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JAGAT GURU NANAK DEV
PUNJAB STATE OPEN UNIVERSITY, PATIALA

(Established by Act No. 19 of 2019 of the Legislature of State of Punjab)

BACHELOR OF ARTS

GENERIC ELECTIVE (GE): POLITICAL SCIENCE

BAB33615T: INDIAN POLITICAL SYSTEM I

SEMESTER VI

Head Quarter: C/28, The Lower Mall, Patiala-147001

WEBSITE: www.psou.ac.in

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PREFACE

Jagat Guru Nanak Dev Punjab State Open University, Patiala was established in December 2019 by Act 19 of the Legislature of State of Punjab. It is the first and only Open University of the State, entrusted with the responsibility of making higher education accessible to all, especially to those sections of society who do not have the means, time or opportunity to pursue regular education.

In keeping with the nature of an Open University, this University provides a flexible education system to suit every need. The time given to complete a programme is double the duration of a regular mode programme. Well-designed study material has been prepared in consultation with experts in their respective fields.

The University offers programmes which have been designed to provide relevant, skill-based and employability-enhancing education. The study material provided in this booklet is self-instructional, with self-assessment exercises, and recommendations for further readings. The syllabus has been divided in sections, and provided as units for simplification.

The University has a network of 110 Learner Support Centres/Study Centres, to enable students to make use of reading facilities, and for curriculum-based counselling and practicals. We, at the University, welcome you to be a part of this institution of knowledge.

Prof. G.S. Batra
Dean Academic Affairs



BACHELOR OF ARTS
GENERIC ELECTIVE (GE): POLITICAL SCIENCE
SEMESTER – VI
(BAB33615T) INDIAN POLITICAL SYSTEM I

MAX. MARKS: 100

INTERNAL: 30

PASS: 40%

EXTERNAL: 70

Objective:

Credits: 6

This course aims to introduce the students to the basic concepts and themes of the discipline of political science. It will provide an overview about political science and theory and State and its sovereignty.

INSTRUCTIONS FOR THE CANDIDATES:

Candidates are required to attempt any two questions each from the sections A, and B of the question paper, and any ten short answer questions from Section C. They have to attempt questions only at one place and only once. Second or subsequent attempts, unless the earlier ones have been crossed out, shall not be evaluated.

SECTION – A

1. Constituent Assembly and making of Indian Constitution.
2. Preamble and Basic features of Indian Constitution.
3. Fundamental Rights and Fundamental Duties: Meaning, Explanation and Evaluation.
4. Directive Principles of State Policy: Meaning, Explanation and Evaluation and its relationship with Fundamental Rights.
5. Indian Federalism: Legislative, Administrative and Financial relations between Union and States.

SECTION – B

1. Union Executive - President: Election, Powers, Position and Changing Role.
2. Prime Minister: Appointment, Powers, Position and Relation between President and Prime Minister.
3. Union Parliament: Composition, Powers and its Changing Role.
4. Speaker of Lok Sabha: Election, Powers, Position and its Changing Role.
5. Supreme Court: Composition, Powers and Judicial Review.

Recommended Readings:

1. G. Austin: The Indian Constitution: Corner Stone of a Nation, Oxford University Press, 1966.
2. G. Austin: Working of a Democratic Constitution: The Indian Experience, Delhi, Oxford University Press, 2000.
3. D.D. Basu: An Introduction to the Constitution of India, New Delhi, Prentice Hall, 1994.
4. C.P. Bhambari: The Indian State fifty years, New Delhi, Sipra, 1997.
5. A.G. Noorani, Constitutional Questions in India, Oxford University Press, 2000.
6. P. Brass: Ethnic Groups and the State, London, Croom Helm, 1995.
7. P. Brass: Language, Religion and Politics in North India, London, Cambridge University Press, 1974.
8. B.L. Fadia: State Politics in India, Vol. II, New Delhi, Radint Publisher, 1984.
9. Laxmikant: Indian Polity, McGraw Hill Education, New Delhi, 2013.

10. R. Kothari: State against Democracy: In Search of Human Governance, Delhi, Ajantha, 1988.
11. R. Kothari: Politics in India, New Delhi, Orient Longman, 1970.
12. Nirja Gopal ayal, Partap Bhanu Mehta, The Oxford Companies to Politics in India, Oxford University Press, 2010.
13. M.V. Pylee : Constituional Government in India, Bombay, Asia Publishing House, 1977.
14. M.V. Pylee: An Introduction to the Constitution of India, New Delhi, Vikas 1998.
15. Partha Chatterjee (ed.), State and Politics in India, Oxford University Press, 1999.



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BACHELOR OF ARTS

GENERIC ELECTIVE (GE): POLITICAL SCIENCE COURSE (BAB33615T): INDIAN POLITICAL SYSTEM I

COURSE COORDINATOR- DR. SUKHPAL KAUR
SEMESTER - VI

SECTION A

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Sr. No.	UNIT NAME
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Unit 2	Preamble and Basic features of Indian Constitution
Unit 3	Fundamental Rights and Fundamental Duties: Meaning, Explanation and Evaluation.
Unit 4	Directive Principles of State Policy: Meaning, Explanation and Evaluation and its relationship with Fundamental Rights.
Unit 5	Indian Federalism: Legislative, Administrative and Financial relations between Union and States.

SECTION B

Unit 6	Union Executive - President: Election, Powers, Position and Changing Role.
Unit 7	Prime Minister: Appointment, Powers, Position and Relation between President and Prime Minister.
Unit 8	Union Parliament: Composition, Powers and its Changing Role.
Unit 9	Speaker of Lok Sabha: Election, Powers, Position and its Changing Role.
Unit 10	Supreme Court: Composition, Powers and Judicial Review.

BACHELOR ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM -I

UNIT 1: CONSTITUENT ASSEMBLY AND MAKING OF INDIAN CONSTITUTION

STRUCTURE:

1.0: Learning Objectives

1.1. Key Words

1.2. Introduction

1.2. Formation

1.2.1. The Cabinet Mission

1.2.2. Communal Tensions

1.2.3. Mountbatten Plan

1.2.4. Check Your Progress I

1.3. Composition

1.4. Making of the Constitution

1.4.1 Check Your Progress II

1.5. Sources of the Constitution

1.6. Summary

1.7. Questions for Practice

1.7.1. Short Answer Questions

1.7.2. Long Answer Questions

1.8. Suggested Readings

1.0. LEARNING OBJECTIVES

After the completion of this unit, you will be able to

- Understand the formation and composition of the Constituent Assembly.
- Develop a better understanding of the making of the Indian Constitution.
- Understand the working of the Constituent Assembly.
- Summarize the important committees of the Constituent Assembly and major sources of the Constitution of India.

1.1. KEY WORDS: Constitution, Constituent Assembly,

1.2. INTRODUCTION

The task of framing the constitution of a sovereign democratic nation is generally undertaken by a representative body of the people of that country. A body such elected by the people for drafting and adopting a constitution for their country is called a Constituent Assembly. In India, the idea of a Constituent Assembly, whereby Indians would themselves draft a constitution for their country, was interconnected with the growth of the national movement, and also implicit in the opposition to the Government of India Act, 1919. The idea of the Assembly was put forth by M.N. Roy in 1934. This demand was authoritatively conceded in principle for the first time by Viceroy Linlithgow in 1940, in what is known as the August Offer, although with certain important reservations. Thereafter, in 1942, Sir Stafford Cripps came to India with a draft proposal on the drafting of an independent Constitution which would be adopted after the Second World War, wherein the British government clearly undertook to accept the Constitution drafted by the proposed Constitution-making body. The Cripps Mission failed due to rejection by the Muslim League, which demanded two states with separate Constituent Assemblies.

1.3. FORMATION

After the Cripps proposals were rejected, no further steps were taken to resolve the Indian constitutional problem until the end of the War in 1945. The Constituent Assembly was ultimately constituted in 1946 on the basis of the Cabinet Mission Plan. The Mission comprising three Cabinet Ministers of England – Lord Pethick Lawrence, Sir Stafford Cripps, and Mr. A. V. Alexander – was sent to India in 1946 after the Labour Party came to power in England. After dialogue with numerous Indian leaders, and holding the Shimla conference with the representatives of the Muslim league and the Indian National Congress, when no settlement could be reached due to a strong demand for partition by the Muslim League, the three ministers announced the Cabinet Mission Plan on May 16, 1946.

1.3.1. THE CABINET MISSION

The Cabinet Mission Plan recommended a basic form and framework for the Constitution, and also laid down the procedure for election to the Constituent Assembly - a single, transferable-vote system of proportional representation. The Cabinet Mission understood that the most appropriate method to constitute such a body would have been elections based on adult franchise, but was of the opinion that that would cause a “wholly unacceptable delay” in the formulation of the Constitution. Therefore, the Mission decided to make use of the then recently elected Provincial Legislative Assemblies as electing bodies, which in its opinion was the “fairest and most practicable plan.”

The members of each Provincial Assembly except the Punjab Provincial Assembly were to be divided into two groups – Muslim and General. The division in Punjab was into communities—Muslim, General, and Sikh. Each group had to elect its own representatives to the Assembly by proportional representation with a single transferrable vote. The number of representatives assigned to each community and each Province was to be in proportion to the population of that community and that province, in the ratio of one to one million. The strength of the Assembly was to be 385, with 292 representing the Governors’ Provinces of British India and 93 representing the Indian Princely States. 4 members representing the Chief Commissioner’s Provinces of Delhi, Ajmer-Merwara, Coorg, and British Baluchistan were added to this figure.

Further, an interim government having the support of the major political parties was to be set up under the plan. The Cabinet Mission proposals were accepted by all parties, although subject to certain reservations, and elections for the 296 seats allotted to the British-Indian Provinces were held in July 1946. Special arrangements were also made for the participation of the nominated representatives of the Princely States. The Indian National Congress secured 208 of the 292 seats, including all but 9 general seats, while the Muslim League won 73 seats, including all but 5 seats assigned to Muslims.

1.3.2. COMMUNAL TENSIONS

In spite of its own resolution, 6 June 1946, whereby it accepted the proposals put forth in the Cabinet Mission Plan of 16th May, the Muslim League withdrew its acceptance and reasserted its

demand for a separate sovereign nation on 27th July. A “direct action” plan was chalked out, and it was declared that 16th August, 1946 would be observed as “Direct Action Day.” The conflict leads to unspeakable violence on 16th August, which led to non-cooperation and non-participation by the League in the Constituent Assembly when it met for its first session in December.

Meanwhile, under the leadership of Jawaharlal Nehru, an Interim Government of 14 members was put in place on 2nd September after a great deal of deliberations, with 6 ministers representing the Congress, 5 the Muslim League, and one member each representing the Indian Christians, Sikhs, and Parsis. However, due to non-cooperation from the Muslim League, this government was not able to function successfully. This Interim Government remained in place till 15th August, 1947.

On 20th February 1947, the British Prime Minister Clement Attlee announced in the House of Commons his government’s intention of transferring power to Indian people and granting complete self-government to British India by a date no later June 30 1948. The British government hoped that the Muslim league would cooperate with the functioning of the Cabinet Mission provisions and formulate a Constitution that would be acceptable to everyone, given that the League had boycotted the earlier sessions of the Constituent Assembly, calling for partition and a separate state of Pakistan. It had declared that it would not participate in a single constitution-making body. In the sixth paragraph of the statement of 20th February, His Majesty’s government noted with regret that differences between Indian parties still persisted which were preventing the Constituent Assembly from working as intended, and that it was the essence of the Cabinet Mission Plan that the Assembly should be fully representative. In case the Muslim League did not cooperate, and it became apparent that a Constitution would not be framed by a fully representative Assembly before 30th June 1948, then the British Government would be forced to “consider to whom the powers of the Central Government in British India should be handed over, on due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interest of the Indian people.” The formation of a separate state, Pakistan, may be understood to have been envisaged in this statement.

1.3.3. MOUNTBATTEN PLAN

Thereafter, Lord Mountbatten became the Viceroy of India in March 1947. Subsequently, on June 3, he released a statement to the effect that the partition of India along with the Provinces of Assam, Bengal, and Punjab was the only solution to the Indian political problem. As per the Mountbatten Plan, British India would be divided into two dominions of Pakistan and India. A referendum was to be held in the North West Frontier Province to determine which dominion it would join. The same was the case with the district of Sylhet. The Constituent Assembly was also to be partitioned into two, representing members from India and Pakistan separately.

The Mountbatten Plan was accepted by all - the Sikhs, the Muslim League, and the Congress. The North West Frontier Province decided to join Pakistan while the district of Sylhet decided to join East Bengal. The Legislative Assembly of Sindh, which was supposed to decide whether to join the Indian Constituent Assembly or the new one, went with Pakistan. The Plan was given effect by the enactment of the Indian Independence Act of 1947. Under the said Act, the respective Constituent Assemblies of the two countries were solely conferred with all the legislative powers, and were not limited in exercising their constituent powers in any manner whatsoever. Subject to certain adaptations and modifications, the Government of India Act, 1935 was to govern India till the time a new Constitution was put in place. The Act received Royal assent on 18th July 1947, and came into effect on 15th August 1947, when the 182 years old British rule in India ended. Lord Mountbatten was sworn in as the first Governor-General of India, the office of viceroy now abolished.

The Constituent Assembly as it was initially constituted in 1946 as per the Cabinet Mission Plan was not an independent or sovereign body, its authority being limited both with respect to basic principles and procedure. The sovereign character of the Constituent Assembly was established by the Indian Independence Act, making it unfettered by the Cabinet Mission Plan, and free from all limitations. It was now the successor to the British Parliament's absolute power and authority in the country.

1.2.4. CHECK YOUR PROGRESS I

2. What was the composition of the Constituent Assembly as originally envisaged under the Cabinet Mission Plan?

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3. What was the significance of the statement of 20th February, 1947?

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4. What was the impact of the Indian Independence Act on the Constituent Assembly?

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1.3 COMPOSITION

The Constituent Assembly of India first met on the ninth day of December, 1946, in the Constitution Hall in New Delhi, which is now popularly known as the the Central Hall of Parliament House. The Muslim League boycotted this meeting despite their earlier acceptance, and the 93 seats assigned to the princely states initially remained vacant as they decided to stay away from the Constituent Assembly. Thus, only 211 members were present at the first meeting. Members representing some of the Indian Princely states took their seats in the Assembly on 28th April 1947. By the 15th of August, most of the Princely States were represented, and the representatives of the remaining States were also sent to join the Assembly in due course of time. After the Mountbatten Plan of June 3 was accepted, the members of the Muslim League from the Indian Dominion started participating in the Constituent Assembly. By December 1947, after the Partition, the Assembly had 299 members – 229 from 12 Indian Provinces, and 70 members nominated from 29 Princely States.

The Assembly thus became that fully represented all of India – all the States and the Provinces of India. It was free from all external authority, completely sovereign. It had the power to amend or abrogate any law applicable to India made by the British Parliament, including the Indian Independence Act itself. Most of the members elected to the Constituent Assembly were male Hindus. There were 15 female representatives, and at least two representatives from all major religious communities. Around 80% of the Assembly consisted of members from the Indian

National Congress, ideological diversity was present within the party itself, which led to representation of a range of ideologies including liberalism, conservatism, and socialism.

**STATE-WISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA AS ON
31ST DECEMBER, 1947
PROVINCES-229**

S.No	State	No. of Members
1.	Madras	49
2.	Bombay	21
3.	West Bengal	19
4.	United Provinces	55
5.	East Punjab	12
6.	Bihar	36
7.	C.P. and Berar	17
8.	Assam	8
9.	Orissa	9
10.	Delhi	1
11.	Ajmer-Merwara	1
12.	Coorg	1

INDIAN STATES-70

1.	Alwar	1
2.	Baroda	3
3.	Bhopal	1
4.	Bikaner	1
5.	Cochin	1
6.	Gwalior	4

7.	Indore	1
8.	Jaipur	3
9.	Jodhpur	2
10.	Kolhapur	1
11.	Kotah	1
12.	Mayurbhanj	1
13.	Mysore	7
14.	Patiala	2
15.	Rewa	2
16.	Travancore	6
17.	Udaipur	2
18.	Sikkim and Cooch Behar Group	1
19.	Tripura, Manipur and Khasi States Group	1
20.	U.P. States Group	1
21.	Eastern Rajputana States Group	3
22.	Central India States Group (including Bundelkhand and Malwa)	3
23.	Western India States Group	4
24.	Gujarat States Group	2
25.	Deccan and Madras States Group	2
26.	Punjab States Group I	3
27.	Eastern States Group I	4
28.	Eastern States Group II	3
29.	Residuary States Group	4
	Total	299

1.4. MAKING OF THE INDIAN CONSTITUTION

The Constituent Assembly in its first meeting held on the appointed Monday, 9th December, with only 211 members, elected Dr. Sachchidananda Sinha, the eldest member, as the temporary interim President of the Assembly. Two days later, on 11th December, 1946, the members elected Dr. Rajendra Prasad as the permanent President and H.C. Mukherjee as the Vice-President of the Assembly. Later, V.T. Krishnamachari was elected as the second Vice-President of the Assembly, and Sir B.N. Rau was appointed as the Constitutional Advisor to the Assembly.

• THE OBJECTIVE RESOLUTION

On 13th December, 1946, Jawaharlal Nehru moved the Objective Resolution defining the aims of the Constituent Assembly. It encapsulated the values and aspirations of the Constitution-making process, a philosophy for the India to be, that served as guiding principles for the Constituent Assembly. The Resolution, which was adopted unanimously by the Assembly on January 22, 1947, and later became the foundation of the Preamble to the Constitution of India, envisaged a federal polity with sovereignty lying with the people and residuary powers vested in autonomous units. It can be summarized as follows

1. India is an Independent Sovereign Republic, for whose future governance the Constituent Assembly shall draw up a Constitution.
2. India shall be a Union of Indian States, erstwhile territories of British India, as well as all other such territories that lie outside British India and Indian States as are willing to be a part of the Independent Sovereign India.
3. The territories that form the Union shall be autonomous units and shall possess and exercise all powers and functions of government and administration, save and except those powers and functions that lie with the Union.
4. All the authority and power of Sovereign and Independent India, its constituent parts and organs of the government, flow from the people of India.
5. Social, economic, and political justice; equality before the law and equality of status and opportunity; basic freedoms - of speech, thought, expression, faith, belief, worship, vocation, association, and action – subject to law and public morality, shall be guaranteed and secured to all the people of India.

6. The depressed and other backward classes, backward and tribal areas, and the minorities shall be protected by adequate safeguards.
7. The integrity of the territory of the Republic of India shall be maintained as per justice and the law of civilized nations, along with its sovereign rights over land, air, and sea.
8. The ancient land of India, having reached its right and honored place in the world, would make its complete and voluntary contribution to the welfare of mankind and the promotion of world peace.

- **WORKING OF THE ASSEMBLY**

The Constituent Assembly appointed numerous committees to handle the various aspects of Constitution-making. There were a total of 22 committees which dealt with substantive and procedural affairs, which include the Drafting Committee, the Union Constitution Committee, Union Powers Committee, etc. The work of the Assembly was carried out in eleven sessions and preceded in various stages.

Preparation and deliberation on reports

The committees appointed by the Assembly produced valuable reports on basic issues and aspects of the constitution. It submitted the reports between April and August of 1947. Parallely, the Constituent Assembly, as and when the reports were submitted, discussed the broad principles laid down in the committees' recommendations. These debates came to an end by end of August, 1947.

Preparation of B.N. Rau's draft Constitution

On the basis of reports submitted by the various committees and sub-committees, the deliberations in the Assembly on these reports, and his own research into the constitutions of other nations, B.N Rau prepared an initial draft of the constitution which was completed by October by 1947 giving effect to the decisions taken in the Assembly on the reports of different committees. It contained 240 Clauses and 13 Schedules. Before this draft was prepared, voluminous background material containing important texts from the constitutions of around sixty countries was provided to the members of the Constituent Assembly in the form a series of three *Constitutional Precedents*.

Preparation of the Draft Constitution of India

On 29th August, 1947, a Drafting Committee was appointed by the Constituent Assembly. It was tasked with scrutinising the first draft of the Constitution prepared by the Constitutional Advisor. Dr. Ambedkar was elected the chairman in its first meeting held on 30th August. It initially comprised K.M Munshi, N. Gopaldaswami, Alladi Krishnaswami Ayyar, Mohammad Saadullah, B.L. Mitter, D.P. Khaitan, and Dr. B.R. Ambedkar. However, Sir B.L. Mitter resigned after the first meeting and was replaced by N. Madhava Rao, while T.T Krishnamachari filled in D.P. Khaitan's seat when he passed away in 1948. The committee began studying B.N. Rau's draft along with other memoranda, notes, and reports on 27th October, 1947.

The Drafting Committee considered and worked on Rau's draft from October 1947 to February 1948, making various changes and tweaks to it. The Committee then came up with and submitted the Draft Constitution of India, 1948 to the President of the Assembly on 21st February, 1948. The Draft had 315 articles organised in 18 Parts and 8 Schedules. The Drafting Committee included footnotes along with brief explanations wherever the Draft Constitution differed in a major manner with B.N. Rau's draft and wherever there was a lack of clarity in some provision or any controversy.

The Draft Constitution was published and widely circulated among the general public, and feedback and suggestions were invited. A huge number of criticisms, comments, and suggestions for the amendment of the Draft Constitution came in. A Special Committee comprising members of the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee, and the Drafting Committee itself, was established to go through all the feedback that was received. The Drafting Committee met in March and October of 1948 to consider and review the inputs and suggestions of the Special Committee, based on which it prepared amendments. To make reference to such amendments easier, the Drafting Committee reprinted the Draft Constitution it had originally submitted on 21st February together with the intended amendments, which were appended to clauses that were intended to be amended. The same was submitted to the President of the Assembly on 26th October, 1948.

Deliberations on and amendments to the Draft Constitution

The Draft Constitution was formally presented in the Assembly on 4th November, 1948, by Dr. B.R. Ambedkar. Every member of the Assembly possessed a copy along with the recommended amendments that were prompted by the feedback received. There were mixed initial reactions to the Draft. Dr. Ambedkar gave an overview of the Draft in his address, and replied to some criticisms levelled against it. For instance, to the criticism that the Draft Constitution could not be called original and that it had reproduced numerous provisions of the Government of India Act, 1935, he responded, “The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the constitutions of other countries is based, I am sure, on an inadequate study of the Constitution.” He firmly held that there was no plagiarism involved in framing the Constitution, and that no one has patent rights over the fundamental ideas of a constitution.

Thereafter, a clause by clause consideration of the Draft Constitution was undertaken by the Constituent Assembly during the period between 15th November 1948 - 17th October 1949. The most vital and comprehensive Constituent Assembly debates took place during this First Reading. Every article of the Draft Constitution of India was discussed and deliberated upon. Numerous amendments put forth by individual members of the Assembly as well as the Drafting Committee were also debated upon. After a period of almost one year, this stage came to an end on 17th October 1949, a day on which the Preamble to the Constitution of India was also debated and voted upon.

Consequently, the Drafting Committee incorporated the necessary amendments on the basis of the Assembly’s decisions, prepared the revised draft. Other revisions related to minor changes in language, numbering of articles, dropping and inserting relevant clauses were also made at this stage. This revised draft was presented to the President of the Assembly on the 3rd of November, 1949, and was placed before the Assembly for another reading on 14th November. The Second Reading of the Constitution saw many amendments being moved by the members, though most were rejected. This took three days, till the 16th of November. The very next day, on the 17th of November, a Third Reading of the Draft Constitution was undertaken by the Assembly which began with a motion by Dr. B.R. Ambedkar to the effect “that the Constitution as settled by the

Assembly has passed.” Few substantive debates occurred in this stage, with a majority of the addresses commenting on the Constitution as a whole. The Third Reading got over with the Constituent Assembly voting for and adopting the motion on the 26th day of November, 1949.

Adoption of Indian Constitution

Thus, the Constitution of India, containing 395 Articles, 22 Parts, and 8 Schedules, was adopted, enacted, and given to the people of India by themselves. The Preamble to the Constitution was also adopted on 26th November. Certain provisions of the Draft Constitution concerning elections, citizenship, Provisional Parliament, temporary and transitional provisions immediately came into force on 26th November, 1949 when the Draft was adopted, while the Constitution of India came into effect on 26th January, 1950. The Constituent Assembly ceased to exist on that day, becoming the Provisional Parliament of India which continued till a new Parliament was constituted after the first general elections in 1952.

The humongous task of constitution-making was accomplished in less than three years. It took two years, eleven months and seventeen days to draft the Constitution of Independent India. Eleven sessions were held during this period. The major portion of the Constituent Assembly debates, and the constitution-making process overall, was dedicated to the deliberations over the Draft Constitution of India and its revised version. 114 out of a total 165 sittings of the Constituent Assembly were spent discussing and considering the Draft. During the process, an astounding 7,635 amendments were tabled, of which the Assembly moved, deliberated upon and disposed off 2,473. Besides making the Constitution for Independent India, the Constituent Assembly also adopted the National Flag on 22nd July 1947 and *Jana Gana Mana* as the National Anthem on 24th January 1950. Ours is the longest written constitution in the world, and although it has borrowed ideas and provisions from other constitutions of the world, it cannot be called copied. It was drafted comprehensively in light of India’s distinct past, location, diversity, tradition, and needs, making it unique in both content and spirit.

SESSIONS OF THE CONSTITUENT ASSEMBLY:

First Session:	9-23 December, 1946
Second Session:	20-25 January, 1947
Third Session:	28 April - 2 May, 1947

Fourth Session:	14-31 July, 1947
Fifth Session:	14-30 August, 1947
Sixth Session:	27 January, 1948
Seventh Session:	4 November, 1948 - 8 January, 1949
Eighth Session:	16 May - 16 June, 1949
Ninth Session:	30 July - 18 September, 1949
Tenth Session:	6-17 October, 1949
Eleventh Session:	14-26 November, 1949

The Assembly met one more time after the eleventh session, on 24th January 1950, the last day of the assembly, when 284 members signed the Constitution of India. That day, the drizzling rain outside was interpreted to a good omen.

IMPORTANT COMMITTEES

Name of the Committee	Chairman
Committee on the Rules of Procedure	Rajendra Prasad
Steering Committee	Rajendra Prasad
Finance and Staff Committee	Rajendra Prasad
Credential Committee	Alladi Krishnaswami Ayyar
House Committee	B. Pattabhi Sitaramayya
Order of Business Committee	K.M. Munshi
Ad hoc Committee on the National Flag	Rajendra Prasad
Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
States Committee	Jawaharlal Nehru
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel
Minorities Sub-Committee	H.C. Mookherjee
Fundamental Rights Sub-Committee	J.B. Kripalani
North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-	Gopinath Bardoloi

Committee	
Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee	A.V. Thakkar
Union Powers Committee	Jawaharlal Nehru
Union Constitution Committee	Jawaharlal Nehru
Drafting Committee	B.R. Ambedkar

1.4.1 CHECK YOUR PROGRESS II

1. Precisely how long did it take to frame the Constitution of India?

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2. What was the final Composition of the Constituent Assembly in December 1947?

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3. How many Readings of the Draft Constitution take place?

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1.5. SOURCES OF INDIAN CONSTITUTION

Sl. No	Countries	Borrowed Features of the Constitution
1.	Japan	<ul style="list-style-type: none"> • The concept of Procedure Established by law
2.	UK	<ul style="list-style-type: none"> • Parliamentary form of government • Rule of Law • Legislative procedure • Idea of Single Citizenship • Cabinet system • Prerogative writs

		<ul style="list-style-type: none"> • Parliamentary privileges • Bicameralism
3.	Canada	<ul style="list-style-type: none"> • Federation with a strong Centre • Vesting of residuary powers in the Centre • Appointment of state governors by the Centre • Advisory jurisdiction of the Supreme Court
4.	Soviet Union (USSR) (now, Russia)	<ul style="list-style-type: none"> • Fundamental duties • Ideals of justice (social, economic and political) in the Preamble
5.	Ireland	<ul style="list-style-type: none"> • Directive Principles of State Policy • Nomination of members to Rajya Sabha • Method of election of the president
6.	US	<ul style="list-style-type: none"> • Fundamental rights • Independence of judiciary • Judicial Review • Impeachment of the president • Removal of Supreme Court and High Court judges • Post of vice-president
7.	Australia	<ul style="list-style-type: none"> • Concurrent list • Freedom of trade, commerce and intercourse • Joint-sitting of the two Houses of Parliament
8.	Germany	<ul style="list-style-type: none"> • Suspension of Fundamental Rights during emergency
9.	France	<ul style="list-style-type: none"> • The concept of “Republic” • Ideals of liberty, equality and fraternity in the Preamble
10.	South Africa	<ul style="list-style-type: none"> • Procedure for amendment to the Indian

		Constitution <ul style="list-style-type: none">• Election of members of Rajya Sabha
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1.6 SUMMARY

The foremost criticism of the Constituent Assembly has been that it was not a representative body its members were not elected directly by the people of India on the basis of universal adult franchise, but indirectly. The time taken in drafting the Constitution has also been commented upon negatively, along with the fact that it was dominated by members of the Indian National Congress, the Hindu community, and also the Lawyer-Politician community. The complicated language and the originality, or lack thereof, has also been criticised, with the Constitution being labelled a borrowed one. However, these criticisms need to be considered in light of the prevailing circumstances of that time, for some of them may be explained. Direct elections by adult franchise during those times when partition and communal riots threatened the country were impracticable, and would have caused an even further delay in the constitution-making process, as was noted by the Cabinet Mission. The delay in drafting is also understandable given the complexity of issues involved, as well as the diversity of a nation like India. Further, it was only natural that a majority of the members of the Assembly would belong to the Congress since the party dominated the Provincial Assemblies. The Congress party itself comprised members belonging to varying ideologies and all the different sections of the Indian society.

1.7. QUESTIONS FOR PRACTICE

1.7.1 LONG ANSWER QUESTIONS

1. What was the Mountbatten Plan?
2. What was the Objective Resolution? Explain.
3. What was the composition and role of Drafting Committee?
4. What are the various sources of the Indian Constitution? Elaborate.
5. What are some common criticisms of the Constituent Assembly? Do you agree with such criticisms?

1.7.2 SHORT ANSWER QUESTIONS

1. What was Dr. Ambedkar's opinion on the originality of the Constitution?

2. When were the Preamble, the National Flag, and the National Anthem adopted, respectively?
3. How many committees were appointed by the Constituent Assembly? Which were the important ones?
4. How many sessions of the Constituent Assembly were held? Why did the Assembly meet on 24th January, 1950?
5. During which Reading of the Draft Constitution did the greatest deliberation take place? What took place in the other two Readings?
6. Is it fair to say that the Indian Constitution is plagiarized?
7. Who prepared the initial draft of the Constitution based on the Committee reports and Assembly debates till August 1947?
8. What is the significance of the Objective Resolution?

1.8. SUGGESTED READINGS

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BACHELOR ARTS
SEMESTER –VI
COURSE: - INDIAN POLITICAL SYSTEM -I

UNIT 2: PREAMBLE AND BASIC FEATURES OF INDIAN CONSTITUTION

STRUCTURE:

2.0 : Learning Objectives

2.1. Key Words

2.2. Introduction

2.3. Purpose of the Preamble

2.4. Objectives enshrined in the Preamble

2.5. Can Preamble be amended?

2.5.1 Check Your Progress I

2.6. Basic features of the Indian Constitution

2.6.1. Check Your Progress II

2.7. Summary

2.8. Questions for Practice

2.8.1. Long Answer Questions

2.8.2. Short Answer Questions

2.9. Suggested Readings

2.0. LEARNING OBJECTIVES

After the completion of this unit, you will be able to:

- What does the Preamble mean and how it came into existence
- The effect of the 42nd Amendment Act, 1976 on the Preamble

- The basic features of the Constitution of India

2.1 KEY WORDS: Preamble, Constitution, judgement, Socialist, Secular, democratic, Republic, Liberty, Equality, Justice, Freedom

2.2. INTRODUCTION

The Preamble to the Constitution of India enlists the main objectives which the Constitution intends to achieve. It is a codified form of all the ideals which India has striven hard to achieve, even during its struggle for independence. The Supreme Court in *Re Berubari case*¹ has said that the Preamble is a door to the thought process of the makers of this Constitution and encapsulates their aims and goals for it.

The Preamble declares:

“We, the people of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens:

Justice, social, economic and political;

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

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

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

In our Constituent Assembly this twenty-sixth day of November, 1949 do Hereby, Adopt, Enact and Give to ourselves this Constitution.”

The Preamble may be a way of peering into the minds of the makers of the Constitution, but it does not have an overriding effect on the express provisions stated in it. This was held in *Re Berubari*², where it was said that the Preamble was not to be considered as a part of the Constitution and therefore, could not be a source of substantive powers. The Preamble serves as a guiding light to understand any ambiguity in the provisions of the Constitution.

¹AIR 1960 SC 845.

²*Ibid.*

However, this view was rejected by the Supreme Court in *Kesavananda Bharti v. State of Kerala*³, where it held that the Preamble is a part of the Constitution. Sikri, C.J., observed, “No authority has been referred before us to establish the propositions that what is true about the powers is equally true about the prohibitions and limitations. Even from the Preamble limitations have been derived in some cases. It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.”

2.3. PURPOSE OF THE PREAMBLE

The aim of the drafting committee of the Constitution was that the Preamble serves the following purposes:

- i.* It is an indicator of the source of the Constitution, i.e., it comes directly from the people of India.
- ii.* It enshrines the clause which brings the Constitution into force.
- iii.* It declares the rights and freedoms intended for the people of India and the type of political system which the people of India wished to establish.

According to the Preamble, the source of the Constitution is the people of India itself, and there is no subordination to any external authority or force. The Preamble also declares India to be a “*Sovereign Socialist Secular Democratic Republic*”. Sovereign power is absolute, and in the words of Cooley, “A State is sovereign where there resides within itself a supreme and absolute power acknowledging no superior”. However, India is still considered a member of the Commonwealth of the Nations, and its sovereign status is not affected by such membership.

The Preamble declares India as a Republic because the head of the State is not a hereditary monarch. In a republic, the head of the State is elected by the people for a fixed amount of time. The Constitution of India states that the head of the Executive is the President, and is elected for a term of five years. The term ‘democratic’ indicates that the Constitution has established a form of the government which derives its power from the people, and is answerable to them as well.

³AIR 1973 SC 1461.

There are two types of democracy: (i) Direct democracy, where the legal and the political sovereignty is vested in the people, as followed in Switzerland, and (ii) Indirect democracy, where the representatives elected by the people are vested with powers of legal and political sovereignty. Such type of democracy is also known as *Representative Democracy*.

The terms 'Socialist' and 'Secular' were added to the Preamble by the 42nd amendment, 1976. The concept of Socialism is implicit in the Preamble, specifically where the words 'Economic justice' has been used. It denotes India's aim to bring about a socio-economic revolution in the country for the upliftment of weaker classes. While the term 'Socialism' has no definition, it has normally implied a political system where means of production are wholly or in large part owned by the State itself. The Constitution of India has added the democratic aspect to it for its idea of government, which is why it is known as democratic socialism. The effect of the word 'Socialist' was considered by the Apex Court in *Excel Wear v. Union of India*⁴, where it was held that addition of the word 'Socialist' may tilt the Court decisions in favour of Nationalisation and State Ownership. As long as a large section of the Indian economic structure is composed of private ownership, the rules of Socialism cannot be pushed to such an extent so as to completely ignore their interests. This point was later elaborated in *D.S. Nakara v. Union of India*⁵, where the Supreme Court held that the 'basic framework' of Socialism is to provide a decent standard of life to the working people and provide economic security 'from cradle to grave'.

A State being 'secular' means that it does not recognize any religion as the State Religion. The concept of Secularism is also implicit in the Preamble, where it reads, "liberty of... belief, faith and worship". In the Constitution, Articles 25 to 28 provide a constitutional guarantee to every person of the freedom of conscience and the right to profess, practise and propagate any religion. In *S.R. Bommai v. Union of India*⁶, it was held by the Supreme Court that secularism is "a basic feature of the Indian Constitution". The definition was expanded in *Aruna Roy v. Union of India*⁷, where the Apex Court held that secularism has a "positive meaning", that is developing, understanding and respect towards different religions.

⁴AIR 1979 SC 25.

⁵AIR 1983 SC 130.

⁶(1994) SCC 1.

⁷AIR 2003 SC 3176.

The word 'integrity' was also added by the 42nd amendment Act, 1976, which aimed at ending separatist tendencies and making people feel that India is their home. While the concept was already implied by the federal nature of the Constitution, the drafting committee has expressly used the following words in Article 1 of the Constitution: "India shall be a Union of States." This makes it clear that the states have no right to secede from the Union. In addition to this, Article 19(2) of the Constitution empowers the State to impose reasonable restrictions on the freedom of speech and expression of the citizens in the interests of integrity and sovereignty of India.

2.4. OBJECTIVES ENSHRINED IN THE PREAMBLE

There are certain ideals which the Preamble envisages for the Constitution to achieve and those are mentioned in the Preamble itself: *Justice, Liberty, Equality* and *Fraternity*. The Constitution of India wishes to secure political, social and economic justice for the citizens of India. The attainment of collective good as distinguished from individual good is the main aim of rendering justice. Combining the ideals of political, social and economic democracy with that of equality and fraternity in the preamble will make an India "in which the poorest shall feel that it is their country in whose making they have an effective voice: an India in which all communities shall live in perfect harmony.", in the words of Mahatma Gandhi.

Article 1 of the Universal Declaration of Human Rights adopted by the United Nations Organization embodies the noble idea that "all human beings are born free and in equal dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". It is this concept of brotherhood of the man which is contained in the Preamble of the Constitution.

2.5 CAN PREAMBLE BE AMENDED?

This question was asked for the first time in *Kesavananda Bharti* case, where the Attorney General argued that according to power of amendment under Article 368, even the Preamble can be amended, as it is a part of the Constitution. However, the petitioners argued that the power under Article 368 was limited, and did not extend to amending the Preamble. It was further argued that the Preamble contained the 'basic features' or the 'fundamental elements' of the Constitution, and any attempt to tamper with or alter them may violate the spirit of the Constitution itself.

The Supreme Court by a majority decision held that since Preamble is a part of the Constitution, it can be amended. However, any amendment of the Preamble would be subject to keeping its 'basic structure' intact. The identity of the Constitution cannot be maintained if the elements integral to its core are removed. The Court stated, "the edifice of our Constitution is based upon the basic elements mentioned in the Preamble. If any of these elements are removed the structure will not survive and it will not be the same constitution or it cannot maintain its identity. The Preamble declares that the People of India resolved to constitute their country into a sovereign democratic republic. No one can suggest that these words and expressions are ambiguous in any manner. An amending power cannot be interpreted so as to confer power on the Parliament to take away any of these fundamental and basic characteristics of policy."

2.5.1 CHECK YOUR PROGRESS I

1. What were the words added by the 42nd Amendment?

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2. Can Preamble be amended under Article 368?

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3. What do the words 'Socialist' and 'Secular' mean?

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2.6. BASIC FEATURES OF THE INDIAN CONSTITUTION

The Constitution of India has some very unique and interesting features. They are elaborated as follows:

i. Longest Constitution –

The Constitution of India is one of the longest and most elaborate of all the codified constitutions of the world. The Australian Constitution has only 128 Articles, the American Constitution has 7 Articles and the Canadian Constitution has only 147 Articles. On the other hand, Indian Constitution originally consisted of 395 Articles, 25 Parts and 12 Schedules. Since the original draft of the Constitution, a lot more Articles and provisions have been added. Some of the reasons for this bulk are as follows:

- a) The framers of the Indian Constitution had gone through a lot of written constitutions available and wanted to incorporate their best provisions into their Constitution. This was done with the sole purpose of avoiding any defects and loopholes that might come in future.
- b) The Constitution of India lays down the structure for both central and state governments. Quite a lot of other countries' constitutions have not done this.

ii. Parliamentary form of Government –

The makers of the Indian Constitution followed the British model of Government *in toto*, adopting the parliamentary form of government both at the central and the state level. The reason for this is that Indian political system was used to this form of government, and such form of government was also considered as the one which was directly responsible for and answerable to its source of power, i.e. the people of India. The President is the constitutional head of the State, but the real executive power is vested in the Council of Ministers, and headed by the Prime Minister. All the ministers and other representatives (both in lower house, the Lok Sabha and the upper house, the Rajya Sabha) are elected, either directly or indirectly, by the citizens of India.

iii. Blend of rigidity and flexibility –

Many of the federations have lengthy or cumbersome constitution- or law-amending processes. However, barring a few provisions requiring assent from half of the state legislatures of India, a simple method of amendment is followed for altering the Constitution in India. While it may be a codified constitution, it is still possible to change/alter a provision with a relatively easy process. Hence, the Constitution of India is both rigid and flexible.

iv. Fundamental Rights –

As the fundamental rights have been incorporated in Part III of the Constitution, they are considered as one of the most distinguishing features of a democracy. These rights are a safeguard against any illegal action taken by the state with respect to freedoms granted to the citizens (and other persons too, in some cases). In order to enforce these rights, various remedies in the form of writs have also been created, such as *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo Warranto* and *Certiorari*. However, fundamental rights come with reasonable restrictions defined under the Constitution. In other words, fundamental rights are not absolute.

v. Directive Principles of State Policy –

Written in Part IV of the Constitution of India, the Directive Principles of State Policy sets the goals which the State wishes to achieve through governance of its subjects. These are not enforceable in a Court of Law, unlike the fundamental rights. While these principles may not be justiciable, yet the idea of a welfare state envisaged in the Constitution can only be achieved if the States endeavour to implement them with high sense of moral duty. The representatives are answerable to their constituents during every election, and directive principles serve as a checklist for the constituents to see what work has been done and what more is expected out of their representatives.

vi. Federation with a strong Centre –

The structure provided by the Constitution of India is such that a lot of power has been given to centre over the states, unlike a federal system, where division of powers is done equally between centre and the states. In times of emergency, the federal system of government in India becomes a unitary one, with all the power concentrated at the Centre. All the decisions related to finance, legislation, security, etc. are then decided by the Centre rather than the states. This combination of federal and unitary character is a unique feature of the Indian Constitution, and can be better understood by understanding the circumstances and the historical background upon which federalism was introduced in India.

vii. Adult suffrage –

The previously used system of communal electorates was abolished by this Constitution and the uniform adult suffrage system was adopted. Under the Constitution of India, every person above the age of 18 years has been given the right to elect their representatives. This right has been given without any qualification for sex, property, taxation returns, etc., which makes it both bold and ambitious to give this right to every citizen of India, considering the country's diversity. It is safe to say that this attempt to create the world's largest democracy has been met with modest success, keeping in mind the fact that number of people voting in every subsequent election is increasing and yet there are a lot of problems with the way how elections are conducted in India.

viii. Independent Judiciary –

Listing of freedoms in the Constitution without a body with powers to protect those freedoms, defeats the purpose of giving such freedoms and rights in the first place.

That's why for enforcement of these rights, an independent judiciary is necessary and has also been established. Unless there is remedy, there is no right, as rights do get violated from time to time. The Judiciary has been granted powers like Judicial Review in order to safeguard people's rights against violations by the State or private persons. Besides, in a federal Constitution, it plays the role of defining the powers and limits of the Centre and the States.

ix. Secular State –

As mentioned earlier, a Secular State is one where a State has no recognised religion of itself and treats all religions equally. Once again, trying to create a secular state in a country as diverse as India is a bold attempt to portray the unity amongst different religions which continue to propagate and exist within the boundaries of the Country. The Preamble declares to give all the citizens of India "liberty of... belief, faith and worship", while the Articles 25 to 28 emphasise on the secular nature of the Indian Constitution. It guarantees every person the freedom of conscience and the right to profess, practise and propagate the religion of their choice. In a secular state, the only relationship which the State regulates is that of man and man, not man and God. A person can worship God according to what their conscience dictates, but this freedom too, like other freedoms, is subject to regulation by the State. Nothing can be done under the garb of religion which against public health, order or morality. Similarly, religious freedom is not a tool to be used for economic exploitation. The right to own, acquire and administer property by religious institutions is also subject to regulation by the Government.

x. Single Citizenship –

Although the Constitution of India has a federal character and provides for a dual polity, i.e. governments in both centre and states, it only provides for a single citizenship, which spans throughout the whole of the country. This is unlike other countries with federal constitutions, such as the United States of America (USA), where dual citizenship exists. In India, there is no 'state citizenship'. Every Indian is a citizen of India and enjoys the same rights of citizenship no matter what state he/she/they reside in.

xi. Fundamental Duties –

The Constitution (42nd Amendment) Act, 1976 introduced the concept of fundamental duties for the citizens. These duties serve as a reminder that while the people may have certain rights granted to them under the Indian Constitution, they

also have certain duties which they have to perform in order for the country to become a successful democracy. However, these duties are not enforceable in a Court of Law.

xii. Judicial Review –

‘Judicial Review’ is the power of the higher Courts to decide the constitutionality of the legislations and laws which fall under their jurisdiction to enforce and the power to refuse enforcement of such law which it deems unconstitutional or not meeting the standards set by the Constitution, and hence void. Khanna, J., in *Kesavananda Bharati* case, said, “Judicial Review has thus become an integral part of our Constitutional System and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of the provisions of statutes. If the provisions of the statutes are found to be violative of any of the articles of the Constitution, which is the touchstone for the validity of all the laws, the Supreme Court and the High Courts are empowered to strike down the said provisions.”

‘Power corrupts a man and absolute power corrupts absolutely’ is a very significant adage to be kept in mind, especially when talking about governments and their ambit of powers. When Montesquieu gave his doctrine of separation of powers, he was ‘moved’ by his desire to put a curb on absolute and uncontrollable power with any one organ of the government. A legislature, an executive and a judiciary make the aggregate of what is understood and meant as ‘Government’. Power has to be kept in check, or the tilt of human nature towards chaos and tyranny will violate the body and the spirit of the Constitution, and the promise of a democratic state made by it to the people of India.

The doctrine of Judicial Review was first propounded by the Supreme Court of USA in the case of *Marbury v. Madison*⁸. Judicial Review works on the premise that there is a supreme law of the land which is the foundation and source of other legislative authorities in the country, and it is applied when any ordinary law is in violation of the supreme law of the land, and in order to declare such law void, some authority must possess this power of pronouncing such Acts void.

In the Indian Constitution, the Judicial Review has been expressly mentioned, unlike USA, where it is on a softer footing. In *State of Madras v. V.G. Row*⁹, Patanjali Sastri,

⁸2L Ed. 60.

⁹AIR 1952 SC 196.

C.J., observed, “Our Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of widely interpreted ‘due process’ clause in the Fifth and the Fourteenth amendments. If then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority and a crusader’s spirit, but in discharge of duty plainly laid upon them by the Constitution. This is especially true as regards the fundamental rights as to which the Court has been assigned the role of the sentinel on the *qui vive*”.

In *Binoy Viswam v. Union of India*¹⁰, the Supreme Court held that the Supreme Court or the High Courts while exercising their power of judicial review may declare law passed by the Central or the State Legislature as invalid on only two grounds: (a) The legislature which passed the law is not competent to do so and/or (b) it is in violation of any of the fundamental rights given in Part III of the Constitution or any other right/provision of Constitution.

Judicial Review has also been considered as a part of the ‘basic structure’ of the Constitution in the *Kesavananda Bharati* case and therefore, “it cannot be damaged or destroyed by amending the Constitution under Article 368 of the Constitution”.

2.6.1. CHECK YOUR PROGRESS II

1. Are Directive Principles of State Policy enforceable in a Court of Law?

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2. Does India grant dual citizenship?

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3. Which landmark case stated that Judicial Review is the ‘basic structure’ of the Constitution?

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¹⁰AIR 2017 SC 2697.

2.7. SUMMARY

Both the Preamble and the basic features of the Constitution have an important role to play in upholding the lofty standards set by the makers of the Constitution, and while it is still an ongoing process, India now fares far better as a legal and political system than its performance at the time of independence, which has been only possible in large part due to following the letter and the spirit of the Constitution and understanding what it means to be a lawfully-abiding citizen of this country.

2.8. QUESTIONS FOR PRACTICE

2.8.1 LONG ANSWER QUESTIONS

1. Explain the basic features of the Constitution of India in brief.
2. What is the meaning of the terms 'Socialist' and 'Secular' and why were they added to the Preamble?
3. Elaborate upon the power of Judicial Review and how it has been incorporated into the Indian Constitution.

2.8.2. SHORT ANSWER QUESTIONS

1. Why is the Constitution of India the lengthiest Constitution in the World?
2. Is Preamble a part of the Constitution?
3. What purpose is served by the Preamble?
4. How is being secular a basic feature of the Indian Constitution?
5. What are the remedies for the enforcement of Fundamental Rights?

2.9. SUGGESTED READINGS

- J.N. Pandey, *CONSTITUTIONAL LAW OF INDIA*, Central Law Agency, Allahabad, 2018.
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**BACHELOR OF ARTS
SEMESTER VI**

COURSE: INDIAN POLITICAL SYSTEM I

**UNIT 3 FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES: MEANING,
EXPLANATION AND EVALUATION**

STRUCTURE

- 3.0 Learning Objectives
- 3.1 Key Words
- 3.2. Introduction
- 3.3. Features of fundamental rights
- 3.0. Learning Objectives
- 3.4. Elaboration of Fundamental Rights Enshrined in the constitution
 - 3.4.1 Writs
- 3.5. Evaluation of Fundamental rights
- 3.6. Significance of Fundamental Rights
 - 3.6.1. Check Your Progress I
- 3.7. Fundamental Duties
- 3.8. Criticism of Fundamental Duties
- 3.9. Significance of Fundamental Duties
 - 3.9.1. Check Your Progress II
- 3.10. Summary
- 3.11. Questions for Practice
 - 3.11.1 Long Answer Questions
 - 3.11.2 Short Answer Questions
- 3.12. Suggested Readings

3.0 LEARNING OBJECTIVES

After the completion of this unit, you will be able to:

- Explain the meaning of rights and duties and critically evaluate their need and importance in our day to day life.
- Assess the importance of fundamental rights given in the constitution of India and analyze their expectations and restrictions.

- Know the importance of fundamental duties and the need to perform them as a good and law-abiding citizen of India.

3.1. KEY WORDS: Fundamental, Rights, Liberty, Equality, Justice, Freedom, Duties

3.2. INTRODUCTION:

Fundamental rights are integral part of any democratic system. They are required for the overall development of an individual's personality. The constitution of India also provides us with a number of fundamental rights. The constituent assembly which began its work on December 1946, created a special committee under Sardar Patel, to deal with problems of fundamental rights. They faced a stupendous job of identifying rights which would be essential for the people of India. Thus, they made a distinction between Directive Principles of state policy and fundamental Rights making the former non-enforceable and the latter enforceable by the courts of law. The fundamental rights are the 'conscience of the constitution' and very 'soul of the constitution'.

Fundamental Rights in India are those rights which guaranteed under part III (Articles 12 to 35) of the constitution of India. There are six fundamental rights (Article 12- 35) recognized by the Indian constitution i.e. the right to equality (Articles 14-18), the right to freedom (Articles 19-22), the right against exploitation (Articles 23-24), the right to freedom of religion (Articles 25- 28), Cultural and educational rights (Articles 29-30) and right to constitutional remedies (Article 32 and 226).

While the constitution also gives other rights, such as right to property, they are not fundamental rights. In the case of fundamental rights violations, the supreme court of India can be directly petitioned under Article 32 of the constitution. The rights have their origins in many sources, including England's bill of Rights, the United States bill of Rights and France's Declaration of the Rights of Man. Fundamental Rights for Indians have also been aimed at overturning the inequalities of pre independence social practices. Specifically, they have also been used to abolish unctouchability and thus prohibit discrimination on the grounds of religion, race, caste, gender or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of religious establishments. Right to property was changed from fundamental right to legal right.

3.3. FEATURES OF FUNDAMENTAL RIGHTS:

The fundamental rights guaranteed by the constitution are characterized by the following

1. Fundamental Rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the Supreme Court (SC) bypassing the lower courts. He or she should first approach the lower courts.
2. Some of the fundamental Rights are available only to all citizens while the rest are for all persons (citizens and foreigners).

3. Fundamental Rights are not absolute rights. They have reasonable restrictions, which mean they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
4. They are justiciable implying and are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
5. Fundamental Rights can be amended by the parliament through a constitutional amendment but only if the amendment does not alter the basic structure of the constitution.
6. Fundamental rights can be suspended during a national emergency. But, the right guaranteed under Articles 20 and 21 cannot be suspended.
7. The application of fundamental rights can be restricted in an area that has been placed under martial law or military rule.

3.4. ELABORATION OF FUNDAMENTAL RIGHTS ENSHRINED IN THE CONSTITUTION:-

Originally, there were seven fundamental rights in the constitution. Besides the above mentioned six rights, there was the right to property also since this Right created a lot of problems in the way of attaining the goal of socialism and equitable distribution of wealth it was removed from the list of fundamental Rights in 1978 by 44th constitutional amendment. However, its deletion does not mean that we do not have the right to acquire, hold and dispose of property. Citizens are still free to enjoy this right. But now it is just a legal right and not a fundamental Right.

1. RIGHT TO EQUALITY (Articles 14-18):-

Right to equality is very important in a society. The purpose of this right is to establish the rule of law where all the citizens should be treated equal before the law. It has five provisions (Article 14 to 18) to provide for equality before law or for the protection of law to all the persons in India and also to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

- **Equality Before Law (Article 14):**

The constitution guarantees that all citizens will be equal before law. It means that everyone will be equally protected by the laws of the country. No person is above law. It means that if two persons commit the same crime, both of them will get the same punishment without any discrimination.

- **Prohibition of Discrimination on the grounds of Religion, Race ,Caste ,Sex or Place of birth (Article15):**

The state cannot discriminate against a citizen on the basis of religion, race, caste, sex or place of birth. This is necessary to bring about social equality. Every citizen of India has equal access to shops, restaurants, and places of public entertainment or in the use of wells, tanks or roads without any discrimination. However the state can make special provisions for women and children.

- **Equality of opportunity in matters of public employment (Article 16):**

The state cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the state. Merits and qualifications will be the basis of employment. However, there are some exceptions to this reservation of posts for citizens belonging to scheduled castes, scheduled tribes and other backward classes.

- **Abolition of Untouchability (Article 17):**

Practicing untouchability in any form has been made a punishable offence under any law. This provision is an effort to uplift the social status of millions of Indians who had been looked down upon and kept at a distance because of either their caste or the nature of their profession. But it is really very unfortunate that despite constitutional provisions, this social evil continues even today. Can you find any difference when you see a nurse cleaning a patient, a mother cleaning her child and lady cleaning a toilet in the illustration? Why do people consider the cleaning of a toilet in derogatory manner?

- **Abolition of Titles (Article 18):**

All the British titles like sir or Rai Bahadur which were given to the British loyalists during British rule have been abolished because they created distinctions of artificial nature. However, the president of India can confer civil and military awards to those who have rendered meritorious service to the nation in different fields. The civil awards such as Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri and military awards like Veer Chakra, Param Vir Chakra, and Ashoka Chakra are conferred.

2. RIGHT TO FREEDOM (Article 19-22) :

Freedom is the most cherished desire of every living being. Human beings definitely want and need freedom. The constitution of India provides Right to freedom to all its citizens. The right is stipulated under Article 19-22. The following are the four categories of Right to Freedom

Protection of certain Rights regarding Freedom of Speech etc (Article 19)

- **Six freedoms:**

Article 19 of the constitution provides for the following six freedoms:

- a. Freedom of speech and expression

- b. Freedom to assemble peacefully and without arms.
- c. Freedom to form associations and unions
- d. Freedom to move freely throughout the territory of India.
- e. Freedom to reside and settle in any part of India.
- f. Freedom to practice any profession or to carry on any occupation, trade or business.

The purpose of providing these freedoms is to build and maintain an environment for proper functioning of democracy. However, the constitution has authorized the state to impose certain reasonable restrictions on each of them:

1. Restrictions may be put on the Right to Freedom of speech and expression in the interests of the sovereignty, integrity and security of India, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
2. Right to assemble peacefully and without arms may be restricted in the interests of sovereignty and integrity of India or public order.
3. Right to form associations or unions may have restrictions in the interests of the sovereignty and integrity of India, public order or morality.
4. Right to move freely throughout the territory of India and to reside and settle in any part of India may also be restricted in the interests of the general public or for the protection of the interests of any scheduled Tribe.
5. Right to practice any profession or to carry on any occupation, trade or business may have restrictions in the interests of the general public. The state is also permitted to lay down the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

- **Protection in respect of conviction for offences (Article 20):**

Article 20 of the constitution provides for the protection in respect of conviction for offences. No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offence more than once and can be forced to give witness against his or her own self.

- **Protection of life and personal liberty (Article 21):**

As provided in Article 21, No one can be deprived of his or her life or personal liberty except according to the procedure established by law.

- **Right to Education (Article 21A):**

The right to education is added by introducing a new Article 21A in the chapter on fundamental Rights in 2002 by the 86th constitutional amendment. It was a long standing demand so that all children in the age group of 6-14 years can claim compulsory and free education as a fundamental right. It is a major step forward in making the country free of illiteracy. But this addition remained meaningless, as it could not be enforced until 2009 when the parliament passed the right to education Act 2009. It is this act which aims at ensuring that every child who is between 6- 14 years of age and is out of the school in India, goes to school and receives quality education that is his /her right.

- **Protection against arrest detention in certain cases(Article 22):**

It is provided in Article 22 that whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice. Moreover, the arrested person must be produced before the nearest magistrate within 24 hours of such an arrest excepting a person who has been arrested under preventive detention law has also to be referred to an advisory board within a period of three months of his or her arrest.

3. RIGHT AGAINST EXPLOITATION (Article 23 and 24):

Traditionally, the Indian society has been hierarchical that has encouraged exploitation in many forms which why the constitution makes provisions against exploitation. The citizens have been guaranteed the right against exploitation through Article 23 and 24 of constitution. These two provisions are:

- a. **Prohibition of traffic in human beings and forced Labour (Article 23):-**

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any breach of this provision shall be an offence punishable in accordance with law.

Traffic in human beings means selling and buying of human beings as material goods. Trafficking, especially of young woman, girls and even boys are continuing as an illegal trade.

Earlier especially in the feudal Indian society, people belonging to the poor and downtrodden sections were made to do work free of charge for landlords and other powerful people. This practice was *Begari* or forced labour.

- b. **Prohibition of employment of children in factories etc.(Article 24):**

As the constitution provides, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This right aims at eliminating one of the most serious problems, child labour that India has been facing since ages. Children are assets of the society. It is their basic right to enjoy a happy childhood and get education. In spite of this constitutional provision, the problem of child labour is still

continuing at many places. This malice can be eliminated by creating public opinion against it.

4. **RIGHT TO FREEDOM OF RELIGION (Article 25-28):**

I. **Freedom of conscience and free profession, practice and propagation of religion (Article 25):** This shows that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

- **Freedom of conscience:** Inner freedom of an individual to mold his relation with God or Creatures in whatever way he desires.
- **Right to profess:** Declaration of one's religious beliefs and faith openly and freely.
- **Right to practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
- **Right to propagate:** Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all persons alike. These rights are available to all persons— citizens as well as non- citizens.

II. **Freedom to Manage Religious Affairs (Article 26):**

According to Article 26, every religious denomination or any of its section shall have the rights:

- a. Right to establish and maintain institutions for religious and charitable purposes.
- b. Right to manage its own affairs in matters of religion.
- c. Right to own and acquire movable and immovable property.
- d. Right to administer such property in accordance with law.

The Supreme Court held that a religious denomination must satisfy three conditions:

- a. It should be a collection of Individuals who have a system of beliefs which they regard as conducive to their spiritual well – being.
- b. It should have a common organization.
- c. It should be designated by a distinctive name

Under the above criteria, the Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that Aurobindo society is not a religious denomination.

III. **Freedom as to payment of taxes for promotion of any particular Religion (Article 27):**

Article 27 lays down emphasis that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other

words, the state should not spend the public money collected by the way of tax for the promotion or maintenance of any particular religion. This provision prohibits the state from favoring, patronizing and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them same special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

IV. Freedom as to attendance at Religious Instruction or religious worship in certain educational institutions (Article 28):

Under Article 28, No religious instruction shall be provided in any educational institution wholly maintained out of state funds. However, it will not apply to an educational institution which is administered by the state but has been established under any trust which requires that religious instruction shall be compelled to take part in any religious instructions that may be imparted there or attend any religious worship that may be conducted there. In case of a minor the consent of his/ her guardian is essential for attending such activities.

5. CULTURAL AND EDUCATIONAL RIGHTS (Article 29-30):

India is the largest democracy in the world having diversity of culture, scripts, languages and religions. As we know the democracy is a rule of the majority. But the minorities are also equally important for its successful working. Therefore, protection of language culture and religion of the minorities becomes essential so that the minorities may not feel neglected under the impact of the majority rule. Since people take pride in their own culture and language, a special right known as cultural and educational Right has been included in the chapter on fundamental Rights. In articles 29-30 two major provisions have been made:

I. Protection of Interests of Minorities (Article 29):

Any minority group having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

II. Right of Minorities to Establish and Administer Educational Institutions (Article 30):

All minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the state shall ensure that the amount fixed under such law for

acquisition of such property would not restrict or abrogate the right guaranteed under that clause. The state shall not in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language.

6. RIGHT TO CONSTITUTIONAL REMEDIES (ARTICLE 32):

The constitution guarantees remedies if citizen's fundamental Rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights. The right to get the Fundamental Rights protected is in itself a fundamental right. This makes the Fundamental Rights real. That is why DR. Ambedkar called Article 32 as the most important article of the constitution- 'an Article without which this constitution would be nullity. It is the very soul of the constitution and the very heart of it.'

6.1.1. WRITS:

The Supreme Court under article 32 and the high court under Article 226 can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo-warranto. Further, the parliament (Under Article 32) can empower any other court to issue these writs.

Habeas corpus:

It is a Latin term which literally means 'to have a body of'. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal. Thus, this writ is a bulwark of Individual liberty against arbitrary detention.

Mandamus:

It literally means 'we command'. It is command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

Prohibition:

Literally, it means 'to forbid'. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction that it does not possess. Thus, unlike mandamus that directs activity, the prohibition directs inactivity. The writ prohibition can be issued only against judicial and quasi- judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals.

Certiorari:

It means 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, certiorari, is both preventive as well as curative. Previously, the writ of certiorari could be issued only against judicial and quasi-judicial authorities and not against administrative authorities. However, in 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of Individuals.

Quo-Warranto:

In the literal sense, it means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

3.5. EVALUATION OF FUNDAMENTAL RIGHTS:

The Fundamental Right enshrined in part III of the constitution has met with a wide and varied criticism. The arguments of critics are:

1. Excessive Limitations:

They are subjected to innumerable exceptions, restrictions, Qualifications and explanations. Hence, the critics remarked that constitution grants fundamental Rights with one hand and takes them away with other.

2. No Clarity:

They are stated in a vague, indefinite and ambiguous manner. The various phrases and words used in the chapter like public order, minorities, reasonable restriction, and public interest and so on are not clearly defined. The language used to describe them is very complicated.

3. No consistent Philosophy:

Critics say that the chapter on the fundamental rights is not the product of any philosophical principle. Sir Ivor Jennings expressed this Rights proclaimed by the Indian constitution are based on no consistent philosophy. This creates difficulty for the Supreme Court and the high courts on interpreting the fundamental rights.

4. Suspension During Emergency:

The suspension of their enforcement during the operation of National emergency (except Article 20 and 21) is another blot on the efficiency of these rights. This provision cuts at the roots of the millions of innocent people in continuous jeopardy. Critics say, the fundamental rights should be enjoyable in all situations, Emergency or no emergency.

5. Preventive Detention:

The critics assert that provision for preventive detention (Article 22) takes away the spirit and substance of the chapter on fundamental rights. It confers arbitrary powers on the state and negates individual liberty. It justifies the criticism that the constitution of India deals more with the rights of the state against individual than with the rights of the individual against the state. Notably, no democratic country in the world has made preventive detention as an integral part of their constitutions as has been made in India.

6. No Permanency:

They are not sacrosanct as the parliament can curtail them as the abolition of the fundamental right to property in 1978. Hence, they can become a play tool in hands of politicians having majority- support in the parliament.

7. Expensive Remedy:

The judiciary has been made responsible for defending and protecting these rights against the interference of the legislatures and executives. However, the judiciary process is very costly and hinders the common man from getting his rights enforced through the courts.

8. No Social and Economic Rights:

The list is not comprehensive as it mainly consists of political rights. It makes no provision for social and economic rights. These rights are made available to the citizens of advanced democratic countries. The socialistic constitutions of erstwhile USSR or China provided for such rights.

3.6. SIGNIFICANCE OF FUNDAMENTAL RIGHTS:

The vitality of fundamental Rights is stated in our constitution. Part III of the constitution covers all the traditional civil and political rights enumerated in the universal declaration of human rights. Dr. B.R Ambedkar described them as the most citizen part of the constitution. They were considered essential to protect the liberties and rights of the people against the infringement of the power, delegated by them to their government. They uphold the equality of all individuals, the dignity of the individual and the nation's unity. It can be clear from the below points:

1. They constitute the bedrock of democratic system in the country.
2. They provide necessary conditions for the material and moral protection of man
3. They serve as a formidable but work of individual liberty.
4. They facilitate the establishment of Rule of law in the country.
5. They protect the interests of minorities and weaker sections of the society.
6. They strengthen the secular fabric of the Indian state.
7. They check the absoluteness of the authority of the government.
8. They lay down the foundation stone of social equality and social justice.
9. They ensure the dignity and respect of individuals.
10. They facilitate the participation of people in the political and administrative process.

3.6.1 CHECK YOUR PROGRESS I

1. What is the difference between fundamental and legal rights?

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2. Who called which article 'it is the very soul of the constitution and the very heart of it' and why?

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3.7. FUNDAMENTAL DUTIES

The fundamental duties of citizens were added to the constitution under article 51A by the 42 amendment act of 1976. Originally, they were ten in number, but later the duties were increased to eleven by the 86th amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward aged between six years and fourteen years was provided with the opportunities for education. However, like the Directive principles, these are non-justiciable, and thus, without any legal sanction in case of their violation or non-compliance. As India upholds the universal declaration of human rights and International covenant on civil and political Rights, where there is some reference to such duties it can be said that Article 51A tries to strike a balance with these international treaties. The following are the fundamental duties prescribed by the constitution of the nation under part IV A to its very citizen:

1. To abide by the constitution and respect its ideals and institutions, the national flag and the national anthem.
2. To cherish and follow the noble ideals which inspired our national struggle for freedom.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.

5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women.
6. To value and preserve the rich heritage of composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
8. To develop the scientific temper, humanism and spirit of inquiry and reform.
9. To safeguard public property and to abjure violence.
10. To strive towards excellence in all spheres of Individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
11. The 86 amendment added the 11th fundamental duty in 2002, which states that the every citizen 'who is parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

3.8. CRITICISM OF FUNDAMENTAL DUTIES:

The fundamental duties mentioned in part IV A of the constitution have been criticized on the following points:

1. The list of duties is not exhaustible as it does not cover other important duties like casting vote, paying taxes, family planning and so on.
2. Some of the duties are vague, ambiguous and difficult to be the common man. For example, different interpretations can be given to the phrases like 'Noble Ideas', 'composite culture', scientific temper and so on.
3. They have been described by the critics as a code of moral precepts due to their non-justiciable character.
4. Their inclusion in the constitution was described by the critics as superfluous. This is because the duties included in the constitution as fundamental would be performed by the people even though they were not incorporated in the constitution.
5. The critics said that the inclusion of fundamental duties as an appendage to part IV of constitution has reduced their value and significance.

3.9. SIGNIFICANCE OF FUNDAMENTAL DUTIES:

In spite of criticisms and opposition, the fundamental duties are considered significant from the following viewpoints:

1. They remind the Indian citizens of their duty towards their society, fellow citizens and the nation.
2. They warn citizens against anti- national and anti- social activities.
3. They inspire citizens and promote a sense of discipline and commitment among them.
4. They help courts in examining and determining the constitutional validity of a law.
5. They are enforceable by law. Hence, the parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfill any of them.

3.9.1. CHECK YOUR PROGRESS II

1. By which constitutional amendment how many fundamental duties were added in Indian Constitution?

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2. 'To uphold and protect the sovereignty, unity and integrity of India.' It is our fundamental duty, what it means?

.....
.....

3.10. SUMMARY

In the end we can say that, fundamental rights play a very significant role in the life of any citizen. These rights can defend during the time of complexity and difficulty and help us grow into a good human being and that's why all the rights are the needs of people, on the other hand, fundamental duties are the essence of a democratic state like India. The best part is the word 'Fundamental' before duties. It gives equal status against fundamental rights and can be correlated. These are guidelines for a socially aware and morally correct citizen of India.

3.11. QUESTIONS FOR PRACTICE

3.11.1 LONG ANSWER QUESTIONS

1. Discuss the provisions related to the right to equality as provided by the constitution of India.
2. Discuss the nature of fundamental Rights and critically examine the Right to freedom.
3. Critically examine the fundamental Rights of India.
4. Discuss how the fundamental Rights in India can be protected in the light of Article 32.
5. Discuss the fundamental duties of India.
6. Critically examine the fundamental duties of India.

3.11.2 SHORT ANSWER QUESTIONS

1. What are the limitations on the enjoyment of Rights to freedom under article 19?
2. What are the provisions made under article 32?
3. What is Quo-Warranto?
4. Write a note on Prohibition.
5. Write a note on Right to education.
6. Give any two Fundamental duties of India.
7. In Which article Right to equality is mentioned and what it means?

3.12. Suggested Readings: -

- P.M Bakshi, *The constitution of India*, Universal Law Publishing Delhi, 2000.
- D.D Basu, *Introduction to the constitution of India*, Prentice-Hall of India, New Delhi, 1992.
- O.P Goyal, *Indian Political system*, Macmillan India, New Delhi, 1985.
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BACHELOR OF ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM -I

UNIT 4 DIRECTIVE PRINCIPLES OF STATE POLICY: MEANING, EXPLANATION AND EVALUATION AND ITS RELATIONSHIP WITH FUNDAMENTAL RIGHTS

STRUCTURE

4.0 Learning Objectives

4.1. Key Words

4.2. Introduction

4.3. Meaning

4.4. Classifications of the Directive principles of State Policy

4.4.1. Socialistic principles

4.4.2. Gandhian Principles

4.4.3 Liberal-Intellectual Principles

4.4.4. Check Your Progress I

4.5. Criticism of the Directive Principles of State Policy

4.6. Significance of Directive Principles

4.7. Implementation of Directive principle

4.8. Relationship between fundamental Rights and Directive principles of state policy

4.8.1 Check Your Progress II

4.9. Summary

4.10 Questions for Practice

4.10.1. Long Answer Questions

4.10.2. Short Answer Questions

4.11. Suggested Readings

4.0. LEARNING OBJECTIVES:

After the completion of this unit, you will be able to:

- Understand the meaning and nature of Directive Principle of state policy.
- Explain the philosophical basis of the Directive Principles.
- Classify the directive principles of state policy.
- Appreciate the role of Directive Principles towards making India a welfare state.
- Appreciate the importance of Directive principles of state policy in promoting socio- economic equality.
- Distinguish between fundamental Rights and directive principles of state policy.
- Assess the role of government in implementing Directive principles of state policy.

4.1. KEY WORDS: Directive Principle of state policy, Gandhism, Socialism, Liberalism, constitution

4.2. INTRODUCTION:

Part IV of constitution of India (Article 36-51) contains the Directive principles of state policy (DPSP). These principles aim at ensuring socio- economic justice to the people and establishing India as a welfare state. The founding fathers of Indian constitution were aware of the fact that Independent India state was going to face many challenges. After colonial rule of almost two hundred years country and the society was left with widespread poverty, hunger and with deep rooted socio-economic inequalities. The Framers of constitution felt that certain policy directions, guidelines or instructions for the governance of the country were required to handle these problems. Legislature, executive and administration of the independent India were expected to exercise their powers in accordance with the direction and guidelines given in this part of the constitution.

4.3. MEANING:

Directive Principles are certain ideals, particularly aiming at socio- economic justice, which according to framers of the constitution, Indian state should for Dr. B.R Ambedkar described directive principles as a ‘Novel Feature’ of the constitution.

They are in the nature of general directions, instructions or guidelines to the state. Directive principles embody the aspirations of the people, Objectives and ideals which union and the state governments must bear in mind while making laws and formulating policies. According to L.M. Singhvi, the Directive principles are the life giving provisions of the constitution. They represent the philosophy of social justice incorporated in the constitutions of India. Although Directive principles are non-Justiciable or they are not legally binding by any courts, they however, are fundamental in the governance of the country. They lay down a code of conduct for the legislatures, executives and administrators of India to discharge their responsibilities in tune with these ideals. Directive principles in the Indian constitution are taken from the constitution of Ireland. But the idea and philosophy of these principles can be traced back to French declaration of human rights, American declaration of Independence, liberal as well as socialist philosophy of 19th century and our own Gandhian Concept of Sarvodaya.

Ivor Jennings has observed that philosophy underlying most of the directive principles is ‘Fabian Socialism’. Many of our constitution makers were under the great influence of socialism and Gandhism. So, through these provisions and principles they laid down the socialistic pattern of society and Gandhian ideal state as the objective, which the Indian state should strive to achieve. Article 37 of the constitution, states about the application of the directive principles, which says that the provisions contained in this part IV shall not be enforceable by any court but principles there in laid down, are nevertheless fundamental in the governance of the country and it shall be in the duty of the state to apply these principles while making the laws.

4.4. CLASSIFICATIONS OF THE DIRECTIVE PRINCIPLES:

The constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz., socialist, Gandhian and liberal intellectual.

4.4.1. SOCIALISTIC PRINCIPLES:

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

Article 38:

The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice, social, economic and political,

shall inform all the institutions of the national life. The state shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39:

To secure the right to adequate means of livelihood for all citizen, the equitable distribution of material resources of the community for the common good, prevention of concentration of wealth and means of production, equal pay for equal work for men and women, preservation of the health and strength of workers and children against forcible abuse, and opportunities for healthy development of children.

Article 39 A:

To promote equal justice and to provide free legal aid to the poor by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 40:

The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Article 41:

To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

Article 42:

To make provision for just and humane conditions of work and maternity relief

Article 43:

To secure a living wage, a decent standard of life and social and cultural opportunities for all workers.

Article 43 A:

To take steps to secure the industries.

Article 47:

To raise the level of nutrition and standard of living of people and to improve public health

4.4.2. GANDHIAN PRINCIPLES:

These principles are based on Gandhian Ideology. They represent the programs of reconstruction enunciated by Gandhi during the natural movement. In order to fulfill the dreams of Gandhi some of his ideas were included as directive principles. They require the state:

Article 40:

To organize Village Panchayats and endow them with necessary powers and authority and to enable them to function as units of self- government

Article 43:

To promote cottage industries on an individual or co-operation basis in rural areas

Article 43B:

To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies

Article 46:

The state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the scheduled tribes and shall protect them from social injustice and all forms of exploitation.

Article 47:

The state shall regard the raising at the level of nutrition and the standard of living of its people and the improvements of public health as among its primary duties and in particular, the state shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

Article 48:

The state shall endeavor to prohibit the slaughter of cows, calves and other milch and drought cattle and to improve their breeds.

4.4.3 LIBERAL-INTELLECTUAL PRINCIPLES:

The principles included in this category represent the ideology of Liberalism. They direct the state:

Article 44:

To secure for all citizen a uniform civil code throughout the country

Article 45:

To provide early childhood care and education for all children until they complete the age of six years.

Article 48:

To organize agriculture and animal husbandry on modern and scientific lines

Article 48A:

The state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 49:

It shall be the obligation of the state to protect every monument or place or object of artistic or historic interest, declared by or under law made by parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal, or export, as the case may be.

Article 50:

The state shall take steps to separate the judiciary from the executive in the public services of the state.

Article 51:

The state shall endeavor to promote international peace and security, maintain just honorable relations between nations, foster respect for international law and treaty obligations in the dealings of organized people with one another and encourage settlement of international disputes by arbitration.

4.4.4. CHECK YOUR PROGRESS I

1. Are Directive Principles of State Policy is Justiciable?

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2. In which categories directive principles are divided?

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4.5. CRITICISM OF THE DIRECTIVE PRINCIPLES:

Sir B.N Rau, the constitutional advisor to the constituent assembly, recommended that the rights of an individual should be divided into two categories- justiciable and non-justiciable, which was accepted the drafting committee. Consequently, the fundamental Right, which is justiciable in nature, is incorporated in part 3 and the Directive principles, which are non- justiciable in nature, are incorporated in part 4 of the constitution. Though the Directive principles are non- justiciable, the constitution (Article 37) makes it clear that ‘these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Thus, they impose a moral obligation on the real force behind them is political, that is, public opinion. As observed by Alladi Krishnaswamy Iyer’, no ministry responsible to the people can afford light heartedly to ignore the provisions in part 4 of the constitution. The Directive principles of state policy have been criticized by some members of the constituent assembly as well as other constitutional and political experts on the following grounds.

1. No legal force:

The Directive principles have been criticized mainly because of their non- justiciable character so, their means the violation of DPSPs cannot be challenged in any court. Nassiruddin, a member of constituent assembly characterized them as a set of ‘New Year’s’ resolutions.

Prof. K.T. Shah described them as pious superfluities and compared them as a cheque payable only when the resources of the bank permit. K.C wheare called them as ‘manifesto of aims and aspirations’.

2. Illogically Arranged :

Critics had an opinion that DPSPs are not arranged in a logical manner based on a consistent philosophy. According to N Srinivasan, ‘The Directives are neither properly classified nor logically arranged. So, these principles appear to be a collection of some pious declarations which have only moral values.

3. Lack as clarity:

Several Directives lack clarity again this is the issue with whole Indian constitution. Several principles are the repetition of earlier ones. Article 51, which says, promotes international peace and friendly co-operation among all the nations is a laudable declaration. But the real issue is how to secure it? So, when it comes to the implementation part, there is no clear guidance. Article 31-C has made them totally unclear.

4. Reactionary in Nature :

Many critics have the opinion that several of the Directives appear to be reactionary. The party in power at a particular time can use some of the directives for political moreover,

enumeration as these principles involves an attempt to unduly bind the present with the past.

5. Constitutional conflict:

K. Santhanam has pointed out that the Directive principles lead to constitutional conflict;

- * Between the center and the states
- * Between the president and the prime minister
- * Between the governor and the chief minister.

According to him, the center can give directions to the states with regard to the implementation of these principles and in case of non-compliance can dismiss the state government. Similarly, when the prime minister gets a bill which violates the directive principles passed by parliament, the president may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the ministry has no right to ignore them. The same constitutional conflict may occur between the governor and the chief minister at the state level.

4.6. SIGNIFICANCE OF DIRECTIVE PRINCIPLES:

In spite of the above criticisms and shortcomings, the Directive principles are an essential ingredient of the Indian constitution. The constitution itself declares that they are fundamental to the governance of the country (Art 37). The Directive principles place an ideal before the legislator of India which guides them to frame the policies and laws. DPSP's is basically a code of conduct for the legislature and administrations of the country. They show the path to the leaders of the country to achieve the ideal of the Indian constitution.

According to L.M. Singhvi, an eminent jurist and diplomat, the directives are life giving provisions of the constitution. They constitute the stuff of the constitution and its philosophy of social justice. M.C. Chagla, former chief justice of India, is of the opinion that, if all the principles are fully carried out, our country would indeed be a heaven on earth. India would then be not only democracy in the political sense, but also the welfare state looking after the welfare of its citizens. Sir B.N Rau, the constitutional advisor to the constituent assembly, stated that the directive principles are intended as moral precepts for the authorities of the state. They have at least an educative value. According to M.C. Setalvad, the former attorney General of India, the Directive principles, although confer no legal rights and create no legal remedies, are significant and useful in the following ways:

- I. They are like an Instrument of instructions or general recommendations addressed to all authorities in the Indian union. They remind them of the basic principles of the new social and economic order, which the constitution aims at building.
- II. They have served as useful beacon lights to the courts. They have helped the courts in exercising their power of judicial review, that is, the power to determine the constitutional validity of a law.
- III. They form the dominating background to all state action, legislative or executive and also a guide to the courts in some respects.

- IV. They amplify the preamble, which solemnly resolves to secure to all citizens of India justice, Liberty, equality and fraternity.

4.7. IMPLEMENTATION OF DIRECTIVE PRINCIPLE:

The current status of the directive principles is secondary to the fundamental rights and the latter enjoy a legal superiority over the former. The crux of several amendments and Supreme Court verdicts thrust the responsibility on the government of the day to implement the directive principles in such a way that they do not contravene the fundamental rights or there arise a need for further constitutional amendment. The implementation of directive principles is a monumental job for any government, because non- implementation of these principles can cost the governments heavily. The governments over the year have made efforts to give expressions to some of the directive principles, yet lot has to be done if the benefit of social welfare and economic justice is to percolate into the bottom most level of the society.

The state has made many efforts to implement the directive principles with the aim of providing universalisation of education, the government works with the objective to provide elementary education free of cost to all children up to the age of 14 years which has always been a priority for the government. The 86th constitutional amendment of 2002 inserted a new article, Article 21 A, into the constitution that seeks to provide free and compulsory education to all children aged from 6 to 14 years. The government has made great effort so that the percentage of drop- outs from the schools decreases every year. Mid-day meals are also provided for their nutrition as well as added incentive to come to school.

Another noteworthy development was the 73rd amendment act, 1992 which is a landmark amendment towards decentralization and setting up of local self-government in India and this amendment inserted part IX to make provisions for constitution, election, financing and function of Panchayati Raj bodies. The 74th amendment act 1992, inserted part IX A to make provisions for constitution, election, financing and functioning of municipal bodies. These two were a great step towards decentralization and establishment of local self-governments.

As far poverty alleviation and creation of employment opportunities are concerned several programs have been initiated by the government of India like Pradhan Mantri Gram Sadak Yojana 2000, Mahatma Gandhi National Rural Employment Guarantee Act 2005, and various other schemes under the development and employment programs in India.

To protect the right of child, the Indian government has also passed several acts, like Child Labour Act 1986, Child Marriage Restraint Act 1929, Children Act 1960, Children Act 1933, Commissions for protection of child rights act, 2005, Commissions for protection of child right Act 2006 and so on.

Nationalization of Banks and insurance sectors were other significant steps towards realization of directive principles in India. To translate the Directive Principles into action, the government of India has initiated national five years plans for which a planning commission has been formed. The planning commission of India was set up on march 15, 1950, under the chairmanship of Jawaharlal Nehru, by a resolution of union cabinet for

formation of plans for the most effective and balanced utilization of county's resources . Till date, 11 plans have been implemented and the twelfth five year plan is underway.

India's foreign policy, has also to some degree, been influenced by the Directive principles. India has always reposed great faith in the United Nations and has always upheld its basic principles and objectives. It has also taken part in a number of peace keeping activities under the auspices of the United Nations. Despite such steps taken by the government of India, at both the state and the central levels, a lot is to be done as the conditions of women, children, weaker sections of the society and the poor have not shown significant difference even with such lofty measures and acts in place.

4.8. RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY:

The Relationship between part III and part IV is the one that is not a novice one and was discussed by the constitutional advisor sir B.N Rau who advocated the idea that the right of an individual on the basis of their nature can be divided into:

- Justiciable Rights
- Non – Justiciable Rights

The list of justiciable rights was engulfed in Part –III while the non- justiciable one became the member of part IV of the constitution. At times and again these directive principles are used by the judiciary to determine the constitutional validity of any legislation when they are found to be in conflict with the fundamental rights or part III of the constitution.

The first case we are going to discuss in this light is of Sajjan Singh vs. State of Rajasthan of 1964 where the obiter dicta laid down by justice Madhukar becomes opposite, even the fundamental rights enshrined in part III were taken as unalterable, the much needed dynamism may be according to him achieved by a proper interpretation of the fundamental rights in light of directive principles. Further, he observed that part IV is fundamental in the governance of the country and the provision relating to part III must be interpreted harmoniously with these principles. As discussed above in the case of Champakam Dorairajan it was held by the Supreme Court that the fundamental Rights would be reduced to a 'Mere rope of sand' if they were to be override by the Directive principles of state policy.

The parliament reacted to the Supreme Court's judgement in Golaknath case (1967) by enacting the 24th amendment act (1971) and the 25th amendment act (1971). The 24th Amendment act declared that the parliament has the power to abridge or take away any of the fundamental rights by enacting constitutional amendment acts .The 25 amendment act inserted a new article 31 C which contained the following two provisions:

1. No law which seeks to implement the socialistic Directive principles specified in Article 39 (b) and (c) shall be void on the ground of contravention of the

fundamental rights conferred by Article 14, Article 19 (protection of six rights in respect of speech, assembly, movement , etc.)or Article 31 (right to property).

2. No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.
 - In a case of conflict between the rights of an individual and a law that particularly aims at the implementation of socio- economic policies in furtherance of the Directive principles, the weight would be accorded to the latter.
 - Every act or Legislation enacted in fulfillment of the directive principles should be construed as the one professing in the public interest or as a reasonable restriction to part 3 of the constitution.

In the ‘Kesavananda Bharati’ case (1973), the Supreme Court declared the second provision of Article 31 C as unconstitutional and invalid on the ground that judicial review is a basic feature of the constitution and hence, cannot be taken away. However, the above first provision of Article 31 C was held to constitutional and valid.

Justice Chandrachud in the landmark case of *Minerva mills v. union of India* observed “fundamental rights are not an end in themselves but are means to an end”, the aforesaid end is specified in the directive principles. In the (Paras 56 and 57) of the same judgment, it was also duly held that harmony and balance between the fundamental rights and directive principles is an essential feature of the basic structure of the constitution.

The same becomes pertinent when we look in the case as *Bandhua Mukti Morcha* case where the bench headed by justice P.N. Bhagwati in page 163 as the same judgment has expressly mentioned: The right to live human dignity, free from exploitation enshrined under Article 21 derives its life and breath from the directive principles of state policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42.

Recently in the case of *Charu Khurana vs. Union of India* of 2015, the supreme court of India again highlighted the importance of their existence (part 3 and part 4) by observing that fundamental rights and the Directive principle are the two wheels of the chariot establishing the egalitarian social order.

Therefore, the present position is that the fundamental rights enjoy supremacy over the directive principles. Yet, this does not mean that the Directive principles cannot be implemented. The parliament can amend the fundamental rights for implementing the Directive principles. So long as the amendment does not damage or destroy the basic structure of the constitution.

4.8.1 CHECK YOUR PROGRESS II

1. Which Principle of Directive Principles of State Policy is now a Fundamental right?

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2. Write any two Gandhian Directive Principles of State Policy.

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4.9. SUMMARY:

In the end we can say that, these Directives constitution the national objectives and the national conscience and whosoever is victorious at the polls will not be free to violate them. According to Mr. Alladi Krishnaswamy Iyer, “No ministry responsible to the people can afford light heartedly to ignore the provision in part 4 of the constitution”. They have served as a guide for the union parliament and state legislatures. They are cited by the courts to support decisions. The governmental bodies have been invariably guided by these provisions. The critical analysis clearly shows that attempts of propagating the views that fundamental rights and directive principles are inter-related are untenable. Directive principles are moral guidance to state for enacting the laws. It is also proved that the soul as the constitution is that fundamental rights are above Directive principles and in case of any conflict between the two former should be accorded priority or the later.

4.10 QUESTIONS FOR PRACTICE

4.10.1. LONG ANSWER QUESTIONS

1. Analyze the significance of directive principles of state policy in comparison with fundamental rights as guaranteed by the constitution of India.
2. Examine the various Directive Principles provided in the constitution of India.
3. Discuss the meaning and evaluation of Directive Principles of state policy.
4. Discuss the importance of the Directive principles of state policy while discussing the various directive principles of state policy.

4.10.2. SHORT ANSWER QUESTIONS

1. What is the meaning of Directive Principles of state policy?
2. Briefly explain the difference between fundamental rights and Directive principles.
3. Write any five Directive Principles of State Policy.
4. Discuss the Utility of Directive principles of State Policy.

4.11. SUGGESTED READINGS:

- Granville Austin, *The Indian constitution: cornerstone of a nation*, oxford university press, Bombay, 1972.
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- J.R. Siwach, *Dynamics of Indian government and politics*, Sterling publishers Pvt. Ltd. New Delhi, 1985.
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BACHELOR ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM -I

UNIT 5: INDIAN FEDERALISM: LEGISLATIVE, ADMINISTRATIVE AND FINANCIAL RELATIONS BETWEEN UNION AND STATES

STRUCTURE

5.0: Learning Objectives

5.1. Key Words

5.2. Introduction

5.3. Features of Indian Federalism

5.4. Nature of Indian Federalism

5.4.1. Check Your Progress I

5.5. Relations between Centre and State

5.5.1. Legislative Relations

5.5.2. Distribution of Powers (Subject Matter)

5.5.3. Administrative Relations

5.5.4. Financial Relations

5.6. The Sarkaria Commission

5.6.1 Check your Progress II

5.7. Summary

5.8. Questions for Practice

5.8.1. Long Answer Questions

5.8.2. Short Answer Questions

5.9. Suggested Readings

5.0. Learning Objectives

After the completion of this unit, you will be able to

- Understand the nature of Indian federalism
- Discuss why the framers of the Indian Constitution adopted a federal form of government
- Describe the federal features of the Indian Constitution
- Recognize the quasi-federal structure of governance
- Describe the unitary features of the Indian federation
- Enumerate and discuss the process of the central government and those of the governments of the states
- Understand the two-fold division of legislative powers between the Centre and the State
- Understand the legislative, administrative (executive) and the financial relations between the centre and the units
- Analyze how the powers of the central government prevail over States' power
- Understand the rationale behind states' demand for greater autonomy
- Examine the recommendations that were put forth by the Sarkaria Commission to regulate and improve Centre- State relations.

5.1. Key Words: Federal, Unitary, Constitution, Centre- State relations,

5.2. INTRODUCTION

In a federal system, the powers and functions of the government are divided between the Union and the State. In a federal form of government, both the central and state governments work independently as well as in coordination with each other. The Indian constitution has adopted federal features thus providing for a federal form of government. Both the union and state are the creation of the constitution and their authority is derived from it. However, there has been criticism that the Indian form of government is a federal one but with unitary features. In order to verify the validity of this criticism, it is important to understand the relations between the centre

and the state. How far is this criticism valid? To understand this, it is desirable to study the relationship between the Union and the States.

The Indian constitution recognizes the principle of 'quasi-federalism'. Though there is division of powers between the Union and the States under schedule 7 of the constitution, this division is not absolute. In the 7th schedule of the constitution, the power of legislation has been given separately to the centre and the states in the first and second lists respectively and in the concurrent list being the third list power has been given to legislate to both the State and the Centre. In *J.P Rao Petitioner v. Union of India*, the Supreme Court observed that "Supremacy of the Central legislature is already provided in the Constitution as far as the concurrent list is concerned as it will appear from Article 254 of constitution of India". The court further observed that "it is very clear that in a certain situation the Central Legislature will have the overriding power over the state legislature and even exclusive power in some cases to legislate even on the state list (list II)".

The Indian judiciary has recognized the fact that Indian constitution does not accept an absolute form of federalism. In *State of West Bengal v. Union of India*, the apex court arrived at the conclusion that Indian constitution does not propound the principle of 'absolute federalism'¹. In *State of West Bengal vs. Kesoram Industries Ltd. and others*, the apex court observed that "Federalism under the Indian context points out to the supremacy of parliament and legislative entries contained in different lists of the Seventh schedule must be construed accordingly"². Noted legal scholar Professor K.C Wheare was the one who first declared that "It seems clear that, after allowing for the federal features of the Indian Union it can only be concluded that the constitution is quasi-federal"³.

5.3. FEATURES OF INDIAN FEDERALISM

Before we delve into discuss regarding the division of legislative, administrative and financial powers between the Centre and the State, it is important to understand the essential features of the Indian Constitution.

¹ *State of West Bengal v. Union of India* 1963 AIR SC 1241

² *The State of West Bengal v. Kesoram Industries Ltd. & Ors* [2004] Insc 28 (15 January 2004).

³ *Federal Government*, by KC Wheare, 1961

Written Constitution

In order for a nation to be a federation, it is essential that it has a written constitution. This is to ensure that both the Centre and the State can refer to it when required. It is well known fact that Indian Constitution is a written document that was drafted after a long deliberation by the constitution makers. The Constitution is a supreme document and it empowers both the Centre and the State to function independently in their administrative sphere with minimum interference.

Rigid Constitution

Amending a constitution in a federal system is generally a rigid and complicated task. The Indian Constitution lays down emphasis that in order for amending certain provisions, a special majority is required. This means that majority of total members of each house of the Parliament as well as by two-thirds majority of the members present and voting has to pass the amendment. Moreover, in addition to this, there are certain amendments that must be approved by at least 50% of the states. After this process is over, the head of the state i.e. the President gives his assent by signing the amendment. This procedure can be time consume and tedious. Thus, it has been rightly said that Indian Constitution is rigid in nature.

Division of Powers

Our Constitution lays down a clear cut division of powers. This ensures that both the States and the Centre are able to enact and legislate within their assigned administrative sphere. This is done so as to prevent any violation of its limits and prevent any interference with their respective autonomy's. Our constitution provides three lists, viz. the Union, the State and the Concurrent List.

Supremacy of the Judiciary

The independence of the judiciary is yet another important feature of the Indian Constitution. The original jurisdiction of the Supreme Court of India allows it to resolve disputes between the Union and the States. In case a law undermines or contradicts a provision of the constitution, the judiciary can declare it to be unconstitutional.

5.4. NATURE OF INDIAN FEDERALISM

As per Article 1 of the Constitution, India is a 'Union of States' thus indicating that is not a product of arrangement between the Union and the States and the States do not have the power to ask for separation from the union. Apart from that, the Constitution of India binds the Union and the States in such a manner that they cannot exit the same and must operate within the framework that has been laid down by it. The objective of the federation is to preserve the unity of the nation thus making it indestructible. The Governors are appointed by the Centre and their recommendations can prompt the Centre to take over the control of the state.

It can be said that the governor acts as an agent of the Centre. A closer look at the Indian federal system indicates that governor's are appointed to represent the interests of the Centre. This is in contrast with their responsibility as the head of the state. The Governor's position ensures that the Centre continues to exercise its control over the State. This becomes particularly significant in the context of imposition of National Emergency. If the units are to be treated equally in a federation, then they must be entitled to equal representation in the Upper House of the federal legislature i.e. the Parliament. However, the same is not followed in the Indian States.

This means that states have been given unequal representation in Rajya Sabha. This is in contrast to other countries that have adopted a federal form of government such as the United States of America. In USA, states are entitled to equal representation in the upper house that happens to be the Senate. This is irrespective of the size of their area or the population. Additionally, the Union Government is in charge of making important appointments such as the appointment of Chief Election Commissioner, the Comptroller and Auditor General are made by the Union Government. The provision for a separate constitution for the state is absent. The states are not empowered to suggest amendments to the Constitution. This is because only the Union Government is empowered to make amendments.

Generally, in a federal system, a dual system of courts is followed. However, that isn't the case in the Indian context. Here, we have a system of unified judiciary in which the Supreme Court assumes the apex position. The Constitution has made the Centre strong by assigning it subjects of significance. The States governments have been provided with minimal powers. The states are at a disadvantage from a financial perspective as they are made dependent on the Centre. One

relevant statement accurately explains the nature of Indian federalism that ‘Indian Constitution is federal in form but unitary in nature, is justified. All this will be discussed in depth in the coming sections.

5.4.1. CHECK YOUR PROGRESS I

1. What is the meaning of Supremacy of Judiciary?

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2. Briefly explain the three lists?

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5.5. RELATIONS BETWEEN CENTRE AND STATE

Part XI of the Indian Constitution lays down the relations between the union and the states. The Centre state relations are divided into three parts namely- Legislative Relations (article 245-255), Administrative Relations (Article 256- 263) and financial relations (Article 268-293). These have been discussed below in detail-

5.5.1. LEGISLATIVE RELATIONS

As per Chapter I of Part XI (Article 245-254) of the Indian Constitution, there exists a two-fold division of legislative powers between the State and the centre. This division is with respect to territory and subject matter.

Territorial Jurisdiction:- With respect to territory, Article 245(1) lays down that subject to the provisions contained in the Constitution, a State Legislature is empower to enact laws for whole of the state or any area that falls within its territory. However, State Legislatures cannot expand its territorial jurisdiction under any circumstances. The only scenario in which they can do the same is if the boundaries of the state are enlarged by an act of the Parliament.

On the Other hand, the Parliament is entitled to legislate for ‘the whole or any part of the territory of India, which includes not only the states but also the union territory of India’. This has been laid down by Article 246(1) of the Constitution. The Parliament is also entitled to the power of ‘extra territorial jurisdiction. This power is given by Article 245(2) and is not available to state legislatures. This means that the legislation enacted by the Parliament will not only concern itself with those people who are in the Indian territory but will also extent to Indian subjects and property that are situated outside India.

Distribution of Powers (Subject Matter)

As discussed above, under a federal form of government, there is a distribution of powers between the Centre and the State. The local and political backgrounds of a country play a critical role in determining the nature of distribution of powers. For example, in the USA, sovereign states were opposed to the idea of absolute subordination to the Government at Centre. Therefore, they entrusted subjects of common interest to the Central Government and legislated upon the remaining themselves. Australia also followed this pattern of single enumeration of powers. In contrast to this, Canada opted for double enumeration of the power. They took into account the US experience that resulted in a Civil War as a result of weak centre. Thus, to prevent the same from happening, they opted for a strong Centre. The makers of the Indian Constitution followed the federal scheme of double enumeration as adopted by Canada thereby going for a strong Centre. However, they modified this by adding a third list called the Concurrent list.

In the Indian context, with respect to legislative relations, powers have been divided into three categories in the Constitution. As per the seventh schedule of the Indian Constitution, legislative powers have been divided into lists- one for the Centre and the other for the State, known as the Union List and the State List, respectively. The concurrent list has also been added. There are 97 subjects of national interest in the Union List and is the largest list among the three. Some of the important subjects that fall within the purview of Union List include: Defence, Railways, Post and Telegraph, Income Tax, Custom Duties, etc.

The Parliament has the exclusive power to legislate on the subjects contained in the Union List for the entire country. There are 66 subjects in the State List that deal with local interest. Some of

the important subjects as contained in this List are- Trade and Commerce within the State, Police, Fisheries, Forests, Industries, etc. The State Legislatures have the power to legislate on the subjects included in the State List.

The Concurrent List is composed of 47 subjects that are of common interest to both the Union and the States. Some of the subjects included in this list are: Stamp Duties, Drugs and Poison, Electricity, Newspapers etc. Both the Parliament and the State Legislatures are empowered to legislate on the subjects included in this list. But in case a conflict arises between the Union and the State law with respect to the same subject, the Union law will prevail over the State law. The parliament is empowered to legislate on all subjects that do not fall within the purview of the three lists. The Parliament is also empowered to legislate on the subjects contained in the state list in certain circumstances.

5.5.2. ADMINISTRATIVE RELATIONS

The administrative relations between the union and the states can be examined under: (i) normal and (ii) emergency conditions.

Several techniques have been devised by the Indian Constitution to ensure that the Union government is able to exercise control over the state government in 57 normal circumstances. The state is not allowed to interfere in the legislative and executive actions and policies of the Centre. This control of the Centre has been possible because of the President's powers. Article 155-156 provides the president with the power to appoint and dismiss a governor. Apart from that, Article 304 allows him to introduce legislation in the state legislature; Article 213 lays down that the President's assent is required in case the Governor wishes to introduce ordinances pertaining to specific issues and Article 200 confers veto power on the President in case of State bills that have been reserved by the Governor.

It was not the intention of the framers of the Indian Constitution to lay down a constitutional framework that facilitated administrative co-operation and co-ordination between the union and states. The state is still required to exercise its executive power in such a manner that it complies with the laws made by the parliament. Furthermore, the Union Executive has the power to give directions to a State. This happens when such direction are necessary for a requisite purpose. For example, The Union Government is empowered to direct the States to make sure that it complies

with the laws that are enacted by the Parliament. These include laws pertaining to the construction and maintenance of means of communications, which have been declared to be of national and military importance, and also on the measures regarding the protection of Railways. Additionally, only the Parliament is empowered to adjudicate on inter-state river disputes. There is also a provision that lays down that an Inter-State Council should be constituted for advising the president on Inter-State disputes.

The State governments are empowered to delegate some of its administrative functions pertaining to the State subjects to the Union Government for a certain period of time. The Constitution of India has incorporated certain special provisions to make sure that the administrative system is uniform in nature. The creation of the All India Services such as IAS and IPS is an example of that. The members of these services are placed in significant administrative positions in the states. This enables the Central Government to exercise its authority and ensure that the states are in its control. The recruitment of these members takes place through a centralized examination. However, they are appointed in different states.

The states do not have the authority to take any disciplinary action against them without the Centre's prior permission. The Constitution has also made a provision that empowers the Parliament to establish a new All India Service on the recommendations of Rajya Sabha. The President possesses the powers to hand over the entire control of the state administrative machinery to the Union. Such powers have been enumerated in the emergency provisions.

The Union executive has the power to issue directions to a state if such directions are necessary to fulfill a requisite purpose of the union government. In addition to this, Union Government can be subjective in its approach and issue directions as it deems fit. In other words, the scope of Union powers is wide enough to result in interference with the state's administrative machinery. Under ordinary circumstances, it is the states that request the centre to deploy Central Police Force and Army in the states. However, in certain exceptional circumstances, the Central Government has deployed CRPF or BSP despite the objections of the State Government. Thus, The Centre plays a very critical role in the states' administrative sphere.

5.5.3. FINANCIAL RELATIONS

In order to determine the nature of State's relationship with the Centre, it is important to pay adequate attention to the distribution of financial resources between the two. The Constitution has provided independent sources of revenue for both the Union and the State. The Parliament is empowered to impose taxes on the subjects that fall within the purview of the Union List. Similarly, the States can impose taxes on the subjects included in the State List. Most of the times, the Centre is in charge of levying taxes that have an inter-state base whereas taxes that have a local base are levied by the state.

The Union List contains items of taxation which can be categorized as:

- (i) There are taxes that are levied by the Union. However, their collection and appropriation is done by the states. For example, stamp duties and duties of excise on medicinal and toilet preparations etc.
- (ii) There are taxes that are levied and collected by the Union. However, such taxes are assigned to the States viz. railways, sea or air etc.
- (iii) There are taxes that are levied and collected by the Central Government. In some cases, the parliament prescribes that these taxes be distributed between the Central and the states. For example- union excise duties, excise on toilet preparations etc.
- (iv) There are taxes that are levied and collected by the Centre for its own utilization. These include customs, surcharge on income tax etc.
- (v) There are taxes that levied and collected by the Centre and their distribution takes place between the union and the states. For example- taxes other than agriculture etc. This indicates that the Centre is better equipped to deal with matters concerning the financial sphere.

The state finances are subject to the control of the Centre. In some instances, the Centre is empowered to provide financial aid so that the expenditure requirements of states' developmental schemes can be met. In case of a financial emergency, the President is empowered to suspend the provisions concerning the division of taxes between the Centre and the State. In such a scenario, other restricts can also be imposed on the expenses of the state by the President.

The priorities of the central plan mind are kept in mind while framing the state plans. The Planning Commission plays a critical role in the process as state plans cannot be executed without its approval. Furthermore, the States are provided with certain grants for carrying out centre sponsored schemes. It can be said that an over-centralized planning system has been established by the Planning Commission. The State haven't been gave much power to take up their own initiatives. Instead, they have to implement the schemes that have been formulated by the Centre.

One of the primary concerns of the founding fathers of the Indian Constitution was to ensure that the constitution fostered the unity and integrity of the country. They took into account the disunity and lack of harmony that prevailed in the country especially in the immediate period following the independence. To counter the same, they felt that a strong government at Centre was needed. Therefore, the Centre was assigned a relatively stronger role by the framers of the Indian Constitution. They also incorporated provisions that led to the establishment of a co-operative federalism.

In the past few decades, the working of the Indian federal system has revealed that the Centre and States have had unfriendly relations. Instead of working co-operatively, they have had fair share of disagreements and failed to coordinate with each other. In light of the same, over the course of years, the Indian Government has appointed the administrative Reforms Commission and several other Commissions with the objective of regulating and improving Centre State relations.

5.6. THE SARKARIA COMMISSION

The Sarkaria Commission was appointed by the Union Government to recommend ways and measures to improve Centre-State relations. The recommendations put forth by the Sarkaria Commission are important as they seek to ensure that an appropriate policy with respect to legislative, administrative and financial relations between Centre and States is adopted. However, no fundamental changes with respect to the constitutional fabric have been suggested. The Commission was of the opinion that federalism is co-operative in nature instead of being a static institutional concept.

One of the more concrete recommendations that was put forth by the commission was with regards to the establishment of permanent Inter-State Council. Additionally, it was of the opinion that the development of backward regions or areas should be common concern of both the Central and State Government. This would ensure that the economic development of these backward regions took place in a planned manner thereby reducing the separatist tendencies.

Apart from that, it recommended that the Union and the States should resolve their disagreements/ differences through mutual consultations. It viewed the States' demand for more financial resources from a favorable perspective. It further suggested that Centre –State relations can be improved by putting impetus on economic liberalization and making suitable amendments to the Constitution.

5.6.1 CHECK YOUR PROGRESS II

1. Which part of Indian Constitution deals with administrative relations?

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.....

2. What is Sarkaria Commission?

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.....

5.7. Summary

A federal system of government requires a definite division of power between the Union and States. In addition, a written and rigid constitution is also necessary and in order to effectively deal with the disputes between the Union and the States, there should be a strong independent judiciary. Even though the Indian Constitution has adopted several federal features, the Indian State has failed to function as a true federation. This can be attributed to incorporation of some nonfederal features in it by the framers of the constitution. These include single citizenship, single judiciary, a strong centre, appointment of the Governor by the President, unequal of representation in the Rajya Sabha etc.

This indicates a preference for a strong centre. The states are required to work in close co-operation with the centre. However, this is not always possible as the powers of the centre often prevail over that of the state. The constitution may be projected to be federal in form but it has proved to be unitary in function.

This above discussion of Center-State relationship in legislative, administrative and financial spheres reveals that the Centre has been made relatively stronger than the states. The rationale behind assigning a dominant role to the Centre was to preserve the unity and integrity of the nation. Therefore, provisions laying down a co-operative form of government have been laid down.

As the relations between the Centre and the States have failed to remain cordial, states have started asking for more autonomy to conduct its administrative affairs. In such a scenario, the government intervened and set up commissions to examine the situation and put forth recommendations.

5.8. QUESTIONS FOR PRACTICE

5.8.1. LONG ANSWER QUESTIONS

1. Describe the unitary features of the Indian Constitution.
2. Write a short note on each of the following-
 - a.) Legislative relations between the Centre and the States
 - b.) Financial relations between the Centre and the States
 - c.) Administrative relations between the Centre and the States
3. “Indian Constitution is federal in form but unitary in spirit”. Comment.
4. What is co-operative federalism?
5. Why did the framers of the Constitution felt the need for a strong centre?
6. What are the salient features of Indian federalism?

5.8.2. SHORT ANSWER QUESTIONS

1. Do you think that India has adopted an absolute form of federalism? Given reasons supporting your answer.
2. Discuss the recommendations that were put forth by the Sarkaria Commission to regulate Centre-State relations. Do you agree with the recommendations? Given reasons supporting your answer.
3. Write a short note on how the Indian Federal System varies from that adopted by the United States of America?
4. What is quasi-federalism?
5. Differentiate between the Union, State and the Concurrent list.

5.9. SUGGESTED READINGS

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BACHELOR ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM -I

UNIT 6: UNOIN EXECUTIVE: PRESIDENT- ELECTION, POWERS, POSITION AND CHANGING ROLE

STRUCTURE

6.0. Learning Objectives

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6.2. Introduction

6.3. Election of the President

6.3.1 Uniformity in the scale of Representation

6.3.2 Eligibility

6.3.3 Oath or affirmation

6.3.4 Salary and Allowances of the President

6.3.5. Conditions of President's office

6.3.6 Term of President's Office

6.3.7. Process of Impeachment

6.3.8. Vacancy of President's office

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6.4. Powers and Functions of President

6.4.1 Executive Powers

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6.4.5. Emergency Powers of the President

6.4.6. Diplomatic powers

6.4.7. Military powers

6.4.8. Judicial Powers

6.4.9. Pardoning Power of the President

6.5. Position or Changing role of the Indian president in Minority Government

6.5.1 Check Your Progress II

6.6. Summary

6.7 Questions for Practice

6.7.1 Long Answer Question

6.7.2 Short Answer Question

6.8 References

6.9 Suggested Readings

6.0 LEARNING OBJECTIVES:

After the completion of this unit, you will be able to:

- Understand the election method, qualifications, term and impeachment of the President of India.
- Examine the powers and functions performed by the President.
- Evaluate the constitutional position and changing role of the President in Indian Political System.

6.1. KEY WORDS

Electoral College, Impeachment, veto power, ordinance-making and changing role.

6.2. INTRODUCTION

The Constitution of India has opted for parliamentary system of Government modelled on the British pattern, where the head of the state is the nominal executive and the real executive is the Council of Ministers headed by the Prime Minister. Though the executive power is vested in the president but he exercises this power with the aid and advice of the Council of Ministers. The President is the head of the Indian State and acts as the symbol of unity, integrity and solidarity of the nation. He is the first citizen of India. Article 52 of the Indian Constitution deals with the office of President.

6.3 ELECTION OF THE PRESIDENT

The president is not directly elected by the people but by members of Electoral College consisting of:

1. The elected members of the both the houses of Parliament;
2. The elected members of the legislative assemblies of the states;
3. The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

Thus, the nominated members of both of the houses of parliament, the nominated members of the state legislative assemblies, both elected and nominated members of Legislative councils (in case of the bicameral legislature) and nominated members of the legislative assemblies of Delhi and Puducherry do not participate in the election of the president.

According to Article-55(3), “the election of the president shall be held in accordance with the system of proportional representation by means of single transferable vote and voting of such election shall be secret ballot.”

6.3.1 UNIFORMITY IN THE SCALE OF REPRESENTATION-

Article 55 provides the formula of uniformity in the scale of representation of different states, as far as practicable. The formula is given below:

1. Value of the votes of the members of state legislature- Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly. This can be expressed as:

Value of the vote of MLA= Total population of state/total number of elected members in the state legislature $\times 1 \div 1000$

2. Value of the vote of an elected member of Parliament- Every elected member of parliament shall have such number of votes as many as obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the houses of Parliament. This can be expressed as:

Value of the vote of an MP= Total value of votes of all MLAs of all states/ total number of the elected members of Parliament

The President’s election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as:

Electoral quota= Total number of valid votes polled/1+1+1

Each member of the Electoral College is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray.

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference

votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

Supreme Court shall inquire and decide regarding doubts and disputes arising out of or in connection with the election of a President per Article 71(1) of the constitution. Supreme Court can remove the president for the electoral malpractices or upon being not eligible to be Lok Sabha member under the Representation of the People Act, 1951. Subject to Article 71 (3), Parliament made applicable rules/procedure to petition the Supreme Court for resolving the disputes only that arise during the election process of the president but not the doubts that arise from his unconstitutional actions/deeds or changing Indian citizenship during the tenure of president which may violate the requisite election qualification

6.3.2 ELIGIBILITY

Article 58 of the Constitution sets the principal qualifications one must meet to be eligible to the office of the president. A president must be:

- A Citizen of India
- 35 years of age or above
- Qualified to become a member of the Lok Sabha

A person shall not be eligible for election as president if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Certain office-holders, however, are permitted to stand as presidential candidates. These are:

- The current vice-president
- The governor of any state
- A Minister of the Union or of any state (including prime minister and chief ministers)

In the event that the vice-president, a state governor or a minister is elected president, they are considered to have vacated their previous office on the date they begin serving as president.

A member of parliament or of a State Legislature can seek election to the office of the president but if he is elected as president, he shall be deemed to have vacated his seat in parliament or State Legislature on the date on which he enters upon his office as President [Article 59(1)].

Article 57 provides that a person who holds, or who has held, office as president shall, subject to the other provisions of this constitution, be eligible for re-election to that office.

Under the Presidential and Vice-Presidential Elections Act, 1952,^[43] a candidate to be nominated for the office of president needs 50 electors as proposers and 50 electors as seconders for his name to appear on the ballot.

6.3.3 OATH OR AFFIRMATION

The President is required to make and subscribe in the presence of the Chief Justice of India (or in his absence, the senior-most Judge of the Supreme Court), an oath or affirmation that he/she shall protect, preserve and defend the Constitution as follows:

I, (name), do swear in the name of God (or solemnly affirm) that I will faithfully execute the office of President (or discharge the functions of the President) of the Republic of India, and will to the best of my ability preserve, protect and defend the Constitution and the law, and that I will devote myself to the service and well-being of the people of the Republic of India.

6.3.4 SALARY AND ALLOWANCES OF THE PRESIDENT

Under Article-59(3) the power to fix the salary and allowances of the president is vested in Parliament. According to the President's emoluments and Pension (Amendment) Bill passed by the Parliament in December, 2008, the president gets salary of Rs.1.50 lakh per month. This amount was further increased to Rs.5 lakh per month in the 2018 Union Budget of India. The pension of the president is 50% of his salary per month. He is also entitled to free accommodation, free electricity, telephone, medical facility, travelling also. The President's salary and pension is charged from the consolidated fund of India and cannot be reduced during his tenure.

6.3.5. CONDITIONS OF PRESIDENT'S OFFICE

Certain conditions, per Article 59 of the Constitution, debar an otherwise eligible citizen from contesting the presidential elections. The conditions are:

1. The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
2. The President shall not hold any other office of profit.

6.3.6 TERM OF PRESIDENT'S OFFICE

The President holds office for a term of five years from the day on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the vice-president. Further, he can also be removed from office before completion of his term by the process of impeachment. The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms.

6.3.7. PROCESS OF IMPEACHMENT

The President may be removed before the expiry of the term through impeachment for violating the Constitution of India. The process may start in either of the two houses of the Parliament. The house initiates the process by levelling the charges against the President. The charges are contained in a notice that has to be signed by at least one quarter of the total members of that house. The notice is sent up to the President and 14 days later, it is taken up

for consideration. A resolution to impeach the President has to be passed by a two-third majority of the total number of members of the originating house. It is then sent to the other house. The other house investigates the charges that have been made. During this process, the President has the right to defend oneself through an authorised counsel. If the second house also approves the charges made by special majority again, the President stands impeached and is deemed to have vacated his/her office from the date when such a resolution stands passed. No president has faced impeachment proceedings so the above provisions have never been used.' Under Article 361 of the constitution, though president cannot be summoned for questioning except on his voluntary willingness to testify in the court in support of his controversial deeds, the unconstitutional decisions taken by the president would be declared invalid by the courts. The case would be decided by the courts based on the facts furnished by the union government for the president's role. As clarified by the Supreme Court in the case 'Rameshwar Prasad & Ors vs Union of India & Anr on 24 January 2006', though president cannot be prosecuted and imprisoned during his term of office, he can be prosecuted after his term of office for the guilty committed during his term of presidency as declared earlier by the courts. No president has resigned on impropriety to continue in office for declaring and nullifying his unconstitutional decisions by the courts till now. No criminal case at least on the grounds of disrespecting constitution is lodged till now against former presidents to punish them for their unconstitutional acts though many decisions taken during the term of presidency had been declared by Supreme Court as unconstitutional, mala fides, void, ultra vires, etc.

6.3.8. VACANCY OF PRESIDENT'S OFFICE

The Office of the president falls vacant in the following scenarios:

1. On the expiry of their term.
2. By reason of death.
3. By Resignation.
4. Removal by Supreme Court.
5. Removal by impeachment.

Article 65 of the Indian constitution says that the Vice-President of India will have to discharge the duties, if the office falls vacant due to any reason other than the expiry of the term. The vice-president reverts to their office when a new president is elected and enters office. When the president is unable to act because of absence, illness or any other cause, the vice-president discharges the president's functions until the president resumes the duties.

A vice-president who acts as or discharges the functions of the president has all the powers and immunities of the president and is entitled to the same emoluments as the president. When a vice-president discharges the duties of the president, he/she does not function as the Chairperson of the Rajya Sabha.

The Indian parliament has enacted the law—*The President (Discharge of Functions) Act, 1969*—for the discharge of the functions of the president when vacancies occur in the offices of the president and of the vice-president simultaneously, owing to removal, death, resignation of the incumbent or otherwise. In such an eventuality, the chief justice—or in his

absence, the senior most judge of the Supreme Court of India available—discharges the functions of the president until a newly elected president enters upon his office or a newly elected vice-president begins to act as president under Article 65 of the constitution, whichever is the earlier. For example, in 1969, when President Zakir Husain died in Office, Vice-President V. V. Giri served as the acting president of India. However, later, V.V Giri resigned from both posts (Acting President of India and Vice-President of India) as he became a candidate in the 1969 presidential election in India. In this event, the then Chief Justice of India, Justice Mohammad Hidayatullah served as the acting president of India until the next president was elected.

6.3.9. CHECK YOUR PROGRESS I

1. Who is eligible to become president of India?

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2. How the President of can be removed from his office?

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6.4. POWERS AND FUNCTIONS OF PRESIDENT

The constitutional powers and functions of the President of India may be classified into six types principle.

6.4.1 EXECUTIVE POWERS

1. Head of the Union: The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.

2. Appointments: As head of the executive, the President appoints the Governors of States, the Judges of the Supreme Court and the High Courts, the Auditor General of India and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc.

3. Appointment of the Prime Minister and other Ministers: The President also appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers. But here too, as in all other appointments, the President can seldom use his discretion. He is, ordinarily, duty-bound to summon the leader of the political party which secures an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry. He does enjoy some discretionary powers in the matter only under exceptional circumstances. When no single political party wins a clear absolute majority and, as a result, no Council of

Ministers can be formed without a coalition of parties the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations developed in the past. India has entered into an age of coalition politics. And it may so happen that no single party will be able to secure an absolute majority, and the President may be required to exercise his discretionary power for some time to come, in appointing Prime Minister.

4. Can ask to prove Majority in Lok Sabha: Union Council of Ministers normally remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha. In case of any doubt he can ask the Council of Ministers to prove its majority in the Lok Sabha, as the Prime Ministers Sri H.D. Deve Gowda was asked by the President after the official withdrawal of support by the Congress Party from Ministry. The President can also dissolve the Union Council of Ministers in accordance with Article 75(2) of the constitution, if he finds that the Ministry does not enjoy the support of the majorities in the Lok Sabha.

5. Supreme Commander of Armed Forces: As head of State, the President is the supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

6.4.2. LEGISLATIVE POWERS AND FUNCTIONS

1. President is a part of Parliament: The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of Union Legislature. He shall summon from time to time, either separately or jointly, the Houses of Parliament. The President can prorogue the Houses or either House of Parliament and, if necessary, can dissolve the lower Chamber of Parliament, the Lok Sabha. For example, the President dissolved the twelfth Lok Sabha in early 1999 when the confidence motion in favour of the Vajpayee government was lost in the Lok Sabha.

2. Summons and Addresses Parliament: The President may address either or both House of Parliament. In such address, at the first session after general election to the Lok Sabha and at beginning of a joint session of Parliament each year, he may place the reasons for summoning it. Apart from addressing Parliament, the President may also, in case of 3 necessities, send messages to either House, or to both Houses [Article 86(2)]. Normally, the President does not send such a message, unless however, he has a serious disagreement with the Council of Ministers.

3. Nomination: The President nominates a number of members in both Houses. The chief purpose of the nomination is to ensure adequate representation in Parliament of all sections of population which many not always be achieved through elections.

4. Power in respect of Bills: The President has certain functions in respect of passing of a Bill. A bill passed by both the Houses of Parliament requires his assent in order to become an Act. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President. But, if Parliament, acting on President's refusal to assent to a bill, passes it again with or without amendment, for the

second time and presents it to the President for his approval, the President shall not withhold his assent there from under Article 111. In other words, it becomes obligatory upon him to give his assent. In certain cases, prior sanction of the President is required for initiating any legislation. For instance, bill for formation of a new State or altering the boundaries of the existing State or States is to be placed before Parliament with prior approval of the President. Money bill is another example in which obtaining of such approval of the President is a constitutional necessity.

5. Bill passed by a State Legislature: A bill passed by a State Legislature may also be reserved for the consideration of the President by the Governor of that State. The President enjoys this right in relation to a bill passed by a State Legislature only in such cases where those are referred to him by the Government of a State under Article 200.

6.4.3. POWER TO PROMULGATE ORDINANCES

Except when both Houses of Parliament are in session, the President may promulgate such Ordinances as the circumstances appear to him to require (Article 123). Such an ordinance can have the same force and effect of an Act of Parliament. Such an ordinance shall cease to operate unless passed by both Houses of Parliament within the stipulated period. A.K. Roy vs. Union of India (1982) illustrates the proposition that the satisfaction of the President must be as to the existence of a situation which makes it necessary for the President to promulgate such an Ordinance.

The more controversial and debatable legislative power of the President has always been the Ordinance Making Power. Usually, the power to make the laws rests with the Parliament. However, special power on the President empowering him to promulgate ordinances when the Parliament is not in session and the circumstances are such which require immediate action. An ordinance cannot be promulgated when both the houses of parliament are in session However it may be passed when only one house is in session the reason being that a law cannot be passed by only one house and thus it cannot meet a situation calling for immediate legislation. This power granted to the President in the Indian Constitution is unique and no such power has been conferred upon the executive in Britain or the USA. In justification of the inception of the Ordinance Making power in the Constitution Dr Ambedkar said that there might be a situation of emergency when the Houses of the parliament are not in session. It is important that this situation should be dealt with and it seems to me that the only solution is to confer upon the President the power to promulgate the law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because the legislature is not in session.

6.4.4. FINANCIAL POWERS AND FUNCTIONS

The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President. According to the Constitution of

India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year. It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President. No proposal for spending money or raising revenues for purposes of government can be introduced in Parliament without previous permission of the President.

6.4.5. EMERGENCY POWERS OF THE PRESIDENT

The constitution of India empowers the President to proclaim three kinds of Emergencies:

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

1. National Emergency: The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion or external aggression. Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. Parliament has the power to make laws on the subjects enumerated in the State List. The right to freedom of speech and expression, freedom to form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

2. Failure of State Constitutional Machinery: In Case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament.

3. Financial Emergency: The President may also issue a Proclamation of Financial if he is satisfied that the financial stability of India is threatened. This type of emergency may continue to remain in force for an indefinite period. The Central Government may give directions to the States for canons of financial propriety. All money-bills passed by the State Legislatures are to be reserved for the consideration of the President. The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law.

6.4.6. DIPLOMATIC POWERS

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive

diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.

6.4.7. MILITARY POWERS

The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the Prime Minister. All-important treaties and contracts are made in the President's name. He also appoints the chiefs of the service branches of the armed forces.

6.4.8. JUDICIAL POWERS

The Judicial powers and function of the president are

- He appoints the chief justice and other judges of Supreme Court and high courts
- He can seek advice from the Supreme Court on any question of law or fact. However the advice of Supreme Court is not binding on the president.
- The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law. As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:
 - I. Punishment or sentence is for an offence against Union Law;
 - II. Punishment or sentence is for by a court martial (Military Court)
 - III. Sentence is a sentence of death

The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

6.4.9. PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases which are given above.

- I. **Pardon:** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
- II. **Commutation:** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.
- III. **Remission:** It implies reducing the period of sentence without changing its character.

- IV. **Respite:** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as physical disability of a convict or the pregnancy of a woman offender.
- V. **Reprieve:** It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to seek pardon or commutation from the President.

6.5. POSITION OR CHANGING ROLE OF THE INDIAN PRESIDENT IN MINORITY GOVERNMENT

As stated, the President is the nominal head so he himself/herself does not take major decisions rather it is the Council of Ministers headed by the Prime Minister which helps the President in taking the decisions and executing them. The issue was resolved during the first presidency of Dr. Rajendra Prasad, who sometimes questioned the position of the President vis-à-vis Nehru’s cabinet decisions sent for the consent of the President when he had to give his consent while having different opinion personally but as President of the Republic, he abided by the constitutional mandate. With the emergence of coalition politics in India, the President is getting opportunities where s/he can use discretion. As no party is in a position to get majority in the general elections so who should be the PM becomes a discretionary choice for the President. Though first of all s/he tries to invite the single largest party to form the government but if he feels that the single largest party may not prove majority on the floor of the House then it became a kind of discretion for him/her. In case of Chandra Shekhar, President Venkatraman allowed him to form the government though he had support of only around sixty MPs of Lok Sabha who defected from the Janta Dal. Secondly, dissolution of the Lok Sabha may be advised by a Council of Ministers but it is up to the President to accept such a move, especially in circumstances where the existing council of Ministers might have lost the confidence of Parliament and thus s/he may like to explore the possibilities of government formation by any other political group. Thirdly, asking the Council of Ministers to resign or get confidence of the Parliament if they seem to have lost the confidence of the lower House.

6.5.1. CHECK YOUR PROGRESS II

1. What are the diplomatic Powers of President?

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2. Write a note on Pardon.

.....

6.6. SUMMARY

In nutshell, it can be said that the constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the Prime Minister. But after 1989, the period of coalition politics began in India as President has to play an active role and not the role of a rubber stamp. He is above party politics; therefore, he thinks of national interests. He is also the guardian of the constitutional propriety and ensures that the government functions within the framework of the constitution.

6.7 QUESTIONS FOR PRACTICE

6.7.1 LONG ANSWER QUESTION

- 1 Discuss the election, qualifications and Impeachment of Indian President.
- 2 Describe the powers, functions and position of President in detail.
- 3 Examine the changing role of President in the context of Minority Government.

6.7.2 SHORT ANSWER QUESTION

- 1 Write necessary qualifications for the office of President.
- 2 Write down the composition of Electoral College constituted for the election of President.
- 3 Discuss the tenure and method of removal of the President.
- 4 Write any four Legislative Powers of the President.
- 5 When can the President issue Ordinance?
- 6 Write down the emergency powers of the President.

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BACHELOR ARTS
SEMESTER –VI
COURSE: - INDIAN POLITICAL SYSTEM –I

**UNIT 7: PRIME MINISTER: APPOINTMENT, POWERS, POSITION AND
RELATION BETWEEN PRESIDENT AND PRIME MINISTER**

STRUCTURE:

7.0: Learning Objectives

7.1. Key Words

7.2. Introduction

7.3. Appointment

7.3.1 Check Your Progress I

7.3.2. British Convention

7.3.3. History of Appointments

7.4. Working of Prime Minister

7.5. Functions and Powers

7.6. Relationship with the President

7.6.1 Check Your Progress II

7.7. Summary

7.8. Questions for Practice

7.8.1. Long Answer Questions

7.8.2. Short Answer Questions

7.9. Suggested Readings

7.0. LEARNING OBJECTIVES

After the completion of this unit, you will be able to:

- To understand the working of the Prime Minister in India.
- Understand the structure of central executive.
- Understand the operation of law with regards to the central executive.

- Summarize the major historical changes associated with the appointment of Prime Minister of India.

7.1. KEY WORDS: Executive, Council of Ministers, Prime Minister, Lok Sabha, Cabinet

7.2. INTRODUCTION

The central executive of India is structured similarly to the British model, with a president and a council of ministers led by the Prime Minister. Articles 74 and 75, which deal with the Council of Ministers' composition and status, are vague and overly written. The Indian Constitution's founders left certain issues unclear in order for them to be handled by practice and conventions. The conventions operating in Britain, where a similar pattern of government prevails, are very relevant and can be adopted here to according to our needs.

The clause that "there shall be a Council of Ministers" is obligatory, and the President may not do away with it at any moment. Even if the Lok Sabha is dissolved, the Council of Ministers continues to function. The Supreme Court has rejected the argument in U.N.R. Rao that there is no need for a Council of Ministers at the dissolution of the Lok Sabha and that the President can act with the help of advisors.¹

The Constituent Assembly did not choose the Presidential System of Government accepting the argument that An. 74(1) is not mandatory would change the whole concept of the Executive. It would mean that the President would no longer require the services of a Prime Minister and Ministers to assist and advise him in the performance of his duties. Nobody would be accountable to the Lok Sabha without the Council of Ministers. Until he is impeached, the President would be allowed to rule with the help of advisors. As a result, the Court decided that the term "shall" in Art. 74(1) should be interpreted as "shall" rather than "may." As a result, the President cannot exercise executive power without the Council of Ministers' assistance and advice. As a result, it is evident that the President cannot function without the assistance of a Ministerial Council at any time.

While the Constitution appears to give the President the power to designate anyone he wants as Prime Minister, this is not the case in practice. A few conventions, as well as a few constitutional constraints, limit his ability to choose a Prime Minister.

To keep the fabric of parliamentary government in proper working order, it is necessary that the Council of Ministers, of which the Prime Minister is the head, enjoys the confidence of

¹ U.N.R. Rao v. Indira Gandhi, A.I.R. 1971 S.C. 1002

the Lok Sabha. As a result, the Council of Ministers is collectively accountable to the Lok Sabha [Article 75(3)].

7.3. APPOINTMENT

According to Article 75(1), the President appoints the Prime Minister. This is a decision made by the President without consulting the Council of Ministers or the Prime Minister. The issue of appointing a new Prime Minister normally arises following a new Lok Sabha election, or when the current Prime Minister dies or resigns. In such a case, the President will be unable to pick and install the Prime Minister on his own as he cannot act on advice of the Prime Minister.

As a result, it is critical that the President appoints a Prime Minister who has the support and confidence of a majority of Lok Sabha members; otherwise, he will be unable to form a stable Cabinet and carry the House along with him in his policies and programs, and the government will be unable to function. This implies that the leader of the majority party in the Lok Sabha should always be considered for the position of Prime Minister. In practice, this is the main constraint on the President's choice. "If a party gets a majority and that party has a leader, that leader becomes Prime Minister," as Ivor Jennings put it in the context of the United Kingdom.

The President has some discretion in appointing the Prime Minister, but only to the extent that he can choose a person who is qualified to be a member of Parliament under Article 84 and is not disqualified under Article 102, who is either a member of Parliament or has the potential to be so elected within six months of his appointment, and who can command the support of the Senate. The Supreme Court recently ruled that there was no requirement in the Constitution for a person elected to the Rajya Sabha to be a voter or a resident of the state they were chosen to represent.²

The President's choice of Prime Minister may prove to be exceedingly important at critical times. When a party has a clear majority in the Lok Sabha, the President is required to induct the party's acknowledged leader into the Prime Minister's office, and the President's power is essentially ceremonial in this situation. If, on the other hand, the political situation is unclear and no single party has a clear majority, the President will have considerable leeway in deciding who among the many candidates for the post has the best possibility of building a stable government and gaining the Lok Sabha's trust.

² Kuldip nayar v. Union of India, (2006) 7 S.C.C. 1.

However, it may be good to have some agreed-upon conventions for the President's guidance, such as inviting the leader of the most powerful party in the Lok Sabha to form the government. In the end, however, the President's choice of Prime Minister is influenced by the will of the Lok Sabha majority. Even a minority government can stay in power for a long period if other parties in parliament support it. Indira Gandhi's government, for example, although being in a numerical minority in the Lok Sabha near the end of 1969, remained in power for a long time. The Gandhi government was challenged on the floor of the House on multiple times, but the opposition motions were defeated by large margins.

7.3.1 CHECK YOUR PROGRESS I

1. Why Prime Minister of India takes Oath of Office and Secrecy?

.....
.....

2. What is not the correct statement?

- (A) If a minister is not the member of any house at the time of becoming a minister, then he will have to get a membership of Lok Sabha within 6 months.
- (B) A minister who is a member of lower House can participate in the proceedings of the upper house.
- (C) A minister can vote only in that house whose membership he holds.
- (D) The President appoints the Prime Minister.

7.3.2. BRITISH CONVENTION

In the United Kingdom, it is customary for the Prime Minister to be a member of the House of Commons. The House of Commons is chosen by the people, reflects public opinion more accurately and authentically than the House of Lords, and plays a key role in the legislative process. It is responsible to the Cabinet, which controls the purse strings, and it is here that maintaining party organization is critical. The Prime Minister cannot afford to be out of touch with the House of Commons in order to run the government efficiently. Therefore, it is necessary that the Prime Minister should Commons so that he may carry the House along with him.

A member of the Rajya Sabha is not barred from becoming Prime Minister by any particular provision in the Indian Constitution or by any required convention. Mrs. Indira Gandhi, a Rajya Sabha member, for example, was elected Prime Minister in 1966. However, her

election to the Lok Sabha soon after illustrates that it is regarded desirable for the Prime Minister to be a Lok Sabha member. Because one-third of Rajya Sabha members are indirectly elected every two years, it is not a hereditary house like the House of Lords, and it interacts with current public opinion.

A minister, who is member of the Rajya Sabha, has the right to participate in the proceedings of Lok Sabha [Art. 88]. Such is not the case in Britain where a Lord, even though a Minister, cannot participate in the proceedings of the House of Commons, in view of these circumstances, there may not be as much objection to a member of the Rajya Sabha becoming the Prime Minister as there is in the case of a peer becoming the Prime Minister in Britain. In fact, the ex-Prime Minister, Dr. Manmohan Singh, was appointed as such in 2004 as a member of the Rajya Sabha, and he did not seek re-election to the Lok Sabha after resigning from the Rajya Sabha, as was customary at the time. However, in order to preserve the best democratic traditions and to maintain the efficient operation of the government machinery, the Prime Minister should be a member of the Lok Sabha rather than the Rajya Sabha. In any case, when a member of the Rajya Sabha becomes Prime Minister, he or she should seek election to the Lok Sabha as soon as possible.

7.3.3. HISTORY OF APPOINTMENTS

List of all the Prime Ministers of India from 1947-2021 below:

S.N.	Name	Term of office	Remark
1.	Jawahar Lal Nehru	15 August 1947 to 27 May 1964 16 years, 286 days	The first prime minister of India and the longest-serving PM of India, the first to die in office.
2.	Gulzarilal Nanda (Acting)	27 May 1964 to 9 June 1964, 13 days	First acting PM of India
3.	Lal Bahadur Shastri	9 June 1964 to 11 January 1966 1 year, 216 days	He has given the slogan of 'Jai Jawan Jai Kisan' during the Indo-Pak war of 1965
4.	Gulzari Lal Nanda (Acting)	11 January 1966 to 24 January 1966 13 days	-
5.	Indira Gandhi	24 January 1966 to 24 March 1977 11 years, 59 days	First female Prime Minister of India

6.	Morarji Desai	24 March 1977 to 28 July 1979 2 year, 126 days	Oldest to become PM (81 years old) and first to resign from office
7.	Charan Singh	28 July 1979 to 14 January 1980 170 days	Only PM who did not face the Parliament
8.	Indira Gandhi	14 January 1980 to 31 October 1984 4 years, 291 days	The first lady who served as PM for the second term
9.	Rajiv Gandhi	31 October 1984 to 2 December 1989 5 years, 32 days	Youngest to become PM (40 years old)
10.	V. P. Singh	2 December 1989 to 10 November 1990 343 days	First PM to step down after a vote of no confidence
11.	Chandra Shekhar	10 November 1990 to 21 June 1991 223 days	He belongs to Samajwadi Janata Party
12.	P. V. Narasimha Rao	21 June 1991 to 16 May 1996 4 years, 330 days	First PM from south India
13.	Atal Bihari Vajpayee	16 May 1996 to 1 June 1996 16 days	PM for shortest tenure
14.	H. D. Deve Gowda	1 June 1996 to 21 April 1997 324 days	He belongs to Janata Dal
15.	Inder Kumar Gujral	21 April 1997 to 19 March 1998 332 days	-----
16.	Atal Bihari Vajpayee	19 March 1998 to 22 May 2004 6 years, 64 days	The first non-congress PM who completed a full term as PM
17.	Dr. Manmohan Singh	22 May 2004 to 26 May 2014 10 years, 4 days	First Sikh PM
18.	Narendra Modi	26 May 2014 - Present	4th Prime Minister of India who served two consecutive tenures

The Janata Party, a coalition of many parties, won a majority in 1977. The Janata Party's leader was appointed as Prime Minister. Following the breakup of this party in 1979, Chaudhury Charan Singh, the head of a Janata Party section, was chosen Prime Minister because he was backed by the Congress Party from the outside, i.e. without being a member of the Council of Ministers.

Despite the fact that he did not have an outright majority in the Lok Sabha, he received more support than Morarji Desai, who had just resigned as Prime Minister. The President stated at the time that the Prime Minister should seek a vote of confidence in the Lok Sabha as soon as possible "in conformity with the greatest democratic traditions and in the sake of creating healthy customs." The Congress Party withdrew its support within a few days, and Charan Singh was reduced to a minority in the Lok Sabha. On the suggestion of the new Prime Minister, the President prorogued the House.

The nomination of Charan Singh as Prime Minister was challenged in the Delhi High Court with a plea for issuance of a writ of quo. The petition was, however, dismissed by the court. The Court rejected the contention that a member of the Lok Sabha should only be chosen Prime Minister after receiving a vote of confidence from the Lok Sabha. The Court held that accepting this argument would essentially mean that the Prime Minister should be chosen by the Lok Sabha rather than the President. ³The President is mandated by the Constitution to undertake such duties. Of course, when selecting the Prime Minister, he must adhere to constitutional conventions.

Following a consideration of the pertinent cases, and British conventions, in *Madan Murari v. Chaudhury Charan Singh*, the petition was dismissed. Despite the 42nd Amendment, the Court stated that "When it comes to selecting the Prime Minister, the President has complete power. He is not fettered in his choice of who will enjoy the confidence of the Lok Sabha save by his own opinion, and the court could not pass judgment on the President's political assessment. It is not for the court to decide whether he was politically justified in appointing the Prime Minister.

Without a doubt, the Chaudhury Charan Singh incident was a one-of-a-kind situation. Here was a Council of Ministers that had never been before the Lok Sabha, had never demonstrated its accountability to the House, had resigned before facing a vote of confidence, and was assisting and advising the President in the exercise of his duties. The entire episode does not follow the best traditions of constitutionalism and the legislative system.

³ *Dinesh Chandra v. Chaudhary Charan Singh*, A.I.R 1980 Del. 114.

The Congress Party, which had a majority in the Lok Sabha when Prime Minister Indira Gandhi was assassinated in 1985, had no recognized leader. It would have taken a few days to organize a meeting of the Congress Legislature Party, but it was imperative to appoint Prime Minister right now. At this critical moment President Giani Zail Singh named her son Rajiv Gandhi as Prime Minister without waiting for him to be properly elected as the Congress Party's leader. He was elected as the leader of the majority party only after his nomination as Prime Minister.

V.P. Singh was nominated Prime Minister in 1989 despite his party's lack of a clear majority, with only 176 members in a House of 520. Without participating in the government, the BJP committed to help V.P. Singh from the outside. V.P. Singh received a vote of confidence from the Lok Sabha. After a period of time, the BJP withdrew its support. Despite the fact that V.P. Singh was reduced to a minority in the House, the President did not order him to resign immediately, instead giving him time to show his majority. When V.P. Singh was unable to gain a vote of confidence from the House, he resigned.

In 1996, the Lok Sabha was dissolved at the end of its five-year term, and general elections were held, resulting in a Parliament in which no party had a majority. The Congress Party, which had been in power prior to the elections (1991-1996), only managed to secure 135 seats in a House of 520 members. The Bhartiya Janata Party (BJP) won 162 seats in the election. The United Front (Leftist Parties, Janta Dal, and a few other regional parties) won 178 seats, while Independents and small groups took the remaining seats. The President invited the leader of the BJP, the single largest political party, to form the government on the condition that it received a confidence vote. After failing to secure such a vote, Prime Minister Atal Bihari Vajpayee resigned after only 13 days.

The house was again dissolved in 1997 and fresh elections were held in 1998. In the Lok Sabha, no majority party emerged once more. Atal Bihari Vajpayee, the leader of the Bhartiya Janata Party (BJP) (the largest single party with 162 members compared to 141 for the Congress Party), was able to form a coalition with several small regional parties and was thus invited to form the government. Atal Bihari Vajpayee was re-elected Prime Minister and received a vote of confidence from the Lok Sabha. The Congress, which emerged as the largest single party in the general elections of 2004 and 2009, formed the government in the center with the support of other political parties.

It is evident from the above scenarios that, the President clearly wants to appoint a Prime Minister who can command a majority in the House, as evidenced by the above events. This

is consistent with S.A. de Smith's view that when "no party has an overall majority in the House," the Queen must decide who has "a reasonable prospect" of remaining in office. Normally, but not always, that person will be the leader of the largest party in the House of Commons.

7.4. WORKING OF PRIME MINISTER

The Prime Minister plays a critical role in the parliamentary system of government, according to JENNINGS, who calls him the "keystone of the Constitution." "All routes in the Constitution lead to the Prime Minister," he continues. Joh Morley had previously referred to him as the "keystone of the cabinet arch." In the Lok Sabha, the Prime Minister is the leader of the majority party. He is the Ministerial Council's Chairman. He is in charge of government policy coordination. He is the sole conduit of communication between the President and the Council of Ministers. In this regard, the provisions of Article 78 may be referred to.

He is in charge of appointing Ministers as well as allocating duties among them. He has the right to demand a Minister's resignation and to use the presidential power to dismiss an unpopular Minister hence all Ministers serve at his discretion. Ministers who refuse to accept their positions of leadership must resign. The Prime Minister is the Cabinet's primary spokesman and advocate in Parliament. He has the power to dissolve the Lok Sabha. He is the Chairman of the Cabinet, summoning and presiding over its meetings. His resignation would be followed by the resignations of all of the government's ministers.

As a result, the Prime Minister's post carries a lot of weight, influence, and status. He ensures that the legislative system of government is in good working condition. His personality appears to be at the center of the entire constitutional apparatus. As a result, he has been referred to as the "keystone" of the Cabinet arch, as he is vital to its development, existence, and death. No Prime Minister, however, can govern without the help of his or her colleagues. As a result, he is constrained by one major constraint: maintaining a government in power that has the confidence of the Lok Sabha majority. The Prime Minister's appointment is the product of compromises between various elements within the political party in question, and as a result, the Prime Minister must constantly seek the support of the political party to which he belongs. When the Prime Minister leads a coalition government, his freedom of action is severely limited because he must carry not just his own party but also the alliance's various parties.

Thus, the Prime Minister cannot operate as an authoritarian or despot; he cannot afford to ignore his colleagues' and party organs' opinions all of the time. He is reliant on his colleagues for support, and too many resignations from the Cabinet could spell his collapse.

It has been suggested that the Prime Minister is *primus inter pares* among his colleagues as a result of this. However, this does not accurately portray the Prime Minister's perspective. The Prime Minister's position is far superior to that of other Ministers, subject to the limitation of commanding the Lok Sabha's confidence and the political party's support. Much, however, depends on the Prime Minister's unique personality, and someone like Nehru, Indira Gandhi or Modi might entirely eclipse the entire Cabinet and even the party machinery. KEITH, in his own words has stated that, "The courteous definition of the Prime Minister as *primus inter pares* is insufficient to represent the Prime Minister's true status, his temperament allows him to exert the entire power that he has if he so wishes."

The position of Deputy Prime Minister is not mentioned in the Constitution, but it has been filled on occasions. Devi Lal took the oath of office as Deputy Prime Minister when V.P. Singh was named Prime Minister in 1990. The validity of Devi Lal's oath was called into doubt in a writ case before the Supreme Court.

The Court dismissed the writ petition in *K.M. Sharma v. Devi Lal*, stating that an oath contains two parts: (i) descriptive and (ii) significant. A little mistake or inaccuracy in the descriptive component of the oath would not void the oath if the substantive part was followed correctly. On this basis, the Court concluded that, while Devi Lal characterised himself as the Deputy Prime Minister, he was "simply a Minister like other members of the Council of Ministers," and that his designation "did not confer on him any powers of the Prime Minister."⁴

7.5. FUNCTIONS & POWERS

As an integral part of Parliament, the Council of Ministers, led by the Prime Minister, takes part in the legislative process and performs numerous vital functions in connection to Parliament. The Council of Ministers, as a constituent of Parliament, plays an active role in the legislative process and performs a number of significant functions in connection to Parliament. The fact that the President is a constituent part of Parliament emphasizes this concept.

⁴ *K.M. Sharma v. Devi Lal*, A.I.R. 1990 S.C. 528

Because the government has a majority in the Lok Sabha, no law can be passed unless it has the support of the government. As a result, a private member's bill with no government support has little prospect of passing the House. In practice, the administration has a monopoly on the legislative process in the House of Commons. All bills presented to the House of Commons are, in effect, those presented by the administration.

The Central Executive also takes part in the legislative process in the states to some extent. Certain types of State legislation require its approval: in some situations, before a Bill is introduced in the State Legislature, such as a Bill restricting the freedom of trade, commerce, and intercourse within the State, and in other cases, after a Bill is enacted by the State Legislature. As a result, State Bills that falls under Article 288(2) do not become law until they have received approval from the Central Executive.

The Executive's principal responsibility is to administer and carry out the laws passed by Parliament, as well as to maintain peace and order. However, executive function isn't just restricted to this. A modern state is more than the collection of taxes, the maintenance of law and order, and the defense of the country against external aggression. It engages in a wide range of activities. The Executive with Prime Minister as its real head is in charge of a vast region and performs a wide range of functions.

In a parliamentary government, the council of ministers, led by the prime minister, has a majority of support in the legislature and, to a significant part, dominates it. It leads foreign policy, signs treaties with other countries, manages and monitors general administration, and promotes the people's socioeconomic well-being. It develops and implements policies, as well as making modifications to policies when circumstances change; it also proposes laws. The Executive is not limited to performing only those tasks that have been officially delegated to it by the Legislature or the Constitution in this situation.

As long as the Executive has the backing of the Legislature, it can continue to carry out its policies, and no objections can be raised on the basis that a policy has not been sanctioned by legislation. However, there are some restrictions, such as the Executive's ability to ignore a constitutional prohibition or requirement. The Constitution requires that executive power be exercised in line with it. It can't spend money from the Consolidated Fund without an Appropriation Act, and it can't levy a tax without a law.

7.6. RELATIONSHIP WITH THE PRESIDENT

The following provisions of the constitution deal with the relationship between the President and the Prime Minister:

Article 74: There shall be a council of ministers with the Prime Minister at the head to aid and advice the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the council of ministers to reconsider such advice and the President shall act accordance with the advice tendered after such reconsideration.

Article 75: (a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime minister;

(b) The ministers shall hold office during the pleasure of the President; and

(c) The Council of Ministers shall be collectively responsible to the House of the People.

Article 78: It shall be the duty of the Prime Minister:

(a) to communicate to the president all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

7.6.1 CHECK YOUR PROGRESS II

1. Which of the following statements is not correct?

- a. Article 74 deals with the Council of Ministers
- b. The Prime Minister is the head of the Council of Ministers
- c. The Central Council of Ministers is the head of India's political and administrative system.
- d. Article 75 is related only to the appointment of ministers.

2. Name the first Prime Minister of India who served office (15 August 1947 – 27 May 1964) until his death.

- a. Gulzarilal Nanda
- b. Jawaharlal Nehru
- c. Rajendra Prasad
- d. Lal Bahadur Shastri

7.7. SUMMARY

India's government is based on the parliamentary system. However, unlike in England, the introduction of the parliamentary form of government did not come gradually. The Constituent Assembly of India chose this style of administration on purpose. India has been in a period of political transformation since the promulgation of the Constitution, particularly after 1977. Political parties have proliferated like mushrooms. Despite adopting the first-past-the-post system, the electorate is divided, and hung Parliaments and Legislative Assemblies are the result.

The President has the right to appoint the Prime Minister under Article 75(1) of the Constitution. Apart from Article 75(3), which discusses the notion of collective accountability of the council of ministers to the House, no other direction is given as to who the President should appoint as Prime Minister. In the event of a hung parliament, the Constitution is silent on who the President should call to form the administration. In the event of a clear electorate mandate, the President is a foregone conclusion.

7.8. QUESTIONS FOR PRACTICE

7.8.1 LONG ANSWER QUESTIONS

1. What are the duties of prime minister provided under article 78?
2. What are the powers and functions of prime minister in relation to the council of ministers?
3. How is the British practice of appointing prime minister, different from ours?

7.8.2 SHORT ANSWER QUESTIONS

1. A person not belonging to any house of the parliament can become the prime minister. Explain?
2. Why is the post of deputy prime minister not a constitutional office?
3. What is a no confidence motion?
4. Distinguish between political executive and permanent executive?
5. What are the powers of prime minister with respect to formation of cabinet?

7.9. SUGGESTED READINGS

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BACHELOR ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM -I

**UNIT 8: UNION PARLIAMENT: COMPOSITION, POWERS AND ITS CHANGING
ROLE**

STRUCTURE:

8.0 Learning Objectives

8.1. Key Words

8.2. Introduction

8.3. Composition of the Houses

8.4. Meeting of the Parliament

8.5. Offices of Parliament

8.6. Termination of the Parliament

8.7. Roles of the Parliament

8.7.1. Legislation

8.7.2. Financial Control

8.7.2.1. Parliamentary procedure with respect to Bills

8.7.2.2. The Consolidated Fund of India

8.7.2.3. Contingency Fund

8.7.2.4. Comptroller and Auditor General

8.7.2.5. Parliamentary Financial Committees

8.7.2.6. Deliberation and Discussion

8.7.2.7. Parliamentary Committees

8.7.2.8 Check Your Progress I

8.8. Eligibility for Parliamentary Membership

8.9. Parliamentary Privileges

8.9.1 Check Your Progress II

8.10. Summary

8.11. Questions for Practice

8.11.1. Long Answer Questions

8.11.2. Short Answer Questions

8.12. References

8.13. Suggested Readings

8.0. LEARNING OBJECTIVES-

After the completion of this unit, you will be able to:

- To understand the composition and structure of the Indian Parliament.
- Understand the functions of Parliament.
- Comprehend how the Parliament and Executive carry out financial operations of the country.

8.1. KEY WORDS: Parliament, Legislature, government, Upper House, Lower House, Rajya Sabha, Lok Sabha

8.2. INTRODUCTION

The government of India has been structurally categorized into three organs- Executive, Legislature and Judiciary. All three organs are responsible for performing distinct functions and enjoy different powers. Legislative functions of the union in India are performed by the Parliament. Articles 79-122 of the Constitution of India particularly deal with the powers, duties and features of the Union Parliament.

‘The Parliament of India is ‘Bicameral’, which means it is made up of two Houses-

- Council of States or Rajya Sabha (Upper House)
- House of the People or Lok Sabha (Lower House)

The Lower and Upper Houses along with The President form the Parliament of India. The President does not directly participate in the proceedings of the houses. However, he serves many discrete functions and has important powers. The two houses are very different in nature and are not equal in many respects. The ‘House of the People’, as suggested by its name, is comprised of members that are elected by the citizens of India. In contrast, the Rajya Sabha is indirectly elected. Though they share many functions and powers, the Lok Sabha is generally considered more important, owing to the fact that it reflects the verdict of the people. Despite this however, the Rajya Sabha too enjoys some powers and performs functions that are specific to it.

8.3. COMPOSITION OF THE HOUSES-

RAJYA SABHA-

The maximum strength of the Upper House has been capped at 250 members by the Constitution of India. [Art. 80] Out of the maximum number, 238 are the elected representatives of states and UTs, while the remaining 12 members are nominated by the President. The specially nominated people are chosen on the basis of their contributions in the fields of science, art, literature or social service.

Seats in the Rajya Sabha are allotted on the basis of population. The members of Rajya Sabha are elected by the members of the Legislative Assembly of the state, thus making Rajya Sabha members indirectly elected by the people. The person elected to the Rajya Sabha from a state does not necessarily have to be a resident of that state. The President is advised by the Council of Ministers on who to nominate to the Council of States.

A member of Rajya Sabha continues to be a member for 6 years. Unlike the Lok Sabha, the Upper House cannot be dissolved. A third of the members retire every 2 years, thereby allowing the house to run continuously.

LOK SABHA-

The Lower House is elected by the people. Its members are chosen by the people for a period of 5 years, after which the house ceases to exist and is re-elected. The maximum strength of the Lok Sabha as stated by the Constitution of India is 550. Of the maximum capacity, 530 members are elected from states and the remaining 20 from Union Territories. An additional two members can be nominated by the President from the Anglo-Indian population if it is felt by him that the community is not adequately represented.

The members are elected through Lok Sabha elections. The principle of Universal Adult Franchise is applicable in India. Therefore, every citizen of India above 18 years of age and who is not disqualified by the law in India is allowed to cast his vote.

8.4. MEETING OF THE PARLIAMENT-

Summoning the Parliament-

On paper, the Parliament is summoned by the President of India. However, in reality it is the leader of the house, along with his cabinet and the speaker of the house takes the decision. The summons to the members is sent out under the name of the President and a notification is published in the Official Gazette.

Article 85(1) provides that the period between the final sitting of a session and the initial sitting of another session of the house must not exceed six months, unless if the Lok Sabha is dissolved before its allotted five years.

President's Address-

Article 87(1) dictates that soon after Lok Sabha elections are finished and before the Parliament begins its session, the President is supposed to deliver an address to both the houses together. The President's address is of importance as it involves the government's assessment of the contemporary state of affairs and its strategy for the upcoming term. It is for that reason that the Presidential address is drafted by cabinet members. The houses of Parliament are bound to allot time for discussion of the topics that President's speech talks about.

A motion is also made in the houses subsequently for a debate on the President's speech. The debate is held under the name of thanking the President for the speech. Amendments can be made to the motion of thanks. It is the government's position to defend the motion and if it fails to prevent the motion from being defeated or amended, it is taken to be a successful no-confidence against the government.

Power to send messages-

It is within the President's power to send a message to either of the houses. He draws this power from article 86(2) of the Constitution of India. The message that is sent to a house needs to be given attention to.

Quorum-

Quorum refers to the minimum no. of members that must be present in a house for it to conduct its agenda. In both the houses of Parliament, that number has been fixed to be one-tenth of the total capacity. The houses cannot function if quorum is not present and must be adjourned till the required number is fulfilled. Further, article 100(3) provides that quorum can be changed if a law is passed.

Voting and decisions-

All decisions on matters raised before the house are being taken through a vote of simple majority. In this vote, all the members present in the house vote on the matter, except the speaker, who only votes if there is a tie of votes. [Art. 100(1)] However, not all matters can be decided by the way of a simple majority vote. The Constitution of India directs that some matters be decided by a special majority. These matters are usually of substantial significance, such as amendment of constitutional provisions or removal of persons on high constitutional posts.

Language-

All business is transacted in the houses in either English or Hindi. [Art. 120(1)] For the benefit of those who cannot express themselves in either of the aforementioned languages, the presiding speaker can allow him/her to speak in his mother tongue.

8.5. OFFICES OF PARLIAMENT-

1. Speaker/ Deputy Speaker-

The Lok Sabha is presided over by Speaker of the house. The Deputy Speaker acts in his stead when the speaker is indisposed. In cases where both positions are vacant, the Lok Sabha chooses a member of the house to temporarily perform the speaker's functions.

The Speaker and Dep. Speaker are elected by the Lok Sabha from amongst its members. [Art. 93] The Constitution of India provides the Speaker to conduct the proceedings and maintain that all business is carried out with order. He exercises prominent powers within the Lok Sabha and relies on his discretion to ensure that the house functions optimally. The term of the Speaker and Dep. Speaker continues till the Lok Sabha is dissolved. The Speaker represents the 'House of the People' and acts as the spokesmen on its behalf. It is up to the speaker to pronounce if the bill before the house is a money bill or otherwise. [Art. 110(3)]

The Speaker may be removed from his office if a resolution is passed by the majority of the total strength of the house. Moreover, the Speaker can resign from office by writing to the Dep. Speaker. The salaries of the Speaker and Dep. Speaker are paid out of the Consolidated Fund of India and are fixed by law of the Parliament. Due to these reasons, the Speaker's impartiality is assured.

2. Chairman of Rajya Sabha/ Deputy Chairman-

The Chairman presides over the sittings of the Council of States. The Vice-President of India acts as the ex-officio chairman of the Rajya Sabha. [Art. 89(1)] Just like Lok Sabha, the Dep. Chairman is chosen from amongst the members of the house. The Dep. Chairman performs the functions of the Chairman when he is unavailable or the post is vacant. Similar to Lok Sabha, the Dep. Chairman can be removed from his post by a resolution passed in the house, following a period of 14 days before which the notice must be given to him. Also, he can resign from his post by writing to the Chairman himself. The salaries and allowances provided to the Chairman and Dep. Chairman are determined by the law made by Parliament.

Consistent to the Speaker of Lok Sabha, the Chairman also holds great authority with regards to the conduct and proceedings of the Upper House.

3. Secretariat of the Parliament [Art. 98]

This office of the Parliament consists of the staff members that are required to assist or facilitate the working of the house. They are appointed by the President, on the behest of the Speaker/Chairman and the terms of their recruitment are determined by the Parliament.

8.6. TERMINATION OF PARLIAMENT

Adjournment-

The presiding officer of the house holds the power to adjourn the sitting of the house. This ends the ongoing sitting of the house and it can be done without providing a date for the parliament to reconvene.

Prorogation [85(2)]

A prorogation of the house can be directed by the President of India. What this does is put an end to the session of the house. So the house stops to function for a certain period of time. However, any bills pending before the house prior to the prorogation do not lapse and can be picked off as soon as the session recommences.

Dissolution [Art. 83]

Dissolution of the Lok Sabha renders it vacant completely and re-elections would have to be held for a new Lower House. On the other hand, the Rajya Sabha can never be dissolved as a third of the total members retire every two years. So, the house always remains in existence. The Lower House can be dissolved by the President of India by virtue of Article 85(2)(b).

8.7. ROLES OF THE PARLIAMENT

The most important tasks of the Parliament are-

- A) Legislation
- B) Controlling the Executive
- C) Constituent Functions
- D) Deliberation
- E) Financial Control
- F) Removal of people in certain offices

8.7.1. LEGISLATION

Formation of new laws, amending and doing away with obsolete laws is the primary function of the Parliament. This is done through the passage of bills before each house and finally receiving the assent of the President. A bill before the Parliament can be of the following types-

- i. Ordinary Bill
- ii. Money Bill
- iii. Financial Bill

There are three steps involved in the passage of a bill in one house. The initial step is the introduction phase which usually does not include any deliberation unless the bill is of a highly controversial nature.

Next comes the consideration phase which further has a pair of stages. The first stage is of general discussion of the bill. Conventionally, this is handed over to a select committee or joint committee of both houses. This is followed with the clause by clause consideration during which amendments to the bill can be made through deliberations. Then the third stage consists of a final discussion after which the bill is passed in the house and can be sent to the other house.

Joint Sessions-

This provision of the Constitution provided in article 108(1) allows for a joint session of both the houses to be held in cases when there is a deadlock between them. The President has been presented with the authority to arrange for a joint session of the houses.

Once the President announces the joint sitting to be held, the bill cannot proceed further. The sitting is presided over by the Speaker. The rules and procedure for the sitting is prepared by the President, who consults with the Speaker of Lok Sabha and the Chairman of Rajya Sabha.

If the bill is passed by a majority in the joint session, it is estimated to have been passed by both houses.

President's Assent-

This is the last stage subsequent to which the bill can be passed and regarded as an official act. The President can either choose to give his approval to the bill or deny it. He may also suggest some amendments to be made to the bill. In such a situation the bill returns to the houses and it is necessary for them to reconsider or evaluate such prescribed changes. The bill after undergoing such deliberations and changes once again reaches the President. However, the President cannot withhold assent when the bill reaches him the second time.

8.7.2. FINANCIAL CONTROL-

In order for the government to carry out its plan of development and make reality of the goals it initially proclaimed, it would need financial backing and support. In India, the finances are regulated by the Parliament. In this way, the Parliament can also keep a track of the government's functioning.

There exist some important principles that constitute the financial obligations and control of the Parliament and Executive.

1. The Executive cannot raise money by taxation, borrowing or otherwise, or spend money, without the authority of Parliament. This principle has been provided in art. 265 of the Constitution. The article additionally provides that not only the imposition, but the collection of taxes must also be authorized by the Legislature.
2. The lower house enjoys greater power and authority than the upper house in matters of public finance.
3. Moreover, another important principle asserts that the Parliament does not have the capability to grant funds greater than the government's demands.
4. Lastly, the Parliament cannot impose a tax without the Executive's will.

Three types of bills-

a.) Money Bill [Art. 110(1)]-

As the name suggests, a money bill is only considered with matters relating to imposition, abolition or amendment of taxes, the borrowings of the central government, use of the Contingency or the Consolidated Fund of India etc. Thus, a money bill is only associated with the transaction or audit of finances.

b.) Financial Bill [Art. 117(1)]-

A Financial Bill is any bill which has a matter regarding money or finances, but also any other non-financial matter attached to the same bill. Therefore, if any separate matter is tethered to a money bill, it will be treated as a Financial Bill.

c.) Ordinary Bill of Expenditure-

Bills that deal with imposition of fines, taxation by a local authority or payment of fees for services rendered or license authenticated. Thus, any taxes levied by a Municipal body are not of the nature of a money or financial bill.

8.7.2.1. PARLIAMENTARY PROCEDURE WITH RESPECT TO BILLS-

A Money Bill can only be introduced in the House of the People. The Rajya Sabha has very limited powers when it comes to Money Bills. Also, such bills can only be introduced and moved on the recommendation of the President.

After a money bill is introduced and passed in the Lok Sabha, it is transmitted to the Rajya Sabha. The Rajya Sabha has a period of 14 days within which the house can return the bill with its recommendations. If it does not take any actions within the stipulated 14 days, the bill is deemed to have been passed.

Alternatively, if recommendations have been suggested by the Rajya Sabha, it falls upon the Lok Sabha to either accept or reject them. If the changes are rejected, the bill passes in its original form. If changes are accepted, the bill passes in both houses with the modified changes. Whether

a bill is a money bill or not is decided by the Speaker.

Money Bills are similar to Financial Bills in two respects. Firstly, both are only capable of being introduced only in the Lok Sabha. Secondly, both are introduced on the recommendation of the President.

In the last stage of the money bill, it is required to be approved by the President. However, in contrast to an ordinary bill, the President cannot withhold his assent.

8.7.2.2. THE CONSOLIDATED FUND OF INDIA-

All the funds and finances for the use by government are drawn from the Consolidated Fund of India. Nothing can be drawn out of the fund without due procedure of the law which requires the sanction of the Parliament. The Consolidated Fund is single unified account for all government departments. All the money raised by the Government of India through loans, taxes etc. are deposited in the Consolidated Fund. According to Article 114 (3) of the Constitution, money withdrawn from the Consolidated Fund must be done through an Appropriation Act. Once a certain amount has been fixed by the Parliament through an Appropriation Act, it cannot be changed by the Lok Sabha. This act is a money bill and so the Rajya Sabha has very limited powers regarding it.

The following expenditures are charged on the Consolidated Fund of India-

- (a) The emoluments and allowances of the President and other expenditure relating to his office;
- (b) The salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha;
- (c) Debt charges for which the Indian Government is responsible;

- (d) The salaries allowances and pensions payable to or in respect of Judges of the Supreme Court; (e) the pensions payable to the Judges of the Federal Court;
- (e) The Judges of the High Courts;
- (f) Any sum of money needed to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (g) The salary, allowances and pensions payable to the Comptroller and Auditor-General of India;
- (h) Any other expenditure declared by this Constitution or by Parliament by law to be so charged [Art. 112(3) (g)]. Thus Parliament may by law declare any other expenditure to be charged on the Consolidated Fund of India.

8.7.2.3. CONTINGENCY FUND

As the name suggests, this provision has been provided by art. 267(1) of the Constitution for scenarios where an unforeseen requirement for funds is required by the government and it is not convenient for the Parliament to convene. Therefore, funds are drawn from this account and are later sanctioned by the Parliament.

8.7.2.4. COMPTROLLER AND AUDITOR GENERAL

The Comptroller and Auditor General (CAG) is a constitutional post created by virtue of Article 148 of the constitution. The CAG is appointed by the President of India. The basic function of the CAG is securing the accountability of the Executive to Parliament in the field of financial administration. He compiles the accounts of the centre and the state, while also auditing the government's expenditure. This is very essential as the spending of the government always remains scrutinized, thereby ensuring accountability.

8.7.2.5. PARLIAMENTARY FINANCIAL COMMITTEES

The Lok Sabha has two committees for better control and management of financial affairs.

Public Accounts Committee- This committee is formed with 15 members elected from the Lok Sabha, along with 7 members of Rajya Sabha. It is headed by a member of opposition of the Lok Sabha. The job of this committee is to examine the accounts of government bodies and government corporations, in addition to the examination of accounts showing the appropriations of the sums granted by Parliament for government's expenditure. This committee also examines the reports made by the Comptroller and Auditor General. The committee makes its reports to the house itself.

Estimates Committee- This committee is made up of 30 Lok Sabha members and no Rajya Sabha members. This committee inspects the numbers in the budget in order to ensure greater efficiency and economy. This committee also reports to the house only.

8.7.2.6. DELIBERATION AND DISCUSSION

This is another one of the Parliament's most vital functions. The houses consistently participate in debates and discussions on topics of substantial importance. Debates on government's policies, agenda and legislation are of prime value as they lead to better governance and criticism of government rule reduces maladministration. A discussion may be raised by a member moving in the House a resolution on a matter of general public interest; by raising half an hour discussion on a matter of sufficient public importance which has been the subject of a recent question in the House and the answer to which needs elucidation on a matter of fact.

8.7.2.7. PARLIAMENTARY COMMITTEES-

Since the functions and privileges of both houses are so big in number, a great number of committees have been instituted for their facilitation and efficiency. The committees shoulder various duties and their functions are distinctly divided for more effectiveness. More Committees can also be joint i.e. having members from both houses of the Parliament. .

The Lok Sabha committees have been listed below-

- Committee on Absence of Members from the sitting of the House
- Committee on Business Advisory Committee
- Committee on Welfare of Other Backward Classes
- Committee on Empowerment of Women
- Committee on General Purposes Committee
- Committee on Government Assurances
- House Committee
- Library Committee
- Committee on Papers Laid on the Table
- Committee on Petitions
- Committee on Private Members Bills and Resolutions
- Committee on Privileges
- Rules Committee
- Committee on Subordinate Legislation
- Committee on The welfare of Scheduled Castes and Scheduled Tribes

The Committees of Rajya Sabha have been listed below-

- Business Advisory Committee
- Committee on Papers Laid on the Table
- Committee on Petitions
- Committee of Privileges
- Committee on Rules
- Committee on Subordinate Legislation
- Committee on Government Assurances
- General Purposes Committee
- House Committee
- Committee on Ethics
- Committee on Provision of Computers to Members of Rajya Sabha
- Committee on Members of Parliament Local Area Development Scheme

8.7.2.8. CHECK YOUR PROGRESS I

1. What is the total capacity of the Lok Sabha and Rajya Sabha respectively?

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2. Why is the President’s Address to the houses at the start of term essential?

.....

3. Which article of the constitution grants the CAG his powers?

.....

4. How is a Money Bill different from a Financial Bill?

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8.8. ELIGIBILITY FOR PARLIAMENTARY MEMBERSHIP

There is a certain set of criteria that must be adhered to for a person aspiring to be a member of the Parliament. He must be a citizen of India. He must be above 25 years of age for Lok Sabha and above 30 in order to be a Rajya Sabha member. He should not be disqualified under any of the following grounds listed in the Representation of the People Act, 1951 –

(1) Corrupt practice at an election;

(2) conviction for an offence resulting in imprisonment for two or more years, or for an offence under certain provisions of the Indian Penal Code, or The Prevention of Terrorism Act, 2002 or conviction for contravening a law providing for the prevention of hoarding or profiteering or of adulteration of food and drugs and sentenced to imprisonment for not less than six months;

(3) Failure to lodge an account for election expenses;

(4) Having a subsisting contract for supply of goods to, or execution of any works undertaken by, the government

(5) Being a managing agent, manager or secretary of a corporation in which government has not less than 25 per cent share;

(6) Dismissal from government service for corruption or disloyalty to the state.

Additionally, the Indian Constitution lays down 4 grounds that bar a person from contesting membership of Parliament under Art. 102(1)-

- i. He is of unsound mind
- ii. He is a discharged insolvent
- iii. He is not a citizen of India
- iv. He holds an office of profit under the central or state government.

Termination of Membership-

Members of Parliament can resign their respective seats by writing to the presiding officer of their respective houses. Once accepted, the seat becomes vacant. A seat may also be declared vacant if a member excuses himself from the sittings of the house for a period of 60 days without permission. A committee of the house is responsible to consider leave applications of members.

Oath-

All members of the house must take an oath before the President before they can participate in the proceedings.

Defection-

Defection means floor-crossing by a member of one political party to another party. This is an undesirable yet not uncommon practice which causes government instability. An act of defection goes against the popular verdict. This might even cause a political party who gained majority through elections lose their majority.

The 52nd amendment act brought about a change that if a member voluntarily gives up his membership or votes or abstains from voting, in the House against the direction issued by, the

party on whose symbol he or she was elected, then he or she would be liable to be disqualified from membership. This is often referred to as the Anti-defection law.

8.9. PARLIAMENTARY PRIVILEGES

The members of parliament have been supplied with many privileges to reduce obstructions, interference and allow progress be made without hindrance. They are also provided with immunity and greater freedom for increased effectiveness. The privileges are both internal and external. Article 105 provides for privileges of the house. However, the privileges are not limited to the ones enlisted in the Constitution.

The Constitution guarantees the following privileges-

a) Freedom of Speech [Art. 105(1) and (2)]-

With the aim of allowing greater expression of thoughts and a free flowing discussion and deliberation amongst the members, they are provided with immunity that is broader than the freedom given to citizens.

b) Free publications under Parliamentary authority [Art. 105(2)]-

No person is to be liable to any proceedings in any court in respect of the publication of any report, paper, votes or proceedings by or under the authority of a House of Parliament. Thus, all persons connected with the publication of proceedings of a House are protected if the same is made under the authority of the House itself.

c) Rule-making power [Art. 118(1)]-

The houses have been issued the authority to make rules to regulate the proceedings of the house, as long as it does not violate any principles of the constitution.

d) Internal autonomy [Art. 122(1) and (2)]-

The validity of any proceedings in Parliament cannot be called in question on the ground of any alleged irregularity of procedure. A House has absolute jurisdiction over its own internal proceedings.

8.9.1. CHECK YOUR PROGRESS II

1. What do you understand by 'Defection'?

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.....

2. List the important functions of the Parliament.

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.....
3. What is the difference between Prorogation and Dissolution of the house?

.....
.....
4. Who decides whether a bill before the house is Money Bill or not?

8.10. SUMMARY

In nutshell, it can be said that the parliament is the legislative organ of the union government. It occupies a pre eminent and central position in the Indian democratic political system due to adoption of the Indian parliamentary form of Government, also known as Westminster model of government.’ Parliamentary form of government emphasizes on the interdependence between the legislative and executive organs. Hence, we have the ‘President –in- Parliament’ like the Crown-in-Parliament’ in Britain.

8.11. QUESTIONS FOR PRACTICE

8.11.1. LONG ANSWER QUESTIONS-

1. What are the most notable differences between the Lok Sabha and the Rajya Sabha?
2. Give examples to suggest the importance of the President with respect to the functioning of the Parliament.
3. Elaborate on the Parliamentary procedure with respect to Money Bills.
4. What are the grounds for disqualification from being elected as a Member of Parliament?
5. Write a short note on Lok Sabha.

8.11.2 SHORT ANSWER QUESTIONS

1. What is the composition of the Lok Sabha?
2. What is the significance of the President’s Address before the start of term of the houses?
3. What are the primary functions of the Parliamentary Financial Committees?
4. What are the expenditures charged on the Consolidated Fund of India?
5. Name any 5 Lok Sabha and 5 Rajya Sabha committees.

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BACHELOR ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM-I

UNIT 9 SPEAKER OF LOK SABHA: ELECTION, POWERS, POSITION AND ITS CHANGING ROLE

STRUCTURE

9.0. Learning Objectives

9.1. Key Words

9.2. Introduction

9.3. Election and Tenure

9.4. Speakers of Lok Sabha

9.5. Powers and Functions of the Speaker of Lok Sabha

9.6. Position of Speaker

9.7. Suggestion to Maintain the Respect and Dignity of the Office of the Speaker

9.7.1 Check Your Progress I

9.8. Summary

9.9. Questions for Practice

9.9.1. Long Answer Questions

9.9.2. Short Answer Questions

9.10. References

9.11. Suggested Readings

9.0 LEARNING OBJECTIVE

After the completion of this unit, you will be able to:

- Understand the role of speaker of Lok Sabha.
- Know the working of Speaker
- Critically analyse the position of Speaker

9.1. KEY WORDS:

Speaker, Presiding officer, Lok Sabha, Deputy Speaker, Parliament

9.2. INTRODUCTION

Each house of Parliament has its own Presiding officer. The Presiding officer of the Lok Sabha is called the Speaker. The office of the Speaker is of great honour, dignity and authority. In regard to his position and functions Pandit Jawaharlal Nehru had stated that, "The Speaker represents the House. He represents the Nation, in a particular way the Speaker becomes the symbol of the Nation's liberty and freedom". The Speaker over the meetings of the Lok Sabha protects the rights and privileges of the members of the House and represents the House as a whole. S. Hukam Singh, a former Speaker of the Lok Sabha, once said, "The Speaker holds one of the highest offices of Land."

9.3. ELECTION AND TENURE

The Speaker is elected by the Lok Sabha from amongst its own members. Article-93 of the Indian Constitution states that, "The House of the people shall as soon as may be, choose two members of the house to be respectively Speaker and Deputy Speaker thereof and so often as the office of the Speaker and the Deputy Speaker becomes vacant, the house shall choose another member to be Speaker or Deputy Speaker as the case may be." Thus, the Indian Constitution provides for the election of the Speaker of the Lok Sabha. The date of election of the Speaker is fixed by the President.

Usually, the Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:

1. if he ceases to be a member of the Lok Sabha;
2. if he resigns by writing to the Deputy Speaker; and
3. If he is removed by a resolution passed by a majority of all then members of the lower house. Such a resolution can be moved only after giving fourteen days advance notice.

When the resolution for the removal of Speaker is under consideration of the house, he cannot preside over the meeting, even he / she may be present.

Smt. Meira Kumar was the Speaker of 15th Lok Sabha who was elected unanimously and she was the first woman to occupy this office. Smt. Sumitra Mahajan was the Speaker of 16th Lok Sabha and she was also elected unanimously and was the second woman to occupy this office. It should be noted that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly elected Lok Sabha meet.

Sh. Om Birla is the present Speaker of Lok Sabha and was elected unanimously.

TENURE: - Usually the Speaker remains in office during the life of the Lok Sabha. But, in case, the Lok Sabha has been dissolved before its usual tenure of 5 years the Speaker remains in office till the new Lok Sabha has not been elected. He has to vacate his office earlier in any of the following three cases:

- i. If he ceases to be a member of the Lok Sabha.
- ii. If the Speaker, due to reason, tendors his resignation.
- iii. If he is removed by a resolution passed by a majority of all the members of the Lok Sabha. Such a resolution can be moved only after giving 14 days advance notice.

When a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House though he may be present. However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes. It should be noted here, that whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly elected Lok Sabha meets.

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9.4. SPEAKERS OF LOK SABHA

Till date the following persons have held the office of Speaker –

Sr.No.	Lok Sabha	Name	Period
1.	First Lok Sabha	Sh. G.V. Mavalankar	15-05-52 to 27-02-56
2.	First Lok Sabha	Sh. A.S. Ayangar	8-03-56 to 10-05-57
3.	2 nd Lok Sabha	Sh. A.S. Ayangar	11-05-57 to 16-04-62
4.	3 rd Lok Sabha	Sh. Hukam Singh	17-04-62 to 16-03-67
5.	4 th Lok Sabha	Sh. Neelam Sanjiva Reddy	17-07-67 to 19-07-69
6.	4 th Lok Sabha	S. Gurdial Singh Dhillon	08-08-69 to 19-03-71
7.	5 th Lok Sabha	S. Gurdial Singh Dhillon	22-03-71 to 01-12-75
8.	5 th Lok Sabha	Sh. Bali Ram Bhagat	05-01-76 to 25-03-77
9.	6 th Lok Sabha	Sh. Neelam Sanjiva Reddy	23-06-77 to 13-07-77
10.	6 th Lok Sabha	Sh. K.S. Hegde	21-07-77 to 10-01-80
11.	7 th Lok Sabha	Sh. Balram Jakhar	11-01-80 to 15-01-85
12.	8 th Lok Sabha	Sh. Balram Jakhar	16-01-85 to 4-12-89
13.	9 th Lok Sabha	Sh. Rabi Ray	5-12-89 to 21-06-91
14.	10 th Lok Sabha	Sh. Shiv Raj Patil	22-06-91 to 22-05-96
15.	11 th Lok Sabha	Sh. Purno A. Sangma	23-05-96 to 23-03-98
16.	12 th Lok Sabha	Sh. G.M.C. Balayogi	24-03-98 to 21-10-99
17.	13 th Lok Sabha	Sh. G.M.C. Balayogi	22-10-99 to 03-03-2002 (Died in Office)
18.	13 th Lok Sabha	Sh. Manohar Joshi	10-05-2002 to 13-05-2004
19.	14 th Lok Sabha	Sh. Somnath Chatterjee	04-06-2004 to 31-05-2009
20.	15 th Lok Sabha	Smt. Meira Kumar (First Woman Speaker of Lok Sabha)	03-06-2009 to 04-06-2014
21.	16 th Lok Sabha	Smt. Sumitra Mahajan	06-06-2014 to 16-06-2019

		(Second Woman Speaker)	
22.	17 th Lok Sabha	Sh. Om Birla	19-06-2019 to 05-06-24
23.	18 th Lok Sabha	Sh. Om Birla	24-06-2024

PANEL OF CHAIRMAN:

In the beginning of the Parliament the Speaker of the Lok Sabha prepares a panel of the members of the House, who as and when the meet arises will preside over the meeting of the House in the absence of the Speaker and the Deputy Speaker.

Salary and Allowances: According to Article-79 of the constitution the salary and allowances of the Speaker of the Lok Sabha, are fixed by the Parliament. In addition to this, the Speaker is also entitled to a free accommodation, car, and medical facilities. The salary of the Speaker is drawn from the consolidated fund of India over which the Indian Parliament has no right to vote etc.

Speaker Pro-Tem: Appointment of Speaker Pro Tem after the General Elections: - When the officer of both the Speaker and Deputy Speaker are vacant, the duties of the Speaker are performed by such member of the House as the President may appoint for the purpose. The person so appointed is known as Speaker Pro tem and he/she continues in office till the Speaker is elected. The name of a member to appoint the Speaker pro term is suggested by the Prime Minister. Normally, a senior member of Lok Sabha is appointed as the Speaker Pro Tem. He vacates the seat soon after the House elects its own Speaker.

9.5. POWERS AND FUNCTIONS OF THE SPEAKER OF LOK SABHA:-

The Speaker is the head of the Lok Sabha, and its representative. He is the guardian of the powers and privileges of the members, the House as a whole and its committees. He is the Principal spokesman of the House and his decision in all Parliamentary matters is final.

The Speaker of the Lok Sabha derives his Powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary Powers that are unwritten or unspecified in the Rules). Altogether, he has the following powers and duties:

1. **To preside over the meetings of the House:** The Speaker presides over the meetings of the Lok Sabha and controls its proceedings. As a Presiding Officer he holds the Supreme position in the House. The Speaker gives his assent to the members to express their view on the floor of the House and the members of the Lok Sabha address to the Speaker.
2. **Presiding Officer of the Joint Sitting:** The Speaker also presides over the Joint meeting of the two houses of the Union Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a

bill.

3. **To maintain discipline in the House:** The Speaker also maintains discipline in the House. If some members of the House obstructs the proceedings of the House, the Speaker gives him a warning and if need be and he deems fit, he can order the expulsion of such a member from the meeting of the House. The Speaker can debar a member from participating in the deliberations of the House for a fixed period if that member creates disturbance and indiscipline in the House. The Speaker is assisted by the Marshals in the maintainances of discipline in the House.
4. **To fix the Programme of the House:** The Speaker, in consultation with the leader of the House, fixes its programme which includes selecting various items for discussion and the time to be allowed for such discussion in the house.
5. **Manage the discussion in the House:** Every member of the Parliament can ask questions from the Ministers but it is necessary to get the assent of the Speaker before asking a question. The Speaker decides whether the question is worth-asking or not.
6. **Determination of the Business of the House:** The Speaker fixes the hour of commencement or termination of a sitting and determines the days on which the House will sit. In consultation with the leader of the House, he determines the order of the business of the House which can be varied only if he is satisfied that the sufficient grounds exist for doing so.
7. **To conduct the Business of the House:** The main responsibility for the conduct of the business of the Lok Sabha rests on the Speaker. He gives his consent to the members to introduce the various bills, Present Adjournment Motion, Censur Motion, No-confidence Motion and the call Attention Motion etc. The Speaker fixes the duration of period for which various issues or topics are debated or discussed in the House, takes the voting in the House and announces the result. He asks the members of the House to use parliamentary language.
8. **Interpretation of the rule:** He is the final interpreter of the provisions of (a) the constitution of India, (b) the rules of Procedure and Conduct of Business of Lok Sabha, and (c) the Parliamentary precedents, within the House.
9. **Adjournment of the House:** He adjourns the House or suspends the meeting in absence of a Quorum. The Quorum to constitute a meeting of the House is one-tenth of the total Strength of the House. If he thinks that of too much of noise etc. the proceeding of the House cannot be smoothly and fruitfully conducted, he can adjourn the meeting for a fixed period.
10. **Decision about Money bill:** If a dispute arises whether a particular bill is a money bill or not a money bill, the decision given by the Speaker in this regard is considered final and no appeal can be made against such a decision of the Speaker. Every Money Bill, when it is transmitted to the Rajya Sabha, is so certified by him and also when it is presented to the President for his assent.

11. **To give approval to introduce the Bill:** The Speaker gives approval for the introduction of the Bill in the House. Without his prior permission on bill can be introduced in the Lok Sabha. After the Bill has been passed by the Lok Sabha, the Speaker certifies it and puts his signature on it.
12. **To exercise casting vote:** He does not vote in the first instance because as a general rule, the Speaker does not participate in the discussion and debates on the various bills in House. He also does not cast his vote but he can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any questions, the Speaker is entitled to vote such vote is called casting vote, and its purpose is to resolve a deadlock.
13. **Grant of Permission to ask Questions:** Various powers are conferred on the Speaker in relation to questions put to Ministers by members of the House. Though the guiding principles regarding admissibility of questions are laid down in the rules, their interpretation is rested in the Speaker. He may the rules relating to notice of questions and permits a question to be asked at short notice if it relates to a matter of public importance. He has a general discretion in regard to the admissibility of questions. The decision as whether a question conforms to the requirements of the relevant rules is rests with the Speaker.
14. **Protection of the Privileges of the members of the House:** The members of the Lok Sabha are entitled to a number of special rights and privileges the protection of which is the responsibility of the Speaker of the Lok Sabha. If some item regarding the special rights of the members becomes a subject of debate in the House, the Speaker sends it to the committee on Privileges. The Speaker is the guard and protector of the interests of the members of the House.
15. **Link between President and the Parliament:** The Speaker of the Lok Sabha is the agency through which the Union Parliament and the President of India establish link. Thus, the Speaker acts as a bridge between the President and the Parliament.
16. **Makes arrangements for the secret sittings of the House:** The Speaker makes arrangements for the secret sittings of the Lok Sabha, if it is needed. The proceedings of such a meeting are kept a secret. When the House sits in secret, no stranger can be present in the Chamber, lobby or galleries except with the permission of the Speaker.
17. **Chairman of Conference of Presiding Officers:** The Speaker of the Lok Sabha is the Chairman of the Conference of Presiding Officers of the Legislature bodies of various states of Indian Union. He presides over the meeting of these conferences. Generally, the Speaker convenes the meeting of the Chairman of the State Legislatures once in a year in which the problems being faced by the Chairman and the methods to improve the functioning of the houses are discussed.
18. **Nomination of members for Parliamentary Delegation:** The Speaker of the Lok Sabha, in consultation with the leader of the House, nominates the

members for the various Parliamentary delegations which tour foreign countries.

19. **Control over Visitor's galleries:** The Speaker controls visitor's galleries. He can allow visitors in the galleries of the house and in case of unruly behaviour or noise; he can order them to leave the gallery.
20. **Framing of rules concerning Defection:** In January 1985, 52nd amendments were made in the Constitution to check defection. Under this amendment, the power to frame rules concerning defection is given to Speaker. So, the Speaker makes rules concerning defection and takes decisions accordingly.
21. **Chairman of Committees:** He appoints the Chairman of all the Lok Sabha and supervises their functioning. He himself is the Chairman of the Business Advisory Committee. The rules committee and the General purpose Committee.
22. **Administrative Functions:** The Speaker of Lok Sabha performs the following administrative functions.
 - (i) He exercises full control over the Secretariat of the House. He makes appointments of the officials working in the Secretariat, fixes their conditions of service and supervises their work and duties.
 - (ii) He makes arrangements for the accommodations of the members of the House.
 - (iii) He makes arrangements for the safe custody of the record of the House.
 - (iv) He undertakes proper measures in order to protect the members of the House and the property of the Parliament.
 - (v) He accepts the letters of resignation of the members of the House.
23. **To accept the resignations of the Members :** The members of Lok Sabha send their resignations to the Speaker and to accept or not to accept these depends upon the will of the Speaker makes through investigation whether the resignation is written with this own hands by the concerned member or it is tendered under any pressure etc. The Speaker accepts the resignation only after making through investigation of all these factors.

After going through the powers and functions of the Speaker of the Lok Sabha a given above, we come to the conclusion that the position of the Speaker is one of influence and respect. The Speaker is the Chairman of the Lok Sabha and thus, in the words of Pt. Jawaharlal Nehru, is the leader of the Nation. The members of the House pay him due respect.

The Speaker is also the guardian of the dignity and honour of the House and he takes every possible step to maintain it. He warns the members who misbehave in the House and if need arises he can turn them out also. He is also the guardian of the rights of the house. The following provisions ensure the independence and impartiality of the office of the Speaker.

- (1) He is provided with a security of tenure. He can be removed only by a resolution passed by the Lok Sabha by a special majority and not by an ordinary majority (i.e., a majority of the members present and voting in the House). This motion of removal can be considered and discussed only when it has the support of at least 50 members.
- (2) His salaries and allowances are fixed by Parliament. They are charged on the consolidated Fund of India and thus are not subject to the annual vote of Parliament.
- (3) His work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion.
- (4) His powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any court.
- (5) He cannot vote in the first instance. He can only exercise a casting vote in the event of a tie. This makes the position of Speaker impartial.
- (6) He is given a very high position in the order of precedence. He is placed at seventh rank, along with the Chief Justice of India. This means, he has a higher rank than all Cabinet Ministers, except the Prime Minister or Deputy Prime Minister.

9.6. POSITION OF SPEAKER

The Speaker of Lok Sabha Plays an important role in parliamentary system and enjoys a position of respect and dignity. He has highest responsibility to manage the affairs of lower house and have responsibility to conduct the proceedings of the House in such a manner as can lead to an orderly transaction of business in the Lok Sabha. He act as the representative and the leader of the house and as its impartial chairman. The Speaker does not resign of his party after being elected to this high office, nevertheless he exercise his powers in an impartial and objective manner. In the House, he is committed to preserve the dignity of the house and always acts as impartial and neutral member neither as a member of ruling party nor as a member of opposition.

The Speaker of Lok Sabha is neither as deeply politicized as the Speaker of USA House of Representative nor as thoroughly neutral as the Speaker of the British House of Commons. While Indian Speaker retains and even nourishes his political links and affiliations outside the house, he acts as a neutral chairperson of the house. He renounces from indulging into aggressive party politics even while maintaing his party membership. The office of the speaker in India is a living and dynamic institution which deals with the actual needs and problems of parliament in the performance of its functions.

9.7. SUGGESTION TO MAINTAIN THE RESPECT AND DIGNITY OF THE OFFICE OF THE SPEAKER:-

The former General Secretary of Lok Sabha Sh. C.K. Jain has given the following suggestions to maintain the respect and dignity of the office of the Speaker:

1. Only a wise and able person, who has a long experience of working of parliamentary system, should be elected as a Speaker.
2. The ruling party should consult the opposition before proposing the name for the office of the Speaker.
3. No party should put up a candidate against the Speaker.
4. Speaker should be elected for two-terms and after this the Speaker should say good-bye to active politics and should play the role of elder statesman.
5. The powers given to the Speaker under the Anti-Defection Law should be withdrawn from the Speaker because usually the Speaker uses these powers in favour of the ruling party. This lowers the dignity of his office.

9.7.1 CHECK YOUR PROGRESS I

1. Who is the first woman speaker of India?

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2. What do you understand by Speaker Pro Tempore?

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3. Who is the present speaker of Lok Sabha?

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9.8. SUMMARY

The respect and dignity of the office of the Speaker depends upon his neutral and impartial attitude. The Speaker cannot run the proceedings of the House in a healthy way without getting full cooperation of the members of the House. But for few years, it seemed that the members have taken an oath not to let the Parliament function properly. On one occasion they even did not allow the Prime Minister to speak in the House. In order to get cheap popularity walk outs, stogan shouting, getting collected in the well of the house etc. have become normal things.

In spite of all this, the position of the Speaker depends upon his individual personality. A person with impressive personality makes the office of the Speaker quite impressive and effective.

In Britain, the Speaker is strictly a non party man. There is a convention that the Speaker has to resign from his party and remain politically neutral. This healthy convention is not fully established in India where the Speaker does not resign from the membership of his party on his election to the exalted office. The Speaker of the

Lok Sabha in India has not been able to set the amount of respect and dignity which the Speaker of the House of Commons gets in Britain.

9.9. QUESTIONS FOR PRACTICE

9.9.1. LONG ANSWER QUESTIONS

1. Explain the appointment and powers of the Speaker of Lok Sabha.
2. Describe the appointment, functions and position of the Speaker of Lok Sabha.
3. Critically examine the role of Speaker in Indian Parliament.

9.9.2. SHORT ANSWER QUESTIONS

1. Who is the First Speaker of India?
2. Which articles relates to the Speaker?
3. Who preside over the joint Sittings of Parliament?

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BACHELOR ARTS

SEMESTER –VI

COURSE: - INDIAN POLITICAL SYSTEM -I

UNIT 10 SUPREME COURT: COMPOSITION, POWERS AND JUDICIAL REVIEW

STRUCTURE

- 10.0. Learning Objectives
- 10.1. Key Words
- 10.2. Introduction
- 10.3. Composition of the Supreme Court
 - 10.3.1. Check Your Progress I
- 10.4. Independence of the Supreme Court
 - 10.4.1. Check Your Progress II
- 10.5. Jurisdiction and Powers of the Supreme Court
 - 10.5.1. Original Jurisdiction
 - 10.5.2. Writ Jurisdiction
 - 10.5.3. Appellate Jurisdiction
 - 10.5.4. Advisory Jurisdiction
 - 10.5.5. A Court of Record
 - 10.5.6. Power of Judicial Review
 - 10.5.7. Other Powers
 - 10.5.8. Check Your Progress III
- 10.6. Summary
- 10.7. Questions for Practice
 - 10.7.1 Long Answer Questions
 - 10.7.2. Short Answer Questions
- 10.8. Suggested Readings

10.0. LEARNING OBJECTIVES:

After the completion of this unit, you will be able to:

- Understanding and Appreciating the role of the Supreme Court in the Indian Democratic Set up
- Studying the composition of the Supreme Court
- Studying the process of appointment of Supreme Court judges and its implications

- Studying the process of Removal of Supreme Court judges
- Understanding the need for Independence of Judiciary
- Analyzing the Jurisdiction and Powers of the Supreme Court
- Analyzing the power of Judicial Review

10.1. KEY WORDS: Judiciary, Law, Supreme Court, Judge, Constitution

10.2. INTRODUCTION:

The Judiciary plays the important role of interpreting and applying the law and deciding upon any controversy that may arise between two citizens or between a citizen and the state. The courts maintain the rule of law in the country and assure that the government runs according to law. In a country with a written constitution, the courts have an additional responsibility of safeguarding the supremacy of the Constitution and keeping all authorities within the constitutional framework.

In a federation, the Judiciary has another responsibility to decide upon the controversies between the constituent states inter se, as well as between the Centre and the States. A Federal Government is a legalistic government,¹ a characteristic feature of which is the allocation of powers between the Centre and the States. Usually the disputes between the Centre and constituent units relate to the distribution of powers and functions between them and therefore, the courts have to scrutinize laws to determine such distribution. The Judiciary is also the protector and enforcer of the fundamental rights guaranteed by the Constitution.

10.3 COMPOSITION OF THE SUPREME COURT:

Under Article 124(1), the Supreme Court consisted of a Chief Justice of India (CJI) and seven other judges. But the Parliament has the power to increase the number of other judges. The Parliament has progressively increased the number of judges through multiple Acts and the number currently stands at 33.

Article 124(2) provides for appointment of Judges by the President. While appointing the CJI, the President has consultation with such of the Judges of the Supreme Court as he may deem necessary. The consultation with the CJI is obligatory in the case of appointment of a judge other than CJI.

Controversy over Consultation

The Supreme Court has interpreted the word ‘consultation’ in a number of ways. In the First Judges case (1982)², the court held that it did not mean concurrence and it signified the exchange of views. But, in the Second Judges case (1993)³, the court reversed its earlier decision and interpreted the word to mean concurrence. It also opined that the CJI’s advice would be binding upon the President. But the CJI would advise the President only after

¹ DICEY Law of the Constitution, Ch. III, 175 (1956) Also, M.P. JAIN, Role of Judiciary in a Democracy, 6 J.M.C.L. 239 (1979)

² S.P. Gupta v. Union of India, AIR 1982 SC 149

³ Supreme Court Advocates on Record Association v. Union of India, AIR 1994 SC 268

consulting two of the senior most judges of the court. Similarly in the Third Judges case⁴, the Court held that the consultation process required the ‘consultation of plurality of judges’ and that the sole opinion of the CJI would not constitute consultation process.

In India, the practice has been to appoint the senior most judge of the Supreme Court as the CJI. However, this practice has been violated twice, once in 1973 when Justice AN Ray was appointed as the CJI superseding three senior judges and again in 1977 when Justice MU Beg was appointed as CJI. The Supreme Court curtailed this discretion in the Second Judges case (1993)⁵ and held that the senior most judge should be appointed as the Chief Justice of India.

There is no fixed tenure provided for a judge of the Supreme Court of India. However, the constitution requires that the judge can only hold office till the age of 65 or that he can resign his office by writing to the president or that he can be removed by the President on the recommendation of the Parliament.

Removal of Judges (Impeachment)

A Supreme Court Judge can be impeached (be removed from his office by an order of the President). However, this order can only be issued on the recommendation of the Parliament. The Constitution also requires the recommendation of the Parliament should be presented to the President in the same session in which the recommendation was passed by a special majority of each house of Parliament. The grounds for such removal are restricted to proven misbehaviour or incapacity. The detailed procedure for the impeachment of a Supreme Court Judge is provided in the Judges Enquiry Act (1968).

Ad hoc Judge

The CJI can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period after consulting with the Chief Justice of the concerned High Court and with the consent of the President of India. He exercises this power in case there is a lack of quorum of the permanent judges to continue any session of the Supreme Court. The judge to be appointed as an ad hoc judge must be qualified for appointment as a judge of the Supreme Court.

The CJI can also request a retired judge of the Supreme Court or a retired judge of a High Court (who is qualified for appointment as a judge of the Supreme Court). He can exercise this power with the consent of the president and of the person concerned. These judges enjoy all the powers, privileges and jurisdiction of a judge of the Supreme Court.

10.3.1. CHECK YOUR PROGRESS I

1. Is the opinion of the Chief Justice Binding upon the President?

⁴ *Re: Special Reference*, AIR 1999 SC 1

⁵ *Supreme Court Advocates on Record Association v. Union of India*, AIR 1994 SC 268

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2. What is the impact of the government violating the practice of appointing the senior most judges as the Chief Justice on the independence of the Judiciary?

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10.4. INDEPENDENCE OF SUPREME COURT

The Supreme Court plays a vital role in India’s political structure. It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, it is pertinent that the Supreme Court be independent from the other organs of the Government so that it can effectively discharge the duties assigned to it. It should be unaffected from the executive or legislative interference.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

- a. **Mode of Appointment:** The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (i.e., judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.
- b. **Security of Tenure:** The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.
- c. **Fixed Service Conditions:** The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.
- d. **Expenses Charged on Consolidated Fund:** The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-vote able by the Parliament (though they can be discussed by it).

- e. **Conduct of Judges cannot be Discussed:** The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

- f. **Ban on Practice after Retirement:** The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour any one in the hope of future favour.
- g. **Power to Punish for its Contempt:** The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody. This power is vested in the Supreme Court to maintain its authority, dignity and honour.

- h. **Its Jurisdiction cannot be Curtailed:** The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

- i. **Separation from Executive:** The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services. This means that the executive authorities should not possess the judicial powers. Consequently, upon its implementation, the role of executive authorities in judicial administration came to an end.

10.4.1. CHECK YOUR PROGRESS II

1. Do the Constitutional safeguards ensure complete independence of the Judiciary from other organs? Is complete independence even desirable?

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2. Differentiate between the Writ and Original Jurisdiction of the Supreme Court.

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10.5. JURISDICTION AND POWERS OF SUPREME COURT

The Supreme Court has been assigned a very wide jurisdiction and vast powers. Unlike the Supreme Court of the United States and similar to the British House of Lords (Upper House of the British Parliament), the Supreme Court is a final court of appeal. It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. It is also entrusted with the advisory and supervisory powers by the Constitution. Alladi Krishnaswamy Ayyar, a member of the Drafting Committee, has rightly said that, "The Supreme Court of India has more powers than any other Supreme Court in any part of the World." The Jurisdiction and powers of the Supreme Court can be classified into the following categories:

- (a) Original Jurisdiction.
- (b) Writ Jurisdiction.
- (c) Appellate Jurisdiction.
- (d) Advisory Jurisdiction.
- (e) A Court of Record.
- (f) Power of Judicial Review.
- (g) Other Powers.

10.5.1. ORIGINAL JURISDICTION

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between:

- (a) The Centre and one or more states; or
- (b) The Centre and any state or states on one side and one or more states on the other; or
- (c) Between two or more states.

In these federal disputes, the Supreme Court has the exclusive jurisdiction. It means that no other court in India is competent to deal with these issues and the Supreme Court is the only authority with the power to resolve these.

It is pertinent to note two things about the exercise of exclusive jurisdiction of the Supreme Court. Firstly, the dispute must involve a question of law or fact on which the existence or extent of a legal right or obligation depends. Thus the questions of political nature are not included in it. Secondly, any suit brought before the Supreme Court by a private citizen against the Centre or a state is not covered under this jurisdiction and shall not be entertained under this.

Further, this jurisdiction of the Supreme Court does not extend to the following:

- (a) A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instrument.

- (b) A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extend to such a dispute.
- (c) Inter-state water disputes.
- (d) Matters referred to the Finance Commission.
- (e) Adjustment of certain expenses and pensions between the Centre and the states.
- (f) Ordinary dispute of Commercial nature between the Centre and the states.
- (g) Recovery of damages by a state against the Centre.

In 1961, the first suit, under the original jurisdiction of the Supreme Court, was brought by West Bengal against the Centre. The State Government challenged the Constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

10.5.2 WRIT JURISDICTION

The Supreme Court is the guarantor, enforcer and defender of the fundamental rights of the citizens. The Supreme Court has the power to issue certain writs including Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari in order to enforce the fundamental rights of the citizens concerned. The Supreme Court has original jurisdiction in this regard. It means that an aggrieved individual can directly approach the Supreme Court in such issues. The High Courts also have the powers to issue writs to enforce the Fundamental Rights.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights. In the first case, it is exclusive and in the second case, it is concurrent with high courts jurisdiction. Moreover, the parties involved in the first case are units of the federation (Centre and states) while the dispute in the second case is between a citizen and the Government (Central or state).

There is also a difference between the writ jurisdiction of the Supreme Court and that of the high court. The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental rights but also for other purposes. It means that the writ jurisdiction of the high court is wider than that of the Supreme Court. But, the Parliament can confer on the Supreme Court, the power to issue writs for other purposes also.

10.5.3. APPELLATE JURISDICTION

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

- (a) Appeals in constitutional matters.
- (b) Appeals in civil matters.
- (c) Appeals in criminal matters.
- (d) Appeals by special leave.

(a) Constitutional Matters: In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

(b) Civil Matters: In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—

- (i) That the case involves a substantial question of law of general importance; and
- (ii) That the question needs to be decided by the Supreme Court.

Originally, only those civil cases that involved a sum of ₹20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.

(c) Criminal Matters: The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—

- (i) Has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (ii) Has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- (iii) Certifies that the case is a fit one for appeal to the Supreme Court.

In the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court). But if the high court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

In 1970, the Parliament had enlarged the Criminal Appellate Jurisdiction of the Supreme Court. Accordingly, an appeal lies to the Supreme Court from the judgement of a high court if the high court:

- (i) Has on appeal, reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or for ten years; or
- (ii) Has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to imprisonment for life or for ten years.

Further, the appellate jurisdiction of the Supreme Court extends to all civil and criminal cases in which the Federal Court of India had jurisdiction to hear appeals from the high court but which are not covered under the civil and criminal appellate jurisdiction of the Supreme Court mentioned above.

(d) Appeal by Special Leave: The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:

(i) It is a discretionary power and hence, cannot be claimed as a matter of right.

(ii) It can be granted in any judgement whether final or interlocutory.

(iii) It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.

(iv) It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals. On the exercise of this power, the Supreme Court itself held that ‘being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule’.

10.5.4. ADVISORY JURISDICTION

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

(a) On any question of law or fact of public importance which has arisen or which is likely to arise.

(b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

The Supreme court can refuse to tender its opinion to the president on any question of law or fact of public importance which has arisen or which is likely to arise. However, the Court must tender its opinion in the second category of matters. The opinion expressed by the Supreme Court is of an advisory nature and it is not a judicial verdict. Therefore, it does not bind the president. He is free to follow or not follow the opinion of the Court. However, it helps the Government to have an authoritative opinion on a matter decided by it.

10.5.5. A COURT OF RECORD

As a Court of Record, the Supreme Court has two powers:

(a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.

(b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to `2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

Contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner. However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

10.5.6. POWER OF JUDICIAL REVIEW

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

Judicial review is needed for the following reasons:

- (a) To uphold the principle of the supremacy of the Constitution.
- (b) To maintain federal equilibrium (balance between Centre and states).
- (c) To protect the fundamental rights of the citizens.

The Supreme Court used the power of judicial review in various cases, as for example, the Golaknath case (1967)⁶, the Bank Nationalisation case (1970)⁷, the Privy Purses Abolition case (1971)⁸, the Kesavananda Bharati case (1973)⁹, the Minerva Mills case (1980)¹⁰ and so on.

Though the phrase ‘Judicial Review’ has nowhere been used in the Constitution, the provisions of several articles explicitly confer the power of judicial review on the Supreme

⁶ Golak Nath v. State of Punjab, AIR 1967 SC 1643

⁷ Rustom Cawasjee Cooper (Bank Nationalization) v. Union of India, AIR 1970 SC 564

⁸ Madhav Rao Jivaji Rao Scindia v. Union of India, AIR 1971 SC 530

⁹ Kesavananda Bharati v. State of Karnataka, AIR 1973 SC 1461

¹⁰ Minerva Mills v. Union of India, AIR 1980 SC 1789

Court. The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the following three grounds:

- (a) It infringes the Fundamental Rights (Part III),
- (b) It is outside the competence of the authority which has framed it, and
- (c) It is repugnant to the constitutional provisions.

From the above, it is clear that the scope of judicial review in India is narrower than that of what exists in USA, though the American Constitution does not explicitly mention the concept of judicial review in any of its provisions. This is because, the American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The difference between the two is : 'The due process of law gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable. Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications.'¹¹

The exercise of wide power of judicial review by the American Supreme Court in the name of 'due process of law' clause has made the critics to describe it as a 'third chamber' of the Legislature, a super-legislature, the arbiter of social policy and so on. This American principle of judicial supremacy is also recognised in our constitutional system, but to a limited extent. Nor do we fully follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament in our country, like the written character of the Constitution, the federalism with division of powers, the Fundamental Rights and the judicial review. In effect, what exists in India is a synthesis of both, that is, the American principle of judicial supremacy and the British principle of parliamentary supremacy.

10.5.7. OTHER POWERS

Besides the above, the Supreme Court has numerous other powers:

- (a) It decides the disputes regarding the election of the president and the vice-president. In this regard, it has the original, exclusive and final authority.
- (b) It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.
- (c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the

¹¹ Subhash C Kashyap, Our Constitution, National Book Trust, Third Edition, 2001, p. 232.

Supreme Court is a self-correcting agency. For example, in the Kesavananda Bharati case (1973)¹², the Supreme Court departed from its previous judgement in the Golak Nath case (1967)¹³.

(d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.

(e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.

(f) It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution.

(g) It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

The Supreme Court’s jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

10.5.8. CHECK YOUR PROGRESS III

1. When is the Supreme Court bound to tender its opinion to the president? Is the Court’s opinion binding upon the President?

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2. What is the difference between the powers of Judicial Review in Supreme Court of India and USA?

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10.6. SUMMARY

The Judiciary plays a vital role in safeguarding the Constitutional Framework and deciding upon any controversy that may arise between two citizens or between a citizen and the state. The Supreme Court of India has the additional responsibility of guarding and enforcing the

¹² Kesavananda Bharati v. State of Karnataka, AIR 1973 SC 1461

¹³ Golak Nath v. State of Punjab, AIR 1967 SC 1643

Fundamental Rights of the citizens as well as resolving any dispute that may arise between the constituent units of the Indian Federation.

The Supreme Court has a total strength of 34 Judges (33 Judges + 1 Chief Justice) appointed by the President after consulting the Consortium. The Constitution provides that no Judge shall continue to hold his office after he attains the age of 65. The Constitution also provides the procedure through which a judge may resign or may be removed by the Parliament. The Constitution also provides the CJI powers to appoint Ad Hoc Judges and Retired Judges.

In order to effectively discharge its responsibilities, the Supreme Court has to be free from Legislative and Executive interference. For this purpose, the Constitution has provided certain safeguards including security of tenure, fixed service conditions, ban on practice after retirement, etc.

The Supreme Court, being the final authority to resolve any dispute, has been given very wide jurisdiction and vast powers. It exercises Original and Exclusive Jurisdiction over the disputes between the Federal Units. It also has the Writ Jurisdiction in order to safeguard the Fundamental rights. It can hear appeals against judgments delivered by the lower courts and advise the President on legal issues. The Supreme Court, being a Court of Record, has the powers to punish for contempt of court and all the proceedings of the Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.

Lastly, the Supreme Court has the power to examine the Constitutionality of the legislative enactments and executive orders of both the Central and the State governments. On examination, if they are found to be Ultra-Vires of the Constitution, they can be declared as Unconstitutional and invalid. Consequently, they cannot be enforced by the Government.

10.7 QUESTIONS FOR PRACTICE

10.7.1 LONG ANSWER QUESTIONS

1. How has the Supreme Court interpreted the word 'Consultation' under Article 124(1) of the Constitution? Does the opinion of the Chief Justice hold primacy over the other judges and the wishes of the President?
2. What are the conditions under which a Supreme Court judge will cease to hold the office? Explain the process of Impeachment.
3. What are protections provided by the Constitution to ensure the independence of the Judiciary? Are these protections sufficient to resolve the issue of Legislative and Executive interference?
4. What is the impact of the Constitutional safeguards (to ensure the independence of the Judiciary) on the Judicial Accountability?
5. Explain the Appellate Jurisdiction of the Supreme Court in detail.
6. Explain the concept of Judicial Review in detail. The Constitution does not use the phrase 'Judicial Review', then how is the Supreme Court allowed to use this power?

10.7.2. SHORT ANSWER QUESTIONS

1. What criterion has been used to appoint the Chief Justice of India?
2. Can the CJI appoint Ad Hoc Judges? If yes, how can he exercise such power?
3. Can the CJI appoint retired judges as a judge of the Supreme Court? If yes, how can he exercise such power?
4. What is the significance of an Independent Judiciary?
5. Over which issues does the Supreme Court have Original jurisdiction? Also explain the difference between exclusive or concurrent jurisdiction.
6. Explain the Special Leave Jurisdiction of the Supreme Court.
7. Under which circumstances is the Supreme Court bound to tender its opinion to the president? Is the opinion of the Supreme Court binding upon the president?
8. Explain the power of the Supreme Court to punish for its contempt.

10.8.SUGGESTED READING

- G. Austin: The Indian Constitution: Corner Stone of a Nation, Oxford University Press, 1966
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