same crime, the panel wanted a sentencing board of three judges including the trial judge for crimes punishable with death or life imprisonment.
- Probation should be invoked more often, especially for short-term jail terms and parole regulated more strictly.
- Setting up of a separate national authority to deal with crimes impacting country's security.
- Creation of an ombudsman for criminal justice.
- Full application of the Right to Information Act to all aspects of criminal justice.
- Corruption cases threatening national security and institutional foundation should be undertaken by a separate body with a status comparable to that of the Election Commission.
- E- FIRS should be introduced.
- Custodial violence should be tackled more severely.
- The audio/video statements to the police should he made admissible in evidence, provided the accused has consulted his lawyers.
- There should be a code of ethics for lawyers.
- Concept of legal aid should he enlarged to provide for psychiatric and rehabilitative services the victim besides incorporating a system of compensation.
- There should be two separate laws for child in conflict with law and two child in need of care and protection.

Expenditure Reforms Commission, 2001

- Government of India set up the Expenditure Reforms Commission, under the chairmanship of K.P. Geethakrishnan, a retired bureaucrat who had earlier functioned as the finance secretary in the Government of India. Appointed in February 2000, it was given one year's time to complete its economy exercise suggesting 'a road map for reducing the functions, activities and administrative structure of the Government'.
- The Expenditure Reforms Commission functioned as a staff

reduction committee in view of the Government's worry that the non-developmental expenditure of the Government was showing a very high rate of growth calling for its immediate downsizing. The Commission submitted ten reports, the final one in September 2001 when it was wound up.

Political Debate

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PRESIDENTIAL VS PARLIAMENTARY

Generally democracies are either Presidential or Parliamentary in form. In the former the Chief executive is directly elected by the people and is not responsible to legislatures. Removal of a President is normally through an impeachment procedure. The advisers to the President are chosen at random by the President and they are not members of legislature. On the other hand, in' a parliamentary democracy the Chief executive and advisers known as Council of Ministers are all chosen from legislature. Both individually and collectively they are accountable to legislature. The members of the Prime Minister's team are trained and tested in parliamentary system of governance and all of them go out if legislature chooses to cut their tenure.

Main features of a Presidential form of Government are:

1. **No distinction between the Notional and the Real Executive.** The executive powers of the Government are not only vested in the President, they are exercised by him in actual practice also. The President is, thus, both the head of the State and the head of the Government.
2. **President is elected by the people for a fixed term.** The President is elected, not by the Legislature, but directly by the entire electorate. Thus, both in regard to his election and tenure the President is not dependent on the Legislature.
3. **The President is the sole Executive.** All executive powers of the Government are vested in the President and are exercised by him. His Cabinet has merely the status of

an advisory body. Constitutionally, he is not bound by its advice. He may take the advice or may not take it at all. After getting the opinion of the Cabinet, he may refuse to accept it and may choose to act according to his own judgement.

4. **Both the President and the Legislature are independent of each other in respect of their terms.** The President and the members of his Cabinet are not members of the Legislature. The Legislature has no power to terminate the tenure of the President before its full constitutional course, other than by impeachment. Similarly, the President has no power to dissolve the Legislature before the expiry of its term. Thus, the President and the Legislature are elected for fixed terms.

Merits

The following are the merits of the Presidential form of Government:

1. **Greater Stability:** In the Presidential systems, the head of State has a fixed term. This ensures stability of the system. He is also free from day-to-day Legislative duties and control, which enable him to devote his entire time to administration.
2. **Valuable in time of War or National Crisis**: The Presidential executive is a single executive. In taking decisions, the President is not bogged down by endless discussions in his Cabinet. He can take quick decisions and implement them with full energy. Such a government, therefore, is very useful in the times of war or national crisis.
3. **Experts may be obtained to head the Departments:** The President can select the persons with proper expertise to head various departments of the Government. These heads of departments constitute his Cabinet. The Ministers under the Presidential system, therefore, prove to be better administrators, whereas Ministers in a Parliamentary system are appointed as Ministers not because of administrative acumen, but simply because of their political affiliation.
4. **Less dominated by the Party Spirit**: Once election to the office of the President is over, the whole nation accepts the new President as the leader of the nation. Political rivalries of the election days are forgotten. Both inside the Legislature and outside it, people look at problems from a national rather than a party angle. This gives the system greater cohesion and unity.
5. **No concentration of Legislative and Executive powers**: Presidential system is organised on the principle of separation of functions and checks and balances. This provides much better protection to personal liberties than in the Parliamentary system.

Demerits

Presidential system has been criticized on the following grounds:

1. **Autocratic and Irresponsible**: The Presidential system places immense powers in the hands of the President.

It is autocratic because the President is independent of the control of the Legislature. He may govern largely as he pleases. He cannot be made answerable regularly for the misdeeds of his administration. The Legislature (Congress) in the United States can turn down the appointments and treaties made by the President, but it can in no way remove him from the office, except through the impeachment. A power hungry President may misuse his powers to amass wealth, and to finish off political opponents.

2. **Presidential Election is an Union Affair**: The President in this system is elected directly. The election to this office generates great heat and tension. The whole national life gets disturbed. In countries where constitutional traditions are not as deep-rooted as in the United States, tensions and instability of the election time can even result in revolutions.
3. **Friction and Discord between the President and the Legislature**: The separation of the Executive and the Legislature may led to conflicts and deadlocks between the President and the Legislature. The Legislature may refuse to accept executive policies, or enact the laws suggested by the executive. The President, on the other hand, may show lack of interest in implementing the laws passed against his will. He may even veto the bills passed by the Legislature. Such deadlocks are more frequent when the party to which the President belongs does not have a majority in the Legislature.
4. **Responsibility is hard to find**: In the Presidential system, it becomes difficult to fix responsibility for the Governmental failures. The President may blame the Legislature, the Legislature may put the blame on President. In the US, most of the bills are referred to the committees of the Legislature, on the report of which the bills are passed. The powers of these committees are immense. The committees have not only seized the power of law-making, they have also made fixing of responsibility in this regard very difficult.

In Favour of Presidential form

The presidential form of government has some theoretical advantages:

- Cabinet of is based on competence and integrity;
- Ministers are not motivated by populist measures;
- No time is wasted in politicking;
- No incentive for desertions and defections; and
- The fixed tenure of the President ensures reasonable stability.

In Favour of Parliamentary form

- In India parliamentary form of democracy is better. Arguments in favour of Presidential type of democracy do not carry conviction. If the executive's tenure is fixed for a few years, the executive would be able to pursue his policies without being

impeached or challenged by legislature.

- This is not a great advantage. Executive decisions well debated and discussed are more welcome than a single individual pursuing a policy. Very often rifts occur between executive and legislature in the Presidential form of Government. Indian society is plural.
- Cultural differences are quite prominent. In such a situation it is possible to choose the members of the Council of Ministers from various regions and cultures. If at all there is any lack of expertise on the part of the Council of Ministers it is compensated by the permanent executive and various advisory bodies, committees and commissions
- Moreover, Indians have considerable experience in the parliamentary form of government. From 1923 onwards, leaders of India were well trained both as members of opposition and as treasury benches in legislatures. After all, a known devil is better than an unknown devil.
- Further more, in the composition of the Council of Ministers it is possible to accommodate leaders of various minorities which is not possible in the Presidential form of democracy. Presidential form of government has not solved many of the social, economic and cultural problems in many countries.
- In many countries of Asia, Africa and Latin America, the Presidential form has degenerated into dictatorship. The moral decay which is responsible for political rot will not disappear with the introduction of the Presidential system. There is perhaps no alternative but to give a fair trial to our parliamentary system, particularly in view of our socio-economic problems, vastness of the country, its traditions, national genius and diversity.

SEPARATION OF POWER

The doctrine of separation of powers, ascribed to a Frenchman, Montesquieu has come to mean an organic separation or separation of government powers, namely, the legislative, the executive, and the judicial powers. Any two of these powers should not fall in the same hands. They should not assume or combine functions essentially belonging toe each other. This is necessary to ward off any kind of tyrannical government. Thus, doctrine of separation of powers stated in its rigid form means that each of the branches of. government, namely, executive or administrative, legislative and judicial should be. confined exclusively to a separate department or organ of government. There should be no overlapping either of functions or of persons.

Separation of Power Used in USA

The Constitution of the United States is usually quoted as the leading example of a constitution embodying the doctrine of separation of powers. While Constitution of the U.S.A. does not expressly provide for a separation of power, the doctrine has been incorporated into the Constitution by the provisions that:

- All legislative powers shall be vested in a Congress
- All executive power shall be vested in President

- All judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish.

Separation Power Used in India

- Under the Indian constitution only executive power is 'vested' in the President while provisions are simply made for a Parliament and judiciary without expressly vesting the legislative and judicial powers in any person or body.
- Moreover, India has the same system of parliamentary executive as in England and the Council of Ministers consisting as it does of the members of legislature is, like the British Cabinet. Even, though the Constitution of India does not accept strict separation of powers it provides for an independent judiciary with extensive jurisdiction over the acts of the legislature and the executive.
- The Constitution in article 50, however, specifically ordains separation of the Judiciary from the Executive. The vitality and importance of the doctrine of separation of powers lies not in any rigid separation of functions, but in a working synthesis with the guarantee of judicial independence.
- Accordingly, the Indian Constitution has not recognised the doctrine of separation of powers in its absolute form but the functions of the different parts or branches of government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State, of functions, that essentially belong to another.
- The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way.

JUDICIARY VS LEGISLATURE

Conflict between legislature and the judiciary has often given rise to anxiety and grave concern to the governments at the Centre and the States. The executive heaves a sigh of relief when the conflict gets resolved or the matter is put in the cold storage after initial heat over the powers each of these wings of the States enjoy under the Constitution subsidies. There are a number of cases where friction between the two has arisen. There has been a perennial conflict not only in India but also in England about the respective rights and privileges of Members of Parliament and the Judiciary.

Indian Scene

- In India, under the written Constitution, the three organs of the Government, viz. the Legislature, judiciary and the executive, have to function within their respective powers and none of them can exceed its powers. Whether, any one of these organs has exceeded its powers or not, is a matter of judicial interpretation.
- In several decisions of the Supreme Court, it has been held that the

Supreme Court is the ultimate interpreter of the Constitution and its interpretation is binding on all courts, tribunals and authorities in this country. Under article 141 of the Constitution, the law declared by the Supreme Court is binding on all parties.

- So, if there is any doubt that any particular organ of Government has exceeded its powers, the interpretation ultimately rests with the Supreme Court.
- Even the powers granted by the Constitution to the Members of Parliament and the Assembly are subject to other provisions of the Constitution. They cannot act arbitrarily; nor can they deprive the citizens of their fundamental rights arbitrarily.
- There is a provision in the Constitution for codifying the law relating to the privileges of legislatures and if Parliament makes such a law that will be a law within the meaning of Article 13 of the Constitution; validity of which can be tested before the Supreme Court in the same manner as any other legislation.
- The scheme of the Constitution does not contemplate that Parliament or a State Legislature is not at all liable to be questioned for any violation of law since rule of law is the corner-stone of the Constitution of India.
- Though Legislatures in India have plenary powers they function within limits prescribed by the material and relevant provisions of the Constitution.

Main Areas of Conflict

Following are the Main areas of conflict between the Legislature and the Judiciary:

- Existence, extent and scope of Parliamentary privileges and power of Legislatures to punish for contempt,
- Interference in the proceedings of Parliament/ Legislatures,
- Decisions given by the Presiding Officers of Legislatures under the Anti-defection law; and
- Decision given by the Presiding Officers of Legislatures in administration of their Secretariats.

Powers, Privileges and Immunities of Members of Legislatures

The relevant provision of the Constitution relating to powers, privileges and immunities of the members of Parliament and State Legislatures is incorporated under Article 105 and Article 194 respectively. These Articles provide that:

- Subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislatures, there shall be freedom of speech in the Legislature of the Union and of every State.
- No member of any Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof,

and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

- In other respects, the powers, privileges and immunities of a House of any Legislature, and of the members and committees of a House of such Legislature, shal be such as may from time to time be defined by that Legislature by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) act, 1978.

LEGISLATIVE COUNCILS

Arguments in Favour of Legislative Council

The supporters of these Upper Houses of State Legislatures advance strong arguments. They feel that these Houses must be retained in the national interest. In favour of these Houses, it is said that:

- In India the Lower Houses are constituted on the basis of universal adult franchise. There are no voting qualifications based on education and property. In the Lower House, both the literate as well as illiterate vote on political considerations. It is argued out that in case democracy is to be saved from the caprice of uneducated persons, it is' essential that there should be Upper House.
- Another argument advanced is that in every state there are people who have excelled in certain walks of life. The nation must take advantage of their abilities and capabilities. But these persons have no interest in contesting elections. Their services can best be utilised only with the help of Vidhan Parishads.
- It is also argued that the very fact that there is another House, creates a very sobering effect on the Lower House, which does not feel tempted to pass a bill either in haste or under the influence of some momentary impulses. In case any half cooked measure comes up then at least Upper House points that out to the duly elected representatives of the people, leaving to them to accept the suggestion or not. In other words, it points out gravity of problems and suggests solution but does not very much care whether suggestions have been accepted or not.
- Another utility of the Legislative Council is that minority communities in every state can be given representation in this House. Such representation is likely to keep them very much happy and satisfied. Similarly, the services of experienced persons who do not wish to contest elections can also be used in this House.
- Legislative work every where has much increased and it is becoming impossible for a single House to handle it efficiently. So some non-money bills or less controversial matters can be introduced in the

Upper House and in this way pressure of work in the Lower House is considerably reduced. This is always a welcome relief for the Lower House.

- It is accepted that law making process has become time consuming and sufficient time is taken by each House before a bill becomes an Act. It is also accepted that during this time, the people get an opportunity to express their view point.
- But when the bill goes to the Upper House, the people are bit more clear as to what is going to be passed. Moreover, this time interval is always a welcome because during this period the people can express them selves and if need be changes can even now be introduced.
- It is also argued that Upper House does not stand in any way on the determination of duly elected representatives of the people. All that they do is that they point out certain drawbacks and shortcomings, which should always be welcome. These Houses can serve very useful purpose in case all political parties return there men of eminence who have long and varied experience of life and maintain a good position in society.
- If they are the people with the strength of character and also capacity to render service to the society, they can do a lot of good to the society. Only those should be nominated who enjoy high reputation for their qualities of head and heart and a spotless life career.

Arguments Against Legislative Council

- In view of inherent weaknesses of Vidhan Parishads (Legislative Councils), some critics are of the view that these should be abolished. According to them, in case Parishad agrees with what is passed by the Assembly then it is simply a superfluous House. In case, it does not then it will be characterized as a mischievous. House and will be charged as citadel of reaction standing on the *way* of policies and programme of duly elected House.
- Another criticism levied against this House is that it is no check on the Assembly. A money bill can be delayed only for a period of 14 days, which is very insufficient period for the members to express their view point. Even in the case of non-money bills, it can only delay a bill for a period of 4 months and if the Assembly is bent upon passing a measure no efforts on the part of the Parishad can check it.
- The Council of Ministers also does not much fear from it because a vote of no confidence does not have any effect for the Ministry.
- It is also argued that the Parishads are usually not even progressive. These have no directly elected elements. Some of the members are nominated ones. Their composition is such that these are not supposed to know public sentiments. Thus, the House is characterised as reactionary and conservative.

- It is argued that in these Houses scholarly or literary or social workers are not nominated. Instead, this chamber is used for providing berth to defeated politicians or those active party workers who somehow or other could not be accommodated in the Assembly or dissidents in the party to avoid party frictions. In other words, the Upper Houses neither represent any caste, class or section of society but only vested interests. All elections or nominations are made on party basis and these chambers are only for increasing party interests and influences.
- A usual argument is that since these chambers do not serve much useful purpose, therefore, their maintenance is not worth the cost which the nation is required to pay for its upkeep and by way of salaries, allowances and other expenses of the members. In case Parishads are abolished the tax payer will be much saved and the money saved can be used for other useful purposes, including economic development.
- The very fact that only six States have retained Vidhan Parishad proves that bicameralism is not a very popular institution in India in the states. Moreover, practical experience has shown that those states which have no Legislative Councils are in no way doing work less efficiently than the other states. In case, the Councils had been doing very useful work, then the other states must have gone for it.
- Then it is not clear to whom the Parishads represent. In case it is said that in it the teachers, and graduates are to be given representation, along with those who are engaged, in the promotion of co-operative work, then why only these vocations and why not other very important vocations and occupations.
- In case it is felt that in that those who have excelled in any walk of state life, should be given representation, then why nomination has been kept at only 1/6th. It should have been kept much higher.
- It is presumed that in this House there will be calm and serene atmosphere, where every problem will be discussed in a passionless atmosphere because the elders have held out no promises to the people at the time of their election.
- But again this is not true because in the Upper House also political considerations very much weigh with the members. Each member votes more or less on party lines and it is said that an Upper House is just extension of the Lower House, in so far as political parties are concerned. There is also no calm atmosphere in these Houses. The elders quite often quarrel with each other and do not provide much needed calmness.
- According to some thinkers, Upper Houses are necessary because these give sufficient time to the people to express their views. According to them when a bill is traveling from the

Assembly to the Parishad, the people come to know what is going to be passed. Intervening time can be utilised for expressing opinion by the public and in case there are strong reservations, the bill can be modified as well.

- But again this is not correct because the time taken in passing each bill in one House and stages through which it passes are so many that the people have sufficient time to express themselves, through press and platform. On this ground also, the Upper Houses have no utility.

To conclude, the Upper Houses of State Legislatures are likely to remain under criticisms, in case these are used for providing berth to defeated politicians so that they can become Chief Ministers or Ministers by becoming a member of either House of legislature. Politicians must take the responsibility to firmly establish the prestige of these constitutional institutions.

JUDICIAL ACTIVISM

Judicial activism is a political term used to describe judicial rulings that are suspected to be based upon personal and political considerations other than existing law. Judicial restraint is sometimes used as an antonym of judicial activism. The term may have more specific meaning in certain political contexts. Concerns of judicial activism are closely tied to constitutional interpretation, statutory construction, and separation of powers. The honorable Supreme Court issued a notice to the Union government seeking an explanation of the steps taken by it to ameliorate the plight of Indian students in Australia, who have been facing racially motivated attacks. Foreign policy is widely considered to be non-justiciable, that is, courts cannot interfere.

Yet, the interference by Indian courts has not wholly been condemned. The next, and almost equally striking, instance is a Supreme Court notice questioning the proliferation of Mayawati statues, allegedly worth crores of rupees, in Uttar Pradesh. Like foreign policy, budgetary allocations are non-justiciable. But judicial interference in this matter too has not been deprecated, nor is it worthy of serious censure. The Emergency of 1975 and its aftermath constituted defining moments for judicial activism in India. In the infamous decision in ADM Jabalpur v. Shukla (1976) the Supreme Court permitted civil liberties to be suspended during the Emergency. The very Constitution of India permitted the suspension of civil liberties in Part III, such as the right to personal liberty.

- The Constitution was also amended extensively to permit the excesses of the Emergency. In 1975, therefore, permitting civil liberties to be suspended during the Emergency would arguably have constituted deference both to the intent of the framers of the Constitution and to legislative wisdom - in other words "judicial restraint."
- The Supreme Court's decision in that case, however, despite being judicially restrained, struck a devastating blow to civil liberties in India, and was widely condemned thereafter. Justice H.R. Khanna's eloquent dissent was activist, but celebrated.
- Judicial activism during the Emergency was clearly the need of the hour. Thus, "judicial activism" had a

strong moral basis after the Emergency - after all, the Emergency judges ought to have been activist.

- Judicial activism has virtually been constitutionalised in South Africa. The Indian Supreme Court has enforced socio-economic rights, though they are not considered enforceable by the Constitution - the right against malnutrition and the right to shelter are examples. Despite the fact that the Constitution did not permit socio-economic rights to be justiciable or enforceable, the Emergency had taught Indian judges that express constitutional provisions may not necessarily translate into social legitimacy.
- Activist judges in India have consequently fashioned innovative remedies to enforce socio- economic rights. The traditional rule that courts will not issue injunctions requiring periodic supervision does not typically apply in socio-economic rights cases, where Indian courts periodically review the implementation of their orders almost in an administrative capacity.
- However, judicial activism in India has now taken on an interesting face. The courts in India pursue a form of review which can be described at best as 'dialogic' - a term used famously by Peter Hogg and Allison Bushell in the context of the Canadian Supreme Court's decisions.
- The Indian Supreme Court's gaze has now gone beyond the protection of the socially and economically downtrodden, and into the realm of public administration. However, its opinions often resemble aspirations rather than binding pronouncements.
- These opinions bear a strong resemblance to unenforceable, advisory opinions since it will be difficult to comprehensively enforce them as law. They nonetheless set the tone for public discourse and debate.
- Their greatest value lies in the creation of a dialogue with the other branches of government, in the consequent endeavor towards transparency in public administration, and in their giving a voice to the Indian citizen, albeit only the citizen who has the time and the resources to petition the courts.
- Attempts to petition the Supreme Court recently have demonstrated this trend towards dialogue and transparency. Following the Mumbai terror attacks of November 2008, a former Attorney General of India filed a petition before the Supreme Court seeking to better equip the Indian police. The public interest petition in the context of the attacks on Indian students in Australia tells a similar tale.
- However, a court which issues unenforceable (one should say enforceable with some difficulty) opinions, toys with the dangerous possibility of delegitimating its own existence. It also begs the question of institutional efficiency: of whether

such functions can be better performed by another institution which does not have the Supreme Court's case load but one which matches its visibility - if such an institution were ever capable of being devised. However, whispers of corruption in the judiciary, and the act of withholding information regarding judges' assets, do not make the case for judicial activism any stronger.

- For the first time during the judgment of the majority in the Keshavananda Bharati case (the fundamental rights case) court held that a Constitutional Amendment duly passed by the legislature was invalid if it damages or destroying its basic structure. This was a gigantic innovative judicial leap unknown to any legal system. The masterstroke was that the judgment could not be annulled by any amendment to be made by Parliament because the basic structure doctrine was vague and amorphous.
- Judicial activism earned a human face in India by liberalising access to justice and giving relief to disadvantaged groups and the have-nots under the leadership of Justices V.R. Krishna Iyer and P.N. Bhagwati. The Supreme Court gained in stature and legitimacy. Later, when the independence of the judiciary was threatened by punitive transfers, the court entered the arena of judicial appointments and transfers.
- With the increasing criminalisation and misgovernance and the complete apathy of the executive, the court (under the leadership of Chief Justice Verma and Justices Bharucha and Sen) took up the case of terrorist funding linked to political corruption through the 'hawala' route in the Vineet Narain Case (Jain hawala Case). A cover-up by the Central Bureau of Investigation to protect its political masters was exposed and the court monitored the investigation upholding the principle "Be you ever so high the law is above you."
- The courts on several occasions have issued directions in public interest litigation (PIL) covering a wide spectrum such as road safety, pollution, illegal structures in VIP zones, monkey menace, dog menace, unpaid dues by former and serving legislators, nursery admissions, and admissions in institutions of higher learning. There is no doubt that sometimes these orders are triggered by righteous indignation and emotional responses.
- The common citizens have discovered that the administration has become so apathetic and non-performing and corruption and criminality so widespread that they have no recourse except to move the courts through PIL, enlarging the field for judicial intervention.
- The great contribution of judicial activism in India has been to provide a safety valve in a democracy and a hope that justice is not beyond reach. Judicial activism has come to stay in

India and will prosper as long as the judiciary is respected and is not undermined by negative perceptions, which has overtaken upon the executive and the legislature.

- There is concern among the public about lack of transparency in judicial appointments and a sense of increasing unease because of a lack of a credible mechanism to deal with serious complaints against the higher judiciary.

JUDICIAL REVIEW

- Law will not be in force until an amendment of the constitution relating to the same matter.
- In such situation the provision of that law will again come into force, if it is compatible with the constitution as amended. This is called the Theory of Eclipse.
- In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the constitution, otherwise the laws and amendments will be deemed to be void-ab-initio.
- Judicial review is actually adopted in the Indian constitution from the constitution of the United States of America. In the Indian constitution, Judicial Review is dealt under Article 13. Judicial Review actually refers that the Constitution is the supreme power of the nation and all laws are under its supremacy. Article 13 deals that
- All pre-constitutional laws, after the coming into force of constitution, if in conflict with it in all or some of its provisions then the provisions of constitution will prevail and the provisions of that pre-constitutional.

IMPACT OF THE 42ND AMENDMENT

The 42nd Amendment enacted during the Emergency made far-reaching changes to curtail the powers of the courts and to make the Parliament sovereign. Firstly, the 42nd Amendment stated that no amendment to the Constitution could be questioned in a Court of Law. And "for the removal of the doubts, it is hereby declared that there shall be no limitation what ever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this constitution." In this manner, through this Amendment the Supreme Court's power to judicial review of constitutional amendments was taken away to establish the complete and total sovereignty of Parliament. The Amendment stated that:

- A High Court cannot pronounce invalid any Central law,
- The Supreme Court shall not pronounce a State law as unconstitutional unless a Central law has also been challenged.

Further, the minimum number of judges of the Supreme Court who shall sit to determine the constitutional validity of any Central or State law shall be seven and in the case of High Court, five. It was also stated that a majority of not less than two- thirds of the judges hearing such a case must agree before a law is declared invalid. But after this the 43rd Amendment was passed which restored the pre-emergency position of the Supreme Court's power of judicial review over laws passed by state legislatures and Parliament.

- As far as Parliament's sovereignty with regard to amending the Constitution is concerned, there is no change. The power of Parliament to amend the Constitution exists as under the 42nd Amendment.
- The judgment of the Supreme Court in the Minerva Mills case in May 1980 was a setback to the position of unlimited powers claimed by the Parliament to amend any part of Constitution. This judgment recognized only limited powers of the Parliament to amend the Constitution without altering the basic structure.
- In such situations, the Supreme Court or High Court interprets the laws as if they are in conformity with the constitution. If such an interpretation is not possible because of inconsistency, and where a separation is possible, the provision that is inconsistent with constitution is considered to be void. In addition to article 13, articles 32, 124, 131, 219, 226 and 246 provide a constitutional bases to the Judicial review in India.
- The Indian Constitution has not recognized the doctrine of separation of powers in its absolute form but the functions of the different organs have been clearly differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ of the functions that essentially belongs to another.
- Though the Constitution has adopted the parliamentary form of government, where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.
- The Judiciary plays a very important role as a protector of the constitutional values that the founding fathers have given us. They try to undo the harm that is being done by the legislature and the executive and also they try to provide every citizen what has been promised by the Constitution under the Directive Principles of State Policy.
- In such type of situations Supreme Court or High Court interprets the law as if they are in conformity with constitution or not. If find it not in conformity, they declare it either whole & if possible to separate, then only that much of provision to be void which are inconsistent with that of the Constitution.
- Judicial review in India comprises of three aspects: judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action. The judges of the superior courts have beefy entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it.
- It is they who have to ensure that, the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of functions, transgress constitutional limitations. Thus, judicial review is a highly

complex and developing subject.

- Judicial review has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution.
- The court in its exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens' rights of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds, which could be expended on building, hospitals, roads and the like, or overseas aid, or compensating victims of crime.

JUDICIAL REFORM IN INDIA

- The institution of judiciary and the rule of law is the essence of modern civilization and democratic governance. It is important that people's faith in judiciary and the rule of law is not only preserved but enhanced as well and simple way to achieve that is by ensuring an effective system of justice delivery.
- For decades judicial system has been crying for reforms as the cheap and speedy justice has been by and large elusive.
- There is a huge pendency of over 2.5 crore cases despite measures to reduce it. Experts have expressed fears that there has been a loss of public confidence in the judiciary, and an increasing resort to lawlessness and violent crime to settle disputes. They feel, that public confidence in the judiciary must be restored immediately, in order to arrest and reverse this negative trend.
- Over the last five decades various legally constituted/government authorities such as the Law Commission of India, Parliamentary Standing Committees, and other government appointed Committees, several benches of the Supreme Court, eminent lawyers and judges, various legal associations/ organizations and NGOs have identified problems in the judicial system and called for addressing them speedily.
- Yet, the effective implementation of many such recommendations is still pending. According to one of the Parliamentary Standing Committee on Home Affairs (2001) almost 50% of the reports of the Law Commissions awaited implementation.
- The poor budgetary support to the judiciary has been alluded to as one of the reasons for non-implementation of judicial reforms. Rs.700 crore allocated to the judiciary during the 10th Plan (2002-2007) constituted 0.078 percent of the total plan outlay of Rs. 8,93,183 crore. During the Ninth Plan the allocation was even less, only 0.071 percent.
- It has been observed that such meager allocations are too inadequate to meet the requirements of the judiciary. It is said that India spends just 0.2 percent of the gross national product on judiciary. According to the first

National Judicial Pay Commission, all states but one have been providing less than 1% of their respective budgets for subordinate judiciary which is afflicted with huge pendency.

- But, lack of resources cannot be a reason for denying justice or any other fundamental right to most citizens, especially the disadvantaged sections, who "have limited access to justice, due to unclear laws and high costs that act as effective barriers".
- Observing that 'justice delayed is justice denied' in P. Ramachandra Rao v. State of Karnataka (2002), a Constitution Bench of the Supreme Court reiterated from Hussainara Khatoon case that "It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21,19 and 14 and the preamble of the Constitution as also from the directive principles of State policy.
- It is high time that the Union of India and the various States realize their constitutional obligation and do something 'concrete in the direction of strengthening the justice delivery system."
- Other major factors include neglect in improving judicial infrastructure over the past decades, inordinate delays in filling up vacancies of judges and very low population-to-judge ratio that require immediate attention to improve the performance of judiciary.
- The 120th Law Commission Report had pointed out that India's population-to-judge ratio is one of the lowest in the world with only 10 judges for every million of its population as compared to about 150 judges for the same number in the United States and Britain. According to the 'All India Judges' Association', the Supreme Court had directed the government to increase the judge strength to 50 judges per 10 lakh population by 2007 in a phased manner, which has not been fulfilled so far. Even for filling up of vacancies of approved strength of judges much needs to be done.
- It is observed that 25 percent of the judge positions remain vacant due to procedural delays. The sanctioned strength of judges of the High Courts was 886 and working strength was 608 as on 6th January 2009 leaving 278 vacancies. Similarly, with 11,767 working strength of Subordinate Judges there were 2710 vacancies. on March 1, 2007.
- The E-enabling will help the courts to function more efficiently and speed up the disposal of cases. It would also network these courts with the higher courts and thus facilitate greater accountability.
- Another centrally sponsored scheme for development of infrastructure facilities including setting up of court buildings and residential accommodation for the judicial

officers is under operation since 1993-1994. Rs. 286.19 crore were released to the States from 2006-07 to 2008-09 under this scheme. The outlay for the judiciary during the 11th Plan has been sought on the basis a perspective plan having projections of such requirements over a ten year period.

- Meanwhile, the disposal of cases can be increased by greater use of the existing infrastructure with courts having more than one shift. Gujarat is one of the states where evening courts are functioning with appreciable results.
- Fast Track Courts (FTC) recommended by 11th Finance Commission have also proved effective in addressing pendency. Keeping this in mind the government has already extended the term of 1,562 FT courts operating at sessions' level up to 31st March 2010 by providing central support to the states. As per union Law Ministry, these courts have out of 28.49 lakh transferred cases to them disposed off 21.83 lakh cases.
- The Central Government proposes to set up more than five thousand Gram Nyayalayas at intermediate panchayat levels under the Gram Nyayalayas Act, 2008 in order to bring justice delivery system at the door step of rural population. The procedure to be followed by these courts has been kept simple and flexible so that these cases can be heard and disposed of within 90 days' period.
- Recourse to Alternate Dispute Redressal (ADR) mechanism can greatly help in reducing pendency of cases through arbitration, negotiations, conciliation and mediation. In the United States and many other countries, ADR as dispute resolving mechanism has been highly successful.
- India already has Arbitration Conciliation Act 1996 and the Code of Civil Procedure has also been amended. However, the measure suffers from grossly inadequate number of trained mediators and conciliators. Both judicial officers and lawyers need to be trained with a view to grow alternate system into the mainstream of justice.
- The government will have to take an overall view of procedural laws that allow endless interlocutory appeals and the role of 'delay lawyers' in posing impediments to resolve cases. Despite the Criminal Procedure Code (Amendment Act) 2002, bringing change in the procedure in suits and civil proceedings by way of reducing delays, the situation remains far from satisfactory.
- The issue of frivolous litigation will also have to be addressed and one of the ways could be by imposing heavy costs. The police investigation system needs to be strengthened and modernized that would decrease load on judiciary.
- While having a holistic view of all the intricacies and nuances of the justice

delivery system, its present pitfalls and fault lines will have to be considered to ensure transparency and accountability of the judicial system.

NAXALISM - PERCEPTION AND REALITY

- Addressing the senior police officers of the country on September 15, Prime Minister Manmohan Singh reiterated that left-wing extremism is perhaps "the gravest internal security threat our country faces", and deplored that "we have not achieved as much success as we would have liked in containing this menace".
- The Naxal influence has indeed spread over a huge geographical area. According to the Home Minister's own statement, various Naxal group have pockets of influence in 20 states across the country, and over 2000 police station areas in 223 districts of these states are partially or substantially affected by the menace.
- The states particularly affected are Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh, West Bengal, Kerala, Karnataka, Tamil Nadu, and Haryana.
- Naxal violence has been on a high trajectory. There have been violent incidents in about 400 police station areas of 90 districts in 13 states. There were, in 2008, a total of 1591 incidents of Naxal violence resulting in 721 killings.
- This year, there have already been (till August 27) 1405 incidents of Naxal violence resulting in the death of 580 persons. Casualties among security forces personnel have been quite high. Altogether, 231 security forces personnel lost their lives in Naxal violence in 2008, while 270 (Oct 15) personnel have already lost their lives this year so far.
- The Ninth Congress of the People's War Group held in 2007 "reaffirmed the general line of New Democratic Revolution with agrarian revolution as its axis and protracted people's war as the path of the Indian revolution", and resolved to "advance the people's war throughout the country, further strengthen the people's army, deepen the mass base of the party and wage a broad-based militant mass movement against the neo-liberal policies of globalization, liberalization, privatization."
- Naxal activities have since then been on a canter. The expansion of Naxal influence is also to be attributed to their plan to take the battle to new fields. This was spelled out by the party's politbureau in one of its policy documents where it was mentioned that "we have to further aggravate the situation and create more difficulties to the enemy forces by expanding our guerrilla war to new areas on the one hand and intensifying the mass resistance in the existing areas so as the disperse the enemy forces over a sufficiently wider area; hence the foremost task in every state is to

intensify the war in their respective states while in areas of intense enemy repression there is need to expand the area of struggle by proper planning by the concerned committees; tactical counter-offensives should be stepped up and also taken up in new areas so as to divert a section of the enemy forces from attacking our guerrilla bases and organs of political power."

- While it is true that the Naxal movement is on a high trajectory and that its arc of violence is expanding, it is also true that there has been considerable dilution in its ideology. The present generation of Naxal leaders are obsessed with the idea of capturing power with the barrel of the gun, and the success of Maoists in Nepal seems to have turned their head.
- They do not realise that the accretion in their influence and support has not been so much due to the relevance or even appeal of their ideology as due to the inefficiency and corruption of the government which has generally failed to deliver, particularly in the far flung remote areas. An analysis of some of the basic concepts would bring this out.

Anti – Development

The Naxals blame the government for poverty, for poor development, and for the absence of basic amenities in the interior areas. And yet, ironically they have adopted an anti-development posture. According to a report, the Naxals have, during the period January 2006 to June 2009, attacked 316 economic targets which gave employment to thousands of people including the tribals in different states, particularly those falling in the so called Red Corridor. Home Ministry statistics show the following numbers of attacks on economic targets during the last few years:

2006	71
2007	80
2008	109
2009	56 (till June)

The following establishments were particularly targeted:

Railways	122
Telecom	83
Mines, Steel Plants	59
Transmission lines	42

- In a document *Tasks Ahead,* the party says that "the people should be educated as to how the entire region is being handed over to the comprador big business houses like the Tatas in Lohandiguda, Essar in Dhurli, NMDC's proposed steel plants in Nagarnaar and Dilimili, Raoghat mines and the Bodhghat projects.
- The conspiracy should be exposed and a broad-based movement built against displacement." The land acquisition for Tata's five million tonne steel project at Jagdalpur has been hampered by the Maoists who have infiltrated the farmers' outfit seeking better payment and resisting land acquisition.
- Officials allege that the Naxals do not want of any economic activity in the areas of their influence because they feel that once the administration fills

up the gaps in infrastructure, their relevance and appeal would diminish.

- Some intellectuals argue that the Naxal opposition stems from the fact that they want more inclusive development. They accuse the government of usurping land in tribal areas with a view to obliging big business houses, who are encouraged to set up economic zones and given concessions for the purpose.
- There may be some truth in the argument, but it is difficult to imagine how the development process could be accelerated without acquiring land somewhere. There could be difference of opinion about the selection of site, but places for setting up big plants will have to be earmarked.

Nexus with Insurgents

- The Naxals' nexus with the insurgent organizations has further exposed them. There are indications that the PW cadres received training in the handling of weapons and IEDs from some ex-LTTE cadres.
- Besides, they have *entente cordiale* with the National Socialist Council of Nagaland (IM). Some batches of Naxals have also received arms training from the United Liberation Front of Assam. Besides, the Communist Party of India (Maoist) has fraternal relations with the Communist Party of Nepal.
- According to a recent report, the ISI is trying to reach out to the Naxals. The Lashkar-e-Toiba had directed its operative, Mohammed Umer Madani, to recruit Maoists and help them with money and firearms.
- Madani admitted before the police that his plan included giving preliminary training to the jehadis recruited from different parts of India in Maoist strongholds and then sending them to Pakistan for further training.

Extortion

- Extortion is the biggest source of revenue for the Naxals. They extort money from industrialists, businessmen, contractors, government officers and any other function-aries operating in the areas where they operate.
- A major steel company is reported to have been making regular payments to the Naxals, though recently the Naxals attacked it and torched their vehicles when they refused to ferry arms on their planes. According to a confessional statement, the Naxals are extorting Rs. 2 crore from the NMDC every year.

Opium Cultivation

- There are reports that Naxals have started encouraging the cultivation of poppy in certain areas of Bihar and Jharkhand. This is a very ominous development.
- The greatest source of revenue for the Taliban, as is known, is the cultivation of poppy and the subsequent sale of heroin which ultimately finds its way into the markets of Europe and USA.

Boycott of Elections

- The Naxals' objective is to bring about a Democratic Revolution in the country. India, according to them is a "semi-colonial and semi-feudal country" and the Indian State is completely in the hands of "big landlords and comprador-bureaucrat capitalists".
- The Naxals methods are however most undemocratic. They always call upon the people to boycott the elections. There are instances of people having their fingers chopped off for having exercised their franchise.
- Polling parties are attacked and occasionally the ballot boxes are looted. It is another matter that people still vote; Gadchiroli recorded over 70% turnout in the recent Assembly elections despite the Maoists' threats.

Intelligentsia's Support

- The Naxals have the support of a section of the intelligentsia. These mostly include teachers, students and writers. Chhatradhar Mahto, the tribal leader of Lalgarh who was arrested by the West Bengal police, reportedly disclosed the names of 20 Kolkata based University students and three of their professors who have links with the Naxals. According to Mahto, the Naxals occasionally consulted the professors and even took their assistance in drafting policy documents.
- Human Rights groups have a soft corner for the Naxals. There could be no objection to that. But the problem is their blinkered view of the total picture. They project police actions in the most lurid colours but are blind to the excesses and atrocities of the Naxals. It has been rightly said that "our civil society must give up this dangerous flirtation with the ideologies of hatred and murder."

Option before the Government

- The trajectory of Naxal violence has left the government with no option but to undertake comprehensive police operations against them. Unfortunately, certain sections, in their keenness to sensationalise the developments, are painting the government response in gory colours. The proposed action is being described as "war" on the Naxals while some say that it is the beginning of a "civil war" in the country.
- There is no question of a war being waged. The point to be understood is that no government worth the name can remain a mute spectator to its authority and writ over a territorial area being challenged. It has to take action against the elements challenging its authority.
- Be sides, how can you tolerate a group which is attacking police stations, ambushing patrols, extorting money, blowing up schools, disrupting the construction of roads, demolishing communication towers, etc. The activities of such a group have to be put down.
- There is no question of a civil war either. It is not that two groups of the civilian population are fighting

against each other. It is a confrontation between the forces of law and order on the one hand and the People's Guerrilla Liberation Army on the other.

- This is, however, not to absolve the government of its blame - its inefficiency, incompetence, corruption, and failure to alleviate poverty, provide gainful employment and minimise the alienation of land from the tribals.
- It is a sad commentary on our planning process that, as admitted by the Planning Commission in the Eleventh Five Year Plan document, "sixty years after independence, over a quarter of our population still remains poor". It is distressing that the progress on land reforms has been "dismal". It is also a matter of shame that, as observed by an Expert Group, the tribals of the country are feeling "totally exhausted, impoverished, and traumatised".

Conclusion

- Poor governance, it must be acknowledged, is at the root of the Naxal problem, and the government is entirely to blame for this. There is adequate justification for the planned police offensive against the Naxals.
- However, there is no justification for the socioeconomic malaise which still afflicts the country. Unless these factors - of poverty, land reforms, unemployment, corruption and alienation of tribals - are addressed, police action would prove to be a temporary palliative only.
- In any case, it is time that the Naxals are exposed for what they are. They claim to be champions of the poor and yet have no compunctions in annihilating people from that section of society. They claim to be protagonists of the tribals and yet they antagonised the tribals of Bastar by interfering with their social customs and cultural practices.
- They shed tears for the poorest of the poor and yet sabotage the schemes to alleviate their poverty. They want to bring about a democratic revolution in the country and yet try to disrupt every election. They claim to be patriots and yet have a nexus with the anti-national forces. The intellectuals' support for the Naxals has a romantic touch about it. The reality is quite different.

Multiple Choice Question

1. Match the following features of the Indian Constitution and their sources.

	I	II
(A)	Bill of Rights and Judicial Review	1. England
(B)	Parliamentary system of democracy	2. Ireland
(C)	Directive Principles	3. U.S.A.
(D)	Residuary powers with Centre	4. Canada

Codes:

(a) A-4, B-1, C-2, D-3
(b) A-1, B-2, C-3, D-4
(c) A-3, B-4, C-2, D-1
(d) A-3, B-1, C-2, D-4

2. In what way is the Indian Constitution rigid?

(a) The provisions of the Constitution can be amended with two-thirds majority of Parliament alone
(b) The Centre alone can initiate amendments
(c) The provisions regarding constitutional relationship between Union and State Governments can he amended only with the joint consent of Central and State Legislatures
(d) The Indian Constitution is not rigid

3. "We the people of India having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all citizens..." From this statement we can conclude

(a) Sovereignty lies with the executive of the country
(b) Sovereignty lies with the President
(c) Sovereignty lies with the people of India
(d) Sovereignty lies with the elected represent-atives of the people of India

4. The Preamble to the Constitution of India reads:

(a) We, the people of India .... in our Constitution Assembly,... enact and give to ourselves this Constitution
(b) We, the people of India ….in this Constituent Assembly... decide to enact and give to India this Constitution.
(c) We, the people of India ….through the representatives of this Constituent Assembly. enact and give to ourselves this Constitution.
(d) We, the members of the Constituent Assembly,... representing the people of India enact this Constitution.

5. Put the following in the ascending order with regard to their years of creation.

I. Andhra Pradesh II. Gujarat
III. Nagaland IV. Meghalaya
V. Haryana

(a) I, II, III, IV, V
(b) II, I, III, V, IV
(c) I, II, III, V, IV
(d) II, V, I, III, IV

6. The detailed provisions regarding acquisition and termination of Indian

citizenship are contained in the Citizenship Act which was passed by:
(a) the Indian Parliament in 1955
(b) the Indian Parliament in 1950
(c) the British Parliament in August 1948
(d) the Constituent Assembly in 1949

7. How can the Fundamental Rights be protected by a citizen?
(a) By approaching the Supreme Court which will issue appropriate writs against the authority
(b) Parliament will take note of such violations and tell the courts
(c) The Executive will inform the Courts
(d) It is automatically protected

8. Which Fundamental Right cannot be suspended even during an emergency tinder Article 352 of the Constitution?
(a) Right to equality
(b) Right to freedom of speech and expression
(c) Right of life
(d) Right to constitutional remedies

9. Which one of the following has been wrongly listed as a freedom provided to the Indian citizens under Article 19?
(a) Freedom of speech and expression
(b) Freedom of residence and settlement
(c) Freedom of profession
(d) Freedom of press

10. Cultural and Educational rights include.
(a) Right of minorities to establish and administer their educational institutions
(b) Right of minorities to promote their language
(c) Right against discrimination for admission to educational institutions on the grounds of religion, race or caste
(d) All of these

11. The Indian Constitution declares that protection of life and liberty
(a) can never be taken away in any condition
(b) can be taken away only according to procedure established by law
(c) can be taken away during the Emergency through Presidential order
(d) none of the above

12. The phrase 'procedure established by law'
(a) gives immense powers in the hands of the courts regarding judicial review
(b) gives the authority to the courts to go into the question as to whether a law is 'due' i.e. just or not
(c) limits the authority of the Indian Courts in judicial review and the courts cannot go into the question as to whether a law is just or not
(d) None of the above is correct

13. What was the main decision of the Supreme Court in the Golak Nath case regarding the amendment of the Fundamental Rights by the Parliament?
(a) The Parliament had the right to amend the Fundamental Rights
(b) The ordinary elected Parliament has no right to amend the Fundamental Rights included in the Constitution which were quite sacred
(c) The Parliament had the right even to repeal the Fundamental Rights
(d) None of the above

14. What was the main judgement of the Supreme Court regarding Parliament's right to amend the Fundamental Rights in the Kesavananda Bharati case?
(a) The Supreme Court took away the right of Parliament to amend the Fundamental Rights
(b) The Supreme Court declared that Parliament had no right to amend

the Fundamental Rights
(c) The Supreme Court upheld the right of Parliament to amend any part of the Constitution including Part III of the Constitution but it also declared that Parliament had no right to amend the basic structure of the Constitution
(d) None of the above

15. Habeas Corpus means:
(a) an order from a court to free a person who had been illegally detained by the police or any other person
(b) an order from a superior court calling up the record of a proceeding in an inferior court for review
(c) an order from the superior court to an official to show his right to the office
(d) an order from a higher court to stop proceedings in a certain case

16. The writ of prohibition issued by the Supreme Court or a High Court is issued against:
(a) judicial or quasi judicial authorities
(b) administrative and judicial authorities
(c) administrative authorities only
(d) administrative authorities and government

17. The writ of Mandamus is available for the purpose of:
I. Enforcement of fundamental rights
II. Compelling a court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it
III. Directing a public official or the Government not to enforce a law which is unconstitutional
(a) I only (b) II and III
(c) I and III (d) I, II and Ill

18. What are the Gandhian Principles incorporated in the Indian Constitution?
I. Organisation of village panchayats
II. Establishment of cottage and small scale industries in rural areas
III. Prohibition on use of intoxicating liquor except for medicinal purposes
IV. Efforts to be made for the development of weaker or backward sections of the society
(a) I and II (b) I, III, IV
(c) II, III (d) All four

19. Which one of the following Directive Principles of State Policy does not come into the category of liberal principles?
(a) The State shall endeavour to secure a uniform civil code throughout the territory of India
(b) The State shall protect every monument or place or object of artistic or historic interest
(c) The State shall endeavour to secure to all workers a living wage and conditions of work ensuring a decent standard of life
(d) The State shall take steps to separate the judiciary from the executive

20. The President of India is not a member of Parliament because:
(a) he has to see that he remains impartial
(b) he does not need to be
(c) he would then hold an office of profit under the Government
(d) his position will be lowered if he becomes a member of Parliament

21. Regarding the powers and functions of the President it is not correct to say that
(a) all legislative proposals involving expenditure from the Consolidated Fund of India have to be recommended by the President to the Parliament for consideration

(b) no money bill or demand for grant can be introduced or moved in the Parliament unless it has been recommended by the President
(c) The may direct the Chief Justice of the Supreme Court to take over a particular case for disposal
(d) he calls upon the party enjoying majority in the Lok Sabha to choose its leader who is then appointed as the Prime Minister

22. The Law Officers who hold office at the pleasure of the President are
(a) The Chief Justice of the Supreme Court and the Attorney General
(b) The Attorney General and the Solicitor General
(c) The Attorney General and the Law Minister
(d) The Law Minister and any judge of the Supreme Court or of a High Court

23. A Member of Parliament or a State Legislature can be elected as President, but
I. he has to resign his seat before contesting election
II. he has to relinquish his seat as soon as he is elected
III. he has to relinquish his seat within six months of his election
(a) Only I (b) II
(c) III
(d) A Member of Parliament can contest but a member of State Legislature cannot contest

24. Which one of the following steps cannot be taken by the President during Financial Emergency?
(a) Direct the Union and State Governments to observe such canons of financial propriety as he deems desirable
(b) Suspend the Fundamental Rights of the Indian Citizens
(c) Order reduction of salaries and allowances of all civil servants
(d) Order the reduction of the salaries of the Supreme Court and High Court judges

25. Which of the following is/are correct?
I. No formal impeachment is required for the removal of the Vice-President
II. No functions are attached to the office of the Vice-President as such
III. Dispute regarding election of Vice-President is referred to the Election Commission
IV. If the election of a President or the Vice-President is declared void acts done by him prior to the date of such decision shall be invalidated
(a) I, II, III
(b) I, III, and IV
(c) I and II (d) All four

26. What do you understand from the phrase 'Collective responsibility of the Cabinet' to the Lok Sabha?
(a) The Cabinet is ultimately answerable for all the acts of the ruling party taken together
(b) The action of the Cabinet is the action of each member, and that the Cabinet is responsible as a whole for the action of each member
(c) The Ministers are responsible to each other collectively
(d) None of the above

27. Which one of the following functions of the Prime Minister has been wrongly listed?
(a) he presides over the meeting of the cabinet
(b) he prepares the agenda for the meetings of the cabinet
(c) he coordinates the working of various departments
(d) he chairs the meetings of the various standing and ad hoc committees of parliament.

28. The legislative functions of the Council of Ministers include the right to:
    (a) summon and prorogue the two Houses of Parliament
    (b) nominate two Anglo-Indian members of Lok Sabha
    (c) nominate some members to Rajya Sabha
    (d) Introduce important bills and resolutions in the Parliament
29. The Council of Ministers is to aid and advise the President in the exercise of his functions:
    (a) but the President is not bound to accept its advice
    (b) but the President may use his discretion in certain matters
    (c) but the President may avoid seeking its advice or over rule the Council of Ministers
    (d) and the President is bound to act on the advice of the Council of Ministers
30. Which of the following is/are not true?
    I. There is no bar to the appointment of a person from outside the Legislature as Minister.
    II. A Minister who is a Member of one House cannot speak or take part in proceedings of the other House.
    III. A Minister who is a Member of one House has no right to vote in the House of which he is not a member.
    (a) II and III (b) I and II
    (c) I and III (d) II
31. The office and functions of the Comptroller and Auditor-General of India include which of the following?
    I. He ensures that the moneys voted by the legislature are spent under appropriate heads and that they are not exceeded or used for other purpose
    II. He submits reports of the President and the Governor
    III. He should keep a vigilant eye on the finances of the Union as well as the States
    (a) I and II (b) II
    (c) II, III (d) All of them
32. Which of the following ensure the independence of the Comptroller and Auditor-General of India?
    I. Only the President can remove him on the grounds of proved misbehaviour
    II. His salary and conditions of service shall be statutory, i.e. laid down by parliament by law and shall not be liable to variation during his term of office
    III. The salaries of the Auditor-General and his staff and administrative expenses of his office shall be charged upon the revenue of India and shall be non-votable
    (a) I, II (b) II, III
    (c) III (d) All of these
33. The Consolidated Fund of India is a common pool in which
    (a) all taxes collected by the Government of India are deposited
    (b) equal contributions from the Centre and States are made and out of which money can be taken as loan to meet unforeseen contingencies
    (c) all money received by or on behalf of the Government of India in the shape of revenues, fresh loans and money received in repayment of loans etc. are deposited
    (d) States, Union Territories and Central Government contribute ten per cent of their revenues
34. Vote on account is made by the Lok Sabha

(a) to meet the additional expenditure incurred by the government on any approved item of expenditure during the supplementary budget
(b) to meet expenditure on secret service
(c) meet expenditure for a period before the passing of the annual budget
(d) to meet expenditure on unexpected demand

35. One of the following is not a method by which the Parliament expresses lack of confidence in the Council of Ministers:
I. Rejecting a bill introduced by a Minister
II. Declaring that the taxes proposed have to be reduced
III. Passing a bill introduced by a private member to which the Council of Ministers is opposed
(a) I (b) I and III
(c) II (d) III

36. The Constitution provides that a House of Parliament may declare a seat vacant:
I. in the case of a member who is guilty of breach of privilege of the House
II. in the case of a member who has been absent for 60 days without the permission of the House
III. if a member resigns in no case
IV. in no case
(a) I (b) I and II
(c) IV (d) I, II, III

37. Which one of the following does not fall within the financial powers of the Indian Parliament?
(a) No taxes can be levied without the consent of the Parliament
(b) No expenditure can be incurred without the sanction of the Parliament
(c) The Parliament can propose any tax
(d) The Parliament can reduce or reject the demands of the Government

38. The Lok Sabha and the Rajya Sabha sit jointly when
(a) they feel it necessary
(b) there is a disagreement between the two Houses
(c) the President summons both the Houses
(d) two years have lapsed after the last meeting

39. The members nominated by the President to the Rajya Sabha are from amongst persons:
(a) who are members of Lok Sabha
(b) who suffered imprisonment during freedom movement
(c) who are seasoned politicians
(d) none of the above

40. Which one of the following statements is correct?
(a) one-third of the members of Rajya Sabha retire every year
(b) two-thirds of its members retire every two years
(c) one-third of its members retire every two years
(d) all the members retire every two years

41. The functions of the Estimates Committee of Parliament do not include:
(a) presenting annually to Parliament an Economic Survey report on the country's state of economy
(b) reporting on what economies, improvement in organisation, or administrative reforms can be effected
(c) examining whether the money is well laid out within the limits of the policy implied in the estimates
(d) suggesting the form in which estimates should be presented to Parliament

42. Which one of the following statements about the Parliamentary committee

on Public Sector Undertakings is not true?

(a) It examines the reports and accounts of certain specified public sector undertakings and the reports of the Auditor General
(b) It approves the appointments of Chairman of certain specified public sector undertakings
(c) It examines whether public undertakings are being run efficiently
(d) It also examines whether they are being managed in accordance with sound business principles and prudent commercial practice

43. Under which of the following circumstances can President's rule be imposed in a State?

(a) If no stable government can be formed
(b) If the Cabinet has lost majority and no ce
(c) If the State Government does not obey the directives given by the Union Government
(d) In all the above cases

44. When does the Governor recommend the imposition of the President's rule in a State?

(a) On the recommendation of the Centre
(b) On the recommendation of the Chief Minister
(c) On the recommendation of the Council of Ministers
(d) If he is satisfied that the Government of the State cannot be carried on in accordance with the provisions of the Constitution

45. The judicial powers of the Governor do not include the right to:

(a) be consulted by the President about appointment of Judges of State High Court
(b) grant pardon
(c) remit punishment or suspend the sentence
(d) pardon death sentence

46. When can the Governor exercise his discretionary powers?

(a) In appointment of Chief Minister if not a single party has clear-cut majority in the House or there is no recognised leader of the majority party
(b) In reservation of a Bill passed by State Legislature for the assent of the President
(c) Dismissing a ministry if he is convinced it has lost majority support in the Assembly
(d) All the above cases are valid

47. Executive powers of the State Council of Ministers include:

I. formulating the policy of the government
II. responsibility for the smooth administration of the State
III. assisting the Governor in making all important appointments in the State

(a) I and II
(b) I and III
(c) III
(d) All of them

48. Which one of the following is not an executive function of the Council of Ministers of a State?

(a) To run the administration of the State in accordance with the provisions of the Constitution
(b) To bring about necessary cohesion in the policies of the various ministries
(c) To formulate the policy of the State Government and give it practical shape
(d) To assist the President in the administration of the State during the President's Rule in the State

49. Which one of the following is not legislative power of the State Council of Ministers?
    I. Summoning and proroguing the session of either or both the Houses of the State Legislature
    II. Determining the business and timetable of the State Legislature
    III. Introducing the important Bills in the State Legislature
    (a) I (b) III
    (c) II (d) I and II
50. Which one of the following is not a financial power of State Council of Ministers?
    I. Formulating the budget proposals and presenting the same to the State Legislature for approval
    II. All proposals for taxation emanate from the Council of Ministers
    III. Regulating the Contingency Fund of the State and advancing money out of it to meet the unforeseen contingencies
    (a) I (b) II
    (c) III (d) II and III
51. Which one of the following statements is correct?
    I. The Governor is the ex-officio Chairman of the Legislative Council.
    II. The Speaker of Legislative Assembly also acts as the Chairman of the Legislative Council.
    III. The Council elects its own Chairman from amongst its members.
    (a) I (b) II
    (c) III (d) None
52. Which one of the following powers of the State Legislature has been incorrectly given ?
    I. It takes part in the election of the President
    II. It plays an important role in amendment of the Constitution
    III. It considers the report of the State Public Service Commission
    (a) I (b) II
    (c) I and II
    (d) None is incorrect
53. The special status of the State of Jammu and Kashmir
    (a) does not prevent the Union Government from making changes in the name and boundaries of the State
    (b) does not prevent the President from exercising his right to suspend the constitutional machinery of the State on the ground that the State Government has failed to carry out directions of the Union Government
    (c) does not prevent the Union Government from making any international agreement affecting the State without taking the consent of the State Legislature
    (d) prevents the Union Government from making any alteration in the name and boundaries of the state
54. The Supreme Court of India does not have original jurisdiction in the settling of disputes
    (a) between the Government of India and any State of the Union
    (b) between two or more States
    (c) between the Government of India and one State on one hand and other States on the other hand
    (d) arising out of any trreaty or agreement
55. The phrase 'procedure established by the law' means
    (a) the judges in India cannot question the fairness or validity of a law, provided it is within the limits of the Constitution
    (b) judges in India can question the fairness or validity of an undue law

even if it is within the limits of the Constitution
(c) judges in India can declare a law invalid simply because in their opinion the law is not due or is unjust
(d) None of the above

56. The High Court enjoys the power
I. To issue writs for the enforcement of rights conferred on the citizens of India
II. To exercise superintendence over the working of Courts and Tribunals under its jurisdiction
III. To make general rules and prescribe forms regulating the practices and proceedings of Courts under its jurisdiction
(a) I (b) I and Ill
(c) II and III (d) All of them

57. The ordinary Judges of the State High Court are appointed by the President on consultation with
I. The Chief Justice of the High Court
II. The Chief Justice of India
III. The Governor of the State
(a) I (b) I and II
(c) II and III
(d) I, II and III

58. The Parliament can make a law on a subject in the State List when
I. A Proclamation of Emergency is in force
II. Two or more States make a request to the Parliament to make a law on a subject
III. Rajya Sabha passes are solution that such subjects have acquired national importance
(a) Only I (b) I and II
(c) II and III (d) All of these

59. The jurisdiction of the Finance Commission does not extend to
(a) recommendation of the allocation of funds among the various heads of expenditure in the Union and State budgets
(b) recommendation of the distribution between the Union and the States of the net proceeds of taxes
(c) recommendation of the allocation to the States of the respective shares of such tax proceeds
(d) recommendation of the principles which govern the Grants-in-Aid of the revenue of the States out of the Consolidated Fund of India.

60. What can the President do if the States fail to comply with the Directives of the Central Government?
(a) The President can send reserve police to the State to secure compliance
(b) The President can declare the breakdown of Constitutional machinery in the State and assume responsibility for the governance of the State
(c) The President can dissolve the State Legislature and order fresh election
(d) The President cannot do any of the things mentioned in (a), (b) and (c)

61. Which of the following is not one of the qualifications prescribed in Article 326?
(a) He should not be less an twenty-one years of age
(b) He should be citizen of India
(c) He should not hold any office of profit under the Government of India
(d) He should not be otherwise disqualified on the ground of unsoundness of mind, crime, or corrupt or illegal practice.

62. Which one of the following feature regarding organisation of Parties in India has been wrongly listed?

(a) The Political Parties in India are not well-organised
(b) Most of the Political Parties in India are organised around certain leaders.
(c) The Organizational elections of Political Parties in India are held at regular intervals
(d) Most of the Political Parties in India do not hold organisational elections at regular intervals.

63. Consider the following statements:
1. The national Political Parties in India are truly speaking not national in character because most of the national parties are not spread over the entire country.
2. On account of multi-party system in India we find a close resemblance in the policies and programmes of various Political Parties.
3. Of late the regional Political Parties are planning more important role in the India polity than the national Political Parties.
4. The Political Parties in India have tended of submerging their narrow interests to national interests due to development of nationalists sprit.

Code :
(a) 1, 2, and 3 are correct
(b) 2, 3 and 4 are correct
(c) 1, 2 and 4 are correct
(d) 1, 3 and 4 are correct

64. Match the following:

List-I Articles	**List-II Provisions for Minorities**
A. Article 26	1. Provides for freedom to manage religions affairs to all majority as well as monitory communities
B. Article 29	2. Protects the interests or minorities
C. Article 30 (1)	3. Provides that all " minorities, whether based on religion or language shall have to right to establish and administer educational institution of their choice
D. Article 15	4. Provision discrimination on grounds of religion, race, caste, sex, or place of birth.

Codes :

	A	B	C	D
(a)	2	1	3	4
(b)	1	2	3	4
(c)	3	2	4	1
(d)	1	2	4	3

65. The primary aim of the Panchayati Raj administration is:
(a) to work for rural development
(b) to ensure the upliftment of Harijans
(c) to arouse in the people continuous interest in the community development programmes
(d) to increase agricultural production through the involvement of the people in extension programmes

66. Pick out the statement which is not correct
(a) The Gram Panchayat is headed by the Sarpanch
(b) The Panchayat Samiti is headed by the Chairman
(c) The Zilla Parishad is headed by the Chairman
(d) The Sarpanch and the Chairman are elected directly by the people

67. Balwant Rai G. Mehta team was set up in 1956 by the National

Development Council for the purpose of:

(a) reporting on the working of the village panchayats at that time
(b) investigating the feasibility of setting up the new panchayat machinery
(c) suggesting measures for democratic decentralization
(d) suggesting measures for better efficiency in the implementation of the Community Development projects

68. Which of the following is correctly matched?

(a) Santhanam Committee : Panchayati-Raj Finances
(b) Balwant Rai Metha: Panchayati-Raj Institutions Committee
(c) G.V.K. Rao Committee : Planning at the block level
(d) Dantwala Committee : existing admin-istration arrangement for rural development programmes.

69. Which of the following statements are true about the Chief Secretary?

1. he acts as the Chief Public relations officer of the govt.
2. He acts as the Channel of Communications in intergovernmental matters
3. he is the only advisor to the CM
4. In 1974, the past of Chief secretary was brought and par with that of the secretary to the Government of India.

(a) 1, 3 and 4 (b) l, 2 and 4
(c) 1 and 2 (d) 2 day

70. Arrange the following in ascending order

1. Tehsil 2. sub-division
3. village 4. Paragama

Codes :

(a) 2, 1, 2, 3
(b) 2, 1, 3, and 4
(c) 3, 4, 1, 2 (d) 3, 4, 2 and 1

71. Which of the following are the features of 74th Amendment Act on municipalities?

1. Reservation of seats for SCs and STs in Proportion of their population
2. Mandatory periodic elections every 5 years
3. The procedure for maintenance of accounts and audit would be decided by the state Governor
4. Constitution of Nagar-Panchayats for smaller Urban area.

(a) 1, 2, and 4
(b) 2 and 3
(c) 3 and 4
(d) 1 and 2

72. The 42nd Constitution Amendment Act added a Chapter on

(a) the Preamble of the Constitution
(b) the Fundamental Rights
(c) the Fundamental Duties
(d) all of the above

73. Match the following columns:

I	II
A. Reorganisation of States	1. Seventh Amendment
B. Sikkim became 22nd State of Indian Union	2. Thirty-sixth Amendment
C. Ninth Schedule	3. First Amendment added
D. Abolition of Titles of Princes	4. Twenty-sixth Amendment

(a) A-1, B-2, C-3, D-4
(b) A-2, B-l, C-3, D-4
(c) A-3, B-2, C-l, D-4
(d) A-3, B-l, C:-4, D-2

74. In which part of the Constitution are directives to the State included?

I. Part IV only
II. Art. 36 to 51
III. Art. 36 to 51, 335, 350(a) and 351
(a) I (b) II
(c) III (d) I and II

75. Right to equaliy includes
A. Equality before law
B. Right against discrimination on grounds of race, caste, religion, etc.
C. Equal pay for equal work
D. Abolition of untouchability
E. Abolition of all titles
(a) A, B and D only (b) A, B and C only
(c) A, B, D and E (d) All of them

76. Consider the following statements with reference to India and pick the right one
(a) The Chief Election Commissioner and other election commissioner enjoy equal powers but receive unequal salaries.
(b) The Chief Election Commissioner is entitled to the same salary as provided to a judge of the S.C.
(c) The chief E.C shall not be removed from his office except in like manner and on like grounds as a judge of the S.C.
(d) The term of office of one E.C is 5 years from one date he assure his office or till the day he attains the age of 62 years, whichever is earlier.

77. With reference to the Indian Public Finance consider the following statements :
(1) The liabilities reported in the Union Budget are based on historical exchange rates.
(2) The continued high borrowing has kept the.real interest rates high in the economy.
(3) The upward trend in the ratio of Fiscal Deficit to.G.D.P. in recent years has an adverse effect on private investments.
(4) Interest payment is the single largest component of the non-plan revenue expenditure of the union govt.
Which is correct statement ?
(a) 1, 2, 3 (b) 1 & 4
(c) 2, 3 & 4 (d) 1, 2, 3 & 4

78. Match List (Article) with (Provisions)

(Articles)	(Provisions)
(A) Art. 16 (2)	1. No person shall be deprived of his property save by. the authority of law.
(B) Art. 29 (2)	2. No person can be discriminated against in the matter of public appointment on the ground of race, religion, or caste.
(C) Art. 30 (i)	3. All minorities whether based on religion or language shall have the Fundamental Rights to establish and administer educational institution of their choice.
(D) Art. 31 (i)	4. No citizen shall be denied admission into any educational institution maintained by the state on receiving state aid, on grounds of religion, race, caste, language or any of them.

Codes :

	A	B	C	D
(a)	2	4	3	1
(b)	3	1	2	4
(c)	2	1	3	4
(d)	3	4	2	1

79. The member of Constituent Assembly which drafted the Con-stitution of India were

(a) nominated by the British Parliament
(b) nominated by the Governor General.
(c) elected by the Legislative Assemblies of various provinces.
(d) Elected by the Indian National Congress & Muslim League

80. Match List-I with List-II and select the correct answer using the codes given below

	List I (Article of constitution)		List I (Provision)
A.	Art 101 (4)	1.	The speaker of the Lok Sabha shall preside over a joint sitting of the two houses of parliament
B.	Art 110(4)	2.	The house may declare a seat vacant if the member in question absents himself from all the meetings of the house for a period of 60 days without permi-ssion of the houses.
C.	Art 118(4)	3.	When a Money Bill is transferred from the lower to upper house, the speaker shall endorse on the bill his certificate that it is a money bill

Select the correct code

	A	B	C
(a)	1	2	3
(b)	2	1	3
(c)	2	3	1

81. Which of the following Articles of the Constitution of India have been declared by the Supreme Court as the inviolable civic structure of the constitution ?

(1) Art. 32 (2) Art. 226
(3) Art. 227 (4) Art. 245
(a) 1, 2, 3 (b) 1, 3, 4
(c) 1, 2, 4 (d) 1, 2, 3 & 4.

82.

List I (Schedule of constitution)	List II (Subject matter)
A. 4	I. Land reform
B. 6	2. Language
C. 8	3. Council of State
D. 9	4. Tribal areas

Codes

	A	B	C	D
(a)	1	2	3	4
(b)	2	3	4	1
(c)	3	4	2	1
(d)	4	2	1	3

83. Match the List.

List I (Acts of Colonial Govt. of India)	List II
(A) Charter Act. 1813	(1) Set up a board of control in Britain to fully regulate the East India Company's affairs in India.
(B) Regulating Act	(2) Company's trade monopoly in India was ended.
(C) Act of 1858	(3) The power to govern was transferred from the East India company to the British crown.

(D) Pitt's India Act (4) The company's directors were asked to present to the British govt. all correspondence and documents pertaining to the ad-ministration of the company.

Codes :

	A	B	C	D
(a)	2	4	3	1
(b)	1	3	4	2
(c)	2	3	4	1
(d)	I	4	3	2

84. With reference to colonial period of Indian history, match List I (person) with List II (events)

(Person)	**(Events)**
(A) MacDonald	1. Doctrine of Lapse
(B) Linlithgow	2. Communal Award
(C) Dalhousie	3. August Offer
(D) Chelmsford	4. Dyarchy

Codes :

	A	B	C	D
(a)	3	2	1	4
(b)	3	2	4	1
(c)	2	3	1	4
(d)	2	3	4	1

85. Consider the following statements regarding the political parties in India

(1) The Representation of the Peoples Act, 1951 provide for registration of political parties.

(2) Registration of political parties is carried out by the election commission.

(3) A National level political party is one which is recognized in 4 or more states.

(4) During 1999 general elections, there were six national and 48 state level parties recognized by Election Commission.

Which one is correct statement ?

(a) 1, 2, & 4 (b) 1, 2, 3

(c) 2, & 4 (d) l, 2, 3 & 4

86. Match the list

(Art. of the constitution)	**(Content)**
(A) Art. 54	1. Election of President Council of Ministers
(B) Art. 75	2. Appointment of P.M. & Council of Ministers
(C) Art. 155	3. Appointment of Governor of State
(D) Art. 164	4. Appointment of C.M. & Council of Ministers of State.
	5. Composition of Legislative Assembly

Codes :

	A	B	C	D
(a)	1	2	3	4
(b)	1	2	4	5
(c)	2	1	3	5
(d)	2	1	4	3

87.Consider the following statements about the minorities in India:

(1) The Govt. of India has notified five communities namely, Muslims, Sikhs, Christians, Buddhists and Zoroastrians as minorities.

(2) The National Commission for minorities was given statutory status in 1993.

(3) The smaller religious minority in India are the Zoroastrians.

(4) The Constitntion of India recognises and protects religious and linguistic minorities.

Which statement is correct ?

(a) 2 & 3 (b) 1 & 4
(c) 2, 3, & 4 (d) 1, 2, & 4

88. Consider the following statements regarding the High courts in India:
 1. There are 18 High Courts in India
 2. Three of them have jurisdiction on more than one state.
 3. No Union Territory has a H.C. of its own.
 4. Judges of the H.C. hold office till the age of 62.

(a) 1, 2 & 4 (b) 2 & 3
(c) 1 & 4 (d) 4 only

89. Match the list I with list II

List I (Amendments of the Constitution)	**List II (Contents)**
A. The constitution	1. Establishment of state (Sixty-ninth level Amendment Act, 1991) Rent Tribunals
B. The constitution	2. No reservation for (Seventy Fifth Scheduled Caste in Amendment) Panchayats in Arunachal Pradesh Act, 1994
C. The constitution	3. Constitution of Panchayats (Eightieth in villages or Amendment at other local levels Act, 2000)
D. The constitution	4. Accepting the (Eighty third recommendations of the Amendment Tenth Finance Act, 2000) Commission
	5. Accepting the status of National Capital Territory to Delhi.

Codes:

	A	B	C	D
(a)	5	1	4	2
(b)	1	5	3	4
(c)	5	1	3	4
(d)	1	5	4	2

90. Match the Following

List I	**List II**
A. Zilla Parishads at the Sub-divisional level	(i) Andhra Pradesh
B. Mandal Praja Parishad	(ii) Assam
C. Tribal Councils	(iii) Mizoram
D. Absence of village panchayats	(iv) Meghalaya

Codes:

	A	B	C	D
(a)	2	1	4	3
(b)	1	2	4	3
(c)	3	2	1	4
(d)	2	1	3	4

91. Match the following.

List I	**List II**
(a) Development programme	1. U.N. Indian Human Development Report
(b) National Council of Economic Research	2. India Development Applied Report
(c) Indira Gandhi Institute of Development Research	3. World Development Report
(d) World Bank	4. Human Development Report

Codes:

	A	B	C	D
(a)	4	1	2	3
(b)	4	2	1	3
(c)	2	3	4	1
(d)	2	1	4	3

92. Instill into the vast millions of the workers, men and women, who actually do the job, a sense of partnership and of co-operative performance.

The above passage related to

(a) Planned development
(b) Community development
(c) Panchayati Raj system
(d) Integrated development Programme

93. Consider the following statements about the Attorney General of India :

(1) He is appointed by the President.
(2) He must have the same qualification as required for Judges of Supreme Court
(3) He must be member of either house of Parliament.
(4) He can be removed by impeachment by Parliament

Which is correct

(a) 1 & 2 (b) 1 & 3
(c) 2, 3 & 4
(d) 3 & 4

94. Consider the following functionaries:

(1) Cabinet Secretary
(2) Chief Election Commissioner
(3) Union Cabinet Ministers
(4) Chief Justice of India.

Their correct sequence, in the order of Precedence is

(a) 3, 4, 2, 1 (b) 4, 3, 1, 2
(c) 4, 3, 2, 1 (d) 3, 4, I, 2

95. Match the following

	List I		List II
A.	Art. 40	1.	Organization of village Panchayat
B.	Art. 41	2.	Right to work
C.	Art. 44	3.	Uniform civil code
D.	Art. 48	4.	Organization of agriculture and animal husbandry.

Codes:

	A	B	C	D
(a)	1	2	3	4
(b)	2	3	1	4
(c)	1	3	4	2
(d)	3	2	4	1

96. Who has control over "the issue of money" from Consolidated Fund of India ?

(a) Comptroller and Auditor General of India
(b) Finance Minister of India
(c) Authorized ministers
(d) None of the above.

97. In the new Panchayati Raj Bill enacted in 1993, there are several fresh provisions deviating from the past, which one of the following is not one such provision?

(a) A number of added responsibilities in the area of agriculture, rural development, primary education and social forestry among others.
(b) Elections being made mandatory for all posts at the time they are due
(c) A statutory representation for women in the panchayats increased upto one third of the strength.
(d) Regular remuneration to the Panchayat members, so as to ensure their punctuality and accountability.

98. Consider the following statements about the recent amendments to the election law by the Representation of the People (Amendment) Act 1996.

1. Any conviction for the offence of insulting the Indian National Flag or the constitution of India shall entail

disqualification for contesting elections to Parliament and state legislatures or 6 years from the date of conviction

2. There is an increase in the security deposit which a candidate has to make to contest election to the Lok Sabha
3. A candidate cannot now stand for election from more than one Parliament seat.
4. No election will now be countermanded on the death of a contesting candidate.

Which of the above statements are correct ?

(a) 2 & 3
(b) l, 2 & 4
(c) 1, 2, 3 (d) 1, 2, 3 & 4

99. The employment assurance scheme envisages financial assistance to rural areas for guaranteeing employment to at least :
(a) 50% of the man and woman seeking jobs in rural areas.
(b) 50% of the men seeking jobs in rural area.
(c) one man and one woman in a rural family living below the poverty line.
(d) one person in a rural landless household living below the poverty line.

100. Consider the following statement regarding the National Human Rights Commission.
(1) Its chairman must be a retired Chief Justice of India.
(2) It has formations in each state as Human Rights Commission.
(3) Its powers are only recommendatory in nature.
(4) It is mandatory to appoint a woman as a member of the commission.

Which is correct?
(a) 1, 2, 3, 4 (b) 2 &4
(c) 2 & 3 (d) 1 & 3

101. Which of the following is the objective of National Renewal Fund?
(a) To safeguard the interests of workers who may be affected by technologist upgradation of industries or closure of sick units.
(b) To develop the core sector of the economy.
(c) For the development of infrastructure such as energy, transport, communication and irrigation
(d) For human resource development such as full literacy, employment, population control, housing & drinking water

Directions : The following questions consist of two statements, are labelled as 'Assertion A' and other labelled as 'Reason R'. You are to examine the two statements carefully and decide of the 'Assertion A' and the 'Reason R' individually true and if so, whether the Reason is a correct explanation of the Assertion. Select your answer to these item using the codes given below.

(a) Both 'A' and 'R' are true and 'R' is the correct explanation of A'.
(b) Both 'A' and 'R' are true, but 'R' is not a correct explanation of '.A'.
(c) 'A' is true but 'R' is false.
(d) 'A' is false but 'R' is true.

102. **(A):** India is a union of states and not a federal state.

(R): In the Indian constitution, the centre is given emergency powers which can convert the state into a unitary state.

103. **(A):** The rigid constitutions have lived only by judicial interpretation.

(R): Judicial interpretation has been the most effective way of making the

rigid constitutions flexible enough to work.

104. **(A):** No state can ensure the welfare of all its citizens.

(R): The state is coercive by nature and inherently oppose to human nature.

105. **(A):** Sovereignty is the most important attribute of the state.

(R): In every full-fledged or independent state there must be an ultimate authority, an authority against which there is no appeal.

106. **(A):** Preventive Detention" is included in the chapter on Fundamental Rights in the Constitution of India.

(R): "Preventive Detention" is a fundamental Rights of the state against individuals.

107. **(A):** Local politics in India is run on a non-partisan basis.

(R): At the local level, some people who would not he chosen if party labels accampanied their names get elected by non-partisan arrangements.

108. **(A):** An unwritten constitution consists largely of a mass of customs, usages, judicial decisions and some statutes.

(R): Constitutions are not written they grow.

109. **(A):** The president has the right to seek advisory opinion of the Supreme Court on any question of law or fact.

(R): The constitution makes it obligatory for the President to 5 accept the advice rendered by Supreme Court.

110. **(A):** In a federal set-up sovereignty is divided between the central and the provincial governments.

(R): The powers of the government are divided in a federal set-up.

111. **(A):** Political participation does not necessarily mean playing of an equal part by all.

(R): Greater political awareness and increasing opportunities lead to egalitarian political participation.

112. **(A):** The chief minister occupies a pivotal position in state.

(R): He symbolizes ruling power structure and wields more authority than anybody else in the state.

113. **(A):** In February 2004, Government-of India constituted a National commission on farmers.

(R): The commission examines various issues that Indian farmers are confronting and suggests appropriate interventions for improving the economic viability and sustainability of diversified agriculture.

114. **(A):** Globalization demands liberalization of ideas government regulations, delicensing and greater people's participation in the economic affairs which in turn leads to political empowerment.

(R): The concept of democracy has taken deeper roots in the current age of globalization.

115. **(A):** Dual citizenship was announced by Prime Minister at the 3rd Pravasi Bhartiva Divas in Jan. 2005.

(R): Dual citizenship for all overseas Indians who migrated after January 26, 1950. subject to the laws prevailing in their home country.

ANSWERS

1. (d)	2. (c)	3. (c)	4. (a)	5. (c)	6. (a)	7. (a)	8. (c)	9. (d)	10. (d)
11. (b)	12. (c)	13. (b)	14. (c)	15. (a)	16. (a)	17. (d)	18. (a)	19. (a)	20. (c)
21. (c)	22. (b)	23. (b)	24. (b)	25. (c)	26. (b)	27. (d)	28. (d)	29. (d)	30. (d)
31. (d)	32. (c)	33. (c)	34. (d)	35. (c)	36. (b)	37. (c)	38. (b)	39. (d)	40. (c)
41. (a)	42. (b)	43. (d)	44. (d)	45. (d)	46. (d)	47. (d)	48. (d)	49. (a)	50. (c)
51. (c)	52. (d)	53. (d)	54. (d)	55. (a)	56. (d)	57. (d)	58. (d)	59. (a)	60. (b)
61. (c)	62. (c)	63. (d)	64. (b)	65. (c)	66. (d)	67. (d)	68. (a)	69. (c)	70. (c)
71. (d)	72. (c)	73. (a)	74. (c)	75. (a)	76. (d)	77. (c)	78. (a)	79. (c)	80. (c)
81. (a)	82. (c)	83. (a)	84. (c)	85. (d)	86. (a)	87. (d)	88. (a)	89. (a)	90. (a)
91. (a)	92. (b)	93. (a)	94. (c)	95. (a)	96. (d)	97. (c)	98. (b)	99. (c)	100. (d)
101. (a)	102. (a)	103. (a)	104. (c)	105. (a)	106. (c)	107. (c)	108. (b)	109. (c)	110.(d)
111. (b)	112. (a)	113. (b)	114. (a)	115. (b)					

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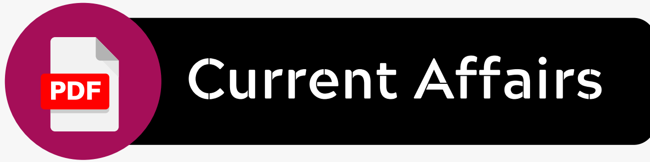

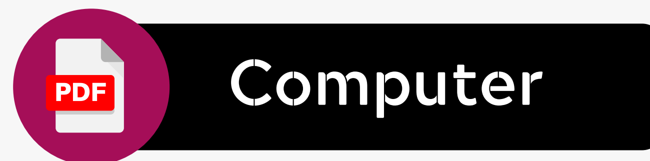

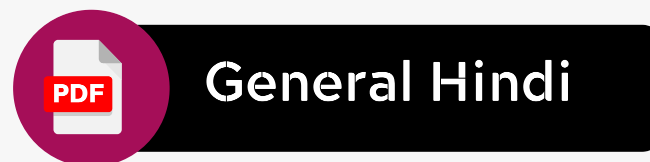

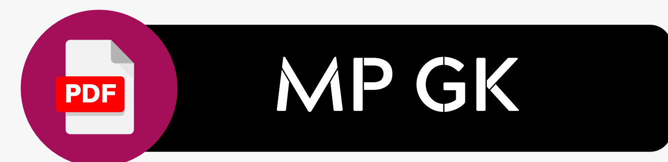

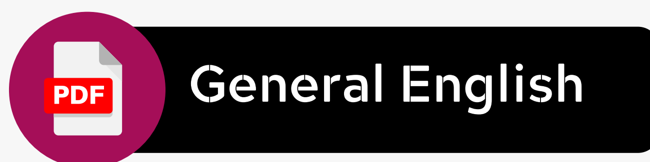

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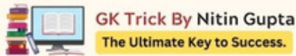

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