INDIAN POLITICAL SYSTEM

BA [Political Science]

First Semester

Paper-I

RAJIV GANDHI UNIVERSITY
Arunachal Pradesh, INDIA - 791 112

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About the University

Rajiv Gandhi University (formerly Arunachal University) is a premier institution for higher education in the state of Arunachal Pradesh and has completed twenty-five years of its existence. Late Smt. Indira Gandhi, the then Prime Minister of India, laid the foundation stone of the university on 4th February, 1984 at Rono Hills, where the present campus is located.

Ever since its inception, the university has been trying to achieve excellence and fulfill the objectives as envisaged in the University Act. The university received academic recognition under Section 2(f) from the University Grants Commission on 28th March, 1985 and started functioning from 1st April, 1985. It got financial recognition under section 12-B of the UGC on 25th March, 1994. Since then Rajiv Gandhi University, (then Arunachal University) has carved a niche for itself in the educational scenario of the country following its selection as a University with potential for excellence by a high-level expert committee of the University Grants Commission from among universities in India.

The University was converted into a Central University with effect from 9th April, 2007 as per notification of the Ministry of Human Resource Development, Government of India.

The University is located atop Rono Hills on a picturesque tableland of 302 acres overlooking the river Dikrong. It is 6.5 km from the National Highway 52-A and 25 km from Itanagar, the State capital. The campus is linked with the National Highway by the Dikrong bridge.

The teaching and research programmes of the University are designed with a view to play a positive role in the socio-economic and cultural development of the State. The University offers Undergraduate, Post-graduate, M.Phil and Ph.D. programmes. The Department of Education also offers the B.Ed. programme.

There are fifteen colleges affiliated to the University. The University has been extending educational facilities to students from the neighbouring states, particularly Assam. The strength of students in different departments of the University and in affiliated colleges has been steadily increasing.

The faculty members have been actively engaged in research activities with financial support from UGC and other funding agencies. Since inception, a number of proposals on research projects have been sanctioned by various funding agencies to the University. Various departments have organized numerous seminars, workshops and conferences. Many faculty members have participated in national and international conferences and seminars held within the country and abroad. Eminent scholars and distinguished personalities have visited the University and delivered lectures on various disciplines.

The academic year 2000-2001 was a year of consolidation for the University. The switch over from the annual to the semester system took off smoothly and the performance of the students registered a marked improvement. Various syllabi designed by Boards of Post-graduate Studies (BPGS) have been implemented. VSAT facility installed by the ERNET India, New Delhi under the UGC-Infonet program, provides Internet access.

In spite of infrastructural constraints, the University has been maintaining its academic excellence. The University has strictly adhered to the academic calendar, conducted the examinations and declared the results on time. The students from the University have found placements not only in State and Central Government Services, but also in various institutions, industries and organizations. Many students have emerged successful in the National Eligibility Test (NET).

Since inception, the University has made significant progress in teaching, research, innovations in curriculum development and developing infrastructure.

SYLLABI-BOOK MAPPING TABLE

Indian Political System

Syllabi	Mapping in Book
UNIT 1 The making of India's constitution: Government of India Acts 1919 and 1935 and Constituent Assembly	**Unit 1:** The Making of India's Constitution **(Pages 3-21)**
Unit 2 Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties.	**Unit 2:** The Indian Constitution **(Pages 23-53)**
Unit 3 Structure and function of Parliament; power and function of President, Prime Minister and Governor.	**Unit 3:** The Parliament and the Executive **(Pages 55-83)**
Unit 4 Supreme Court and High Courts.	**Unit 4:** Supreme Court and High Courts **(Pages 85-95)**
Unit 5 Democratic Decentralization: 73rd and 74th Constitutional Amendment Acts.	**Unit 5:** Democratic Decentralization **(Pages 97-124)**
Unit 6 Centre- State relations: Legislative, Administrative and Financial.	**Unit 6:** Centre-State Relations **(Pages 125-142)**
Unit 7 Party System in India: BJP, INC, CPI (M) and National Conference.	**Unit 7:** Party System in India **(Pages 143-157)**
Unit 8 Electoral System: Election Commission of India and Electoral Reforms.	**Unit 8:** Electoral System **(Pages 159-179)**
Unit 9 Judiciary in India: Judicial Review and Judicial Activism.	**Unit 9:** Judiciary in India **(Pages 181-188)**
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INTRODUCTION

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The book, *Indian Political System*, deals with the nuances of the functioning of political system in India. It traces the historical background of the framing of the Indian Constitution. It broadly observes the basis of the Indian Constitution from its historical perspective and describes the study of constitutional progress and the role played by ideologies in the making of our Constitution. The book outlines the salient features of the Preamble which has the Fundamental Rights and Duties, and the Directive Principles of State Policy enshrined in it. The parliamentary form of government was established by the Constitution in 1950 and the working of the government is divided into executive, legislative and judiciary.

The book highlights the various factors of conflict that exist between the Centre and the states. The functioning of the Indian judiciary, considered to be one of the oldest in the world, has been dealt with in detail. Furthermore, the political parties and party system in India leading to the formation of coalition government have also been discussed. Finally, the book concludes with a discussion on the major issues governing Indian politics.

This book, *Indian Political System*, has been designed keeping in mind the self-instruction mode (SIM) format and follows a simple pattern, wherein each unit of the book begins with the **Introduction** followed by the **Unit Objectives** for the topic. The content is then presented in a simple and easy-to-understand manner, and is interspersed with **Check Your Progress** questions to reinforce the student's understanding of the topic. A list of **Questions and Exercises** is also provided at the end of each unit. The **Summary** and **Key Terms** further act as useful tools for students and are meant for effective recapitulation of the text.

UNIT 1 THE MAKING OF INDIA'S CONSTITUTION

Structure

1.0 INTRODUCTION

Most countries in the world have a constitution. A constitution serves several purposes. First, it lays out certain ideals that form the basis of the kind of country that we as citizens aspire to live in. A constitution tells us what the fundamental nature of our society is. It helps to serve a set of rules and principles that all citizens of a country can agree upon as the basis of the way in which they want the country to be governed.

The making of the Indian Constitution was in progress even before the country attained independence in 1947. Indian nationalism took birth in the 19th century as a result of the conditions created by the British rule. Nationalist leaders of India demanded many reforms in constitutional arrangements during the colonial rule. To meet some of their demands, the British enacted some legislations, such as the Government of India Act, 1858; the Indian Council Act, 1861; the Indian Council Act, 1892; the Indian Council Act, 1909; the Government of India Act, 1919; and the Government of India Act, 1935. The Constituent Assembly of India was elected in 1946 to write the Constitution of India. Following India's independence from Great Britain, its members served as the nation's first Parliament.

The first historical session of Indian Constituent Assembly was held on 9 December 1946, under the chairmanship of Dr Sachidananda Sinha. On 11 December, it elected Dr Rajendra Prasad as its permanent president. The membership of the Constituent Assembly included all eminent Indian leaders. Pandit Jawaharlal Nehru introduced the Objectives Resolution on 13 December 1946. After a full discussion and debate, the Constituent Assembly passed the Objectives Resolution on 22 January 1947. It clearly laid down the ideological foundations and values of the Indian Constitution and guided the work of the

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Constituent Assembly. When on 15 August 1947, India became Independent, the Constituent Assembly became a fully sovereign body and remained so till the inauguration of the Constitution of India. During this period, it acted in a dual capacity: first as the Constituent Assembly, it engaged in the making of the Indian Constitution, and secondly as the Parliament of India, it remained involved in legislating for the whole of India. For conducting its work in a systematic and efficient manner, the Constituent Assembly constituted several committees which were to report on the subjects assigned to them. Some of these committees were committees on procedural matters while others were committees on substantive matters. The reports of these committees provided the bricks and mortar for the formation of the Constitution of India.

In the making of the Constitution, a very valuable role was played by the Drafting Committee. The Committee was constituted on 29 August 1947 with Dr B.R. Ambedkar as its chairman. The Drafting Committee submitted its report (draft) to the Constituent Assembly on 21 February 1948 and the Constituent Assembly held debates on it. On the basis of these discussions, a new draft was prepared by the Drafting Committee and submitted to the Assembly on 4 November 1948. From 14 November 1949 to 26 November 1949 the final debate was held on the draft. Later, in order to perpetuate the memory of the great pledge of the 'Purna Swaraj Day', 26 January 1950 was chosen to be the day of the commencement of the Constitution and declared India a Republic state with Dr Rajendra Prasad as its first President.

On completion of the constitution-making task of the Constituent Assembly, Dr Rajendra Prasad said: 'I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits and demerits of the Constitution which it has framed, I am content to leave that to others and posterity.'

1.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Describe the historical background of the Indian Constitution
- Explain the significance of the Government of India Act, 1919 and the Government of India Act, 1935
- Discuss the evolution of the Constituent Assembly

1.2 HISTORY AND IDEOLOGY OF INDIA'S CONSTITUTION

The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework as well as the primary objectives for the various organs of the government. The Constitution of a country is the basic structure of the political system that governs people. It establishes a governmental structure that exercises power, and at the same time ensures individual freedom and liberty. Further, it recommends a method for the settlement of the power of the state through the principles of state organization. Besides, the Constitution is also responsible for defining the powers of the main elements of the states, segregating their responsibilities as well as regulating their relationships amongst each other and with the people. In a nutshell, the Constitution

serves as the 'Fundamental Law' of a country. Any other law made in the country must be in conformity with the Constitution in order to be legal.

The constitutions of a majority of countries were a result of a deliberate decision due to the necessity to have relevant documents. Similarly, the Constitution of the Indian republic is the result of the research and deliberations of a body of eminent representatives of the people who sought to improve the system of administration.

The structure of Indian administration shows the effects of the British rule. Several functional aspects, including the education system, public services, political set-up, training, recruitment, official procedure, police system, district administration, revenue administration, budgeting and auditing, began at the time of the British rule. The British rule in India can be categorized into two phases:

(i) Company Rule until 1858

(ii) Crown Rule during 1858 –1947

The latter period saw the gradual rise of the Indian constitutional structure in different phases, which are elaborated as follows:

1.2.1 Government of India Act, 1858

The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown. The Company's rule was, thus, terminated and the administration was carried out in the name of the Crown through the Secretary of the State. The Secretary assumed the powers of the Company's Board of Directors as well as the Board of Control. The Secretary of State, accountable to the British Parliament, needed to be supported by the Council of India consisting of fifteen members. The Crown was required to appoint eight members for the Council, while the Board of Directors was to elect the remaining seven. The main features of this Act were as follows:

- It made the administration of the country unitary as well as rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant Governor headed by his executive council, yet the provincial governments were mere agents of the Government of India. They had to function under the superintendence, direction and control of the Governor-General in all matters related to the governance of the province.
- It made no provision for separation of functions. The entire authority for the governance of India – civil, military, executive and legislative was handed over to the Governor-General of the Council, who was accountable to the Secretary of the State.
- The Secretary of the State had absolute control over the Indian administration.
- The entire machinery of administration was made bureaucratic.

The Act of 1858 was intiated for 'a better Government of India'. Thus, it introduced many significant changes in the Home Government. However, these changes were not related to the administrative set-up of India. Major changes were made in the Constitution of India after the severe crisis of 1857–58. There were many reasons behind the introduction of these changes. All legislative procedures were centralized by the Charter Act of 1833. The sole authority for legislating and passing decrees, while implementing them for the economy, rested with the Legislative Council (Centre). Though the functioning of the Legislative Council was set up by the Charter Acts of 1833, the Act was not

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followed properly. The Council became a debating society or a Parliament on a smaller scale, claiming all privileges and functions of the representative body. While acting as an independent legislature, the Council did not function well with the Home Government. As a result, the first Council Act was passed in 1861 after discussions between the Home Government and the Government of India.

1.2.2 Indian Council Act, 1861

The Indian Council Act, 1861 introduced a representative institution in India for the first time. As per this Act, the Executive Council of the Governor-General was to comprise some Indians as non-official members for transactions of legislative business. It initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Presidencies. Another feature of the Act was its statutory recognition of the portfolio system.

If we see in depth, the Indian Council Act was a part of a legislation that was passed by the Parliament of Great Britain in 1861, which converted the Executive Council of the Viceroy of India into a cabinet on the portfolio system. This cabinet had six ordinary members, each of whom was in charge of an independent department in the Calcutta Government comprising home, government, revenue, law and finance, and public works (post 1874). The Military Commander in Chief worked with the Council as a special member. Under the provisions of the Act, the Viceroy was allowed to overrule the Council when he deemed it necessary.

The Act offered many advantages to the members of the legislative council. They could discuss legislation and give their inputs or suggestions. The legislative power that was taken away by the Charter of 1833 was restored through this Act. On the other hand, there were some drawbacks of the Act as well. The members of the Council were not allowed to implement any legislation on their own.

The Act added a fifth member to the executive council of the Viceroy. The member was assumed to be a gentleman of legal professional service and a jurist. The Act further gave powers to the Governor-General to enact rules for convenient business transactions in the Council. Lord Canning used the power to pioneer the portfolio system in the Government of India. Until then, the government's rules administered the executive council as a whole due to which all official documents were brought under the notice of the council members.

As per the provisos of the Act, Canning divided the government amongst the council members. With this, the foundation of the cabinet government was formed in India. The Act further declared that each administrative branch would have its own spokesman and Head in the government, who would be responsible for the entire administration and defence. The new system witnessed the daily administrative matters taken care by the member-in-charge. In important cases, the concerned member had to present the matters before the Governor-General and consult him before taking any decision. The decentralization of business brought in some efficiency in the system, however, it could not be accomplished thoroughly.

The Indian Council Act of 1861 also introduced a number of legislative reforms in the country. The number of members in the Viceroy's executive council was increased, wherein, it was declared that additional members should be minimum six and maximum twelve. These were directly nominated by the Governor-General for two years. Not less than fifty per cent of the members were non-official members. The Act did not make any statutory provisions for admitting Indians. However, a few non-official seats

of high rank were offered to Indians. The Council's functions were strictly confined to the legislative affairs. It did not have any control over the administration, finance and the right of interpellation.

The Act reinstated the legislative powers of implementing and amending laws to the provinces of Madras and Bombay. Nevertheless, the provincial councils could not pass any laws until they had the consent of the Governor-General. Besides, in few matters, the prior approval of the Governor-General was made compulsory. After the Act, the legislative councils were formed in Bengal, Punjab and the north-western provinces during 1862, 1886, 1889, and so forth.

The Act significantly laid down the mechanical set-up of the government. There were three independent presidencies formed into a common system. The legislative and the administrative authority of the Governor-General-in-Council was established over different provinces. Further, the Act also gave legislative authority to the governments of Bombay and Madras. It laid many provisos for creating identical legislative councils in other provinces. This led to the decentralization of legislative powers which culminated in autonomy grants to the provinces under the Government of India Act, 1935.

However, no attempts were made under the Council Act of 1861 to distinguish the jurisdiction of the central legislature from the local legislature in the federal constitution. Furthermore, the main functions of the legislative councils, as established under the Act, were not carried out properly. Even the Councils could not perform in conformity to the Act. The Act could not establish representative government in India on the basis of the England government. It declared that the colonial representative assemblies would largely discuss financial matters and taxation. The Act paved the way for widespread agitation and public alienation.

1.2.3 Indian Council Act, 1892

It is important to understand the evolution of this Act. The Indian Constitution was incepted after the Act of 1861. The legislative reforms created under the Act of 1861 failed miserably in meeting the demands and aspirations of the people of India. The small elements of non-officials, which mainly comprised big zamindars, Indian princes or retired officials, were entirely unaware of the problems of the common man. Thus, the commoners of India were not happy.

The nationalist spirit began to emerge in the late 19th century. The establishment of universities in the presidencies led to educational developments in the country. The gulf between the British and the Indians in the field of Civil Services was not liked by the Indians. The Acts enacted by Lord Rippon, that is, the Vernacular Press Act and the Indian Arms Act of 1878, infuriated Indians to a great extent.

The controversy between the two governments over the banishment of five per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885. The main aim of the Congress was to organize public opinions in India, make the grievances public and demand reforms from the British government.

Initially, the attitude of the British government towards the Indian National Congress was good but it changed when Lord Dufferin attacked the Congress and belittled the significance of the Congress leaders. He ignored the importance of the movement launched by the Congress. Dufferin secretly sent proposals to England to liberalize the councils and appoint a committee which can plan the enlargement of the provincial councils.

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As a result, a Committee report was sent to the Home authorities in England to make changes in the Councils' composition and functions. The report was aimed at giving Indians a wider share in the administration. In 1890, the Conservative Ministry introduced a bill in the House of Lords in England based on these proposals. The House of Lords took two years to adopt measures in the form of the Indian Council Act of 1892.

The Indian Council Act of 1892 was known to have dealt entirely with the powers, functions and compositions of the legislative councils in India. In respect of the central legislature, the Act ensured that the number of additional members should only be between six and twelve. An increase in the members was regarded worthless. Lord Curzon supported it saying that the efficiency of the body had no relation with the numerical strength of its members.

The Council Act of 1892 affirmed that 2/5th of the total members in the Council should be non-officials. Some of them were to be nominated and others elected. The election principle was compromised to some extent. According to the Act, the members of the legislatures were given equal rights to express themselves in financial issues. It was decided that all financial affairs statements would be prepared in the legislation. However, the members were not allowed to either move resolutions or divide the houses as per financial concerns. The members could only put questions limited to the governmental matters of interest on a six days' notice.

The Indian Council Act of 1892 also brought in many new rules and regulations. However, the only significant feature of the Act was the introduction of election procedure. The term 'election' was carefully used in the Act. In addition to the elected official members, the Act pronounced that there should be five non-official members. It furthur said that these members should be elected by the official members of the provincial legislatures of Bombay, Madras, Calcutta, the north-western province and the Calcutta Chamber of Commerce.The Governor-General had the authority to nominate the five non-official members.

The bodies were allowed to elect the members of District Boards, Municipalities, Universities and the Chamber of Commerce but the election methods were not clearly mentioned. The elected members were officially regarded as 'nominated' in spite of the fact that the recommendations of each legislative body was taken into consideration for the selection of these members. Often the person favoured by majority was not considered 'elected', but was directly recommended for nomination. According to this Act, the members were allowed to make observations on the budget and give their suggestions on how revenue can be increased and expenditure can be reduced. The principle of election, as introduced by the Acts of 1892, was used in the formation of the Constitution as well.

Nevertheless, there were numerous faults and drawbacks in the Acts of 1892 because of which the Act could not satisfy the needs of the Indian nationalists. It was criticized in various sessions of the Indian National Congress. The critics did not like the election procedure mentioned in the Act. They also felt that the functions of the legislative councils were rigorously confined.

1.2.4 Indian Council Act, 1909

This Act changed the name of the Central Legislative Council to the Imperial Legislative Council. The size of the Councils of provinces was enlarged by including non-official members. The functions of the legislative councils were increased by this Act.

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Lord Morley, the Secretary of State for Indian Affairs, announced that his government wished to create new reforms for India, wherein the locals would be granted more powers in legislative affairs. Both Lord Morley and Lord Minto believed that terrorism in Bengal needed to be countered. The Indian government appointed a committee to propose a scheme of reforms. The committee submitted the report and the reforms mentioned in the report were agreed upon by Lord Minto and Lord Morley. Thus, the Act of 1909 was passed by the British Parliament, also referred as the Minto-Morley Reforms.

The Act of 1909 was significant due to the following reasons:

- It facilitated elections of Indians in legislative councils. Prior to this, some Indians were appointed in legislative councils, majority of which remained under the appointments of the British government.
- The electoral principle introduced under the Act laid down the framework for a parliamentary system.
- Muslims had expressed serious concern that a 'first past the post' British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 as demanded by the Muslim leadership stipulated:
    - o That Indian Muslims should be allotted reserved seats in the municipal and district boards, in the provincial councils, and in the Imperial legislature;
    - o That the number of reserved seats be in excess of their relative population (25 per cent of the Indian population); and
    - o That only Muslims should vote for candidates for Muslim seats ('separate electorates')

The salient features of the Act of 1909 were as follows:

- The number of members of the legislative council at the Centre was increased from sixteen to sixty.
- The number of members of the provincial legislatures was also increased. It was made fifty in the provinces of Bengal, Bombay and Madras. For the rest of the provinces, the number was thirty.
- The members of the legislative councils were divided into four categories both at the Centre and within the provinces. These categories were ex-officio members (Governor-General and the members of their executive councils), nominated government official members by the Governor-General, nominated non-governmental and non-official members by the Governor-General, and members elected by different categories of Indians.
- Muslims were granted the right of a separate electorate.
- Official members were needed to be in majority. However, in provinces, non-official members formed the majority.
- The legislative council members were allowed to discuss budgets, recommend amendments, and vote in some matters excluding some matters which were categorized under 'non-voted items'. The members were also entitled to seek answers to their concerns during the legislative proceedings.
- India's Secretary of State was empowered to increase the number of executive councils from two to four in Madras as well as Bombay.

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- Two Indians were to be nominated in the Council of the Secretary of State for Indian Affairs.
- The power for nominating one Indian member to the executive council was with the Governor-General.

The provision for concessions under the Act was a constant source of strife between the Hindu and Muslim population from 1909 to 1947. British statesmen generally considered reserved seats as regrettable as it encouraged communal extremism.The Hindu politicians tried to eliminate reserved seats as they considered them to be undemocratic.They also believed that the reserved seats would hinder the development of a shared Indian national feeling among Hindus and Muslims.

1.2.5 Government of India Act, 1919

The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand participation of the natives in the Indian government. The Act embodied the reforms recommended in the joint report of Sir Edwin Montagu and Lord Chelmsford. The retraction of British imperialism was a result of India's enthusiastic participation in the first World War.

The Act broadly ideated a dual form of government, called diarchy, for the major provinces. It also affirmed that a High Commissioner residing in London would represent India in Great Britain. The Government of India Act was enacted for ten long years, that is, from 1919 to 1929.

According to the Act, the Viceroy was responsible for controlling areas of defence, communications and foreign affairs. The government was responsible to take care of the matters related to health and education. Besides, there was a bicameral legislature located at the Centre, comprising legislative assembly with 144 members, out of which forty-one were nominated.

The Council of States constituted thirty-four elected members and twenty-six nominated members. The princely states were responsible for keeping control over political parties. The Indian National Congress was not satisfied with this law, and regarded it as 'disappointing'. There was a special session held in Bombay under Hasan Imam, wherein reforms were degenerated. Nevertheless, leaders such as Surendranath Banerjee appreciated these reforms.

This Act introduced important changes in the Home Government, at the Centre, as well as at the provinces. The changes introduced by the Act were as follows:

- **System of diarchy in the provinces**: According to this system, the subjects of administration were to be divided into two categories: central and provincial. The central subjects were exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
- **Central control over the provinces was relaxed**: Under this provision, subjects of all-India importance were brought under the category 'central', while matters primarily relating to the administration of the provinces were put under 'provincial' subjects. This meant a relaxation of the previous central control over the provinces not only in administrative but also in legislative and financial matters. The previous provincial budgets were removed by the Government of India and the provincial legislatures were empowered to present their own budgets and levy taxes according to the provincial sources of revenue.

- **Indian legislature was made more representative**: The Indian legislature was made bicameral. It consisted of the upper house named the Council of States and the lower house named the Legislative Assembly. The Council of States had sixty members out of which thirty-four were elected . The Legislative Assembly had 144 members out of which 104 were elected. Nevertheless, the Centre did not introduce any responsibility and the Governor-General in Council remained accountable to the British Parliament. The Governor-General's overriding powers in respect of the central legislation were retained in many forms.

The British government in 1927 appointed a Statutory Commission, as envisaged by the Government of Act of 1919, to make an enquiry in the functioning of the Act and to announce that the domination status was the goal of Indian political developments. Sir John Simon was the Chairman of the Commission which gave its final report in 1930. This report was given consideration at a Round Table Conference that created a White Paper.

The White Paper was examined by the Joint Select Committee of the British Parliament. Lord Linlithgow was appointed the President of the Joint Select Committee. The Committee presented a draft Bill on 5 February 1935. The Bill was discussed for forty-three days in the House of Commons and for thirteen days in the House of Lords. After the signatures of the King, the Bill was enforced in July 1935 as the Government of India Act, 1935.

1.2.6 Government of India Act, 1935

The main features of the system introduced by the Government of India Act,1935 were as follows:

1. **Federal features with provincial autonomy:** The Act established an all-India federation comprising the provinces and princely states as units. It segregated powers between the Centre and the units into three lists, that is, the Federal List, the Provincial List and the Concurrent List. Though the Act advocated the use of the provinces and the Indian states as units in a federation, it was optional for the Indian states to join the federation. No Indian state accepted this provision and hence the federation envisaged by the Act was not operational.

   The provincial autonomy was initiated in April 1937. Within its defined sphere, the provinces were no longer delegates of the central government but were autonomous units of the administration. The executive authority of a province was to be exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor acted in consultation with the ministers who were accountable to the legislature. However, the Governor was given some additional powers which could be exercised by him at his 'discretion' or in the exercise of his 'individual judgement' in certain matters without ministerial advice.

2. **System of diarchy at the centre:** The Act abolished the diarchy in the provinces and continued the system of diarchy at the Centre. According to this system, the administration of defence, external affairs, ecclesiastical affairs, and of tribal areas, was to be made by the Governor-General with the help of 'counsellors' appointed by him. These counsellors were not responsible to the legislature. With regards to matters other than the above reserved subjects, the Governor-General was to act on the advice of a Council of Ministers who was responsible to the legislature. However, in regard to the Governor-General's 'special responsibilities', he could act contrary to the advice given by the ministers.

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3. **Bicameral legislature:** The central legislature was made bicameral which consisted of the Federal Assembly and Council of States. It also introduced bicameralism in six out of eleven provinces, such as Assam, Bombay, Bengal, Madras, Bihar, and the United Province. However, the legislative powers of the central and provincial legislatures had various limitations and neither of them had the features of a sovereign legislature.

   Federal legislature needed to comprise two houses: The Council of State (Upper House) and the Federal Assembly (Lower House). The Council of State was required to have 260 members, out of which 156 needed to be elected from British India and 104 to be nominated by the rulers of princely states. The Federal Assembly was required to include 375 members, out of which 250 members were required to be elected by the Legislative Assemblies of the British Indian provinces and 125 to be nominated by the rulers of princely states.

4. **Division of powers between centre and provinces:** The legislative powers were divided between the provinces and the Centre into three lists —the Federal, List, the Provincial List, and the Concurrent List. There was a provision for residuary subjects also. The Federal List for the Centre consisted of fifty-nine items such as external affairs; currency and coinage; naval, military and air forces, and census. The Provincial List consisted of fifty-four items which dealt with subjects such as police, provincial public services and education. The Concurrent List comprised thirty-six items dealing with subjects like criminal law and procedure, civil procedure, marriage and divorces, and abortion. The residuary powers were given to the Governor-General. He was empowered to authorize the Federal or the Provincial Legislature to ratify a law for any matter if not listed in any of the Legislative Lists. The provinces were, however, given autonomy with respect to subjects delegated to them.

   Other salient features of the Government of India Act, 1935 were as follows:

   - The central legislature was empowered to pass any bill though the bill required the Governor-General's approval before it became law. The Governor-General too had the power to pass ordinances.
   - The Indian Council was removed. In its place, few advisors were nominated to assist the Secretary of State of India.
   - The Secretary of State was not allowed to interfere in the governmental matters of Indian ministers.
   - Sind and Orissa were created as two new provinces.
   - One-third of members could represent the Muslim community in the central legislature.
   - Autonomous provincial governments were set-up in eleven provinces under ministries which were accountable to legislatures.
   - India was separated from Burma and Aden.
   - The Federal Court was established at the Centre.
   - The Reserve Bank of India was established.

The Indian National Congress as well as the Muslim League were strictly against the Act but they participated in the provincial elections of 1936–37, which were held under stipulations of the Act. At the time of independence, the two dominions of India and Pakistan accepted the Act of 1935, with few amendments, as their provisional Constitution.

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1.2.7 Indian Independence Act, 1947

The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India. The legislation of the Indian Independence Act was designed by Clement Attlee. (Attlee was leader of the labour party from 1935 to 1955, and served as Britain's Prime Minister from 1945 to 1951). The Indian Political Parties, the Indian National Congress, the Muslim League and the Sikh community came to an agreement on the transfer of power from the British government to the independent Indian government, and the Partition of India. The agreement was made with Lord Mountbatten, which was known as the 3rd June Plan or Mountbatten Plan.

The Indian Independence Act, 1947 can be regarded as the statute ratified by the Parliament of the United Kingdom propagating the separation of India along with the independence of the dominions of Pakistan and India.

Events leading to the Indian Independence Act

(a) 3 June Plan

On 3rd June 1947, a plan was proposed by the British government that outlined the following principles:

- The principle of Partition of India was agreed upon by the British government.
- The successive governments were allotted dominion status.

(b) Attlee's announcement

On 20 February 1947, the Prime Minister of United Kingdom, Clement Attlee made the following announcements:

- Latest by June 1948, the British government would endow absolute self-government to British India
- After deciding the final transfer date, the future of princely states would be decided

The Indian Independence Act, 1947 came into inception from the 3rd June Plan.

Structure of the Act

The structure of the Act included:

- Twenty sections
- Three schedules

The Indian Independence Bill was formally introduced in the British Parliament on 4 July 1947 and received the royal assent on 18 July 1947. It removed all limitations upon the responsible government (or the elected legislature) of the natives. It said that until they developed their own Constitutions, their respective Governor-Generals and provincial governors were to enjoy the same powers as their counterparts in other dominions of the Commonwealth. It meant that India and Pakistan would become independent from 15 August 1947.

1.2.8 Ideology of the Indian Constitution

On 13 December 1946, Pandit Jawaharlal Nehru laid down the Objectives Resolution of the Indian Constitution which depicted its ideology. These resolutions are as follows:

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- This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up a Constitution for her future governance.
- Wherein the territories that now comprise British India, the territories that now form the Indian states, and such other parts of India as are outside British India and the states as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- Wherein shall be guaranteed and secured to all the people of India justice, social economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations; and
- This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947. On 29 August 1947, the Constituent Assembly set-up a Drafting Committee under the Chairmanship of Dr B.R. Ambedkar to prepare a Draft Constitution for India. While deliberating upon the draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled.

The Constitution of India was adopted on 26 November 1949 and the members appended their signatures to it on 24 January 1950. In all, 284 members actually signed the Constitution. The Constitution of India came into force on 26 January 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.

Check Your Progress

1. Mention the main phases of British rule in India.
2. State any two main features of the Government of India Act, 1858?
3. What was the significance of the Indian Independence Act, 1947?
4. When was the Objectives Resolution of the Indian Constitution adopted by the Constituent Assembly?

1.3 CONSTITUENT ASSEMBLY

The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen in the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on the national demand, was a historic event. It is because the central legislature had, for the first time, lent its support to the growing demand of the future Constitution of India. It also agreed to the opinion that the

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Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad, voiced the demand for the right to participate in the making of the Constitution of their country.

Earlier, on 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution. The resolution called upon the Congress Working Committee to frame the Constitution for India in consultation with the elected members of the central and provincial legislatures, and the leaders of political parties. Adopted by an overwhelming majority with amendments, it was this resolution on the Swaraj Constitution which was later restated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927.

In an all-party conference in Bombay on 19 May 1929, a committee was appointed under the Chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India. The report of the committee, which was submitted on 10 August 1928, later became famous as the Nehru Report. It was the first attempt by Indians to frame the Constitution for their country.

The report depicted the perception of the modern nationalists. It also provided an outline of the Constitution of India. The outline was based on the principles of dominion status and it suggested that the government should be made on the parliamentary pattern. The report asserted the principle that sovereignty belongs to Indians. It laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units. The residuary powers were given to the central government.

A broad parliamentary system with government responsible to the Parliament, a chapter on justifiable fundamental rights and rights of minorities envisaged in the Nehru Report in 1928 largely embodied the Constitution of the independent India.

The Third Round Table Conference issued a White Paper outlining the British government's proposal for constitutional reforms in India. However, the joint parliamentary committees, which examined this proposal, observed that 'a specific grant of constituent power to authorities in India is not at the moment a practicable proposition'. In its response, the Congress Working Committee in June 1934 declared that the only satisfactory alternative to the White Paper was that the Constitution be drawn out by the Constituent Assembly. They demanded that the members of the Constituent Assembly be elected on the basis of adult suffrage. Significantly, this was the first time that a definite demand for a Constituent Assembly was formally put forward.

The failure of the Simon Commission and the Round Table Conference gave rise to the ratification of the Government of India Act, 1935. The Congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no constitution imposed by an outside authority shall be acceptable to India. The resolution asserted that it has to be framed by an Indian Constituent Assembly elected by the people of India on the basis of adult franchise. On 18 March 1937, the Congress adopted another resolution in Delhi which asserted these demands.

After the outbreak of World War II in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939. Gandhi wrote an article in the *Harijan* on 19 November 1939, in which he expressed the view that the Constituent Assembly alone can produce a Constitution for the country which truly and completely represents the will of Indians. It declared that the Constituent Assembly was the only way out to arrive at the solution of

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communal and other problems of the country. The demand was partially considered by the British government in the 'August Offer of 1940'.

In March 1942, the British government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War. The main proposals of the Mission were:

- The Constitution of India was to be framed by an elected Constituent Assembly of the Indian people.
- The Constitution should give dominion status to India, that is, equal partnership of the British Commonwealth of Nations.
- There should be an Indian Union, comprising all the provinces and Indian states.
- Any province or Indian state, which was not prepared to accept the Constitution would be free to retain its constitutional position existing at that time. With such provinces, the British government could enter into separate constitutional arrangements.

However, the Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945. In July, when the new labour government came to power in England, Lord Wavell affirmed that His Majesty's intention was to convene a Constitution-making body as soon as possible.

In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem. However, the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims. It forwarded the following proposals:

- There would be a Union of India, comprising both British India and states, and having jurisdiction over the subjects of foreign affairs, defence and communications. All residuary powers would belong to the provinces and the states.
- The Union should comprise an executive and a legislature having representatives from the provinces and states.

To explain the actual meaning of the clauses of the proposals of the Cabinet Mission, the British Government published the following statement on 6 December 1946: 'Should a Constitution come to be framed by the Constituent Assembly in which large section of the Indian population had not been represented? His Majesty' government would not consider imposing such a Constitution upon any restrictive part of the country.'

The British Government for the first time pondered over the likelihood of forming two constituent assemblies and two states. The Cabinet Mission recommended a basic framework for the Constitution and laid down a detailed procedure to be followed by the Constitution-making body. In the election for the 296 seats, the Congress won 208 seats including all the General seats except nine. The Muslim League won seventy-three seats.

With the Partition and Independence of the country on 14 and 15 August 1947, the Constituent Assembly of India was said to have become free from the fetters of the Cabinet Mission Plan. Following the acceptance of the plan of 3rd June, the members of the Muslim League from the Indian dominion also took their seats in the Assembly. The representatives of some of the Indian states had already entered the Assembly on 28 April 1947. By 15 August 1947, most of the states were represented in the Assembly

and the remaining states also sent their representatives in due course. The Constituent Assembly, thus, became a body to fully represent the states and provinces in India, free from external authority. It could change any law made by the British Parliament.

1.3.1 Composition of the Constituent Assembly

The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi. After India became independent, the Constituent Assembly became the Parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (lower house only), as per the scheme of the cabinet delegations. The prime features of the scheme were as follows:

- Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively. Due to this, the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of ninety-three seats.
- Each provincial seat was distributed amongst three major communities—Muslim, Sikh and General proportional to their respective population.
- Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- The selection method for Indian representatives had to be determined through consultation.

In all, the Constituent Assembly was to have 389 members but Muslim League boycotted the Assembly. Only 211 members attended its first meeting on 9 December 1946. Apart from that, the Partition Plan of 3 June 1947 gave rise to the setting up of a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North West Frontier Province, Baluchistan, and the Sylhet district of Assam had to join Pakistan. Due to this, on 31 October 1947, when the Constituent Assembly reassembled, the House membership was lessened to 299. Out of these, 284 members were actually present on 26 November 1949 and signed the Constitution to regard it as finally passed.

1.3.2 Committees to Draft a Constitution

The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution. Out of these, ten focused on procedural affairs and twelve on substantive affairs. The reports of these committees created the basis for the first draft of the Constitution.

Committees on Procedural Affairs

- The Steering Committee
- The Rules of Procedure Committee
- The House Committee
- The Hindi-translation Committee

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- The Urdu-translation Committee
- The Finance and Staff Committee
- Press Gallery Committee
- The Committee based on the Indian Independence Act of 1947
- The Order of Business Committee
- The Credential Committee

Committees on Substantial Affairs

- The Drafting Committee (Chairman: Dr B.R. Ambedkar)
- The Committee for negotiating with States (Chairman: Dr Rajendra Prasad)
- The Union Constitution Committee (Chairman: Pandit Jawaharlal Nehru)
- The Provincial Constitution Committee (Chairman: Sardar Patel)
- A Special Committee to examine the Draft Constitution (Chairman: Sir Alladi Krishnaswami Iyer)
- The Union Powers Committee (Chairman: Pandit Jawaharlal Nehru)
- The Committee on Fundamental Rights and Minorities (Chairman: Sardar Patel)
- The Committee on Chief Commissioners Provinces
- The Commission of Linguistic Provinces
- An Expert Committee on Financial Provisions
- Ad-hoc Committee on National Flag
- Ad-hoc Committee on the Supreme Court

During its entire sitting, the Constituent Assembly had eleven sessions and 165 days of actual work. After three years, the historic document, that is, the Constitution of free India was adopted by the Assembly on 26 November 1949. It came into force on 26 January 1950.

The draft Constitution had 315 Articles and thirteen Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules. This shows that the original draft had undergone considerable changes. In fact, there were over 7000 amendments which were proposed to be made in the Draft Constitution. Of these, 2473 were actually moved, debated and disposed of. It was indeed a great democratic exercise as discussion, debates and deliberation were encouraged. There was also a great tolerance of criticism. It was truly a full-fledged democratic procedure which helped in the making of the Constitution.

Check Your Progress

5. State any three objectives of the Cripps Mission?
6. What were the two main events responsible for the ratification of the Government of India Act, 1935?
7. When did the Constitution of free India come into effect?

1.4 SUMMARY

In this unit, you have learnt that:

- The making of the Indian Constitution was in progress even before the country attained independence in 1947. Indian nationalism took birth in the 19th century as a result of the conditions created by British rule.
- The first historical session of Indian Constituent Assembly held its meeting on 9 December 1946 under the chairmanship of Dr Sachidananda Sinha. On 11 December, it elected Dr Rajendra Prasad as its permanent president.

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- In the making of the Constitution, a very valuable role was played by the Drafting Committee. The Committee was constituted on 29 August 1947 with Dr B.R. Ambedkar as its chairman.
- The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework as well as the primary objectives for the various organs of the government.
- The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown. The Company's rule was, thus, terminated and the administration was carried out in the name of the Crown through the Secretary of the State.
- The Indian Council Act, 1861 introduced a representative institution in India for the first time. As per this Act, the executive council of the Governor-General was to comprise some Indians as non-official members for transactions of legislative business.
- The Indian Council Act of 1892 was known to have dealt entirely with the powers, functions and compositions of the legislative councils in India.
- The Indian Council Act, 1909 changed the name of the Central Legislative Council to the Imperial Legislative Council. The size of the Councils of provinces was enlarged by including non-officials members.
- The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand participation of the natives in the government of India. The Act embodied the reforms recommended in the joint report of Sir Edwin Montagu and Lord Chelmsford.
- The Indian Independence Act, 1947 was the legislation passed and enacted by the British parliament that officially announced the Independence of India and the Partition of India.
- On 13 December 1946, Pandit Jawaharlal Nehru laid down the Objectives Resolution of the Indian Constitution which depicted its ideology.
- In an all-party conference in Bombay on 19 May 1929, a committee was appointed under the chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India.
- After the outbreak of the second World War in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939.
- The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well.
- The salient principles of the proposed Constitution were outlined by various committees of the Assembly.
- The Constitution of free India was adopted by the Assembly on 26 November 1949. It came into force on 26 January 1950.

1.5 KEY TERMS

- **Proviso:** It is a condition attached to an agreement.
- **Interpellation:** It is a procedure of interrupting the order of the day by demanding an explanation from the concerned minister in a government.

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- **Bicameral:** It refers to having two branches, chambers, or houses in a legislative body.
- **Diarchy:** It is a government by two independent authorities.
- **Dominion:** It refers to the territory of a sovereign or government.
- **Legislature:** It is an officially elected body of persons vested with the power and responsibility to create, amend and revoke laws for a political unit, such as a state or nation.

1.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The two main phases of British rule in India are as follows:
   - The Company Rule until 1858
   - The Crown Rule during 1858–1947
2. Two main features of the Government of India Act, 1858 are as follows:
   - It made no provision for separation of functions. The entire authority for the governance of India — civil, military, executive and legislative was handed over to the Governor-General of the Council, who was accountable to the Secretary of the State.
   - The Secretary of the State had absolute control over the Indian administration.
3. The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India.
4. The Objectives Resolution of the Indian Constitution was unanimously adopted by the Constituent Assembly on 22 January 1947.
5. The three main objectives of the Cripps Mission were as follows:
   - The Constitution of India was to be framed by an elected Constituent Assembly of the Indian people.
   - The Constitution should give dominion status to India, that is, equal partnership of the British Commonwealth of Nations.
   - There should be an Indian Union, comprising all the provinces and Indian states.
6. The two main events responsible for the ratification of the Government of India Act, 1935 were the failure of the Simon Commission and the Third Round Table Conference.
7. The Constitution of free India came into effect on 26 January 1950.

1.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the Government of India Act, 1919 and the Government of India Act, 1935.
2. Trace the evolution of the Indian Council Act, 1892.

3. Briefly discuss the evolution of the Constituent Assembly.
4. List the Committees that were involved in the formation of the Indian Constitution.

Long-Answer Questions

1. Discuss the historical background of the Indian Constitution.
2. Assess the significance of the Indian Council Act, 1909.
3. State the ideology of the Indian Constitution. Have we been able to realize the expectations of our founding fathers of the Constitution? Justify.
4. Describe the composition of the Constituent Assembly.

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1.8 FURTHER READING

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UNIT 2 THE INDIAN CONSTITUTION

Structure

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2.0 INTRODUCTION

The philosophical and socio-economic dimensions of the governance of India are reflected in the Preamble to the country's Constitution and the Directive Principles of State Policy enshrined in it. The Preamble enunciates the great objectives, such as making India a socialist, republic, democratic and secular; and the socio-economic goals, such as providing social, economic and political justice to the citizens of India. The Preamble, in brief, explains the objectives of the Constitution in two ways: one, about the structure of the governance, and the other, about the ideals to be achieved in independent India. It is because of this that the Preamble is considered to be the key of the Constitution.

The Preamble embodies a distinct philosophy which regards the state as an organ to secure the welfare of the people. This concept of state is further strengthened by the Directive Principles of State Policy, which set out the economic, social and political goals of the Indian constitutional system. These directives confer certain non-justiciable rights on the people and place the government under an obligation to achieve and maximize social welfare through education, employment, and health. In consonance with the modern beliefs of man, the Indian Constitution sets up machinery to achieve the goal of economic democracy along with political democracy, for the latter would be meaningless without the former.

In this unit, you will study about the Preamble added to the Indian Constitution, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties.

2.1 UNIT OBJECTIVES

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After going through this unit, you will be able to:

- Discuss the salient features of the Preamble
- Explain the Fundamental Rights
- Discuss the Directive Principles of State Policy
- List the Fundamental Duties of the citizens of India

2.2 THE PREAMBLE

The Preamble to the Indian Constitution was formulated in the light of the Objectives Resolution, which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947. Also, the drafting committee of the Constituent Assembly, after a lot of deliberations, decided that the 'Preamble stands part of the Constitution'.

The Preamble to the Constitution of India reads as follows:

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

- JUSTICE, social, economic and political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and opportunity; and to promote them all;
- FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
- IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The words of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity. These objectives help us decode the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

Amendment to the Preamble

By Section 2 of the Constitution (Forty-second Amendment Act, 1976), two amendments were made in the Preamble.

- Instead of 'Sovereign Democratic Republic', India was declared 'Sovereign Socialist Secular Democratic Republic'
- For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.

Explanation of the Preamble

A careful study of the Preamble reveals the following points:

1. **Source of the Constitution:** The first and the last words of the Preamble, that is, 'We, the people of India'…….. 'adopt, enact and give to ourselves this

constitution' convey that the source of the Constitution is the people of India. The people have formulated their Constitution through the Constituent Assembly, which represented them.

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2. **Nature of the Indian political system:** The Preamble also discusses the nature of the Indian political system. The Indian polity is sovereign, socialist, secular, democratic and republic.
   (i) **Sovereign:** After the implementation of the Constitution on 26 January 1950, India became sovereign. It was no longer a dominion. Sovereignty means the absence of the external and the internal limitations of the state. It means that India has the supreme power to take its decision.
   (ii) **Socialist:** After the Forty-second Constitutional Amendment, the Constitution of India declares itself a socialist polity. A number of provisions in Part IV of the Constitution dealing with the Directive Principles of State Policy are intended to bring about a socialist order of society.
   (iii) **Secular:** Secularism is another aspect of the Indian polity, which was included by the forty-second Constitutional Amendment. It means that people have the right to follow their respective religion.
   (iv) **Democracy:** The Preamble declares India to be a democratic country. The term 'democratic' is comprehensive. In its broader sense, it comprises political, social and economic democracy. The term 'democratic' is used in this sense in the Preamble and calls upon the establishment of equality of status and opportunity.

   In a narrow political sense, it refers to the form of government, a representative and responsible system under which those who administer the affairs of the state are chosen by the electorate and are accountable to them.
   (v) **Republic:** Lastly, the Preamble declares India to be a republic. It means that the head of the state is elected and this position is not hereditary. The President of India, who is the head of the state, is elected by an electoral college consisting of members of federal and state legislatures.
3. **Objectives of the political system:** The Preamble proceeds further to define the objectives of the Indian political system. These objectives are: justice, liberty, equality and fraternity.
   (i) **Justice:** The term ' Justice' implies a harmonious reconciliation of individual conduct with the general welfare of the society. In the light of Objectives Resolution and the Preamble, the idea of socio-economic justice signifies three things:
      (a) The essence of socio-economic justice in a country can be valued only in terms of positive, material and substantive benefits to the working class in the form of services rendered by the state. Socio-economic justice, in the negative sense, means curtailment of the privileges of the fortunate few in the society, while positively, it suggests that the poor and the exploited have the rights and opportunities to rise to the highest stature in life.
      (b) Socio-economic justice is qualitatively higher than political justice.
      (c) The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the common man. Adult

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franchise would soon become a mockery if socio-economic justice is not encouraged. The objectives to secure justice for the citizens got concrete reflection in the provisions of Chapters III and IV, namely, the Fundamental Rights and Directive Principles.

(ii) **Liberty:** The term 'liberty' is used in the Preamble both in the positive and negative sense. In the positive sense, it means the creation of conditions that provide the essential ingredients necessary for the complete development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship.

In the negative sense, it means the absence of any arbitrary restraint on the freedom of the individual action.

(iii) **Equality:** Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality means that all human beings are equal in the eyes of the law irrespective of their caste, creed, religion and language.

(iv) **Fraternity:** Finally, the Preamble emphasizes the objective of fraternity in order to ensure both the dignity of the individual and the unity of the nation. 'Fraternity' means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions.

(v) **Dignity:** It is a word of moral and spiritual import and imposes a moral obligation on the part of the Union to respect the personality of the citizen and create conditions of work which will ensure self-respect.

The words 'unity and integrity' have been included to prevent tendencies of regionalism, provincialism, linguism, communalism and any other separatist activity so that the dream of national integration on the lines of the enlightened secularism is achieved.

2.2.1 Philosophy and Values Embodied in the Indian Constitution

Our Constitution is not just a mere set of fundamental laws that form the basis of governance of our country but it embodies and reflects certain basic values, philosophy and objectives that were held very dear to our founding fathers. These values do find expression in various articles and provisions of our Constitution and mostly, the Preamble to our Constitution embodies the fundamental values and the philosophy on which the Constitution is based.

The preamble provides a key to unlock and explore the spirit of our Constitution. Without it, a proper appreciation of the objectives and values that find place in our Constitution seems a remote possibility. Therefore, it is essential to turn to the various expressions contained in the Preamble for a better understanding and interpretation of the Indian Constitution. Recognizing its importance, the Preamble was amended in 1976 by the 42nd Constitution Amendment Act. According to an eminent Constitutional expert, Subhash C. Kashyap, the text of the Preamble stands for the fundamental constitutional values in which the founding fathers believed , which they wanted to foster among the people of the Republic and which, they hoped, would guide all those who, from generation to generation, were called upon to work. The values expressed in the Preamble are sovereignty, socialism, secularism, democracy, republican character, justice, liberty, equality, fraternity, human dignity and the unity and integrity of the Nation (all these points are discussed ahead in detail).

In addition to them, our Constitution promotes respect for diversity and minority rights, accommodates regional and political assertions through federalism and fosters international peace and cooperation.

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Before discussing the values that our Constitution upholds, and the objectives it has set to achieve, it is of relevance to discuss their correlation. Value in a layman's understanding is that which is very essential or worth having for its existence as an entity. In that sense, there are some core values and secondary values of each state. Security of one's territory is definitely a basic or mainstay value of every state; whereas 'promotion of cultural relations with other states' could be a lesser value. Objective means what we want to have or we wish to achieve. Here the same values could be the objectives. Thus, objectives and values appear similar since there is a very thin line of difference between the two. For example, social justice or a just society could be both an objective and a value. An objective, usually, is guided by a value. In other words, the objectives set, are directly or indirectly linked with or are drawn from values. There is an integral relationship between them. However, value deals with 'what' of the same thing whereas the objective is concerned with the 'how' of that. It means that translation of values is the concern of objectives. Sometimes a value may not be an immediate objective but that still exists. Promotion of international peace may belong to that category.

And finally, one finds a correlation between and among all the values; no value stands alone and so also the objectives. Each contributes to the other. Let us now discuss some of basic values and objectives that provide basis and direction to governmental policy decisions.

1. Sovereignty

By declaring us as a sovereign entity, Preamble emphasizes complete political freedom. It implies that our state is internally powerful and externally free and is free to determine for itself without any external interference. There is none within the state to challenge its authority. Only this attribute of sovereignty has made the a member in the comity of nations. Without sovereignty the state has no essence. If a state cannot freely determine what it wants and how to achieve it, it loses the rationale to exist. Further, sovereignty gives the state the dignity of existence. It would not receive respect from within as well from outside if it does not possess the sovereign status. This suggests that sovereignty is one of the most important values of a state. Therefore, the government is duty bound to defend its sovereignty by preventing any kind of threat to it coming from any entity and direction.

Though our Constitution does not specify where the sovereign authority lies but by mentioning the source of our Constitution as 'We the people of India' it announces to the world that the ultimate sovereignty rests with the people of India as a whole. Political sovereignty is the hinge of our polity. Accordingly, it is implied that the Constitutional authorities and organs of government derive their power only from the people. Therefore, our political system should ensure the support and approval of the people to it.

Article-51A(c), on the other hand, says that it shall be the duty of every citizen to uphold and protect the sovereignty, unity and integrity of India.

2. Socialism

The word 'socialist' was added to the Preamble by the 42nd Amendment Act of 1976. However, several articles of our Constitution were already there giving credence to the

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ideal. The fathers of our Constitution had a wider vision of social transformation. Despite all social, economic and political inequality present and inherent in Indian traditional society, our Constitution started a crusade against that order. The Constitution has deliberately imposed on us the ideal of socialist pattern of society, a kind of Indian model of socialism to suit our needs and temperament. It stands to end all forms of exploitation in all spheres of our existence. Our Constitution directs the state to ensure a planned and coordinated social advance in all fields while preventing concentration of wealth and power in few hands.

The Constitution of India supports land reforms, promotes the well-being of working class and advocates for social control of all important natural resources and means of production for the well-being of all sections. To ensure a basic minimum to all has been the crux of many of our public policies today. The Government of India has adopted mixed economy, introduced five year plans and has framed many such laws to achieve the value of socialism in a democratic set up. To achieve the objective of socialism Part-IV of our Constitution has outlined the principles to be followed.

3. Secularism

India is a home to almost all major religions in the world. To keep the followers of all these religions together, secularism has been found to be a convenient formula. The ideal of secularism in Indian context implies that our country is not guided by any religion or any religious considerations. However, our polity is not against religions. It allows all its citizens to profess, preach and practice any religion of their liking. Articles from 25 to 28 ensure freedom of religion to all its citizens. Constitution strictly prohibits any discrimination on the ground of religion. All minority communities are granted the right to conserve their distinctive culture and the right to administer their educational institutions. The Supreme Court in S.R Bommai v. Union of India held that secularism was an integral part of the basic structure of the Constitution. Secularism thus is a value in the sense that it supports to our plural society. It aims at promoting cohesion among different communities living in India. Despite the constitutional provisions and safeguards it is unfortunate that we still remain insufficiently secular. Secularism has remained a challenging objective.

4. Democracy

India is a democracy. We have adopted parliamentary democracy to ensure a responsible and stable government. As a form of government it derives its authority from the will of the people. The people elect the rulers of the country and the latter remain accountable to the people. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as 'one man one vote'. Elections are held periodically to ensure the approval of the people to the governments at different levels. All the citizens without any discrimination on the basis of caste, creed, colour, sex, religion or education are allowed freedom of speech, thought and expression and also association. Democracy contributes to stability in the society and it secures peaceful change of rulers. It allows dissent and encourages tolerance. It rules by persuasion, not by coercion. It stands for a constitutional government, rule of law, inalienable rights of citizens, independence of judiciary, free and fair elections and freedom of press, etc. Therefore, to develop a democratic political culture has been an important objective.

5. Republic

As opposed to a monarchy, our Constitution prefers to remain a republic. The office of the head of the state is elective. This idea strengthens and substantiates democracy that every citizen of India (barring some who are constitutionally disqualified) after attaining a particular age is equally eligible to become the head of the state if he is elected as such. Political equality is its chief message. Any sort of hereditary rule is thus regarded as a disvalue in India.

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6. Justice

Justice is called a total value. The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep rooted. Therefore, they stressed that the positive constructive aspect of political freedom has to be instrumental in the creation of a new social order, based on the doctrine of socio-economic justice. The message of socio-economic justice mentioned in the preamble to our Constitution has been translated into several articles enshrined in part-III and part-IV of the Constitution. A number of practical measures have been taken over the years to create more favourable social conditions for the millions of downtrodden. These include several developmental policies to safeguard minorities, backward, depressed and tribal people. Our constitution abolishes untouchability; prohibits exploitation of the women, children and the weak and advocates for reservation to raise the standard of the people. Whenever our government undertakes any developmental project, it always adds a human face to it. Therefore, this ideal of a just and egalitarian society remains as one of the foremost objectives.

7. Liberty

The blessings of freedom have been preserved and ensured to our citizens through a set of Fundamental Rights. It was well understood by the fathers of our Constitution that the ideal of democracy was unattainable without the presence of certain minimal rights which are essential for a free and civilized existence. Therefore, the Preamble mentions these essential individual rights such as freedom of thought, expression, belief, faith and worship which are assured to every member of the community against all the authorities of States by Part-III of the Constitution. There are however less number of success stories. Unless all dissenting voice is heard and tolerated and their problems are addressed liberty will be a distant dream.

8. Equality

Every citizen of India is entitled to equality before law and equal protection of law. As a human being everybody has a dignified self. To ensure its full enjoyment, inequality in all forms present in our social structure has been prohibited. Our Constitution assures equality of status and opportunity to every citizen for the development of the best in him. Political equality though given in terms of vote is not found in all spheres of politics and power. Equality before law, in order to be effective, requires some economic and education base or grounding. Equality substantiates democracy and justice. It is therefore held as an important value.

9. Fraternity

Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided. Therefore, to give meaning to all the ideals like justice,

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liberty and equality, our Constitution gives ample stress on fraternity. Democracy has been given the responsibility to generate this spirit of brotherhood amongst all sections of people. This has been a foremost objective to achieve in a country composed of so many races, religions, languages and cultures. Article-51A(e) therefore, declares it as a duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. Article 51A(f) further asks each citizen to value and preserve the rich heritage of our composite culture. However, Justice D.D. Basu believes that, 'Fraternity will be achieved not only by abolishing untouchability amongst the different sects of the same community, but by abolishing all communal or sectional or even local or provincial anti-social feelings which stand in the way of unity of India.'

10. Dignity of the individual

Fraternity and dignity of the individuals have a close link. Fraternity is only achievable when the dignity of the individual is secured and promoted. Therefore, the founding fathers of our Constitution attached supreme importance to it. Our Constitution therefore, directs the state through the Directives enshrined in the Part-IV of our Constitution to ensure the development of the quality of life to all sections of people. Our Constitution acknowledges that all citizens, men and women equally, have the right to an adequate means of livelihood (Art.-39 a) and just and humane conditions of work (Art.-42). Article-17 has abolished the practice of untouchability by declaring it as a punishable offence. Our Constitution too directs the state to take steps to put an end to exploitation and poverty.

11. Unity and integrity of the Nation

To maintain the independence of the country intact and enduring, unity and integrity of the nation is very essential. Therefore, the stress has been given on the ideal of fraternity which would foster unity amongst the inhabitants. Without a spirit of brotherhood amongst the people, the ideals of unity and integration of people and nation seem unattainable. Our Constitution expects from all the citizens of India to uphold and protect the unity and integrity of India as a matter of duty.

12. International peace and a just international order

Indian Constitution directs the state to make endeavour to promote international peace and security; maintain just and honourable relations between nations; and 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. Thus India too cherishes the ideal of universal brotherhood beyond our national border. These provisions enshrined in Article 51 of the Indian Constitution have been a beacon light that provides a ray of hope for saving the world from the impending nuclear and environmental catastrophe. To fulfill these objectives India had provided leadership during the heydays of colonialism and also during Cold War. In a changed world scenario characterized by globalization, proliferation of the weapons of mass destruction, climate change and international terrorism, India has been making a constant bid for a permanent seat in the Security Council of the United Nations to provide direction to these world issues.

13. Fundamental Duties

Our Constitution too prescribes some duties to be performed by the citizens. All these duties though not enforceable in nature but reflect some basic values too. It highlights values like patriotism, nationalism, humanism, environmentalism, discipline, harmonious living, feminism, scientific temper and inquiry and individual and collective excellence. Article 51A provides a long list of these duties to be observed by all the citizens (discussed ahead in the unit in detail).

The above account shows how our Constitution is a value loaded document.

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2.3 FUNDAMENTAL RIGHTS

The Constitution of India contained seven fundamental rights originally. But the Right to Property was repealed in 1978 by the Forty-fourth Constitutional Amendment bill during the rule of the Janata Party. These fundamental rights constitute the soul of the Constitution and thereby provides it a dimension of permanence. These rights enjoy an esteemed position as all legislations have to conform to the provisions of Part III of the Constitution. Not only this, its remarkable feature is that these rights encompass all those rights which human ingenuity has found to be essential for the development and growth of human beings.

The Constitution classifies fundamental rights into six categories:

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 23–24)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to constitutional remedies (Article 32)

2.3.1 Right to Equality (Articles 14–18)

Article 14 declares that the state shall not deny any person the equality before the law or the equal protection of laws within the territory of India. As interpreted by the courts, it means that though the State shall not deny to any person equality before law or the equal protection of law, it shall have the right to classify citizens, provided that such a classification is rational and is related to the object sought to be achieved by the law.

(i) Equality before law: Equality before law does not mean an absolute equality of men which is a physical impossibility. It means the absence of special privileges on grounds of birth, creed or the like in favour of any individual. It also states that individuals are equally subjected to the ordinary laws of the land.

(ii) Equal protection of laws: This clause has been taken verbatim from the fourteenth amendment to the American Constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not mean that every law must have a universal application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money)

Check Your Progress

1. Mention the two significant amendments made to the Preamble of the Indian Constitution.
2. What does the term 'liberty' used in the Preamble to the Indian Constitution denote?
3. Who according to the Preamble has constituted the Indian Constitution?

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in the same position as others. Varying needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be violative of equal protection. The Constitution, however, does not stand for absolute equality. The state may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have the same nature, attainments, qualifications or circumstances. It means that the state is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

(iii) Prohibition of discrimination (Article 15)

Article 15(1) prohibits discrimination on certain grounds. It declares, 'The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them.' This discrimination is prohibited with regard to '(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public'. Article 15 has, however, two notable exceptions in its application. The first of these permits the state to make special provision for the benefit of women and children. The second allows the state to make a special provision for the advancement of any socially and educationally backward class of citizens or for scheduled castes and scheduled tribes. The special treatment meted out to women and children is in the larger and long-term interest of the community itself. The second exception was not in the original Constitution, but was later on added to it as a result of the first amendment of the Constitution in 1951. While freedom contained in Article 14 is available to all persons, that in Article15 is available only to the citizens and, therefore, it cannot be invoked by non-citizens.

Article 15(2) proclaims that no citizen shall, on grounds only of religion, race, casts, sex and place of birth be subject to any disability, liability, restriction or condition with regard to:

- Access to shops, public restaurants, hotels and places of public entertainment
- Use of wells, tanks, bathing-ghats, roads and places of public resort, maintained wholly or partly out of state funds or dedicated to the use of the general public

The prohibition in this clause is levelled not only against the state but also against private persons.

Article 15(3) provides that the state shall be free to make any special provision for women and children. This sub-article is in the nature of an exception in favour of women and children. Thus, the provision of free education for children up to a certain age or the provision of special maternity leave for women workers is not discrimination. However, discrimination in favour of women in respect of political rights is not justified, as women are not regarded as a backward class in comparison to men for special political representation.

Article 15(4) allows the state to make special provision for the advancement of any socially and educationally backward classes of citizens, including the scheduled castes and the scheduled tribes. The state is, therefore, free to reserve seats for them in the legislature and the services. This Article only allows the state to make special provisions for these classes. Inserted under Ninety-third Constitutional Amendment Act, this clause

conferred on the state the power to make any special provision by law for the advancement of any socially and educationally backward class or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions.

(iv) Equality of opportunity (Article 16)

Article 16(1) reads: 'There shall be equality of opportunity for all citizens in matters relating to employment to any office under the State.' It confers on every citizen, a right to equality of economic opportunity, and subsequently provides that no citizen shall be discriminated against in this respect on grounds only of religion, race, caste, descent, place of birth or any of them. However, an equality of opportunity is only between equals, that is, between persons who are either seeking the same employment or have obtained the same employment. In other words, equality means equality between members of the same class or employees, and not between members of different classes.

Article 16 (2) reads: 'No citizen shall, on grounds only of religion, race, caste, sex, descent, place or birth, residence or any one of them be ineligible for or discriminated against in respect of any employment or office under the State.'

Article 16 (3) says that the President is competent to allow states to make residency as a necessary qualification in certain services for ensuring efficiency of work.

Article 16 (4) allows the state to reserve appointments in favour of backward class of citizens which in its opinion is not adequately represented in the services under the State. The Supreme Court had held that such reservation should generally be less then 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats, member of backward classes are free to compete with others and be appointed to non-reserved seats, if otherwise, they are eligible on merit.

Article 16 (5) allows the State to provide that in case of appointment to religious offices, or offices in religious institutions, the candidates shall possess such additional qualifications or be members of that religious institution. This is an exception to the general rule that the State shall not discriminate on ground of religion in providing equal economic opportunities to the citizens.

Although Article 16 guarantees equality of opportunity in matters of public employment, for all citizens and is expected to provide a bulwark against considerations of caste, community and religion, the result so far has been far from satisfactory.

(v) Social equality by abolition of untouchability (Article 17)

Complete abolition of untouchability was one of the items in Mahatma Gandhi's programme for social reform. The present article adopts the Gandhian ideal without any qualification in abolishing untouchability and in forbidding its practice. It also declares that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament has enacted the Untouchability Offences Act, 1955, which was later amended in 1976. It prescribes punishment for the practice of untouchability, in any form, up to a fine of ₹500 or an imprisonment of six months or both, depending upon the seriousness of the crime.

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(vi) Social equality by abolition of titles (Article 18)

Article 18 is a radical application of the principle of equality it seeks to prevent the power of the state to confer titles from being abused or misused for corrupting the public life, by creating unnecessary class divisions in the society. The object of the Article is to prevent the growth of any nobility in India. Creation of privileged classes is contrary to the equality of status promised to all citizens by the Preamble to the Constitution.

Article 18(1) declares: 'No title, not being a military or academic distinction shall be conferred by the State'. It means that no authority in India is competent to confer any title on any person, excepting the academic title, or military titles of general, Major or Captain. Article 18(2) prohibits the citizens of India from receiving any title from any foreign state. This is an absolute bar. One the other hand, Article 18(3) prohibits the citizens from accepting any title from any foreign state without the consent of the President of India, if and so long they are holding any office of profit or trust under the state. Also, Article 18(4) prohibits both the citizens and aliens, who are holding any office of profit or trust under the state from accepting any present, emolument or office of any kind, from or under any foreign state.

Article 18, however, does not prohibit the institutions other than the state from conferring titles of honours by way of honouring their leaders or men of merit.

2.3.2 Right to Freedom (Articles 19–22)

In this section we will discuss Articles 19, 20, 21 and 22.

1. Article 19

Article 19 of the Constitution guarantees civil freedoms to the citizens as a matter of their right. Included in Clause 1 of Article 19, these freedoms are as follows:

- Right to Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India
- Right to practice any profession, or to carry on any occupation, trade or business

These freedoms are discussed under the following heads:

(i) Right to freedom of speech and expression

The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose falsehood. Freedom of speech and expression lie at the foundation of all democratic organizations, for without political discussion, no political education is possible.

Freedom of expression in this clause means right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. Thus, it includes not only the freedom of press but also the expression of one's ideas in any other form. Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to constitutional and statutory provisions.

'Reasonable' restrictions on freedom of speech

As amended by the First and the Sixteenth Amendment Acts, Clause 2 of Article 19(1)(a) entitles the state to impose 'reasonable' restrictions on the freedom of speech on any one or more of the following grounds:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

These reasonable restrictions to the freedom of speech have been subject to much criticism since its inception. It is argued that words like 'public order' and 'decency' or 'morality' are deliberately made vague through amendments to the Constitution to allow the state to suppress dissent. On the other hand, it could also be argued that in a state as diverse as India, where people's sentiments run high, such restrictions are necessary to maintain public order. While one can argue the merits of reasonable restrictions relating to public order, there can be no argument on the unreasonableness of restricting freedom of speech in relation to 'relations with foreign states'. Such a restriction theoretically puts curbs on citizens of the country from criticizing the foreign policy of the Indian state, which is the democratic right of citizens.

(ii) Right to assemble peacefully and without arms

Article 19 (1)(b) guarantees to every citizen the right to assemble peacefully and without arms. This right is subject to the following limitations:

- Assembly must be peaceful
- Assembly must be unarmed
- It must not be in violation of public order

(iii) Right to form association and unions [Articles 19 (1) and (4)]

Article 19(1)(c) guarantees to all citizens the right to form associations and unions, the formation of which is vital to democracy. If free discussion is essential to democracy, no less essential is the freedom to form political parties to discuss questions of public importance. They are essential as much as they present to the government alternative solutions to political problems. Freedom of association is necessary not only for political purpose but also for the maintenance and enjoyment of the other rights conferred by the Constitution.

In short, the freedom of association includes the right to form an association for any lawful purpose. It also includes the right to form trade union with the object of negotiating better conditions of service for the employees.

Clause 4 of Article 19 empowers the state to make reasonable restrictions upon this right on grounds only of:

- Sovereignty and integrity of India
- Public order
- Morality

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(iv) Right to move freely throughout the territory of India

Articles 19(1)(d) and (e) guarantee to all citizens the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. These freedoms are aimed at the removal of all hindrances in the enjoyment of these rights.

The freedom of movement of a citizen has three aspects:

- Freedom to move from any part of his country to any other part
- Freedom to move out of his country
- Freedom to return to his country from abroad

The second of these provisions is not guaranteed by our Constitution as a fundamental right and has been left to be determined by the Parliament.

Freedom of movement and residence is subject to restrictions only on the following grounds:

- In the interest of any scheduled tribes
- In the interest of the general public, that is, public order morality and health

(v) Right to practice any profession, or to carry on any occupation, trade or business

Article 19(1)(f) guarantees to all citizens right to practice any profession or to carry on any occupation, trade or business. The freedom of profession, trade or business means that every citizen has the right to choose his own employment, or take up any trade, subject only to the limitations mentioned in Clause (6).

The right is subject to reasonable restrictions, which may be imposed by the state in the interest of general public. The state may prescribe professional or technical qualifications necessary for carrying on any business, trade or occupation. It also has the right itself, or through a corporation, to carry on any occupation, trade or business to the complete or partial exclusion of private citizens.

2. Protection in criminal convictions (Article 20)

Article 20 (1) declares that 'a person cannot be convicted for an offence that was not a violation of law in force at the time of the commission of the act, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.' Clause 2 declares: 'No person shall be prosecuted and punished for the same offence more than once.' And, Clause 3 says that 'no person accused of any offence shall be compelled to be a witness against himself.'

3. Right to life and personal liberty (Article 21)

Article 21 says that no person shall be deprived of his life or personal liberty, except according to procedure established by law. The object of this article is to serve as a restraint upon the executive, so that it may not proceed against the life or personal liberty of the individual, except under the authority of some law and in conformity with the procedure laid down therein. This article can be invoked only if a person is detained by or under the authority of the state.

Furthermore, the Supreme Court on various occasions ruled that the expression 'life' in Article 21 does not connote merely physical or animal existence, but includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life.

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Right to Information

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. The concerned bill, however, was introduced in the Parliament as Freedom on Information Bill, 2002 which along with certain restrictions made it mandatory for the government to provide information pertaining to public sphere. This right of information was further illustrated by the Supreme Court, which held that 'a voter has a fundamental right to know the antecedents of a candidate'. Accordingly, Supreme Court struck down some parts of Representation of People (Amendment) Act, 2002 by making a clear distinction between the constitutional right of a voter and his rights under general laws. The court declared that voter's fundamental right to know the antecedents of a candidate is independent of statutory right under election law.

Right to Education (Article 21(a))

Under Eighty-sixth Amendment Act 2002, right to education was provided. For the purpose, a new Article in Part III was inserted and two Articles in Part IV were amended. The newly inserted Article 21(a) declared that 'The state shall provide free compulsory education to all children of the age of 6–14 years in such manner as the state may, by law, determine.'

4. Protection against arrest and detention (Article 22)

Article 22 has two parts: Part I consists of Clauses 1 and 2, and deals with the rights of persons arrested under the ordinary criminal law. Part II consists of Clauses 3–7 and deals with the right of persons who are detained under the law of preventive detention.

Clauses 1 and 2 of this article recognize the following rights of the persons arrested under ordinary criminal law:

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move the high court, for the grant of the writ of habeas corpus.
- The second protection granted by clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge, nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within twenty-four hours of his arrest, excluding the time necessary for journey from the place of arrest to the court of the magistrate.

Preventive detention

Clause 3 of Article 22 constitutes an exception to clauses 1 and 2. The result is that enemy-aliens (that is, foreigners belonging to the courtiers which are the enemies of the state) and other persons who are detained under the law of preventive detention have neither the right to consult nor to be defended by a legal practitioner.

Clause 4 requires that a person may be detained under the Preventive Detention Act for three months. If a person is to be detained for more than three months, it can only be done in the following cases:

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- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within ten weeks from the date of detention; and
- Where the person is detained under law made by the Parliament for this clause 5 considers two things, namely:
  (a) That the detainee should be supplied with the grounds of the order of detention; and
  (b) That he should be provided with the opportunity of making representation against that order to the detaining authority for the consideration of the Advisory Board.

Clause 6 declares that the detainee cannot insist for the supply of all the facts, which means evidence and which the government may not consider in public interest. In this context, the Supreme Court has held that an order of detention is mala fide, if it is made for a purpose other than what has been permitted by the legislature.

Clause 7 of this article gives exclusive power to the Parliament to prescribe:

- The circumstances under which and the cases in which a person may be detained for more than three months without obtaining the opinion of the an Advisory Board.
- The period of such detention (which it has determined to be not more than twelve months); and
- The procedure to be followed by an Advisory Board.

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended seven times, each for a period of three years. The revival of anarchist forces obliged parliament to enact a new Act, named The Maintenance of Internal Security Act (MISA) in 1971, having provision broadly similar to those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPOSA still remains in force. Further, in 1980, National Security Act (NSA) was enacted. According to the NSA, the maximum period for which a person may be detained shall be six months from the date of detention. Next in the series was Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the Government to enact The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, which, in fact, empowered the executive for suppression of all kind of dissent and was widely criticized for being undemocratic. In wake of intensified terrorist activities in many parts of the country, Vajpayee government was compelled with yet another enactment in 2002, named as Prevention of Terrorism Act (POTA), which has been criticized for its probable misuse.

2.3.3 Right against Exploitation (Articles 23–24)

Clause 1 of Article 23 prohibits traffic of human beings, begars and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law. In this context, 'traffic in human beings,' includes the institutions

of slavery and prostitution. 'Begar' means involuntary or forced work without payment, for example, tenants being required to render certain free services to their landlords.

Under Clause 2 of this article, the state has been allowed to require compulsory service for public purposes, namely, national defiance, removal of illiteracy or the smooth running of public utility services like water, electricity, postage, rail and air services. In matters like this, the interests of the community are directly and vitally concerned and if the government did not have this power, the entire life would come to a standstill. In making any service compulsory for public purposes, the state has, however, been debarred from making discrimination on grounds only of religion, race, caste, class or any of them.

Article 24 provides that 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. Our Constitution goes in advance of the American Constitution in laying down a constitutional prohibition against employment of children below the age of fourteen in factories, mines or other difficult employments, for example, railways or transport services. Our Parliament has passed necessary legislation and made it a punishable offence.

2.3.4 Right to Freedom of Religion (Articles 25–28)

In pursuance of the goal of liberty of belief, faith and worship enshrined in the Preamble to the Constitution, Articles 25–28 underline the secular aspects of the Indian state.

Article 25(1) grants to all persons the freedom of conscience, and the right to freely profess, practice and propagate religion. This article secures to every person, a freedom not only to subscribe to the religion of his choice, but also to execute his belief in such outward acts as he thinks proper. He is also free to propagate his ideas to others.

Clause 2 of this Article allows the state to make law for the purpose of regulating economic, financial or other activities of the religious institutions. At the same time, it allows the state to provide from, and carry on social welfare programmes, especially by throwing open the Hindu religious institutions of a public character to all classes and sections of Hindus, including the Sikhs, the Jains and the Buddhists.

The Parliament enacted the Untouchability Offences Act, 1955, which prescribes punishment for enforcing religious disabilities on any Hindu simply because he belongs to a low caste. The purpose of this reform is to overcome the evils of the Hindu religion.

Explanation 1 to Article 25 declares that the warring or carrying of kirpan (sword) by the Sikhs shall be deemed to be included in the profession of Sikh religion. Constitutional expert, Basu points out that this right is granted subject to the condition that no Sikh will carry more than one sword without obtaining licence.

Article 26 guarantees to every religious denomination the following rights:

- To establish and maintain institutions for religious and charitable purpose
- To manage its own affairs in matters of religion
- To own and acquire movable and immovable property; and
- To administer such property in accordance with law

While rights guaranteed by Article 25 are available only to the individuals and not to their groups, those under Article 26 are conferred on religious institutions and not on individuals. In this article, religious denomination means a religious sect or body having a common faith and organization and designated by a distinctive name. This was the definition accepted by the Supreme Court. This article grants to a religious denomination

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complete autonomy in deciding what rites and ceremonies were essential according to the tenets of a religion. No outside authority has any jurisdiction to interfere in its decisions in such matters.

Article 27 declares that 'No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination'.

This article secures that the public funds raised by taxes shall not be utilized for the benefit of any particular religion or religious denomination. Thus, a local authority which raises taxes from persons of all communities who reside within its jurisdiction would not be entitled to give aid to those educational institutions which provide instructions relating to any particular religion. In other words, an educational institution, which provides compulsory instructions relating to a particular religion is not entitled to any financial aid from the state.

Article 28 is confined to educational institutions, maintained, aided or recognized by the state. Clause 1 of this article relates to educational institutions wholly maintained out of the state funds. It completely bans imparting religious instructions in such institutions. Clause 2 relates to educational institutions which are administered by the state under some endowment or trust, like the Banaras Hindu University. In such institutions, religious instructions may be given.

2.3.5 Cultural and Educational Rights (Articles 29–30)

The object of Article 29 is to give protection to the religious and linguistic minorities. Clause 1 of Article 29 declares that any section of the Indian citizens, having a distinct language, script or culture of its own, shall have the right to conserve the same. The right to conserve or protect a language includes the right to agitate for the protection of that language. It also means that every minority group shall have the right to impart instructions to the children of their own community in their own languages.

Clause 2 of Article 29 is a counterpart of Article 15. It says that there should be no discrimination against children on grounds only of religion, race, caste or language, in the matters of admission into any educational institution maintained or aided by the state. Thus, this clause gives to an aggrieved minority of citizens the protection in matters of admission to educational institutions against discrimination on any of these grounds. The persons belonging to scheduled castes or tribes are in any case to be given special protection in matters of admission to educational institutions.

The Supreme Court observed that preference in admission given by institutions, established and administered by minority community, to candidates belonging to their own community in their institutions on grounds of religion alone is violation of Article 29(2). Minorities are not entitled to establish and administer educational institutions for their exclusive benefit.

Clause 1 of Article 30 is a counterpart of Article 26, and guarantees the right to all linguistic or religious minorities to establish and administer educational institutions of their choice. It entitles the minority community to impart instructions to the children of their community in their own language.

The right to establish educational institutions of their choice amounts to the establishment of the institutions which will serve the needs of the minority community, whether linguistic or religious. When such institutions are established and seek aid from the state, it cannot be denied to them simply on the ground that they are under the management of a linguistic or religious minority.

2.3.6 Right to Constitutional Remedies (Articles 32–35)

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A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state high courts under Article 226. An individual who complaints the violation of his fundamental rights can move the Supreme Court or the state high court for the restoration of his fundamental rights.

Article 32(1) declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights included in Part III of the Constitution is guaranteed. Clause 1, thus, guarantees the right to move the Supreme Court for the enforcement of fundamental rights. In other words, the right to move the Supreme Court for the violation of fundamental rights is itself a fundamental right.

Article 32(2) empowers the Supreme Court to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto or certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights.

(i) Habeas corpus: The writ of habeas corpus literally means 'have the body'. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention. Thus, habeas corpus is the citizen's guarantee against arbitrary arrest or detention. By virtue of this writ, the Supreme Court or the high court can have any detained person produced before it for examining whether he has been lawfully detained or not, and for dealing with the case in accordance with the Constitution and the laws in force at that time.

(ii) Mandamus: The writ of mandamus means 'we command'. It is an order directing person, or body, to do his legal duty. It lies against a person, holding a public office or a corporation or an inferior court, for it is to ask them to perform their legal duties. They are under legal obligation not to act contrary to law, without the authority of law, or in excess of authority conferred by law. As such, mandamus is available in the following cases:

- To compel the performance of obligatory duties imposed by law; and
- To restrain action which is taken without the authority of law, contrary to law, in excess of law

(iii) Certiorari: The writ of certiorari means 'to be more fully informed of'. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it. It lies not only against the inferior courts but also to any person, body or authority, having the duty to act judicially. It may be issued to the Union government, the state governments, municipalities or other local bodies, universities, statutory bodies, the individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights, because these rights are available only against the state.

(iv) Prohibition: The writ of prohibition is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. It is generally issued to transfer a case from a lower to a higher court. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom proceedings have been taken can move the superior court for the writ of prohibition. If the request is guaranteed by the superior court, the interior court is stopped from continuing the

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proceedings in that case, and the case is transferred to another court to secure justice.

(v) Quo warranto: The writ of quo warranto is issued to stop the irregular and unlawful assumption of any public position by any person. Through this writ, the courts may grant an injunction to restrain a person from acting in any office to which he is not entitled, and may also declare the office vacant.

Article 32(3) provides that, without prejudice to the powers conferred on the Supreme Court by Articles 32(1) and (2), the Parliament may by law empower any court to issue these writs for the purpose of the enforcement of the fundamental rights.

Article 32(4) provides that fundamental rights guaranteed by Article 32(1) shall not be suspended except as otherwise provided by this Constitution.

2.4 DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy, Part IV of the Constitution of India, constitute directions given to the central and state governments for the establishment of a just society. They commit the state to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality.

Article 31C, added by the Twenty-fifth Amendment Act of 1971, upgraded the Directive Principles so that if the government made laws to give effect to the Directive Principles over Fundamental Rights, they would remain valid. In case of a conflict between Fundamental Rights and Directive Principles, if the latter aimed at promoting larger interest of the society, the courts would have to uphold the case in favour of Directive Principles. It is clearly stated in Article 37 that the provisions contained in the Directive Principles is not enforceable in any court of law, but the principles therein laid down are nevertheless fundamental in the governance of the country and it would be the duty of the State to apply these principles in making laws.

(I) Economic and Social Principles

Directive Principles relating to the economic and social sphere are as follows:

1. **Article 39** states that:

The state shall, in particular, direct its policy towards securing that:

(a) The citizens, men and women equally, have the right to an adequate means of livelihood.

(b) The ownership and control of the material resources of the community are so distributed as best to subserve the common good.

(c) The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

(d) There is equal pay for equal work for both men and women.

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.

(f) Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Check Your Progress

4. State the fundamental rights identified by the Indian Constitution.
5. Define habeas corpus.
6. What does the Right to Education provide?

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2. **Article 39A** states that:

The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, 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.

3. **Article 41** states that:

The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases as such that might be considered necessary.

4. **Article 42** states that:

The state shall make provision for securing just and humane conditions of work and for maternity relief.

5. **Article 43** states that:

The state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

6. **Article 43A** states that:

The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

7. **Article 44** states that:

The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

8. **Article 45** states that:

The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

This stand was substituted by the Constitution—Eighty-sixth Amendment Act, 2002, which stated that the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

9. **Article 46** states that:

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 castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

(II) Gandhian Principles

Directive Principles relating Gandhian principles include the following:

1. **Article 40** states that:

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.

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2. **Article 47** states that:

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

3. **Article 48** states that:

The state shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

4. **Article 48A** states that:

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

(III) Cultural Principles

Directive Principles relating to the cultural sphere are as follows:

Article 49 states that:

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 the Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

(IV) Directive Principles Related to Foreign Affairs

Article 51 states that:

The state shall endeavour to:

(a) Promote international peace and security

(b) Maintain just and honourable relations among nations

(c) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another

(d) Encourage settlement of international disputes by arbitration

Defending the adoption of the Directive Principles of State Policy in the Indian Constitution, Dr Ambedkar stated:

> In the Draft Constitution the Fundamental Rights are followed by what are called 'Directive Principles'. It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words. If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

2.4.1 Reaffirmation of Ideology of Egalitarianism

Put together, the Preamble to the Constitution and the Directive Principles of State Policy comprised the ideology of egalitarianism, that is, the rulers of independent India committed themselves to bring about political, economic and social equality and bring to

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an end the age-old sufferings of the people. The State (that is the governments at the Centre and in the states) was required to follow these principles in the determination of its policies and executive actions. It was, however, worth noting that the Directive Principles could not be enforced in the way the Fundamental Rights could be enforced by the Supreme Court and the High Courts. The reason for this was that even though the framers of the Constitution were sincere and enthusiastic about egalitarianism they were fully conscious of the limitations of the future rulers of the country, particularly the limitations of scant financial resources, widespread illiteracy and fast-increasing population. Had they made the Directive Principles enforceable by the courts, the State would have become involved in endless litigation. Devotion to the egalitarian credo was, nevertheless, affirmed time and again in the successive Five Year Plans, that spelt out goals for development, the egalitarian ideology was prominent. At its 1955 session at Avadi (January 21–23) the Congress Party adopted a resolution on economic policy, and realised what became known as 'socialist pattern of society.' At the Government's initiative the Lok Sabha adopted, in 1956, a resolution recommending that 'appropriate measures be taken in order to reduce the disparity in income within society.' The Avadi resolution on economic policy was reiterated at the Bhubaneshwar session in January 1964.

After the assumption of Prime Ministerial office by Mrs Indira Gandhi on 24 January 1966, the concept of socio-economic justice and equality was stressed every now and then. On the eve of the mid-term poll for the Lok Sabha, held in March 1971, Mrs Gandhi coined a new slogan *garibi hatao,* and on the occasion of fifth General Election to state Assemblies, in March 1972, she came out with another, *'annyaya hatao'* (remove injustice). All political parties and their leaders reiterated time and again their commitment to the gospel of egalitarianism, and the implementation of the equalization ideal became an instrument of both policy and faith for them.

Specific measures to implement directive principles almost from the very inauguration of the Indian Republic (on 26 January 1950), the Government authorities at the Centre and in the states took steps to implement the Directive Principles. On 28 February, the then Union Finance Minister, Dr John Matthai, announced that the Government had decided to set up a Planning Commission so that the development of the country could be taken up in a planned manner. The central objective of planning was declared to be the raising of the standard of living and opening to the people new opportunities for a richer and more varied life. The aim of the first-Five Year Plan was to use more effectively the available human and material, resources, so as to obtain from them a larger output of goods and services and to reduce inequalities of wealth, income and opportunity. The Plan envisaged a substantial increase in the volume of employment through the expansion of irrigation, power, basic industries, transport and other resources. The objectives of the successive Plans were laid down almost on the same lines, that is, in the direction of socio-economic justice and equality.

In order to implement Article 39, a series of Acts were passed from time to time. Some of these were: Employees State Insurance Act, Minimum Wages Act, Workmen's Compensation Act, Wealth Tax Act, Gift Tax Act, and Estate Duty Act. In order to reduce disparities in income the Fundamental Right to property was amended several times. A number of industrial products and specialized services, that were considered vital to economic development, were brought under public sector. In 1969, fourteen top commercial banks of the country were nationalized. In 1956, the life insurance, and in 1971 the general insurance companies were nationalized. The same year Privy Purses and Special Privileges of the Princes were abolished. These and a few other measures were taken so that the financial resources could be utilized for promoting common good.

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The responsibility for land reforms and their implementation was, under the Constitution, primarily the responsibility of the states, and in the discharge of this responsibility the legislatures of almost all the states and Union Territories passed Acts for the abolition of intermediaries like *zamindars*, jagirs and *inams.* Laws were also passed to fix ceiling on land holdings, and the surplus land acquired from land-owners was distributed among the landless. More than three crores of farmers became the owners of land. Huge areas of cultivable wastelands were distributed among landless labourers and were brought under cultivation. In many states, tenants were made secure over the lands they cultivated and they could not be ejected before a fixed period. Consolidation of land holdings was taken up and completed in several states such as Uttar Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Delhi, Mysore and Himachal Pradesh. The National Cooperative Farming Advisory Board prepared several plans and promoted the programme of cooperative farming. In order to bring about the integrated development of rural India, covering social, cultural and economic aspects, Community Development Programmes were launched on 2 October 1952 in 55 selected projects each project covering an area of about 1,300 sq kms, about 300 villages and a population of about 2 lakhs. By 1969, the entire country was covered by 5,265 Community Development blocks. A Consultative Council on Community Development was constituted under the chairmanship of the Union Minister of Food and Agriculture to establish coordination between the Union Government and state Ministers, in charge of Community Development.

In January 1985, the National Development Council recommended that in order to bring about the development of rural areas there should be devolution of power and decentralization of machinery for the exercise of such power, and that such a machinery should be controlled and directed by popular representatives of the local area. In pursuance of this recommendation panchayat raj was established with a three-tier structure of local self-governing bodies at the village, block and district, levels. Specific powers and functions were assigned to these institutions in the field of development and local administration. Almost the entire country was covered by the panchayati raj.

In order to organize agriculture on modern and scientific lines, as enjoined in Article 48 of the Constitution, a number of projects were launched with the purpose of better utilization of river waters for irrigation, for generating electricity and power and for flood control. Some of these were Nagarjunasagar Project (Andhra Pradesh), Tungabhadra Project (Andhra Pradesh and Mysore), Gandak Project (Bihar and Uttar Pradesh), Kosi Project (Bihar), Chafnbal Project (Madhya Pradesh and Rajasthan), Hirakud Dam Project (Orissa), Bhakra Nangal Project (Punjab, Haryana and Rajasthan), Farakka Project (West Bengal) and Damodar Valley Corporation (West Bengal and Bihar). Several factories were set up for the manufacture of chemical fertilisers. In 1969, the Seeds Act was passed, and the National Seeds Corporation supplied seeds of high yielding variety of different crops, including vegetables, to the farmers throughout the country. Plant protection and locust control programmes were undertaken. The Indian Council of Agricultural Research and several agricultural universities were set up in the country for promoting research and training in new methods of farming and animal husbandry. The Market Research and Survey Wing of the Directorate of Marketing and Inspection carried out surveys for important agricultural, horticultural and livestock commodities. Intensive cattle development projects and poultry farming were developed on a commercial scale. Programmes of sheep and fisheries development were undertaken.

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Although health programmes were primarily the responsibility of the states, the Union Government, in order to implement the principles laid down in Article 47, sponsored and supported major schemes for improving the standard of health of the nation. During the period of the four Five Year Plans, ₹1,050 crores were spent, on promoting medical education and research, establishing primary health centres, controlling communicable diseases, promoting indigenous systems of medicine and on setting up hospitals and dispensaries. Special programmes were launched for eradicating malaria, filaria, tuberculosis, leprosy, venereal diseases, small pox and cancer.

In 1960, Parliament passed the Children's Act, and juvenile courts, child welfare boards, remand observation homes and special schools were set up to look after the neglected and delinquent children.

Under the Child Marriage Restraint Act of 1929, no marriage to which a male under 18 years of age or a female under 12 years of age was a party could be solemnized. The Special Marriage Act of 1954 permitted marriage of people from different religious faiths without changing their religions and laid down the minimum age of marriage as 18 years for girls and 21 years for boys.

In order to implement the Directive Principles, the States took steps to protect the Scheduled Castes and the Scheduled Tribes from social injustice and all forms of exploitation Parliament passed, the Untouchability (Offences) Act in May 1955. This Act provided penalties for preventing a person, on grounds of untouchability, from entering a place of public worship or taking water from a sacred tank, well or spring. Penalties were provided for enforcing all kinds of social disabilities, such as denying access to any shop, restaurant, public hospital or educational institution, hotel, the use of any road, river, water tap, bathing *ghat,* cremation ground or *dharamshala* or utensils kept in such institutions and hotels and restaurants. The Act also prescribed penalties for enforcing occupational, professional or trade disabilities or disabilities in the construction or occupation of any residential premises in any locality or the observance of any social or religious usage or ceremony. The Act laid down penalties for refusing to sell goods or render services to a Harijan. In 1976, Parliament passed the Protection of Civil Right Act, and it provided for more severe punishment.

In order to promote international peace, as enjoined in Article 51 of the Constitution, the Union Government followed a policy of non-alignment and *Panchsheel.*

2.4.2 Relationship between Fundamental Rights and Directive Principles

In order to uphold the constitutional validity of legislations, Directive Principles have been added to the Indian Constitution to deal with circumstances of conflict with the Fundamental Rights. The 25th Amendment added Article 31C in 1971, which provided that any law made to give effect to the Directive Principles in Article 39 (B) and (C), will not be deemed invalid on the basis that they depreciate Fundamental Rights conferred under Article 14, 19 and 31. In 1976, the 42nd Amendment was to extend all Directive Principles, however the Supreme Court struck down the extension to be null and void as it violated the basic structure of the Indian Constitution. Fundamental Rights and Directive Principles have been combined in forming the basis of legislation for social welfare. After the *Kesavananda Bharati vs. State of Kerala* of 1973, the Supreme Court of India views the Fundamental Rights and Directive Principles to complement each other where one supplements the role of other in the goal of establishing a welfare state by the

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means of a social revolution. In a similar manner, the Supreme Court has used the Fundamental Duties to uphold the constitutional validity of statutes which seeks to promote the objectives laid out in the Fundamental Duties. These duties are obligatory to all citizens, subject to the state enforcing the same by means of a valid law. Supreme Court has also issued relevant directions to the state in this regard, in order to make the provisions effective and enabling citizens to perform their duties appropriately.

Main features of the relationship between Fundamental Rights and Directive Policy

- In various cases the Supreme Court has evolved the Doctrine of Harmonization which aims to make a consistent whole of law.
- Fundamental Rights and Directive Principles supplement each other and together form an integrated scheme
- If the Fundamental Rights and Directive principles cannot work together than Fundamental Rights will prevail over the Directive Principles
- Currently, Article 39 (B) and 39 (C) can be given precedence over Article 14, 19 and 31.

2.4.3 Basic Structure Doctrine

The Basic Structure doctrine is a judicial principle whereby certain features are beyond the limit of the powers of amendment of the Indian Parliament. This doctrine was first recognized by the Indian Supreme Court in 1973 during the *Kesavananda Bharati vs. State of Kerala* case. It reflected concern at the liberal constitutional order posed by the Indian National Congress' majority at the centre and state levels under Prime Minister Indira Gandhi. One important point to remember is that the Basic Structure doctrine applies only to the constitutionality of amendments and not to ordinary Acts of the Indian Parliament, which completely adapts to the Indian Constitution and not just its basic structure. On 24 April 1973, the Supreme Court decision in the *Kesavananda Bharati vs. State of Kerala* case suggested that though the Twenty-Fifth Amendment of 1971 was valid, the court still reserved for itself the right to reject any constitutional amendment passed by the Indian Parliament as the amendments cannot change the Indian Constitution's basic structure.

Main features which comprised the basic structure of the Indian Constitution are:

- The supremacy of the constitution.
- A republican and democratic form of government.
- The secular character of the Constitution.
- Maintenance of the separation of powers.
- The federal character of the Constitution.

During the Emergency situation in 1976, a bench of thirteen judges was assembled to hear the case of *Indira Gandhi vs. Raj Narain*. The hearing was presided by Justice A. N. Ray and the court needed to decide the degree to which amendments were restricted by the Basic Structure Doctrine. For two days, on November 10 and 11, a team of barristers led by Palkhivala made continuous arguments against the Union government's application to reconsider Kesavananda decision. Slowly the judges accepted his argument and by the second day the Chief Justice was reduced to the minority of one. On 12 November 1976, Chief Justice Ray dissolved the bench and the judges rose.

Therefore, the doctrine was applied in the *Indira Gandhi vs. Raj Narain* to the 39th Amendment of 1975, which attempted to pass legislative judgment, besides other provisions, over the election of Indira Gandhi in 1971.

The Basic Structure doctrine was expanded in 1981, during the *Minerva Mills Ltd. vs. Union of India*. Palkhivala was successful in initiating the Supreme Court of India to declare Clauses (4) and (5) of Article 368 of the Indian Constitution as being invalid as these clauses had been inserted as a response by the Indira Gandhi government regarding the decision in the Kesavananda case through the Forty-Second Amendment. The Court held that since, as had been previously held in the Kesavananda case, the power of Parliament to amend the Constitution was limited, it could not by amending the Constitution convert the power into an unlimited power by this amendment. The court went on to invalidate the amendment of Article 31-C by the Forty-second Amendment. This view of Article 31-C, but not the basic structure doctrine, was questioned but not overruled in *Sanjeev Coke Mfg. Co vs. Bharat Cooking Coal Ltd.*

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2.5 FUNDAMENTAL DUTIES

The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties. It was during the 'Internal Emergency', declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The Committee suggested for inclusion of a chapter of fundamental duties, provision for imposition of appropriate penalty or punishment for non-compliance with or refusal to observe any of the duties and also recommended that payment of taxes should be considered as one of the fundamental duties. But these recommendations were not accepted by the Congress government.

However, under the Forty-second Amendment, carried out in 1976, a set of Fundamental Duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51(a). Under this Article, this shall be the duty of every citizen of India:

- To abide by the Constitution and respect the national flag and national anthem.
- To cherish and follow the noble ideas, which inspired our national freedom struggle.
- To protect the sovereignty, unity and integrity of India.
- To defend the country.
- To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional or sectional diversities and laws to renounce practices derogatory to women.
- To preserve the rich heritage of our composite culture.
- To protect and improve the natural environment.
- To develop the scientific temper and spirit of enquiry.
- To safeguard public policy.
- To strive towards excellence in all spheres of individual and collective activity.
- As a 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 (this clause was inserted through Eighty-sixth Amendment Act, 2002).

Check Your Progress

7. State the Directive Principles related to foreign affairs.
8. What are the main objectives for the inclusion of the Directive Principles of State Policy in the Indian Constitution?

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Insertion of these fundamental duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their violation. According to constitutional expert D.D. Basu, the legal utility of these duties is similar to that of the Directives as they stood in 1949, while the Directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

Also the duties enumerated are quite vague and can be interpreted in more than one ways. It is, therefore, very difficult to have their universally acceptable definitions. One of the duties of the citizens is to follow the noble ideals that inspired our freedom struggle, while each section, which participated in freedom struggle, had its own ideals. The term 'noble ideal', therefore, becomes ineffable and vague. Another duty expects every citizen of India to value and preserve the rich heritage of composite culture. A question that can be asked as to which is India's composite culture. Similarly, it is difficult to define scientific temper, humanism or spirit of enquiry.

Notwithstanding these criticisms, the fundamental duties have been the accepted part of the Constitution. These duties may act as a social check on reckless activities indulged in by irresponsible citizens and as a reminder to citizens that while exercising or claiming the right they have also to be conscious of these duties they owe to the nation and to their fellow citizens. In brief, the incorporation of fundamental duties in the Constitution was, no doubt, an attempt to balance the individual's civic 'freedoms' with his civic 'obligations' and, thus, to fill a gap in the Constitution.

2.6 SUMMARY

In this unit, you have learnt that:

- The philosophical and socio-economic dimensions of the governance of India are reflected in the Preamble to the country's Constitution and the Directive Principles of State Policy enshrined in it.
- The Preamble embodies a distinct philosophy which regards the state as an organ to secure good and welfare of the people. This concept of state is further strengthened by the Directive Principles of State Policy, which set out the economic, social and political goals of Indian constitutional system.
- The Preamble to the Indian Constitution was formulated in the light of the Objectives Resolution, which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947.
- The words of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity.
- The Constitution of India contained seven Fundamental Rights originally. But the Right to Property was repealed in 1978 by the Forty-fourth Constitutional Amendment bill during the rule of the Janata government.
- Article 14 declares that the state shall not deny any person the equality before the law or the equal protection of laws within the territory of India.
- Article 19 of the Constitution guarantees seven civil freedoms to the citizens as a matter of their right.

Check Your Progress

9. List the fundamental duties of the citizens of India as added to Chapter IV under Article 51(a).
10. When were Fundamental Duties added in the Indian Constitution?

- The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose falsehood.
- Under Eighty-sixth Amendment Act 2002, right to education was provided.
- The object of Article 29 is given protection to the religious and linguistic minorities. Clause 1 of Article 29 declares that any section of the Indian citizens, having a distinct language, script or culture of its own, shall have the right to conserve the same.
- A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state high courts under Article 226.
- The Directive Principles of State Policy, Part IV of the Constitution of India, constitute directions given to the central and state governments for the establishment of a just society.
- In the Draft Constitution the fundamental rights are followed by what are called 'Directive Principles'. It is a novel feature in a Constitution framed for Parliamentary Democracy.
- The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties.
- However, under the Forty-second Amendment, carried out in 1976, a set of Fundamental Duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51(a).

2.7 KEY TERMS

- **Preamble:** It is the introductory part of a statute or deed, stating its purpose, aims and justification.
- **Resolution:** It refers to a formal expression of opinion or intention agreed on by a legislative body or other formal meeting, typically after taking a vote.
- **Detention:** It is the action of confining someone or the state of being confined to official custody.
- **Mandamus:** It is an order directing person, or body, to do his legal duty.
- **Quo warranto:** It is a writ issued to stop the irregular and unlawful assumption of any public position by any person.

2.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The two significant amendments made to the Preamble of the Indian Constitution are as follows:
   - Instead of 'Sovereign Democratic Republic', India was declared 'Sovereign Socialist Secular Democratic Republic'
   - For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.

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2. The term 'liberty' used in the Preamble of the Indian Constitution denotes both positive and negative aspects. In the positive sense, it means the creation of conditions that provide the essential ingredients necessary for the complete development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. In the negative sense, it means the absence of any arbitrary restraint on the freedom of the individual action.
3. The Preamble states that the people of India have constituted the Constitution. The people have formulated their Constitution through the Constituent Assembly, which represented them.
4. The six fundamental rights identified by the Indian Constitution are as follows:
   - Right to Equality
   - Right to Freedom
   - Right against Exploitation
   - Right to Freedom of Religion
   - Cultural and Educational Rights
   - Right to Constitutional Remedies
5. Habeas corpus is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention.
6. The Right to Education was included under the Eighty-sixth Amendment Act, 2002. The newly inserted Article 21(a) declared that 'The state shall provide free compulsory education to all children of the age of 6–14 years in such manner as the State may, by law, determine.'
7. Directive Principles related to foreign affairs are given in Article 51. This article states that the state shall endeavour to:
   - Promote international peace and security
   - Maintain just and honourable relations among nations
   - Foster respect for international law and treaty obligations in the dealings of organized peoples with one another
   - Encourage settlement of international disputes by arbitration
8. The Directive Principles of State Policy, Part IV of the Constitution of India, constitute directions given to the central and state governments for the establishment of a just society. They commit the state to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality.
9. The fundamental duties of the citizens of India as added to Chapter IV under Article 51(a) are as follows:
   - To abide by the Constitution and respect the national flag and national anthem.
   - To cherish and follow the noble ideas, which inspired our national freedom struggle.
   - To protect the sovereignty, unity and integrity of India.
   - To preserve the rich heritage of our composite culture.

- To protect and improve the natural environment.
- To develop the scientific temper and spirit of enquiry.
- To safeguard public policy.

10. Under the Forty-second Amendment, carried out in 1976, a set of fundamental duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51(a).

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2.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Why is the Preamble of the Indian Constitution important?
2. Write a short note on Right to Freedom given in the Indian Constitution.
3. Why were Fundamental Duties added to the Indian Constitution?

Long-Answer Questions

1. 'The philosophical and socio-economic dimensions of the governance of India are reflected in the Preamble to the country's Constitution and the Directive Principles of State Policy enshrined in it.' Discuss.
2. What are the six categories of fundamental rights? Give reasons for their inclusion in the Indian Constitution.
3. Explain the Directive Principles of State Policy relating to Gandhian principles.

2.10 FURTHER READING

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UNIT 3 THE PARLIAMENT AND THE EXECUTIVE

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Structure

3.0 INTRODUCTION

The Union Executive is headed by the President, the Head of State of the Indian Republic, who exercises his power directly or through his subordinates. The President is the formal head of the legislature, executive and judiciary branches of Indian democracy and is the commander-in-chief of the Indian Armed Forces. The Vice President of India is the second-highest ranking government official in the Government of India. He can act as President in case of latter's death, resignation or removal and in the absence of the President.

The Prime Minister of India is the chief of government, chief advisor to the President of India, head of the Council of Ministers and the leader of the majority party in Parliament. The Prime Minister leads the executive branch of the Government of India. The PM selects and can dismiss other members of the cabinet; allocate posts to members within the Government; is the presiding member and chairman of the cabinet and is responsible for bringing proposal of legislation. The resignation or the death of the Prime Minister dissolves the cabinet.

State executive consists of a Governor and Council of Ministers with a Chief Minister as its head. The Governor of a state is appointed by the President for a term of five years. Only Indian citizens above thirty-five years of age are eligible for appointment to this office. Executive power of the state is vested in the Governor.

In this unit, you will study about the structure and functions of the Indian Parliament, powers and functions of the Indian President, powers and functions of the Indian Prime Minister, and powers and functions of a Governor.

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3.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Describe the structure and functions of the Indian Parliament
- Explain the powers and functions of the Indian President
- Discuss the powers and functions of the Indian Prime Minister
- Explain the powers and functions of a Governor

3.2 STRUCTURE AND FUNCTIONS OF THE PARLIAMENT

Our Parliament or the Union Legislature, the supreme legislative body in the country, comprises two Houses—Lok Sabha (House of the People) and Rajya Sabha (Council of States). The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha. This is why the President is also one of the constituents of our Parliament. Lok Sabha is the body of representatives of the people. Its members are directly elected, normally once in every five years by the adult population who are eligible to vote. The present membership of Lok Sabha is 545. Rajya Sabha is the Upper House of Parliament. It has not more than 250 members. Members of Rajya Sabha are not elected by the people directly but indirectly by the Legislative Assemblies of the various states. Lok Sabha elects one of its own members as its Presiding Officer and he is called the Speaker. The Vice-President of India is the ex-officio Chairman of Rajya Sabha.

The main function of both the Houses is to pass laws. Every Bill has to be passed by both the Houses and assented to by the President before it becomes law. The subjects over which Parliament can legislate are the subjects mentioned under the Union List of the Constitution of India. Broadly speaking, Union subjects are those important subjects which for reasons of convenience, efficiency and security are administered on all-India basis. The principal Union subjects are defence, foreign affairs, railways, transport and communications, currency and coinage, banking, customs and excise duties. There are numerous other subjects on which both Parliament and State Legislatures can legislate. Under this category mention may be made of economic and social planning, social security and insurance, labour welfare, price control and vital statistics. Besides passing laws, Parliament can by means of resolutions, motions for adjournment, discussions and questions addressed by members to ministers exercise control over the administration of the country and safeguard people's liberties.

Rajya Sabha and Lok Sabha

The Indian Parliament is the supreme representative authority of the people. It is the highest legislative organ and the rational forum for the articulation of public opinion. The Parliament of India is the centre and focus of our political system. It is the federal legislature of the Indian Union with limited and specified powers. The Parliament has

been entrusted with an exclusive jurisdiction in ninety-nine Union matters, a concurrent, yet superior jurisdiction in fifty-two (earlier it was forty-seven) matters included in the Concurrent List, an occasional and excessively restricted jurisdiction in sixty-six (now sixty-one) State matters, and a first and final say with respect to all matters not enumerated in any of the lists of the VII Schedule. The jurisdiction of the British Parliament, which is known as the mother of Parliaments, is absolutely unrestricted. It can make and unmake law on all matters, for all persons, and throughout the territory of Britain. The Power of our Parliament is not unlimited and, hence, it cannot claim the same attributes of unlimited sovereignty, which the British Parliament has claimed and exercised in the last seven-and-a-half centuries.

The Indian Parliament is a bicameral legislature in the setting of a Parliamentary executive. The formal executive head of the State, known as the President, is an integral part of the Parliament. The Parliament consists of the President and the two Houses, known respectively as the Rajya Sabha and the Lok Sabha. The Rajya Sabha is the federal upper chamber, while the Lok Sabha is the popularly elected lower chamber. Not only is the President an integral part of the Parliament, the Vice-President, too, is made the Ex-officio Chairman of the Rajya Sabha and is its Chief Presiding Officer. The Council of Ministers headed by the Prime Minister is to consist of the members of Parliament, barring a few temporary exceptions and is made directly and collectively accountable to the Lok Sabha. Making the formal and actual executive a part of the Parliament, and also accountable to it, has immensely added to the prestige and power of the Parliament.

3.2.1 Composition of the Parliament

Under Article 79, the Union Parliament consists of the President, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).

The maximum strength of the Rajya Sabha has been fixed at 250 members, of which not more than twelve are to be nominated by the President on the ground of such matters as art, literature, science and social service.

Not more than 238 members are to be elected by the State and Union Territories in accordance with the allocation of seats in the IV Schedule. This Schedule provides and allocates 229 seats to the states and four to the Union Territories. The remaining five seats are still unallocated. The Rajya Sabha was duly constituted for the first time on 3 April 1952 and it then consisted of 204 elected and twelve nominated members. Since then, the IV Schedule has been amended a dozen times by various Acts of the Parliament, and the allocation of seats has varied from time to time in accordance with the reorganization of states, formation of new States and the addition of Union Territories.

The representatives of each State and Union Territory in the Rajya Sabha are elected by the elected members of the State Legislative Assemblies and by members of specially constituted Electoral Colleges for Union Territories. The elections are held in accordance with the system of proportional representation and the seats are, therefore, allocated to states and Union Territories in terms of the proportion of their population, as determined at the last census. The votes are cast on the basis of single transferable vote. The voters indicate their preferences in favour of three different persons (I, II and III) contesting the membership. The candidates who receive the requisite majority of votes are declared elected. Voting at these elections is secret, and the electors are not required to disclose their identity. The Rajya Sabha is not subject to dissolution; one-third of its members retire every second year.

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The maximum sanctioned strength of the Lok Sabha is 552, of which 530 are to be elected by the State, 20 by the Union Territories and the remaining two to be nominated by the President from amongst the Anglo-Indian community. These 2 members are nominated and appointed by the President only if he or she is satisfied that this community has not been adequately represented in the House through the normal channels of election. The appointment of these 2 members was originally sanctioned by Article 331 only for 10 years. (Under 8th, 23rd, 45th, 62nd, 79th Amendment Acts, this provision has been extended until 2010). At present, the strength of Lok Sabha is 545.

The allocation of seats to the States and Union Territories is in proportion to their population as ascertained in the last census. In elections to the Lok Sabha, seats are reserved in various states and Union Territories for Scheduled Castes and Scheduled Tribes. Elections to the Lok Sabha are direct and are held on the basis of universal adult franchise. All citizens who have attained the age of 18 years on the date prescribed by the Election Commission become eligible as voters. On the basis of this universally recognized principle, fourteen General Elections have so far been held for the Lok Sabha.

When a General Election is due, the President calls upon all parliamentary constituencies to elect members to the Lok Sabha on such dates as recommended by the Election Commission. The elections are held in accordance with the provisions of the Representation of People's Act 1951, as amended up to date, and the rules or orders made under it. As soon as the notification is issued by the President, the Election Commission declares the date for filing nominations, for scrutiny and withdrawal of nominations and the actual dates of polling. A candidate for election is required to deposit a security of ₹10,000 to make his nomination valid. In case of the candidates belonging to scheduled castes and scheduled tribes, the security deposit is only ₹ 5,000. On the expiry of the date of withdrawals, the Returning Officer prepares and publishes a list of validly nominated candidates. Sufficient number of polling stations are set up in each constituency, keeping in view that the voters do not have to travel for more than two miles to cast their votes. The voters have to appear in person on the polling booths to cast their votes as no proxy is allowed. The candidate who receives the largest number of votes is declared elected by the Returning Officer, who issues to him the certificate of election. It is only when the newly elected member presents the certificate of election to the Secretary of Lok Sabha that the Presiding Officer can administer to him or her the oath of this office.

3.2.2 Qualifications for the Membership of the Parliament

Articles 84 and 102 provide the following qualifications which the persons desiring to become members of either House of Parliament must fulfill:

(a) He must be a citizen of India and must swear or affirm that he shall bear true faith and allegiance to the Constitution of India that he shall uphold the sovereignty and integrity of India;

(b) In case of Rajya Sabha, he must be at least 30 years of age, and in case of Lok Sabha he must at least be 25 years;

(c) He must not be holding any office of profit under the Government India, excepting the office of Ministers of the Union and the states, and the Speaker of Lok Sabha;

(d) Must not have been declared by a competent court as a person of unsound mind;

(e) Must not be an undischarged bankrupt;

(f) Must not owe allegiance or adherence to any foreign State;

(g) In case of Rajya Sabha, he must be an elector in the State or the Union Territory from where he is seeking the election. This condition has, however, been waved by the Union Government in March 2003.

3.2.3 Term of the Houses of the Parliament

Members of the Rajya Sabha are elected for a period of 6 years, one-third of them retiring every second year. This makes the Rajya Sabha a continuous and permanent chamber, never subject to dissolution. On the other hand, members of the Lok Sabha are elected for a period of 5 years. Normally, the term of each member's office as well as the life of the Lok Sabha is 5 years. If the Lok Sabha is dissolved earlier, the membership of its members automatically terminates. During the Proclamation of Emergency, under Article 352, the Parliament may extend the life of the Lok Sabha for not more than 1 year at a time, but not beyond a period of 6 months after the Proclamation of Emergency has ceased to operate. In case of extension of the Lok Sabha, the term of its members stands automatically extended.

3.2.4 Presiding Officers of Two Houses

For the smooth, efficient and impartial conduct of its proceedings, each House of Parliament has been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer. The Chief Presiding Officer of the Lok Sabha is known as the Speaker and that of the Rajya Sabha is known as the Chairman. The Speaker is assisted by the Deputy Speaker; while the Chairman is assisted by the Deputy Chairman. Each House also has a chairman to preside over the House in the absence of the Chief Presiding Officers.

Speaker of the Lok Sabha

The Speaker is the most important conventional and ceremonial head of the Lok Sabha. Within the walls of the House, his or her authority is supreme. The most salient feature of his office is his or her impartiality. He or she is expected to wield his authority with the 'cold neutrality of the impartial judge'. His impartiality is ensured by the provision that he or she would remain above party considerations and that he would vote only in case of a tie.

In India, the Speaker does not sever his or her party affiliation after being elected to the office. The first Speaker G.V. Mavalankar, a Congressman, is credited for establishing such tradition. Except for the two exceptions, Neelam Sanjeeva Reddy and G.S. Dhillon who resigned from their parties after becoming the Speakers, the rest of the Speakers have followed the tradition set by Mavalankar. Further, in India (unlike the Speaker in the British Parliament), the office of the Speaker is not the end of political career to its incumbent. Speakers have become ministers, Governors, High Commissioners and even the Presidents of India. Consequently, the office of the Speaker has not been untouched by controversies in India.

Election of the Speaker

The Speaker is to be elected by the members of Lok Sabha from amongst themselves. The election of the Speaker is to take place after each general election of the Lok Sabha and as and when there is a vacancy in his office. The Constitution provides for his election by the members of the Lok Sabha while the rules of the House provide for the

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procedure through which he or she is to be elected. Now, there is an established tradition that the Speaker should be the unanimous choice of the House. The party-in-power decides on the appointment of the Speaker after due consultation with the opposition.

Term of Office

Once elected, the Speaker holds office from the date of his or her election until the first meeting of the Lok Sabha after the dissolution of the one to which he or she was elected. The Speaker is eligible for re-election. Bal Ram Jakhar (1980–85 and 1985–89) is the only Speaker who has so far been re-elected.

The Speaker ceases to hold office if he or she ceases to be a member of the Lok Sabha. The person may resign from the office by addressing his or her resignation to the Deputy Speaker, who informs the House of the Speaker's resignation, but while in office, he or she exercises the functions of the office throughout the term and cannot delegate them to any one else.

Removal of the Speaker

The Speaker may be removed from his or her office by a resolution passed by the majority of the total membership of the Lok Sabha. However, such a resolution can be moved only if at least 14 days notice has been given by a member of his intention to move such a resolution. This resolution must clearly specify the charges against the Speaker. When such a resolution is under consideration of the House, then, the Speaker is debarred from presiding over the House. In that case, the Deputy Speaker, or if he or she too is not available, then any member of the Panel of Chairman presides. The Speaker, however, has the right to be present during the course of debate on this resolution and to defend himself.

There have been resolutions of removal against the Speakers of Lok Sabha like Mavalankar, Sardar Hukum Singh, G.S. Dhillon and Balram Jakhar. However, hitherto no Speaker has been removed by such resolution.

Powers and Functions of the Speaker

As the Chief Presiding Officer of the popularly elected Lok Sabha, the Speaker has been entrusted with many powers by the Constitution and the Rules of the House. The Speaker is the spokesman of the House and the custodian of the privileges and immunities of the House and its members. He or she is the ex-officio President of the Indian Parliamentary Group and the Head of the Lok Sabha Secretariat.

The following are the powers and functions of the Speaker of Lok Sabha:

- The basic function of the Speaker is to preside over the sessions of the House when he or she is present in the House. As the Chief Presiding Officer of the House, the Speaker fixes the hour of the commencement or termination of a sitting and determines the days on which the House will sit.
- The Speaker's decision in all parliamentary matters is final. A request may be made to the Speaker for reconsideration but his or her decision cannot be challenged, criticized or questioned.
- No member can speak in the Lok Sabha without the Speaker's permission. He or she also decides in what order members will speak and how long a member should continue to speak. The Speaker may ask a member to finish

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his or her speech and in case the member does not listen, then the Speaker has the power to order the member's speech not to go on record. The Speaker may also ask a member to withdraw unparliamentary language.

- The Speaker permits a member to speak in his or her mother tongue if the member does not know English and Hindi.
- The members of the House can only address to the Speaker while speaking.
- All the bills, reports, motions and resolutions are introduced with the Speaker's permission.
- The Speaker puts the motion to vote in the Lok Sabha. In case there is a tie, the Speaker is empowered with a casting vote. However, he or she is expected to caste vote so as to retain impartiality and independence.
- Except making formal statements while performing his functions, the Speaker does not, ordinarily, participate in the discussion. He or she seldom addresses the House of his or her own accord and unless requested by the members, the Speaker refrains from expressing or giving personal opinion.
- The Speaker determines a bill to be a money bill and his or her decision is final. The Speaker also certifies a money bill.
- The Speaker also determines whether a motion of no-confidence in the Council of Ministers is in order. He or she is also empowered to select amendment in relation to bills and motions and can refuse to allow a member to move an amendment, if he or she thinks it is unwarranted or unnecessary. Finally, the Speaker's opinion and consent is final in determining whether a motion to adjourn the House or to postpone its regular business for discussing a matter of general public interest or urgent public importance.
- The Speaker has to conduct the meetings of the House in an orderly manner. Whenever there is conundrum or indiscipline in the House, the Speaker has sufficient disciplinary powers to handle such a situation. The Speaker derives his or her disciplinary powers from the Rules of Procedure of the House and his or her decisions in the matter of discipline cannot be generally challenged. In case of grave disorder, the Speaker may adjourn the House.
- The Speaker is the chief spokesman of the House. He or she represents its collective voice to the outside world. In the first place, all communications of the House to the President are made through the Speaker in the form of a formal address. On the other hand, all the communications from the President to the House are made through the Speaker. Similarly, all communications from the Lok Sabha addressed to the Rajya Sabha are sent through the Speaker. It is the Speaker who receives all communications addressed to the Lok Sabha by the Rajya Sabha.
- In the event of disagreement over a bill between the Lok Sabha and the Rajya Sabha, the President calls a joint-sitting of both the Houses and the Speaker presides over the joint-sitting. In this case, his or her decisions, rulings and interpretations on matters before the Joint Session are final.
- The Speaker regulates the debates and proceedings of the House. Even at the secret sittings, which are held at the request of the leader of the House, the Speaker determines the manners of reporting, the proceedings and the procedure to be adopted on such occasions.

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- The rules relating to asking and answering of the questions depend upon the interpretation of the Speaker. He or she has a very large discretion in this matter. He or she may cut short or increase the 'question hour'. He or she may ignore the condition of the notice period for the question and may permit a question to be asked at a short notice.
- The Speaker is the supreme head of all the Parliamentary Committees whether nominated by him or her or chosen by the House. He or she appoints their chairman and issues such directions to them as deemed necessary. The Speaker holds consultations with them from time to time. The committee meetings cannot be held outside the Parliament House without the prior permission of the Speaker, nor can officials of state government be summoned by the committee without his or her consent. The Speaker can remove a member of the committee on the recommendation of its chairman, if the member is absent from two or more consecutive sittings of the committee. Finally, the Speaker is the chairman of certain committees of the House, including the Business Advisory Committee, the General Purposes Committee and the Rules Committee.
- The Speaker appoints a committee consisting of three persons for investigating the charges for the removal of Chief Justice and other judges of the Supreme Court and high courts.
- The Speaker has the power to disqualify a member if he or she defects under the Anti-defection Act but the decision is subject to judicial review.
- The Speaker is the custodian of the rights and privileges of the members of the Lok Sabha. Without his or her permission, no member can be arrested in the Parliament. The Speaker also accepts the resignation of the members of Lok Sabha.
- The Speaker authenticates all the bills passed by the Lok Sabha and sends them to the Rajya Sabha or the President, as the case may be.
- The Speaker is also the Head of the Lok Sabha Secretariat, which functions under his or her control and direction. The Secretary-General is appointed by the Speaker from amongst those who have made their mark in the service of Parliament in various capacities. The Secretary-General is always present in the House during its sittings and advises the Speaker. But the Speaker is not bound by his or her advice.
- The Speaker is the ex-officio President of the Indian Parliamentary Group, which is the Indian branch of the Inter-Parliamentary Union and the Commonwealth Parliamentary Association. He or she nominates the personnel for various parliamentary delegations to foreign countries.
- The Speaker is also the Ex-officio Chairman of the conference of presiding officers of legislative bodies in India. This body consists of the Chairman and Deputy Chairman of the upper chambers, and the Speakers and Deputy Speaker of the lower chambers of Parliament and Legislatures of States and Union Territories. This body evolves uniform rules for the conduct of proceedings in Indian Legislatures.

Thus, the Speaker enjoys a very formidable position in the Lok Sabha. Not only the framers of the Constitution, but also the leaders of the House, have from time to time, recognized that the Speaker should enjoy the same status and privileges, which the

Speaker of British House of Commons enjoys. Acharya Kriplani, a former political leader and spiritual guru, rightly pointed out that the Speaker was not only to guide and regulate the proceedings of the House, he was also 'the guardian of the liberties of the House and through the House, of the liberties of the people'.

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3.2.5 Functions of the Parliament

The primary function of the Parliament to make laws. The law proposal originates in the Parliament in the form of a bill. There are four types of bills, excluding budget, that come up before the Parliament.

1. Ordinary or non-money bill
2. Money bill
3. Constitution amendment bill
4. Budget

The legislative process of these bills is as follows:

1. **Ordinary bill**: Every member of the Parliament has a right to introduce an ordinary bill and from this point of view, there are two kinds of ordinary bills: (i) Government bill, and (ii) Private Member's bill.

   A Government bill is a bill moved by a minister and any bill not moved by a minister is a Private Member's bill, which means that the bill has been moved by a private member. A major part of the Parliament time is consumed by the Government's bill, while Private Member's bill has little possibility of being passed. Only on Fridays, the Parliament devotes time on Private Member's bills. A bill which is a government's bill is passed in the following manner:

   (a) When the government decides that a particular bill is to be brought before the Parliament, its initiation takes place in the ministry dealing with its subject-matter. At this stage, it is a mere proposal for passing a law to implement a policy. The sponsoring ministry must, however, consult the Ministry of Law, whose function is to give advice on the proposed legislation and its constitutional implications, if any. The final proposals are then prepared and a summary of the proposals is submitted to the Cabinet for approval.

   When the Cabinet's approval has been obtained, the proposals are referred to the Ministry of Law with a statement of the exact purpose and form of the legislation. The Ministry of Law is requested to draft a bill. During the process of drafting, there are regular consultations between the Ministry of Law and the ministry initiating the proposal. The final draft is then printed. It cannot, however, be introduced in the Parliament unless it is accompanied by a 'Statement of Objects and Reasons' signed by the minister concerned and accompanied by the President's sanction or recommendation in cases where this is required by the Constitution. A financial memorandum is also necessary where expenditure is involved. Finally, if the bill proposes the delegation of legislative power, a memorandum explaining the scope of the delegation is also essential.

   After all this process, the bill is introduced in one of the two Houses. With the introduction of the bill, the first reading of the bill starts.

   (i) First reading: In the first reading, the minister who moves the bill asks for the permission to do so from the Speaker. After its introduction, the bill is published in the Gazette of India. The Speaker may allow the

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publication of the bill in the Gazette without it being introduced in the House.

(ii) Second reading: The second reading of the bill is the most vital stage. In this stage, the bill is discussed in detail. The second reading consists of two stages. In the first stage, the bill in general is discussed and not the details. The House may decide to (i) refer it to a Select Committee of the House or to the Joint Committee of both the Houses or (ii) to circulate it to elicit public opinion.

If the bill is referred to a Select Committee of the House or the Joint Committee of both the Houses, the concerned committee considers the Bill clause by clause. Amendment can also be moved by the members of the committee. The committee can also consult experts and public bodies who may be interested in the measure. After due consideration, the committee submits its report to the House. If the bill has been circulated to elicit public opinion the same is done through the agencies of the states and Union Territories. After the opinions are elicited, the bill is ordinarily referred to a Select Committee or Joint Select Committee for considerations. The Committee considers the Bill in the light of opinion elicited and submits its report to the House.

The second stage of the second reading starts when the House considers the report of Select Committee or Joint Select Committee. In this stage, a detailed discussion of the Bill, clause by clause, is done in the House. The amendments may also be moved. The bill is passed if the majority of the members present and voting favour its passage in the voting. Amendments, if accepted by the same majority, also become part of the bill.

(iii) Third reading: After the completion of the second reading, the minister may move the bill to be passed. At this stage, not much discussion takes place. It is confined to arguments either in support of the bill or for its rejection, without referring to the details than is absolutely necessary. Only verbal, formal and consequential amendments are allowed to be moved at this stage. After the bill is put to vote, it has to be passed by the simple majority of members, present and voting.

(b) Bill in the other House: After the bill is passed by one of the two Houses, it goes to the other House for consideration. Here again, it has to undergo three readings. The other House may take either of the following courses:

(i) It may pass it. In that case, the bill is sent for President's assent.

(ii) It may reject it, leading to a deadlock between the two Houses.

(iii) It may pass it with amendments. In such a case, the bill is referred back to the first House. The first House may accept the amendments and they are incorporated in the bill and the bill is referred to the President for assent. The bill will not go back to the other House. However, if the first House refuses to accept the amendments, the bill

is sent back to the other House. If the other House still insists on its amendments, this means there is a deadlock.

(iv) It may take no action on the bill and if more than 6 months have elapsed and the House takes no action at all for its consideration, again this means there is a deadlock between the two Houses.

(c) Joint sitting of the Parliament: As per Article 108, a joint sitting can be called by the President if:

(i) One House passes a bill but the other House rejects it or

(ii) The two Houses disagree on the amendment to be made to a bill or

(iii) A House does not consider the bill even after 6 months since its receipt and

(iv) The concerned bill is not a money bill

In case the President has called for the joint sitting of the Parliament and in between, the Lok Sabha is dissolved, the joint sitting will still take place, since the President notified his or her intention to summon the House to meet therein. The president of the joint sitting is the Speaker of the Lok Sabha. In such a joint-sitting, the bill is passed by the majority of the total members of both the Houses present and voting.

Such sessions are rare in the history of the Parliament of India.

(d) President's assent to the bill: After being passed by both the Houses, separately, or in a joint sitting, the bill is sent to the President for assent. The President takes one of the following courses upon receiving the bill:

(i) He or she may give his or her assent. In such a case, the bill becomes the law.

(ii) He or she may withhold assent and in such a case the Parliament has no power to overrule him. This means the death of the bill.

(iii) He or she may suggest recommendations to the bill. In such a case, the bill is referred back to its originating House. However, if both the Houses pass the bill again, with or without the recommendations of the President, the President will have to give his assent.

(iv) In 1986, President Giani Zail Singh took a new course when he, instead of giving or withholding assent or returning it to the Parliament for reconsideration, did not take any action. The bill was the Post Office (Amendment Bill), 1986. His successors also did not take any action.

2. Money bill: Article 110 clearly defines what constitutes a 'money bill'. The Speaker of the Lok Sabha certifies whether a bill is a 'money bill' or a non-money bill.

The money bill is also passed by the Parliament by the different phases of three readings. However, there are substantial differences in the legislative process in relation to an ordinary bill. They are as follows:

(a) Money bill can be introduced, only along with the prior recommendation of the President, in the Lok Sabha and not in the Rajya Sabha.

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(b) After being passed by the Lok Sabha, the bill is sent to the Rajya Sabha for its recommendation. The Rajya Sabha has 14 days from the receipt of the money bill for its consideration.

(c) The Rajya Sabha cannot reject the money bill. It can only make recommendations.

(d) In case the Rajya Sabha makes recommendations, the Lok Sabha may accept or reject those recommendations. Thereafter, the bill will be directly sent to the President for his assent.

(e) If the Rajya Sabha does not return the money bill within 14 days, the bill will be deemed to have passed by both the Houses after the lapse of 14 days and sent to the President for assent. There can be no joint sitting of both Houses on a money bill.

(f) The President cannot withhold his or her assent to a money bill passed by the Parliament.

3. **Constitutional amendments**: With regard to the amendment of the Constitution, both the Rajya Sabha and the Lok Sabha have been placed at par. Though it is true that most of the bills to amend the Constitution had been introduced in the Lok Sabha, both the Houses have got equal powers with regard to the amending process. In order to amend the constitution, a bill must be passed by both the Houses of the Parliament. It may be mentioned in this connection that the Constitution (Twenty-Fourth Amendment) Bill, 1970, which was passed by an overwhelming majority in the Lok Sabha, was defeated in the Rajya Sabha by only a fraction of a vote and consequently the measure fell through. On 13 October 1989, Rajiv Gandhi's government suffered an unprecedented defeat in the Rajya Sabha. The Rajya Sabha refused to pass two major Constitutional amendment bills. These bills were introduced for streamlining the Panchayati Raj and reorienting the municipalities and corporations.

4. **Budget in Parliament**: Every year, the budget is presented before the Lok Sabha. The Finance Ministry prepares the budget. The budget is presented in two parts: (a) Railway Budget and (b) General Budget. Railway budget is presented by the Railway Minister while the general budget is presented by the Finance Minister. The budget passes through various stages, which are as follows:

   (i) **Presentation of the budget**: The railway budget is generally presented in the third week of February while the general budget is normally presented on the last working day of February. The general budget is presented along with the budget speech of the Finance Minister, which is divided into two parts A and B. Part A contains 'a general economic survey' of the country and part B deals with 'the taxation proposal' for the ensuing financial year. The budget remains a closely guarded secret until its presentation. After the budget speech, the Finance Minister introduces the finance bill, which contains the taxation proposal made by the government. There is no discussion by the members of the House on the day of the presentation of the budget.

   (ii) **Discussion on budget**: The discussion on budget is done through two stages: (a) General discussion and (b) demands for grants for each ministry. In the 'general discussion', the general economic policy is discussed and there is no detailed discussion on taxation and expenditures in both the Houses of the Parliament. In these discussions, both Houses express their opinion regarding the economic policy of the government and a general appraisal of

the economic policy is made. Here, it should be noted that the Rajya Sabha also discusses the budget; however, it cannot go beyond general discussion.

The 'general discussion' is followed by the discussion and voting for demands for grants. Demands for grants for each ministry are discussed in detail. The demands are expenditures to be incurred by the ministries and they are in the nature of request made by the Executive to the Lok Sabha for the grant of authority to spend the amount asked for.

At this stage, the various ministries come to a close scrutiny by the Lok Sabha. During this stage, cut motions can be proposed. A 'cut motion' is a device which members can employ to draw attention to specific grievances or criticize particular policies of the government. The cut motions, if passed, may lead to the resignation of the government as it amounts to a vote of censure of the government. The discussion on demand for grants is held along with the motion of Guillotine, which means that a time limit is set for various demands and as the time is over, the demand is put to vote irrespective of whether enough and satisfactory discussion has taken place or not. On the last day of the discussion allotted to demands for grants, all the remaining demands, even on which no discussion has taken place, are put to vote. With this, the discussion on demands for grants is concluded.

(iii) **Appropriation bill**: The next stage is the appropriation bill, which incorporates all the demands for grants voted by the Lok Sabha and the expenditures charged on the Consolidated Fund of India. The bill seeks the legal authority to be given to government to appropriate expenditure from and out of the Consolidated Fund of India.

The appropriation bill is introduced, considered and passed in the same manner as any other bill. However, the discussion is restricted to those matters which were not covered in the debate on demands and no amendments are allowed. After the appropriation bill is passed by the Lok Sabha, the Speaker certifies it to be a money bill and sends it to the Rajya Sabha. After the Rajya Sabha's approval, as per the procedure laid down by the Constitution, the bill is sent to the President for his or her assent.

(iv) **Finance bill**: It contains government proposals for raising revenues. The move for leave to introduce a finance bill cannot be opposed and it is forthwith put to vote. This bill has to be considered and passed by the Parliament and assented to by the President within 75 days after it is introduced. Passing of the finance bill is the final act of Parliament's financial procedure.

(v) **Vote on account**: Sometimes, the Lok Sabha passes the Vote on Account. Vote on Account is passed normally for 2 months, when the passage of budget is delayed for some reason. During an election year, it may be passed for 3–4 months. As a convention, vote on account is treated as a formal matter and passed by the Lok Sabha without discussion. Thus, the House is able to consider the Budget at a convenient time.

3.2.6 Parliamentary Committees

The diverse nature of the vast functions of the Parliament make it impossible to make an exhaustive examination of all Legislative and other matters that come up before it. It is for this reason that a substantial amount of parliamentary business is executed in the

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committees. The committee structure of both the Houses of Parliament are alike barring a few exceptions. Article 118(1) of the Constitution deals with their appointment, terms of office, functions and procedure of conducting business which are also more or less similar and are regulated as per rules made by the two Houses.

A significant amount of its business is, therefore, transacted by what are called the Parliamentary Committees.

Parliamentary committees are of two kinds:

- Ad hoc committees
- Standing committees

Ad hoc committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal ad hoc committees are the Select and Joint Committees on Bills. Others like the Railway Convention Committee, the Committees on the Five Year Plans and the Hindi Equivalents Committee were appointed for specific purposes. Apart from the ad hoc committees, each House of Parliament has standing committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee.

1. Public Accounts Committee

The parliamentary power by which it can vote for transfer of money for specific purposes is meaningless unless it has the power to find out that whether the money has been utilized for the correct purposes or not? This is secured by subjecting the public accounts to an audit by an independent authority – the Comptroller and Auditor General – and, further, the examination of his report by a special committee of Parliament, called the 'Public Accounts Committee'. A committee of Parliament is preferred because, first, that august body has time to undertake detailed examination of the report; secondly, the scrutiny being essentially technical, can best be done by a committee and lastly, the non-party character of the examination can be possible only through a committee and not in the House.

Functions

The function of the Committee is to satisfy itself about the following:

- The money shown in the accounts as having been disbursed was legally available or applicable to the service or purpose to which it has been applied or charged.
- The expenditure conforms to the authority that governs it.
- Every re-appopriation has been made in accordance with the provisions made in this behalf under rules framed by the competent authority.

It shall also be the duty of the Public Accounts Committee to do the following:

- To examine, in the light of the report of the Comptroller and the Auditor General, the statement of accounts showing the income and expenditure of state corporations, trading and manufacturing schemes and projects, together with the balance sheets and statements of profit and loss accounts, which the President may have required to be prepared, or are prepared under the provisions of the statutory rules regulating the financing of a particular corporation, trading concern or a project.
- To examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Comptroller and Auditor General of India either under the directions of the President or by a statute of Parliament.

- To consider the report of the Comptroller and Auditor General in cases where the President may have required him/her to conduct an audit of any of the receipts or to examine the accounts of stores and stocks.

2. Estimates Committee

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The constitution of the Estimates Committee was urged as early as 1937, but the proposal could not materialize. There had been, of course, the Standing Finance Committee, first created in 1921, and attached to the Finance Department of the Government of India. This committee, however, functioned under severe limitations and there was no justification for not constituting the Estimates Committee. The Estimates Committee was first created in April 1950, and its functions were enlarged in 1953.

The Estimates Committee is a standing committee, and is set-up every year. Its functions, method of appointments and other relevant matters are laid down in the Rules of Procedure and Conduct of Business in the Lok Sabha. It consists of thirty members, all belonging to the Lok Sabha, elected according to the system of proportional representation by single transferable vote. It does not contain any member from the Rajya Sabha. The Chairman of the Committee is nominated by the Speaker. If, however, the Deputy Speaker is a member of the Committee, he automatically becomes the Chairman. The ministers cannot be appointed on the Estimates Committee.

Functions

The Estimates Committee has been entrusted with the following functions:

- To report what economies, improvements in organization, efficiency and administrative reforms, consistent with the policy underlying the estimates, may be affected.
- To suggest alternative policies in order to bring out the efficiency and economy in the administration.
- To examine whether the money is well laid out within the limits of the policy implied in the estimates.
- To suggest the form in which the estimates shall be presented to the Parliament.

3.3 POWERS AND FUNCTIONS OF THE PRESIDENT

Under the Constitution of India, the office of the President of India is virtually analogous to that of the British monarchy in keeping with the spirit of the parliamentary executive. Being the ceremonial head of state, the office of the President is an exalted one, with enormous prestige, authority, grace, dignity, respect and adoration, but very less activism. The executive power of the union is based on the assumption of the President being a rubber stamp of the government in order to authenticate the decisions made by the Council of Ministers, barring a few cases ordained by circumstances. The President and the Vice President are the formal executive heads of the Union, while the actual executive is the Union Council of Ministers, with Prime Minister as its Chairman.

The Constitution of India provides for various conditions of his office. Though any Indian with thirty-five years of age, and is eligible to be elected to the Lok Sabha, is entitled to contest for the office of the President; in reality, only persons with either exceptional qualities and stature or having the blessings of the leader of majority party in

Check Your Progress

1. How are members of the Lok Sabha elected?
2. What are the amending functions of the Indian Parliament?
3. Which are the two kinds of parliamentary committees?

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Parliament have been elected to the President's office. The elections to the office of the President are indirectly held through an electoral college consisting of the elected members of both the Houses of Parliament and the elected members of the State Legislature Assemblies. The President is elected for a term of five years with an entitlement for re-election. However, with the exception of Dr Rajendra Prasad, no President has been re-elected to office. The President may be removed from the office by the process of impeachment, which is a cumbersome one, on the charges of violation of the Constitution. Though the various aspects of the office of the President have contributed to his figurehead and ceremonial position, the Constitution has also ensured him a stable tenure so that he can function without fear or favour in the exceptional cases when he may be required to take a position that is unpleasant to the party in power.

3.3.1 Position and Role of the President

Let us study the position and role of President.

Constitutional Position

Broadly speaking, there have been two views regarding the actual position of the President, which are as follows:

- President is a nominal head
- President is not a nominal head

President is a nominal head

We have a parliamentary system of government in which the President can only be a nominal head. The actual powers lie with the Prime Minister and his Council of Ministers. Article 74 states that there shall be a Council of Minister with the Prime Minister as the head to aid and advice the President who shall, in the exercise of his functions, act in accordance with such advice. The President may ask the Council of Ministers to reconsider its aid and advice, but is bound to act according to the advice tendered after such reconsideration. There is no provision in the Constitution which says that the President shall be responsible to the Lok Sabha or the Parliament. The fact that the Council of Ministers takes the decision is clear from Article 78, which enumerates the duties of the Prime Minister in relation to President. The Indian President has not been given any discretionary power and exercises all powers and functions strictly according to the advice of the Council of Ministers. Last but not the least, in the functioning of the Indian political system during the last sixty years, the Presidents have acted as nominal head.

President is not a nominal head

This has been more or less a legalist view, which was more relevant before the 42nd Constitutional Amendment Act. The Amendment Act provided that the President would act according to the advice tendered by the Council of Ministers. But still there are certain arguments which believe that at least the Constitution did not provide for Nominal Head. Before assuming his office, the President takes an oath to faithfully execute the office of the President of India and to preserve, protect and defend the Constitution and the Law and that he will devote himself to the service and well-being of the people of India. For the purpose of following his oath, he acts independently if he feels that the Cabinet advice is contrary to the oath he has undertaken. Further as per the Article 53, he has to exercise the executive powers of the Union, either directly or through officers

subordinate to him in accordance with the Constitution. This also leaves certain undefined powers with the President.

2. Constitutional Role

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The President of India is vested with the role 'to advise, to encourage and to warn', which lends the office of the President much authority and influence. In spite of the finality of the issue that he or she is merely a figurehead without any real powers, circumstantial dynamics may probably afford him few, if not many occasions to use his discretion in making decisions. Three such circumstances are as follows:

- First, when after a fresh general elections, no party is able to command a majority in the Lok Sabha; the President is inadvertently put in a situation to apply his wisdom, without any aid and advice from a Council of Ministers.
- Second, if an incumbent government loses its majority in the Lok Sabha and the Council of Ministers recommends the dissolution of the House, the President might be in a position to use his mind to find out whether a reasonably stable government can be formed and the country is saved from another general election, thereby acquiring a discretionary power to accept or reject the recommendation of the Council of Ministers.
- Last, due to the lack of time frame, the President must assent to a bill, he may, in his discretion, use the pocket veto to kill a bill.

Article 53(1) of the Constitution vests in the President 'the executive power of the Union' that is to be 'exercised by him either directly or through officers subordinate to him' in accordance with the provisions of the Constitution. However, the Constitution also states that the Council of Ministers, headed by the Prime Minister, is to 'aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice'. However, Article 74(2) bars all courts completely from assuming even an existence of such an advice. Therefore, from the courts' point of view, the real executive power lies with the President. As far as President's decision and action are concerned no one can challenge such decision or action on the ground that it is not in accordance with the advice tendered by the ministers or that it is based on no advice.

3.3.2 Powers of the President

Let us now study in detail, the various powers of the President.

1. Executive Powers

As you studied, being the chief executive of the Indian Union, the executive powers of the central government have been vested in the President, to be exercised by him either directly or through officers subordinate to him, in accordance with Article 53 of the Constitution. His position is such that every significant institution and functionary is either directly or indirectly connected with him.

The executive powers of the President are as follows:

- The President is invested with powers of making and unmaking executive appointments. In the first place, he appoints the Prime Minister and on the latter's advice, the other members of the Union Council of Ministers, to aid and advise him in the exercise of his functions. The President is also authorized to receive and accept their resignations and also dismiss them individually or collectively as they all hold office during his pleasure.

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- The President appoints the Attorney-General of India. He can appoint any person as the Attorney-General who is qualified to be appointed as a judge of the Supreme Court.
- He has the authority to appoint the Comptroller and Auditor General of India, provided the candidate to be appointed is qualified to be a judge of the Supreme Court.
- He appoints the Governors of states. These appointments are done in consultation with the Prime Minister.
- He alone can receive the Governor's resignation or dismiss him, as the latter holds his office during the pleasure of the President.
- The President also appoints the administrators of Union Territories and determines the designations to be held by them. They are variously known as Lt. Governors, chief commissioners or administrators.
- He is competent to appoint an inter-state council to exercise the following functions: (a) Advising upon the disputes between the states (b) Investigate and discuss matters of common interest between the Union and the state or amongst the states themselves.
- The President appoints chairmen and members of the Union Public Service Commission and the Joint Public Service Commissions.
- He nominates the Chief Election Commissioner and the Deputy Chief Election Commissioners.
- He chooses commissioner to report to him on the administration of the 'scheduled areas' and the welfare of scheduled tribes. He also appoints another commissioner to investigate the conditions of the backward classes in the states.
- He decides on an Official Language Commission to recommend to him the ways through which Hindi can be progressively used in place of English for the official purposes of the Union. He also appoints a special officer for all matters relating to the safeguards provided for linguistic minorities under the Constitution.
- The President has also been empowered to entrust to the states, or to its officer with the exercise of executive power of the Union, provided that the state or the officers concerned, consent to do so.
- He has the power to administer Union Territories either directly or through officers or administrators of his choice. The executive power or the Union with respect to the Union Territories extends to all subjects.
- The President has the power to receive reports of the Comptroller and Auditor General of India, Union Public Service Commission, Election Commissioners, the Official Language Commission, commissioners for scheduled areas and backward classes, and the special officers for scheduled castes and tribes, and for the linguistic minorities.

2. Legislative Powers

The legislative powers of the President are as follows:

- The President is an integral part of the Parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as the Rajya Sabha and the Lok Sabha. So, a bill before becoming an Act must

not only be approved by the two Houses of Parliament but must also be accepted by the President.

- The President has the power to nominate a maximum of twelve members to the Rajya Sabha on the ground that they possess special knowledge or practical experience in the fields of art, science, literature and social service. Article 331 empowers him to nominate not more than two members belonging to the Anglo-Indian community to Lok Sabha. The President appoints acting Speaker of the Lok Sabha in case both, the Speaker and Deputy Speaker are not available. Similarly, he appoints the acting Chairman of the Rajya Sabha in case both the Chairman and Deputy Chairman are not available.
- The President administers the oath of office to the members of both the Houses of Parliament.
- He decides the final authority, after consultations with the Election Commission, as to whether any Member of Parliament (MP) has become ineligible to hold office as an MP.
- The President has the power to specify the period within which a person who has been elected as a member both to the Parliament and to a State Legislature must resign from either of his seats.
- He has the power to summon, from time to time, each House of the Parliament in such a manner that six months do not intervene in between the sessions. He has the power to prorogue either or both the Houses. He is also empowered to summon the joint sitting of the two Houses of Parliament in case of deadlocks over non-money bills passed by one House and either rejected or delayed for more than six months by the other House.
- The President inaugurates the first session of Parliament after each general election to the Lok Sabha, and delivers his inaugural address to the two Houses sitting together in a joint session.
- Article 123 authorizes the President to promulgate ordinances during the recess of Parliament.
- All bills passed by the Parliament are sent to him for his consideration. He may or may not give his assent to the bill. And only upon his assent, the bill becomes a law. If, however, he wants the Parliament to modify or amend the bill, he is free to return it for their reconsideration, with or without his recommendations.
- He also has the power to recommend to the Parliament to formulate laws to form new states or to alter areas, boundaries, or names of the existing states.
- The President has been authorized by Article 370 to extend the various provisions of the Constitution to the states of Jammu and Kashmir, with the concurrence of its government.
- He has also been authorized to consider and approve state laws and ordinances which under various provisions of this Constitution are reserved by state Governors for his assent. Finally, he has the power to make regulations for the peace, progress, and good governance of all the Union Territories, excepting Chandigarh and Delhi.

3. Judicial Powers

- The President appoints the Chief Justice and other judges of the Supreme Court of India in consultation with the former. He may dismiss the judges if and only if

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the two Houses of Parliament pass resolutions to that effect by two-thirds majority of the members present.

- He appoints the judges of the state high courts, in consultation with the Chief Justice of India and the Governor of the concerned state.
- The President can transfer judges from one high court to another in consultation with the Chief Justice of India.
- Article 143 empowers the President to consult the Supreme Court.
- The President also exercises the power of pardon. He may grant pardon, suspend or commute the sentence of any person.
- The President has the right to be represented and appear at the investigation of charges against him by either House of Parliament on a resolution of impeachment. The President is, however, not answerable to any court for the exercise or performance of powers and duties of office or for any act done by him in the exercise of his official duties. Neither any criminal proceedings can be instituted against him in any court, nor can any court order his arrest or imprisonment during his term of office. Civil suits can be instituted against him by giving him a written notice of at least two months.

4. Financial Powers

The financial powers exercised by the President of India are as follows:

- The President has control over the finance of the nation. It is President who causes the national budget to be laid before each House of Parliament.
- He has been authorized by Article 280 to appoint a Finance Commission consisting of a chairman and other members every fifth year, or earlier if necessary.
- The President has also been given control over the Contingency Fund of India. He can advance money from this fund to the Government of India for meeting unexpected expenditures.
- Certain Money Bills (Article 110) and bills affecting the taxation in which states are interested (Article 274) are to be reserved by the state Governors for the approval by the President.

5. Military Powers

The military powers of the President are as follows:

- Article 53 makes the President—the Supreme Commander of the defence forces of the Union. The exercise of the military power by him is not discretionary. It is regulated according to the law passed by the Parliament. In the exercise of his military powers, the President nominates and appoints the Chiefs of the Staff of Army, Navy and Air Force. He is the Chairman of the Defence Council which consists, besides him, the Prime Minister, the Defence Minister, and the three Chiefs of Staff.
- With the concurrence of the Parliament, the President can declare war and conclude treaties of peace with foreign states.

6. Diplomatic Powers

The President is invested with the following diplomatic powers:

- The President represents India in international affairs. He appoints and recalls India's Ambassadors, High Commissioners and other diplomatic envoys to the foreign states, the United Nations and its specialist agencies. He receives the credentials of the Ambassadors, High Commissioners, and other diplomatic envoys accredited to India by the United Nations and the foreign States.
- All international treatise and agreements to which India is a party are concluded on his behalf and are finally signed by him.

7. Emergency Powers

The emergency powers of the President are as follows:

- Part XVIII of the Constitution is entitled 'Emergency Provisions'. It deals with the circumstances in which a state of emergency can be proclaimed by the President and the steps he may take to cope with it. The purpose is to restore the normal functions of the government at the earliest opportunity. The framers of the Constitution have provided for three types of emergencies, namely:
  (a) Emergency caused by war, external aggression or internal revolt
  (b) Emergency caused by the breakdown of the Constitutional machinery in the states
  (c) Emergency caused by the threat to financial stability or credit of India, or of any part of the territory thereof

3.4 POWERS AND FUNCTIONS OF THE PRIME MINISTER

In the parliamentary system of the Government in India, the Prime Minister (PM) is the real executive in contrast to the ceremonial position of the President of India. The office of the PM is a prominent one as it has attained immense power and authority in the Indian political system. But the executive system is not a one-man show. Emphasizing the collective nature of responsibility, true to the essence of a parliamentary democracy, the Constitution of India has also accorded a position of prime importance to the Council of Ministers under the leadership of the PM. The Indian system is symbolic in ensuring a leading position to the PM with the collective responsibility of the cabinet. The PM is the pivot, the guiding star that perceives and responds to the situation much ahead of others. Under Article 75 of the Indian Constitution, the appointment of the PM is ordained by the President who conventionally invites the leader of the majority party in the Lok Sabha to form the government. However, the President may afford his discretion if the multi party system fails to throw up an obvious choice.

After assuming office at the prestigious South Block, the ministers are appointed according to the choice of the Prime Minister. It must be noted here that the PM has a prerogative to be twisted at times to suit to the compulsions of running a coalition government.

A convention has always been followed in India that the PM needs to be a member of the Lok Sabha. However, Dr Manmohan Singh remains an exception, when as a member of the Rajya Sabha, he was elected as the Prime Minister in the United

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Check Your Progress

4. State the tenure of the President of India.
5. What is the constitutional role of the President of India?
6. Mention any one military power of the President.

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Progressive Alliance (UPA) government. Noteworthy is the fact that the President is free to appoint any person as PM if he is of the opinion that the person to be appointed is likely to enjoy the confidence of the Lok Sabha. He may appoint the PM from amongst the members of either House of the Parliament or even from amongst the outsiders. In case, an outsider is appointed as the PM or as a minister, he must become a member of either House of Parliament within six months of his appointment. The continuation of the PM in office depends upon his majority support in the Lok Sabha, though the Constitution provides that the ministers hold office during the pleasure of the President. However, the pleasure of the President is, in fact, the pleasure of the majority support of the Lok Sabha, to whom the government is collectively responsible and whose vote of no-confidence leads to the withdrawal of the pleasure of the President, resulting in the ouster of the government.

3.4.1 Role, Power and Functions of the PM

The Constitution of India vests executive powers of the Union in the hands of the Prime Minister and his team. But the propensity of the post and the role of the PM in the Indian polity is much more widespread and demanding, than what has been defined in the Constitution. The group is, at least, dominant, if not absolute. Not only this, assertive personalities at times have added more power to the position.

The PM's role spans many diverse areas. These are as follows:

- The power to advise the President about the appointment of other ministers to constitute the Union Council of Ministers. He has a free choice in selecting his colleagues. The only thing which the Prime Minister has to keep in mind, while preparing the list of ministers, is that he has given representation to various groups in his party and that ministers are drawn from different states.
- The political life and death of ministers also depends upon the PM. He assigns to them various ministries and departments. He may change their portfolios or may even advise the President to dismiss them.
- The PM influences to a great extent every other appointment made by the President. The President appoints Chief Justices and Judges of the Supreme Court and the high courts, Comptroller and Auditor General, Attorney General, Election Commissioners, Chiefs of Staff of Army, Navy and Air Force, State Governors, Ambassadors and High Commissioners and many other State officers. All these appointments are essentially the choice of the PM.
- The Parliament is summoned and prorogued by the President on the advice of the PM. The PM also advises the President about the dissolution of the Lok Sabha.
- The Prime Minister is the channel of communication between the President and the Council of Ministers.
- As Chairman of the Union Council of Ministers, the Prime Minister summons meetings of the Council of Ministers and presides over them.
- The Prime Minister, being the Chairman of the Council of Ministers, not only supervises the departments under his personal charge but also coordinates and supervises the work of all other departments and ministers.
- The Council of Ministers is collectively responsible to the Lok Sabha. They can do this only if their leader shields and defends them and their actions both inside and outside the Parliament. They must speak with one voice.

- Important policy matters are initiated by the PM in both the Houses of Parliament. It is he who gives his opening speech on important policy matters and informs the Houses of the purpose the government wants to achieve.
- It has been the prerogative of the PM to take a direct and keen interest in India's international relations.
- The PM, being the leader of the majority party, has to take the whole party into confidence, so that he continues to command the confidence and support of his party.

The office of the PM in the Indian political system has exhibited varied leadership styles and performances due to various factors whether personal or circumstantial. From Nehru to Manmohan Singh, there have been distinct modes of perceptions and achievement orientations. However, in the era of coalition governments, the role and outlook of the PMs have become more cautions, cooperative, controlled but constrained in order to fix support of the participating parties of the government. The cabinet, at times, may also become problematic that would compel the PM to take a back seat. Thereby, the question of PM's autonomy becomes really crucial in such situations. For PM it is not just an issue of the survival of his party, but also of the people and the nation.

3.5 POWERS AND FUNCTIONS OF A GOVERNOR

In accordance with the federal characteristics, the Constitution of India envisages two tiers of government, one at the level of the Union, and the other at the level of the states. Part IV of the Constitution of India lays down the structure of the state governments and stipulates a parliamentary form of government like that for the Centre.

In accordance with the parliamentary framework, like the Union government, the State governments also have two forms of executive—the constitutional head and the real executive. The Governor is the constitutional head of the state and the Chief Minister is the real executive of the state.

The ambiguity about the dual role of the Governor, his powers and functions has provoked sharp debates and controversies both in terms of nature of the federation and Union-State relations.

3.5.1 Office of the Governor

Appointment: According to Article 153 of the Constitution, each state in India has a Governor and the executive power of the state is vested in him. He is appointed by the President of India for a term of five years and holds office during the pleasure of the President (Article 156). This means that a Governor can be removed by the President at any time even before the expiry of the term.

Regarding the appointment of the Governor, there have been two conventions in India:

- The Governor is appointed from outside the state concerned. This convention is there to ensure impartiality of the Governor in state politics. However, there have been instances when this convention was not followed.
- The states are consulted by the Centre in the appointment of the Governor. However, this practice is also not always followed in every appointment.

Check Your Progress

7. How is the Prime Minister (PM) of India appointed?
8. State two functions of the Prime Minister.

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A study of the persons appointed as Governors clearly reveals that a considerable number of retired politicians have been appointed as Governors. Besides, retired bureaucrats, judges and retired army officials have also been made Governors. Thus, frequently, the Governors have been accused of playing in favour of the party-in-power at the Centre.

Qualification: The Constitution prescribes the following qualifications for a person to become a Governor:

- Must be a citizen of India
- Must have completed thirty-five years of age
- Should not be a Member of Parliament or State Legislature
- Should not hold any office of profit

3.5.2 Functions of a Governor

The powers and functions of the Governor can be categorized as follows:

- **Executive Powers:** The Governor appoints the Chief Minister and his Council of Ministers. However, following the parliamentary form of government norms, they are responsible to the State Assembly and remain in power till they enjoy the confidence of the State Assembly. The Governor also appoints the Advocate General, and the members of the State Police Service Commission.

  All the executive actions of the state are executed in the name of the Governor. It is the duty of the Chief Minister to communicate the Governor all the decisions of the Council of Ministers relating to the administration of the state and proposals for legislation.

- **Legislative Powers:** The State Legislature consists of the Governor and the State Legislative Assembly. Thus, he is an integral part of the legislature and enjoys a variety of powers. Governor may summon, address, prorogue and dissolve the legislature. When a bill is passed by the legislature, it has to be presented to the Governor and the Governor shall declare either that he assents to the bill or that he withholds assent or that he reserves the bill for the consideration of the President. Article 213 empowers the Governor to promulgate ordinances during the recess of the legislature. He also has the power of causing to be laid before the State Legislature the annual financial statement and recommending Money Bills.

- **Judicial Powers:** The Governor of a state has the power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

- **Discretionary Powers:** Apart from the normal functions which the Governor exercises as a constitutional head, he exercises certain discretionary powers. Some of them have been expressly conferred on him, some other flow by necessary implication.

Article 163 (1) states that the Governor should act according to the advice of the cabinet except when he is required by the Constitution to act in his discretion. Article 163 (2) confers the Governors the blanket discretion to decide when they are required to act in their discretion. The Governor's satisfaction, as well as certain responsibilities, therefore, becomes vulnerable to the discretionary power.

With regard to the discretionary power by implication, they are significant in two matters. One is with regard to the appointment of Chief Minister when neither a single party nor a combination of parties emerges from the election with a clear majority. Related to this is also the question of dismissal on the loss of majority support. The second matter is with regard to making a report to President under Article 356 about his satisfaction that a situation has arisen in which the government of state cannot be carried on in accordance with the provisions of the Constitution, thereby recommending the imposition of the President's rule.

The above mentioned powers were meant by the Constitution makers to be used for extraordinary and emergency situations. But in practice, not only these but also some normal powers, like that of reservation of bills for the consideration of President, have been used in quite controversial manners which suggests partisan motives thereby creating tensions between Union–State relations.

3.5.3 Position and Role of a Governor

From the description about the powers and functions of the Governor, there emerge some very significant characteristics about the office of Governor which have important bearings on state politics. To begin with, the Constitution intended that the Governor should be the instrument to maintain the fundamental equilibrium between the government and the people of the state and to ensure that the mandates of the Constitution are respected in the State. That is, with regard to the office of the Governor, Article 159 says that the Governor shall, to the best of his ability 'preserve, protect and defend the Constitution and the law' and will devote himself 'to the service and well-being of the people' of the state.

Thus, the Constitution of India envisages a dual role for the Governor of a state as follows:

- The Constitutional head of the state
- The agent of the Centre

Governor as the Head of the State

The Governor as the head of the state works under the parameters of parliamentary democracy. Thus, he acts as a nominal head and exercises his functions strictly according to the 'aid and advise' of the Council of Ministers. Though the administration is carried out in the name of the Governor, the real authority is exercised by the Chief Minister and his Council of Ministers, who are collectively responsible to the Legislative Assembly. After the fourth General Elections in 1967, the monopoly of political power by the Congress party was broken and the non-Congress governments were formed in seven states. This phenomenon continues even today where no one party is capable of forming governments in both the Union and in many of the States. This changed scenario redrafted and redefined the position and role of the Governor in state politics. The Governors became actively involved in state politics and invariably acted in the interests of the party-in-power at the Centre. They also used their discretionary powers for their party purposes and thus made the office of the Governor highly controversial, with the result that there was a demand to abolish the office of the Governor.

Governor as an Agent of the Centre

According to writer and educationist K.M. Munshi, 'Governor is the watch-dog of Constitutional propriety and the link which binds the State to the Centre, thus securing

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the Constitutional unity of India.' The Governor performs the following functions as the agent of the Centre in the states:

- The Union government is responsible for good governance in all the states. In case of the constitutional breakdown of state machinery, the Governor may recommend President's rule or emergency in the state under Article 356.
- The Governor sends his report regarding the affairs of the state to the President, periodically.
- The Centre has the power to issue directives to the states and it is the duty of the Governor to see that such directives are followed by the state government.
- The Governor of a state can reserve a bill passed by the State Legislature for the consideration of the President. Moreover, certain types of bills must be reserved by the Governor for the President's consideration.

Controversy Regarding the Role of the Governor

Since 1967, the deterioration in political standards and practices in the wake of multi party ministries, inter-party rivalries, political defections—all have made the Governor 'a political head' rather than a 'Constitutional Guardian'.

One of the reasons for the attack or the criticism of Governor's role in state politics is the way the Governors have been appointed in the past. In January 1990, eighteen Governors were asked to resign by the President to facilitate a reshuffle by the Union government led by V.P. Singh, which in turn, made the office of the Governor a puppet position. As mentioned earlier, the Centre has generally followed the policy of appointing people as Governors who have either failed to win any seat in the elections, or they are ex-bureaucrats or ex-judges (as a reward to their loyalty). Thus, such Governors owe their loyalty more towards the Centre and less towards the state. Moreover, during their appointment, the Centre sometimes does not consult the Chief Minister and his Council of Ministers. Thus, the state Chief Ministers complain that the selection of the Governors is imposed on them.

3.6 SUMMARY

In this unit, you have learnt that:

- The Union Executive is headed by the President, the Head of State of the Indian Republic, who exercises his power directly or through his subordinates.
- India has adopted a parliamentary form of government in which the Parliament enjoys a pivotal position. However, unlike England, our Parliament is not supreme.
- The Lok Sabha is the House of the People as it is directly elected by the people. It is also known as the Lower House. Until 1853, there was no legislative body in India.
- The Lok Sabha is presided over how the Speaker who is elected in the very first meeting of the Lok Sabha after the general elections for a term of five years from amongst the members of the House.
- The principal function of the Indian Legislature is to make laws. The Constitution of India has divided the Legislative powers between the Centre and States.
- Along with the State legislature, the Indian Legislature can make laws on the subjects mentioned in the Concurrent List as well.

Check Your Progress

9. How is the Governor of a State appointed?
10. List the qualifications for a person to become a Governor.

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- The Parliament is the repository of the Union purse. It has the sole power not only to authorize expenditure for the public services and to specify the purpose to which that money shall be appropriated but also to provide the ways and means to raise the revenue required.
- The Parliament participates in the election of the President and the Vice President of India. Besides, both the Houses elect their presiding officers – the Speaker and Deputy Speaker of the Lok Sabha, Chairman and Deputy Chairman of the Rajya Sabha.
- The Parliament can make laws regulating the Constitution, organization, jurisdiction and powers of the courts.
- The Parliament can amend a major portion of the Constitution but it needs ratification by at least half of the states to amend the Constitution.
- A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation.
- The Constitution of India has assigned a unique role to Rajya Sabha in the Indian parliamentary and constitutional set-up.
- The principal ad hoc committees are the Select and Joint Committees on Bills. Others like the Railway Convention Committee, the Committees on the Five Year Plans and the Hindi Equivalents Committee were appointed for specific purposes.
- The Estimates Committee was first created in April 1950, and its functions were enlarged in 1953.
- Under the Constitution of India, the office of the President of India is virtually analogous to that of the British monarchy in keeping with the spirit of the parliamentary executive.
- The President of India is vested with the role 'to advise, to encourage and to warn', which lends the office of the President much authority and influence.
- The President is an integral part of the Parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as the Rajya Sabha and the Lok Sabha.
- The President appoints the Chief Justice and other judges of the Supreme Court of India in consultation with the former.
- In the parliamentary system of the Government in India, the Prime Minister (PM) is the real executive in contrast to the ceremonial position of the President of India.
- After assuming office at the prestigious South Block, the ministers are appointed on his choice. It must be noted here that the PM has a prerogative to be twisted at times to suit to the compulsions of running a coalition government.
- In accordance with the parliamentary framework, like the Union Government, the state governments also have two forms of executive—the constitutional head and the real executive. The Governor is the constitutional head of the state and the Chief Minister is the real executive of the state.
- The Governor appoints the Chief Minister and his Council of Ministers. The State Legislature consists of the Governor and the State Legislative Assembly.
- The Governor as the head of the state works under the parameters of parliamentary democracy.

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3.7 KEY TERMS

- **Probity:** It refers to quality of having strong moral principles such as honesty and decency.
- **Suffrage:** It is the right to vote in political elections.
- **Amendment:** It refers to a change or addition to a legal or statutory document.
- **Prorogue:** It implies the discontinuation of a session of a Legislative Assembly without dissolving it.
- **Appropriation:** It is the action of taking something for one's own use.

3.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The members of the Lok Sabha are elected on the basis of the universal adult suffrage. Every citizen of India who is not less than eighteen years of age is entitled to vote in elections to the Lok Sabha unless the individual is otherwise disqualified under law (Article 326).
2. The Parliament can amend a major portion of the Constitution but it needs ratification by at least half of the states to amend the Constitution. However, the Parliament cannot amend the basic features of the Constitution.
3. The two kinds of parliamentary committees are as follows:
   - Ad hoc committees
   - The standing committees
4. The President of India is elected for a term of five years with an entitlement for re-election.
5. The President of India is vested with the role 'to advise, to encourage and to warn', which lends the office of the President much authority and influence. In spite of the finality of the issue that he or she is merely a figurehead without any real powers, circumstantial dynamics may probably afford him few, if not many occasions to use his discretion in making decisions.
6. The President is the supreme commander of the defence forces.
7. Under Article 75 of the Indian Constitution, the appointment of the PM is ordained by the President who conventionally invites the leader of the majority party in the Lok Sabha to form the government.
8. Two important functions of the Prime Minister are as follows:
   - The Parliament is summoned and prorogued by the President on the advice of the Prime Minister. The PM also advises the President about the dissolution of the Lok Sabha.
   - The Prime Minister is the channel of communication between the President and the Council of Ministers.
9. The Governor of a state is appointed by the President of India for a term of five years and holds office during the pleasure of the President (Article 156).

10. The qualifications required for a person to become a Governor are as follows:
    - Must be a citizen of India
    - Must have completed thirty-five years of age
    - Should not hold any office of profit

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3.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the judicial functions of the Indian Parliament.
2. What are the emergency powers of the President of India?
3. Briefly discuss the role of the Prime Minister.
4. What is the role of a Governor?
5. Differentiate between Lok Sabha and Rajya Sabha.

Long-Answer Questions

1. Discuss the powers and functions of the Indian Parliament.
2. Explain the constitutional position of the President of India.
3. Describe the powers and functions of the Indian President.
4. What are emergency powers of the President?

3.10 FURTHER READING

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UNIT 4 SUPREME COURT AND HIGH COURTS

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Structure

4.0 INTRODUCTION

In India, the world's largest democracy, the judiciary plays a very significant role. Justice is conducted by the Judiciary, according to law. The Judiciary administers justice through legal reasoning, review of evidence and argumentation. The reliability of the process of justice administered by the Judiciary depends on the way in which it carries out justice. The judgments of the Judiciary can promote social justice, in the absence of which the sufferings of the common man will be too many. The Supreme Court is the highest judicial body in India. It is headed by the Chief Justice of India and comprises thirty other judges. There are twenty-four high courts in India. Each high court is a court of record exercising original and appellate jurisdiction within its respective state or territory.

In this unit, you will study about the composition, jurisdiction and powers of the Supreme Court and high courts of India.

4.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss the jurisdiction and powers of the Supreme Court
- State the composition of a high court
- Discuss the tenure and qualification of high court judges
- Explain the jurisdiction of the high courts

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4.2 SUPREME COURT

The members of the Constituent Assembly aspired to idealize the courts for two basic reasons:

- Strengthening the fundamental rights
- Acting as guardians of the Constitution

This vision guided the framers to design an independent judiciary and vesting it with powers to make the judicial provision of the Constitution congruent with the broad contours of the parliamentary democracy in the country.

During the British rule, the civil and criminal laws were administered by judges-cum-magistrates, with the Judicial Committee of the Privy Council (JCPC) in England acting as the final court of appeal. The separation between the Executive and the Judiciary was made gradually by the Government of India Act of 1935. The highest court in India was established in the form of the Federal Court, which however was subordinate only to the JCPC. The British colonial period also witnessed the emergence of a corporate legal profession that provided pleaders and advocates for presenting the cases of clients to judges or magistrates.

The Supreme Court of India, the first fully independent court for the country, was first set up 28 January 1950. The Constitution also set-up an integrated hierarchy of courts for a more parliamentary federal system, compared to the Government of India Act, 1935.

4.2.1 Composition

Article 124 of the Constitution establishes the Supreme Court of India as the highest court of the Indian Republic. It provides that the Supreme Court shall consist of the Chief Justice and thirty other judges. Each judge is appointed by the President after consultations with other judges of the Supreme Court and the State High Courts, as deemed necessary. However, the President is bound to consult the Chief Justice of India, before appointing an ordinary judge of the Supreme Court.

When the office of the Chief Justice of India is vacant or when he is unable to perform the duties of his office, due to absence or otherwise, the duties of his office are performed by the other judge of the Supreme Court, as the President may appoint. The acting Chief Justice is entitled to the same rights, privileges, emoluments and other facilities, which are available to the Chief Justice.

A person is qualified to be appointed the judge of the Supreme Court as per the following requirements:

- Should be a citizen of India
- Must have been a high court judge for at least five years, or a high court advocate for at least ten years
- Must be a distinguished jurist in the opinion of the President

The judges hold office until retirement at the age of sixty-five years. Nevertheless, they may be removed earlier only by a process of impeachment.

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4.2.2 Independence of the Supreme Court

The framers of the Indian Constitution were concerned with the independence of the Judiciary due to the following reasons:

- The appointing authority, the President, has to consult the members of the Judiciary.
- The Constitution provides a fixed tenure for the judges and they cannot be removed from the office, as and when the government feels like.
- The Second Schedule to the Constitution provides for the salaries of the judges, whereas the terms and conditions of their services are regulated by the Acts of Parliament.
- The terms and conditions of services of a judge cannot be varied to his disadvantage, after his appointment (Article 125).
- The administrative expenses of the Supreme Court, the salaries and allowances of the judges as well as of the staff shall be charged on the Consolidated Fund of India (CFI) and shall not be voted in Parliament (Article 146 [3]).
- No discussion should take place in Parliament regarding the conduct of any judge in the discharge of his duties, except when an impeachment resolution is under consideration (Article 121).
- A retired judge of the Supreme Court shall not plead or act in any court or before any other authority within the territory of India.

4.2.3 Jurisdiction of the Supreme Court

The Supreme Court originally holds appellate and advisory jurisdictions, besides a right to grant special leave for appeal.

1. Original Jurisdiction

The original jurisdiction of the Supreme Court is of two types, namely exclusive and concurrent. Article 131 ensures its exclusive original jurisdiction in all disputes between (i) The Government of India and one or more states; or (ii) The Government of India and any state or states on one side and one or more states on the other, or (iii) Between two or more states.

Secondly, under Articles 32 and 226, the Supreme Court has a concurrent, original as well as appellate jurisdiction in all cases and disputes involving fundamental rights. Any case or dispute involving violation of fundamental rights by the government, may be brought before the Supreme Court as an appeal against the decision of a high court.

Furthermore, under Articles 13 and 32, the Supreme Court of India is empowered to exercise the power of judicial review. It can consider any civil, criminal, or any other case directly, if it involves the interpretation of the Constitution, or of any law.

Finally, Article 71 of the Constitution exclusively empowers the Supreme Court to decide, as the final authority, all doubts and disputes arising out of, or in connection with, the election of the President or Vice President of India.

2. Appellate Jurisdiction

The Supreme Court has appellate jurisdiction in constitutional, civil and criminal cases. It has appellate jurisdiction in all cases involving a substantial question of law according to

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the interpretation of the Constitution. Such cases and disputes may be brought before it against the decision of a high court, if the high court gives such a certificate, or if the Supreme Court itself grants 'special leave to appeal'. The Supreme Court is not only competent to interpret the Constitution of India, Article 147 but it also empowers it to decide any issue of law involving interpretation of the Government of India Act of 1935 and the Indian Independence Act of 1947.

3. Advisory Jurisdiction

Under Article 143 of the Constitution, the Supreme Court has the constitutional obligation to advise the President. The President is free to refer any question of law or fact to the Supreme Court for its opinion, if he is satisfied that the question is of such a nature and of public importance that it is critical to obtain the opinion of the Supreme Court.

4. Special Leave for Appeal

The Supreme Court is empowered by Article 136 to grant Special Leave to Appeal against the judgment, decree, sentence or order in any case by any Tribunal in India, except those of courts or tribunals that are especially constituted for the armed forces. This extraordinary power has been given to the Supreme Court to ensure justice and fairness to all parties in all civil, criminal and constitutional cases.

5. Review Power

Article 137 empowers the Supreme Court to review any of its earlier judgments or orders. The Supreme Court would ordinarily adhere to its previous judgment. If, however, an error is detected in a subsequent case, the court should be able to rectify it rather than adhere to an earlier decision, which is found inapplicable to changed conditions and circumstances, for example, in the *Golak Nath* case, the Supreme Court reviewed its earlier judgment by declaring that it was wrong in allowing the Parliament to curtail fundamental rights and that, therefore the Parliament should have no such right.

6. Miscellaneous Powers

Article 129 makes the Supreme Court a court of record. Similarly, Article 141 makes its decisions binding on all courts, within the territory of India. No court can give a verdict contrary to the one given by the Supreme Court.

The Supreme Court has the power to punish persons guilty of contempt of itself. The Supreme Court is also empowered to make rules and regulations for regulating the practices and procedures of the Court. The Supreme Court also enjoys complete control over its own establishment. Under Article 146, the Chief Justice of India is empowered to appoint officers and servants of the Supreme Court, after consultations with the UPSC (Union Public Service Commission). The rule related to the salaries, allowances, leave or pensions payable to the officers and servants of the Court, are also charged upon the Consolidated Fund of India and, therefore, do not form a votable item of the Union Budget.

Under Articles 257 and 258, the Chief Justice of India has been empowered to appoint arbitrator to decide cases and disputes relating to extra-costs incurred by a State government in carrying out the directions of the Union government in the following matters: (i) Construction and maintenance of the means of communications (ii) Protection of railways within states (iii) Powers and duties conferred upon a state government or its officers with their consent.

Check Your Progress

1. When was the Supreme Court of India established?
2. State the qualifications required for a person to be appointed as the judge of the Supreme Court.
3. Mention the matters in which the Supreme Court of India exercises original jurisdiction.

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4.3 HIGH COURTS

According to Article 125 of the Constitution, each state should have a high court. A high court exercises powers within the territorial jurisdiction of the state concerned. There are in total 24 high courts in the country (see Table 4.1).

Table 4.1 *High Courts in India*

Court name	Established	Act established	Jurisdiction	Seat
Allahabad High Court	1866	Indian High Courts Act, 1861	Uttar Pradesh	Allahabad
Bombay High Court	1862	Indian High Courts Act, 1861	Maharashtra, Goa, Dadra and Nagar Haveli, Daman and Diu	Mumbai
Calcutta High Court	1862	Indian High Courts Act, 1861	West Bengal, Andaman and Nicobar Islands	Kolkata
Chhattisgarh High Court	2000	Madhya Pradesh Reorganisation Act, 2000	Chhattisgarh	Bilaspur
Delhi High Court	1966	Delhi High Court Act, 1966	National Capital Territory of Delhi	New Delhi
Gauhati High Court	1948	Government of India Act, 1935	Arunachal Pradesh, Assam, Nagaland, Mizoram	Guwahati
Gujarat High Court	1960	Bombay Reorgansisation Act, 1960	Gujarat	Ahmedabad
High Court of Judicature at Hyderabad	1954	Andhra State Act, 1953	Andhra Pradesh, Telangana	Hyderabad
Himachal Pradesh High Court	1971	State of Himachal Pradesh Act, 1970	Himachal Pradesh	Shimla
Jammu and Kashmir High Court	1943	Letters Patent issued by thenMaharaja of Kashmir	Jammu and Kashmir	Srinagar/ Jammu
Jharkhand High Court	2000	Bihar Reorganisation Act, 2000	Jharkhand	Ranchi
Karnataka High Court	1884	Mysore High Court Act, 1884	Karnataka	Bengaluru
Kerala High Court	1956	States Reorganisation Act, 1956	Kerala, Lakshadweep	Kochi

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Madhya Pradesh High Court	1936	Government of India Act, 1935	Madhya Pradesh	Jabalpur
Madras High Court	1862	Indian High Courts Act, 1861	Tamil Nadu, Puducherry	Chennai
Manipur High Court	2013	North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012	Manipur	Imphal
Meghalaya High Court	2013	North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012	Meghalaya	Shillong
Orissa High Court	1948	Orissa High Court Order, 1948	Odisha	Cuttack
Patna High Court	1916	Government of India Act, 1915	Bihar	Patna
Punjab and Haryana High Court	1919	High Court (Punjab) Order, 1947	Punjab, Haryana, Chandigarh	Chandigarh
Rajasthan High Court	1949	Rajasthan High Court Ordinance, 1949	Rajasthan	Jodhpur
Sikkim High Court	1975	The 36th Amendment to the Indian Constitution	Sikkim	Gangtok
Tripura High Court	2013	North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012	Tripura	Agartala
Uttarakhand High Court	2000	Uttar Pradesh Reorganisation Act, 2000	Uttarakhand	Nainital

The position of the high courts under a federal constitution, like that of India is substantially different from that of USA (a federal country). In the USA, every state has its own constitution and the high courts in the constituent states are constituted under the state Constitution. The structural features of the judicial courts (for example, method of appointment of the judges, their salary structure, service conditions as well as their jurisdiction, etc.) differ from state to state. On the contrary, in India, all the high courts are constituted either under the authority of the Indian Constitution or by the Indian Parliament, with the state governments having no substantive say in the creation of a high court. Being part of an integrated and unified judicial system, the high courts stand in the hierarchical order below the Supreme Court with an organic relationship between the two of them. Following the principle of separation of powers, it is provided in the Constitution that neither the state executive nor the State Legislature has any power to control the high court or to alter the Constitution or organization of the high court.

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Three New High Courts for North East

In 2013, the Centre constituted three new High Courts in the northeast—Meghalaya, Manipur and Tripura—taking the total number of High Courts in the country from 21 to 24. It was announced that the strength of judges in each High Court will be as follows: Tripura 4 (including the Chief Justice), and Meghalaya and Manipur: three each (including the Chief Justice).

Now, only Nagaland, Mizoram and Arunachal Pradesh are left with outlying benches of the Gauhati High Court, which has since its establishment in 1948 had jurisdiction over the entire North East.

4.3.1 Composition of a High Court

A high court stands at the apex of judicial system of a state. A high court consists of a Chief Justice and such other judges as the President may, from time to time, determine. The number of judges of the state high courts has not been fixed by the Constitution. Therefore, it varies from court to court.

The Chief Justice of a high court is appointed by the President by warrant under his hand and seal, after due consultation with the Chief Justice of India and the Governor of the state. In case of appointing the other judges of the high court, the President is required to consult, in addition to the Chief Justice of India, and the Governor of the state, the Chief Justice of the high court where the appointment of the judges is to be made. The practice has also been evolved to appoint at least one-third of the judges of a high court from outside the state in order to maintain impartiality in the functioning of the high court.

4.3.2 Qualification of High Court Judges

An Indian citizen can be qualified as a high court judge when he fulfills the following conditions:

- He has either held for at least ten years a judicial office in the territory of India.
- Has been, at least, ten years, an advocate of a high court in any state.

In computing the ten-year period for the purpose of appointment, experience as an advocate can be combined with that of a judicial officer.

4.3.3 Tenure of High Court Judges

A judge shall hold office till he attains sixty-two years of age. He may resign from his office by writing to the President. A judge can be removed by the President from his office before the expiry of his term on grounds of proven misbehaviour or incapacity. However, such an action can be taken by the President only if both the Houses of Parliament pass a resolution by a two-thirds majority of the members present in each House, which should also be the majority of the total membership of the House, accusing the judge with proven misbehaviour or incapacity. After retirement, a person who has held office as a permanent judge of the high court shall not plead or act in any court or before any authority in India except the Supreme Court and other high courts (Article 220).

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4.3.4 Jurisdiction of High Court

Since the high courts had been functioning in the country with a fairly satisfactory level of independence and impartiality for many years by the time India became independent, the Constitution makers did not think it fit to detail the jurisdiction of the high courts. On the other hand, the Supreme Court of India was a newly created institution necessitating a clear definition of its powers and functions. Thus, the Constitution of India has not made any special provision relating to the general jurisdiction of the high court.

The civil and criminal jurisdictions of the high courts are primarily governed by two codes of civil and criminal procedures. At present, the high court of a state enjoys the following powers:

- **Original:** The original criminal jurisdiction of the high court has been completely taken away by the Criminal Procedure Code, 1973. The original civil jurisdiction of the high courts has been confined in the matters of admiralty, probate, matrimonials, contempt of court and enforcement of the fundamental rights.
- **Appellate:** The appellate jurisdiction of the high court is both civil and criminal.

  On the civil side, an appeal to the high court is either a first appeal or a second appeal. Appeals from the decisions of the district judges and from those of subordinate judges in case of a higher value are made directly to the high court. The criminal appellate jurisdictions of the high court extends to appeals from the decisions of a Sessions Judge or an Additional Sessions Judge, where the sentence of imprisonment exceeds seven years and from the decisions of an Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'petty' cases.
- **Power of superintendence:** According to Article 277, every high court has the power of superintendence over all courts and tribunals, except those dealing with the armed forces functioning with its territorial jurisdiction. Interpreting the scope of this power, the Supreme Court said that all types of tribunals including the election tribunals operating within a state are subject to the superintendence of the high courts and also that the 'superintendence is both judicial and administrative'.
- **Control over subordinate courts:** Article 228 empowers the high courts to transfer constitutional cases from lower courts to high courts. Thus, if the court is satisfied that a case pending in one of its subordinate courts involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, it shall then withdraw the case and may either dispose of the case itself or determine the constitutional question and then send the case back to the court wherefrom it was withdrawn.
- **The writ jurisdiction of the high court**: Every high court shall have the power to issue to any person or authority including the government (within the territories in which it exercises jurisdiction) orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of the fundamental rights guaranteed by the Constitution, and for any other purposes (Article 226).
- **Power of appointment:** According to Article 229, the Chief Justice of the high court is empowered to appoint officers and servants of the court. The

Governor may, in this respect, require the Court to consult the Public Service Commission in appointing person to the judicial service of the state. The powers of posting and promotions and grant of leave to persons belonging to the judicial service is also vested in the high court.

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4.3.5 Position of High Courts

High courts in India have been given full freedom and independence in imparting justice to the people and ensure that executive and legislature shall in no way interfere in the day-to-day life of the people. As a court of record, the high court has the power to punish those who are adjudged as guilty of contempt of court. All its decisions are binding and cannot be questioned in any lower court. The independence of the judiciary in India is ensured by permanence of tenure and the conditions of service of the judges.

Observers have cited certain inherent defects in the working of the state high courts:

- The Constitution of India has clearly stated that the appointment of the judges to the high court should be on merit basis. However in practice, the appointments are not always made on merit. This is because the state ministry continues to have a powerful voice in the matter, which has eroded the whole concept of independence of judiciary.
- Also, the Constitution prohibits judges of the high court to hold office under the government after their retirement and there have been a number of instances where the high court judges have been appointed as Governors, ministers, ambassadors and vice chancellors.
- The idea of independence of judiciary is eroded when the judges who stand up against the executive are sought to be transferred to other states with the ostensible purpose of furthering 'national integration'.

4.4 SUMMARY

- In India, the world's largest democracy, the Judiciary plays a very significant role. Justice is conducted by the Judiciary, according to law.
- The Supreme Court is the highest judicial body in India. It is headed by the Chief Justice of India and comprises thirty other judges.
- The original jurisdiction of the Supreme Court is of two types, namely exclusive and concurrent.
- The Supreme Court has appellate jurisdiction in constitutional, civil and criminal cases. It has appellate jurisdiction in all cases involving a substantial question of law according to the interpretation of the Constitution.
- Article 137 empowers the Supreme Court to review any of its earlier judgments or orders. The Supreme Court would ordinarily adhere to its previous judgment.
- The Indian Constitution provides for an integrated judicial system. At the apex of the judiciary is the Supreme Court of India whose decisions are applicable all over the country.
- A high court stands at the apex of judicial system of a state. A high court consists of a Chief Justice and such other judges as the President may, from time to time,

Check Your Progress

4. How is the Chief Justice of a high court appointed?
5. State the qualifications required for a person to be appointed as the judge of a high court.

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determine. The number of judges of the state high courts has not been fixed by the Constitution.

- The Constitution of India has not made any special provision relating to the general jurisdiction of the high court.
- The civil and criminal jurisdictions of the high courts are primarily governed by two codes of civil and criminal procedures.
- High courts in India have been given full freedom and independence in imparting justice to the people and ensure that executive and legislature shall in no way interfere in the day-to-day life of the people.

4.5 KEY TERMS

- **Jurisdiction:** It refers to the right, power, or authority to administer justice by hearing and determining controversies.
- **Appellate jurisdiction:** It implies the power of the Supreme Court to review decisions and change outcomes of the decisions of lower courts.
- **Advisory jurisdiction:** It is the power of a court to give advisory opinion on specific issues of law.
- **Amicus Curiae**: It is a party that is not involved in a particular litigation but is allowed by the court to advise it on a matter of law directly affecting the litigation.

4.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The Supreme Court of India was established on 28 January 1950.
2. The qualifications required for a person to be appointed as the judge of the Supreme Court are as follows:
    - He is the citizen of India.
    - He must have been a high court judge for at least five years, or a high court advocate for at least ten years.
    - He must be a distinguished jurist in the opinion of the President.
3. The Supreme Court of India exercises original jurisdiction in all disputes between (i) The Government of India and one or more States (ii) The Government of India and any State or States on one side and one or more States on the other, or (iii) Between two or more States.
4. The Chief Justice of a high court is appointed by the President by warrant under his hand and seal, after due consultation with the Chief Justice of India and the Governor of the state.
5. The qualifications required for a person to be appointed as the judge of a high court are as follows:
    - He has either held for at least ten years a judicial office in the territory of India.
    - Has been, at least, ten years, an advocate of a high court in any state.

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4.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the composition of the Supreme Court.
2. Why was the independence of the Judiciary considered important by the framers of the Indian Constitution?
3. Identify the shortcomings in the working of the state high courts.

Long-Answer Questions

1. Discuss the jurisdiction and the powers of the Supreme Court.
2. Discuss in detail the jurisdiction of the high courts of India.
3. 'The Indian Constitution provides for an integrated judicial system.' Explain.

4.8 FURTHER READING

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UNIT 5 DEMOCRATIC DECENTRALIZATION

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Structure

5.0 INTRODUCTION

Unlike national or central authorities, local authorities do not enjoy any power beyond their defined territorial boundaries. One of the main distinctions between local self-government and national government is that local authorities do not enjoy sovereignty. Their powers are assigned by and delegated from the central authorities. In order to appreciate the value of local self-government, first, it is essential to review those forces which in the course of the 19th century swept modern nations from loose connections of villages to their highly integrated present condition. Most of the states at the advent of modern age were primarily agricultural. Throughout the 19th and 20th centuries most of these states first saw a high level of centralization. Due to the high levels of centralization, certain remote areas and their various problems remained unresolved. It is very important to know the natural factors and the values which ultimately gave birth to the idea of decentralization of powers. When decentralization became popular as a necessary step in the development of a democracy and as an instrument for the better functioning of the administration, the local self-government was born.

In this unit, you will study about the ideas and principles which influenced the formation of the local self-government, nature and scope of local administration in India, the Panchayati Raj System in India, and the changes introduced with the implementation of the 73rd and 74th Constitutional Amendment is to the constitution.

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5.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss the ideas and principles of local self-government
- Examine the nature and scope of local administration in India
- Explain the Panchayati Raj Institutions in India
- State the changes introduced with the implementation of the 73rd and 74th Constitutional Amendments

5.2 LOCAL SELF-GOVERNMENT: IDEAS AND PRINCIPLES

There are three main principles to define the idea of a local self-government, namely democracy, autonomy and decentralization. Let us study these principles and their relationship with the idea of local self-government in detail.

5.2.1 The Relation between Local Self-government and Democracy

Local self-government cannot survive without democracy. Democracy broadly means a system of national political institutions and constitutional rules through which citizens are enabled to choose, influence and dismiss governments—a system in which the requirements of Lincoln's classic formula are fulfilled, together with its accompanying climate or atmosphere. A democratic society gives every individual the right to be a party of the government and decide about his fate. Democracy cannot ignore the demands of people and their aspirations.

There are three different views regarding the relationship between local self-government and democracy. As per the first view, local self-government is defined in such a manner that democracy is shown to be incompatible with its true nature. The second defines democracy in a way that local self-government is proved to be incompatible with its true nature. The third theory, much more loosely articulated than the first two, stipulates definitions to permit the conclusion or assumption that local self-government and democracy are organically related, mutually dependent and reciprocally self-sustaining. After an analysis of these concepts, an alternative method of approaching local government and democracy is suggested.

5.2.2 Evolution of the Local Self-government

The principle of local level autonomy in deciding their day-to-day affairs was a result of the political and economic developments in the 19th century. In other words, the belief that an ultimate political value attaches to the practice of local self-government was developed systematically, in the 19th century. According to Whalen, this idea is the brain child of the Prussian idealist Rudolf von Gneist. Gneist did an extensive study of English political institutions. On the basis of his study, he concluded that the principle of self-government was necessarily the primary value and the essential practical ingredient, in any ideal commonwealth. In any polity where internal administration is carried out locally under the general laws in towns and districts by local officers can be called local self-government. The funds required for the expenses in executing the duties locally are also mobilized at the local level.

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The whole idea of local self-government was started as an attempt to create an internally independent administration. These local bodies were considered to be independent of the Centre or at that time national ministers and parties. According to Gneist, 'self-government is strictly class government. It combines the personal duties and financial burdens of owners of property and gives them political rights to correspond'. The whole idea of giving more rights to the upper classes in Gneist's scheme of an ideal local self-government was to recognize the role of these classes as the most responsible classes. This started a practice of making eligibility to the higher offices depend upon the possession of large landed estates.

Behind the dialectical effusions of this Prussian official lay a rooted aversion to the social and political consequences of the Industrial Revolution. Repeatedly, he misjudged the political role of the emerging middle classes and idealized monarchical and aristocratic norms of government. He rejected the ideal of equality and the practice of an extended franchise. His system, in a word, was an eloquent refutation of the entire rationale and the extended institutional paraphernalia of democratic government. 'No vital philosophy of local government,' he says, 'can come to mankind by way of representative institutions.' He considered the spread of electoral practices particularly harmful with the introduction of elected local authorities. Self-government thereupon ceases to be the basis of class organization; a communal life in which the local elector only takes part every three years by dropping a voting paper into a box— is no longer a link which holds together classes with distinct interests by imposing a daily round of duties from man to man, unites and reconciles the propertied to the working classes and accustoms them to live peacefully together. While the 'parochial mind' extinguishes the propertied classes with their theories of voluntarism, drawing them further apart from the working classes with their doctrines of communism and socialism.

Since the political practice of England moved steadily away from Gneist's ideal commonwealth during the second half of the 19th century, he was forced, like many political writers after him, to interpret the growth of democracy as a steady decay of the British Constitution. A state, whose practice depended increasingly on the idea of natural political equality, was to Hegelian philosophers, meaningless, undefined and purposeless. 'The course of English constitutional development', concluded Gneist, 'leaves us to assume that the third generation will live in an era of radical action against the old governing classes and of a violent reaction in their favour and all appearances point to the end of the nineteenth century England witnessing the same political storms saved by England as those which after its beginning burst over the constitution of continental countries'.

According to Whalen, 'Gneist's theory of self-government tells us nothing about the status of local political processes in a democratic state.' He further says, 'in the interests of his theory, he [Gneist] misinterpreted the significance of every major reform in local government'. In the later years, as the need of more and more powers at the local levels was felt, central governments in different parts of Europe transferred first, local administration from magistrates appointed by the central government to local authorities, elected by local communities. Second, they created local institutions enabling the middle and later the working classes to participate in municipal government. Third, they delegated wholesale new functions associated with expanded public services to locally elected officials. Lastly, they invented a committee technique, which enabled a large number of citizens to be brought into direct contact with local political problems in a practical way.

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A dominant feature of the unreformed system of local government in England was the wholesale subordination of administrative efficiency to the maintenance of class rule. Patronage appointments, in the gift of the local gentry, produced local officials who were everywhere regarded as 'poor dependents of the nearest squire.' The reform measures of 1834–35 were the beginning of a necessary rationalization which culminated in the widespread employment of well-trained and paid technical staffs in local government service. This reform was needed, since it enabled the community to take effective advantage of the fruits of scientific discovery with regard to the provision of an increasingly diversified and more complex range of local works, amenities and services.

A changed image of the administrative competence of representative local authorities, perhaps one of the greatest English contributions to democratic practice during the last century, could never have materialized without the development of local administrative elite, nor without the enlightened leadership of officials like Chadwick, who sought to develop viable local authorities through rigorous central direction and control. Gneist, like Toulmin-Smith (a British political theorist, lawyer and local historian) before him, condemned these necessary reforms as destructive of the true principle of local self-government. His fertile imagination produced an antithesis between magisterial (*obrigkeitlich*) and commercial (*wirtschaftlich*) self-government, the latter being elective, dominated by 'the particularized interests of local combinations' and destructive of the essential objects of magisterial, or moral government. Gneist thus projected an allegedly fatal central-local conflict long after it had been settled in practice and predicted that French ideas and practices, equally misconstrued, would ultimately prevail in England. Indeed, he took pains to assert that a new centralized monarchy would emerge to save the state from factions, organized commercial interests, parties and society.

The second theory under consideration purports to prove that local self-government, as it is currently practiced in democratic states, is inimical to the true principle of democracy. 'Democracy,' writes George Langrod, Professor of Comparative Administration in the Brazilian School of Public Administration, 'is by definition an egalitarian, majority and unitarian system. It tends everywhere and at all times to create a social whole, a community which is uniform, levelled and subject to rules.' According to this view, democracy tends to abhor atomization and the appearance of intermediaries between the whole and the individual. It is thus a feature of democracy that the individual is brought face-to-face with the complete whole, directly and singly. Local self-government, on the other hand, is defined as a phenomenon of differentiation, of individualization, of separation. According to this view of democracy and local self-government, since democracy moves inevitably and by its very essence towards centralization, local government by the division which it creates, constitutes all things considered a negation of democracy.

5.2.3 Rousseau's Doctrine of the General Will

These particular conceptions appear to give expression, in institutional terms, to Rousseau's doctrine of the 'general will' and to a tradition in political thought which we style as totalitarian democracy. General will, in political theory, means a collectively held will that aims at the common good or common interest. The notion of the general will is fully central to Rousseau's theory of political legitimacy. Rousseau, at least in one of his positions, was clearly opposed to the exercise of sovereignty by anybody other than the entire community, but his ideal community was, in practice, the small locality of the 18th century. This monistic conception of liberty, what Sir Isaiah Berlin, philosopher and historian of ideas, has described as the yearning for positive freedom of collective self-

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direction, tends to assume the absolute priority of egalitarianism, over all competing goals. In the vast disciplined and authoritarian structures with their attendant bureaucratic centralism, is seen the idealized self-mastery of classes of entire communities and of the whole human race. When it is thus defined by Langrod, democracy embodies the principle of compulsory rational freedom, an idea which conveniently repudiates the conventional antithesis between freedom and compulsion and rests upon a stipulated definition of liberty. (To Bentham's question, 'Is not liberty to do evil, liberty?', the totalitarian democratic reply is: 'No man is free in doing evil; to prevent him from so doing is to set him free.') Given these assumptions, there can plainly be no rational basis for local or subordinate political institutions. Popular sovereignty, as embodied in national or central political institutions, is emasculated through the working of particular local group wills.

In spite of the emotional and rational force of the two theories discussed above, a third theory, first developed systematically by J. S. Mill *On Liberty* (1859) and *Considerations on Representative Government* (1861), has had a long and influential career in the Anglo-American tradition of political thought. Mill's liberalism rejects the statism of Gneist and favours some measure of popular democracy, but asserts that government by the people in Langrod's sense is the negation of freedom. This variety of liberalism, along with that of Tocqueville and Constant — two French political thinkers and writers has its ethical bearings in the principle of immorality of compulsion. When it is given institutional expression, this theory postulates a large measure of political and social pluralism. The liberty of the citizen, in things where the individual is alone concerned, implies, according to Mill, in *On Liberty and Other Essays*, a corresponding liberty in any number of people 'to regulate, by mutual agreement, such things as regard them jointly and to regard no persons but themselves.' The definitions of local self-government and democracy stipulated in this doctrine, therefore, derive in the first instance from an assertion of the ultimate absolute priority of liberty. Liberty understood as absence of restraint in relation to those self-regarding actions of individuals, groups and local political authorities. Modern liberal theory points to the fatal flaw in Rousseau's conception of the general will: popular sovereignty can easily destroy individuals; the tyranny of prevailing feeling and opinion constitutes the negation of freedom.

In his quest for a 'social spirit' to articulate political life, Rousseau was forced to recommend the inculcation of a civic religion and other totalitarian devices. However, in creative individualism, liberalism sees the natural generator of social and political spirit. The exercise of freedom, which Mill extends to the management of purely local business by localities, is recommended on the ground of the individuality of development and diversity of modes of action. Indeed, the practice of local independence on this reading, promotes a knowledge of public affairs, engenders sympathy and a willingness to compromise, acts as a brake on the natural excesses of misguided enthusiasm and induces a beneficial sense of restraint in both political and administrative officials, who are, it is assumed, in perpetual face-to-face relation with a public that both, comprehends and takes an interest in local political issues.

5.2.4 Liberal Political Ideology

The principal liberal fear, however, was that political power in the hands of public officials would in practice destroy the supreme worth of the individual and the local community, which their ethical and psychological theories purported to establish. The liberal mechanism of control, including local self-government, defines an abuse of power as any threat to liberal, social ideals mounted either by the non-democratic few (Gneist's ideal), or by the democratic majority (Langrod's ideal). In liberal theory, therefore, local

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self-government provides an important institutional buffer against non-liberal and illiberal social tendencies. The suggestion that local authorities help to sustain a liberal way of life means that they tend to be evaluated by liberal ideologists, not so much in relation to a given configuration of ideal democratic political institutions, considered apart from its social context, but rather in relation to a liberal social theory and to a liberal programme or policy. The tension which exists among the three theories, is thus only superficially a conflict over the constitutional status and powers of local government in a democratic state; the real conflict of these theories arises out of three mutually exclusive social ideals with different political strategies, programmes or policies.

Liberal ideology usually contrives skillfully to conceal its true social bearing. Local self-government is alleged to possess a uniquely democratic political quality and is normally endowed with an absolute political value in extravagantly emotive language. In Tocqueville's words, for instance, local government is seen to be 'so perfectly natural that wherever a number of men are collected together it seems to constitute itself.' Historically, local institutions are assumed to be coeval with man. Next, by some mysterious alchemy, intuition supplies a causal sequence which miraculously synthesizes the historic observation of local government and liberal democracy. From the roots of ancient Aryan tribes, through Anglo-Saxon tithing and shires and through Frankish communes, Swedish *kipingarna* and Indian panchayats are thought to have evolved all the famous legislatures in the world. One writer observes that 'organized towns came to Massachusetts from England and thence to Connecticut and became political cells from whose unity developed the federal state'. Another writer mentions about the 'primordial cells' of democracy; while James Bryce, British academic, jurist and historian writes of 'tiny fountain-heads of democracy, rising among the rocks, sometimes lost altogether in their course, sometimes running underground to appear at last in fuller volume.' One cannot escape the use of poetic images, metaphors and other literary devices to describe the morphology of political institutions; but it is a short distance from inspired figurative description to empty assertions of the undoubted immemorial rights, privileges and prerogatives of local institutions.

Other writers have employed more prosaic methods. Professor of Political Science at the University of Chicago, Herman Finer, for example, has put forward a pseudo-empirical hypothesis which purports to show that in practice, local political processes are an inevitable concomitant of political democracy. He writes that, the government by its very nature has a tendency towards centralization and imposition of uniform standards over the largest possible area. When faced with commands, based upon average or general considerations, the products of bureaucratic reporting and statistical analysis—the individual, the small group and the local community respond naturally and necessarily we are told, by demanding and exercising local freedom. Thus, as against the abstract view of people and communities, characteristic of central public administration, there is a continuing reaction which manifests itself practically in local self-government. According to this view, there must be, in any democratic state, a local authority making government pliable to the idiosyncrasies and angularities and plastic by reference to peculiar and individual circumstances. Whether such a political tendency does or does not exist, Professor Finer clearly implies that the reaction described above is caused solely by the exercise of central political power and that it occurs irrespective of the content of the power, so exercised. By failing to distinguish political power of different kinds, that is to say, to distinguish the nature of different central political strategies and programmes, Professor Finer is really saying, perhaps unconsciously, that a significant element in current central government operations is inimical to the liberal way of life.

The liberalism of Tocqueville and Mill tends to consistently stipulate the same general beliefs about local self-government and democracy. First, it is demonstrated that political and social conditions in the small community foster rational democratic behaviour, to which is added the ethical injunction that man should so behave (and in some recent formulations it is suggested that men do so behave). If freedom exercised locally tends automatically to strengthen the aptitude for freedom in the larger community, local self-government then promotes the democratic climate of opinion. Notwithstanding the individualistic assumptions of liberal doctrine, an additional and no less important aspect of it is the notion of toleration and compromise, of give and take, of appreciation and sympathy for the other fellow's interests. In this respect, local self-government assumes a special value because if appreciation of one another's standpoint is not learnt in local communities, there is a risk of it not being learnt at all. So far from being incompatible with democracy, as Langrod suggests, local self-government is its active and necessary partner and the pursuit of local interests in subordinate representative institutions cannot conflict with the supremacy of the general interest of the state. As strong and independent municipal authorities are thought to promote liberal social ideals, the practice of local self-government becomes a bastion of democracy or the strength of free nations. As Tocqueville remarked, 'A nation may establish a system of free government, but without the spirit of municipal institutions, it cannot have the spirit of liberty. The transient passions and interests of the hour, or the chance of circumstances, may have created the external forms of independence; but the despotic tendency which has been repelled will, sooner or later, inevitably reappear on the surface.'

The liberal concept of democracy requires, therefore, that local self-government be accorded not merely a high but an indispensable and absolute value in the constitutional scheme. Local independence, on this view, is a matter of political principle, not a matter of administrative expediency. Local authorities exercising appropriate functions must be truly self-governing and viable; they must not be merely decentralized subsidiary elements of the central state machinery. The foregoing analysis suggests that a purely ideological approach to the assessment of the true status of local self-government, in the conditions of a democratic welfare state, will produce little enlightenment. The reason, in Aristotle's terminology, is that everything within an ideological or rationalism frame of reference is a matter of prior analytics, or of stipulative political definition, while posterior analytics, which reveal the conditions of scientific or demonstrable knowledge, are neglected. Given the stipulative definitions of the three theories discussed above, there is no possibility of reconciling the conflict among them in rational terms. In Gneist's framework, there can be no rational justification for the transformation shaped in English local institutions, by liberal policies during the 19th century; nor can the development of liberal systems of local government in other countries be adequately explained. Also, there can be no reconciliation, as between the theories of Langrod and Mill. Yet the majority of definitions do not give any real explanation for the existence of strong systems of local government in many countries, where social policy has evolved well beyond the ideals defined in liberal social theory.

5.2.5 Political Knowledge: Is it Universal?

It is commonly regarded as a kind of intellectual treason to suggest that there are no principles on which political institutions rest. Yet, government in all countries and at all levels is essentially a practical art, the product of appraisal, persuasion and decision by elected and appointed public authorities within a given tradition, not a matter of abstract

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reasoning or the product of a mere interaction of groups. When this view is applied to the subject at hand, the logical impasse, which was observed above is seen to be a misunderstanding: no problem in fact exists, except a purely verbal one. Such questions as 'Is there a relation of cause and effect between local self-government and democracy?' and 'Is democratization of the state favourable or inimical to the existence of local government?' can never really be answered except in a formal sense–implicit in any answer to such questions, that is to say, must be some image of ideal democracy. Democratic states operate a variety of local government systems for a number of practical reasons. Nevertheless, it should be clear that most of the political institutions grow out of the cultural and social environment and are the products of unconscious habits, mores, desires and fears as much as, if not more than, the results of deliberate human will. The traditionalist view can discern no logic that adequately comprehends political institutions, whether within a single tradition or among different democratic traditions. To say that politics is a practical art within the context of a tradition is to reject the possibility of logical institutional patterns or relations, since logic presupposes both the possibility and existence of rational behaviour, where the only consideration is that of ends and means, purposes and instruments. To say that government is a practical art in the context of a tradition is rather to assert the illogical but unique qualities of all political systems and of all democratic states. This does not mean that political knowledge can only be municipal rather than universal; it means that knowledge, if it is universal, must be practical, not rational.

5.2.6 Local Self-Government and the Idea of Autonomy and Decentralization

In these complex and rapidly changing relations, local authorities in all countries have experienced a gradual erosion of their former independence and have been subject increasingly to severe financial dislocation. Many political scientists see in these trends the ultimate dissolution of local self-government, unless appropriate remedial action is taken. They argue either that functions should be so redistributed that local authorities can regain their former competence, including fiscal competence, over a narrow range of subjects designated as essentially local, in which case the small jurisdiction would remain the basic unit of grassroots democracy. As an alternate they recommend an expansion of existing boundaries and the creation of larger territorial jurisdictions called regions, in which case the advantages assumed to inhere in communal face-to-face relations are lost. The former method contemplates an adjustment of function to structure and the latter method an adjustment of structure to function. In all democracies, however, the reform of local institutions appears to be quite inadequate in relation to the growing deterioration; and the emotional pull of certain liberal notions about local institutions and their necessary connection with democracy inhibits consistency in practical thought. This failure of thought is related to a failure in action which has, to a large extent and in most democracies, rendered present municipal systems obsolete.

Many municipal reform programmes of different kinds–some sweeping and designed for rigorous imposition, some fragmentary and meant for gradual application have been put forward during the post World War years. The technical aspects of these diverse proposals can only be adequately judged in relation to the particular political tradition in whose context it emerges. But concerning the general process and strategy of local government reform in a democratic setting, a few comments are in order. The law of life is the law of change; social activities breed and transform social and political

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arrangements, notwithstanding ideological assertions against change. Yet, stable political traditions are grounded on much more than just the diverse quests of men, despite ideological demands for change. The achieving of an acceptable balance between change and order involves a continuing tension between institutional effectiveness. This effectiveness is interpreted as operational efficiency in relation to a matrix of communal skills, resources, demands and goals and group images of institutional legitimacy attached to conventional organs and procedures. Given the complex, changing, interdependent and potentially unstable conditions common to most democratic states and given the public measures required to secure social stability in such an environment, the condition of local self-government may be described as a crisis of effectiveness. Yet, with few exceptions, senior government policies and practices, influenced as they are by liberal beliefs, seem to suggest that effective reform is impossible or undemocratic because of the high rating of legitimacy accorded to local institutions.

Most studies show that interest is expressed largely in terms of individual problems and complaints and suggestions for the improvement of local facilities. According to one report, 'the representative function of local government is seen as secondary in everyday significance and interest, to the relationship between the people and the local officials who deal with their problems and administer the services.' In these matters the evidence can never be complete; but sufficient knowledge about community structure exists to indicate that frequently the locus of real power resides entirely outside the formally constituted local units of government and that non-participants as defined in the survey normally constitute half of the sample. Large sections of the public do not appear to sense even the relevance of political behaviour. The claims advanced by liberal commentators today, as indeed by the entire school of philosophical partisans of the small community from Plato through Rousseau to Dewey, must be qualified by the fact that for two millennia communities that have been growing larger and more inclusive, 'Democracy must begin at home and its home is the neighbourly community.' There is no substitute for the vitality and depth of close and direct intercourse and attachment.

These assertions contain some condescending ideas: the Whig notion of natural order; the environmentalism of Locke; and the doctrine of human perfectibility. However, they conveniently neglect what economist and philosopher Friedrich, in referring to the American local scene, has called the 'hard-bitten machines run by county sheriffs and town assessment boards.' We know from ordinary observation that municipal politics has its darker, less idealistic side: fear, greed, partiality, vindictiveness and the ruthless application of sanctions to secure conformity and the microscopic view of the universe. But local politics, like all politics, is conflict as well as cooperation.

The reasons and justifications for local self-government are practical. In physical, fiscal, structural, functional and qualitative terms, local subordinate institutions are immensely varied. Yet, in all states where they have evolved, they inhere and form part of that nation's political tradition. Their legal status varies widely. In some democracies, they play a more important administrative role than in others. But in most states they are, or can be made important practical adjuncts to government. They can be reformed and in some communities they are being reformed; but, depending on the tradition, it is probable that reformation will be halting and piecemeal. Their reform in no way prejudices democracy, either in its social or its political dimensions. It seems possible that in some democracies, geographical and traditional forces permitting, local self-government may ultimately wither away. But this would result from the shrinkage of space, permitting central decision-making and execution with adequate provision for local and regional consultation and participation. It would not result from the meandering of Rousseau's

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general will, or the realization of Langrod's principle of democratization. Liberalism fosters the misguided belief that, at some uncertain point, municipal reform must cause the loss of liberty.

A democracy must admittedly contrive institutions and methods that help to sustain an acceptable balance between order and change. Similarly, democratic forms and atmosphere must foster the impulse to keep government responsible. But the instruments of these goals are not universal and timeless; the forms and the objects of control evolve in accordance with the needs of each political tradition. Local self-government, as it exists in most industrial democracies today, can no longer be considered a major instrument of control. In an era of expanding communities, growing mass publics and intricate and rapidly changing technologies, mechanisms of democratic control must be located at the vital centre of power, of each national community. In a federal state, this implies dependence on an elaborate interaction in legal, political and administrative terms among intermediate and senior governments. It implies interaction among and within political parties, interest and pressure groups and the important media of opinion. It implies a growing reliance on judicial and quasi-judicial functions. Lastly, since politics is something much more than a mere functional interaction, this view implies the continuing influence of an ineffable democratic ethic in both parliamentary and social institutions. As a system of government, democracy entails slovenly institutional arrangements.

5.3 NATURE AND SCOPE OF LOCAL ADMINISTRATION IN INDIA

Local administration deals with the powers of the administration. These powers reside with authorities, who provide remedies to the problems at the grassroot level. The local administration also protects the people when those powers are abused by these authorities. In a welfare state, many progressive schemes and programmes are launched by the government. Their execution and implementation is the responsibility of the local administration.

The local administration is based on decisions regarding the demands of the people of an area and their implementation at the grassroots level. Its functions also include sending the advisories to the people at the grassroots level. Local participation was seen as an instrument for better implementation of government policies. The Five-Year Plans gave Panchayati Raj a role in performing functions for development and the view that panchayats were units of folded democracy.

The Panchayati Raj Institutions (PRI) are considered as the grassroots level bodies servings various civic and developmental activities for the rural people. They are basically ground level political institutions involved in the upliftment of rural masses in various ways. A large proportion of the rural population is under the grip of poverty, malnutrition, illiteracy and degradation. The enlistment of such destitute rural masses is the main goal of these local bodies.

A lot of factors influence India's grassroot politics. These factors are as follows:

- Democratic consciousness welfare of the masses
- Participation in elections
- Effect of education
- Linkages between panchayat members and police and bureaucrats

Check Your Progress

1. State any one view that exists regarding the relationship between local self-government and democracy.
2. What is Rousseau's doctrine of general will?

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- Caste domination
- Land holding
- Loan or property
- Wealth
- Groupism, regionalism, nepotism, favouritism and factionalism
- Affiliation of political leaders with different parties
- Socialization and politicization of rural masses

The concept of Panchayati Raj (PR) is unquestionably Indian in origin. PR bodies, which are genuine and effective democratic decentralized institutions, provide simple opportunities for a large number of rural people to take genuine and effective participation in the development and democratic decision-making process. They infuse in the minds of the rural people, a spirit of self-help, self-dependence and self-reliance in order to obtain their goals. The concept of PR, since its inception, faced various interpretations both from its protagonists and antagonists. On one hand, the emphasis was on maximum local autonomy and minimization of supervision and control by the higher authorities, especially by the state government. On the other hand, some consider it to be the ruining factor of the country. Another controversy relates to the role of political parties in the PRI. The term PR came into usage after the acceptance of recommendations on democratic decentralization of the Balwant Rai Mehta study team. Previously, the terms used were village panchayat, which was the self-governing body at the village level. PR implies the creation of local government institution at the village, block and district levels. These bodies play a vital role in rural administration in the present age, when more and more governments are working for the making of a welfare state. In fact, the powers entrusted to these bodies really make a state democratic. India comprises states and union territories. These states are divided into districts and, in turn, sub-divided into tehsils for administrative convenience. The units of local self-government in rural areas are village panchayat, panchayat samities and zila panchayat (ZP). The village panchayat has been linked to the panchayat samiti at the block and to the ZP at the district level.

5.4 PANCHAYATI RAJ INSTITUTIONS IN INDIA

Panchayati Raj institutions (PRIS) in India comprise the following:

- Gram sabha
- Gram panchayat
- Panchayat samiti
- Zila parishad

5.4.1 Gram Sabha

The base of the panchayati raj structure lies in the gram sabha or village assembly consisting of all the adult citizens who are eligible to cast vote. Most of the state's legislations provide that gram sabha should be called at least twice a year, usually after Rabi and Kharif crops are harvested. In Odisha and Jammu and Kashmir it meets only once a year. Some state legislation requires that a meeting of gram sabha should be called if it is requisitioned by a certain proportion at the votes constituting it, say one-fifth.

Check Your Progress

3. What are the responsibilities of the local administration?
4. State any four factors influence India's grassroot politics.

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The gram sabha is expected to play the role of a present body to which the village panchayat should owe responsibility. In Bengal, Punjab, Gujrat and Assam, village panchayat is elected by gram sabha. In Bihar, the Gram sabha elects fifty members as its executive council and a *mukhia.*

The gram sabha has rather been a strong body. There are proposals for strengthening the working of gram sabha so that it can function as an effective organ for the control of panchayat leadership.

The Diwakar Committee (1963) recommended a consultative and deliberative role for these institutions. The Committee wanted only broad framework and plans and policies to be approved by the gram sabha leaving full discretion to the panchayat in day-to-day matters.

The relationship between gram sabha, panchayat and samiti is a delicate matter. Panchayat must heed to the advice of the gram sabha because any other causes would be suicidal, but the panchayat as a body of representatives cannot be relegated to the role of a mere executive body.

5.4.2 Gram Panchayat

Gram panchayats are local self-governments at the village or small town level in India. The gram panchayat is the foundation of the panchayat system. It is set-up in villages with minimum population of 300 people. Sometimes, two or more villages are clubbed together to form group–gram panchayat when the population of the individual villages is less than 300 people.

Sarpanch

The sarpanch or chairperson is the head of the gram panchayat. The elected members of the gram panchayat elect from amongst themselves a sarpanch and a deputy sarpanch for a term of five years. In some places, the panchayat president is directly elected by village people. The sarpanch presides over the meetings of the gram panchayat and supervises its working. He implements the development schemes of the village. The deputy sarpanch, who has the power to make his own decisions, assists the sarpanch in his work.

A sarpanch has the following responsibilities:

- Looking after street lights, construction and repair work of the roads in the villages and also the village markets, fairs, festivals and celebrations
- Keeping a record of births, deaths and marriages in the village
- Looking after public health and hygiene by providing facilities for sanitation and drinking water
- Providing for education

Sources of Income

The main source of income of the gram panchayat is the property tax levied on the buildings and the open spaces within the village. Other sources of income are as follows:

- Professional tax
- Taxes on pilgrimage

- Animal trade
- Grant received from the state government in proportion of land revenue
- Grants received from the zilla parishad

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Dr S. B. Sen Committee, a committee appointed by the Government of Kerala in 1996, had suggested the following principles, which were later adopted by the Second Administrative Reforms Commission, for local governance:

- Subsidiary democratic decentralization
- Delineation of functions
- Devolution of functions in real terms
- Convergence
- Citizen centricity

5.4.3 Panchayat Samiti

The two-tier of local government is needed for filling the vast chasm between the district boards and the village panchayat. It was recognized early in 1882. The members of panchayat samiti elect their own pradhan. They have powers to take decisions within their sphere of competence and can raise their resources on statutory basis.

Size

The areas of the panchayat are mostly coterminous with a tehsil or taluqua, which gives 112 villages per block. In Maharashtra, the panchayats comprise an area equal to two or three blocks. The number of the panchayat per block varies from state to state from eight per block in Kerala to nearly eighty in Uttar Pradesh. They range according to 1951 census from 35,000 to 94,000.

Block as Units

The block is a unit for establishing and maintaining seed multiplication or stock breeding farms, health services, supervising the primary education. The blocks are needed for high quality leadership, independence from local pressures, balancing of interests and quick development.

Composition

The constitutional pattern of the panchayat varies from state to state. There is representation of special interests like cooperative societies and cooperative banks. They are however, associate members with the right of attendance and participation but without knowledge as to who should be elected to the office of pradhan or chairman of the standing committee.

Committee System

A sound committee system is essential to provide opportunities to a larger number of individuals and groups to share in decision-making. It helps in the quick disposal of business and more through consideration of the issues. The committees being smaller in size can consider the issue in great details.

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Constitution of the Committees

The number of committees in a panchayat range from three to seven. The panchayat might create more committees if it feels the need for the following:

- Cooperation, cottage industry
- Education
- Social welfare
- Communication
- Rural water supply, health and sanitation
- Finance and taxation

Every committee usually consists of not more than seven members duly elected by the members themselves. In case the panchayat decides, it may co-opt not more than two persons to a standing committee from the outside for the membership at the panchayats for their experience and knowledge of the subjects assigned to the committee.

The cause of justice, fair deal and member participation would be served if the opposition is properly repressed by the committees for which a system of proportional representation is more suitable than a plural majority system.

The committee has only delegated jurisdiction conferred by the panchayat. Presentation of committee reports is a regular item on the panchayat's agenda. These reports are read out by the concerned official.

Conduct of Business

Rules for conduct are prepared by the vikas adhikari in consultation with the chairman and circulated in advance along with the corresponding papers. Decisions are made by a majority decision with a casting vote for the chairman. The vikas adhikari or a senior official on his behalf has the right to participate in the proceedings but has no vote.

Panchayat samiti as an executive body which generally meets once a fortnight or a month. This implies adding to the cost of decision-making.

Functions of the panchayat samiti are as follows:

- Community development which involves increasing production and employment
- Production programme
- Social service health communication

Finances of the panchayat samiti are as follows:

- Funds available under schematic budget
- Self-raised resources
- Resources available under transferred schemes and departmental schemes to be executed through the panchayat
- Grants-in-aid by the states and other bodies

5.4.4 Zila Parishad

The zila parishad succeeds the district development committee and other district school boards of pre-decentralization period. The zila parishad has been designed mainly as an

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advisory, co-coordinating, fund distributing and supervisory body in Rajasthan, Assam, Odisha and Bihar without any responsibility for executive function directly. In this respect, these states differ from Andhra Pradesh, Gujarat, Maharashtra, and Punjab where social welfare is performed by the zila parishad.

The latter pattern is obtained in Gujarat, Maharashtra, Punjab and Uttar Pradesh. Under this pattern, some elected members are also included in the membership of the body. These are directly elected in Gujarat, Maharashtra and Uttar Pradesh from electoral constituencies consisting of a population of 35,000 heads approximately.

Composition and Term

Under the 'indirect system' which is prevalent in Rajasthan, Andhra Pradesh, Assam, Madhya Pradesh, Odisha and Bihar, the zilla panchayat comprises all the pradhans of panchayats in the district. All the members of Legislative Assembly (MLAs) that are elected from the district and the Lok Sabha form a constituency that is included in or forms a part of the district. All the members of the council of the state reside in the district. The collector is usually ex-officio member of zilla panchayat.

The members of the zilla parishad elect the *pramukh* and *up-pramukh* from amongst themselves. The pramukh or the up-pramukh can be removed by a vote of no-confidence if it is carried out by a majority of 2/3rd of the total membership. The usual term of zilla panchayat is three years.

The architecture of zilla parishad juxtaposes two sets of farces, one set representing the interests of panchayat and cooperatives through their pradhans and the other set representing the interests of the state through its MLAs. In Gujarat, Maharashtra, and Uttar Pradesh, where zilla parishad performs executive functions, it includes a directly elected, popular and independent element.

The composition of zilla panchayat under the indirect system has the merit of linking the zilla panchayat with the panchayat on one hand, and State Legislature and Parliament on the other. The provision is meant to safeguard the autonomy of the municipalities but in a planned economy arrangements for effective coordination between the urban and rural local self-governing authorities should be devised to make best use of available resources.

Functions and Powers of the Zilla Panchayat

In Andhra Pradesh, Punjab, Gujarat, Maharashtra and Uttar Pradesh, the zilla panchayat has been endowed with executive functions, which it has inherited from the farmer district local boards, district school boards and district development committee. These functions in their very nature could not be performed by the newly constituted panchayats.

- Coordination
- Supervision, guidance and control
- Appellate
- Advisory
- Joint service and establishment
- Declaratory and classificatory
- Housekeeping

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Committee System

The composition, functions and powers of the committees of the zilla panchayat vary according to the status of the zilla panchayat in three-tier system. The function of this committee is to make appointments by transfers or promotion within the same district and advise the panchayat and zilla parishad regarding disciplinary action against the panchayat service personnel. The zilla panchayat has created committee on production, social and finance. The budget of the samiti is scrutinized by the last named committee while the progress in respect of other development programmes is reviewed by the respective subject matter committee. In the states where zilla panchayat has executive functions, standing committee has been constituted to look after every major group of function.

This committee is composed of the following members:

- Members of the district council elected from the area of the block and other co-opted members of the district council from this area
- Two sarpanch elected from an electoral college
- Chairman of agriculture cooperative society of the block
- One member each of scheduled caste (SC) and scheduled tribe(ST) and women from the area

The chairman of the block is elected by the members and is ex-office member of the district council. Each subject matter committee is responsible for the development schemes within its subject matter competence. It periodically reviews progress and reports it to the zilla panchayat. The block committee executes and supervises the schemes and works of the council in block area and carries out any other work on behalf of the council or its women. The standing committee supervises and controls the imposition and collection of taxes and other dues of the council.

Role of Pramukh

The pramukh presides over and conducts the meetings at the zilla panchayat. He sends a report to the collector regarding the work of the secretary of the zilla panchayat. He also remarks on confidential reports of class I and II officers as submitted by the chief executive officer (CEO). Thus, the pramukh combines the role of a leader and a supervisor. He also has some standing in the party hierarchy.Panchayati Raj Institutions

5.5 73RD AMENDMENT TO THE CONSTITUTION OF INDIA

The 73rd Amendment to the Constitution of India came into force in 1992 to provide constitutional status to the Panchayati Raj Institutions. This Act was extended to panchayats in the tribal areas of eight states, namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Odisha and Rajasthan with effect from 24 December 1996. Currently, the panchayati raj system exists in all the states except Nagaland, Meghalaya and Mizoram, and in all union territories except Delhi.

Check Your Progress

5. How is the sarpanch of a gram panchayat elected?
6. List the functions of the panchayat samiti.
7. State the role of the pramukh of the zilla panchayat.

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Some important sections in the 73rd Amendment are as follows:

Reservation of Seats

Seats shall be reserved for the following:

- Scheduled Castes
- Scheduled Tribes

In every panchayat the number of seats is reserved in proportion to the total number of seats.

A person shall be disqualified from being chosen as a member of a panchayat:

- If he is disqualified by or under any law for the time being in force for the purpose of elections to the legislature of the state concerned
- If he is less than twenty-five years of age
- If he is disqualified by or under any law made by the legislature of the state

Duration of Panchayats

Panchayat once elected will work continually for five years.

Powers, Authority and Reparability in Panchayats

- Preparation of plans for economic development and social justice
- Implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the eleventh schedule
- Subject to the provision of any law made by the legislature of a state

Powers to Impose Taxes

- Authorize panchayat to collect and appropriate taxes, duties, tolls and fees in accordance with such procedure and subject to such limit
- Assign panchayat taxes, duties, tolls and fees levied and collected by the gram sabha
- Provide for making grant-in aid to the panchayat from the consolidated fund of the state

Application to Union Territories (UT)

The provision of this part shall apply to the union territories and shall, in their application to a union territory have effect as if the references to the Governor of a state were references to the administrator of the union territory appointed under Article 239. References to the legislature or Legislative Assembly of a state were references, in relation to a union territory having a Legislative Assembly, to that Legislative Assembly.

Provided that the President may, by public notification, direct that the provision of this part shall apply to any union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

Part does not apply to certain cases

- Nothing in this part shall apply to the scheduled areas referred to in clause (1) and the tribal areas referred to in clause (2) of Article 244.

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- Nothing in this part shall apply to:
  (i) The states of Nagaland, Meghalaya and Mizoram.
  (ii) The hill areas in the state of Manipur for which district councils exist under any law for the time being in farce.
- Nothing in this part:
  (i) Relates to panchayats at the district level, shall apply to the hill areas of the district of Darjeeling in the state of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force.
  (ii) Shall be constructed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.
- (3A) Nothing in Article 243D relating to reservation of seats for the SC.
- Notwithstanding anything in this constitution:
  (i) The legislature of a state passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of that House present and voting.
  (ii) Parliament may by law, extend the provisions of this part to the scheduled areas and the tribal areas referred to in clause (I) subject to such exception and modification as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purpose of Article 368.

Continuance of Existing Laws and Panchayats

Notwithstanding anything in this part, any provision of any law relating to panchayats in force in a state immediately before the commencement of the Constitution (73rd Amendment) Act 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. Provided that all the panchayats exist immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislature Assembly of that state or, in the case of a state having a Legislative Council, by each House of the legislature of that state.

Bar to interference by Courts in Electoral Matters

Notwithstanding anything in this constitution:

- The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made, or purporting to be made under 243K, shall not be called in question in any court.
- No election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for or under any law made by the legislature of a state.

Functions of Local Administration

The functions of local administration as mentioned in Article 243G are as follows:

- Agriculture, including agricultural extension
- Land improvement, implementation of land reforms, land consolidation and soil conservation
- Minor irrigation, water management and watershed development

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- Animal husbandry, dairy and poultry
- Fisheries
- Social forestry and farm forest
- Minor forest produce
- Small scale industries, including food processing industries
- Khadi village and cottage industries
- Rural housing
- Drinking water
- Fuel and fodder
- Roads, culverts, bridges, ferries, waterways and other means of communication
- Rural electrification, including distribution of electricity
- Non-conventional energy sources
- Poverty alleviation programme
- Education, including primary and secondary schools
- Technical training and vocational education
- Adult and non-formal education
- Libraries
- Cultural activities
- Markets and fairs
- Health and sanitation, including hospitals, primary health centres and dispensaries
- Family welfare
- Women and child development
- Social welfare, including welfare of the handicapped and mentally retarded
- Welfare of the weaker sections, and in particular, of the SC
- Maintenance of community assets

5.6 74TH AMENDMENT TO THE CONSTITUTION OF INDIA

Before 1992, Indian local governments did not have a constitutional status. They were granted only a statutory status under state law. Hence, the governance of urban areas came directly under the purview of the state government. However, the enactment of the 74th Constitution Amendment Act, 1992 changed the situation. For the first time, urban local bodies (ULBs) were given a constitutional position as the third-tier of government. ULBs were provided with a constitutional outline to conduct regular elections, powers and financial devolution. The Amendment assigned local bodies with the responsibility to provide basic services in urban areas.

Based on the population, ULBs are segregated as follows:

- Nagar panchayats for 'urban' areas
- Municipal councils for small urban areas
- Municipal corporations for metropolitan areas

Check Your Progress

8. What was the purpose of introducing 73rd amendment to the Constitution of India?
9. Where in India is the panchayati raj system still non-existent?

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According to the 74th Constitution Amendment Act, 1992, 'In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result of this, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.'

Important changes under the 74th Constitution Amendment Act of 1992 may be summarized as follows:

- Municipalities were intended to include elected representatives, experts and the municipal chairperson. They were awarded a five-year term with re-election scheduled to be held within six months of dilution. A state level election commission was established for the same.
- The Act also aimed at establishing the directive principle of decentralization in the urban context. In order to meet this objective, ULBs powers and responsibilities were approved in terms of preparation of plans, application of development schemes and administration of taxes. A state level finance commission was constituted for assessing the finances of ULBs falling within its purview.
- Besides these three-tiers of local government, two other important organizational structures, namely the District Planning Committee (DPC) and the Metropolitan Planning Committee (MPC) have been constituted under the Constitution of India.
- The Act also included the 'Twelfth Schedule' in the Constitution. The schedule specifies the functional responsibilities of the municipalities.

Today, there are nearly 4,000 ULBs with over 100 municipal corporations, 1,500 municipal councils and 2,000 Nagar panchayats, besides more than fifty cantonment boards.

A study by a well-known research institute in Delhi evaluated the effect of the 74th Constitution Amendment Act in twenty-seven states and one union territory. It concluded: '…municipalities in India are confronted with a number of problems, such as inefficiency in the conduct of business, ineffective participation by the weaker sections of the population in local governance, weak financial condition, lack of transparency in the planning and implementation of projects, etc., which affect their performance adversely.'

Division of Powers—Elected, Nominated and Administrative

The 74th Constitution Amendment Act provides the details of the elected and nominated councillors. The number of elected councillors is dependent on the population of an area. Nominated councillors are selected by the elected councillors on the basis of their expertise in municipal administration. However, they lack voting rights.

Municipal Corporation – Organizational Structures

The organizational structure of municipal administration in India differs from state to state. The 74th Constitution Amendment Act does not mention any particular organizational structure for municipal administration in the country. This issue comes under the purview of state legislation.

In 2003, the Ministry of Urban Development drafted a Model Municipal Law, which was distributed to the state governments. The justification for the absence of a centrally-administered municipal model is that local bodies should be flexible to respond better to local requirements.

5.6.1 The Commissioner System

The Mayor

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The mayor in the municipal corporation is generally elected through indirect elections by the councillors among themselves for a term of one year which can be renewed. The mayor lacks executive authority. Councillors and committee councillors operate as a committee. The standing committee is the most dominant committee which acts as the steering board and exercises executive, supervisory, financial and personnel powers. It constitutes elected members differing in number between seven and sixteen through a system of proportional representation of councillors.

The Executive

The municipal commissioner acts as the Chief Executive Officer (CEO) and head of the executive wing of the municipal corporation. He exercises all executive powers. He derives his powers and authorities by the statute assigned by the standing committee.

Mayor in Council Model

This type of governance of a city is like a cabinet government. It follows the framework of state and national governments. This model comprises a mayor and a cabinet, with individual portfolios, chosen from among the elected councillors. In this system, the municipal commissioner acts as the principal under the supervision of the mayor, who is the CEO. This model structure may seem to be relatively simple. However, in actual practice, urban governance is a perplexing mix of multiple agencies. Some are new, while others are legacies of older regimes; some are accountable to the local government, while others to state level or even national government.

5.6.2 Composition, Function and Role of Local Bodies

The 73rd Amendment has included eighteen new articles and a new schedule known as the twelfth schedule relating to urban local bodies in the Constitution. Just as panchayati raj amendment, the 73rd amendment approves constitutional sanction to the urban self-governing institutions assuring regular elections and enabling them to play a greater role in the development of urban areas. This provides three types of municipal corporations and reservation of seats in every municipality for SC, ST and women. The amendment gives authority to the State Legislature to assign necessary powers and responsibilities upon the municipalities with regard to the preparation of plan for economic development, allotment of taxes and duties by municipalities.

Constitution of Municipalities

Article 243Q provides for the establishment of three types of municipal corporations in urban areas which are as follows:

- A Nagar Panchayat for a transitional area, that is to say, an area undergoing transition from a rural area to an urban area
- A municipal council for smaller urban area.
- A municipal corporation for a larger urban area.

In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' refers to such an area as the Governor may possess with regard to the population of the area, the density of the population in that area, the revenue generated for local

administration, the percentage of employment in non-agricultural activities, the economic or such other factors as he may consider fit. A 'Municipality' means an institution of self-government constituted under Article 243A.

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Composition of Municipalities

Article 243R provides that all the seats in a municipality shall be filled by the persons chosen by direct elections from territorial constituencies in the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards.

Constitution and Composition of Wards Committees

Article 243S provides for the constitution of wards committees comprising of one or more wards, within the territorial area of a municipality having a population of three lakhs or more.

The legislature of the state may make provisions with respect to the following:

- The composition and the territorial area of a wards committee.
- The manner in which the seats in a wards committee shall be filled.

A member of a municipality constituting a ward within the territorial area of the wards committee shall be a member of that committee. Where a wards committee consists of one ward, the member representing that ward in the municipality shall be the chairperson of the committee.

Where a wards committee consists of two or more wards, one of the members representing such wards in the municipality elected by the members of the wards committee shall be the chairperson of that committee [clause (4)]. Nothing in this Article shall stop the legislature of a state from making provisions for the constitution of committees in addition to the wards committees [(clause (5)].

Reservation of Seats in Municipalities

Article 243T has made the provision for the reservation of seats for scheduled castes and scheduled tribes in every municipality. The member of seats reserved for them shall be in same proportion to the total numbers of seats to be filled by direct election in that municipality.

Out of the total number of seats reserved under clause (1), 113 seats shall be reserved for the women belonging to scheduled castes and scheduled tribes. The office of chairpersons in the municipalities shall be reserved for SC, ST and women in such manner as the legislature of a state may by law provide.

Reservation of Seats for Backward Class of Citizens

Under clause (b), the legislature is empowered to make provisions for reservations of seats in any municipality of office, and chairpersons in the municipalities in favour of backward class of citizens. All kinds of reservation of seats shall cease to have effect on the expiration of the period specified in Act 334 that is, upto fifty years from the commencement of the constitution.

Duration of Municipalities

Article 243U provides that every municipality, unless sooner dissolved under any law for the time being, shall exist for five years from the date appointed for its first meeting. No

amendment of any law for the time being shall have the effect of causing dissolution of a municipality, at any level, till the expiration of its normal duration of five years.

Election

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An election conducted for the municipality shall be completed before the expiration of its duration and before the expiration of a period of six months from the date of its dissolution in case it had been dissolved earlier.

Disqualifications for Membership

Article 243V states that a person shall be disqualified for being chosen as, and for being a member at a municipality under the following conditions:

- If he is so disqualified by or under any law for the time being in force for the purpose of elections to the legislature of the state concerned.
- If he is so disqualified by or under any law made by the legislature of the state.

However, a person shall not be disqualified on the ground that he is less than twenty-five years of age or if he has attained the age of twenty-one years. Hence, a person who is already twenty-one years old is eligible for being chosen as a member of a municipality.

Power, Authority and Responsibilities of Municipalities

Under Article 243W, the legislature of a state, subject to the provisions of this constitution, is directed by law to endow:

(a) The municipalities with such powers and authority as may be necessary to enable them to function as an institution of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to:
   (i) The preparation of plans for economic, political and social development
   (ii) The performance of function and implementation of programmers and schemes as per law

(b) The committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matter listed in the twelfth schedule.

Twelfth Schedule of the Constitution

The Twelfth Schedule of the Constitution states the following:

- Urban planning including town planning
- Regulation of land use and construction of buildings
- Planning for economic and social development
- Roads and bridges
- Water supply for domestic, industrial and commercial purposes
- Public health, sanitation conservancy and solid waste management
- Fire services
- Urban forestry, protection of the environment and promotion of ecological aspects
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded

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- Slum improvement and upgradation
- Urban poverty alleviation
- Provision of urban amenities and facilities such as parks, gardens and playgrounds
- Cremation grounds and electric crematoriums, and burial grounds
- Promotion of cultural, educational and aesthetic aspects
- Cattle pounds; prevention of cruelty to animals
- Vital statistics including registration of births and deaths
- Public amenities, including street lighting, parking lots, bus stops and public conveniences
- Regulation of slaughter houses and tanneries

5.6.3 Evaluation of the 73rd and 74th Amendments

In 1988, Sarkaria Commission was set-up to look into the working of Panchayati Raj Institutions and the basic question of Center-State relations. The Commission recommended that the local self-institutions like zila parishad, and municipal corporation should be significantly strengthened both financially and functionally. The commission also suggested that similar provisions should include Panchayati Raj Institutions as are found in Articles 172 and 174, which made it compulsory for National Parliament or State Legislative Assembly to fix the duration for five years.

There was an imperative need to enshrine the basic features of Panchayati Raj Institutions in the Constitution itself to provide them certainty, continuity and strength. Accordingly, the 73rd Amendment Act, 1992 came into force with effect from 24 April 1993. It lays the foundation of strong vibrant Panchayati Raj Institutions.

The present panchayat system is a channel for popular participation in the process of development. The panchayat system is a politico-administrative arrangement. The system of panchayati raj is expected to work in a democratic set-up like India. Panchayati raj has brought about some degree of social change. An increasing interest is activities like agriculture production, education and social cooperation. This, panchayati raj is (i) A unit of local government (ii) An extension of the community development programme and (iii) An agency of the state government. The introduction of Panchayati Raj is the most important political innovation of the present rural community. Due to the implementation of the 73rd Amendment Act, problems of women of the village are now being looked after. With the implementation of various welfare programmes, agricultural development in rural Uttar Pradesh has taken place. Poverty alleviation programmes have been successful in eliminating poverty in rural areas. Rural people get ample employment opportunities with the help of these rural development programmes. Further, infrastructure facilities such a road, rail, banking, post office, electricity, drinking water, sanitation, drainage, and so forth have increased vastly due to implementation of rural development programmes.

These institutions have been helpful in identifying beneficiaries in order to get maximum benefit of these schemes. Under these schemes, priorities have been given to SC, ST, weaker sections of society and women. These schemes have been helpful in eliminating poverty, inequality, unemployment, raising educational facilities, agricultural development, development in small-scale and cottage industries, and others. The emerging scenario of the dynamics of development and thrust on decentralized planning opened new vistas of development. Thus, the institutional, structural and functional counters of

Panchayati Raj Institutions, which flourished in many parts of India in the past, are now being revived as the basic administrative units of government.

Thus, the concept of panchayati raj involves the existence of democratically constituted elected authorities at various levels, with fixed allocations of power, duties, responsibilities to each such authority, all working democratically, the autonomy of the authorities being subject to supervision, guidance and control by higher authorities.

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5.7 SUMMARY

In this unit, you have learnt that:

- Unlike national or central authorities, local authorities do not enjoy any power beyond their defined territorial boundaries.
- There are three main principles to define the idea of a local self-government, namely democracy, autonomy and decentralization.
- The principle of local level autonomy in deciding their day-to-day affairs was a result of the political and economic developments in the 19th century.
- The whole idea of local self-government was started as an attempt to create an internally independent administration. These local bodies were considered to be independent of the Centre or at that time national ministers and parties.
- A dominant feature of the unreformed system of local government in England was the wholesale subordination of administrative efficiency to the maintenance of class rule.
- The principal liberal fear was that political power in the hands of public officials that would in practice destroy the supreme worth of the individual and the local community, which their ethical and psychological theories purported to establish.
- Liberal ideology usually contrives skillfully to conceal its true social bearing. Local self-government is alleged to possess a uniquely democratic political quality and is normally endowed with an absolute political value in extravagantly emotive language.
- The liberalism of Tocqueville and Mill tends to consistently stipulate the same general beliefs about local self-government and democracy.
- The liberal concept of democracy requires that local self-government be accorded not merely a high but an indispensable and absolute value in the constitutional scheme.
- Many municipal reform programmes of different kinds–some sweeping and designed for rigorous imposition, some fragmentary and meant for gradual application have been put forward during the post-war years.
- Local administration deals with the powers of the administration. These powers reside with authorities, who provide remedies to the problems at the grassroots level.
- The Five-Year Plans gave Panchayati Raj a role in performing functions for development and the view that panchayats were units of folded democracy.
- The base of the panchayati raj structure lies in the gram sabha or village assembly consisting of all the adult citizens who are eligible to cast vote.

Check Your Progress

10. How are the urban local bodies (ULBs) segregated as per the 74th Constitutional Amendment Act, 1992?
11. How is the Mayor of the municipal corporation generally elected?
12. State the types of municipal corporations in urban areas established by Article 243Q of the 73rd Amendment Act.

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- Gram panchayats are local self-governments at the village or small town level in India. The gram panchayat is the foundation of the panchayat system.
- The two-tier of local government is needed for filling the vast chasm between the district boards and the village panchayat.
- The zila parishad succeeds the district development committee and other district school boards, and so forth of pre-decentralization period.
- The 73rd Amendment to the Constitution of India came into force in 1992 to provide constitutional status to the Panchayati Raj Institutions.
- The enactment of the 74th Constitution Amendment Act, 1992 changed the situation. For the first time, urban local bodies (ULBs) were given a constitutional position as the third-tier of government.
- Today, there are nearly 4,000 ULBs with over 100 municipal corporations, 1,500 municipal councils and 2,000 Nagar panchayats, besides more than fifty cantonment boards.
- The organizational structure of municipal administration in India differs from state to state. The 74th Constitution Amendment Act does not mention any particular organizational structure for municipal administration in the country.
- In 1988, Sarkaria Commission was set-up to look into the working of Panchayati Raj Institutions and the Centre-State relations.

5.8 KEY TERMS

- **Totalitarian:** It is a form of government in which the political authority exercises absolute and centralized control over all aspects of life.
- **Egalitarianism:** It is a social and political philosophy asserting the equality of all men, especially in their access to the rights and privileges of their society.
- **Decentralization:** It is the process of redistributing or dispersing functions, powers, people or things away from a central location or authority.
- **Autonomy:** It refers to a self-governing country or region.
- **Paraphernalia:** It means miscellaneous articles or equipment.

5.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. There are three different views regarding the relationship between local self-government and democracy. As per the first view, local self-government is defined in such a manner that democracy is shown to be incompatible with its true nature.
2. Rousseau's doctrine of general will believed in the will of the people. He was clearly opposed to the exercise of sovereignty by anybody other than the entire community.
3. The local administration is responsible to solve the problems at the grassroots level. The local administration is also responsible for the execution and implementation of the various progressive schemes and programmes that are launched by the government.

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4. The factors influencing India's grassroot politics are:
   - Democratic consciousness welfare of the masses
   - Participation in elections
   - Effect of education
   - Linkages between panchayat members and police and bureaucrats
5. The sarpanch of a gram panchayat is elected from amongst the elected members of the gram panchayat.
6. The functions of the panchayat samiti are as follows:
   - Community development: This involves increasing production and employment
   - Production programme
   - Social service health communication
7. The pramukh presides over and conducts the meetings at the zilla panchayat. He sends a report to the collector regarding the work of the secretary of zilla panchayat.
8. The 73rd Amendment to the Constitutional of India came into force in 1992 to provide constitutional status to the Panchayati Raj institutions.
9. The panchayati raj system exists in all the states except Nagaland, Meghalaya and Mizoram, and in all union territories except Delhi.
10. As per the 74th Constitutional Amendment Act, 1992 the urban local bodies (ULBs) are segregated as follows:
    - Nagar panchayats for 'urban' areas
    - Municipal councils for small urban areas
    - Municipal corporations for metropolitan areas
11. The mayor in the municipal corporation is generally elected through indirect elections by the councillors among themselves for a term of one year which can be renewed.
12. Article 243Q provides for the establishment of three types of municipal corporations in urban areas which are as follows:
    - A nagar panchayat for a transitional area, that is to say, an area undergoing transition from a rural area to an urban area
    - A municipal council for smaller urban area
    - A municipal corporation for a larger urban area

5.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the evolution of local self-government in India.
2. Mention the nature and scope of local administration in India.
3. What are Panchayati Raj.
4. What factors influence India's grassroot politics?
5. What is Panchayat Samiti? State its functions.

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Long-Answer Questions

1. How are ideas of autonomy and decentralization related to local self-government?
2. Discuss the various Panchayati Raj Institutions in India.
3. Evaluate the 73rd and 74th Amendments to the Indian Constitution.
4. Briefly discuss the changes introduced with the implementation of the 73rd and 74th Amendment is to the constitution.
5. Discuss the role of Zila Panchayat.

5.11 FURTHER READING

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UNIT 6 CENTRE-STATE RELATIONS

Structure

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6.0 INTRODUCTION

Though India is a federation, the word 'federal' does not appear in its Constitution. The Indian Constitution describes India to be a 'Union of States'. According to British academic, A.H. Birch, 'A federal system of government is one in which there is a division of power between one general and several regional authorities, each of which, in its own sphere, is to coordinate with the others, and each of which acts directly on the people through its own administrative agencies'.

Thus, going by the definition of federalism, India has two sets of government: central government and state governments. The Indian Constitution also provides for the division of power between the centre and the states.The Constitution also provides for an independent judiciary in the form of the Supreme Court of India to re-enforce the division of powers as and when it stands violated.

In this unit, you will study about Centre-State relations in the legislative, administrative and financial fields as well as the frequent areas of conflict between the Centre and the states.

6.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss legislative relations between the Union and the states
- Explain the distribution of administrative powers between the Centre and the states

- Describe the regulation of financial relations between the Centre and the states
- Analyse the areas of conflict between the Centre and the states

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6.2 LEGISLATIVE RELATIONS

A study of the Centre–State relations in the Indian Constitution shows that the Makers of the Constitution gave more powers to the Centre as compared to the state. The logic behind this was that a more potent federalism (that is, more powerful states) would have weakened the feelings of national unity. The trauma of partition, the problem of integration of princely states and the need for planned economic development for removing backwardness, poverty and food shortage prompted the Constitution makers to establish a strong centre.

The nature of Centre–State relations emerges from the starting point where formally and in the wording of the Constitution, India does not designate itself as a federal state, rather a 'Union of States'. The reason is the Indian federation was not the result of an agreement, and therefore, no state in India had the right to secede. The Constitution of India conceived of the division of the country into states for administrative convenience. It sought to achieve a smooth working relationship between the two levels of the Union and the states by tilting heavily in favour of the Union in all fields of legislative, administrative and fiscal relations.

Articles 245 to 254 deal with the distribution of legislative powers between the Union and the states. Articles 245 to 246 provide that the Union Parliament shall have exclusive jurisdiction to make laws for the whole or any part of the territory of India, with regard to all matters included in the Union List. The subjects in the Union List are of national importance and include among its ninety-seven items—defence, foreign affairs, currency, and so forth.

The states have been empowered to make laws on all matters included in the State List. The State List in its sixty-six entries includes law and order, local government, public health, education and agriculture, and others.

A third list, that is, a Concurrent List has also been provided in the Constitution. The forty-seven entries in the Concurrent List include the legal system, trade and industry and economic and social planning. Both the Centre and the state governments can legislate on the subjects of the Concurrent List but in case of conflict between the Union and the state governments, the Union law prevails.

The Constitution also enumerates certain conditions in which the Union Parliament is authorized to make laws on a subject mentioned in the State List. These conditions are as follows:

- Under Article 249, if the Rajya Sabha passes a resolution, supported by at least two-thirds of its members, present and voting, declares a particular subject to be of 'national interest' the Parliament becomes competent to make law on the specified state subject, for a period of not more than one year at a time.
- Under Article 250, the Parliament has the power to make laws on state subjects for the whole or any part of the territory of India during the 'operation of a proclamation of Emergency'.

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- Under Article 251, the law passed by the Parliament under Articles 249 and 250 prevails in case of its inconsistency or repugnancy with the law made by a State Legislature.
- Under Article 252, two or more states may request the Parliament to make laws for them with respect to any state matter. But such law(s) will be applicable to only those states who so desire. Subsequently, other states may also adopt that law by passing resolutions in their legislatures. Such act can be amended or repealed by the Parliament only and not by the State Legislature.

  The provisions of this Article have been used by the states to surrender their powers in favour of the Union, for example, by the states of Andhra, Maharashtra, Odisha and Uttar Pradesh, authorizing the Parliament to enact laws for the control and regulation of prices.
- Under Article 253, the Parliament is competent to make laws for the whole or any part of the territory of India to implement India's international treaties, agreements or conventions with any other country or countries. The Parliament is competent to make law for this purpose on any subject, including the state subjects.
- Any bill passed by the State Legislature can be reserved by the Governor of that state for the consent of the President. The President may veto such a law without giving any reason. Thus, in such case, the President's power of veto is absolute. Besides, there are certain matters within the State List and the Concurrent List of which the states must take the previous sanction of the President before making laws on them.
- The states comprising the Union of India have been named in the First Schedule, yet the Constitution empowers the Parliament to admit new states to the Union or establish a new state. The Parliament can increase or decrease the areas of a state, change its name, alter its boundaries, or cause a state to completely disappear by merger or integration with adjoining states.

6.3 ADMINISTRATIVE RELATIONS

In the field of administration, the Centre has still more powers than it possesses in the field of legislation. Normally, the administrative powers of the Centre correspond to the matters over which it has power to make law. This is provided for under Articles 73 and 162. Union government can administer over states in the following ways:

- According to Article 256, the executive power of every state is to be exercised in such a way as to ensure compliance with the laws made by the Parliament.
- Under Article 257, the Union Executive is empowered to give such directions to a state as may appear to the Government of India to be necessary for the purpose. Not satisfied with the general power of the Union to give directions to the states, the Constitution goes a step further and calls upon every state not to impede or prejudice the executive power of the Union in the state. The Union's powers of giving directions include certain specific matters such as: (a) The construction and maintenance of means of communication which are of national or military importance, and (b) The protection of railways within the states.

Check Your Progress

1. Name the articles of the Constitution which deal with the legislative powers between the Union and the states.
2. What kind of subjects are included in the Union List?

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- Article 258 empowers the Union government to entrust to the state, conditionally or unconditionally, any additional functions relating to any matter to which the executive power of the Union extends. In other words, the states can be asked to exercise the executive powers of the Union. In such a case, the Union shall pay the states officials extra costs which they incur in exercising these additional functions.
- The presence of all-India services like the Indian Administrative Service, the Indian Police Service, and others further makes the authority of the central government dominant over the states. The members of these all India services are appointed by the President of India on the basis of a competitive examination held by the Union Public Service Commission. These services serve both the Centre and the states. The creation of these services is not strictly federal, for the states have no say in this matter.
- Articles 352 to 360 contain the emergency provisions which empower the President in effect to suspend the Constitution and to take over the administration of a state or states of the Indian Union if he is satisfied that there is a threat to the security of the nation, or a breakdown in the constitutional machinery of a state, or a financial emergency.
- Governors to the states are appointed by the President on the recommendations of the central government.
- Article 339(2) expressly extends the executive power of the Union to give directions to a state with regard to the drawing up and execution of schemes specified in the direction, to be essential for the welfare of the scheduled tribes in the state.

6.3.1 Machinery for Inter-State Relations

The emphasis in the Constitution is on administrative cooperation and hence provisions are made for it.

1. The Constitution has an important provision embodied in Article 262 dealing with the waters of inter-state rivers and river valleys. Thus, under this Article, Parliament may establish an inter-state agency to adjudicate disputes and complaints with regard to the use, distribution or control of waters of inter-state rivers or river-valleys. An inter-state council has been established by the President on a permanent basis.
2. Article 263 provides for the establishment of another inter-state Council to enquire into, and to advise upon the disputes between the Centre and the states, or amongst the states themselves.
3. Besides, there is a framework of voluntary cooperation at administrative level for resolving problems that may arise between the Centre and the state. The Constitution provides for inter-state delegation of functions, which makes operation of Indian federalism adequately flexible. Thus, where it is inconvenient for one government to carry out its administrative functions directly, it may have those functions executed through the other state governments.
4. The States Reorganization Act of 1956 grouped the states into five Zonal Councils. They do not constitute a layer of government between the Centre and the states; they are advisory bodies. The Zonal Council consists of the Union Home Minister, who is the Chairman and the Chief Ministers in the Zone. The idea was to provide a forum where the states could discuss and resolve inter-state disputes.

Check Your Progress

3. State two instances in which the Union government prevails over states.
4. Which Articles of the Indian Constitution provide greater administrative powers to the Centre over states?

6.4 FINANCIAL RELATIONS

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The financial relations between the Centre and the states are regulated according to the provisions of Part XII of the Constitution. The Union and the State Lists also refer to the financial jurisdiction of the Centre and the state.The financial relations are, however, not a matter of concurrent jurisdiction.

6.4.1 Taxing Powers of the Centre and the States

By and large, taxes that have an interstate base are levied by the Centre and those with a local base by the states.

Articles 269 to 272 and entries 83 to 88 of the Union List deal with the taxes levied and collected by the Union. These taxes fall under five categories:

- Taxes levied by the Union but collected and appropriated by the state, for example, stamp duties, duties of excise on medicinal and toilet preparations, and so forth.
- Taxes levied and collected by the Centre and compulsorily distributed between the Union and the State.
- Taxes levied and collected by the Centre but assigned to the state, for example, taxes on railway fares and freight, estate duties, and others.
- Taxes levied and collected by the Centre may be distributed between the Union and the states, if Parliament by law so provides, for example, Union excise duties.
- Taxes levied and collected and retained by the Centre, for example, customs, corporation tax, surcharge on income-tax, and so forth.

The State List contains nineteen items, for example, land revenue, liquor and opium excise, stamps, taxes on land and buildings, taxes on vehicles, and others. Every state is entitled to levy, collect and appropriate these taxes.

6.4.2 Grants-in-Aid

A remarkable feature of the Constitution is the provision of three types of grants-in-aid by the Centre to the states:

- Article 275 makes specific provisions for grants-in-aid given to the states which are in need of assistance, particularly for the implementation of their development schemes.
- Grants-in-aid under Article 282 may be made for any public purpose.
- Grants under Article 273 are given to the states of Assam, Bihar, Odisha and West Bengal in lieu of the export of jute and jute products.

6.4.3 Consolidated Fund

Under Article 266, a Consolidated Fund for the central government and a separate Consolidated Fund for each of the states have been created.

The purpose of creating these funds was to ensure that no appropriation can be made from these funds without the authority of the law so that the salaries and other allowances of the President, the Union ministers, judges of the Supreme Court and high courts, and so forth could regularly be paid without being a votable item of the budget.

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6.4.4 Contingency Fund

Article 267 provides for the establishment of a Contingency Fund of India (CFI), and similar contingency fund for each of the states, so that the advances may be made to the Centre and the state respectively for meeting unforeseen expenditure, pending the legislative authorization.

6.4.5 Finance Commission of India

Article 264 provides for the creation of a Finance Commission of India, and Articles 280 and 281 deal with its composition, powers and functions. The members of the Finance Commission shall be appointed by the President. The Commission makes recommendations on the distribution of shared and shareable taxes and other assignments between the Centre and the states, or among the states themselves.

6.4.6 Planning Commission

The Planning Commission was established in 1949 by a resolution of the cabinet with a purpose to suggest measures for augmenting the resources of the country, their effective and balanced utilization, determining the priorities, stages, progress and machinery of planning in the country. It is an extra-constitutional agency, which fulfills the role of an advisory technical body in the field of planning. It is responsible for formulating Five-Year Plans for national development. The plans finalized by the Commission are discussed and finally approved by the National Development Council.

6.4.7 National Development Council (NDC)

The NDC was constituted in August 1952. It is the highest reviewing and advisory body in the field of planning. The members of the Council are the Prime Minister, Chief Ministers of all the states, the members of the Planning Commission and since 1967, all the Union cabinet ministers. The NDC is a forum where the central government interacts with the state governments. Its purpose is to bring about cooperation between the central, state and the local governments in the huge task of development.The Five-Year Plans become operational only after they have been approved by it.

6.5 AREAS OF CENTRE–STATE CONFLICT

Despite the fact that there is a division of powers between the Centre and the states, the states are dissatisfied because they feel that the balance of power is heavily in favour of the Centre. They also feel that the Centre has used its power in such a way that there is no autonomy left to them even in matters mentioned in the State List.

The Union–State relations in India took a new turn after the Fourth General Elections (1967). Till 1967, the Congress party dominated the Centre and the state governments. During this phase, the Union–State conflicts were internal problems of the Congress party and resolved at that level only. The post-1967 political scenario saw the emergence of non-Congress governments in the states as well as in the Centre. Now, the internal mechanism of the Congress Party could not resolve the conflicts and they not only came to the surface but also became increasingly intensive.

Check Your Progress

5. Mention the three types of grants-in-aid provided by the Centre to the states.
6. State the responsibility of the Planning Commission.

The major conflict areas between the Union and the states can be broadly classified into three categories of issues, though no rigid compartmentalization is possible, namely:

- Political dimension
- Administrative dimension
- Economic and financial dimension

1. Political Dimension

There is a tendency in our country to view politics through the constitutional legal mechanism and to suggest constitutional amendments for resolving political problems. The constitutional framework is stable while the political context of the relations changes. The four aspects of political dimensions of Centre–State relations are as follows:

(i) Dynamics of political parties: As long as the same political party held sway over both the Central and the state levels of the system, only intra-party factors were important in determining the Centre–State relations. But in an emerging multi party system, where at least a few of the state governments are under parties different from the one in power at the Centre, inter-party factors determine the Centre–State relations and tend to make them more complex. From the viewpoint of the central government, on the basis of inter-party relations, the state governments can be divided into three types:

- Identical, that is, of the same party
- Congenial, that is, where ideological and/or interest gap is low
- Hostile, that is, where the party in power at the state level is radically different in its ideological and political orientation, for example, Congress and Bharatiya Janata Party (BJP)

Obviously, the Centre's relations with the 'hostile' state governments are more difficult and compromises are not easily reached on a wide variety of issues.

(ii) Politics of coalition: The Indian party system now has had a considerable experience of coalition governments. If party ruling at the state level and central level is same, the relations between state and central governments are congenial. The central government may even tolerate extra-constitutional actions of the state government. For example, the NDA government did not make any move to impose President's Rule in Gujarat at the time of Gujarat riots, when the Modi government showed total lack of interest in curbing the riots.

On the other hand, if a state level coalition is a different party from the one that is at the Centre, the state government may be considered hostile. In this situation, the state leadership of the opposition party (belonging the party dominant at the Centre) would usually like the central leadership use the governmental power to undermine the state government, for example, the BJP-led coalition (NDA) government dismissed Rashtriya Janta Dal (RJD) government in Bihar led by Rabri Devi in 1999 in the wake of the caste-class violence but did not do any such thing during the Godhra riots.

(iii) President's Rule (Article 356): One of the most conspicuous and widely used instruments of central power over the states is the provision for President's Rule under Article 356. This was meant as a 'safety valve' in the political system to prevent an authority vacuum in case of a breakdown of constitutional machinery in

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a particular state. However, in practice, this Article has been so frequently used for purely partisan interests that it has become detrimental for our political system.

President's rule can be imposed either on the recommendations of the Governor or even without, that is, on the satisfaction of President (in other words, the Prime Minister) himself. During the period 1950–89, there were seventy-nine presidential/ central interventions in the state. The bulk of these emergencies were declared during the Congress rule under Indira Gandhi (forty-eight emergencies) and during the reign of the Janata Party (sixteen emergencies). The dissolution of nine State Assemblies and proclamation of President's rule in 1977 as well as in 1980 was a political move and a blow to the federal democratic structure of the country.

The use of Article 356 perceptibly declined in the 1990s after the end of the one party dominance. It was in 1997 that for the first time, the President openly asked the Prime Minister and his cabinet to reconsider the proposal for the dismissal of UP state government before signing the proclamation.

(iv) Integrity of the states: One of the first tests of a federal system is that the federating units have distinct territorial identity and their integrity is maintained. In this respect, the states in the Indian political system are severely handicapped because the Constitution does not protect their identity and integrity.

Thus, there have been persistent demands for statehood by Union Territories and sub-regional groups, for example, Telangana, Vidarbha, Bodoland, and others. Since the Centre alone has the power to create new states, it imposes a considerable strain on the Centre–State relations, if the Centre refuses to comply with the state demand.

2. Administrative Dimensions

Relations between the Centre and the states are essentially political. The operational aspects of the political system can be regarded as the administrative dimension of these relations.

(i) Partisan role of the governor: The Governor of a state is appointed by the President on the advice of the central government for a five-year term, but holds his office till the pleasure of the President (Article 156).

The role of the Governor has become one of highly contentious issues in the Centre–State relations. The main issues of contention relate to the appointment of the Governor by the Centre and his partisan role in the formation and dismissal of a state government at the behest of the Centre. The Governorship is now treated as a reward for political loyalists who could not be accommodated in the cabinet and pliable bureaucrats prospecting for post-retirement employment. This has reduced the Governor to a mere rubber-stamp or agent of the Centre.

On many occasions, Governors have dismissed Chief Ministers when the matter should have been decided by the State Legislature. The dismissal of the Janata Dal government in Karnataka (April, 1989) and Kalyan Singh government in UP (1998), Rabri Devi government in Bihar (1999) are some of the instances of violations of constitutional propriety by the Governors of the states.

Apart from this, the Governors have also been interfering in the daily affairs of the states in the name of discretionary powers. Such interference by Governors in state government's affairs and abuse of their powers for partisan reasons has been giving rise to a feeling of insecurity among the states.

(ii) Bureaucracy: Bureaucracy is another area of friction between the central government and the state. The points of issue are neutrality of services and

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formation of new all-India services. The states criticize the Centre for its discriminatory use of all-India services. The state governments do not have adequate control over these services as far as their developmental responsibilities are concerned. Bureaucrats posted at the state level look to the Centre for protection to the detriment of state's political authority. It is being alleged by many state governments that the bureaucrats, appointed by the Centre, do not show loyalty towards the implementation of state government's policies, if the political party at the Centre and the state are hostile to each other.

Another issue is the question of the formation of all-India services and the opposition to such formation on part of the states. There are three main reasons for the states' opposition. First, the creation of the all-India services cuts at effective spread of state services, thus reducing employment opportunities for the sons of the soil. Second, the all-India services encroach upon state autonomy and thirdly, they also involve larger expenditure because of high salary scales.

(iii) Misuse of mass media by the Centre: The misuse of mass media for political purposes has also been an area of tension between the Centre and the states. It has been alleged that the media is the 'mouth piece' of the Union government. However, with the establishment of the Prasar Bharti and the establishment of numerous satellite channels, the scenario has changed to a great extent.

(iv) Law and order problem in the states and the role of the Centre: Maintenance of law and order is primarily a state subject and to achieve this goal they have their own agencies and organizations. Besides all this, there are agencies of the central government to ensure law and order such as the Central Reserve Police Force (CRPF), the Border Security Force (BSF), the Central Industrial Security Force (CISF) and others. The maintenance of 'parallel' agencies by the central government is a very 'unusual' feature of the Indian federal system. The states argue that since public order is a state subject, so the setting up of central police forces is an encroachment on their jurisdiction.

In recent years, in view of increase in militant movements in various parts of the country, the states themselves have become more and more dependent on central forces as they cannot deal with the problems solely with their own resources. Now, the issue of contention is deployment of fewer central forces than required by the state.

However, the issue of deployment of armed forces and the repeal of Armed Forces Special Powers Act became the core of confrontation between the state of Manipur and the Centre in August 2004. It was followed by mass agitation and shifting of Assam Rifles from the state.

(v) Inter-state disputes: In India, there are two types of inter-state disputes, namely, inter-state water disputes and inter-state boundary disputes. Examples of inter-state water dispute are Cauvery water dispute between Karnataka, Kerala and Tamil Nadu; Narmada water dispute between Gujarat, Madhya Pradesh, Maharashtra and Rajasthan.

Inter-state boundary disputes represent the unsettled issues of reorganization of states. Still existing disputes are between Karnataka and Maharashtra, Punjab and Haryana, Assam and Nagaland.

The Centre's involvement in such disputes is more as an arbitrator and less as an interested party and it thus gets caught in inter-state crossfire. The disputes manifest themselves not in a movement away from the Centre but in a concentration of conflicting demands on it, which cut across party lines.

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3. Economic and Financial Dimensions

The financial weakness of the states has been a major area of tension between the Centre and the states. From the state's point of view, the allocation of financial resources between the Centre and the states is faulty. The state's resources in raising the finances are meager whereas they have been assigned a wide range of responsibilities of social welfare, education, rural development, and others. However, with the advent of the process of globalization in India, the states are now able to attract MNCs and private investors and are now able to generate funds for themselves. Earlier, on their own, the state could not take up any major project. Also, the Centre used to adopt discriminatory attitude based on political reasons in the autonomy allocation of grants-in-aid to the states.

The role of Planning Commission is also another controversial matter. The Planning Commission has been accused of political considerations in allocating developmental projects to the state. Poor states like Bihar have always complained that they were not being given enough funds.

6.5.1 Demand for State Autonomy

From the above analysis, it becomes clear that consensus and cooperation, which are pre-requisites for the smooth functioning of the Union-State relations, have been, time and again, eroded and replaced by a growing politics of confrontation. The states have been developing a feeling of deprivation on the ground that the Centre has denied them the due autonomy. From time to time, a number of Commissions have been appointed to look into Centre–State relations and to suggest reforms like the Administrative Reforms Commission (1967), Sarkaria Commission which submitted its report in 1988. However, the suggestions by these Commissions have not been implemented by the successive governments at the Centre. Therefore, the demand for more autonomy from the Centre has taken different forms like demand of the people of certain areas for secession from the Indian Union (Kashmir), demand of people of certain states for autonomy or more powers, demand of people of certain areas for separate statehood (Bodoland, Vidarbha, and others), demand of people of certain Union Territories for full-fledged statehood, and so forth.

In conclusion, one can deduce that the tensions in the Centre–State relations are politically motivated. The best way to avoid Centre–State conflict is for the Centre to show imagination, understanding and a spirit of accommodation, and that it should grant the states adequate finance without discrimination.

6.6 INTER-STATE COUNCIL

Check Your Progress

7. Identify the types of state governments on the basis of inter-party relations.
8. How has the misuse of mass media become an area of tension between the Centre and the states?

Article 263 of the Constitution of India provides for the establishment of an Inter-State Council. This is the only article of the sub-chapter 'Co-ordination between States' of Chapter II -Administrative Relations of Part XI of the Constitution - Relations between the Union and the States. The text of the article reads as follows:

'263. Provisions with respect to an Inter-State Council - *If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of* -

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.'

The genesis of the article can be traced directly to Section 135 of the Govt. of India Act, 1935 provided for establishment of Inter-Provincial Council with duties identical with those of the Inter-State Council. At the time of framing of section 135 of the Government of India Act, 1935, it was felt that 'if departments or institutions of coordination and research are to be maintained at the Centre in such matters as Agriculture, Forestry, Irrigation, Education and Public Health and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of Provincial Governments in them must be expressed in some regular and recognized machinery of Inter-Governmental consultations.' It was also intended that the said Council should be set up as soon as the Provincial autonomy provisions of Government of India Act, 1935 came into operation.

In the Constituent Assembly debate held on 13 June 1949, the article on Inter-State Council was adopted without any debate.

Formations

As Article 263 makes it clear, the Inter-State Council is not a permanent constitutional body for coordination between the States of the Union. It can be established 'at any time' if it appears to the president that the public interests would be served by the establishment of such a Council.

The provision of Article 263 of the Constitution was invoked for the first time on 9 August 1952 when President by a notification established the Central Council of Health under the Chairmanship of the Union Minister of Health and Family Planning 'to consider and recommend broad lines of policy in regard to matters concerning health in all aspects'.

By similar notifications the President established the Central Council for Local Government and Urban Development on 6 September 1954 and four Regional Councils for Sales Tax and State Excise Duties on 1 February 1968.

However, the National Development Council was set up on 6 August 1952, by an executive order on the recommendation of the Planning Commission, as the Planning Commission itself was set up by an executive order of the government. Similarly, the National Integration Council was set up in 1962 without any course to Article 263 of the Constitution. The annual conferences of Chief Ministers, Finance Ministers, Labour Ministers, and Food Ministers have been taking place to discuss important issues of coordination between the Centre and the states. In fact, the issues of inter-state and Centre–state coordination and cooperation were being discussed in a multitude of meetings on specific themes and sectors in an ad hoc and fragmented manner.

The Administrative Reforms Commission (1969) felt the 'need for a single' standing body to which all issues of national importance can be referred and which can advise on them authoritatively after taking all aspects of the problem into account'. The Commission recommended the setting up of Inter-State Council under Article 263 (b) and (c) of the Constitution and felt that saddling the proposed Council with functions on inquiring and advising on disputes between States under article 263 (a) would prevent it from giving full attention to the various problems of national concern.

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This view was endorsed by the Commission on Centre–State Relations (1988) which recommended that 'the Council should be charged with duties in broad terms embracing the entire gamut of clauses (b) and (c) of article 263'.

Government accepted the recommendation of the Sarkaria Commission and notified the establishment of the Inter-State Council on 28 May 1990.

Notification

The Inter-State Council was established under Article 263 of the Constitution of India through a Presidential Order dated 28 May 1990.

The Council is a recommendatory body with the following duties: -

(a) Investigating and discussing such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, as may be brought up before it;

(b) Making recommendations upon any such subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and

(c) Deliberating upon such other matters of general interest to the States as may be referred by the Chairman to the Council.

The Council shall consist of:

(a) Prime Minister – Chairman

(b) Chief Ministers of all States – Member

(c) Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly – Member

(d) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister – Member

The Presidential Order of 1990 has been amended twice vide Orders dated 19 July 1990 and 24 December 1996 providing for Governor of a State under President's rule to attend the meeting of the Council and nomination by the Chairman of permanent invitees from amongst the other Union Ministers, respectively.

Procedure

In terms of clause 2(d) of the Inter-State Council Order of 28 May 1990, the Council has laid down, with the approval of the Central Government, the procedure to be observed by it in the conduct of its business. The Council has further adopted the guidelines to be followed for identifying and selecting issues to be brought up before it.

If any matter is sought up before the Council by the Central Government or by the Government of any State or Union territory, a formal reference shall be made to the Council, addressed to the Secretary of the Council, with a self-contained note setting out – the issue or issues involved and the reasons for making the reference, together with supporting documents, if any; and the constitutional and legal implications of the said issue or issues.

On receipt of the reference, the Secretariat of the Council shall examine it in all its aspects, inter-alia, with reference to the guidelines adopted by the Council and other relevant material. After reference has been examined, the Secretary of the Council shall submit the case to the Chairman with his recommendation for obtaining the orders of the

Chairman as to whether the issue or issues raised therein should be included in the Agenda for the meeting of the Council.

It shall be open to the Secretariat to take up any proposal relating to a matter of general interest and submit the same to the Chairman, for his orders as to its inclusion in the agenda.

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The meetings of the Council shall be held in Delhi or any other convenient place determined by the Chairman. Ten members including the Chairman shall form the quorum for a meeting of the Council.

The Secretary shall evolve a system of monitoring the action taken on the recommendations of the Council by the Central Government, the Government of any State or the Union territory concerned. He shall, at appropriate stages, cause information in this regard to be made available to the Council.

The meetings of the Council are held in camera. Therefore, the details of the agenda items and proceedings of the meetings cannot be shared in the public domain.

Meetings

The Inter-State Council has met for only ten times. The meetings of the Council are held in camera and therefore the details of the agenda items and the proceedings of the meetings cannot be shared in the public domain.

The **First Meeting** of the Inter-State Council was held in October 1990 to discuss the following agenda items:

- Report of the Sarkaria Commission on Centre–State Relations
- Levy of tax on inter-state consignment of goods
- Transfer of additional excise duties from man-made fabrics to the textile fibres/ yarn stage
- Setting up of special courts for speedy trial of economic offences and offences under the Narcotic Drugs and Psychotropic Substances Act

The **Second Meeting** of the Council held on 15th October 1996, discussed the following agenda items:

- Consideration of 179 recommendations of Sarkaria Commission on which there was a consensus in the Sub-committee of the Inter-State Council
- Methodology for examination of 44 recommendations of Sarkaria Commission on Centre–State financial relations, 11 recommendations on which there was no consensus in the Sub-committee and one recommendation relating to Centre–State relations in the sphere of education
- Methodology for examination of the recommendations of Sarkaria Commission relating to emergency provisions including Article 356
- Appointment of High-Level Committee

The **Third Meeting** of the Council held on 17th July, 1997 discussed the following agenda items:

- Action taken on recommendations adopted at the Second meeting of the Inter-State Council held on 15.10.96
- Alternative Scheme of Devolution of Share in Central Taxes to States

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- Amendments to Article 356
- Chapter X of Sarkaria Commission on Centre-State Financial Relations

The **Fourth Meeting** of the Inter-State Council held on 28th November 1997, discussed the following agenda items:

- Chapter X of Sarkaria Commission Report on 'Centre-State Financial Relations'
- Chapter IV of Sarkaria Commission Report on 'Role of Governor'
- Chapter XVII of Sarkaria Commission Report on 'Inter-State River Water Disputes'
- Chapter XI of Sarkaria Commission Report on 'Economic & Social Planning'
- Chapter XV of Sarkaria Commission Report on 'Forests'
- Action taken on decisions taken in the Third meeting of the Inter-State Council held on 17th July, 1997

The **Fifth Meeting** of the Inter-State Council held on 22nd January 1999, discussed the following agenda items:

- Emergency Provisions (Articles 355 and 356 of the Constitution of India
- Guidelines for Conduct of Business of the Inter-State Council
- Economic & Social Planning
- Implementation Report on the recommendations endorsed by the Inter-State Council

The **Sixth Meeting** of the Inter-State Council held on 20th May 2000, discussed the following agenda items:

- Chapter III of Sarkaria Commission Report on 'Administrative Relations'
- Chapter V of Sarkaria Commission Report on 'Reservation of Bills'
- Chapter X of Sarkaria Commission Report on 'Financial Relations'
- Chapter XII of Sarkaria Commission Report on 'Industries'
- Chapter XIV of Sarkaria Commission Report on 'Agriculture'
- Chapter XVI of Sarkaria Commission Report on 'Food and Civil Supplies'
- Chapter XVIII of Sarkaria Commission Report on 'Trade, Commerce and Intercourse within the Territory of India'
- Action Taken Report on the issues decided and raised/discussed in the Fifth meeting of the Inter-State Council held on the 22nd January, 1999
- Implementation Report on the decisions taken by Inter-State Council on the recommendations of the Sarkaria Commission
- Removal of Restrictions on Movement of Essential Commodities
- Post-retirement benefits to Governors

The **Seventh Meeting** of the Inter-State Council held on 16th November 2001, discussed the following agenda items:

- Chapter II of Sarkaria Commission Report on 'Legislative Relations'
- Chapter IV of Sarkaria Commission Report on 'Role of the Governor'
- Chapter VIII of Sarkaria Commission Report on 'All India Services'
- Chapter IX of Sarkaria Commission Report on 'Inter Governmental Council'

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- Chapter XIII of Sarkaria Commission Report on 'Mines & Minerals'
- Chapter XIX of Sarkaria Commission Report on 'Mass Media'
- Chapter XX of Sarkaria Commission Report on 'Miscellaneous matters' Language, UTs and High Court Judges'
- Implementation Report on the decisions taken by Inter-State Council in its earlier meetings

The **Eighth Meeting** of the Inter-State Council held on 27th and 28th August 2003, discussed the following agenda items:

- Administrative Relations
- Emergency Provisions
- Deployment of Union Armed Forces
- Contract Labour and Contract Appointments
- Implementation Report on the decisions taken by Inter-State Council on the recommendations of Sarkaria Commission
- Good Governance - An Action Plan

The **Ninth Meeting** of the Inter-State Council held on 28th June 2005, discussed the following agenda items:

- Blue Print of Action Plan on Good Governance
- Disaster Management - Preparedness of States to Cope With Disaster
- Implementation Report on the decisions taken by Inter-State Council on the recommendations of Sarkaria Commission

The **Tenth Meeting** of the Inter-State Council held on 9th December 2006, discussed the following agenda items:

1. Atrocities on Scheduled Castes and Scheduled Tribes and status of implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The Council-Secretariat closely monitors the implementation of the recommendations of the Council with the concerned. In the ten meetings of the Inter-State Council held so far, the Council has taken final view on all the 247 recommendations made by Sarkaria Commission on center-state relations. Out of these 247 recommendations, 65 recommendations have not been accepted by the Council, 179 recommendations have been implemented and 3 recommendations are at various stages of implementation.

6.7 SUMMARY

In this unit, you have learnt that:

- Though India is a federation, the word 'federal' does not appear in its Constitution. The Indian Constitution describes India to be a 'Union of States'.
- A study of the Centre–State relations in the Indian Constitution shows that the Constitution makers gave more powers to the Centre as compared to the state.
- Articles 245 to 254 deal with the distribution of legislative powers between the Union and the states. Articles 245 to 246 provide that the Union Parliament shall have exclusive jurisdiction to make laws for the whole or any part of the territory of India, with regard to all matters included in the Union List.

Check Your Progress

9. When was the National Development Council set up?
10. Who are the members of Inter-state Council established in 1990?

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- In the field of administration, the Centre has still more powers than it possesses in the field of legislation. Normally, the administrative powers of the Centre correspond to the matters over which it has power to make law.
- The financial relations between the Centre and the states are regulated according to the provisions of Part XII of the Constitution. The Union and the State Lists also refer to the financial jurisdiction of the Centre and the state. The financial relations are, however, not a matter of concurrent jurisdiction.
- Under Article 266, a Consolidated Fund for the central government and a separate Consolidated Fund for each of the states have been created.
- Article 267 provides for the establishment of a Contingency Fund of India, and similar contingency fund for each of the states, so that the advances may be made to the Centre and the state respectively for meeting unforeseen expenditure, pending the legislative authorization.
- The Planning Commission was established in 1949 by a resolution of the cabinet with a purpose to suggest measures for augmenting the resources of the country, their effective and balanced utilization, determining the priorities, stages, progress and machinery of planning in the country.
- Despite the fact that there is a division of powers between the Centre and the states, the states are dissatisfied because they feel that the balance of power is heavily in favour of the Centre. They also feel that the Centre has used its power in such a way that there is no autonomy left to them even in matters mentioned in the State List.
- One of the most conspicuous and widely used instruments of Central power over the states is the provision for President's Rule under Article 356. This was meant as a 'safety valve' in the political system to prevent an authority vacuum in case of a breakdown of constitutional machinery in a particular state.
- The Governor of a state is appointed by the President on the advice of the central government for a five-year term, but holds his office till the pleasure of the President (Article 156).
- The financial weakness of the states has been a major area of tension between the Centre and the states. From the state's point of view, the allocation of financial resources between the Centre and the states is faulty.
- The states have been developing a feeling of deprivation on the ground that the Centre has denied them the due autonomy. From time to time, a number of Commissions have been appointed to look into Centre–State relations and to suggest reforms like the Administrative Reforms Commission (1967), Sarkaria Commission which submitted its report in 1988. However, the suggestions by these Commissions have not been implemented by the successive governments at the Centre.

6.8 KEY TERMS

- **Federation:** A federation is an organization made up of smaller groups, parties, or states.
- **National development council:** This Council was established in 1952 and is the highest reviewing and advisory body in the field of planning.

- **Coalition:** It is a temporary alliance for combined action by of political parties to form a government.
- **Governor:** He/she is the constitutional head of the state.

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6.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Articles 245 to 254 of the Constitution deal with the legislative powers between the Union and the states.
2. The subjects in the Union List are of national importance and include among its ninety-seven items—defence, foreign affairs, currency, and so forth.
3. Two instances in which the Union government prevails over states are as follows:
   - According to Article 256, the executive power of every state is to be exercised in such a way as to ensure compliance with the laws made by Parliament.
   - Governors to the states are appointed by the President on the recommendations of the central government.
4. Articles 73 and 162 of the Indian Constitution provide greater administrative powers to the Centre over states.
5. The three types of grants-in-aid provided by the Centre to the states are as follows:
   - Article 275 makes specific provisions for grants-in-aid given to the states which are in need of assistance, particularly for the implementation of their development schemes.
   - Grants-in-aid under Article 282 may be made for any public purpose.
   - Grants under Article 273 are given to the states of Assam, Bihar, Odisha and West Bengal in lieu of the export of jute and jute products.
6. The Planning Commission is responsible for the formulation of Five-Year Plans for national development.
7. On the basis of inter-party relations, state governments have been divided into three types:
   - Identical, that is, of the same party
   - Congenial, that is, where ideological and/or interest gap is low.
   - Hostile, that is, where the party in power at the state level is radically different in its ideological and political orientation, for example, Congress and Bharatiya Janata Party.
8. The misuse of mass-media for political purposes has also been an area of tension between the Centre and the states. It has been alleged that the media is the 'mouthpiece' of the Union government. However, with the establishment of the Prasar Bharti and the establishment of numerous satellite channels, the scenario has changed to a great extent.
9. The National Development Council was set up on 6 August 1952, by an executive order on the recommendation of the Planning Commission.
10. The Inter-state council consists of:
    (a) Prime Minister – Chairman
    (b) Chief Ministers of all States – Member

(c) Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly – Member

(d) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister – Member

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6.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the distribution of legislative powers between the Centre and the states.
2. What is the objective of creating the Consolidated Fund?
3. When is the President's Rule imposed on a particular state? Give examples.
4. List some of the areas of the centre-state conflicts.

Long-Answer Questions

1. 'In the field of administration, the Centre has still more powers than it possesses in the field of legislation.' Discuss.
2. Why is 'bureaucracy' considered as a major area of friction between the central government and the state?
3. Discuss the four aspects of political dimensions of Centre-State relations.
4. Briefly discuss the role of the Governor as a major issue of conflict between the Centre and the state.

6.11 FURTHER READING

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UNIT 7 PARTY SYSTEM IN INDIA

Structure

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7.0 INTRODUCTION

India has an extremely unique party structure that cannot be 'classified' easily. This structure is defined by the singular nature of Indian politics on one hand and the nature of the relationship between the state and the society on the other. The party system in India began as a single-party dominant system with the Indian National Congress (INC) at the helm of affairs. The INC enjoyed a dominant position, both in terms of the number of seats that it held in the Parliament and the state legislative assemblies, and in terms of its organizational strength at the grassroots level. Initially, it enjoyed a position of hegemony because of its role in the independence movement. However, this gave way for a balanced multiparty system, when in 1977 the Janata Party government came to power. This multiparty nature was strengthened with the rise of the right wing Bharatiya Janata Party (BJP), which won elections in 1996, 1998 and 1999. Over time, smaller regional parties, such as the Telugu Desam Party (TDP) from Andhra Pradesh, the Dravida Munnetra Kazhagam (DMK) or All India Anna Dravida Munnetra Kazhagam (AIADMK) from Tamil Nadu, the Bahujan Samaj Party (BSP) from Uttar Pradesh and the Communist Party of India (Marxist) from West Bengal, Kerala and Tripura, have also gained substantial significance in state and national level politics. In this unit, you will study about the evolution of the Indian party system, and the various national and regional parties existing in the country.

7.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- State the fundamental features of the Indian party system
- Discuss the evolution of the Indian party system
- Identify the national and regional political parties of India

7.2 PARTY SYSTEM

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In the post-Independence era, the political parties came to be recognized as instruments of prime importance through which democracy could be operationalized, as India adopted a parliamentary democratic system of governance. Ideologically, in the pre-Independence era, the colonial state was marked by the presence of the INC as a safety valve-cum-umbrella organization. The INC represented predominantly the voices of the upper and middle classes, and primarily waging the freedom struggle for achieving political independence in the country. The insistence was more on agitation politics and not on institutional politics.

After Independence, the role and importance of political parties have grown substantially and rather proportionately in accordance with the growing franchise. As political suffrage gradually became universal, parties became the means through which politicians are seeking to acquire mass electoral support. Political parties can be defined as organizational groups that seek control of the personnel and policies of the government. They mobilize and compete for popular support. In doing so, they tend to represent products of historical roots, civic traditions, cultural orientations and economy.

7.2.1 Fundamental Features

To understand the Indian party system, it is essential to first understand the fundamental features that appear vital in determining the nature of the Indian party system. These are as follows:

- The struggle for freedom and framework of parliamentary government along with politics of national reconstruction, modernization, integration and development has collectively contributed to the evolution of the Indian party system.
- The national heritage of national movement formed the dimensions of national interest, national unity, political integration and national defence.
- The ideological orientation with coexistence of radical 'left' to traditional 'right' during the national movement laid down a practice of toleration and accommodation of different points of view.
- Moreover, the continental size of the country, comprising well-defined and distinct socio-cultural regions; with linguistic, ethnic and religious diversities; and specific patterns of castes, communities and tribes provided conditions for the rise of regional parties and groups.
- The task to ensure social equality to remove the inequalities perpetuated by centuries of caste oppression gave birth to political parties and groups who strove to use these castes as perpetual vote banks.
- On economic fronts, it was a mixture of feudal but emerging developed agricultural and developing industrial economy. Economic development for raising standards of living in an underdeveloped and poverty-ridden society followed by the problems of Centre-state relations, and allocation of resources paved the way for the emergence of such parties and groups whose approach was regional instead of national.
- Lack of politically conscious middle class along with regional, sectarian and personal imbalances played a vital role in the evolution of party system in India.

7.2.2 Evolution of the Indian Party System

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Let us now study the evolution of the Indian party system.

Pre-Independence Period

The origin of the Indian party system can be traced to the formation of the INC in 1885. Various other parties emerged in the later period. Party formation during the period 1885–1947 occurred in the context of British Raj, and its policy of divide and rule, pursued by encouraging separate electorates, led to the formation of the Muslim League, the Akali Dal and the Hindu Mahasabha. As a multi-class organization, Congress was able to draw the support of peasants, land owners, businessmen and workers. At the time of Independence, Mahatma Gandhi asserted that Congress must transform itself into a Sewa Dal (a forum of public-workers), but instead, Congress changed into a distinct political party and remained the dominant ruling party for three decades.

Post-Independence Period

The evolution of the Indian party system has been from 'one-party dominance' to 'multi party coalition system'. For the purposes of better understanding, it calls for analysis of various stages of growth.

Phase I (1947–1967): The Era of One-party Dominance

India had a party system characterized by dominance of the Congress and the existence of smaller opposition parties, which could not provide an alternative either at the central or state level. In other words, opposition parties had little hope of obtaining sizeable majorities in the legislatures, despite the fact that on most occasions, the Congress did not gain a majority of the valid votes cast. The Congress votes varied from 49.17 per cent to 40.7 per cent. The socialists and the communists, during this period, were able to score around 10 per cent votes each. During this period, groups within the Congress in conjunction with opposition parties, assumed the role of opposition often reflecting the ideologies and interests of the other parties.

An important feature of this era was that the Congress occupied not only the broad centre of the political spectrum, but also dominated the 'left' and 'right' tendencies.

Phase II (1967–1971): The Period of Transition to a Multi-party System

The second phase extended from 1967 to the fifth general elections. In the 1967 Assembly elections, Congress lost majority in eight states and was reduced to fifty-four per cent of Lok Sabha seats. This brought a number of opposition parties to the forefront, which intensified inter-party conflict. Competition and conflict increased as opposition parties formed coalition governments in several states.

The 1967 elections had created a situation in which the dominance of the Congress was strikingly reduced. Parties to the 'right' and 'left' of the Congress, the Jana Sangh (now called the Bhartiya Janata Party) and the Communist Party of India (Marxist), popularly known as CPI (M), grew stronger. The possibility that opposition parties might assume power quite substantially made the Centre–state relations an important feature of inter-party competition. The 1967 elections created conditions which led towards serious Centre–state conflicts.

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Phase III (1971–1975): The Period of Consensus vs Inter-party Conflict

The fifth Lok Sabha elections marked the beginning of yet another stage in the evolution of the Indian party system, and the trend continued till the imposition of the Internal Emergency in 1975. The Congress controlled by Indira Gandhi faced a large united opposition party in the general elections of 1971. Despite the strong opposition, Congress won with a thumping majority. It won 346 out of 510 seats with 43.5 per cent of the popular vote. A significant aspect of the election was the elimination of Congress (O) and the defeat of other political parties. The mid term polls, thus, pre-empted the development of a multi party system. It also prevented the politics of coalition building at the national level. It was followed by a strategy to establish hegemony of the Congress at the Centre backed on populist and plebiscitary elections.

The major reason for victory was the delinking of the Lok Sabha elections from the state assembly elections. The parliamentary election campaign was delinked from state level politics and the state leaders could not exercise the same influence as they had done in the past. Indira Gandhi's campaign injected a powerful element of ideology by raising the slogan of social change and by calling upon the electorate to support her endeavour to initiate new government policies for the benefit of the poor, resulting in a new consensus in the political arena. The dominant party model had given way to the differentiated structure of party competition. The process gained momentum as parties aligned to form coalition governments. For its part, the Congress accepted a confrontationist posture, both towards the opposition parties at the national and the opposition-controlled governments at the state level.

Indira Gandhi's conflict with state leadership of the Congress party as well as that of the opposition parties created a style of politics, which laid great stress on centralization in decision-making. The new system entailed the abandonment of intra-party democracy. Positions in the Congress organization at all levels were invariably filled by nomination rather than election. Above all, institutional decline accompanied by decline of the state-based leaders and the replacements of regional structure of support by the central leadership adversely affected the federal scheme of Indian politics. After the 1969 split, the Congress followed a broad-based strategy consisting of re-distributive policies, such as nationalization of banks, abolition of privy purses and *Garibi Hatao,* all geared towards widening its support.

Phase IV (1975–1977): The Emergency Period

The imposition of an authoritarian Emergency in 1975 signalled the erosion of the popular support of the Congress party, the institutional decline and the weakening of the party system by suspending civil liberties, particularly freedom of the press and representative government. Opposition leaders and activists faced imprisonment, while concentration of power in the party, the government and in the office of the Prime Minister was the striking feature of the party system during this phase. Strict discipline was imposed on the Congress party. No criticism of the government was tolerated. Any attack on the Prime Minister's authority was considered to be an attack on the party's as well as the nation's unity.

The 1971–75 period, thus, marked the decline of the party system, making parties rely more on make shift electoral arrangements, populist symbols and rhetoric for gaining support. Personality, charisma and image have acquired greater salience than party identification and party loyalties. However, this trend withered away in the post-1977 period.

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Phase V (1977-1980): The Janata Phase of Coalition Politics

The next phase in the evolution of India's party system may be considered from the defeat of the Congress in 1977 elections to the restoration of its rule in 1980. The 1977 elections provided a major step towards party institutionalization and possibilities of the emergence of a two-party system. By and large, independent candidates were rejected and 75.8 per cent votes were cast in favour of only two parties, namely, the Janata party and the Congress.

The defeat of the Congress and the victory of the Janata Party, made up of a coalition of parties, was a significant change in Indian politics. The Janata Party government attempted to redirect emphasis away from the industrially-oriented strategy associated with the Congress rule to rural development and small-scale industries. In general, it made attempts to decentralize the state and the economy. The government invested in programmes that created employment and generated income by relying on labour-intensive technology and distribution of productive assets. Though the Janata government's ideology and programmes were not entirely new, but it had taken certain ideological and programmatic themes of rural development from the Congress' broad-based strategy and made it more pronounced.

However, the Janata Party could not achieve its goals. Rural development did not benefit the rural poor because policy was not specifically directed to this end. Most of the policies benefited the rural rich. Moreover, the Janata government disintegrated in mid-1979, and many of the constituents that had formed it broke away from the party. Meanwhile, the Congress split for the second time in 1978. The result was an array of fragmented parties. In this context, the Indira Gandhi-led Congress, that is, Congress (I), appeared to be the only coherent party. This image helped the party to take advantage of the strong popular reaction against frictions and disunity of the Janata government and win 1980 general elections.

Phase VI (1980–1989): Era of Conflict between Congress and the Regional Parties

The 1980 Lok Sabha election was a verdict on the Janata Party's failure to consolidate the electoral alignments. Thus, in 1980s, the success of Congress (I) was mainly due to the failure of national level non-Congress parties. The Communist parties and the Jana Sangh retained the support of important groups. They also possessed effective organizations and ideologies. Bhartiya Lok Dal had displayed its presence in the Hindi-speaking states. The 1980 elections reflected these trends. The Congress won 353 seats with almost forty-three per cent of the popular vote. Janata Party was the second largest party in nine states. Lok Dal was second largest party in Haryana, UP and Orissa; CPI (M) was the largest party in West Bengal, Tripura and the second largest party in Kerala. Though support for the Congress (I) was still widespread as compared to other parties, class, community and region-wise support was on its decline. The Congress had begun to lose its base in the Hindi heartland, which makes forty-two per cent of the parliamentary seats, and its support in the Muslim-dominated constituencies was also reduced. These trends indicated an erosion of Congress' regional and minority support base.

The assassination of Indira Gandhi in 1984 and the landslide victory of the Congress (I) due to the resultant sympathy wave made opposition in Lok Sabha irrelevant in 1984 elections. During Rajiv Gandhi's regime from 1984 to 1989, there was complete absence of dialectical interaction between the government and the opposition. The new political

situation that emerged from 1984 election was the one in which the Congress was dominant at the Centre, but not in most of the states.

Phase VII (1989–2004): The Rise of Coalition Politics

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The 1989 elections transformed the scene at the Centre by establishing a non-Congress coalition government with a true multi party character. The government was called the National Front government under the Prime Ministership of V.P. Singh. People displayed a greater inclination to their caste-based parties which represented their interests in the elections. These elections recorded the decline of the Congress vote share, and the rise of BJP and the 'third front' of marginalized social group. The United Front, the Rashtriya Janata Dal (RJD), the Bahujan Samaj Party (BSP) and the Samajwadi Party (SP) became key players. The National Front coalition proved to be too unstable and collapsed in 1991. The year 1991 was important for India in more ways than one. The year saw the Balance of Payment crisis which resulted in India liberalizing its economic policies under pressure from the World Bank and International Monetary Fund (IMF). The year also resulted in the restoring of Congress rule under P.V. Narasimha Rao. Although the government lasted for a full five-year term, the economic policies followed by the government as well as the rise of communalism seen in the destruction of the Babri Masjid, resulted in the people rejecting the Congress Party. Thereafter began the longest spell non-Congress rule in India.

The 1996 elections marked a decline in the position of the Congress and in the growth of regional parties, which started playing a significant role in the politics at the Centre. This era marked increasing political awareness of people living in remote areas; assessment of national policies in terms of their local impact; mass preference for local politicians and greater demand for state autonomy within the limits of the existing federal structure. In social terms, the election results suggested a greater and more polarized role of caste in politics. Success of BSP among Dalits, consolidation of other backward classes (OBCs) in Bihar and UP, post-mandalization resulting in politics of reservation on caste basis and mushroom growth of various types of caste associations mostly in North India, indicated a positive correlation with election outcome.

The NDA

The 1998 Lok Sabha elections led to even a greater fractured mandate than the one in 1996. The National Democratic Alliance (NDA) formed a government under Prime Minister Atal Bihari Vajpayee with the support of fourteen other parties. Vajpayee being the moderate voice of the right wing BJP and a consensus builder could garner the support of the electorate as well as its allies. At that time coalition politics was at a very young stage in the Indian experiment and unstable in its nature. In April 1999, AIADMK withdrew its support and the Vajpayee government lost the vote of confidence on the floor of the House.

The 1999 national election saw a major victory for the National Democratic Alliance, a broad-based coalition of twenty-four regional parties led by the BJP. This was a new type of dominant coalition of parties headed by Atal Bihar Vajpayee. The government had to manage both the complex relationship with the alliance partners as well as factions within his own party and the Sangh Parivar. His popular management style and his use of the Prime Minister's Office (PMO) on an institutional basis formed the firm roots that gave Vajpayee's ability to dominate the coalition. Vajpayee was able to use the office of the PM for policy development, patronage and allocation of ministerial portfolios to dominate decision-making. As a Prime Minister, he took a lot of initiatives without the

consultation of the BJP's coalition partners. For example, the conduct of the Pokharan Nuclear Test 1998, improving relations with the United States (US) and Pakistan, selecting A.P.J. Abdul Kalam as President and refusal to yield to alliance pressures to dismiss the BJP government of Gujarat following the communal riots in 2002.

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Under Vajpayee, the BJP's perspective on the Ayodhya issue was also softened and the NDA also withdrew its Hindutva education agenda among other things. Thus, this period of coalition government saw the emphasis of pragmatic considerations rather than ideological positions and political alliances without any ideological agreement. Coalition politics meant the shifting of the focus of political parties from ideological differences to power sharing arrangements. Most of the parties of the NDA did not agree with the Hindutva ideology of the BJP. Yet, they came together to form a government that remained in power for the full term.

Phase VIII (2004–2014): Coalition System and Revival of the Congress

End of single-party coalition dominance was the message of 2004 elections. In the 2004 elections the people rejected the claims of India 'shining' of the ruling NDA coalition and provided an opportunity to all non-NDA political parties led by Congress, named as UPA (United Progressive Alliance), to evolve an alternative political coalition. These elections also reflected significant increase in the power of Left parties in national politics, with sixty seats in their favour. The rise of the Left was a result of the increasing disenchantment with the economic policies being followed by the Centre.

Signifying the role of regional political parties, the outcome at the national level, to a great extent, became the sum total of the state level verdicts. It appeared that any party wishing to win a national mandate has to weave its way through the different states and secure a verdict in each of these states. The Congress' key alliances that went hand in hand in the election were with regional parties of Tamil Nadu, Andhra Pradesh, Bihar, Jharkhand and Maharashtra. This, however, gave yet another message that the Congress party was not dead and if it could successfully lead the country and meticulously manage 'the rainbow coalition' in the coming years, it could well return to power circles. Comprehensive common agendas (Minimum Common Programme in case of UPA and National Agenda in case of NDA) became the guidelines of these alliances.

In 2008, the Left withdrew its support to the UPA government because it felt that the Congress had rejected its traditional non-alignment foreign policy stand and had become closely allied to the United States, which was signaled by the signing of the Indo-US nuclear deal. Despite the exit of the Left, the UPA came back to power in 2009.

Phase IX (2014–): BJP ESTABLISHES A SIMPLE MAJORITY ON ITS OWN

It is the first time since 1984 general elections that a party has won enough seats to govern without the support of the other parties. BJP and its allies won the right to form the largest majority government.

Check Your Progress

1. Name some of the political parties that were formed in the pre-Independence period.
2. Under whose leadership did the National Democratic Alliance (NDA) form a government at the Centre?

7.3 NATIONAL AND REGIONAL PARTIES

Political parties of a country are the key organizations in any contemporary democracy. E. E. Schattschneider, an American political scientist, famously asserted more than half

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a century ago that, 'Modern democracy is unthinkable save in terms of the parties.' With the introduction of universal suffrage and the advent of mass democracy, direct links between the state and individual citizens is increasingly becoming unrealistic and thus the existence of political parties as intermediary institutions have become a global phenomenon. Today, political parties are the main vehicles for organizing political representation, political competition and democratic accountability. They link the state and civil society, can influence the executive, formulate public policy, engage in political recruitment, structure electoral choices and facilitate coalitions. Parties participate in electoral campaigns and educational outreach or protest actions. Parties often espouse an expressed ideology or vision bolstered by a written platform with specific stands on political economy and developmental ambitions.

Since the freedom of thought and expression is guaranteed by the Constitution, it has provided the opportunity for various voices to flourish within the ambit of democratic norms. This has resulted in the emergence of various political parties with distinct policies and programmes for the socio-economic development of the nation, as per their ideological stand and support base. Some of these political parties have a national appeal, while others have appeal only at a regional level. Over a period of time, a bewildering variety of political parties have emerged in India – secular, nationalist, socialist, communist, conservative, radical, regional, religious, tribal and caste-based. At present, according to the election commission (EC) there are about 750 registered parties in India, out of which six have been recognized as national parties and forty-four have been recognized as state parties.

7.3.1 National Parties

Although the Indian political landscape is full of political parties, there are only a few parties that have a national support base. According to the Election Commission of India, in order to gain recognition in a state, a political party must have had political activity for at least five continuous years, and must send at least 4 per cent of the state's quota to the Lok Sabha, or 3.33 per cent of members to that Legislative Assembly of that state. If a party is recognized in four or more states, it is declared as a 'national party' by the EC. As per these guidelines, there are six national political parties in India—Indian National Congress (INC), Bharatiya Janata Party (BJP), Bahujan Samaj Party (BSP), Communist Party of India (CPI), Communist Party of India (Marxist)–(CPM) and the Nationalist Congress Party (NCP).

1. Indian National Congress

The Indian National Congress, founded in 1885, is one of the oldest democratic political parties in the world. The INC played a prominent role in the struggle against British colonial rule and became the leader of the Indian Independence Movement, with over 15 million members. After Independence in 1947, it became the nation's dominant political party and has been in political power for about five decades of India's Independence. The party's ideological platform is largely considered as centre-left in the Indian political spectrum. However, in recent times, the INC's economic policies have shifted dramatically towards the right.

2. Bharatiya Janata Party

The Bharatiya Janata Party is one of the two major political parties in India. Established in 1980, it is India's second largest political party in terms of representation in the current Parliament and in various state assemblies. The Bharatiya Janata Party believes in

advocating what many consider to be extreme forms of Hindu nationalism, conservative social policies, self-reliance, free market capitalist policies, a foreign policy driven by a nationalist agenda and a strong national defence. The BJP's platform is generally considered to be right of the centre in the Indian political spectrum.

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3. Communist Party of India

The Communist Party of India is a left-wing political party. It was founded on 26 December 1925, thus making it the second oldest political party in India. Besides the Congress, the Communist Party of India played an important role during India's freedom struggle. The CPI claims to be a political party of workers, peasants, intelligentsia and others devoted to the cause of socialism and communism. The stated goal of the party is 'a just socialist society in which equal opportunities for all and the guarantee of democratic rights will clear the way for ending all forms of exploitation, including caste, class and gender, and exploitation of man by man, a society in which the wealth produced by the toiling millions will not be appropriated by a few.' The CPI, as a member of the Left Front, has been extremely critical of economic reforms and the policies of liberalization, privatization and globalization followed by the two major national parties.

4. Communist Party of India (Marxist)

The Communist Party of India (Marxist)—(CPM) emerged out of a split of the Communist Party of India in 1964. The CPM leads the Left Front coalition of leftist parties in various states and at the national level. It has a strong presence in the states of Kerala, West Bengal and Tripura. West Bengal has been the strongest base of the party and under its leadership the Left Front made a record of winning seven successive assembly elections and ruled the state for almost thirty-three years. The Left Front in Bengal was the longest serving democratically elected Communist government in the world. The CPM strongly advocates anti-capitalism, anti-globalization and anti-imperialist sentiments, and has always upheld the principles of Marxist philosophy.

5. Nationalist Congress Party

The Nationalist Congress Party is a centrist political party having a presence in almost fifteen states, but its major support base is in the state of Maharashtra. The party was formed on 25 May 1999, by three expelled leaders from the Indian National Congress—Sharad Pawar, P. A. Sangma, and Tariq Anwar. The founding principles of the party are as follows:

- Strengthening the forces of nationalism with an emphasis on the egalitarian and secular ethos of the Indian republic and combating fundamentalism and sectarianism.
- Maintaining the unity and integrity of India by strengthening federalism and decentralization of power up to the village level.
- Promoting economic growth through competition, self-reliance, individual initiative and enterprises with emphasis on equality and social justice.

6. Bahujan Samaj Party

The Bahujan Samaj Party is a centrist national political party with socialist leanings. It was formed to chiefly represent the *Bahujans*, which refers to people from the scheduled castes, scheduled tribes and other backward castes (OBC), as well as minorities. The ideology of the party is 'Social Transformation and Economic Emancipation, of the

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'Bahujan Samaj'. The party was founded in 1984 by Kanshi Ram and claims to be inspired by the philosophy of B. R. Ambedkar. The party believes that the 'Bahujan Samaj' have been victims of the *Manuwadi* system in the country for thousands of years, under which they have been vanquished, trampled upon and forced to languish in all spheres of life. The party wants to end the 'Manuwadi Social System' based on the Varna and claims to strive hard for the establishment of an egalitarian and 'humanistic social system' in which everyone enjoys justice (social, economic and political) and equality (of status and of opportunity) as enshrined in the Preamble of the Constitution.

7.3.2 Regional Parties

One of the prominent features of Indian democracy is the presence of a large number of parties with a regional support base. These parties generally operate within a limited geographical area and their activities are often confined only to a single or a handful of states. As compared to the broad ranging diverse interests of national level political parties, these parties represent the interest of a particular area. In simple words, regional parties differ from All India parties both in terms of their outlook as well as the interests they pursue. Their activities are focused on specific issues concerning the region and they operate within the limited area.

1. The Jammu and Kashmir National Conference

The Jammu and Kashmir National Conference (JKNC) is a regional political party in the Indian state of Jammu and Kashmir. The JKNC functions on the ideology of 'Moderate Separatism', and the reunification of Kashmir. This is a political party which is pro-India and supports the policies and structures of the Indian government. This party was founded by Sheikh Abdullah on 11 June 1939 as the All Jammu and Kashmir Muslim Conference in October 1932, under a new name called All Jammu and Kashmir National Conference. The newly established JKNC held its first annual conference in Baramulla in 1940, with Sardar Budh Singh acting as its first president.

Sheikh Mohammad Abdullah was elected the president of the JKNC in 1947. Under his able leadership, the atrocities of the Kashmir Maharaja at Poonch, who ruled the state during that time, were violently revolted against. Having acquired the overwhelming support of the first Prime Minister of India Jawaharlal Nehru, Sheikh Abdullah demanded a 'Naya Kashmir'. Sheikh Abdullah united with the Indira Gandhi-led Congress (I) in 1965, hereafter becoming the J&K branch of the Congress. Abdullah became the Chief Minister of the state after the JKNC won the majority seats in the state Legislative Assembly. Farooq Abdullah replaced his father Sheikh Abdullah as the party president, after the latter's death. Farooq remained the JKNC president from 1981 to 2002 and his son Omar Abdullah became the party chief from 2002 to 2009. In 2009, Farooq was again made the president of the JKNC.

2. Asom Gana Parishad (AGP)

Asom Gana Parishad (Assam Peoples Association) is a political party in Assam, India that came into existence after the historic Assam Accord of 1985 when Prafulla Kumar Mahanta was elected as the youngest chief minister in the country. The AGP formed government twice from 1985 to 1989 and from 1996 to 2001. The party came apart, with former Chief Minister, Prafulla Kumar Mahanta, forming the Asom Gana Parishad (Progressive) but regrouped on 14th October 2008 at Golaghat. AGP came into being after the six-year-long Assam Agitation against Illegal Infiltration of Foreigners from Bangladesh into Assam, led by All Assam Students Union (AASU).

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3. Shiromani Akali Dal

This is a regional party of Punjab. At the national level, while remaining in the forefront of national mainstream, the Shiromani Akali Dal (SAD) has consistently maintained its commitment to a grand privilege for Punjabis in general and particularly the Sikhs, constantly striving to protect their political, economic, social and cultural rights. The Shiromani Akali Dal party is committed to the highest ideals of peace, communal harmony, universal brotherhood and welfare of humanity (Sarbat Da Bhala).

The need for cooperative federalism based on political and fiscal autonomy was for the first time advocated by Shiromani Akali Dal, a concept that was opposed initially but later accepted and adopted by almost every regional and national political party. According to SAD, setting up a real federal structure is the only way to strengthen the objectives of national unity and prosperity. Obstacles in the path of such a national system by the Congress party caused considerable harm to the interests of development and prosperity in the States and deferred India's emergence as a global leader for more than six decades.

4. Dravida Munnetra Kazhagam

The Dravida Munnetra Kazhagam in the state of Tamil Nadu symbolises the political strength of the regional Dravidian movement. Its original roots were in the Justice party (the South Indian Liberal Federation) which was essentially a non-brahmin movement. Shri E.V. Ramaswamy Naicker, better known as 'Periya', who was the President of the Justice Party in 1938, initiated the programme of 'Tamilisation of Politics' and put forth the demand for the creation of Dravidastan, a separate State of Tamil Nadu. In the 1957 elections the DMK contested elections for the first time and secured 15 per cent of the popular vote. From than onwards it made rapid strides and in the 1967 general elections it came out as the ruling party in Tamil Nadu and as the third largest opposition party in Parliament.

5. Telugu Desam

It is a regional party of Andhra Pradesh's formed under the charismatic leadership of N.T. Rama Rao in 1982. It developed as a reaction against Indira Gandhi's frequent imposition of unpopular Congress Party Chief Ministers on the people of Andhra Pradesh. The party's support base was formed by poor especially the scheduled castes.

6. Jharkhand Party

The origin of this party can be traced back to the Birsa uprising at the end of the nineteenth century. It has remained so far as a regional party with its base in the scheduled tribes of Chotta Nagpur and Santhal Pargana regions. Its objective is the formation of an Adivasi state.

7.3.3 Trends in Indian Party System

The trends in the Indian party system are as follows:

1. **Increase in the number of parties:** Particularly in the last decade there was a tremendous increase in the number of parties, both at state level and national level. This led to a competitive multi-party system.
2. **Changes in the status of the national and state parties:** Most of the parties considered as national and state parties during the first general elections became

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extinct within 20 years. Out of the total fourteen national parties, only four parties survived as national parties at the time of second general elections. Since past 50 years, only the Congress, Communists and the Jana Sangh (later known as the BJP) remained stable among the national parties.

3. **Relative electoral strength of the national and state parties:** The national parties, share of votes declined by 13 per cent between 1952 and 2009. This is mainly due to the decline of the Congress.
4. **Power sharing:** Of the fifty odd regional parties, forty-three have so far formed governments or shared power either at the Union or state level or both.
5. **Emergence of coalitional party system:** At present, at the national level no single party is able to meet the all expectations of the people from different classes, castes, religions, and different linguistic, ethnic and regional interests. The present phase is characterized by the emergence of the coalitional party system, where the two leading national parties, the Congress and the BJP, play as central pillars.
6. **Coalitions of numerous regional political parties:** Rapid swings in vote percentages to major parties have created a scene of unpredictability and uncertainty and this has led to regional and splinter parties playing bigger role at the state as well as Centre government formations. De-linking of State Assembly elections from Parliamentary elections has also played its role.
7. **Political appeal of communal and revivalist movements:** In the last two decades, there is a shift in voters' communal, caste and regional orientations. This can be clearly seen in the repeated defeats of the Congress in 1977, 1989, 1996, 1998 and 1999 elections. Appealing directly to sentiments of the majority and minority religious communities, caste groups and language groups has become the latest strategy.
8. **Peaceful transfer of power:** Irrespective of occasional hiccups, the parties and governments are able to transfer power peacefully, barring some small parties in J&K, Assam and the North-East which refused to recognize the legitimacy of the election results.
9. **Support for Communist parties:** In contrast to swinging fortunes of other parties, the two major communist parties retained their vote share with minor fluctuations. Their total vote share varied in the rage of 7–9 per cent between 1957 and 2004.
10. **Decline of independents:** There were many elected independents during 1952–67. Today, however, the number of elected independents has declined sharply. People are more oriented to vote for a party candidate than to an independent.
11. **Women's participation:** Women constitute nearly 50 per cent of voters in India. Though most parties have structured women cells or organizations, in practice they have fielded few women candidates in the elections. The concept of 30 per cent reservation for women in the Parliament or State Assemblies is still to see light.
12. **Criminals in politics:** Despite various efforts made by the Supreme Court and the Election Commission, growing number of criminals in politics could not be checked. While making any such prohibitory or explanatory law, all political parties seems to join hands to nullify any such move. All the parties in India distribute tickets to people with criminal records, resulting in the criminalization of politics.

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To sum up, legal and constitutional reforms, democratic and committed leadership, ideological orientation, inner party democracy, adequate representation to women, transparent and accountable funding, harmonious working, alert and mobilized citizens, emphasis on value-based politics, discouragement to 'blackmailing' and 'pushing' tactics within alliances and encouragement to some harmonious commitments with due space for emerging social and economic forces are needed for the improvement of political scenario and for the balanced development. The parties must realize that the politics of communal and religious allurement is the politics that is essentially divisive and disruptive of public harmony. All the existing political parties must recreate a national consensus.

However, the last decade has seen the emergence of a large number of political parties and increasing factionalization. The rise of regional political parties and caste and community-based parties unleash the tendencies to form separate groups and ideology-based politics leading to decline in political morality and excessive political corruption, criminalization of politics, non-governance, disorder and instability. While urban middle classes were busy bashing politics and politicians, the democratic space provided by electoral politics was being used more deftly by marginalized social groups, who voted not as individuals but as groups and more often used their rights to reject very frequently.

7.4 SUMMARY

In this unit, you have learnt that:

- India has an extremely unique party structure that cannot be 'classified' easily. This structure is defined by the singular nature of Indian politics on one hand and the nature of the relationship between the state and the society on the other.
- In the post-Independence era, the political parties came to be recognized as instruments of prime importance through which democracy could be operationalized, as India adopted a parliamentary democratic system of governance.
- After Independence, the role and importance of political parties have grown substantially and rather proportionately in accordance with the growing franchise.
- The origin of the Indian party system can be traced to the formation of the Indian National Congress in 1885. Various other parties emerged later in the period. Party formation during the period 1885–1947 occurred in the context of British Raj, and its policy of divide and rule, pursued by encouraging separate electorates, led to the formation of the Muslim League, the Akali Dal and the Hindu Mahasabha.
- The evolution of the Indian party system has been from 'one-party dominance' to 'multiparty coalition system'.
- India had a party system characterized by dominance of the Congress and the existence of smaller opposition parties, which could not provide an alternative either at the central or state level.
- The second phase of the evolution of India's party system extended from 1967 to the fifth general elections. In the 1967 Assembly elections, Congress lost majority in eight states and was reduced to fifty-four per cent of Lok Sabha seats.
- The fifth Lok Sabha elections marked the beginning of yet another stage in the evolution of the Indian party system, and the trend continued till the imposition of the Internal Emergency in 1975.

Check Your Progress

3. List the six national political parties of India.
4. Who founded The Jammu & Kashmir National Conference (JKNC) party?

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- The imposition of an authoritarian Emergency in 1975 signalled the erosion of the popular support of the Congress party, the institutional decline and the weakening of the party system by suspending civil liberties, particularly freedom of the press and representative government.
- The next phase in the evolution of India's party system may be considered from the defeat of the Congress in 1977 elections to the restoration of its rule in 1980.
- The 1980 Lok Sabha election was a verdict on the Janata Party's failure to consolidate the electoral alignments. Thus, in 1980s, the success of Congress (I) was mainly due to the failure of national level non-Congress parties.
- The 1989 elections transformed the scene at the Centre by establishing a non-Congress coalition government with a true multiparty character. The government was called the National Front government under the Prime Ministership of V.P. Singh.
- Political parties of a country are the key organizations in any contemporary democracy.
- The Indian National Congress, founded in 1985, is one of the oldest democratic political parties in the world.
- The Jammu and Kashmir National Conference (JKNC) is a regional political party in the Indian state of Jammu and Kashmir.

7.5 KEY TERMS

- **Plebiscitary:** It is the direct vote of all the members of an electorate on an important public question such as a change in the Constitution.
- **Salience:** It refers to the quality of being particularly noticeable or important.
- **Multi-party system:** It is a system in which multiple political parties can gain control of the government separately or in coalition.
- **Single-party system:** It is a type of party system in which a single political party forms the government and no other alternatives are available as opposition.

7.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Some of the political parties that were formed in the pre-Independence period are The Indian National Congress (INC), the Akali Dal and the Hindu Mahasabha.
2. Under the leadership of Atal Bihari Vajpayee, the National Democratic Alliance (NDA) formed a government at the Centre.
3. The six national political parties of India are Indian National Congress (INC), Bharatiya Janata Party (BJP), Bahujan Samaj Party (BSP), Communist Party of India (CPI), Communist Party of India (Marxist) and the Nationalist Congress Party (NCP).
4. The Jammu & Kashmir National Conference (JKNC) party was founded by Sheikh Abdullah.

7.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the fundamental features of the Indian party system?
2. Write a short note on the evolution of the Indian party system in the pre-Independence period.
3. Briefly discuss the rise of coalition politics in India.
4. What are the major political parties in India at the national level?

Long-Answer Questions

1. Discuss the evolution of the Indian party system in the post-Independence period.
2. 'The 1971–1975 period marked the decline of the party system in India.' Explain.
3. Describe the various regional parties existing in India.

7.8 FURTHER READING

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UNIT 8 ELECTORAL SYSTEM

Structure

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8.0 INTRODUCTION

Elections in India, the second most populous nation in the world, involve a mega exercise by a gigantic government machinery. The most common understanding of elections is the general elections or the Lok Sabha elections in which registered adult voters cast their votes. Based on the results of these votes, the directly elected members of a political party form the government with the majority party choosing its leader as the Prime Minister. However, these are not the only elections conducted in India. Elections are held for the state assemblies or Vidhan Sabha through which the state governments are formed and the Chief Minister is chosen, and also for local government bodies such as the municipalities and the panchayats. The President of India and members of the Rajya Sabha are also elected, though, through a different method. In this unit, you will study about the significance of elections in India, the role of the Election Commission in organizing elections and the need of electoral reforms in India.

8.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Explain the significance of elections in India
- Discuss the role of the Election Commission of India in organizing elections
- Identify the need for electoral reforms
- State the different types and rule of pressure groups
- Explain the various types of political alliances

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8.2 SIGNIFICANCE OF ELECTIONS IN INDIA

Elections are particularly conspicuous and revealing aspects of most of the contemporary political systems. They highlight the basic nature and the actual functioning of the system as a whole. Elections are complex events involving individual and collective decisions which directly affect, and are affected by, the total political and social process. They open up channels between the polity and the society, between the elites and the masses, and between the individual and the government. They are major agencies of political socialization and political participation.

Elections are the crucial deciding factor in modern democracies. Elections provide an opportunity to the general masses to get political education. Issues are raised and their pros and cons are discussed, and in the process the electorate gets informed. Elections are primarily held to decide as to who would govern the country. Elections are the only medium available in modern democracies through which a peaceful change in the government is effected or, to use Michael Brecher's (Professor of Political Science, McGill University) words, they are means for the 'routinization of political change'. The electoral politics lead to increasing political consciousness in which every citizen of India uses his right to vote and participate equally in the political process. In fact, there can be no democracy without elections.

Elections in India

Unlike the situation in many developing countries, elections in India have been central, and not peripheral, to the system. They have been truly meaningful and not mainly ritualistic acts. They have served as links between the 'traditional' and the more 'modern' aspects of the Indian life and behaviour.

Elections can now be seen not merely as useful indicators of a modern democracy, but actually as the events through which the party system and hence, in a measure, the political system achieves its evolution. Within this system, the electoral process seems to have functioned with increasing effectiveness and acceptance, and the Indian voter seems to be developing a surprising degree of maturity and sophistication. Or, in other words, India seems to be developing a 'responsible electorate' which was missing when it attained independence.

Another point to be noted is that far from contributing to the increasing 'modernization' of Indian politics on a steadily accelerating scale, recent elections show some signs of becoming more 'traditionalized' in the Indian setting. The trend has been particularly manifested in the changing character of India political leadership. On the whole, this leadership is changing significantly with a declining role and influence of the westernized, educated, urbanized high caste modern elite that spearheaded the Indian National Movement and that provided most of the top leadership to India in the first decade of its independence. On the contrary, there is an increasing role and influence of the middle class, less educated, less westernized, more rural and locally based elite. Elections have been a major instrument for the emergence of this new leadership. Thus, the elections have served as a vehicle for bringing more traditional elites into a more central role in the political system, increasingly at all levels.

Check Your Progress

1. Fill in the blanks with appropriate words.
   (a) Elections in India have been _____ to the system.
   (b) elections are the crucial _____ factor in modern democracies.
2. State whether the statements are true or false.
   (a) Democracy can exist without elections.
   (b) There is an increasing role and influence of the middle class in the elections in India.

8.3 ELECTION COMMISSION OF INDIA

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The Indian Constitution has made provision for a suitable machinery to conduct free and fair elections in the country. It provides for the setting up of an Election Commission for this purpose, which shall consist of the chief election commissioner and such other election commissioners, as are appointed by the President. The Constitution empowers the President to determine the conditions of service of the election commissioners. In the case of the chief election commissioner, it has been laid down that he or she shall not be removed from office except in like manner and on like grounds as a judge of the Supreme Court. The other election commissioners can be removed only on the recommendations of the chief election commissioner.

The Election Commission was set-up, under Article 324 of the Constitution of India, in January 1959. It has been assigned the following main functions:

- Superintendence, direction and control of the preparation of the electoral rolls, and keeping them up-to-date at all times.
- Conducting all elections of the Parliament and the State Legislatures (including casual vacancies), as well as the election to the offices of the President and the Vice President of India.
- Appointing of the Election Tribunals to investigate into complaints made in election petitions, and so forth.

The Election Commission is a statutory body. It has only a Secretariat and no attached or subordinate office under it. But the Election Commission, in consultation with the state governments, nominates or designates an officer of the state government in each state as the chief electoral officer for that state for the preparation, revision and correction of electoral rolls, and so forth. Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer is statutorily responsible for the preparation, revision and correction of all electoral rolls and the conduct of elections in the states.

The Election Commission, as at present constituted, consists of a Chief Election Commissioner, a Deputy Election Commissioner, and other secretariat officers and staff. The office of the Election Commission is organized in nine election branches and two administration branches. The Election Commission has a total strength of 165 staff members.

The Election Commission publishes a number of reports on the general elections in India. Besides, a number of casual publications on elections are issued, mainly at the time of elections.

8.4 ELECTIONS AND THE PROCESS OF POLITICIZATION

Elections in India, both at the national and the state levels, have increased the process of politicization in the following manner:

(a) Democratization of polity: The democratization of polity through regular elections was high on the agenda of the Constituent Assembly. The Constituent Assembly itself was elected on the basis of restricted franchise. It took two landmark decisions

Check Your Progress

3. When was the Election Commission of India established?
4. Who determines the conditions of service of the Election Commissioners?

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regarding the franchise. Firstly, the principle of separate electorates was done away with. Second major decision was to have universal adult franchise. This was a revolutionary decision considering that only 14.6 per cent of population had the experience of right to vote in the colonial India. Also, majority of the population was illiterate and probably could not fathom the intricacies of voting. History has proved the members of the Constituent Assembly, who stood for the provision of adult franchise, right.

(b) Participation of women: A remarkable feature of the Indian elections is the participation of women in them. There are still nations in Asia, Africa and Latin America where women are not allowed to participate in the elections (both as a voter and as a candidate). The zeal for voting among Indian women has been as strong as among Indian men (Figure 8.1). Today women actively participate not only in the voting process, but also in securing representation in the country's Parliament and legislatures. The number of women contestants has been steadily rising since Independence, even though their proportion is small compared to men. Most political parties are still not willing to give adequate number of 'tickets' to women, even though they show their support to the principle of reserving 33 per cent representation.

Fig. 8.1 *Women in Queue Waiting to Cast their Votes During an Election*

(c) Representation to weaker sections: From the very beginning, a constitutional provision has existed in India for the allocation of seats proportionate to their population to some specific weaker sections of the Indian society, namely, the Scheduled Castes and the Scheduled Tribes. While it is possible for an SC or ST candidate to contest from a 'general' seat, only candidates representing those sections can contest from the 'reserved' constituencies. There has been a steady increase in the participation of the SC and STs in the legislatures. Not only that, a few parties (like the BSP) have also become popular in some states whose social base purely consists of SCs and STs.

(d) Mobilization of passive socio-economic groups: Electoral competition has mobilized many formerly passive socio-economic groups and have brought them into the political arena. On one hand, this is a desirable outcome in a vibrant democracy but on the other, given the state's limited capacities for the redistribution of wealth and the intensity with which electoral support has been courted, these mobilized and dissatisfied groups have further contributed to the growing political turmoil. A major example of this phenomenon is the growing caste conflicts between

the 'backward' and the 'forward' castes. Leaders in nearly all the states have utilized 'reservations' as a means to gain the electoral support of numerically significant backward castes. Higher castes, feeling that their interests are threatened, have resisted these moves.

(e) Populism and personalization of political power: One important method for preserving power has been populism, i.e. to establish direct contact between the leader and the masses and to undermine those impersonal rules and institutions designed to facilitate orderly changes. Making direct promises that will affect as large a segment of the population as possible can enable a leader to mobilize broad electoral support.

(f) Intensity of class conflict: Competing elites have sought to mobilize ethnic groups who share language, religion, caste or race. Leaders manipulate primordial attachments so as to gain access to the state. If they are accommodated, the conflict often recedes. However, accommodation is not always possible. Moreover, sometimes those in position to make concessions have not made timely concessions in order to protect their own political interests. Such recalcitrance has only further encouraged the leaders of ethnic and religious groups to make use of violence and agitations as means of accomplishing their political goals.

(g) Proliferation of political parties: Splits and /or mergers have become common to political parties in India. In the last two decades, this trend increased phenomenally leading to the growth of parties 'registered' and 'recognised' by the Election Commission.

8.5 ELECTORAL REFORMS

Electoral reform is not an unchartered cognitive territory in contemporary India. Since the beginning of electoral politics in the fifties and particularly in the last two decades, this theme has been dealt with by a number of scholars. The key to a meaningful political discussion about electoral reform is the ideal of representation and its relation to the process of democratization in contemporary India. The institution of universal adult franchise started a democratic revolution involving greater and more intense participation along with higher expectations in the game of politics. However, the dissociation of electoral mandates from the process of government formation and policy-making has distorted the nature of representation.

This is what gives rise to the challenge of electoral reform. The challenge is to make the mechanism of election an effective instrument of the democratic will of the people, especially those who have so far been excluded from their due share of power. This is directly related to the character of representation, for effective democratization is achieved through a transition from formal representation to substantive representation.

Critics have pointed out that the elected members to the legislatures do not get sufficient number of votes to represent the people in the true sense. They get elected with twenty per cent or even less that twenty per cent of votes. They would be better representatives if they get more than fifty per cent at least of the votes cast. Further, the people in our country have a constitutional right to vote, but this right does not correspond with the duty to vote. With the result, our general elections record fifty to sixty per cent voting. The representatives in the legislatures, therefore, do not represent the people as a whole. There are few other problems as well.

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5. Fill in the blanks
   (a) A remarkable feature of the Indian elections is the participation of _____ in them.
   (b) One important method for preserving power has been _____.

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The emergence of new parties, pursuing desperate regional, sectarian and segmental causes, and fragmentation of erstwhile vote banks, mounting expenditure on elections, vitiating muscle power, aggravation of caste and communal conflict, the eclipse of idealism and ideology in public life, the evil of both capturing and rigging, public apathy resulting in lower turn out for voting, large number of candidates resulting in twenty per cent or some times less than twenty per cent of votes in favour of winning candidates are some of the evils that have so effected the situation that electoral reforms have become unavoidable. Many a times, the battle of ballots becomes the battle of bullets. On the day of elections, booths are captured, polling agents are attacked and bombs thrown to prevent the weaker sections from exercising their franchise. Criminal-politician nexus has resulted in the entry of criminals in legislatures (for example, Pappu Yadav, Rajan Tiwari, Mohd. Shahbuddin, Bablu Srivastava, and others). G.T. Nanavati, a Supreme Court Judge has pointed out, 'criminals found politics a profitable business and also an influential field, where they could get immunity from the law of the land so that their criminal activities could go on unchallenged'.

Representation of the People (Amendment) Act, 1996

To overcome such weaknesses, the Election Law underwent some important changes through the Representation of the People (Amendment) Act, 1996. Some important changes were as follows:

- Disqualification on conviction under the Prevention of Insults to National Honour Act, 1971.
- To check the multiplicity of non-serious candidates, the amount of security deposits for an election to the Lok Sabha and a state Legislative Assembly was increased. In case of Lok Sabha, the amount of security deposits was increased from ₹500 to ₹10,000. For a member of scheduled caste (SC) and scheduled tribe (ST), it stands at ₹5000.
- In case of a state Legislative Assembly, the Act fixed ₹5,000 for a general candidate and ₹2,500 in case of candidate belonging to SC/ST as security deposit instead of ₹250 and ₹125 respectively.
- The nomination of a candidate in parliamentary or assembly constituency was to be subscribed by 10 electors of the constituency as proposers.
- Restriction was laid on contesting election from more than two constituencies.
- For listing names of candidates, they were to be classified as candidates of recognized political parties, registered—unrecognized parties and other candidates.
- No election was to be countermanded on the death of a contesting candidate.
- Grant of paid holiday to employees and daily wagers on the day of poll.
- Prohibition of sale and distribution of liquor within a polling area.
- By-elections to any House of Parliament or a State Assembly were now to be held within six months from the occurrence of the vacancy in the House.

From 31 December 1997, central government raised the maximum ceiling on election expenditure by candidates, for Lok Sabha constituency to ₹15,00,000 and for Vidhan Sabha ₹6,00,000. In 2011, this ceiling on election expense was further enhanced for Lok Sabha constituencies to ₹60 lakhs and for State Assembly seats to ₹16 Lakhs.

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The Supreme Court of India directed the Election Commission to get the declaration from all candidates about their criminal antecedents, financial liabilities and educational qualifications.

Thus, from 2004 general elections, the 'model code of conduct' came into force. On 29 February 2004, the Election Commission issued detailed guidelines for the political parties and candidates. Accordingly, corrupt practices were prohibited (under Section 123 of the Representation of People's Act, 1951), declared electoral offences as punishable (under Section 125-137 of the Representation of People's Act, 1951), necessitated the disclosure of information about financial, criminal and educational status of candidates, restrained the use of excessive money or muscle during the elections and required the candidates to follow the model code of conduct and other related laws.

Despite all these efforts made by the Election Commission, one cannot undermine the role of good, clean democratic practice, watchdog news media, and a vigilant public opinion in raising the bar for all political parties. Above all, the Indian voter has also become quite discerning to understand which political party is able to prove its mettle and deliver the goods.

Problem of Defection

In the 1980s, a problem that emerged in the parliamentary process was the problem of defections in state legislatures and even the Parliament. Defections meant that an elected representative of a particular party joined another party on the promise of more power or some other benefit. This was however not always true as some defections also took place on matters of principles or ideological differences.

To combat the problem of defection, the Rajiv Gandhi government moved the 52nd amendment to the Constitution and amended articles 101, 102, 190 and 191 and added a new schedule, the Tenth Schedule, which dealt with the disqualification of a member of Parliament on the ground of defection.

Today, an elected representative is disqualified from being member of either House of the Parliament or a state legislature if he or she incurs the disqualifications mentioned in the 10th schedule. These disqualifications are as follows:

- If a member voluntarily gives up the membership of the political party on whose ticket he or she is elected to the House.
- If the member votes or abstains from voting in the House against any direction of the political party or by any person or authority authorized by it in this behalf, without the party permission of such party and unless it has been condoned by the party within fifteen days from the date of voting or abstention.
- If any nominated member joins any political party after the expiry of six months from the date on which he takes his seat in the House.

Some scholars have suggested that the defection law has been used to impose a centralized structure on political parties and has resulted in the death knell of parliamentary dissent.

8.5.1 Role of Identity and Crime in Election

The enormous electorate and the large physical expanse of India make any election an expensive affair. The function of money in the electoral procedure has become important and introduced a big number of anomalies. Candidates and political parties use vast sums to persuade voters through a variety of inducements. This results in an unholy

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nexus between the political parties and vested interests that insist reciprocation after financing election costs. Appeal to the voters on the basis of caste, religion, region and such partisan matters have led to divide the communities with catastrophic impact upon the society. Another trend has been the propensity of elected members to alter their vote in opposition to the directions of their party. This allows horse-trading to go on where money rather than political ideology or policy decides the choice of the elected member. In many States, this became a main problem with a large number of legislatures candidly offering their votes for sale. All through a vote of no-confidence in the Parliament, a lot of opposition members showed wads of money that was supposedly given to them for switching their ballots.

A grave result of lax election laws has been the rising criminalization of politics in the country. Indian law forbids an individual from contesting election if he or she has been condemned of any criminal charges. This stipulation is easily circumvented, as court trials take tremendously long, even years, to come to a result. Meanwhile, the individual is free to contest polls and even gather ministerial posts upon winning the elections. Thereupon, it becomes rigid for police agencies to act against the person since he or she begins to unfavourably affect the witnesses and even the examiners by misusing the political associations. Many people, charged with solemn crimes such as murder and rape, have won polls and gained political surpluses. According to political researcher Mr. Verma, 'By one estimate in 1997, 700 of 4,120 elected members of 25 State-level assemblies had criminal records. Of these, some 1,555 were accused of heinous crimes such as murder, armed robbery, rape and the like.'

This criminalization of politics began from the initial days of Indian democracy when the forward castes and well-established groups stopped lower castes and other marginalized masses from casting their votes. Prearranged 'booth capturing' started in 1957 when a group of upper-caste muscle-men hounded away the electorate and powerfully cast the votes for their applicant. Such booth capturing, i.e., the aggressive casting of votes in favour of a particular candidate, which forces genuine voters to stop from exercising their rights, gradually became a serious problem in several regions of India and particularly in States like Bihar and Uttar Pradesh. In 2004, a number of special officers appointed by the Election Commission discovered blatant proof of violence, threat and 'silent booth capturing' by the supporters of a well-known ruling party leader. The query prompted the Election Commission to annul the results and order re-polling. However, in most cases, it is not trouble-free to notice such efficient operations.

Prevention

A chief step taken by the Election Commission has been the improvement and introduction of electronic voting machines (Figure 8.2) for the course of conducting successful election in the country. The purposes were to address two setbacks vitiating the elections: the difficulties in calculating the paper votes by hand which often led to disputes and court challenges and the other being the issue of booth capturing. It was noticed that criminals would rapidly stamp the voting papers and stuff them in the boxes which made it unfeasible to asses if a specific vote was authentically cast or done by an unlawful process. For that reason, the Commission approached the Electronic Corporation of India (ECIL) to devise a machine that would record votes at a time-consuming pace. At present, the existing machines record an utmost of five votes per minute. This design was made to aid in hardening the goal since the criminals would have to spend a great deal of the time at one booth to cast a large number of unlawful votes. This extra time would facilitate the police to respond to the call and arrive at even distant booths in time to nab the

criminals. The machines could also be put out of action by polling personnel and would then need a supervisor to re-start. Furthermore, the electronic machines would also aid in calculating the total votes and declaring the results in the shortest possible time. This was expected to avoid harmful elements from disturbing the procedure.

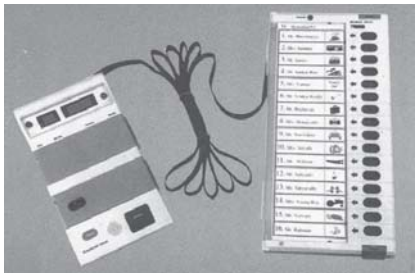

Fig. 8.2 *An Electronic Voting Machine*

8.6 POLITICAL ALLIANCES

A political alliance is an agreement for cooperation between different political parties on a common political programme. A coalition government is formed when a political alliance comes to power.

Political alliances, a feature of parliamentary system, are not formed under a normal political situation. Alliances are forged only when no one single party has a clear mandate. Thus, political alliances are not the ideal choices of the political parties—rather they are the second-best choice of the political parties.

Political alliances are transitional inter-party collaborations to capture the reins of the government. The parties do not loose their identity. They only compromise in their party manifesto so that they can fulfill their quest for power. Thus, there are compromises and accommodation as well as competition and fragmentation in the alliances. The durability of a political alliance depends greatly on the degree of accommodation and competition amongst the partners of alliances.

Since political parties enter into the alliance out of 'rational choice', i.e. by considering the utility or otherwise of the arrangement, each one of the partners would like sufficient influence over the decision-making process for two reasons. First, for maximizing its power within the alliance thereby manipulating the outcome of the conflicting issues during the alliance. Secondly, each partner wants to maximize its political influence in future to gain political power on its own.

The ultimate goal, however, has to be long-term. In fact, the power-maximization theory rests on this premise. Each political participant therefore must know the extent to which it is willing to sacrifice its ideological or programmatic objective when it forms an alliance in order to achieve monopoly of political power in future. Conversely, short-term political and other gains will be given preference only to the extent that a party visualizes its future prospects. In other words, the emphasis on short-term gains will be conversely proportionate to the perception of future political prospects.

Power maximization theories and policy-based theories present two opposing perspectives on political alliances. The first stresses the maximization of pay-offs (power), ignoring the ideological and political compatibilities, as the key factor in the political alliance formation. The policy-based theories, on the other hand, predict that alliances

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Check Your Progress

6. Fill in the blanks with appropriate words.
   (a) The institution of _____ started a democratic revolution.
   (b) The representatives in the _____do not represent the people as a whole.
7. State whether the statements are true or false.
   (a) As per the Representation of the People (Amendment) Act, 1996 a candidate is disqualified on conviction under the Prevention of Insults to National Honour Act, 1971.
   (b) A problem that emerged in the parliamentary process was the problem of corruption in state legislatures and even the Parliament.

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are formed when member parties are adjacent on the ideological scale and at least, not incompatible on major issues, thus, minimizing the ideological range. While it may be possible to find alliances which confirm to the purists view in each of the categories, the actual truth may lie somewhere in the middle. That is, even when there is stress on power maximization in a political alliance, some policy agreements are inevitable and power maximization efforts may take place in policy-based alliances too.

8.6.1 Common Minimum Programme

A common minimum programme is a document, which outlines the minimum objectives to which the different parties come to an agreement when they are in alliance. Through the CMP (Common Minimum Programme), the parties of varying ideologies agree to compromise their policies to remain in the alliance. In order to avoid conflict and bickering at every issue, the partners have to agree over some declared policies. Even if they may not believe in those policies and may have no intention of attempting to implement them, parties have to agree to some common policies once the alliance has been formed. If for nothing else, these un-implemented (sometimes, even un-implementable) common minimum programmes can serve as scoring points to apportion blame for subsequent coalition failure on the other partners, and for gaining bargaining leverage at future coalitions.

Thus, the policies announced by the political parties at the election time get modified and transformed when these parties enter into an alliance. Policies that would be implemented in practice would be different from the ones that were announced at the time of elections. For example, when National Democratic Alliance (NDA) was formed, its key constituent member the BJP had to give up its agenda on Ayodhya issue and also its demand for Uniform Civil Code because the other partners in the alliance were totally against such policies / demands of the BJP.

8.6.2 Types of Alliances

Political alliances can be categorized as pre-election alliance and adjustments and post-election agreements to share political power. The post-election agreements can be of two types—Parliamentary and governmental. All these can co-exist or alternatively may occur in isolation.

(i) **Pre-electoral alliance:** Pre-electoral alliances find expression in various forms like putting up joint candidates for the distribution of the reciprocal standing down agreements for the distribution of the remainders in the votes cast or friendly arrangements in the proportional system of representation. Such alliances are sometimes restricted to local issues or situation and at times take the form of a broad national policy of the constituent parties.

(ii) **Parliamentary alliance:** Parliamentary alliances can take the shape of Parliamentary Parties uniting in support of the government or against it.

(iii) **Governmental alliance:** A governmental alliance, which results in the inclusion of ministers from different parties, is naturally accompanied by a similar alliance at the party level in the Parliament in favour of the government.

However, the opposite of it is not true. There are situations in which party or parties support the government generally or on particular issues without being associated with the government in office. In other words, while it is necessary for a governmental alliance to be complemented by a parliamentary alliance, the converse is not always so.

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This simple equation, however, does not apply to electoral alliances vis-à-vis parliamentary and governmental alliance. Even when certain parties share power in a governmental alliance and are united at the level of the Parliament in support of the government, electoral alliances between these parties may not exist. The absence of understanding at the electoral level, no doubt, diminishes the solidarity of the alliance in the Parliament and at the government level. At the electoral level, each party wants to justify itself before the people to get maximum votes. Even when the same parties have functioned in a governmental alliance, the attempt on the part of the individual parties is to take credit for the popular measures carried out by the Government and to be critical of the unpopular measures by laying the blame at the door of other parties. Electoral alliances do not always coincide with the governmental alliances. The basic difference between the two is that while electoral alliances require a negative agreement against an opponent, governmental alliance necessitates as a pre-condition, a positive agreement upon a common minimum programme to be pursued during the tenure of the alliance. This requires a basic similarity of thinking on important issues. That is why it is comparatively easy to have temporary electoral adjustments in certain situations rather than agreements on certain policy matters which alone would help form a governmental alliance.

8.6.3 Indian and Foreign Political Alliances

In India, political alliances are not a new phenomenon. Many countries, at different times, have had parties coming together to form an alliance, which (sometimes) consequently resulted in coalition governments.

The following are some foreign examples of political alliances:

Sweden: Alliance for Sweden, Red-Greens

Japan: Liberal Democratic Party / New Komeito Party

United Kingdom: Conservative Party–Liberal Democrats

Like any other multi-party system, beginning from 1989, India had only political alliances ruling at the Centre with single party getting absolute majority. Since 2004-2014 UPA alliance had been ruling at the Centre, where the alliance was led by Sonia Gandhi and the coalition government was led by Dr Manmohan Singh.

8.6.4 Political Alliances in a Multi-Cultural Society like India

Coalition government should be considered a natural political arrangement in a nation of continental diversity like India. Yet India witnessed a single dominant party system for two decades since independence in 1947. Under the leadership of Mahatma Gandhi, the Congress was successfully fashioned as a grand alliance during the course of the national movement. It, therefore, was able to rule the roost since independence. Accommodating and representing a broad spectrum of views and political interests, except that the Communists and the Justice Party in Madras, the Congress obviated the possibility of emergence of many political parties. This explains the origin of a single dominant party system in India.

The emergence of political parties with political ideologies ranging from the left to the right began emerging soon after the independence. Obviously, a spectrum of political ideologies and interests found themselves in an uneasy alliance once the common goal (independence of the country) had been achieved. Not surprisingly, most of the non-communist political parties since independence splintered out of the Congress. Thus, the Indian political system, since the fifties, crystallized as a multi-party system with a single dominant party.

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In 1967, the Congress suffered widespread electoral reverses both in various State Legislative Assemblies as well as in the form of a substantially reduced majority in the Lok Sabha. The massive political challenge that the Congress faced since the mid-eighties is due to the fact that other political parties, like the Congress, too tried, with varying degree of success, to create a social coalition. In fact, the alliances that the Congress entered into with regional parties like the All India Anna-Dravida Munetra Kazgham (AIDMK) in Tamil Nadu and All India Muslim League in Kerala for parliamentary elections showed that it was compelled to broaden social coalition through political alliances. The OBC and the Muslim alliance put together in Uttar Pradesh in 1993 by Mulayam Singh Yadav's Samajwadi Party; an attempt by the BJP, though with limited success, to forge together an alliance of the upper caste Hindus; a coalition of Dalits (Harijans) created by the Bahujan Samaj Party (BSP) and an attempt by the BSP and BJP in Uttar Pradesh, to create a temporary alliance of the upper caste and the Dalits are some of the examples of changing contours of social coalitions in Indian politics. These shifting social coalitions have made the Indian politics highly fractious and factionalized on the one hand, where no political alliance is able to have a firm footing for a long duration on the rapidly shifting political quicksand, and on the other, it has opened the possibilities of unbelievable political alliances between and amongst the social groups.

Alliances at the Centre

At present, in India, two major political alliances have been formed NDA (National Democratic Alliance) and UPA (United Progressive Alliance), of which NDA is presently in power and has formed the government after the Lok Sabha elections of 2014.

1. National Democratic Alliance

The National Democratic Alliance (NDA) is a centre-right coalition of political parties in India. Its main constituent political party is the BJP (Bhartiya Janata Party). It had 13 constituent parties at the time of its formation in 1993.

When NDA was formed in 1998, it staked its claim to form a government. However, it collapsed within a year because AIDMK, a member of NDA at that time, pulled out of the alliance. In 1999, when again Lok Sabha elections were held, NDA won with greater majority and new alliance partners. From 1999 until 2004, the NDA governed the country under the Prime Ministership of Atal Bihari Vajpayee.

It is important to note that the formation of UPA, the Congress-led coalition, was inspired by the structure of the NDA, with one major national party at the helm and several regional parties participating.

With regard to the decision-making process within the alliance, the NDA does not have an executive board or a politburo. Important decisions have been taken by the leaders of the individual parties as and when the issues have come up.

NDA is the ruling coalition in India.

2. United Progressive Alliance

The United Progressive Alliance **(**UPA) was the a ruling coalition of centre-left political parties heading Union Government of India from 2004–2014. The UPA led by the Indian National Congress (INC). INC's President Sonia Gandhi is the Chairperson of the UPA.

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The 2004 General Elections were an eye-opener for the INC. After these elections, the Congress accepted the fact that it will not be able to form the government at the Centre on its own. It will have to form alliances to be in power. It understands that the days of fighting as a singular party are gone and that the elections are more of a battle of alliances than anything else. Therefore, initially the UPA was an informal alliance—it only acquired a proper shape and structure after the results of 2004 general elections were announced.

The UPA has not enjoyed a simple majority on its own in the Parliament, rather it has relied on the outside support to ensure that it enjoys the confidence of the Lok Sabha, similar to the formula adopted by the previous coalition governments like the United Front, the Congress government of Narasimha Rao and NDA government.

Initially, the UPA was given external support from the Left Front, which had 59 MPs. Despite ideological differences within the Congress, the Left parties supported the UPA to ensure a secular government. Similar external support was also extended by several smaller parties that were not a member of any coalition. For example, Samajwadi Party (39 MPs), the Marumalarchi Dravida Munnetra Kazhagam (4 MPs), and the Janata Dal (S) (3 MPs). Bahujan Samaj Party (BSP) promised to support the UPA government if it faced a vote of confidence. All these parties supported the government from outside—i.e. they were not a part of the government.

However, very soon some parties quit the UPA alliance. The Telangana Rashtra Samithi (TRS) was the first party to quit the alliance. In March 2007 during the Tamil Nadu elections, MDMK also officially withdrew its support from the UPA. In 2008, both BSP and Left Front also withdrew their support. The Left withdrew from the UPA because it was vehemently opposed to the government's decision to sign the 123 Agreement with the United States.

UPA won around 261 seats out of 543 seats in 2009 general elections. In 2014 UPA won only 60 seats out of 543 seats.

Characteristics of Political Alliances in India

Following are the characteristics of political alliances:

- **Lack of cohesiveness:** It has been argued that political alliances in a multi-party system do not produce cohesive party structures. The incentive and pressure to maintain unity in such alliances is greatly reduced. There is an ever-growing temptation to break from one alliance and to join the rival alliance, which may bring another group into power.
- **Role of the state/regional parties enhanced:** In the context of alliances coming to power and forming coalition governments at the Centre, State parties become crucial players as balancing forces in competing alliances. Though this openness of the coalitional system to assimilate the smaller parties promotes integration of the political system through an accommodation of regional and ethnic forces, it also acts as a factor leading to unprincipled compromises and governmental instability and drift.
- **Instability of the system:** Political alliances in India have brought about political instability. The coalition governments are always on tenterhooks because the partners of alliance can at point of time threaten to withdraw from the alliance. Due to the constant danger of split within its own ranks and attempts of the rival alliance to dismember it, the alliance members tend to avoid any commitment on the explosive issues.

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8.7 PRESSURE GROUP

Pressure groups operate actively, especially in a representative government committed to the realization of the ideal of social service state. The state also makes itself increasingly dependent on them while handling its sphere of planning and social service. However, the number of groups and the intensity with which they are able to pursue their objectives depend upon the social legitimization of group activity and the prospects of fulfilling group demands in a given political system.

The genesis of the pressure groups may be traced back to the pre-Independence days when a large number of pressure groups existed to put forth their reasoning and argument before the British government in order to pressurize it and to seek concessions and privileges for the members of the pressure groups. In fact, the Indian National Congress in 1885 was more like a pressure group to plead for reforms and to articulate the interests of the educated middle class. As the Congress donned the mantle of a political party gradually, various pressure groups began to mushroom to safeguard the interests of other sections. Most remarkable was the formation of the All India Trade Union Congress in 1920 and the All India Kisan Sabha in 1936 that opened new chapters in the book of pressure groups.

In the post-Independence times, the processes of democracy and development provided a fertile ground for a huge number of pressure groups to come into existence. Various sections of the society began to create their own interest groups to make their voices heard in policy formulation and the ever-increasing state activities. In the wake of planned economic development, even the polity inspires the creation of pressure groups for their contribution to developmental activities. Moreover, the consolidation of the party system has also contributed to the expansion in the base and scope of activities of pressure groups in certain defined sectors of economy, society and polity. For example, with an eye on inculcating the voters for their parties on a long-term basis, almost all major political parties in the country have floated various frontal organizations in the areas of trade union activities, farmers' fronts, women morchas and students' wings. There also exist politically neutral pressure groups like the federation of Indian Chambers of Commerce (FICCI) and the Confederation of Indian Industry (CII). All these pressure groups ensure safeguards from adverse policy initiatives of the government.

Check Your Progress

8. State whether the following statements are true or false.
   (i) Power maximization theories and policy based theories present two similar perspectives on political alliances.
   (ii) Coation government should be considered a natural political arrangement in a nation of continental diversity like India.

8.7.1 Types of Pressure Groups

Different writers on comparative governments have classified interest groups and pressure groups on the basis of their structure and organization. In general interest groups are classified into the following four types.

- Institutional interest groups
- Associational interest groups
- Anomic interest groups
- Non-associational interest groups

1. Institutional Interest Groups

These are formally organized groups consisting of professionally qualified people. They are closely connected to government machinery while at the same time enjoy sufficient autonomy. They exert sufficient influence on the government policy making. They include

bureaucracy, armies, political parties and legislatures. Whenever these groups raise protest, they do it by constitutional means and in accordance with rules and regulations. An example of such as organization can be West Bengal Civil Services Association.

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2. The Associational Interest Groups

These are formally organized groups, which articulate the shared interests of their members over long periods of time and try to achieve the specific and particular objectives of their members. They are also called promotional or protective or functional or professional groups. Associational groups promote economic and vocational interests, pubic interest or single issues or protect and safeguard the interests of their members. These are organized and specialized groups formed for interest articulation, but to pursue limited objectives. These include trade unions, organizations, businessmen and industrialists and civic groups. Some examples of associational interest groups in India are Federation of Indian Chambers of Commerce and Industry (FICCI), Trade Unions such as All India Trade Union Congress (AITUC), teachers', associations, students' unions, etc.

3. Anomic Interest Groups

These are ad hoc (unplanned) groups, which emerge due to turmoil and excitement or a crisis, a specific event or issue. Anomic groups do not have a formal structure or leaders and their actions are often violent. They act spontaneously and in an uncoordinated fashion are short-lived. They express their grievances through violent riots, demonstrations and street protests.

4. Non-associational Interest Groups

These are the complete opposite of associational interest groups. They have no formal organization. They are composed of individuals who feel close to others on the basis of class, caste, race, religion, culture or gender. They seldom act as coherent political groups, but they are often regarded by others as if they represent an interest even though they have no formal authorization to do so.

5. Big Business

Among the organized groups, the most important are the groups of big business. In fact, the growth of business associations is a parallel to the process of development. At present, there are many types of business associations, industrial associations, communal associations, regional organizations and all India organizations connected with trade and commerce. Most important of these is the Federation of Indian Chambers of Commerce and Industry (FICCI), which is the mouthpiece of Indian capitalism and of the big capitalists.

The kinds of pressure exerted by the business interests are extremely varied. The associations lobby among the members of Parliament and Legislative Assemblies, members of the Council of Ministers and bureaucrats. They also devote a great time and effort to influence the Planning Commission, the economic ministries and the various licensing bodies. They also have considerable influence on the councils of various parties, particularly the ruling party, which have been heavily dependent on business contributions to their funds. Such contributions do not go unrewarded. The big business has frequent and sustained access to the executive and bureaucracy for lobbying when the policy is being made and implemented.

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The enormous strength of the groups of big business comes from the fact of its ownership and control of the larger part of society's economic resources. This makes it difficult for even a reform-minded government to impose its policies to which these groups are firmly opposed. Alternatively, they have the power of going on an 'investment strike' until the government creates the necessary climate of 'business confidence' by dropping unwelcome policies. Since such inertia will slow down the economy and therefore discredit the government, even a reformist government will be forced to compromise at least on crucial issues.

The power of capital as a pressure group is reinforced by the composition of the state elite. The state elite includes not only the political executive, but also, very importantly, the bureaucratic or administrative elite, which is not accountable to the Parliament or the electorate, but which plays a vital advisory and executive role in policy-making. The composition of the state elite, due to its social, economic and other links with big business and inclinations, biases the state system in favour of capitalist class interests and reinforces and complements capital's power as a pressure group on the state system.

6. Trade Unions

Along with the growth of industries, the working class has also been growing in India. Though it is accepted that limited industrial growth and availability of large workforce, continuous relationship of the labourers with their peasantry background and archaic way of thinking are hindrances in the development of workers organizations, the Indian trade union movement has developed with an astonishing speed. There is a high concentration of Indian industry in certain regions. The Indian National Congress had mobilized the trade unions to participate in the freedom struggle. In fact, even before independence, trade unions had won some important battles in the field of social legislation.

After independence, other centres of Trade Unions like Indian National Trade Union Congress (INTUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU), etc. have also been organized. The number of such centres has been increasing along with the increase in political parties. Even the rightist parties have started organizing trade unions, under their influence. Yet the fact remains that only a small part of the country's work force is organized. A substantial portion of the labour force is still in rural areas and because of various factors, it is yet not organized to a significant extent on class lines at national or local level.

Further, the trade unions have been organized by the middle class leadership of the various political parties and act as the aims of those parties. Almost all labour unions act as agents of the some parties, seeking to explain their parties' policy to workers and enlisting their support. This has, in turn, led to fragmentation and mutually destructive conflict among the workers, making them pliable for manipulation by political parties sometimes against the long-term interests of their own movement. Trade unions in India, as whole, are able to exert significant pressure on the policy formulation. The political parties and the government, all recognize their strength. Trade unions provide significant vote-banks in the industrialized regions. Another factor that cannot be ignored here is that the working class views capital as its main opponent.

The only important weapon that labour has is to go on strike. But the use of its only effective weapon is precisely what is severely hampered by its internal division and weakness and by the external pressures it is vulnerable too. First, in most capitalist countries, only a part of the labour force, usually a minority, sometimes as low as 30 per cent in the United States, is organized into trade unions. Second, strikes are a serious

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drain on the resources of the trade unions, and these resources and the corresponding staying power of the union, are extremely limited compared to those of the employers. Third, trade unions have always been divided from each other in terms of the particular skills and functions of their members and sometimes geographically (i.e. regionally or provincially) and also racially in the present age of large-scale immigrant labour in the West from the third-world. This makes it easier for employers and the state to divide and isolate striking unions. Fourth, trade unions in advanced capitalist countries are often bitterly divided politically and ideologically into communist, social democratic or plain economist unions. This makes it easier for employers and the state to drive a wedge between striking unions or striking members of a particular union through buying off the less militant, economist and reformist elements with minor concessions and isolating the militants. Fifth, during a strike, whatever be the merits of the case, the bourgeois parties and the capitalist dominated mass media, as well as the state-owned media, can be expected to blast the strike as irresponsible, economically ruinous, sectional and against the 'national interest', thus creating a climate of public opinion hostile to the strike and isolating the strikers. All these forces combine to severely hamper the effective use of organized labour's only weapon, the strike, thus indirectly adding to the pressure power of the capital, which is already vastly superior, upon the state system.

By their activities, the organized working class has been able to obtain quite a few successes in bettering their economic and social conditions. Among their major achievements could be mentioned:

- The recognition of the fundamental right of strike.
- An overall increase in the wage structure.
- The right to bonus in many public sector undertakings as well as private enterprises.
- Regulation of working hours and overtime payment.
- Relating the wage structure to conditions of living and price increase in the form of dearness Pay ad Dearness Allowances with the obligation for a pay revision after every three increases in the Dearness Allowance payment.
- Better living conditions in the form of social welfare benefits like employees insurance, medical and housing facilities etc. The government has realized the inevitability of increasing trade union strength.

7. Peasants' Organizations

For a land so overwhelmingly rural and with more than 73 per cent of the available workforce engaged in agriculture, it is expected that agricultural groups would play an important role in the democratic politics.

In independent India, particularly in the sixties, more important than the peasant movements had been the lobbies of big and medium farmers. Over the years, the abolition of the zamindari system and implementation of land reform measures, and the momentum they created in the rural side, have resulted in the middle class peasants acquiring more land and working harder on their land. At least a good section of them acquired sufficient economic power to organize themselves politically. The power of the rich farmers has also increased over the years as a result of the conventional electoral politics. The Panchayati Raj, the community development programme and the government sponsored Green Revolution have been the highlights of the past.

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The agriculturists are, however, organized more in the regional or local class-unions, than on an all India basis. Even though there are some important All India Kisan Associations like All India Kisan Congress, All India Kisan Kamgar Sammelan, Kisan Janata, Akhil Bhartiya Kisan Sangh and All India Agriculturists Federation, peasant groups have been organized on territorial basis. The reason for such a pattern seems to be the weak financial position of the Kisans apart from the interplay or factors like language, caste and geography of agriculture. Moreover, the pattern of crop production, fertility of land, land-labour use, etc. are not uniform throughout the country. Due to the regional and local variations in the agrarian system, state level organizations have emerged stronger than the all India associations.

Another pattern of peasant organizations is that the state-level organizations tend to be non-political, independent of the political parties and homogenous. Their political slogan is unity of classes as against the division of classes. In fact, the class basis of peasant organizations in India is generally from the middle-rich peasantry with a small percentage of poor peasants. The commercial farmers have found the utility of organized activity and quite often lead the agitations on the basis of the problems facing the entire peasantry in general and the rich in particular.

8. Other Groups in Modern Sector

In addition to large-scale and influential business, trade union and kisan groups, there also exists various professional and occupational groups, especially in the towns and cities. These include employees associations, lawyers associations, teachers associations, students unions, consumer interest associations, and specific groups with various issues emerging from time to time. Their strategies range from arousing public opinion through the various media in favour of issues they want to project, to organizing massive demonstrations and sometimes strikes, to pressurising the government for conceding specific demands or change in policy line. Most of these groups are effective at local or state level.

9. Caste Groups

In certain areas, the formation of caste associations began in the early years of this century. In the early stages of its awareness, as a competing entity which could gain strength by organization and by throwing out of links beyond immediate locality, the castes organizations concentrated on ritual status rather than directly on political or economic rights. But after a while, (and the stages tended to be increasingly telescoped with the faster pace of social change) the aspirations took a more material form.

The meaning of caste itself has changed in the encounter between tradition and modernity. By creating conditions in which a caste's significance and power are beginning to depend on its numbers rather than on its ritual and social status, and by encouraging egalitarian aspirations among its members, the caste association is exerting a liberating influence.

10. Communal Groups

There are also groups based on religion. However, the communal interest groups are not of rich variety and texture. But a tendency towards the crystallization of communal groups seems evident. Cases of Indian Christian Conference, the Chief Khalsa Diwan and Vishwa Hindu Parishad, etc. may be cited as examples. Similarly, there are several Muslim groups which have sought to change the government policy. Also in the process of economic change and social mobilization, India's increasingly participant communities

have grown more politically self-conscious, and this self-consciousness not only depends on existing cleavages but also makes them to pressurize the system as organized groups.

Style of Operation of Pressure Groups

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The nature and characteristics of the pressure groups in a society depend mainly upon the governmental structure, its activities and the socio-economic milieu. The various groups in India operate within the federal and parliamentary nature of the polity, the division of powers, at the regional level between the state and local levels, as well as the within process of development and transformation taking place in India.

8.7.2 Role of Pressure Groups

There are various organized interest groups that make use of a 'pressure system' for getting their claims accepted by the decision-makers, though they have been slow to develop. These groups in India are a form of linkage and means of communication between the masses and the elite. They provide scope for expanding participation and their institutionalization is a critical element in the development of a responsive political system, for they are barometers of the political climate by which decision-makers can make and assess policy. While the interest groups make demands upon society for the benefit of its members, it also serves to restrain them. Interest groups not only act as agents of interest articulation, but they also increase the political consciousness and participation of their membership and democratic achievements, although they may strain the responsive capacity of the system. In addition, interest groups may be reservoirs of political leadership. Most importantly interest groups vehicles for social integration.

However, in a society whose resources are limited, demands may far outrun the capacity of the government to respond. Rational economic planning may come into conflict with the exigencies of democratic response, forcing the decision-makers to consider demands as such illegitimate and to argue that the compulsions of a backward society require restriction of political access and democratic competition. In the name of rationality and public interest, the decision-makers have often turned deaf ear to the demands of interest groups. On the one hand group pressure in India has been directed toward influencing the administration and implementation of policy rather than its formation. On the other, interests are articulated not always through collective channels; nor does pressure always take the form of group pressures. In spite of the existence of highly differentiated structures of interest articulation, individual business houses, for instance, have placed continued reliance on individual approach.

Also in the given situation, pressure is only one of the methods used by various interest elites for the purpose of influencing the decision-makers. Money is the most important instrument to be used for the purpose of forcing the decision-makers behave in certain ways. Apart from this, however, personal ties are also used to achieve the desired ends. Thus, as a whole, while political mobilization has extended the identity horizon of the Indian masses in widening participation and involvement, interest groups have been unable to provide the institutional channels or access to structure and order what Myron Weiner, an American political scientist, has called the 'emergent mass political culture'. Political parties have assumed this critical role.

Check Your Progress

9. What are the four types of pressure groups?
10. _____ and _____ are mouthpiece of big businesses.

8.8 SUMMARY

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In this unit, you have learnt that:

- Elections in India, the second most populous nation in the world, involve a mega exercise by a gigantic government machinery.
- Elections are held for the state assemblies or Vidhan Sabha through which the state governments are formed and the Chief Minister is chosen, and also for local government bodies such as the municipalities and the panchayats. The President of India and members of the Rajya Sabha are also elected, though, through a different method.
- Elections are the crucial deciding events in modern democracies. Elections provide an opportunity to the general masses to get political education.
- Another point to be noted is that far from contributing to the increasing 'modernization' of Indian politics on a steadily accelerating scale, recent elections show some signs of becoming more 'traditionalized' in the Indian setting.
- The Indian Constitution has made provision for a suitable machinery to conduct free and fair elections in the country. It provides for the setting up of an Election Commission for this purpose, which shall consist of the chief election commissioner and such other election commissioners, as are appointed by the President.
- The key to a meaningful political discussion about electoral reform is the ideal of representation and its relation to the process of democratization in contemporary India.
- The Supreme Court of India directed the Election Commission to get the declaration from all candidates about their criminal antecedents, financial liabilities and educational qualifications.
- In the 1980s, a problem that emerged in the parliamentary process was the problem of defections in state legislatures and even the parliament.
- An elected representative is disqualified from being member of either house of the parliament or a state legislature if he or she incurs the disqualifications mentioned in the 10th schedule.

8.9 KEY TERMS

- **Nexus:** It is the connection or series of connections linking two or more things.
- **Political alliance:** It is an agreement for cooperation between different political parties.
- **Model code of conduct:** It is a set of guidelines laid down by the Election Commission to govern the conduct of political parties and candidates in the run-up to an election.
- **Pressure groups:** It is a group that tries to influence public policy in the interest of a particular cause.

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8.10 ANSWERS TO 'CHECK YOUR PROGRESS'

1. (a) deciding (b) emergence
2. (a) False (b) True
3. The Election Commission of India was established in January 1959.
4. The President determines the conditions of service of the Election Commissioners.
5. (a) women (b) populism
6. (a) universal adult franchise (b) legislatures
7. (a) True (b) False
8. (i) False (ii) True
9. The four types of pressure groups are: Institutional interest groups, the associational interest groups, Anomic interest groups and non-associational interest groups.
10. FICCI and CII

8.11 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the main functions of the Election Commission of India?
2. Why is it necessary to introduce electoral reforms in India?
3. How has the defection law resulted in the death knell of parliamentary dissent?
4. What are characteristics of political alliances in a multicultural society like India?
5. What are pressure groups? Name some.

Long-Answer Questions

1. Analyse the significance of elections in India.
2. Discuss the changes introduced with the implementation of the Representation of the People's (Amendment) Act, 1996.
3. Discuss why political alliance lane become important for modern day politics.
4. 'Electoral reform is not an unchartered cognitive territory in contemporary India.' Explain.
5. Discuss elections and the process of politicization.

8.12 FURTHER READING

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UNIT 9 JUDICIARY IN INDIA

Structure

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9.0 INTRODUCTION

The current Indian judicial system has its roots in the British colonial rule which makes it one of the oldest legal systems in the world today. The Constitution of India is the supreme law of the country, the main source of law in India. An important characteristic of the Indian judicial system is that it is regarded a 'common law system'. In a common law system, law is made by the judges through their decisions, orders, or judgments. These are also mentioned as precedents. The Indian judicial system has adopted features of other legal systems in such a way that they do not clash with each other while helping the citizens of the country. For instance, the Supreme Court and the high courts have the power of judicial review. This is a concept predominant in the American legal system. According to the notion of judicial review, the legislative and executive actions are subject to the examination of the judiciary and the judiciary can nullify such actions if they are ultra vires of the constitutional provisions. Hence, the laws made by the legislative and the rules made by the executive need to be in conformity with the Constitution of India. In this unit, you will study about the concept of judicial review and judicial activism in India.

9.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Interpret judicial review
- Explain judicial activism
- Discuss the concept of amicus curiae

9.2 JUDICIAL REVIEW

Judicial review means review by the courts to investigate the constitutional validity of the legislative enactments or executive actions. The power of judicial review in India stands between the American and British practices.

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The Constitution of India, in this respect, is more akin to the American Constitution than to British or any other constitution. Being the guardian of fundamental rights and the arbitrator of constitutional conflicts between the union and the states with respect to the division of powers between them, the Supreme Court holds a unique position. According to this position, it is competent to exercise the power of reviewing the legislative enactments of both, the Parliament and the state legislatures. The Supreme Court in India, however, can interpret the laws and invalidate them, if they are contrary to the letter of the Constitution, but not if they are contrary to its 'spirit'. Accordingly, our courts have to interpret the law as it is written and cannot declare a law as invalid on the ground that it is unjust. Similarly, the Indian Constitution distributes the legislative powers between the Union and the states so precisely, with residuary powers vesting in the Union, that disputes over legislative jurisdiction do not pose any serious problem. As our Constitution is not as rigid as the American Constitution, it is possible to override adverse judicial decisions by suitable amendments of the Constitution.

There are several specific provisions in the Indian Constitution, which imbibe the power of judicial review:

- Article 13(2) specifically declares that every law in force at the commencement of this Constitution, and every subsequent law, which is inconsistent with the fundamental rights shall be void.
- Article 32 empowers the Supreme Court to invalidate all such laws which violate fundamental rights.
- Under Articles 131–136, the basic function of the courts is to adjudicate disputes between individuals, between individuals and states, between states and the Union and while so adjudicating, the courts may be required to interpret the provisions of the Constitution and the laws. The interpretation given by the Supreme Court becomes the law honoured by all courts of the land.
- Article 226 constitutes high courts as protectors and guarantors of fundamental rights.
- Article 245 provides powers to both, the Parliament and the state legislatures, subject to the provision of the Constitution. Article 246 (3) expressly provides that in the State List, the state legislatures have exclusive powers. In context of Concurrent List or of those entries in the State List, for which one or more states would have requested the Parliament to make laws; Articles 251 and 254 declare that in case of inconsistency between Union and state laws, the state law shall be void. The constitutional validity of a law can be challenged in India on the ground that the subject matter of the legislation: (a) Is not within the competence of the legislature, which has passed it (b) Is repugnant to the provisions of the Constitution. (c) It infringes one of the fundamental rights.
- In view of Article 372 (1), no pre-constitutional law, which is inconsistent with it, can continue to be valid after commencement of the Constitution.

The power of judicial review, in general, flows from the powers of the courts to interpret the Constitution. Since the judiciary is the final interpreter of the Constitution and the Constitution regulates the exercise of political power, which, in general is considered to be the main domain of the legislature and the executive. Moreover, the judicial process determines the jurisdictional frontiers of the other branches of government. As a result of this, it constantly interacts with the legislature, the executive and other institutions of government, which are vested with political power.

Constitutional Amendments and the Use of Judicial Review

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Until 1967, the Supreme Court upheld that the Amendment Acts were not ordinary laws and could not be struck down by the application of Article 13 (2). It was in the famous Golak Nath Vs. the state of Punjab case in 1967, where the validity of three constitutional amendments (1st, 4th and 17th) was challenged, that the Supreme Court reversed its earlier decision and uphold the provision under article 368 which put a check on the Parliament's propensity to abridge the fundamental Rights under chapter III of the Constitution.

In the Kesavananda Bharti vs. State of Kerala case in 1973, the constitutional validity of the twenty-fourth, twenty fifth and twenty ninth amendments was challenged wherein the court held that even though the Parliament is entitled to amend any provision of the constitution it should not tamper with the essential features of the constitution; and that Article 31c is void since it takes away invaluable fundamental rights.

The court balances the felt 'necessities of the time' and 'constitutional fundamentals' when scrutinizing the validity of any law. H.M. Seervai has enumerated some of the canyons, maxims and norms followed by the court:

- There is a presumption in favour of constitutionality, and a law will not be declared constitutional unless the case is so clear as to be free from doubt; and the onus to prove that it's unconstitutional lies upon the person who challenges it.
- Where the validity of a stature is questioned and there are two interpretations, one of which would make the law valid, and the other void, the former must be preferred and the validity of the law will be upheld.
- The court will not decide constitutional questions if a case is capable of being decided on other grounds.
- The court will not decide a larger constitutional question than is required by the case before it.
- The court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.
- Ordinarily, courts should not pronounce on the validity of an Act or part of an Act which has not been brought into force, because till then the question of validity would be merely academic.
- In a later case, the Minerva Mill case, the Supreme Court went a step ahead. The 42nd Constitutional Amendment of 1976 among other things had added a clause to Article 368 placing a constitutional amendment beyond judicial review. The court held that this was against the doctrine of judicial review, the basic feature of the Constitution.

Judicial Review under Private Law

There are remedies against the actions of the executive under private law. A suit can be filed under section 9 of the Code of Civil Procedure. The suit can be for damages from the government or other public authority when right is violated and an injury is suffered. It can also be for a declaration of the illegality of the administrative action.

A suit can be filed for issuing injunction against the act that threatens the rights of persons. These remedies can, however, be specifically excluded by a statute under which the administration acts. In such cases the statute will provide alternative remedies.

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If it does not, or if the alternative remedies provided are not adequate or sufficient the aggrieved person will have a right to file a suit. When the alternative remedies are effective the citizen will have the right only to resort to those remedies and not the remedy under the Code of Civil Procedure. These rules are laid down through judicial decisions.

Judicial Review and Contempt of Court

It is mandatory that an administrative officer or authority should obey the directions of a court and execute the decisions of the court. What action can be court take if they do not do this? The court has neither the sword not the purse like the executive. It has a potential power.

It has the power to take action of contempt of court. Those who violate or disobey the decisions of the courts are proceeded against under this power. They can be punished and sent to jail. Obviously the contempt power is the only weapon in the hand of judiciary to see that their decisions are executed.

Locus standi is the first limitation on judicial review. This means that only a person aggrieved by an administrative action or by an unjust provision of law shall have the right to move the court for redressal. Under this traditional rule a third party who is not affected by the action cannot move the court.

Another limitation is that before a person moves the High Courts and the Supreme Court invoking their extraordinary jurisdiction, he should have exhausted all alternative remedies. For example, these may be a hierarchy of authorities provided in legislation to look-into the grievances of the affected party. The aggrieved person should first approach these authorities for a remedy before invoking extraordinary jurisdiction of the courts.

However, the alternative remedies should be equally efficacious and effective as the remedies available from the courts are. If they are not, the jurisdiction can be invoked. In cases of manifest injustice and the violation of procedural fairness, alternative remedy is not a bar.

A rule has been evolved to avoid repeated adjudication on the same matter between the same parties. If the case is finally disposed of on merits the same issue cannot be re-agitated by any of the parties filing another case. This limitation is called res judicata.

Changing Trends in Judicial Review

Recently there is a rising trends in judicial activism in the land. The doors of the judiciary are kept open for redressing the grievances of persons who cannot ordinarily have access to justice. The strict observance of the traditional rule of locus standi will do injustice to certain persons who do not have the money, knowledge and facilities of approaching court.

In such cases if a public spirited person comes forward on their behalf courts relax the rules and adjudicate over the matter. Thus, in the matter of socially and economically backward groups or persons who are not aware of their rights or not capable of pursuing their case in a court, the complex and rigorous procedural formalities are not insisted upon. At this level there are cases when press reports were taken as write petitions and reliefs granted. Letters addressed to the courts were also ‘treated as petitions.

Judicial review is one of the important techniques by which the courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the Constitution.

Therefore, with the power of judicial review the courts act as a custodian of the fundamental rights. The Indian Judiciary, given the federal structure of the Constitution, also settles conflicts of jurisdiction in legislation between the centre and the states. With the growing functions of the modern state judicial intervention in the process of making administrative decisions and executive them has also increased.

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9.3 JUDICIAL ACTIVISM

The term judicial activism is explained in *Black's Law Dictionary*, Sixtieth Edition, [Centennial Edition (1891–1991)]. Thus, judicial philosophy motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies, which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in matters of the legislative and the executive.

No one will dispute that the judiciary has to perform an important role in the interpretation and enforcement of human rights inscribed in the fundamental law of the country. Therefore, it is necessary to consider what should be the approach of the Judiciary in the matter of constitutional interpretation. An approach must be a creative and purposive in the interpretation of various rights embodied in the Constitution, with a view to advancing human rights jurisprudence and social justice.

Judicial activism has emerged as the thematic thread running through the diverse areas of law that are represented in this comprehensive review of the Indian Supreme Court's jurisprudence. Subjects (to name just a few) ranging across areas as distinctive as fundamental rights, matrimonial adjudication, mercantile law, environmental justice, agrarian reforms, industrial jurisprudence and election laws, are all viewed through the approving lens of 'proactive adjudication'.

During the last five decades, the judiciary has emerged as the most powerful institution of the state. It has assumed the power to strike down amendments to the Constitution on the basis of the innovative theory of basic structure. The area of judicial intervention has been steadily expanding through the device of public interest litigation (PIL) and enforcement of human rights. Problems relating to environment pollution and natural resources of the nation, which ought to have been tackled on priority by the Executive and the Legislature are brought up through PIL, to be handled by the Supreme Court and the high courts. Lack of proper governance, non-governance and misgovernance are, probably, more responsible for increasing judicial activism. Speaking at Dr Zakir Hussain Memorial Lecture in 1997, A.M. Ahmedi (former Chief Justice) asserted that judicial activism might be seen as a transient phase responding to peculiar needs of the nation. Shedding its pro-status quo approach, the judiciary has taken upon itself the duty to enforce the basic rights of poor and vulnerable sections of the society. Apart from its traditional limited role of administration of justice, it has also vowed to actively participate in the socio-economic reconstruction of society, by progressive interpretation and affirmative action.

9.3.1 Public Interest Litigation

A public interest litigation (PIL) is a claim that can be lodged in any high court or directly in the Supreme Court. It is not mandatory for the petitioner to suffer an injury or have a personal grievance for filing the litigation. PIL can be referred to as the right that every socially aware member or public-supportive NGO has, to support a public cause by seeking judicial redressal of a public grievance. Such a grievance may arise as an outcome

Check Your Progress

1. Fill in the blanks with appropriate words.
   (a) Article 226 constitutes _____as protectors and guarantors of fundamental rights.
   (b) Article 32 empowers the _____to invalidate all such laws which violate fundamental rights.
2. State whether the statements are true or false.
   (a) The power of judicial review flows from the powers of the courts to interpret the Constitution.
   (b) The executive is the final interpreter of the Constitution.

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of a breach of public duty or due to some provision of the Constitution that has been violated. Public interest litigation is the mechanism by which public participation in judicial review of administrative action can be assured. It works to increase the democracy of the judicial process. Public interest litigation cannot be referred to as any statute or act. Judges have interpreted it for considering the overall objective of the public. Therefore, public interest is the prime and sole focus of such litigation.

9.3.2 Provision of Legal Aid

Several substantial assurances have been made for defending human rights in Section 39 of the Indian Constitution. In spite of this, there are a large number of challenges faced by India, pertaining to the implementation of domestic laws for the protection of due process rights like piling of cases which are likely to go on for decades, in addition to seventy per cent of prisoners who have been detained without trials. Nevertheless, law has been a tradition in India since ages and even judicial activism in Asia, was born in India. It has the required legal infrastructure. In the domain of legal aid and legal services, establishments have been set-up at the national, state and district levels. This endorses a sound capability to provide quality criminal defence to every accused citizen, more importantly belonging to the underprivileged groups, for example, the poor, and others. It is the need of the moment to provide quality and prompt legal aid to every citizen of India. This will protect all their due process rights beginning from the time they are arrested by the police for an alleged crime.

9.3.3 Amicus Curiae

Amicus curiae or amicus curiæ (plural amici curiae) is a legal phrase in Latin language. It is literally translated as 'friend of the court'. Friend of the court means any person who is not a participant in a case, but offers to provide information on a legal aspect or any other aspect, to help a court in ruling over a matter before it. The mode of information may be a legal opinion in the form of a brief, a testimony that none of the parties have solicited, or a learned treatise on any aspect of the case that has a bearing on it. It is for the court to judge if the information can be considered.

The term amicus curiae should not be confused with someone who is involved in a case just because his direct interest lies in the result. Salmon L J (also addressed as Lord Salmon) defines amicus curiae as follows: 'I had always understood that the role of an amicus curiae was to help the court by expounding the law impartially, or if one of the parties were unrepresented, by advancing the legal argument on his behalf.'

The courts in India, have repeatedly advocated the concept of allowing amicus curiae to connect themselves with trials that usually involve public interest. In the process, a court is directed not only by the intellectual viewpoint required in a particular case, but it also gets to understand which viewpoint would allow it to deliver total justice. Those who are allowed by the courts to function as amicus curiae are the ones who represent the impartial will and belief of the society.

In a large number of cases in India, the courts have provided for, or, on their own activity, have summoned several people to play the role of amicus curiae in their proceedings. An ideal instance of this is the well-known, or rather the notorious *BMW* case. This case has featured in the news due to the fact that the Delhi High Court has suspended both, the defence and the prosecution lawyers. The charge was that they were instrumental in turning the witnesses hostile. In the corresponding case, the Delhi High Court had appointed Advocate Arvind Nigam to act as amicus curiae. His role was critical in securing justice.

Hence, in India, if a petition comes from a jail or is related to any other criminal matter where there is no one to represent the accused, then the corresponding court appoints a lawyer as amicus curiae. He defends the accused and fights his case. Even in civil matters, the process followed by the court is the same. The court also has the discretion to assign amicus curiae in any matter pertaining to general public importance or where the interest of the public is involved.

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9.4 SUMMARY

In this unit, you have learnt that:

- The current Indian judicial system has its roots in the British colonial rule which makes it one of the oldest legal systems in the world today.
- Judicial review means review by the courts to investigate the constitutional validity of the legislative enactments or executive actions. The power of judicial review in India stands between the American and British practices.
- Being the guardian of fundamental rights and the arbitrator of constitutional conflicts between the Union and the states with respect to the division of powers between them, the Supreme Court holds a unique position.
- As our Constitution is not as rigid as the American Constitution, it is possible to override adverse judicial decisions by suitable amendments of the Constitution.
- No one will dispute that the judiciary has to perform an important role in the interpretation and enforcement of human rights inscribed in the fundamental law of the country. Therefore, it is necessary to consider what should be the approach of the judiciary in the matter of constitutional interpretation.
- Judicial activism has emerged as the thematic thread running through the diverse areas of law that are represented in this comprehensive review of the Indian Supreme Court's jurisprudence.
- During the last five decades, the judiciary has emerged as the most powerful institution of the state. It has assumed the power to strike down amendments to the Constitution on the basis of the innovative theory of basic structure.
- A public interest litigation (PIL) is a claim that can be lodged in any high court or directly in the Supreme Court. It is not mandatory for the petitioner to suffer an injury or have a personal grievance for filing the litigation.
- Several substantial assurances have been made for defending human rights in Section 39 of the Indian Constitution.
- The term amicus curiae should not be confused with someone who is involved in a case just because his direct interest lies in the result.

9.5 KEY TERMS

- **Judicial review:** It means review by the courts to investigate the constitutional validity of the legislative enactments or executive actions.
- **Adjudication:** The giving or pronouncing a judgment or decree in a cause.
- **Litigation:** It is an action brought in court to enforce a particular right.

Check Your Progress

3. Fill in the blanks with appropriate words.
   (a) Several substantial assurances have been made for defending human rights in _____of the Indian Constitution.
   (b) The term _____ should not be confused with someone who is involved in a case just because his direct interest lies in the result.
4. State whether the statements are true or false.
   (a) Judicial activism has emerged as the thematic thread running through the diverse areas of law.
   (b) Proper governance is probably responsible for increasing judicial activism.

9.6 ANSWERS TO 'CHECK YOUR PROGRESS'

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1. (a) high courts (b) Supreme Court
2. (a) True (b) False
3. (a) Section 39 (b) amicus curiae
4. (a) True (b) False

9.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is public interest litigation?
2. Mention the specific provisions in the Indian Constitution, which imbibe the power of judicial review.
3. Write a short note on Amicus Curiae.

Long-Answer Questions

1. 'During the last five decades, the Judiciary has emerged as the most powerful institution of the state.' Discuss.
2. What is the provision of legal aid provided by the Judiciary of India?
3. Discuss the power of judicial review in India.

9.8 FURTHER READING

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UNIT 10 MAJOR ISSUES IN INDIAN POLITICS

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Structure

10.0 INTRODUCTION

The major issues in Indian politics at present are assorted and in abundance. A few of the issues are indigenous in nature while others come from external sources. Many issues pose extreme challenges. Currently, it is possible to resolve some of the issues and some are in the process of being resolved. Thus, the most prominent of these issues are communalism, regionalism and corruption.

Communalism emerges in a society in the event of specific religion or sub-religion based groups stressing on promotion of their interests at the cost of others. More specifically, it can be referred to as the process of distinguishing people on religious grounds. The ideology of communalism:

- Is dependent on the conviction that a society comprises religious or socio-political communities or groups, that coexist. The political, social and economic interests of every community are different from every other community within the larger society.
- Since these interests are unique, it becomes important for these communities to stand up for their interests, which results in division and fragmentation of a society.

Regionalism has a very strong impact on the Indian political system. During the period before Independence, imperialists made use of regionalism as a technique for promoting their policy of divide and rule. The promotion of regionalism was done on purpose, the consequence of which was that love for a region became more dominant than love for the country. People thought of patriotism more in terms of regionalism. Once Independence was achieved, efforts to make the people more inclined to think of India as a whole, instead of thinking only about their regions, gained momentum.

Corruption, another critical issue of the Indian society, has always been prevalent since ages. It has always been there in different forms and guises. The base of corruption lies with corrupt politicians who only think of their vested interests. They have caused a

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great deal of damage to our country. People of principles and values are not acknowledged and are regarded as unwise in the contemporary society. Hence, such people rarely come to power. The main reason for corruption is the nexus between bureaucrats, politicians and criminals. In this unit, you will study about the major issues in Indian politics, namely regionalism, communalism and corruption.

10.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Explain the factors responsible for the rise of regionalism
- Define communalism
- Give examples of governmental corruption

10.2 REGIONALISM

Regionalism refers to the idea or practice of dividing a country into small units for political, economic, social and cultural purposes. Politically, regionalism is connected with decentralized or federalist governments. Regionalism is both cultural and political, as its political success is associated with the development of a regional culture.

Regionalism has two connotations: negative as well as positive.

- In the negative sense, it implies the excessive attachment to one's region.
- In the positive sense it is a political attribute, which is associated with people's love for their region, culture and language, with a view to maintain their independent identity.

While positive regionalism is a welcome concept, as far as it maintains that it encourages the people to develop a feeling of brotherhood and commonness on the basis of common language, religion or historical background. The negative sense of regionalism is a great threat towards the unity and the integrity of the country. Generally, in the Indian context regionalism is used in the negative sense.

The feeling of regionalism might arise either by the continuous negligence of a particular area or region by the ruling authorities. It might also spring up as a result of increasing political awareness of backward people who have been differentiated against by the authorities in power. Usually, some political leaders encourage the feeling of regionalism so as to maintain their hold over a specific area or group of people.

Regionalism in India has assumed various forms. Some of them are as follows:

- **Demand for state autonomy**: Regionalism has frequently led towards the demand by states for greater independence from the Centre. Increasing intrusion by the Centre in the affairs of the states has led to regional feelings. Need for autonomy has also been raised by regions, within few states of the Indian federation.
- **Secession from the union:** It is a dangerous form of regionalism as it emerges when states demand separation from the Centre and try to establish an independent identity of their own.

Disputes among states over the sharing of river water, primacy given by the states to the language of majority and to people of their own states in job opportunities have also given rise to feelings of regionalism. For example, Gorkha Janmukti Morcha

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(GJM) has been demanding for the creation of Gorkhaland, a separate state from West Bengal. Another example of regionalism is that people of north eastern states who have migrated to Delhi for further studies or employment have met with an antagonist attitude in Delhi.

Regionalism is an old phenomenon in the Indian political system. During the pre-Independence period, it was promoted by the British imperialists and they deliberately supported people of various regions to think only about their regions rather than the whole nation, with a view to keep their hold over India during the national movement. After Independence the leaders tried to cultivate a feeling in the people that they belonged to a single nation. The framers of the Constitution wanted to achieve this by introducing the concept of single citizenship for all. With the same aim, a unified judiciary, all Indian services and a strong central government was formed. But soon, in view of the vastness of the country and its culture, regionalism displayed its existence in India.

The initial manifestation of regionalism was the requirement for reorganization of states on the basis of linguistics, but the most efficient play of regionalism was the agitation of the Dravida Munnetra Kazhagam (DMK) against Congress in Tamil Nadu in 1960s. In the beginning, the central leadership felt that regionalism was a marginal political factor that was confined to Tamil Nadu and so did not pose any threat towards national unity. But, that assessment was wrong. Soon after that in Punjab, the Akali movement gained impetus, while in Jammu and Kashmir Sheikh Abdullah revitalized the National Conference. During 1950-60 all Indian political parties continued to fine-tune with these regional forces.

In India a number of factors have constituted to the growth of regionalism. These are as follows:

- Regionalism made its appearance as a reaction against the efforts of the national government for imposing a specific ideology, language or cultural pattern on all people and groups. So the states of South have resisted the imposition of Hindi as an official language because they fear this would lead to dominance of the North. Likewise, in Assam, anti-foreign movement was launched by the Assamese to preserve their own culture.
- The desire of various units of the Indian federal system to uphold their sub-cultural regions and greater degree of self-governance has encouraged regionalism and given rise to the demand for greater autonomy.
- Constant neglect of an area or region by the ruling parties and concentration of administrative and political power has given rise to a demand for decentralization of the authority and bifurcation of unilingual states.
- The wish of regional elites to get power has also led to the rise of regionalism. It is quite well-known that political parties like DMK, All India Anna Dravida Munnetra Kazhagam (AIADMK), Akali Dal, Telugu Desam and Asom Gana Parishad have supported regionalism to gain power.
- The interaction between the forces of modernization and mass participation has also contributed largely towards the growth of regionalism in India. As the country is still quite a distance away from realizing its goal of a nation state, various groups have failed to recognize their group interests with national interests; so the feeling of regionalism has persisted.
- The increasing awareness among backward people that they are being discriminated has also encouraged the feeling of regionalism. Local political leaders have fully

exploited this factor and tried to feed the people with the idea that the central government was intentionally trying to maintain regional imbalances by neglecting social and economic development of some places.

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10.3 COMMUNALISM

The term 'communalism' has its roots in the word 'community'. Communalism refers to the politics of conflict between the members of different communities. It is a derogatory perception of communities other than one's own and in it one community is instigated against the other in the name of religion. This evil restricts one's sympathy to the community of one's birth. It is opposed to secularism as it has a pattern of socio-cultural coexistence and of political integration. Communalism has a two fold negative effect, which is as follows:

- In it, individuals consider their own religion to be superior to that of others
- It promotes hatred and intolerance against people of other communities

  India is a land of diverse regions and cultures and our strength lies in the acceptance and understanding of cultures and religions, other than our own. It is believed that our unity lies in our diversity. Therefore, communalism leads to ill feelings within the members of a nation and is a threat to national unity.

10.3.1 Exceptions to Communalism

The following features do not come under the category of communalism:

- Adherence to religion and religious system
- Personal attachment to a religious community
- Affiliation to any social, cultural and service section of a religious community
- Attachment to ritualism, superstition, obscurantism, magic charm and occult practices

Commitment to conservative values in social life and conservative orientation in politics is not communalism. This can be called social backwardness and political reaction. However, it should be recognized that all these aspects can work as inputs for the development of communal consciousness and indeed communalists in various permutations and combinations have utilized most of these aspects in order to build their communal political base. But communalism, as a specific phenomenon in the Indian polity is something different and more specific.

10.3.2 Communal Ideology

Communalism is an ideology based on the belief that the Indian society is divided into various religious communities with diverse economic, political, social and cultural interests. They are even hostile to one another due to their religious differences. Communalism is a belief system through which a society, economy and polity are viewed and explained and around which an effort is made to organize politics.

According to communal ideology, people who follow the same religion usually have common secular interests, that is, people who belong to the same religion not only have common religious beliefs or interests but they also have common political, economic, social and cultural interests. This rule is the first bedrock of communal ideology. From this arises the notion of a religious community, functioning as a community for secular

Check Your Progress

1. What are the two connotations of regionalism?
2. State any two factors responsible for the growth of regionalism in India.

purposes. Any person who discusses about Hindu community or Sikh community or about the interests of the Sikh or the Muslim or the Hindu community is already taking the first step towards communalism whether he knows it or not and however secular he might be feeling genuinely at heart, unless the concept of community is used for religious purposes only.

Communalism is opposed to the rational civic basis of party formations and minorities, segments and divisions within a polity and political system. Communalism perceives majorities and minorities, segments and divisions within the polity and the nation. These are based essentially on religious communities and not even on other inscriptive bases (like that of family, clan, tribe, jati, language region or domicile) and certainly not on the basis of political, ideological, party, class, interests or strata considerations, which are the hallmarks of a modern political system. Communalism is the single biggest subversive ideology in contemporary India.

Pakistan and Communal Ideology

The ideology of Pakistan took shape through an evolutionary process. Historical experience provided the base; Allama Iqbal gave it a philosophical explanation; Quaid-i-Azam (Muhammad Ali Jinnah) translated it into a political reality; and the Constituent Assembly of Pakistan, by passing Objectives Resolution in March 1949, gave it legal sanction. It was due to the realization of the Muslims of South Asia that they are different from the Hindus that they demanded separate electorates. However, when they realized that their future in a 'Democratic India' dominated by Hindu majority was not safe, they changed their demand to a separate state. The ideology of Pakistan stemmed from the instinct of the Muslim community of South Asia to maintain their individuality in the Hindu society. The Muslims believed that Islam and Hinduism are not only two religions, but are two social orders that produced two distinct cultures. There is no compatibility between the two religions.

10.3.3 Communal Violence and Communal Politics

Communal violence (or communal riots) is a particular approach to politics, which is practiced at a sustained level. Communal violence involves incidents of violence between two religious communities. It can be sporadic in nature and mainly forms a law and order issue to be handled on the spot for restoring peace and calm. Though communal politics does not need immediate police intervention, it has much more damaging implications in future. It breeds feelings of suspicion between religious communities and also gives rise to frequencies of violence, which in turn sustain communal politics.

Communal Politics

Communal politics is a South Asian expression for ethnic or sectarian politics. Such politics is based on a belief that religion forms the basis of a common identity; that members of a particular religious community have the same economic, political and social interests. In other words, communal politics works on the belief that each religious community is distinct from the others in its religious and cultural practices, lifestyles and value systems, which become the basis of differences in the socio-economic interests of these communities. In the absence of shared interests, it is only distrust and suspicion that tends to define the relationship between different communities. Communal politics generates mutual distrust between religious communities. This feeling of distrust often leads to violence, which is a very important factor in communal politics. Communal politics deepens mutual suspicion and hatred, which fuels violence in the first place.

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Communal violence, leads to communal polarization of the society and hence, helps in the expansion of communal politics.

Communal politics in this sense is primarily a form of politics, which mobilizes a particular religious community for political power. It is the exploitation of religious differences for political gains. Communal politics may also take the form of highlighting the communitarian interests of a religious group, without necessarily generating hatred towards any other community. Most importantly, communal politics is not driven by any religious or spiritual issue, but by secular interests, which can range from bargaining for jobs, educational concessions, political patronage, separate representation or control over institutions of governance.

Source of Communal Conflict

The sources that lead to communal conflict are as follows:

- Struggle for property
- Sexual offences
- Urge for economic domination among the elite Hindus and the elite of other communities
- Political interests and communal behaviour to capture political power
- Scramble for jobs, clashes of economic interests and personal animosities
- Cow slaughter and religious processions of one community passing through the areas of other community.

10.3.4 Secularism

Pandit Nehru's definition of secularism consisted of the following four points:

- Separation of religion from political, economic, social and cultural aspects of life
- Dissociation of the state from religion
- Full freedom to all religions and tolerance of all religions
- Equal opportunities for followers of all religions and no discrimination and partiality on grounds of religion

Secularism refers to firm opposition against communalism. Pandit Nehru saw secularism as a gift of freedom struggle and heritage of India's ancient and medieval past. Secularism basically means separation of religion from the state and politics and it is treated as a private and personal affair. It also requires that the state should not discriminate against a citizen on grounds of his or her religion or caste.

Case Study

The Shah Bano case came up in 1985, in the context of ambiguous precedents. Shah Bano, a divorced Muslim wife, sued for maintenance. The Bench Chief Justice ruled that Muslims were subject to maintenance provisions (as stated in the Indian Code of Criminal Procedure) and also went on to pronounce gratuitously that this ruling was in accord with Islamic Law (he based this interpretation on the basis of the Islamic concept of *Mehr*).

The Muslim Personal Law Board intervened on behalf of Shah Bano's husband and having been unsuccessful in their appeal to the Supreme Court, took their case to Parliament. The Congress (I) had already suffered reverses in the by-elections in

Uttar Pradesh, Assam and Gujarat. It is alleged that Rajiv Gandhi, who had electoral considerations in mind, persuaded the Indian Parliament to pass a statute, entitled Muslim Women (Protection of Rights on Divorce) Act, 1986, which undid the Shah Bano case decision. According to this new codification of Muslim personal law, the divorced woman's husband is obliged only to return the *mehr* (dowry or marriage settlement) and pay her maintenance during the period of iddat (the period of three months following the divorce). If the divorced woman is not able to maintain herself after the iddat period her maintenance will be the responsibility of her children, or parents, or those relatives who would be entitled to inherit her property upon her death. In case, she has no relatives or if they have no means to pay her maintenance the magistrate may direct the State *Wakf* Boards (administrators of Muslim trust funds) to pay the maintenance determined by them.

Shah Bano herself, under pressure from the mullahs, withdrew her claim. However, the earlier court decision is still on record and there is a powerful drive among some court judges not to alienate Muslims and exclude from provisions that are viewed as national in scope and are applicable to all citizens.

The government's decision (the government in question here being that of Rajiv Gandhi, associated with the Indian National Congress, as the ruling party) to allow Muslim personal law to prevail in reversal of the court decision is one of the conspicuous grievances objected to by the leaders of the various component units of the Hindu nationalist movement (Sangh Parivar). They have constantly regarded it as favouritism of the Congress towards the Muslim minority at the expense of the sentiments and interests of the Hindu majority. It was also vigorously protested by the activist women's organizations as regressive with regard to women's rights. Thus, different groups presented it in ways to boost their own vested interests.

10.4 CORRUPTION

Recently, the cases of corruption and public grievances have been on the rise in the departments of civil servants. In this section, we discuss these important topics.

10.4.1 Governmental Corruption

Governmental corruption is a complex phenomenon, which is prevalent in all forms of government and for which various sociological, economic, administrative factors are responsible. Simple avarice may appear to be generally the motive but it is by no means the only motive. Poverty, power, wealth and status are all involved in these transactions and there is no clear demarcation between them.

This is the general picture and it would not be wrong to say that in the developing countries of Asia and Africa, public administration is seething with bribery and corruption. This situation may be compared to bushes and weeds that are flourishing luxuriantly, taking the good elements from the soil and suffocating those plants which have been carefully and expensively tended.

The following causes appear to have largely contributed to the prevailing widespread bribery and corruption, in public administration in India:

- Legacy from the past
- Wartime scarcities and controls

Check Your Progress

3. Mention the various sources of communal conflict.
4. Define 'secularism'.

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Before the advent of second World War, corruption did exist to some extent amongst lower-grade officials, particularly of revenue earning departments like income tax, customs and central excise, railways and forests and others. It also included money-spending departments like the public works department, police, health and others. However, the higher ranks were comparatively free from this evil. The lack of liquidity resulting from the 'great depression' which afflicted the nation after World War I and also the limited compass of state activities afforded fewer opportunities and limited capacity to corrupt and be corrupted. This situation, however, changed during the course of World War II. The immense war efforts involving heavy expenditure over various kinds of war supplies and contracts created unprecedented opportunities for amassing wealth by dubious means and methods. Later, wartime scarcities and controls provided opportunities for bribery, corruption and favouritism, as governments subordinated all other considerations to that of making the war effort a success. Propriety of means was never considered, if it hampered the war effort. It was during this period that corruption reached the high watermark in India.

2G Spectrum Scam: An Example of Governmental Corruption

We have had a number of scams in India; but none bigger than the 2G spectrum scam involving the process of allocating unified access service licenses. The scandal involved officials in the Government of India illegally undercharging mobile telephone companies for frequency allocation licenses, which they would use to create 2G subscriptions for cell phones. The shortfall between the money collected and the money which the law mandated to be collected is estimated to be ₹176,645 crore as valued by the Comptroller and Auditor General of India based on 3G and broadband wireless access (BWA) auction prices held in 2010. The issuing of licenses occurred in 2008, but the scam came to public notice when the Indian income tax department was investigating political lobbyist Nira Radia. A. Raja, an Indian politician from the Dravida Munnetra Kazhagam (DMK) political party and former Telecom minister at the Centre, is the main accused in the 2G scam case. It has been observed by the Supreme Court that Mr Raja 'wanted to favour some companies at the cost of the public exchequer' and 'virtually gifted away important national asset'.

Post-war Inflation

The climate for integrity which had been rendered unhealthy by wartime controls and scarcities was further aggravated by the post-war flush of money and the consequent inflation.

Post-independence Atmosphere and Problems

The administrative machinery inherited by Independent India had been considerably weakened by (i) wartime neglect and (ii) the sudden departure of a large number of British and Muslim officers, which necessitated rapid promotions including those of some unproven men and recruitment of a large number of officers in various grades. This inevitably caused a dilution of experience and ability. These officers could not gain familiarity with the traditions of service.

Conflict of Values in Our Expanding Economy

In the olden days, a moral code prescribing simple living and high thinking profoundly influenced the mechanism of social control and social responses. But in the emerging society, with its emphasis on purposively initiated process of urbanization and

industrialization, there has come about a steady weakening of the old system of values without it being replaced by an effective system of new values. Corruption thrives in such a conflict of values simply because there is no agreement on the definition of corruption. Consequently, honesty and integrity have become extremely scarce and malpractices have come to be regarded as something inevitable and inescapable in administration, business, politics, trade unions, education, and various other fields. These have spread to, in fact, practically every sphere of public activity in India. Following are the common examples of corruption:

- The warden of a hostel, using the hostel peons for running his domestic errands.
- An officer making the department's peon drive his car for personal use.
- A doctor issuing false medical certificates.
- A official using the staff car for his personal use.
- An official undertaking needless travels at official expenses.

What is striking is that these activities are considered legitimate. Some minor examples of modes of corruption, which are very much prevalent in the government and quasi-government offices are, the use of government vehicles for private purposes and taking of government stationery, and so forth, by government servants for their personal use.

Acute Poverty

The coexistence of acute poverty and confounding prosperity has also eroded the integrity of the people. The Railway Corruption Enquiry Committee (1953–1955), which was presided over by Acharya J. B. Kripalani, observed:

> While in most modern countries the difference between highest and lowest incomes is about ten times or even less, in India it is much more. This is out of all proportion to the difference in educational qualifications and ability. High salaries generally lead to luxurious living. The standard of living of high paid officials becomes the norm to be aspired to. Every subordinate tries to emulate his superior. If his salary does not warrant it, he gets money through dubious means. True, these high incomes are the privilege of the few, yet their demoralizing effect is out of all proportion to their number. We believe that, so far as the disparity in emoluments of the lowest and the highest paid government employees is conceded, it should be narrowed down. It is argued that as long as the disparity between the lowest and highest paid employees in trade and industry remains high, the Government, if it tried to reduce high emoluments of its executive, will not get the requisite talent for public service. This has not happened in other democratic countries, because of the power, prestige, fixity of service and other advantages enjoyed by government servants. All these advantages exist in India to a greater degree than in other countries where democratic traditions have been established for centuries. We believe that if the Government takes the initiative in reducing disparity of emoluments of its high paid and low paid employees, it will progressively reduce as we march towards socialism, which has been declared to be the goal of government policy.

Lack of Strong Public Opinion Against the Evil of Corruption

Corruption is a consequence of the way of life of our acquisitive society, where people are judged by what they have rather than by what they are. The possession of material goods seems to have become the sine qua non of life. Thus, materialism, importance of status resulting from the possession of money and economic power, group loyalties and

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parochial affinities, and so forth, seem to be on the increase. This is because of the general apathy or inability of all sections of the society to appreciate in full, the need of strict observance of a high standard of behaviour. This has resulted in emergence and growth of white-collared and economic crimes and rendered the enforcement of laws themselves, not sufficiently deterrent, but even more difficult.

As a result of lack of a strong public opinion in India, there are many instances of bribes being paid in the country for ration cards, passports, building permits, and ever for doing normal business. Street vendors and rickshaw pullers are forced to pay bribes for exercising their fundamental rights. Villagers across the country are forced to pay bribes for getting their wages under the Mahatma Gandhi National Rural Employment Guarantee Act (NREGA) or for any other entitlements under other schemes. A government-sponsored recent study on the efficacy of the National Rural Employment Guarantee Act (NREGA) found corruption in program implementation where workers worked for one day and were paid wages for one day; however, records showed them as having worked for 33 days, with the wages for the remaining 32 days being misappropriated. On closer study, job cards, which all workers are issued under the programme, were found to have fake entries, and often in the possession of the local panchayat members. According to the study, workers were threatened not to complain about the fake entries lest they lose even the few days of work and wages that trickled down to them.

Economic Necessity

Inadequate remuneration or salary scales and rising cost of living is probably one of the important causes of corruption. In recent years, the ever rising cost of living has brought down the real income of various sections of the community, particularly, that of the salaried classes. It is, therefore, inevitable that government servants are the worst hit and have had to face an appreciable fall in the standard of living. Though this cannot be placed in extenuation of the fall in the standard of integrity, the fact remains that the economics necessity has encouraged those who had the opportunities to succumb to temptations.

Structure or System of Government Induces Corruption to Influence Peddlers

The assumption of new responsibilities by the government has resulted in highly complicated administrative procedures. Administrative powers and discretions are vested at different levels of the executive, all members of which are not endowed with the same level of understanding and strength of character. Where there is power and discretion, there is always the possibility of abuse and the administrative authority may act outside the strict scope of law and propriety without the injured citizen being in a position to obtain effective redressal, in the absence of the machinery for appeals. This has given rise to the impression of arbitrariness on the part of the executive. Consequently, there has been a phenomenal growth of influence, peddlers operating for various individuals or groups of commercial organizations. They are ostensibly designated as liaison officers, public relations officers, officers on special duty, or alternatively work independently as 'contact men', on commission basis. They are generally influential people who are either related, or otherwise closely connected with ministers and senior bureaucrats, or retired high government officers who are in a position to influence or bring pressure upon the concerned officers. These concerned officers are likely to be their erstwhile colleagues or subordinates.

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Complicated and Cumbersome Working of Government Offices

It is alleged that the working of certain government departments for example, the customs and central excise, imports and exports, railway supplies and disposals, and others is complicated, cumbersome and dilatory. This has encouraged the growth of dishonest practices like the system of 'speed money'. In these cases, the bribe giver generally does not wish to get anything done unlawfully but only wants to expedite the process of movement of files and communications, relating to decisions. Apart from being the most objectionable corrupt practice, this custom of 'speed money' has become one of the most serious causes of delay and inefficiency.

Collusion of Commercial and Industrial Magnates, to serve their individual interests

It is not always a government servant, who takes the initiative in the matter of corruption. Corruption can exist only if there is someone willing to corrupt and capable of corrupting. Both willingness and capacity to corrupt are found in ample measure in the industrial and commercial classes. The speculators and war-period adventures further swell their ranks. For them, corruption is an easy way to secure large unearned profits by various devices, also the necessary means to enable them to pursue their vocations or retain their position among their own competitors. It is these people, who have control over large funds and are in a position to spend considerable sums of money on entertainment. It is they, who maintain an army of 'liaison men and contact men'. Further, there is another class of dishonest merchants, 'suppliers and contractors', who have perfected the art of getting government businesses, and contracts, by undercutting and making good their loss by supplying inferior goods, also by sharing a portion of their ill-earned profit with the government servants who would be prepared to oblige them in their nefarious activities.

Non-cooperation of Trade Associations and Chambers of Commerce

Unscrupulous and dishonest members of industrial and commercial classes are major impediments in the purification of public life. It is as important to fight these unscrupulous agents of corruption to eliminate corruption in public services. In fact, they go together. The Trade Association, the State Chambers of Commerce and the Federation of Indian Chambers of Commerce could lend powerful support to the fight against corruption. However, unfortunately, they generally do not cooperate.

Protection given to the Public Services in India

As the law exists at present, both, the giver and the receiver of bribes are held guilty. The result, therefore, is that evidence against the offenders is very difficult to procure, for not only there is collusion in the commission of crime, but also collusion in the suppression of evidence. The heads of departments are unable to do anything against a subordinate official, even though they are aware that the subordinate is corrupt because of the difficulties in obtaining formal proofs for conviction. The heads of departments are even unwilling to make adverse entries in the confidential rolls unless they are in a position to justify such entries with proof, when challenged by the subordinates concerned. Article 311 of the Constitution, as interpreted by our courts, made it very difficult to deal effectively with corrupt public servants. Reluctance of higher officials to exercise the disciplinary powers they possess may sometimes be due to their own incompetence, indifference or even downright collusion in corruption with the subordinates concerned.

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Indeed, many heads of organizations are themselves corrupt and a corrupt officer will never combat corruption in his organization for fear of exposure by his subordinates.

There is too much security of tenure accorded to the bureaucracy by requiring that no public servant shall be dismissed or removed by an authority, subordinate to that by which he was appointed and further no such person shall be dismissed, or removed, or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The fifteenth amendment of the Constitution (October 1963) softens some of the rigidities by expediting the conduct of disciplinary proceedings against public servants. The effect of the amendment is that an accused government servant gets two chances to defend himself. His first chance to defend himself is at the time when charges are framed against him and his second chance is when penalties are proposed to be imposed. This is based on the evidence already adduced during enquiry of the charges against him, without bringing in any fresh evidence or other extraneous matters. The intention is to expedite the conduct of disciplinary proceedings.

10.5 SUMMARY

In this unit, you have learnt that:

- At present, the major issues in Indian politics are assorted and in abundance. A few of the problems are indigenous in nature while others come from external sources.
- Communalism emerges in a society in the event of specific religion or sub-religion based groups stressing on promotion of their interests at the cost of others.
- Regionalism has a very strong impact on the Indian political system. During the period before Independence, imperialists made use of regionalism as a technique for promoting their policy of divide and rule.
- Corruption, another critical problem of the Indian society, has always been prevalent since ages. It has always been there in different forms and guises.
- Regionalism is both cultural and political, as its political success is associated with the development of a regional culture.
- Usually, some political leaders encourage the feeling of regionalism so as to maintain their hold over a specific area or group of people.
- The term 'communalism' has its roots in the word 'community'. Communalism refers to the politics of conflict between the members of different communities.
- Commitment to conservative values in social life and conservative orientation in politics is not communalism.
- Communalism is an ideology based on the belief that the Indian society is divided into various religious communities with diverse economic, political, social and cultural interests.
- Communal violence, leads to communal polarization of the society and hence, helps in the expansion of communal politics.
- Recently, the cases of corruption and public grievances have been on the rise in 0the departments of civil servants.

Check Your Progress

5. Fill in the blanks with appropriate words.
   (a) The coexistence of acute poverty and confounding prosperity has also eroded the _____of the people.
   (b) Unscrupulous and dishonest members of industrial and commercial classes are major impediments in the purification of _____life.
6. State whether the statements are true or false.
   (a) Inadequate remuneration or salary scales and rising cost of living is probably one of the important causes of corruption.
   (b) Before the advent of World War II corruption did not exist in India.

- Governmental corruption is a complex phenomenon, which is prevalent in all forms of government and for which various sociological, economic, administrative factors are responsible.
- The coexistence of acute poverty and confounding prosperity has also eroded the integrity of the people.
- Corruption is a consequence of the way of life of our acquisitive society, where people are judged by what they have rather than by what they are. The possession of material goods seems to have become the sine qua non of life.

10.6 KEY TERMS

- **Regionalism:** It refers to the idea or practice of dividing a country into small units for political, economic, social and cultural purposes.
- **Communalism:** It refers to the politics of conflict between the members of different communities.
- **Secularism:** It is a belief that religious preferences should not influence public and governmental decisions.
- **By-elections:** It is an election to fill a vacancy arising during a term of office.
- **Obscurantism:** It is the practice of deliberately preventing the facts or full details of something from becoming known.

10.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Regionalism has two connotations: negative and positive.
   - In the negative sense, it implies the excessive attachment to one's region
   - In the positive sense it is a political attribute, which is associated with people's love for their region, culture and language with a view to maintain their independent identity.
2. The factors responsible for the growth of regionalism in India are as:
   - Regionalism made its appearance as a reaction against the efforts of the national government for imposing a specific ideology, language or cultural pattern on all people and groups. So the states of South have resisted the imposition of Hindi as an official language because they fear this would lead to dominance of the North.
   - The desire of various units of the Indian federal system to uphold their sub-cultural regions and greater degree of self-governance has encouraged regionalism and given rise to the demand for greater autonomy.
3. The various sources of communal conflict are as follows:
   - Struggle for property
   - Sexual offences
   - The urge for economic domination among the elite Hindus and the elite of other communities
   - Political interests and communal behaviour to capture political power
   - Scramble for jobs, clashes of economic interests and personal animosities

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4. Secularism refers to firm opposition against communalism. Pandit Nehru saw secularism as a gift of freedom struggle and heritage of India's ancient and medieval past. Secularism basically means separation of religion from the state and politics and it is treated as a private and personal affair. It also requires that the state should not discriminate against a citizen on grounds of his or her religion or caste.
5. (a) integrity (b) public
6. (a) True (b) False

10.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List and explain the exceptions to communalism.
2. What are the salient features of communal violence and communal politics?
3. Write a note on governmental corruption in India.

Long-Answer Questions

1. 'Regionalism is an old phenomenon in the Indian political system,' Explain.
2. Discuss the various factors that have contributed to the growth of corruption in India after Independence.
3. How can secularism be used as tool to combat communalism?

10.9 FURTHER READING

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