

INDIAN GOVERNMENT & POLITICS

CORE COURSE

**FOR
BA POLITICAL SCIENCE
III SEMESTER**

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INDIAN GOVERNMENT & POLITICS

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MODULE I

A BRIEF INTRODUCTION TO INDIAN POLITY - CONSTITUTIONAL DEVELOPMENT WITH REFERENCE TO GOVERNMENT OF INDIA ACT 1909-1919-1935, INDIAN INDEPENDENCE ACT 1947 - THE CONSTITUENT ASSEMBLY.

India, the land of great civilization, has a history of more than 5000 years with diversity rather than unity in every aspect of human life, strived a lot and attained a proper place among the community of nations. Indian polity started from Manu passed through hundreds of benevolent monarch's and rulers reached the position what we see today. The *Arthashastra* of Kautilya was the most important political treatise which India has so far produced. It deals comprehensively every aspect of Indian polity as we do not possess any other period before Akbar the Great.

English East India Company constituted to promote trade with India was firmly established its domination in India by 1600 AD when the Mughals were at the height of their power and glory. Within a century the Mughal power became degenerated and disintegrated. The Britishers took advantage of this situation, tightened their grip over India with a series of legislations starting with the Regulation Act of 1773. Followed by the Pitts India Act 1784, the Act of 1786- The Charter Act of 1793, the Charter Act of 1813- the Charter Act of 1833 and the Charter Act of 1853 which passed by the British Parliament.

Followed by this, first War of Indian Independence 1857, the British Parliament adopted the Government of India Act 1858 by which the British Government took over the administration of India. As a continuation, the Indian Council Act of 1861 and Indian Council Act 1892 were passed by the British Parliament for administrative convenience.

A peep into the development of Constitutionalism in India

The growth of Constitutionalism in India particularly after the Act of 1858 was largely the story of political dissatisfaction and agitation altering with Council reforms. The reforms grudgingly conceded were always found inadequate and dissatisfaction evoked demands for further reforms. It is true of all subsequent Acts passed by the British Parliament relating to India and in each case in its broad outline, practically the same.

MINTO MORLEY REFORMS

(Indian Council Act 1909 / Government of India Act 1909)

The British Parliament passed the Act of 1909 with much expectation to secure its influence among the various Indian communities. Lord Morley, the Secretary of State for India pointed out that "The Act of 1909 opened a new chapter in Indian Constitutional reforms". The Act of 1909 recommended for

- (i) The inclusion of an Indian members in the Executive Council of the Governor General

- (ii) An enlarged Central legislative Council
- (iii) An enlarged Provincial Legislative Council
- (iv) It also enlarged the scope of the subjects to be debated in both Central Legislative Council and Provincial Legislative Council
- (v) Communal reservation both for the Hindus and Muslims

However, the British government brought the Act with the intention of rallying to its side the Moderates and the Muslims. But quite contrary to the expectations, the discontentment among the people reached new height and the Government had resorted to repressive measures.

MONTAGUE-CHELMSFORD REFORMS (The Act of 1919)

The Secretary of states for India, Lord Montague visited India on November 1917 and discussed his scheme of reforms, with the Viceroy Lord Minto and Indian leaders. A committee was constituted consisting of Sir William Duke, Earl, B N Basu and Charles Robert together with the Viceroy Lord Montague. The committee prepared a draft which was published in July 1918 and is known as Montagu-Chelmsford Report. On the basis of this report, the Government of India Act 1919 was drafted.

The Act of 1919, laid down in its Preamble the principles on which the reforms were to be progressively carried out in India. An analysis of the Preamble brings out that

- (1) British India is to remain an integral part of the British Empire.
- (2) Responsible government in British India is the objective of the declared policy of Parliament.
- (3) Responsible government is capable of progressive realization only.
- (4) The increasing association of Indians in every branch of administration.
- (5) Gradual development of self governing institutions.
- (6) It provided independence to Provinces in Provincial matters. The significance of the Preamble was that what was already declared by Montague was now given a definite legal shape.

Provisions

Changes in the Central Government

- (1) The number of Indians in the Governor General's Executive Council was raised to 3 in a council of 8
- (2) The new scheme envisaged a division of subjects into central list and provincial list
- (3) The Act provided a bicameral legislature at the centre. The Council of State (Upper House) Legislative Assembly (Lower House)

Changes in the Provincial Government

- (1) The Act introduced Dyarchy or dual government in the Provinces.
- (2) It provided for a Provincial Legislature called Provincial Legislative Council.

- (3) Strengths of the Provincial Legislative Council is varied from state to state.
- (4) The scope of the functions enlarged.
- (5) Franchise was widened
- (6) Term of the Provincial Legislative Council is 3 years but the Governor could increase or reduce it

Criticism

- (1) Though a step was taken towards increasing association of Indians by raising their strengths to three, in a council of 8, the departments assigned to them were comparatively unimportant. There was also much confusion in the division of subjects.
- (2) The Act of 1919 introduced only a responsive government, not a responsible government at the Centre. No vote of confidence of the Central legislatures could turn out a member of the Executive Council and the Governor General and as such they were irresponsible.
- (3) The Act introduced Dyarchy in the provinces and during its operation, it proved to be failure, because the division of subjects was irrational and illogical. Moreover, the position of the Ministers were weak and they had to serve two masters-the Governor and the Provincial Legislative Council at the same time. The final crunch in the Provinces were also put everything in the dock.

Appraisal

Unfortunately the Government of India Act of 1919 was never given a co-operative trial. Right from the beginning, the Indian National Congress condemned it as disappointing and unsatisfactory and launched non-violent, non-co-operation movement in 1920 for the attainment of Swaraj or Self Rule.

However, the first election under Act of 1919 was held in 1920. Dyarchy functioned in all the provinces uninterruptedly from 1921 to 1937 except in Bengal and Central province when it tried to be suspended during 1924-27 and 1924-26 respectively.

GOVERNMENT OF INDIA ACT OF 1935

The Congress considered the Montague-Chelmsford Reforms to be “inadequate, unsatisfactorily and disappointing” and launched non-violent, non-co-operation movement in 1920 for the attainment of full responsible government in India. Besides this the Government of India Act of 1919 provided for a review of the political situation in India every 10 years. Accordingly the process of review was set in motion by the appointment of the Simon Commission which was followed by the Nehru Report (1928) the Round Table Conferences (1930-32) and the white paper issued by the British government in March 1933 culminated in the passing of the Act of 1935.

Because of the multiplicity of the sources, and lengthy provisions the Act of 1935 was an elaborate document. The main features of the Act were provisions for

- (a) An all India Federation;
- (b) Responsible government with safeguards and
- (c) Separate representation of communal and other groups

Provisions

The Act provided for the establishment of an all India Federation comprising British Indian provinces and Indian states in case of the Indian states accession to the Federation was voluntary. The terms on which a state joined the Federation were to be laid down in the instrument of Accession.

Though Dyarchy was rejected by the Simon Commission, the Act of 1935 provided Dyarchy at the Centre. Accordingly, Defence, External Affairs, Ecclesiastical Affairs and the Administration of tribal areas were reserved which was to be administered by the Governor General with the assistance of Councilors appointed by him. The other federal subjects would be administered by the Governor General of India with assistance of advice, a Council of Ministers responsible to the Federal legislatures.

The Federal legislature was to have two chambers, the Council of State (Upper House) and the Federal Assembly (Lower House). The Council of states was to be permanent body constituted by 260 members, 1/3 of its members being vacated and renewed biennially. The Federal Assembly whose duration was fixed for 5 years was to consist of 375 representatives indirectly elected by the members of the Provincial Legislative Assembly on the system of proportional representation with single transferable vote system. The powers of the Federal Legislature were very limited and confined.

Responsible Government with Safeguards

The second important feature of the Act of 1935 was the provision for a responsible government with safeguards. This provision can be examined under two heads- the Federal Structures and the provinces.

The Act made the Governor General the pivot of the entire administration in India. He acted in three different ways- act on the advice of his ministers, act on his individual judgment and act on his discretion. However, "responsible government" was introduced at the central level in a very limited way by the Act of 1935.

Provincial Executive

As in the case of the Central Government, the executive authority of the provinces was vested in the Governor. The Administration of the provinces was carried out by the Governor by a Council of Ministers, responsible to the Provincial Legislatures. But the Governor like the Governor General was not only a constitutional authority, but had special responsibilities regarding certain specified subjects. In this case he could act according to his discretion. But in all other matters, he could act to his own judgment, after considering the advice of the Council of Ministers. However, the Governor under the Act had wide powers and if he was not satisfied the government of the provinces could not function normally.

Provincial Legislature

The Act provide for Bicameral legislature in 6 provinces (Madras, Bombay, Bengal, United Provinces, Bihar and Assam) which was to consist of two houses, the Provincial Legislative Council and Provincial Legislative Assembly.

In the Provincial Legislative Council a few seats were filled by the Governor through nomination. The members of all Provincial Legislative Assembly were elected directly by the people and its strength varies from Province to Province as in the case of the Act of 1919.

The third prominent feature of Act of 1935 was the separatist system of representation by religious communities and other groups. The electoral provisions of the Act were governed by the communal award of the British government (1932) as modified by the Poona Pact. Under this seats in the legislatures were divided as general constituencies Muslims, Europeans, Anglo Indians, and Sikh Communities. Some of the general seats were reserved for Scheduled Castes. However this communal division which paved the way for the eventual partition of India.

The Act of 1935 provided for a Federal Court, with original and appellate powers to interpret the Constitution. However, the last word remained with the Privy Council in London.

The new Constitution (Act of 1935) was rigid because the sole authority to amend the Act rest with the British Parliament. The Council of the Secretary State was abolished by the Act of 1935 and incorporated provisions for advisers who may or may not be consulted by him for his actions.

The Government of India Act of 1935 received Royal assent in August 1935. The electoral provisions began to operate on July 3, 1936, and the provincial autonomy from April 1, 1937. However, the establishment of an All India Federation as visualized in the Act of 1935 never came into being. The operative part of the Act of 1935 remained in force till August 15, 1947, when it was amended by Indian Independence Act 1947.

Even after the inauguration of the Government of India Act of 1935, British imperialism determined to maintain its strong hold over India. According to Nehru, the Act provided 'a machine with strong brake but no engine'. M.A. Jinnah described the scheme as "thoroughly rotten, fundamentally bad and totally unacceptable".

INDIAN INDEPENDENCE ACT 1947

The Indian Independence Act was introduced in the British Parliament on July 4, 1947 and was passed within a fortnight on July 18, 1947. This Act did not provide for any new Constitution for India. It was only an Act to enable the representatives of India and Pakistan to frame their own Constitutions and to provide for the exceedingly difficult period of transition. In other words, the Act merely formalized and gave legal effort to the promise made by Lord Mount Batten in his third June Plan.

Provisions

- (1) The Act of 1947 provided for the partition of India and the establishment of the two Dominions (India and Pakistan) from the appointed day viz August 15, 1947.
- (2) The Act provided for the legislative supremacy of the two Dominions and declared that the British governments have no control over the affairs of the Dominions or provinces or any part of the Dominions after 15th August 1947.
- (3) Until a new Constitution was framed for each Dominion, the Act made the existing Constituent Assemblies on the Dominion Legislatures for the time being.
- (4) Pending the framing of new constitutions, each of the Dominions and all provinces were to be governed in accordance with the Government of India Act of 1935 and each Dominion was authorized to make notifications with this effect.

- (5) The Governor General was given the power to modify or adopt the Government of India Act of 1935, as might be considered necessary till 31st March 1948. After that it was open to the Constituent Assembly to modify or amend the Act of 1935.
- (6) The rights of the British monarch to veto Bills or reserve Bills for his pleasure were given up. This right was given to the Governor General. He was given the full right to assent in the name of His Majesty to any law of the Dominion Legislature made in the ordinary legislative capacity.
- (7) The Act provided for the termination of the sovereignty of the British crown over the Indian states.
- (8) Agreements with the tribes of the North West Frontier Province of India were to be negotiated by the successor Dominion.
- (9) The office of the Secretary of State for India was to be abolished and his work was to be taken over by the Secretary of State for Commonwealth Affairs.
- (10) The title of the 'Emperor of India' was to be dropped from the Royal style as titles of the 'King of England'.
- (11) The Act provided both the Dominions-India and Pakistan the full power and rights to go out of the British Commonwealth of Nations if they desire.
- (12) In short the Act converted India from a dependency of the British crown into two independent Dominions within the British Commonwealth of Nations. The word Independence emphasized from the control of The British Parliament.

The Indian Independence Act of 1947 was acclaimed as "the noblest and greatest law ever enacted by the British Parliament" It marked the end of the British supremacy in India. It was recognition of the right of the Indians to be free. But unfortunately it divided the subcontinent into two Dominions, India and Pakistan.

THE CONSTITUENT ASSEMBLY OF INDIA

The idea of Constituent Assembly is the American contribution to the science of Government. The Philadelphia Convention of the United States was the first constitutional convention which was the direct inspiration of the French Nation and Philosophers like John Locke, Montesque and Rousseau. The concept of Constituent Assembly rests on the doctrine of Sovereignty of the People through the expressions like "We the People of India". According to the proposals of the Cabinet Mission Plan, the elections to the Constituent Assembly were held in July 1946. Out of the 296 seats for British India, the Congress secured 209 seats and the Muslim League secured 73 seats. 93 seats were allotted to the Indian states were not filled. The Constituent Assembly was a galaxy of top ranking leaders of the Indian National Congress and the Muslim League and statesmen from various fields like Administration, Law, Education, Journalism, Literature etc.

The first session of the Constituent Assembly was held from 9th December 1946 to 25th January 1947. Dr. Rajendra Prasad was elected as the permanent chairman of the Constituent Assembly. The objective resolution was passed on 22nd January 1947, which the Muslim League refused to join. This resolution declared the fundamental objectives which were to guide the Constituent Assembly in its deliberations. It gave expressions to the ideas and aspirations of the people of India. However it was to be observed that "the Constituent

Assembly was not a sovereign body and it was to work within the framework of the Cabinet Mission Plan”.

The second session of the Constituent Assembly set up 8 committees namely Rules Committee, Steering Committee, Advisory Committee, Drafting Committee, Union Subject Committee, Union Constitution Committee, Provincial Constitution Committee and States committee. Unanimous approval was given to a resolution moved by Nehru recommending a redistribution of the provinces so as to make them homogeneous units based on linguistic, cultural, administrative and economic consideration as soon as possible after the new constitution had been enforced.

The third session of the Constituent Assembly lasted from 22nd April 1947 to 2nd May 1947. During this session the report of the Union Constitution Committee and the Advisory Committee on Fundamental Rights and minorities were submitted. The Constituent Assembly started debates on the Fundamental Rights.

The fourth session of the Constituent Assembly was held from 14th July 1947 to 31st July 1947. The report of the Committee on Union Constitution, Provincial Constitution, the Subcommittee on minorities and Fundamental rights and the addition of the Scheduled Caste were presented. This session also adopted the National Flag on 22nd July 1947.

The fifth session of the Constituent Assembly was held from 14th August 1947. According to the provision of the Indian Independence Act of 1947, the Constituent Assembly became a sovereign body. It was not to work within the framework of the Cabinet Mission Plan. It was to enact ordinary laws for the land and it was to make the new Constitution. During the session all the previous reports of the Union Committees were discussed in the light of the Indian Independence Act. There was no limitation of the work of the Constituent Assembly. On 29th August 1947, a Drafting Committee of the seven members was set up with Dr B. R. Ambedkar as chairman.

On 21st February 1948, the Drafting Committee submitted its report. The Draft Constitution was presented to the Constituent Assembly on November 4 1948 which thereafter started debates. The consideration of the Draft Constitution took 114 days. About 7635 amendments were proposed and 2973 amendments were actually discussed by the Constituent Assembly. This alone will show the manner in which the Constituent Assembly conducted its business. To anyone who goes through the proceedings of the Assembly, it will be clear that it was a great democratic exercise of which Indians can be proud. The Draft Constitution had 315 articles and 13 sections and after final discussions it contained 395 articles and 8 schedules. The constitution was adopted by the Constituent Assembly on 26th November 1949 and it was inaugurated on 26th January 1950.

MODULE II

SALIENT FEATURES OF THE INDIAN CONSTITUTION - THE PREAMBLE – FUNDAMENTAL RIGHTS – DIRECTIVE PRINCIPLES OF STATE POLICY – FUNDAMENTAL DUTIES.

SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Constitution of India is remarkable for many outstanding features which will distinguish it from other constitutions. The most important features of the constitution are:

1. An elaborately written document: Brevity has been a normal feature of most of the constitutions of the world and it is thought, as K.C. Wheare observes that “one essential characteristic of the ideally best form of the constitution, is that it should be as short as possible”. Contrary to this the Indian constitution is the lengthiest constitution in the world this is due to the reason that the framers of the constitution included all the accumulated experiences gathered from the working of all the constitutions in the world

2. Combination of rigidity and flexibility: Lord Bryce said that that “procedure of Amendment makes the constitution the flexible or rigid”. Dynamism of human society necessitates an evolving constitution. This evolution can be brought about by a formal change or Amendments Article 4, 169, 368 deals with the Indian constitution. Our constitution can be amended in three ways (1) By simple majority of both houses of parliament (2) By 2/3 majority of both houses of parliament (3) By 2/3 majority of both houses of parliament with ratification by half of the state legislatures. In the first procedure it is flexible and in the 3rd category it is rigid. So our constitution is a combination of rigidity and flexibility.

3. Parliamentary form of government: The constitution of India is said to be parliamentary form of government in the Indian soil. The Preamble to the constitution provides that India will be a “Sovereign, Socialist, Secular, Democratic, Republic”. Thus the Preamble provided that India shall be a democracy, but the pattern of government as outlined in the constitution indicates that India shall be having a Parliamentary form of government.

4. A Federal system with Unitary Bias: Perhaps the most remarkable achievement of the Indian constitution is to confer upon a federal system the strength of a unitary government. Though normally the system of government is federal, the constitution enables the federation to transform itself into a unitary state. Such a combination of federal and unitary system in the constitution is unique in the world. To K.C. Wheare, “India is a unitary state with subsidiary federal features rather than a federal state with unitary features”.

5. Fundamental Rights: Rights are the conditions given to the individuals for the development of the personality. Part III (Article 12-35) of the constitution provides for 6 Fundamental Rights for the citizens of the country. According to M.A. Ayyangar, “the Fundamental Rights guaranteed to the people of India are not electorally based like those formed in the constitution of secured other countries in the world”.

6. Directive Principles of State Policy: The Preamble to the constitution provides the operational perspective of the constitution whereas the Directive Principles of State Policy high

light the organizational philosophy. Part IV (Art 36-51) of the constitution provides for a set of positive instructions in shape of Directive Principles of State Policy. They are non legal provision not enforceable in the court of law, but as fundamental instruction for the country and legislation. They may be divided into 4 groups- Economic Principles, Socialist Principles, Gandhian Principles and Liberal Principles.

7. Single Citizenship: The constitution of India does not recognize dual citizenship as in USA. It follows a single citizenship as basic principle of attainment of national integration and solidarity irrespective of caste, creed and colour.

8. Republic: Republic is the form of state when the head of the state is elected. India got Republic on 26 Jan 1950. Our constitution provides for a President as the Head of the state, who is elected indirectly by the people for a period of 5 years.

9. Secular State: India is indeed in the principle of Secularism. India is neutral in religious affairs and it does not accept any religion as state religion.

10. Integrated Judiciary: Indian judicial system inherits the trendiest set forth by the British for more than a century in this country. Our Judicial system is integrated in a hierarchical manner with the Supreme Court in the apex. The Directive Principles of State Policy however provide for separation of judiciary from Executive but not vice versa.

11. Judicial Review: An independent judiciary having a powerful Judicial Review is an important feature of the Indian constitution. The Supreme Court of India has the power to declare a law as unconstitutional, if it is beyond the mandatory provision of the constitution.

12. Welfare State: Welfare State is a Post II World War phenomenon, which has come to existence because of recommendation of Lord Beveridge in England. Welfare state is essentially a planned state in which deliberately guided actions for the most profitable utilization of the available natural resources for the community. A welfare state serves the individual as a Mother and nurse from the cradle to the grave in every aspect of life. The Preamble of the Indian constitution promises to secure Justice- social, economic and political for the promotion of the welfare of the people.

THE PREAMBLE

Every constitution has a preamble with which it begins and which embodies its objectives. The Preamble states the basic objectives which the constitution seeks to establish and promotes and also aids the legal interpretation of the constitution, where the language is found to be ambiguous. The Preamble act as a “Key to open the mind of the framers of the constitution and the mischief they intended to redress”. This serves three purpose (1) The sources of the constitution (2) A sediment of its objectives (3) The date of its adoption. For a proper application of the aim and aspiration embodied in our constitution, we must analyse the various expressions contained in the Preamble.

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

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

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

FRATERNITY assuring the dignity of the individual and the UNITY AND INTEGRITY of the Nation

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1946, do HEREBY ADOPT, ENACT AND TO GIVE OURSELVES THIS CONSTITUTION.”

1. The opening word of the Preamble “We the People of India” declares unequivocally, the ultimate society of the people of India and the constitution exerts on their authority. India declares her sovereignty to manage her own affairs is no unmistakable terms. With the inauguration of present constitution, India became a “Sovereign Republic” like USA and Switzerland.

2. The word Socialism has been included in the Preamble by the 42nd Amendment Act of 1976. The goal of the Indian polity is ‘Socialism’ which has been ensured by the constitution. It is to noted that the socialism envisaged by the Indian constitution is not usual scheme of state Socialism which involves of all means of production and distribution and the abolition of private property. Our former Prime Minister Mrs. Indira Gandhi rightly observed that “We have our own brand of socialism. We will nationalize the sectors where is full the necessities just nationalization is not our type of socialism”.

3. The Secular nature of Indian political system has been ensured by inserting the word ‘secular’ in the Preamble by the 42nd Amendment Act of 1976. A secular state is primarily devoted to political order and freedom and pursues policies in promoting economic stability and welfare of the people. It is not to be guided in the performing of its functions and discharge of duties by the teachings of any religious faith. It does not allow its resources and prestige to be utilized for the propagation of any particular religion. It allows freedom of religion to all, provided, such freedom is exercised subject to law and morality.

4. The term Democratic is comprehensive. In a narrow political sense, it refers only to the form of government. As a form of government, the democracy which envisaged is a representative democracy and there in our constitution no agencies of direct control by the people. In its broader sense, it embraces in addition to political democracy, also social and economic democracy. The term democratic is used in this sense in the Preamble.

5. The term Republic implies an elected head of the state. Under a Republican form, the Head of the state is elected for a prescribed period. In India, the President- the Head of the State- is elected indirectly by the people for a specific period or at regular intervals. The Preamble provides to define the objectives of the Indian Republic. They are ‘Justice, Liberty, Equality and Fraternity’.

Justice implies a “harmonizing reconciliation of individual conduct within the general welfare of the society “. The essence of the justice is the attainment of the common good. It embraces as the Preamble proclaims the entire, social, economic and political spheres of human activity.

The term liberty is used in the Preamble not merely in negative but also in positive sense. It signifies not only the absence of any arbitrary restraints on the freedom of the individual actions, but also the creation of conditions which provide the essential ingredients necessary for the fullest development of individual personality. Liberty shall be provided to each every citizen, in the thought, expression, belief, faith and worship and these are guaranteed against all the authorities of the state by Part III of the constitution.

Guaranteeing of certain right would be meaningless if only all inequalities are banished from the soil and each individual is assured of equality of status and opportunity for the development of the best in him. This object is secured in the body of the constitution by making illegal all discrimination by the state between citizen, simply on the ground of religion, race, caste, sex or place of birth in addition to this constitution ensures political equality by providing Universal Adult Franchise.

The Preamble emphasise the objectives of 'Fraternity' to generate a spirit of brotherhood among all sections of the people which is essential in a country like India composed of so many races, religions, languages and culture. In its declaration of Human Rights, the UN proclaims: "All human beings are born free and equal in dignity and rights. They are embodied with reason and conscience and should act towards one another in a spirit of brotherhood". It is this spirit of brotherhood that the Preamble of our country reflects.

The Preamble of the constitution of India is one of the best of its kind ever drafted. A glance over the Preamble of the constitution all the world over will show that both in ideas and ideals and in expression ours its unrivaled.

THE FUNDAMENTAL RIGHTS

Rights have been the demands of the individual everywhere in all ages because of good social life will not be possible without it. The origin of the rights of the individuals is shrouded in mystery and antiquity. An English Man believes that his rights are essential element of common law. British history replete with several solemn agreements and declarations like the Great Charter, Magna Carta, The Petition of Rights and The Bill of Rights. The American Declaration of Independence upheld the inalienable individual rights of life, liberty and pursuit of happiness. Similarly the French Declaration of Rights of Man and Citizens set forth the natural inalienable and sacred rights of man.

In India the demand for a Bill of Rights originated during the Freedom Struggle and the National Movement. The Indian desire for Civil Rights was implicate in the formation of Indian National Congress in 1885. A series of resolutions adopted by the Congress between 1917 and 1919 repeated the demand for Civil Rights and Equality of Status with Englishmen. Further the Common Wealth of India Bill 1925, Karachi Resolution of 1931, Government of India Act 1935, the Sapru Committee Report of 1945 and the Objective Resolution of 1947 highlighted the significance of the Bill of Rights. When India became free high hopes were raised in the minds of the people to become citizens by enjoying the rights and freedoms under the future constitutions of the country. After a debate of 25 days the Constituent Assembly adopted the Fundamental Rights which adorned the Constitution as Part III.

Our rights bear the designation fundamental in the sense that there are likely to be honored by all kinds of Government and State and not in the sense that Fundamental Rights are immune from constitutional amendment. The provisions of Part III of our constitution which enumerates the fundamental rights are more elaborate than any other existing constitutions and cover a wide range of topics. The constitution itself classifies the Fundamental Rights under six groups as follows:-

1. Right to Equality.
2. Right to Freedom.
3. Right against Exploitation.

- 4 Right to freedom of Religion.
- 5 Cultural and Educational Rights.
- 6 Right to Constitutional Remedies.

Article 12 simply provide the definition of the state including government, Parliament of India and the government and legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13 provides the definition of law for the purpose of actual operation of Part III of the Constitution because the Fundamental Rights provided therein are of are for the most part rights guaranteed against state action.

Right to Equality (14-18)

Article 14 provides that the Sate shall not deny to any person equality before the law and equal protection of the law within the territory of India. This article is the very corner stone of our Constitutional edifice. Equality before law is intended to preserve and guarantee the principle of Rule of Law in the Indian political system. Moreover, this article is intended to realize the ideal of equality enshrined in the Preamble of the Constitution.

Article 15 of the Constitution prohibits discrimination against any citizens on grounds only of religion, race, caste, sex or place of birth. This right is intended to establish the Gandhian ideal of social equality. However, this does not prevent state from making any special provision for women and children and socially and educationally backward classes of people or for Schedules Caste and Schedules Tribes.

Article 16 ensures equality of opportunity in matters of public employment. It is limited to employment or appointment to any offices under the state. The state has the power to make any provision for reservation of appointment in favor of socially and educationally backward communities and Schedules Caste and Schedules Tribes.

Article 17 of the constitution abolishes untouchability and its practice in any form is an offence punishable under law. Gandhiji's struggle for the emancipation of the Harijans resulted in Article 17. The abolition of untouchability removes a social disability and guarantees social equality among the citizens.

Article 18 prohibits the state from conferring any titles except a military or academic distinction.

Right to Freedom (19-22)

Article 19 guarantees to all citizens the enjoyment of certain civil rights while they are free. It gives six freedoms to the citizens of India. They are:

- 1) Right to freedom of speech and expression.
- 2) Freedom of assembly.
- 3) Freedom of association.
- 4) Freedom of movement.
- 5) Freedom of residence.
- 6) Freedom of profession.

The state may impose reasonable restrictions on the exercise of these rights in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation etc. These rights are only applicable to citizens of India.

Article 20 of the constitution guarantees protection against arbitrary and excessive punishment to any person who commits an offence. This Article lays down the following:-

- 1) It lays down that no one shall be convicted of an offence except of violation of law in force at the time of commission of such act.
- 2) No person shall be prosecuted and punished for the same offence more than once.
- 3) No person accused of an offence shall be compelled to be a witness against himself.

Article 21 prescribed that no person shall be deprived of his life or personal liberty "except according to the procedure established by law". The court interpreted the phrase "procedure established by law", the word Law means a positive or state made law and not a law arising out of the rules of natural justice.

Article 22: Protection against arbitrary arrest and detention. It deals with the Preventive Detention. It empowers the Parliament to make law providing for Preventive Detention. Union Legislature can make such law for reasons connected with Defense, Foreign Affairs and Security of the State. The State may make it for maintenance of public order, maintain of services, supply of essential commodity and security of the state.

Under such a law a person shall be arrested and detained in custody without trial. The authorities are not liable to provide the ground for arrest, if the disclosure will be against public interest. He can be detained for 3 months; this can be extended further only on the report of an Advisory Board.

In certain cases even without such report the detention can be extended beyond 3 months. The detene should be given opportunity to make a representation against his detention.

Right against Exploitation (Articles 23 -24)

Right against exploitation means that traffic in human beings and begging of other such forced labour are forbidden and declares to be offences.

Right to freedom of Religion (Articles 25-28)

It includes freedom of conscience and of professing, preaching and propagating any religion subject to public order, morality and health. Every religious denominations can establish and maintain institutions for religious and charitable purposes manage its own affairs and administer property.

Cultural and educational rights (Articles 29-30)

This includes the right of any sections of the people preserve its own language, scripts and culture. It also guarantees the right of the religious and cultural minorities to establish and administer their own educational institutions.

Right to constitutional remedies (Article 32)

This includes the safeguards for the enjoyment of these Fundamental Rights. The embodiment of these rights will have no meaning if certain remedies for their enforcement

are not made in case of any violation of these Rights. The Right to protection of the Fundamental Rights is called the Right to Constitutional Remedies. The Supreme Court and various High Courts are given the Right to issue writs for the enforcement of these rights.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy is a unique and novel feature of the constitution of India, as a pattern of Irish model which came to be operative since 1937. Though being not-enforceable this as fundamental in the governance of the country and legislation. This provides a general guidance to the government and parliament in making laws. It is the very content of organizational philosophy and socio economic democracy, According to Sir Iver Jennings “the philosophy underlying most of these provisions is Fabian Socialism.”

The Directive Principles of State Policy has been included in our constitution on Part IV-Art 36 to 51 can be classified under three heads:

I. Certain ideas particularly Economic and Social which according to the framers of the constitution, the state should provide:

1. Right to adequate means of livelihoods.
2. Right of both sex to equal pay for equal work.
3. Right against economic exploitation.
4. Right to equal opportunity for justice and for legal aid.
5. Right to work.
6. Right to public assistance in case of unemployment, old ages etc.
7. Right to human conditions of work and maternity relief.
8. Right to adequate wages.
9. Right of the workers to participate in management of industries.
10. Right to children to free and compulsory education.

II Certain directions to the government at all level in what manner they should exercise its powers:

1. State shall strive to promote the welfare of the people by securing a social order permeates by social, economic and political justice.
2. The state shall endeavor to secure just and human conditions of work.
3. The state shall endeavor to raise the level of nutrition and standard of living and to improve public health.
4. The state shall endeavor to promote international peace and security.
5. The state shall direct its policy towards securing distribution of material resources of the community and prevention of concentration of wealth and means of production.
6. Provide free and compulsory education.
7. To secure uniform civil code.

III Gandhian Principles:

1. To prohibit the consumption of liquor and intoxicating drugs except for medicinal purposes.
2. To develop cottage industries.
3. To encourage agriculture and animal husbandry in modern lines.
4. To organize village Panchayaths as a unit of self government.
5. To prevent Cow slaughter.

Besides the Directive Principles of State Policy contained in Part IV, there are certain other directions addressed to the state in other parts of the constitution. They are:

1. Article 350 A – To provide adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority groups.
2. Article 351- To promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression of all the elements of the composite culture of India.
3. Article 335- Enjoined that claims of the members of SC/ST shall take into consideration in making the appointment to services and posts in connection with the affairs of the Union or State.

It would not be an easy task to make a survey on the progress made by the government of the Union and the states in implementing such a large number of directions over the periods of 6 decades since the promulgation of the constitution. Nevertheless a brief reference to some of the outstanding achievements may be made in order to illustrate that the Directions have not been taken by the Government in power as pious as was supposed by many when they were engrafted in the constitution.

1. The greatest progress in carrying out the Directions has taken place as regarded the Directive that the state should secure that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.
2. A large number of laws have been enacted to implement Directives in Art 40, to organize Village panchayat.
3. For promotion of cottage industries (Art 43) which is a state subject, the central Government had established several Boards to help the state.
4. Legislations for compulsory education (Art 45)
5. For raising the Standard of Living (Art 47) particularly of the rural population, the government of India launched the Community Development Programme in 1952.

FUNDAMENTAL DUTIES

The Fundamental Duties has been incorporated in the Indian constitution by the 42nd Amendment Act 1976. As per Part IV A – Article 51A it shall be the duty of every citizen of India:

- 1) To abide by the constitution and respect the National Flag and National Anthem.
- 2) To cherish and follow the noble ideas which inspired our national struggle for freedom.

- 3) To promote the sovereignty, unity and integrity of India.
- 4) To defend the country and render national service when called upon to do so.
- 5) To promote the spirit of common brotherhood amongst all the people of India.
- 6) To preserve the rich heritage of our composite culture.
- 7) To protect and improve the natural environment.
- 8) To develop scientific temper the spirit of enquiry.
- 9) To safeguard public property.
- 10) To strive towards excellence in all spheres of individual and collective activity.
- 11) The parent or the guardian to provide opportunities to his child or ward between the age of six and fourteen.

MODULE III

INDIAN FEDERALISM, CENTRE-STATE RELATIONS, DISTRIBUTION OF LEGISLATIVE POWERS, ADMINISTRATIVE AND FINANCIAL RELATIONS BETWEEN UNION AND THE STATES- THE FINANCE COMMISSION, THE PLANNING COMMISSION, NATIONAL DEVELOPMENT COUNCIL

The political systems of the world have been classified into Unitary and Federal Models on the basis of concentration of powers or division of powers between the Central Government and Regional or State Governments. Unitarian means the concentration of the strength of the State in the hands of a visible sovereign power. Federalism means the distribution of the forces of the state among a number of co-ordinate bodies each originating in and controlled by the Constitution. According to Alexander Hamilton, "A federal state is an association of states that form a new one".

FEATURES OF FEDERALISM

The minimum essential features of a federal system are Dual Government, Distribution of Powers, and Supremacy of the Constitution, Independent Judiciary, Written and Rigid Constitution. But the classical case of federalism has now undergone a serious transformation owing to significant changes in social, political and economic conditions. The powers of the Federal Government have increased more and more which resulted in the centralism in every federal system of the world. It is for this reason that a modern federal system is said to fall "Somewhere between a unitary Government and a loose association of sovereign states".

FEDERAL SYSTEMS IN INDIA

The history of the federal system in India can be traced back to the Government of India Act of 1935. Because of the Multi- Culturalism, Multi-Ethnicity, Multi-Linguism, Vastness of the Country, multi-religions of India etc. the British Government realized that the political and constitutional problems in India can be solved by adopting a federal polity. All subsequent negotiations which followed after 1935 was in this direction, which culminated in the establishment of a federal system of the Government by the provisions of the Constitution.

FEDERAL FEATURES OF INDIAN POLITICAL SYSTEM

- 1. Written Constitution:-** India has a written Constitution, which is an essential requirement for a federation. All powers and authorities derived from the Constitution, and the constitution is considered as the most sacred national document.
- 2. Dual Government:-** India has also a dual system of Government i.e. the Federal Government at the Union Level and State Government at the Regional Level.
- 3. Distribution of Power:-** As in all federations, in India also there is a division of power. The subjects are divided into 3 namely: the Central List (97 subjects), the State List (66 subjects), and the Concurrent List (47 subjects). The Residuary Powers are vested with the Central Government. The Union Parliament has exclusive legislative powers on the Central List. The State Legislature has the power to make laws in the State List. Though both the Union and

State's can legislate on the subjects in the Concurrent List, the Central law will prevail, if both legislate on the same subjects.

4. Judicial Supremacy:- As in all Federations, in India also, there is Judicial Supremacy. The Judiciary is considered as the custodian of the Constitution and safeguard the interest of the people. The Supreme Court, with the provisions in the Constitution, is beyond the influence of either the Executive or the Legislature.

5. Bi-Cameral Legislature:- As in all Federations, India has a Bi-Cameral Legislature, the Lower House represents the people and the Upper House represents the federating units. It is in the Upper House that federating units are adjusted and accommodated so that they feel a sense of Security and equality.

6. Rigid Constitution:- The rigidity of the Constitution is specially desired for the federating units so that the centre subsequently does not change the list of subjects to suit its convenience. India's Constitution is accordingly rigid to a great extent and this is in conformity with a federal set up.

NON- FEDERAL FEATURES IN THE INDIAN CONSTITUTION

According to K.C. Wheare, "India is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features". To C.H. Alexandrowicz, the "Constitution of India is neither purely federal nor purely unitary but is a combination of both" It is a union or composite state of a novel type. It enshrines the principle that in spite of federalism the national interest output to be permanent. Hence we can see many non-federal or unitary aspects in the Indian federation. They are

- (1) Single citizenship
- (2) Predominance of Union government in law-making
- (3) Unequal representation of states in the upper House
- (4) The power of the Union government to alter the boundaries of the State governments
- (5) The role of the Inter-State Council, The Planning Commission, Finance Commission, Election Commission etc.
- (6) The emergency powers of the President of India
- (7) Partly flexible nature of the Constitution
- (8) The role of the Governor
- (9) All India Services
- (10) Integrated Judiciary
- (11) The office of the Accountant and General in the states which is a subsidiary of the CAG
- (12) Uniform Civil and Criminal laws

TENSION AREAS

Federal System in India began functioning in the context of a constitutional arrangement with the primacy of the Government. So the Union Government from the very beginning was not only conscious of its constitutional powers but also started encroaching steadily into the

state's domain. This increasing centralization and intervention has caused some major tensions in Union and State Relations. Important of them are:-

1. Role of Governor.
2. Imposition of President's Rule.
3. Deployment of Central Forces.
4. Reservation of Bills by the Governor for the consideration of the President.
5. Sharing of Resources.
6. Monopoly of the Union Government in certain areas.
7. Use of Electronic Media.

1. Role of Governor:- With regard to the Governor, the points of conflict have been four-fold- The Appointment of Governor; the relationship of Governor with the Centre; the relation of the Governor with the State Government and the consent by the Governor to laws passed by a State Legislature. In brief if the office of the Governor and its incumbent exceeds the limit, it is highly a tension mounted area.

2. Imposition of the President's Rule:- It has been suggested that the Article 356 is to be used as a measure of last resort. But in practice this Article has been so frequently used for the purely partisan interest or the subjective satisfaction of the President. Article 356 has been misused by dismissing the State Government having majority in the Assembly, either suspending or dissolving the Assemblies on partisan consideration. On certain occasions the chance of the opposition parties to form the government were rejected.

3. Deployment of Central Forces:- Maintenance of Law and Order is a State Subject. But on many occasions the Union Government deployed the Central forces like BSF, CRPF and even military for the maintenance of Public Order in the State, even without consulting or informing the State Government.

4. Reservation of Bills for the consent of the President:- the power of the Governor to reserve a Bill passed by the State Legislature for the assent of the President is the another area of tension. The main purpose of this is that the Centre wants to keep watch on the activities of the States. Unfortunately the Governors misused this provision to serve the interests of the Ruling Party at the Centre. It is interesting to note that even the Central Government remains idle for years without taking any action on the Bills referred by the Governor.

5. Sharing Of Resources:- One of the most controversial issue between the Centre and the State's is the sharing of federal revenues. The state has always complained that the centre is not sharing the taxes with them in the spirit of the constitution. This results in an ever widening gap between the revenues and expenditure. Further the centre's assistance is not reasonable and is guided by political consideration. This imbalance in allocation and the resultant economic growth lead to strain the relation between the Centre and the States.

6. Monopoly of the Central Government:- The Central Government has monopolized the control of industries, trade, commerce and production and distribution of goods. Though these are state subjects with the advantage of the constitutional provisions that Parliament could regulate them in national interest, the centre had brought them usually under its

control. This owes consideration has resulted in poor rate of economic growth and the consequent poverty of the people.

7. Use of Electronic Media:- According to the constitution, all laws and regulations concerning broadcasting and telecasting emanate exclusively for the Central Government. The centre has used this advantage for satisfying their demands, particularly political. The opposition parties have raised this but of no use. Even the non-Congress ruling parties at the centre had also done only lip service with regard to the autonomy to the media. However, the arrival of satellite channels and cable TV network may provide some relief to the states.

SARKARIA COMMISSION

When the federal issues attained new dimensions due to political, social and economic changes and the tension areas grew in sharpness, the Union Government appointed a commission on 24th March 1983, under the Chairmanship of Retd. Justice R.S.Sarkaria, to review the working of existing arrangements between the Union and States and to recommend appropriate changes to strengthen the unity and integrity of the nation. This commission came to be known as Sarkaria Commission.

The Sarkaria Commission identified certain major issues in union-state relationship and made 265 recommendations, primarily based on the existing constitutional principles and arrangements. However they are sound to ensure a system of collective decisions.

CO-OPERATIVE FEDERALISM

It is became almost impossible to follow the traditional principles of division of power and confined governmental activities in a federal system. The structure of activities of both the Union Government and State Government has undergone tremendous changes, which necessitated mutual help and assistance. This led to more harmonious working i.e. co-operative Federalism which stands for the mutual assistance and help in areas where it demands.

India is also moving in this direction. Indian Federalism is co-operative in the same that it seeks co-operation of both the Union and State in several matters of common interest. The conference of the Governor's, Chief Minister's at New Delhi, Zonal Councils, Interstate Council, Finance Commission, Planning Commission, National Development Council etc. may be cited as some of the examples in this regard. The working of these agencies ensures that the states are not entirely on the receiving end and as Prof. W.H. Morris Jones put that "neither the centre nor state can impose decisions on the other".

CENTRE- STATE RELATIONS

In all Federal Systems the relation between Centre and units is a subject of much controversy. Where there is concentration of power in the Federal Government the States clamour for more powers and where there is too much of decentralization the centre demands for more powers from the States. Anyhow the written constitution, judicial supremacy and self imposed restrictions make the thing works smoothly. India is also not an exception to this.

ADMINISTRATIVE RELATIONS

Though the Federal system of Government involves the sovereignty of the federating units, in their respective territorial limits, it is not possible to provide them complete isolation from

the Centre. Both of them involved in a give and take policy for mutual benefits. The constitutional provisions in Articles 256, 257 and 365 enables the Union government TO exercise control over state administration. Apart from this delegation of Union functions to the States, All India Services, Inter- State Councils, Zonal Councils, Inter- State Commerce Commissions, Inter-State Water Disputes etc. enables the centre to regulate the administrative systems in the States.

LEGISLATIVE RELATIONS

For the smooth functioning of a Federal Polity the legislative relations between the Centre and States should be complimentary. However in India the centre is more powerful than the State in Law Making. All subjects for legislative purposes have been divided into three lists namely, Union List, State List and Concurrent List. The Union List which contains as many as 97 subjects on which the Union Legislature has exclusive power of legislation. The State List contains 66 subjects on which the State Legislature has exclusive power of legislation. In the Concurrent List there are 47 subjects on which both the Centre and the State can legislate. If both of them legislate on the same subjects the Centre Law will prevail over the State Laws. Moreover residuary powers have also being left with the Centre. Thus it is evident that the power of the Union Government in Law Making is quite powerful than the States

Further during an emergency under Article 356 of the Constitution can forbid the States and direct these not to legislate on subjects under the State List. The Parliament with the approval of 2/3rd members present and voting the Council of States can legislate on the subjects mentioned in the State List.

Again in the legislative field certain Bills passed by the State Legislature must seek Presidents approval before it becomes an Act.

FINANCE COMMISSION

One of the controversial problems in a federal system is the fiscal relations between the federal government and State Governments. The framers of our constitution anticipated this and decided it was absolutely necessary that from time to time, the position should be reviewed. Accordingly a provision was made in the constitution itself for setting up a Finance Commission.

Composition:-

Article 280 of the Constitution provides that the President, shall within two years from the commencement of the constitution and thereafter at the expiration of every fifth year or at such earlier times as the president may consider necessary, by order constitute a Finance Commission. It consists of a Chairman and four other members. The Chairman and members are appointed by the President on the recommendations of the Council of Ministers.

Qualification:-

As per the Finance Commission Act (1951) as amended in 1955, the Chairman of the commission shall be a person who has the experience of dealing with public affairs. As regarding the members they should

1. Be persons who can be appointed as judge of the High Court or
2. Have special knowledge of accounts and finances of the Government or

3. Have wide experience of financial matters or
4. Have special knowledge of Economics.

Functions:-

The experience in the past indicates that the Finance Commission concentrates on two main questions namely, Vertical Devolution (What % of the taxes collected by the Central Government should be passed on to the States) and Horizontal Devolution (How the divisible tax proceeds are to be apportioned among the States).

1. To recommend to the President about the distribution between the Union and State of the taxes collected by the Central Government.
2. To suggest the principles which should govern the grants-in-aid of the revenues of the state out of the Consolidated Fund of India
3. Any other matters which may be referred to the Commission by the President in the interest of sound finance.

PLANNING COMMISSION

Ever since Dadabhai Naoroji published his paper on powers of India in 1876, the Indian leaders had argued the necessity of co-ordinated action in the economic field as a means to the economic development of the country. As the struggle for national independence progressed, its social or economic aims become more definite. Much useful programmes in the field of National Planning was adopted by the National Planning Committee which was set up in 1938 by the Indian National Congress with Jawaharlal Nehru as its Chairman.

In 1941 the Government of India appointed a committee for planning which was replaced in 1943 by the Reconstruction Committee of the Executive Council with the Governor General himself in chair. In 1944, a separate Planning and Development Department was established under the inspiration of the Planning Department. A number of development schemes were prepared by the Central and Provincial Governments. The problem of planning was reviewed towards the end of 1946 by the Advisory Planning Board established by the Interim Government.

The Advisory Planning Board suggested the setting up of a Planning Commission, a single compact authoritative organization directly responsible to the Cabinet to devote continuous attention for overall development. The recommendation was accepted and the Planning Commission was established by a resolution of the Government of India dated 15th March 1950.

Composition:-

The Planning Commission is an extra constitutional body, composed by the Chairman, Deputy Chairman and members. (The number of full time members varies from time to time). Prime Minister will be the ex-officio chairman of the Planning Commission.

Functions:-

1. To make an assessment of the material, capital and human resources of the country and to investigate the possibilities of augmenting these resources to the requirement of the nation.

2. To formulate a plan for the most effective and balanced utilization of the country's resources.
3. To determine priorities of projects and the programmes to be included in the plan.
4. To indicate the factors which are tending to retard economic development.
5. To determine the nature of the machinery to secure the successful implementation of the plan.
6. To appraise from time to time the programme of the plan and to recommend the necessary adjustments of policy and measures.
7. To make recommendations either for facilitating the discharge of its duties or for a consideration of the prevailing economic conditions and current policies.
8. It examines all problems referred to it for advice by the Central Government/ State Government.

NATIONAL DEVELOPMENT COUNCIL

National Development Council was set up by a resolution of the Government of India on 6th August 1952, for the close co-operation of the Planning Commission and the States. It is constituted by the Prime Minister, Chief Ministers of all States and members of the Planning Commission. It must meet at least twice a year. Its main functions are as follows:-

1. To review the working of the National Plan from time to time.
2. To consider important questions of social and economic policy affecting national development.
3. To recommend mean for the achievement of the aims and targets set out in the National Plan.

MODULE IV

THE UNION GOVERNMENT

UNION EXECUTIVE

THE PRESIDENT OF INDIA

Article 53 of the Constitution of India says that “the executive powers of the Union shall be vested in the President”. The President of India is indirectly elected by an electoral college consisting the elected members of the both Houses of Parliament and the elected members of the State Legislative Assemblies. The election is on the basis of the proportional representation by means of Single Transferable Vote.

Qualifications

The qualifications fixed to the office of the President are simple:

1. A citizen of India.
2. Should have completed the age of 35 years.
3. Should be qualified for election as a member of the Houses of the Parliament.
4. Should not hold any office of profit under the Central Government/ State Government or Local Authority control by the Government.
5. Cannot be a member of either House of Parliament or State Legislature.

Term

The President's term of office is 5 years from the date on which he assumes office. He is also eligible for a re-election. The President may resign from his office before the expiry of his term or he may be removed from office by an impeachment for violation of the Constitution. According to the procedure laid down in the constitution, 1/4th of the total number of the House can give notice at least 14 days in advance of their intention to impeach the President. The charges is approved by the 2/3 majority of the House, will be referred to the other House for investigation, if the investigation House also approves the charges with 2/3 majority, the President should need his office.

Salary

The President shall be entitled an official residence, emoluments(Rs.1,50,000) allowances and privileges as determined by Parliament from time to time. He is also provided with free medical care and personnel staff. On the retirement, the President is eligible for pension. The salary and allowances of the President shall not be diminished during his term of office.

Privileges

1. He is not answerable to any Court of Law for the performances of his duties.
2. No criminal proceedings can be initiated against him.
3. No warrant can be initiated against him.
4. In civil cases, two months notice should be given to him.

Powers and Functions

The constitution of India provides wide powers to the President of India. These powers can be classified under the following heads – Executive, Legislative, Judicial, Military, Diplomatic, Financial and Emergency Powers.

Executive Powers

Most of the constitutional functionaries are appointed by the President. The President appoints the Prime Minister; other Ministers of the Council of Ministers on the advice of the Prime Minister; The Attorney General of India; the Comptroller and Auditor General of India; the Chief Justice and other Judges of the Supreme Court and the High Court; the Governors; Ambassadors; High Commissioners; the Chairman and Members of the UPSC; the Chief Election Commissioner and other Commissioners of the Election Commission; the Finance Commission; Special Officer for SC/ST; Official Language Commission; Minorities Commission; Administrators of Union Territories etc.... Some of the functions remain in office during the pleasure of the President. More over the President prescribes rules and regulations for some personnel servicing under Civil and Military administration in India.

Legislative Powers

President is the Integral part of the Union Legislature. The President has the power to summon, prorogue the session of the Parliament. He can dissolve the Lok Sabha. The President can convene a joint session of both the Houses of Parliament to resolve a deadlock. The President nominates 12 members to Rajya Sabha and 2 persons of the Anglo Indian Community to the Lok Sabha. The President has the power to address and sent messages to the Parliament. The first session of the Parliament after a general election and its first session of a new year must open with the inaugural address of the President.

There are certain types of Bill that cannot be introduced in the Parliament without the prior recommendations of the President. Money Bills, Creation of New States, Alteration in the boundary lines of a State, laws related to languages and Expenditure from the Consolidated Fund of India.

The Presidential assent is necessary for the Bills passed by the Parliament to become a law. In the case of Non- Money Bills, he may either give his assent; or withhold it or he may return the Bill to the Parliament for reconsideration. If the Bill is again passed by the Parliament, with or without amendment, the President can't withhold his assent. But the President has absolute Veto Power over Bills passed by the State Legislatures.

Article 123 of the Constitution empowers the President to promulgates Ordinances, when both the Houses of Parliament are not in session, such a step will be taken by the President when he is satisfied that the circumstances so requires.

The President is required to lay before the Parliament the reports and recommendations of the UPSC, Finance Commission, Election Commission, Comptroller and Auditor General, Commissions for SC/ST and Backward Classes etc.

Judicial Powers

Apart from the key judicial appointments, the judicial powers of the President constitute prerogative of mercy. He has the power to pardon, offenders, or remit or suspend or commute

their sentences. He has the right to consult Supreme Court on any matters of law. He is the fountain of Justice.

Military Powers

The Constitution bestows certain military powers on the president. He is the Commander-in-Chief of the armed forces. He is the head of the National Defense Committee. He could declare the War and Peace. The President has the right to ask for a military exercise during the peace time. The President also confers titles on Armed forces personnel.

Diplomatic Powers

The President appoints the diplomatic representatives like Ambassadors, High Commissioners, and Charge D Affairs etc. The President represents India in International Conferences and make negotiations. He is expected to sign international treaties which would create healthy relations with other countries. He receives diplomatic representatives of other countries.

Financial Powers

The Constitution provides certain financial powers to the President of India. As the head of the state all Money Bills passed by the Parliament require his consent and approval. Money Bills can be introduced in the Parliament only after obtaining the previous sanction of the President. The Contingency Fund of India is at his disposal. The President appoints the Finance Commission from time to time to decide about the share of the State Government from the Central Revenue. The President submits the annual financial statement of the Union Government to the Parliament. He also submits the annual report of the Comptroller and Auditor General to the Parliament.

Emergency Powers

Part XVIII of the constitution deals with the Emergency powers of the President. The constitution stipulates three kinds of emergencies – National Emergency, State Emergency and Financial Emergency.

National Emergency:- Article 352 empowers the President to declare the National Emergency when a serious situation has arisen or is most likely to arise threatening the security of the country by war, external aggression or armed rebellion in the country. Such a proclamation shall be laid before the Parliament and unless approved by it. It shall see to have its effect after the expiry of one month at the most.

Effects

1. Parliament shall have unrestricted power to make laws in the Union, State and Concurrent List.
2. Parliament shall have the power to extend its own life.
3. The Executive power of the Union shall extend to the issuing of any directions to State Government about its operation.
4. The President by his order shall be entitled for notifying the provision relating to the distribution of revenue between the Union Government/State Government.
5. The Fundamental Right under the Article 19 and 32 stands suspended. The Article 226 is also not in operation during this period.

State Emergency:- Article 356 of the Constitution empowers the President to take over the administration of any States in the event of the breakdown of the constitutional machinery. The proclamation will be either on the request of the State Governor or on the basis of his own satisfaction. The proclamation shall remain in force for 6 months and can be extended for another 6 months by a resolution of the Parliament.

Effects

1. The President shall assume all functions of the State Government.
2. Since the State Legislature stands dissolved or kept in a state of suspended animation, the Parliament shall have the power to make laws and pass budget for that State.

Financial Emergency:- Article 360 of the constitution empowers the President to declare a financial emergency, if he feels that “the financial stability or credit of India or any part thereof is threatened”.

Effects

1. The Executive authority of the Union shall extend to giving directions to any state to observe financial propriety.
2. The President may give directions to reduce the salaries and allowances of all or of any class of persons serving the State.
3. The President can withhold the financial bills reserved for the consideration of the President by the Governor after they are passed by the State Legislature.
4. The President may give direction to the Union Government to reduce the salary and allowances of all or any class of persons including the judges of the Supreme Court / High Court.

THE VICE PRESIDENT

Article 63 of the constitution provides for a Vice President. He is to be elected by an electoral college consisting of members of both the Houses of Parliament. The election will be by Secret Ballot on the basis of proportional representation by means of Single Transferable Vote.

Qualifications

1. A Citizen of India and he must have 35 years of age.
2. Must hold any office of profit under the Central Government/State Government.
3. He must have the qualification for election as a member of the Council of States.

Term of Office

The Vice President shall hold office for a term of 5 years from the date on which he joins office. He could resign from his office, before the expiry of his term. He can also be removed from his office by a resolution passed by a majority of the Council of States. But the resolution should also be approved by the Lok Sabha.

Emoluments

As the Vice President, he is not eligible for any salary or allowances. But being the Chairman of the Rajya Sabha, he is eligible for salary and allowances as fixed by Parliament from time to time. When the Vice President acts as the President or discharges the functions of the President, he gets the salary and allowances of the President of India.

Powers and Functions of the Vice President

The Vice President is the ex-officio chairman of the Council of States. He presides over its meetings. He is to see that there is a perfect decorum in the House and all business in the House is conducted in accordance with the provisions of the Rule of Procedures and conduct of business. (As presiding officer of the House he has no right to vote). The members of the House can speak only with his permission.

When the office of the President falls vacant, the Vice President act as the President. However the constitution prescribes that such a vacancy should be filled in with in a period of six months. If he is elected as the President, he shall enjoy a full term of 5 years.

The Vice President may also visit foreign countries on a good will mission or an invitation from foreign governments or for cultural exchange programmes. During these visits he neither speaks for the government nor participates directly or indirectly in the affairs of the government.

THE COUNCIL OF MINISTERS

Article 74 of the constitution provides that there shall be a Council of Ministers with the Prime Ministers as its head which shall aid and advice the President in the discharge of his constitutional responsibilities.

Formation (Composition)

The President invites the leader of the majority party or the leader of a coalition of parties who commands a majority in the Lok Sabha to form the Government. Other ministers are the Council of Ministers are appointed by the President on the advice of the Prime Minister. The constitution does not fix the size of the Council of Ministers. It is, however, preferred that the total strength of the Council of Ministers should not exceed 1/10th of the total strength of the Lok Sabha. Further the Administrative Reforms Commission recommended that the strength of the Council of Ministers should not exceed 45. But it is for the Prime Minister to determine the size of the Council of Ministers according to the exigencies of time and requirements.

The Council of Ministers is a three tier system. It includes the Cabinet Ministers, the Ministers of State and Deputy Ministers.

The Cabinet Ministers are the senior party men, whom the Prime Minister can trust and rely in contingencies for advices, who are in charge of very important departments in the governments. Sometimes persons outside the party or even from outside the politics are inducted in the cabinet. Actually the role of the Council of Ministers is assumed by the Cabinet.

Ministers of State are the second level of leaders in the party who are given the changes of comparatively less important, though quite significant departments. They are given

independent charges of their portfolio and are expected to prove their worth, talent and integrity. In course of time they may be given berth in the Cabinet.

Deputy Ministers are comparatively junior persons and not given independent charge of any department. They are put under the charge of either minister of the cabinet rank or that of the state, so that they can get proper training.

The minister of all the three categories combined together form the Council of Ministers. The ministers of the central rank form the cabinet. The cabinet is a small and compact body whereas the Council of Ministers is much a bigger body.

Principles of the Council of Ministers

- 1. Leadership of the Prime Minister:-** All the members of the Council of Ministers must accept the leadership of the Prime Minister. If anybody disagrees with him, he may be shunted to a minor portfolio or ask for his resignation or may be sacked by the President on the recommendation of the Prime Minister.
- 2. Collective Responsibility:-** It means that all the ministers of the three ranks are collectively responsible to the Lok Sabha. They come into power, together and leave their office together. An attack by the opposition parties against one minister in an attack against all. If the Lok Sabha adopts a no confidence motion, the entire ministers goes out of power. The basic principle is that the cabinet sinks and swims together.
- 3. Cabinet Solidarity:-** It means that the cabinet works as a team. All major policy issues are decided by the cabinet as a whole and the whole cabinet is expected to speak with one voice. No minister is supposed to speak against it in public or vote against it in the Parliament, or disown a cabinet decision.
- 4. Cabinet Secrecy:-** In cabinet meetings several secret issues are discussed and disclosed. Each minister receives several reports and documents on which he is required to take decisions. It is required of everyone not to disclose anything to the public. He must continue to maintain secrecy even after his resigning from the Cabinet.
- 5. Political Responsibility:-** The ministers, who are the political head of the department, are responsible to Parliament for the functioning of their departments. He has the moral responsibility for the achievement and failure of his department. The minister must accept the responsibility for the actions of the department and must resign if serious blunders or failures are exposed.

Functions of the Council of Ministers

The functions of the Council of Ministers can be summarized as follows – The final determination of policy; the supreme control of the national executive; the continuous co-ordination of the administration. Apart from this the cabinet also performs a lot of other administrative functions.

- 1. As a Legislator:-** The cabinet guides and controls Parliament in its law making function. It proposes, explains and defends. The cabinet plans overall legislative programmes and determines which measure shall occupy how much time. The entire time table of Parliament including the time for its summoning, prorogation and dissolution is determined by the Cabinet.

2. **Determines policy:-** The Cabinet determines all policies – external, internal and fiscal matters. It approves all plans of economic development and the Planning Commission works in close consultation with it.
3. **Supreme Control of the Executive:-** The Constitution vests the executive authority in the President, exercisable by him either directly or through offices subordinates to him. The real functionaries are the ministers, who control the ministry. The Cabinet is, thus, the Supreme National Executive.
4. **Power of Appointment:-** Appointment to all key posts such as Governors, Ambassadors, Chairman and Members of various commissions like UPSC, Election Commission, Finance Commission, Attorney General, Comptroller and Auditor General, Chiefs of Armed Forces. Sometimes even the selection of judges of the Supreme Court is made by the Cabinet.
5. **Conduct of Foreign Relations:-** the Foreign Relations of the country are also controlled by the cabinet. All negotiations with foreign head of State/Government are conducted either by the Prime Minister or by the Minister for External Affairs. Sometimes the government signs secret treaties and agreements with foreign powers and Parliament is not even informed about them.
6. **Financial Powers:-** In the financial field, the cabinet performs many functions. Though the budget is prepared by the Finance Minister, there will be discussions with Prime Minister and to some extent the inner cabinet, whose approval is treated as the approval of the whole cabinet. Further, it is the responsibility of each minister to see that budget proposals of his ministry are approved by the House.
7. **Imposition of Article 356:-** The cabinet decides about the imposition of President's rule in the State. When the President's rule is imposed on any state, it is the cabinet that decides how long that rule would continue and when new election for the State Assembly would be held. The President's rule in a state, in fact, means the rule of the Cabinet.
8. **Cabinet as a Co-ordinator:-** the cabinet is responsible for coordinating the work of all the ministries and this is done through the Cabinet Secretariat.

With regard to the position of the cabinet it enjoys a predominant position in administration. It is the efficient part of the government. To Ramsay Meir, "It is the steering wheel of the ship of the state". To Marriot, "The pivot around which the whole political machinery revolves".

THE PRIME MINISTER

The title Prime Minister has been derived from the French word "Premier Ministre" who served the king in administration. Later the term was adopted by the English People and the authority of the Prime Minister was fully established in the late 19th century. Since we adopted the West Minister model, the office of the Prime Minister is the embodiment of highest political power. To Lord Morley "Prime Minister is the keystone of the Cabinet Arch". So if the Prime Minister happens to be a man of powerful personality, backed by a stable majority in Parliament, he would be far more powerful than a most despotic monarch.

Appointment

Article 75 provided that the Prime Minister shall be appointed by the President. Accordingly the President after a general election invites the leader of the majority party or the leader of the coalition of parties who commands a majority in the Lok Sabha to form the Government.

Qualification

He shall be qualified to get elected to the Lok Sabha.

Term of Office

The term of the Prime Minister is not fixed. Once appointed he continues till he is assured of the support of majority in the Lok Sabha. If he loses the support/confidence he resigns.

Powers and Functions of the Prime Minister

- 1. Formation of the Council of Minister:-** The first task of the Prime Minister is to draw up a list of other ministers. He has a free hand and Lore Attlee maintained that "The Prime Minister should make decisions solely and should be ruthless in making appointments and sacking those who should be relieved". To Disraeli, "a work of great time, great labour and great responsibility". However, the Prime Minister has certain considerations in selecting his colleagues. He must include all important leaders of the party; must give representation to all regions, states, union territories, representation to all shades of opinion and interest in the party, communities, religions, and section of societies, young blood, people with steady loyalty to him, should give due weightage to experience, balance between the two Houses etc.
- 2. Allocation of Port Folio:-** Another important task of the Prime Minister is the allocation of Portfolios among the colleagues. For this he keeps in mind the experience, ability and interest of the persons concerned. In this case also he may be put in pressure by the colleagues and has to tackle diplomatically.
- 3. Re-shuffle the cabinet:-** the power of reshuffling the cabinet reveals the real powers of the Prime Minister. Nehru did it whenever he pleased but Mrs. Gandhi did it more often. Rajiv Gandhi is also not an exception to this. The Prime Minister has the unfettered right to review, from time to time, the allocation of offices among the various ministries and to decide whether that allocation still remained the best that could be effected.
- 4. Head of the Government:-** the Prime Minister is the pivot of the whole system of administration and the head of what Bagehot termed as the efficient part of the Executive. As such he keeps an eye on all departments and coordinates their working. He guides, instructs, encourages, advice, and warns his ministerial colleagues.
- 5. Presides over the meetings of the Council of Ministers:-** the Prime Minister presides over the cabinet meetings and controls the agenda. The agenda of the cabinet meetings will be prepared by the cabinet secretariat in consultation with the Prime Minister's office.
- 6. Link between the President and the Council of Minister's:-** It is the constitutional responsibility of the Prime Minister to keep the President informed about all the decisions of the Council of Ministers, to furnish information about all the administrative affairs and legislative proposals of the Union Government. Further if the President requires, to submit for the consideration of the Council of Ministers any matter on which a decisions had been taken by the Minister, but which had not been considered by the Council of Ministers.
- 7. Role in Parliament:-** the Prime Minister has a decisive role in determining as to when Parliament shall be summoned, prorogued and dissolved. It is under the Prime Minister's guidance that the time table of each session is worked out and new bills are drafted and moved in Parliament. As the leader of the House, the Prime Minister makes all the

principal announcements, defend government policies, answer questions, pilot major bills, and at certain occasions comes to the rescue of his colleagues.

- 8. Leader of the Party:-** Being the leader of the party, Prime Minister plays a very important role in formulating his party's policies, programmes and in defending them. The Prime Minister decides the party's victory at the elections. The general election is in reality the election of the Prime Minister. The Prime Minister is the chief conciliator of the diverse factions in the party. He controls the party machine and appointments in the party cadre often depend upon his political blessings.
- 9. Builder of Public Opinion:-** To Ivor Jennings, "The Prime Minister is not only a close student of public opinion, but also an expert in propaganda. He must know what to say, when to say, how to say and whom to say. The Prime Minister moulds and guides public opinion by receiving deputations and discusses issues, by public speeches on ceremonial occasions, news conferences, radio broadcasts, television appearances etc. He must also study the report which the party manages receives from the constituencies to know the pulse of the people.
- 10. International representatives:-** Though the Prime Minister does not hold the ministry of External Affairs, he exercises a lot of influence on it. All authoritative announcements of the Foreign Policy of the country are made by the Prime Minister. He controls Foreign Policy and the appointment of diplomatic missions is unchallengeable. He represents the nation at critical international conferences and negotiations. He entered into correspondences with the foreign heads of governments on issues concerning world peace and security. He sent messages of good will and felicitations on national days.
- 11. Co-ordination of Administration:-** The Prime Minister co-ordinates the administration. Apart from the overall co-ordination and supervision of the administration of the Union government, the Prime Minister exercises special responsibility towards foreign, defense, finance, home and economic affairs. In times of national and international crisis the nation looks towards him for information, guidance and even encouragement.
- 12. Prime Minister during Emergency:-** During the operation of emergency under Article 352 of the constitution, the Prime Minister if want, can virtually become a dictator. Mrs. Indira Gandhi, during the 19th months of internal emergency from June 1975, assumed full dictatorial powers. The evidence of this tendency was that she did not even consult her cabinet colleagues before taking decisions and only informed them about it, the following morning. While the country had already been moving in the direction of what R.H.S. Crossman had styled "Prime Ministerial form of government" it now entered into an era of Prime ministerial dictatorship. The institution framework of parliamentary democracy stayed on, but it became subservient to the whims of the Prime Minister.

THE UNION LEGISLATURE

The Union legislature, known as Parliament is a bi-cameral legislative body. It consists of two houses namely House of the People (Lok Sabha) and Council of States (Rajya Sabha). House of the People is the Lower House and Council of States is the Upper House.

HOUSE OF THE PEOPLE (LOK SABHA)

The House of the People is the Lower House of the Indian Parliament. Article 81 of the Indian Constitution deals with the composition of the House. The present strength of the Lok Sabha is 545(State 525, Union Territory 18).Out of this if the President feels that the Anglo Indian Community is not fairly represented, he could nominate 2 persons from that community to the Lok Sabha. The members are elected directly by the people on the basis of Single Member Constituency (Territorial Representation) and Universal Adult Suffrage.

Qualifications

Elections to the Lok Sabha are held on the basis of the Universal Adult Franchise (in which any citizen of India is eligible to cast his vote without any discrimination on the basis of religion, race, caste, sex, or place of birth). But in order to chosen as a member of the Parliament a person

1. Must be a citizen of India.
2. Must complete 25 years of age.
3. He has resided in the constituency for a minimum period as prescribed by law.
4. Sound Mind
5. He should not otherwise be disqualified to become a member of the Lok Sabha.
6. He should not hold any office of profit either in the Central Government or State Government.
7. He should subscribe that he holds allegiance to the Constitution of India and uphold unity and integrity of the country.

Term

Article 83 of the Constitution has fixed the normal life of Lok Sabha at 5 years. The House may be dissolved before the expiry of its normal term by the President/Normal term of the House may be extended by an Act passed by Parliament during the operation of an Internal Emergency under Article 352 of the Constitution.

Sessions

The President of India, on the advice of the Prime Minister, Summon, Prorogue, as well as Dissolve the House. But according to Article 85 of the Constitution 6 months shall not intervene between the two sessions.

1. Summon: Call Session
2. Sessions: The period of time between the meeting of a Parliament whether after a prorogation or dissolution.
3. Adjournment: The temporary suspension of the sitting of the House. This is the decision of the Speaker. Adjournment does not end the session.
4. Prorogation: It is the act of terminating the parliamentary session. This is a Presidential act on the advice tended by his Council of Ministers.

5. Dissolution: The complete dissolution of the House either on the expiry of the term, or on the advice of the Council of Ministers.
6. Recess: The period between the prorogate of Parliament and its re-assembly in a new session is termed as recess.
7. Sine-Die: Indefinite adjournment of the House.

Functions and Powers of the Speaker

The functions and authority of the speaker in India resembles more or less to that of the speaker of the British House of Commons. The speaker exercises his powers and functions partly under the Constitution and partly under the Rules of procedure of the House.

His foremost duty is to see that there is decorum and discipline in the House is conducted in an orderly manner and in accordance with the minister of the House. In the House when the speaker stands, all members are supposed to sit and listen to him patiently. All members are supposed to address him only, while participating in the debate.

All Bills passed by the House are authenticated by his signature before they are sent to the Council of States for its consideration to the President for his assent. The speaker is the channel of communication between the House and the President.

The speaker certifies whether a particular Bill is a Money Bill or a Non Money Bill. This is important because Money Bills can't be introduced in the Rajya Sabha and that Rajya Sabha can't delay its passage beyond 14 days.

The speaker decides about the admissibility of resolutions, questions, and motions. He decides what time should be allotted to each item on the agenda. He is the only authority to decide who shall hold the floor and speak. The speaker is expected to the judicious conduct of debates.

As presiding officer of the House, he conducts its proceedings. He does not participate in the deliberation of the House except in the discharge of his duties. Usually the speaker will not cast his vote. But during ties, he exercises a casting vote to resolve the deadlock

The speaker is the custodian of rights and privileges of the members of the Lok Sabha. His authority in the proceedings of the House and over the galleries is final. No persons can enter the House or galleries without his permission.

The speaker presides over the joint sittings of both Houses of Parliament. The speaker has the power to recognize parties and groups in the House of the People.

The speaker nominates Chairman and members of the various parliamentary committees. He is expected to see that all shades of opinion have representation in these committee.

No arrest or any other type of warrant can be issued by any executive authority or any member of the Parliament without his prior permission, within the four walls of the House. Information about arrest, bail or release of a member should be immediately sent to him.

He accepts all the resignation which are sent to him by the members of the House. He has the power not to accept a resignation which he feels has been bogus.

The speaker is the head of the Lok Sabha Secretariat. The secretariat staff of the House functions directly under the control of the speaker and is responsible to him. The speaker is the ex-officio president of the Indian Parliamentary Group.

Thus the speaker of the Lok Sabha has immense responsibilities and powers as well. But the speaker can discharge his duties and responsibilities only when he enjoys the confidence of the House including the opposition parties.

Powers and Functions of the Lok Sabha

Legislative Powers:- Though Non-Money (Ordinary) Bills can be introduced in either House of Parliament, Money Bills can be introduced only in the Lok Sabha. Whether a Bill is a Money Bill or not will be decided by the Speaker. With regard to Money Bills, the Upper House cannot reject or amend it by virtue of its own powers. Upper House must return it with or without comments within 14 days. In case the bill is not returned within 14 days, it is treated to have been passed by the Upper House.

In case of Non-Money Bills, if there is a disagreement between the two Houses, the President may summon or joint sitting of both the Houses to settle the differences. In addition to this, the Lok Sabha can also legislate on Concurrent list and residuary powers.

Central Executive:- The Constitution makes the Council of Ministers individually and collectively responsible to the Lok Sabha. It can remain in power as long as it enjoys the confidence of the majority of the House, as soon as the confidence is lost, the minister is supposed to resign. Apart from this the House controls the executive by using the Question Hour, by moving Calling Attention Motion, by moving Adjournment Motion, Criticize the Executives during debates, Zero Hour and by moving the Non-Confidence Motion. When a Non-Confidence Motion is passed by the House, the entire Ministry is expected to resign.

Constituent Function:- The Lok Sabha or with the Rajya Sabha, has the power to amend the constitution. Though the amendment Bill can be introduced in either House, in fact all the important constitutional amendment Bills have so far been introduced in the Lok Sabha.

Control Finance:- Being custodian of national finance, it controls Contingency Fund of India. It can borrow money from the Foreign Nations. It empowers the RBI to raise loans from the Indian Public. It also decides about the taxes which should be levied and those already in forces should be reduced or abolished. The sanctioning (Appropriation Act) of the expenditure in the exclusive privileges of the Houses of the People.

Electoral Function:- In the Election of the President, Vice-President, and the House has a significant role. It also elects the Speaker, Deputy Speaker and panel of Chairmen to preside over its meetings and members and Chairman of various Parliamentary Committees.

Judicial Powers:- The House of the People enjoys some judicial powers. It sits as a Court of Law, when it discusses motion for the removal of judges of the Supreme Court and High Court, or disposes of a motion of the impeachment against the President of India. Its approval is also necessary for the removal of Vice-President.

Diplomatic Powers:- The executive enters into International treaties from time to time. These treaties cast certain obligations on the People of India. It is the responsibility of the Lok Sabha to ensure that adequate steps are taken to see that their obligations are fully discharged.

An Organ of Information:- As an organ of information, Parliament is more powerful than the press. Because the Parliament secures the information authoritatively from those in the Government. This information is collected and disseminated not only through the debates but through the specific question to the Ministers.

Political Education:- The member of the House has a significant role in the political education of the people with their wide and vast functions. Legislation makes the people conscious of their role and responsibility as a citizen of India.

Investigatory Powers:- It had investigatory powers on certain occasions. The House of the People with the Council of States constitutes investigatory commissions to enquire into serious scandals or any other grave situations.

Advisory Functions:- The Parliament provides members to the Cabinet and advice the ministers on various issues. This is done particularly by the Parliamentary consultative Committees attached to various Ministers.

Ventilation of Grievances:- The House performs an important function of removing and ventilating the grievance of the people. The members are supposed to be in contact with the electorate and listen to their grievances and problems. During the sessions they draw attention to these problems on the floor of the House and try to find solutions.

THE COUNCIL OF STATES (RAJYA SABHA)

The Council of the States is the upper House of the Indian Parliament. It is constituted by 250 members of which 238 elected and 12 can nominate by the President from amongst persons having special knowledge or practical experiences in Literature, Science, Arts and Social Services. This House represents the units of the Indian Federation.

Qualifications

The Constitution of India provides that a person who wants to become a member of the Council of States should be

1. A citizen of India.
2. Must have completed 30 years of age.
3. He should be an elected for a Parliamentary constituency of the state from which he seeks election.
4. He should not hold any office of profit either in the Central Government or State Government.
5. He should be of sound mind
6. He should not have been declared unqualified for membership by any Court of Law.
7. He should neither have voluntarily acquired citizenship of any foreign countries nor agreed to owe allegiance to any foreign power.

Term

The Council of States is a permanent chamber. It is not subject to dissolution as in the case of Lok Sabha. 1/3 of its members retire every two years and the same number will be elected. After election each member enjoys a six year term.

Sessions

Sessions of both the Houses are convened simultaneously, by the President on the advice of the Council of Ministers.

Presiding Officer

The meetings of the Rajya Sabha are presided over by the Vice-President of India, who is the ex-officio chairman of the Rajya Sabha. Since the Vice President is not a member of the Rajya Sabha, he enjoys no voting power. But he can use his casting vote in case of a dead lock.

As presiding officer of the House, he is required to maintain decorum and discipline in the House. He recognizes the members to the floor, decides points of order, puts questions and announces results. Any items in the Houses can be discussed only with his permission. He enjoys an exalted position.

In the absence of the Chairman, the House elects a Deputy Chairman, who of course, is elected by the Rajya Sabha from amongst its own members. When both the Chairman/Vice Chairman are not available to preside, available member from the panel of Chairman presides.

Functions

Rajya Sabha being the Upper House does not possess co-equal powers with the Lok Sabha in many matters. No Money Bill will originate in the Rajya Sabha. If a Money Bill is passed by the Lok Sabha, it will be transmitted to the Rajya Sabha, with the certificate of the Speaker; The Rajya Sabha can only delay it for a period of 14 days. In case, a Money Bill is not returned within that period, that will be treated as passed.

With regard to Ordinary Bills, it can be originated in the Rajya Sabha and if it approves, the Bill will be transmitted to the Lok Sabha. If an Ordinary Bill is originated in the Lok Sabha, after its approval that will be transmitted to the Rajya Sabha. The Rajya Sabha can only the power to delay an Ordinary Bill approved by the Lok Sabha for a period of 6 months. If there is a disagreement, a joint session will be convened to solve the dead lock. In case of joint sitting, the position of the Rajya Sabha is weak, because of the numerical strength of the Lok Sabha.

In case of controlling the executive, the position of the Rajya Sabha is weak, because the Council of Ministers is collectively responsible to the Lok Sabha. Though they present in the Rajya Sabha, Pilot Bills, Answers Questions, They could not be removed by the Rajya Sabha by passing a Non-Confidence motion.

Both Houses has an equal power in Constituent function; approval of election of the President, Vice President, impeachment of the President, removal of the judges of Supreme Court and High Court and also that of the Comptroller and Auditor General of India.

In certain case, Rajya Sabha has exclusive rights. Since it represents the states; with a resolution of 2/3 majority can suggest to transfer of a particular subject under State List either to the Central List/Concurrent List. Such a resolution has the validity of one year and can be extended for another one year.

By 2/3 majority of the House it can pass a resolution for creating an All India Service, if it feels that such a service is essential and needed in the National Interest.

The position of the Rajya Sabha is not similar to that of the British House of Lords which is the weakest chamber in the world and not comparable to that of the American Senate, which is the most powerful second chamber in the world. It comes a middle of the two upper chambers.

Parliamentary Privileges

The privilege on certain rights belongs to each House of Parliament collectively and some of them belong to the members individually, without which it would be impossible for either House to maintain its independence of action. Article 105 and Article 194 of the Constitution deals with powers and privileges and immunities of members of Parliament and State Legislature in India.

Privileges of each House may be divided into two groups- Those which are enjoyed by the member individually and those which belong to each House of Parliament as a collective body.

A. Privileges enjoyed by the members individually are:

- 1. Freedom from Arrest:-** No member shall be arrested in civil case 40 days before and after adjournment of the House and also when the House is in Session.
- 2. Freedom of Attendance and Witness:-** A member can't be summoned without leave of the House, to give evidence as a witness while Parliament is in Session.
- 3. Freedom of Speech:-** The member of the Parliament have freedom of Speech and they can't be taken to task anywhere outside the four walls of the House. They can't be discriminated against for expressing their views on their floor of the House.

B. Privileges enjoyed by the house collectively:

1. The right to publish debates and proceedings and the right to restrain publication by others.
2. The right to exclude others.
3. The right to regulate the internal affairs of the House and to decide matters arising within its walls.
4. The right to publish Parliamentary misbehavior.
5. The right to punish members and outsiders for breach of its privileges.

LAW MAKING PROCEDURE

The Constitution does not provide a detailed legislative procedure. The lengthy procedure of law making have made by the Parliament. These rules prescribes an identical procedure in both the House of the Parliament. A legislature proposed to be introduced in the Parliament is known as "Bill". Bills can be classified into two- Government Bills and Private Bills. The Government Bill can be further divided into two- Money Bills and Non-Money Bills. The Bills introduced in the House by the Minister is known as Government Bills and the member other than the Ministers is known as Private Member Bill.

Every Bill, for become a law has pass through five different steps as follows:-

First Stage: First Reading:- During this stage the person who desires to move the Bill, introduce it in the House. At this stage, simply the detail of the Bill is read and a very brief speech is made explaining the intention of the Bill. If the Bill has a controversial nature, the speaker permits the opposition to express its opinions. The copy of the Bill will be distributed among the members and publish it in the "Gazette of India".

Second Stage: Second Reading:- In the second stage, the Bill is discussed at great length. The mover of the Bill elaborates the intention of the proposed measure. The members opposing it criticize and attack the Bill. In this stage the mover of the Bill may forward a motion that the Bill may be referred to a Select Committee/ Joint Select Committee. When it is decided that the Bill be referred to the committee, it is called Committee Stage.

Third Stage: Committee Stage:- The committee examines the Bill thoroughly and in detail. The committee has full power to summon any person, hear experts, verify the document, and to make suggestions for the improvement of the Bill. After expertise analysis, the committee prepares its report and transmits it to the House.

Fourth Stage: Report Stage:- The report consists of two parts- The points the committee consider to be incorporated in the Bill and the Bill is amended by the committee. The Bill at this stage will be debated clause by clause and amendment as moved. Each clause and amendment is put to vote of the House, if the amendments are approved by the House by a majority it become a part of the Bill.

Fifth Stage: Third Reading:- The debate on the Bill during this stage is of a restricted character, because the Bill has already been discussed clause by clause during the previous stage. The points left untouched during the second stage are raised during this stage. The motion is then put and voted upon. If a majority of the members presents and voting supports it, the Bill is deemed to have been passed by the House of its origin.

The Bill in the Other House:- After adopted by the House in which the Bill was originated; transmitted to the other House. The Bill has to undergo the same procedure in the other House also.

If it agrees with the proposal, it approves it. Sometime they make some amendments to the original proposal and sent back the Bill with their recommendations. In this situation, perhaps they accept it. Then the Bill goes to the President for his assent.

In case of a disagreement between the two Houses, it will be settled in a Joint Sitting. In a Joint Sitting, the Lok Sabha's position will be vindicated, because of the numerical strength.

Assent by the President:- After passing the Bill by the two Houses, it is presented to the President for his assent, since no bill can be an Act, unless assented by the President. The President may give his assent or withhold it, or return it for reconsideration of the House with his recommendations. When the Bill so returned, the Parliament may reconsider it and passed by the two Houses with or without amendments and presented to the President for his assent. In this context, the President has no option, but to assent the Bill. A Bill thus becomes law.

PASSING OF THE BUDGET

Procedure for passing a budget is somewhat different from that of passing of Money Bills. The general budget is presented by the Finance Minister, usually on the last working day of

February each year. The budget reviews the state of economy, the development measures to be initiated, steps proposed to be taken to fill uncovered gap between the Income and Expenditure. The expenditure on the accounts of all Departments except the Consolidate Fund of India are put before the House as "Demand for Grants". And the budget has been presented there is a general discussion on that in the Parliament.

Then comes next stage, namely that of the "Voting on Demands". At this stage, demands of each ministry are debated at this opposition may put forward a motion (Cut Motion) suggesting that expenditure earmarked for a particular Ministry/Programmer should be reduced. In case such a motion is carried out that will mean virtual vote of no confidence against the Government and the Minister is expected to quit.

All demand including the expenditure chargeable as the Consolidated Fund of India is presented to in House as "Appropriation Bill". At this stage, no amendment is moved because has already discussed demands. After it has been approved by the Lok Sabha, and certified by Speaker, as Money Bill, it is sent to the Rajya Sabha and thereafter to the President, the Government is empowered to draw money from the treasury.

Apart of the budget deals with the income i.e. taxation proposals of the year. This is presented to the Houses in the form of Finance Bill. Finance Bill has also passes through the same stages, as the Appropriation Bill. The Finance Bill empowers the Government to collect taxes proposed in the Budget.

AMENDMENT

Amendment is a very comprehensive term and includes alteration, revision, repeal, addition, variation or deletion of any provision of the constitution. Article 368 of the constitution deals with amendment procedure of the constitution.

Features

1. The amendment bill can originated in either house of parliament
2. Certain bill requires previous sanction of the president before its introduction.
3. There is no provision in the constitute for a joint sitting of both houses to settle a disagreement.
4. Parliament has no power to amend the basic principles of the constitution
5. No separate body for amending the constitution.
6. State legislatures cannot initiate any bill/proposal for amendment of the constitution.

Methods

There are three methods by with the constitution can be amended.

1. By a simple majority of parliament
2. By 2/3 majority of both houses of parliament
3. By 2/3 majority of both houses of parliament and ratification by half of the state legislature.

COMMITTEE SYSTEM

The word Committee traces its origin from French word 'Command' means trust. H.M. Robert defined, "Committee as a body of one or more persons appointed or elected by an assembly or society to consider or investigate certain matters". The history of the committees in India can be traced back to 1854. In 1854, the first legislature constituted a committee. Since then the committee system in India has come to stay and today each house of the Parliament has its own committees. The committee system of the Parliament plays a predominant role in transacting the business of the House.

The committees can be broadly divided into three- the committee helps to conduct the business of the House; the committee helps to transact the business of the House and the Financial Committee. In spite of the nature of composition and strength of the committee enjoys a lot of powers. The committee can call for any relevant documents, summon officials and examines witness for its investigation. The following are the important committees:-

- 1. Business Advisory Committee:-** This committee consists of 15 members, formed at the beginning of the each session. The committee will be presided by the speaker. The leader of the opposition will also associate with the committee. This committee advises the speaker about the schedules of his proceedings in the House. The task of this committee becoming difficult because of the volume of work to be disposed by the House.
- 2. The Rules Committee:-** the Rules Committee is composed of 15 members. Speaker of the House is the Chairman of the Committee. This committee gives through the rules of procedure for the conduct of business and suggests necessary revisions in the light of experiences.
- 3. The Committee on Petitions:-** This committee is constituted by 15 members with the commencement of the House. This committee examines the petitions about grievances, irregularities or difficulties experienced by the people and suggest remedial measures.
- 4. The Select Committee:-** The strength of the Select Committee varies from one or another. The life of the committee also depends on the nature of the Bill. The function of the committee is the minutest examination of the Bills referred to it and suggests alteration, if any to the House.
- 5. Committee on Privileges:-** This committee has a strength of 15 members nominated by the speaker at the commencement of the House. Usually the Deputy Speaker is the member of this committee and on such he presides over the meetings. The function of the committee is to look into complaints of the members about the violation of their privileges and to suggest remedial measures or punish the guilty.
- 6. Committee on Sub-ordinate Legislation:-** This is a 15 member committee nominated by the Speaker. The task of the committee is to see that the rules framed by the Government on within the spirit and guide lines prescribed by the legislature.
- 7. Committee on Public Undertakings:-** This committee includes 15 members drawn from both Houses of the Parliament. 3 members retire every one year. This committee examines the working of the public undertakings and points out all types of irregularities on the basis of the reports of the Public Undertakings Committee; the Government takes effective steps for improving its working.

- 8. Committee on Government Assurances:-** The committee on assurances is composed of 15 members, nominated by the Speaker for a period of one year. It is the responsibility of the committee to report to the House. In extent, to which assurances given to the House have been implemented, it also recommends what action should be taken for implementing the assurances.
- 9. Estimates Committee:-** The Estimates Committee includes 30 members who are elected on the basis of the proportional representation by means of single transferable vote. The Chairman of this committee will be nominated by the Speaker. The term of the committee is one year. But in order to provide continuity the members are re-elected. This committee examines the methods of public expenditure and analysis whether public money is being properly used or not.
- 10. Public Accounts Committee:-** This committee is a very important Committee of the House. The total strength of the Public Accounts Committee is 22 members. 15 members are from Lok Sabha and 7 from Rajya Sabha. The members of the Rajya Sabha are associating with the committee because they have no voting rights. Members are elected for a period of one year but by a convention they are also elected for the next year also. The speaker nominates the Chairman of the committee. The committee examines the report of the Comptroller and Auditor General and makes suggestion for the improvements of economy in expenditure. It summarizes the Appropriation Accounts of the Government and other reports placed before it.
- 11. Informal Consultative Committee:-** Each ministry has an Informal Consultative Committee of the members of Parliament attached to it. This committee will advise the minister about the functioning of the ministry and the minister, to the extent possible accommodate the suggestions of the members.
- 12. Committee on the Salary and Allowance of Members of Parliament:-** This committee make studies and recommends to the Parliament to given the salary and allowances and other perks of the members so as to enable them to discharge their duties honestly and effectively.

GOVERNMENT OF THE STATES

THE GOVERNOR

The Governor is the constitutional head of the State Government. He plays a twofold function- as the constitutional head of the Government and as a link between the centre and the state government.

Appointment:- The Governor of the state is appointed by the President on the recommendation of the Council of Ministers. There are two conventions with regard to the appointment of the Governor. They are

- (1) Must not belong to the state where he is appointed and
- (2) Consult the Chief Minister of the state where to be appointed.

Qualification

1. Must be a citizen of India.
2. Must have completed 35 years of age

3. Must not hold any office of profit.
4. Must not be a member of the Union Parliament or State Legislature.

Term of Office

The Governor is appointed for a period of 5 years. But he holds office during the pleasure of the President. He may be dismissed by the President or removed by the President for bribery, corruption, or treason or violation of the Constitution. The Governor has also the right to resignation before the expiry of the term. The Governor's are eligible for re-appointment or may be transferred from the one state to another, on certain occasions the state governments may demand for the recall of the Governor, who act against the wishes and interest of the popularly elected state government.

Salary And Allowances:- The Governor receives a monthly salary and other allowances fixed by the Parliament from time to time. He is also provided with official residence, personnel staff etc.

Privileges

1. Governors are not answerable to any court of law for the exercise and perform of the power and duties of his office.
2. Personnel immunity from all civil and criminal proceedings during his term of office.

Powers

The Governor enjoys executive powers, legislative powers, judicial powers, and emergency powers.

Executive Powers:- Article 154 of the constitution has provided that the executive powers of the state shall be vested with the Governor. The Governor appoints the Advocate General and the Chairman and members of the State Public Service Commission. The Governor sends periodic report to the President with regard to the State administration. He is the chancellor of the universities in the state. Though the Governor has no power in appointing the judges of the High Court, but the President consults his Governor before appointment of the judges of the High Court in the State.

Legislative Powers:- Governor of a state is an integral part of the state legislature though not a member of either House. He summons prorogues the state legislature and dissolves the State Legislative Assembly. He addresses the state legislature at the commencement of the new session after a general election as well as the opening session of every year. He also sends messages to the state legislature on a matter pending before it or otherwise. He has the power to convene the joint session of the State Legislature, to settle the disputes if any between the two Houses.

The Governor nominates 1 person from the Anglo Indian Community if he feels that the Anglo Indian Community is not fairly represented in the House and nominates 1/6th of the members to the Legislative Council, from among the persons who have special knowledge in any field of Art, Literature, Social Services, Education, Co-operate movement etc. The Governor has the power to issue Ordinances when the legislature is not in session. He lays the annual report of the PSC, Accountant General, and Annual Financial statement in the State Legislature.

Prior sanction of the Governor is needed for the introduction of the Money Bills and Demand for grants in the Legislature. In the absence of the Speaker and Deputy Speaker, the Governor appoints one person to conduct the business of the House. All Bills after passed by the State Legislature will be send to the Governor for the assent without which it will not become a law. With regard to a Bill, the Governor can recourse to four course of action. They are- he may give his assent; or with hold his assent; or reserve the Bill for the consideration of the President or return the Bill to the Legislature for re-consideration. It is to be noted that he can't withhold his assent in case of a Bill, if it is re-adopted by the legislature with or without his recommendations.

Judicial Powers:- The Governor has certain judicial functions. He can pardon, reprieve or reduce the punishment of a person who has been adjudged guilty by any court in the State. The Governor has also the power of commuting the sentences.

Emergency Powers:- The Governor can report to the President with regard to the breakdown of constitutional machinery in the State with his recommendations regarding the imposition of state emergency under Article 356 of the Constitution. In case the President declares the State Emergency, then the Governor act like an agent of the Union Government in running the administration of the State.

A comprehensive Survey of the function and powers of the Governor shows that he is more or less a nominal head like the President. According to T.T. Krishnamachari, "Governor is a constitutional head without any authority to interfere with the actual administration".

STATE COUNCIL OF MINISTERS

After a general election to the State Legislative Assembly, the Governor invites the leader of the majority party or coalition to form the Government. Other Ministers of the Council of Ministers are appointed by the Governor on the advice of the Chief Minister. The Council of Ministers are collectively responsible to the Legislative Assembly of the State and individually to the Governor. The Chief Minister and his Council of Ministers remain power so long as they command the confidence of the Legislature. The power of the Chief Minister is corresponding to the Prime Minister of the Union Government.

1. Head of the State Government.
2. Leader of the majority party or coalition in the Assembly.
3. Appoint other Ministers.
4. Allocate Portfolio.
5. Chairman of the Council of Ministers.
6. Link between Governor and Council of Ministers.
7. Co-ordinate Administration.

STATE LEGISLATURE

Even though a uniform pattern of the Government is prescribed for the States, in the matters of composition of the state legislatures their exists distinction. In some states their exists Bi-Cameral Legislatures and in some states there is only Uni-Cameral Legislatures. When there exists a Bi-Cameral system, the Upper House is known as Legislative Council and the Lower

House is known as Legislative Assembly. In the Uni-cameral system the legislature is known as Legislative Assembly.

Composition of Legislative Council

The size of the Legislative Council is varying from state to state. The membership of the council being not more than $1/3^{\text{rd}}$ of the membership of the Legislative Assembly but not less than 40. It is partly nominated and partly elected body- Election is indirect one and according to the principle of Proportional Representation by the Single Transferrable Vote. $1/6^{\text{th}}$ member of the total strength is nominated by the Governor and $5/6^{\text{th}}$ are elected indirectly. That of which $1/3$ will be elected by the electorates consisting members of local bodies such as Municipalities, District Board etc. $1/12^{\text{th}}$ will be elected by electorate consisting of graduate of 3 years standing residing in the State. $1/12^{\text{th}}$ will be elected by electorates consisting 3 years of teaching in educational institutions with in that state not lower than secondary schools and $1/3^{\text{rd}}$ will be elected by members of the Legislative Assembly from amongst persons who are not member of the Assembly.

Term

The Legislative Council as in the case of the Council of States is not subject to dissolution. But $1/3^{\text{rd}}$ of its members retire on the expiry of every second year.

Composition of the Legislative Assembly

The member of the Legislative Assembly of each state is composed of members elected directly by the people on the basis of Universal Adult Franchise from Territorial Constituencies. The number of members shall not be more than 500 or less than 60. The Governor of the State can nominate such members of the Anglo-Indian Community as he deems fit, if he is of opinion that they are not adequately represented in the Assembly. (Article 333)

Term

The duration of the Legislative Assembly is 5 years but may be dissolved, earlier by the Governor.

Powers

The legislative procedure in a state having two chambers is broadly similar to that in Parliament.

DEMOCRATIC DECENTRALIZATION

OR

PANCHAYATH RAJ IN INDIA

Article 40 of the Constitution says that "The state shall take steps to organize village panchayaths and endow with such powers and authority or as may be necessary to enable them to function as which of self government". In pursuance of the above Article, in 1949, the Fiscal Commission recommended the launching of a National Extension Service Movement covering the entire nation. Towards the end of the 1st Five Year Plan, the Government appointed a Committee headed by Balwant Rai Mehta (Jan.1957) to review the working of the Community Development Programme and also to examine the question of re-organization

of the district administration. The Committee submitted its report in the same year (The Mehta Report is considered as a historic document). It is described as the “master Blue print and Bible of the Panchayati Raj”

The Committee recommends a scheme of “Democratic Decentralization” with a three tier structure of local bodies namely Village Panchayath, at the Village level; The Panchayath Samiti (Block Panchayath) at the Block Level; The Zila Parishad (District Panchayath) at the District level. Thus evolved the three tier system of Panchayathi Raj in the country.

Later in 1985 and 1986, the Government appointed two committees to suggest ways and means for strengthening Panchayath Raj under the Chairmanship of G.V.R. Rao and L.M. Sighvi respectively. Taking into account of the recommendation of these committees the Union Government initiated the 73rd Amendment to the Constitution.

After the 73rd Constitutional Amendment Act 1992, significant re-organization of the Panchayath Raj system took place all over the country and has been statutorily provided fully or partially in 22 out of 25 states and in 6 out of 7 Union Territories. In remaining 3 states and one Union Territory there are traditional Tribal Councils.

GRAMA SABHA

Grama Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised with the area of Panchayath at the Village Level. A Grama Sabha may exercise such powers and perform such functions at the Village Level as the legislature of a State. The most important function of the Grama Sabha is to submit proposals for the overall development of the ward.

THE PANCHAYATH

It is the lowest rung of the three tier system and consists of the elected representatives of the people. Its structure and composition differs from state to state. Its membership varies from 5 to 31. Seats have been reserved for SC, ST and Women. Average population per Panchayath on all India basis is approximately 1,400. The Panchayath is elected is generally for a period of 5 years.

Functions

The following are the important functions of the Panchayaths:-

- 1. Maintenance of Public Health:-** This includes Sanitation, Medical Relief, Disposal of Garbage, Street Drainage, Safe Drinking Water, Control Epidemics, Public Latrines etc.
- 2. Development and Production Function:-** It includes the Construction of Public Amenities, prepare village plans, regarding the Development of Agriculture, Animal Husbandry, Cottage Industries etc.
- 3. Physical Planning of the Village:-** Control over the Common Land and Control over the Site Land.
- 4. Social Welfare:-** It includes Famine Relief, welfare programmes related to the Handicapped, Children and Youth Welfare Programmes, Welfare Programmes for SC/ST etc.
- 5. Representational:-** Airing local grievances, representing continuity in Panchayath Samitis etc.

6. House Keeping:- Collecting Panchayath revenue, budgeting, accounting, maintain roads, supervising schools, supervising hospitals etc.

7. Civil Defence:- The Panchayath may undertake the organization of village volunteers force and also the maintenance of watch and ward services.

8. Conciliative:- The Panchayaths have been empowered to conciliate disputes with mutual consent of both parties.

9. Agency Function:- The Panchayaths are entrusted with agency functions such as small savings, insurances, revenue collection.

Financial Resources:- Panchayath can levy the taxes, prescribed under the statute with due regard for rules and regulations framed by the State Government.

1. Taxes:- House Tax, Professional Tax, Land Cess, Sanitary Cess, Vehicle Tax, Water Tax, Marriage Tax, Tax on Trade, Tax on Commercial Crops, Entertainment Tax etc.

2. Fees & Fines:- Registration of Animals.

3. Other Resources:- Income derived from the management of common land, disposal of Panchayath property, auction of fruit trees, fisheries and tanks, and income from agency function.

4. Grants:- Matching grants from the Government.

BLOCK PANCHAYATH

Area:- The Area generally within an National Extension Block (NES)

Composition:- The constitutional pattern of the Panchayath Samiti's varies from state to state.

Tenure:-The tenure of the Panchayath Samiti in most states is same as that of the Panchayaths.

Election:- Direct Election

Functions

1. Social Services:- It includes the Education, Health, Sanitation, Social Welfare, House Keeping Functions, Emergency Relief, Inter- Panchayath Roads and culvert etc.

2. Community Development:- Organize Village Institutions, Amenities for Self Help, Community Feeling.

3. Production Programmes:- Construction and Maintenance of Irrigation Works, Development of Co-operatives, development of village forests, development of Small Scale Industries, development of agriculture etc.

THE ZILA PARISHAD

The Zila Parishad,(District Panchayath) is mainly an advisory, co-ordinating, fund distributing and supervisory body. The Zila Parishad performs Executive, Co-ordinative, Advisory, Appellate, Supervisory, Declaratory and House Keeping and joint service Functions.

MUNICIPALITIES

The Municipal Government in India has its roots in pre-historic India. But the foundations of modern system of Municipal Government were laid by the English people in India and the policy of Decentralization in that sense started from 1870, which was culminated through various legislations by the government. The oldest landmark in the evolution of urban local government was the setting up of National Commission on Urbanization by the government of India in 1985 to make a comprehensive study of the rapidly growing phenomenon of Urbanization and of the problems caused by it and to suggest measures to combat them.

There are 5 types of local bodies in India namely- Corporation, Municipalities, Notified Areas, Tour Area Committees, and Cantonment Board.

Functions of Municipalities

A bulk of Municipal Acts laid down specifically two types of function, viz; Obligatory and Optical. These functions comprise Medical and Public Health Services, Sanitation, Water Supply and Drainage, Education, Municipal Trading, Housing, Planning, Town improvement etc.

73RD CONSTITUTIONAL AMENDMENT ACT

This is a landmark amendment of the Constitution passed in 1993, which provides for an elaborate system of establishing Panchayaths as units of Self Government which for the first time in the constitutional history of independent India; details the constitution of Panchayaths, direction for which they would function, membership of Panchayaths, constitution of the Finance Commission, to review the financial position of the Panchayaths and several other related matters. It also adds a new schedule namely 11th schedule of the Constitution.

The highlights of the Act are:

1. A separate Part namely Part IX has been added to the Constitution.
2. A new schedule called Eleventh Schedule enumerates the powers and the function of the Panchayati Raj Institutions has been incorporated.
3. A uniform pattern of Panchayati Raj Institutions.
4. Reservation of seats for SC/ST and Women.
5. The State Legislature by law may assign the preparation of plans for economic development and social justice and their implementation to Panchayati Raj Institutions.
6. The State Election Commissioner will hold election to Panchayath bodies.
7. State Legislature have been given powers to authorize the panchayat to collect appropriate local taxes.
8. A Finance Commission has to be constituted once in five years to review the financial position of the panchayat.
9. A uniform term of 5 years has been provided for Panchayati Raj Institutions.

74TH CONSTITUTIONAL AMENDMENT ACT

This amendment is very important passed in 1993, deals with the establishment of municipalities as a part of the constitutional system, just as in the case of Panchayati raj system. This amendment spells out various details connected with the different types of municipalities, including their powers, duration, election, finance and other related matters. It also adds a new schedule to the constitution namely the 12th schedule.

According to this Act, there are provisions for setting up of Nagar Palika and Nagar Panchayaths. Regarding recreation, election, power of taxation, formulation and development of projects, constitution of a Finance Commission, fixed term etc. the provisions are very much similar to those in the 73rd Amendment Act.

MODULE V

THE INDIAN JUDICIAL SYSTEM

JUDICIAL STRUCTURE, SUPREME COURT - HIGH COURT, FUNCTIONS AND POWERS

Judiciary is considered as custodian of rights of people and a balancing wheel between the Executive and the Legislature. It interprets the constitution keeping in view both the letters and spirit of the constitution. In order to discharge its functions impartially, impartiality of Judiciary is always maintained by the provisions of the constitution itself. Further with view to ensuring that executive and legislative to do not extent their power, the courts as given power of judicial Review.

JUDICIAL STRUCTURE

India has a single judicial system. It is the shape of hierarchy. The Supreme Court stands at the apex. Below the Supreme Court there are high courts at state level and below the High Court there is hierarchy of other courts called Sub-ordinate Courts.

THE SUPREME COURT

The Constitution provides for a Supreme Court. It consists of the Chief Justice and 25 associate judges. The Chief Justice is appointed by the President after consultation with the other judges of the Supreme Court and other judges are appointed by the President in consultation with the Chief Justice of India.

Qualification

1. A citizen of India.
2. Either a distinguished jurist or has been judge of the High Court for at least 5 years or has been an advocate of a High Court for at least 10 years.

Term and Removal

A person is appointed as judge in the Supreme Court shall retire on attaining the age of 65. The judge may quit his office at any time after submitting his resignation to the President. A judge of the Supreme Court can be removed by the President only by a process of impeachment on the basis of proven misbehavior or incapacity. The method of the removal of the judges has been deliberately made complicated so that there is security of tenure for them and they can perform their duties with courage and conviction to do the right as defined by law. A resolution for the impeachment is passed in the same session by each House of Parliament supported by a majority of the total membership of that House and by a majority of the 2/3 membership of that House present and voting.

Salary and Allowances

The Chief Justice and the judges gets monthly salary and allowances as decided by the Parliament from time to time. The judges are provided with official residence and other perks.

Quorum

The trial in the Supreme Court was open and the judgment also was delivered in the glance of public eye. The minimum number of judges who have to sit for the purpose of deciding any case involving a substantial question of law on to the interpretation of the constitution/for the purpose of hearing any reference under Article 143 is five. Other matters will be heard by smaller Benches and division Courts. All decision in the Supreme Court are taken by a majority of vote of the judges present at the hearing of the case. But every judge has a right to give his dissenting judgment.

Independence of the Supreme Court (Independence of Judiciary)

Meticulous care is taken by the framers of the constitution to ensure the independence of the judges of the Supreme Court.

1. Though the President appoints the judges on the advice of the Council of Ministers; the President has to consult the Chief Justice of India.
2. The constitution provides for a fixed term and they can't be removed from office at the pleasure of the Government. They can be removed by a process of impeachment.
3. The salaries of judges have been fixed and the terms and conditions of their services are regulated by an act of Parliament. Further the term and condition of a judge cannot be varied to this disadvantage after his appointment.
4. The salaries and allowances of the judges and the staff of the Supreme Court shall be charged on the Consolidated Fund of India.
5. No discussion shall take place with respect to conduct of any judge in the discharge of his duties except when a resolution for his removal is under consideration.
6. A retired judge of the Supreme Court shall not plead or act in any court or before any authority within the territory of India.

Powers and Functions

Supreme Court is the most powerful and highest court in the country, at the apex of the Indian Judiciary. The power of the court can be classified on Original Jurisdiction, Appellate Jurisdiction, and Advisory Jurisdiction

Original Jurisdiction: By Original Jurisdiction, we mean the authority to hear and determine a case in the first instance. The original jurisdiction of the Supreme Court is of two types- Exclusive and Concurrent. It has an exclusive jurisdiction in any disputes

1. Between the Government of India and one/more states.
2. Between the Government of India, any state/states on one side and one/more states on the other side.
3. Between two or more states.

Its concurrent jurisdiction covers the enforcement of Fundamental Rights. It can issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari.

Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court applied to three types of cases- Civil, Criminal

and Constitutional. Article 132(1) provided that an appeal shall be to the Supreme Court, if the High Court certified that the case involved a substantial question of law as to the interpretation of the Constitution. The second category as case in Civil cases, Article 133 provided that an appeal shall lie to the Supreme Court from any judgment, decree, or final order in civil proceedings of a High Court, if High Court certified that the matter involves constitutional question of law. Thirdly in Criminal Cases an appeal lies to the Supreme Court under Article 134, from the decisions of a High Court.

- A. Has an appeal reversed the order of acquittal of an accused person and sentenced him to death.
- B. Has certified that the case is fit for appeal to the Supreme Court.

Advisory Jurisdiction

The constitution empowers the President to seek the advisory opinion of the Supreme Court in any question of law or fact of public importance which lacks clarity. But the opinion of the Court is not binding on the President who may not act according to majority view

Grants Special Leave to Appeal (Special Leave Petition)

The Supreme Court has been vested with wide discretionary powers in regard to special leave to appeal. Article 136, stipulated that the Supreme Court might, in its discretion grants special leave to appeal from any judgment, decree, determination, sentence/order in case or matter passed/made by any court/tribunal in the territory of India, other than military tribunal and Court Martial.

Enlarged Powers

There are also provisions for the enlargement of the jurisdiction of the Supreme Court. Article 138 provides that the Supreme Court shall have such further jurisdiction and power with respect to any of the matters in the Union list as Parliament may by law confer. Further Article 139 provide that Parliament may by law, confer upon the Supreme Court such supplemental powers not inconsistent with any provision of the constitution as may be desirable for the court more effectively to examine the jurisdiction conferred upon it by or under the constitution.

Above all these, there is nothing in the constitution which prevents the Supreme Court for departing from a previous decision of its own, if the court is satisfied of its error and its harmful affect on the general interest of the public. This power of revising its own decisions along with the power of judicial power makes the Supreme Court really supreme.

Court of Record

Article 129 of the constitution says "The Supreme Court shall be a court of record and shall have all powers of such a court, including the power to punish for contempt of itself". A Court of Record obviously is one when the acts and judicial proceedings are kept for memory and testimony. There were not to be challenged or questioned when presented before any court for evidentiary purposes.

JUDICIAL REVIEW

Judicial Review is the power of the Supreme Court to review and declare the laws and acts passed by the legislature/executive, when challenged by the affected person as un

constitutional if it violates the provisions of the constitution. The philosophy of judicial review is rooted in the principle that the constitution is the fundamental law of land. But it is interesting that nowhere in the Indian constitution the term judicial review has been used. No direct explicit authority has been conferred upon the Supreme Court for the purpose of judicial review. Though the expression of judicial review does not find place in our constitution, the power has been derived by the judiciary from various provisions.

1. There is no guarantee in the constitution that the judiciary would not review the verdict of the parliament or Executive.
2. Despite the insistence of the framers of the constitution on the importance of rendering socio-economic justice to the common man, nowhere there is any indication as to how the judiciary would respond to it.
3. Although the constitution laid down that the mode of judicial reasoning would be determined by the procedure established by law, the constitution has loopholes allowed the Supreme Court to enjoy the fullest power of judicial discretion in its interpretation of the statute.
4. The power of judicial review flows also from the power of court to interpret the constitution.

PUBLIC INTEREST LITIGATION

It is a process whereby the courts and administering field by concerned citizens on behalf of poor or distressed. The judiciary now, by and large have given complete recognition to the idea of public interest litigation. In the following case:

1. Where the interest of a large number of people are likely to be affected though interest of the specific individuals is so tangibly affected.
2. Where the person's whose rights or interests are at stake have no resource due to poverty/ignorance to come to court.

JUDICIAL ACTIVISM

Judicial activism is an exercise of judicial power in case where in the judiciary come to face to face in the legislature's arbitrariness or executive abuse or interfere in the due course in legal proceedings. For example, though bonded labour was declared illegal the government not only did little to enforce the law but its own agencies employed bonded labour. Further laws protecting the environment were passed but then neglected somebody had to do something and courts stepped in the fields where they would have had workers to play had the administration enforced the law.

HIGH COURT

The Constitution provides a High Court in each state. But the Parliament has the power to establish came a High Court for two or more State as well as for a Union territory (7th Constitutional Amendment 1956)

Composition

The High Court shall consist of a Chief Justice and other judge on the President from time to time deems it necessary. Further for the reason of temporary increase of the workload/huge

arrears of cases, the President may appoint qualified person as additional judges for a period not exceeding two years (subject to the age limit of 62 years). President may also appoint temporary judges to fill casual vacancies in the cadre of permanent judges.

Appointment

Chief Justice and other judges appointed by the President in consultation with the Chief Justice and Supreme Court and with the Governor of the State. (For appointing judges of High Court, the state Chief Justice will also be consulted). The Judges of the High Court are liable to transfer from one state to another.

Qualification

1. A citizen of India
2. Has for at least 10 years held a judicial office in the territory of India.
3. For at least 10 years been an advocate of the High Court
4. He should be below the age of 62 years.

Terms and Removal

A judge of High Court retires at the age of 62. He may tender his resignation addressed to the President, in writing at any time. A judge of the High Court may be removed by the President on impeachment for misbehavior/incapacity; if the parliament passes a resolution by its special majority (absolute majority of the whole House and 2/3 majority of the members present and voting)

Salary and Allowances

The Chief Justice and other judges of the High Court gets monthly salary. They are also entitled to such allowance and rights in respect of leave and pension as parliament from time to time determine.

Powers and Functions

High Court of the State is the highest judicial authority, whose decisions are binding over all citizens residing in the states. But the constitution does not attempt detailed definitions and classification of the different types of jurisdiction of the High Court as it has done in the case of the Supreme Court. (This is mainly because most of the High Court at the time of the framing of the constitution had been functioning with well defined jurisdiction whereas the Supreme Court was a newly created institution). Yet it enjoys both Criminal and Appellate Jurisdiction.

Besides the original and appellate jurisdiction the constitution vested in the High Court four additional powers-

1. The power to issue writs.
2. The power to superintendence over sub-ordinate courts
3. The power to transfer cases to themselves pending in the sub-ordinate courts involving the interpretation of the constitution.
4. The power to appoint officers.

WRITS

The High Court has the power to issue writs namely Habeas Corpus, Mandamus, Prohibition, Quo warranto and Certiorari

- 1. Habeas Corpus:-** This writ helps a person who is confined without legal justification may secure a release from his confinement.
- 2. Mandamus:-** This writ prevent the government from enforcing an unconstitutional act or notification.
- 3. Prohibition:-** It is a type of writ which commands the court/tribunal to whom it is issued to refrain from doing something which it is about to do.
- 4. Quo-warranto:-** It is issued to prevent a person who has wrongfully assumed an office from continuing in that office.
- 5. Certiorari:-** It is an order issued by the High Court to an Inferior Court about the legality of its judicial decisions may be investigated.

JUDICIAL INDEPENDENCE

Judicial Independence is an essential feature of a democratic country. India is not an exception Judicial independence is guaranteed in the Constitution by

1. The judge in the Supreme Court and High Court are appointed
2. They enjoy a fixed tenure (on attain the age of 65 in the Supreme Court and 62 in the High Court).
3. Removal by Impeachment
4. Their service conditions, salary and allowances are determined by the Parliament and can't be varied to the disadvantage of the judges.
5. Forbade the discussion of the conduct of judge either of the Supreme Court/ High Court in the Parliament (except in upon a motion of impeachment)
6. They can't plead or act in any court or authority with in the territory of India after retirement.

MODULE VI

MAJOR ISSUES IN INDIAN DEMOCRACY

REGIONALISM-COMMUNALISM-RELIGIOUS FUNDAMENTALISM- CRIMINALIZATION OF POLITICS - RESERVATION ISSUES AND GLOBALIZATION

The framers of the Indian Constitution opted for a participatory democracy on the Westminster model. They visualized it as an effective tool to bring about coalition of desperate political forces, viable leadership, continuity in public policy, unity and integrity of the nation, responsible and responsive administration, co-ordination between the government organs of decision making and policy implementation and a political system based on a broad consensus. But the Indian experience of party democracy was a superimposed one, on a highly centralized federal state structure. However the working of democracy in India, in the last 50 years has spectacular with remarkable stability and continuity, despite occasional strains and unhappy interludes. Anyhow the following are the major problems in the Indian Democracy:-

Regionalism

Communalism

Religious Fundamentalism

Criminalization of Politics

Reservation Issues

Globalization

REGIONALISM

“Regionalism can be defined as devotion to the interests of one’s own region”. The phenomenon of regionalism obviously starts with the identification of parts of territory as separate region, as a result of the operation of different variables. These variables may be geography, topography, religion, languages, usages, customs, socio-economic factors, political development, historical legacy, common way of living etc. Thus regionalism is a multi dimensional phenomenon. In general, regionalism is developed through different ways such as demand of people for secession, demand for separate Statehood, demand of people for favourable settlement in Inter-State disputes etc. Apart from this, the factors responsible for the growth of regionalism are cultural aspects, economic aspects, political aspects, regional parties etc.

The regionalism in India is a product of its diversity administration and historical antecedents on one side and process of political centralization and mal development in post independent period. After Indian Independence, states were reorganized on the linguistic basis in 1956. This reorganization of states led to many problems and created further demands for the creation of new states. This situation gave birth to the “Son of the Soil” demand. The creation of new states led to the problems like regional imbalances, regional parties and further demand for disintegration.

COMMUNALISM

Communalism is basically an ideology of political allegiance to a religious community as a primarily and decisive group in the polity and for political action. It is a modern phenomenon, it is a sectarian, restrictive and negative response to the process of modernization and modern nation building. It is the product of British Colonial legacy and National Movement, socio-economic factors and the electoral politics. The electoral politics has promoted the process of communalism in almost all states and the masses are getting increasingly communalized. Though the political parties rejected communalism, indirectly they promote communalism. On the other hand the communal forces also have much influence on political parties. All most all the political parties fix the candidates for election after analysing the communal equation of the electorate. Some of the political parties are organized even on communal basis. The secular parties are also indirectly promote communal feelings of the electorate and ask them to cast their votes accordingly, apart from these there are a number of pressure groups and interests group organized on communal lines. Even communalism has crept into the bureaucracy and other administrative areas. Put it briefly the situation is grim and a major issue in the democratic life of the country.

RELIGIOUS FUNDAMENTALISM

Religion is perhaps one of the most fundamental factor which united people together with common symbols like believes, worship, prayer, rituals, God etc. Though a unifying factor, it became a threat to national life and democratic polity when it assumed certain negative aspects like stick-on to one's own religious beliefs, scriptures, practices, rituals etc. as the only right thing and at any cost propagate these ideals with less regard and disrespect for other religions. Religious Fundamentalism may also lead to many other disruptive tendencies including terrorism which affects peace, security, social life, economic growth, national integration and electoral system etc.

CRIMINALIZATION OF POLITICS

There exists a nexus between politicians and criminals during the last few decades and the politicians use criminals for rigging in election like booth capturing, impersonation etc. Later the criminals and the leaders with criminal background come forward and they used the election laws favouring them to contest elections and they won election to the legislative bodies. The statistics published by the Election Commission of India reveals the alarming role of criminals and people with criminal back ground enter into the representative bodies like the Union Parliament and State Legislatures. For example, 19% of MP's, 49% of MLA's in Bihar, 38% of MLA's in Uttar Pradesh, 33% of MLA's in Tamil Nadu, 30% MLA's in Jharkhand, 15% MLA's in West Bengal are with criminal background.

Election Commission made a series of proposals and attempts to free election from the clutches of criminals. But the Parliament and political parties take no serious steps in this direction. This is also a burning issue in the democratic process in India.

RESERVATION ISSUES

Article 15(3) accord recognition to gender based discrimination.

Article 15(4) provides special provisions for the advancement of any socially and educationally backward classes of citizens or for the SC and ST. Again in Article 16(4) provide reservation of appointments or posts in favor of any backward class of citizens which in the

opinion of the State is not adequately represented in its services. These provisions enable the government to provide reservation of seats in the job for the advancement of certain social and economically backward classes in the society.

So far 25 commissions had been appointed by various state governments and two by the union government to identify backward classes for this purpose. The first commission appointed in 1953 by the Union Government under the Chairmanship of Kaka Saheb Kalelkar identified 2399 castes or groups as backward classes. As a result of the socio-economic-political changes of a quarter of a country, in 1978 Moraji Desai government appointed Second Backward Classes Commission headed by B.P. Mandal. The recommendation of the Mandal Commission became a political weapon for creating vote banks, is a major issue in the democratic life of the nation.

GLOBALIZATION

It is a word much debated by all most all the statesmen, politicians, economists and scholars of the world. It is being excessively used exaggerated confused, misinterpreted and misunderstood. It is generally a term used to refer to several changes which are being encouraged in the present world. Put it simply "It is the process of corporate expansion across borders and structures of cross border facilitates and economic linkages that has been steadily growing and changing". As an impact of globalization the international trade is regulated by WTO which is committed to protect interest of developed nations. The developing nation became a prey to it and it adversely affected the development of developing nations. The impact of globalization may be summarized as:

1. Concentration of Wealth in fewer hands or disparity in the distribution of wealth: Rich become richer and poor become poorer.
2. Retreating the state from welfare activities: With the arrival of globalization, the role of the state has changed and it also leads to the declining of the state.
3. Decline of the sovereignty of the state: The modern state was a capitalist state. In a capitalist state, the law was determined by the private companies. It resulted in the destruction of sovereignty of the state.
4. The process of globalization leads to the marginalization of depressed classes.
5. Emergence of free market and free flow of goods and services: The third world countries opened their economies during the period of globalization and it also resulted in the flow of goods and services. It helps to increase the trade relationship between the nations.
6. Increasing non-traditional security threats: During the period of globalization, the non-traditional security threat was increasing such as Terrorism, Drug Trafficking etc.....
7. Increase in Privatization: During the process of globalization, the markets were opened and it resulted the economies into privatize.
8. Collapse of small scale industries: The emergence of multinational companies with new competing technologies resulted in the destruction of traditional small scale industries such as handloom industries.

9. Erosion of Ideologies: In the era of globalization, many political parties compelled to leave their ideologies.
10. Emergence of new social movements: The process of globalization strengthens the new social movements, it resulted in defragmentation.
11. The process of globalization accelerates the consumer culture of the peoples of the third world countries.
12. Emergence of identity politics.

India being a developing nation is experiencing the negative impact of globalization rather than the positive aspects. The widening economic disparity, problems of marginalized sections, impact of western culture, government policies of agriculture, industries etc. are certain issues which threaten Indian Democracy.
