PERIYAR UNIVERSITY

(NAAC 'A++' Grade - State University - NIRF Rank 56 – State Public Rank 25)

SALEM - 636 011, Tamil Nadu, India.

CENTRE FOR DISTANCE AND ONLINE EDUCATION (CDOE)

M.A HISTORY

SEMESTER - I

CORE : Indian Constitution

(Candidates admitted from 2025 onwards)

PERIYAR UNIVERSITY

CENTRE FOR DISTANCE AND ONLINE EDUCATION (CDOE)

M.A History 2025 admission onwards

ELECTIVE - IV

Indian Constitution

Prepared by:

Dr.T.Asokan
Professor and Head
Dept. of History
Bharathidasan University
Tiruchirappalli- 630 024.

Scrutinized & Verified by:

BOS Members,
Centre for Distance and Online Education (CDOE)
Periyar University
Salem - 636011

UNIT I

HISTORICAL BACKGROUND

The British came to India in 1600 as traders, in the form of East India Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I. In 1765, the Company, which till now had purely trading functions obtained the ‘diwani’ (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa. This started its career as a territorial power. In 1858, in the wake of the ‘sepoy mutiny’, the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on August 15, 1947.

With Independence came the need for a Constitution. Hence, a Constituent Assembly was formed for this purpose in 1946 and on January 26, 1950, the Constitution came into being. However, various features of the Indian Constitution and polity have their roots in the British rule. There were certain events in the British rule that laid down the legal framework for the organisation and functioning of government and administration in British India. These events have greatly influenced our constitution and polity.

The Regulating Act of 1773

The 1773 Regulating Act brought about the British government’s involvement in Indian affairs in the effort to control and regulate the functioning of the East India Company. It recognised that the Company’s role in India extended beyond mere trade to administrative and political fields, and introduced the element of centralised administration.

The directors of the Company were required to submit all correspondence regarding revenue affairs and civil and military administration to the government. (Thus for the first time, the British cabinet was given the right to exercise control over Indian affairs.)

In Bengal, the administration was to be carried out by governor-general and a council consisting of 4 members, representing civil and military government. They were required to function according to the majority rule. Warren Hastings and four others were named in the Act, later ones were to be appointed by the Company.

A Supreme Court of judicature was to be established in Bengal with original and appellate jurisdictions where all subjects could seek redressal. In practice, however, the Supreme Court had a debatable jurisdiction vis-a-vis the council which created various problems.

The governor-general could exercise some powers over Bombay and Madras—again, a vague provision which created many problems.

The whole scheme was based on checks and balances.

Amendments (1781) The jurisdiction of the Supreme Court was defined—within Calcutta, it was to administer the personal law of the defendant.

The servants of the government were immune if they did anything while discharging their duties.

Social and religious usages of the subjects were to be honoured.

Pitt's India Act of 1784

The Pitt's India Act gave the British government a large measure of control over the Company's affairs. In fact, the Company became a subordinate department of the State. The Company's territories in India were termed 'British possessions'.

The government's control over the Company's affairs was greatly extended. A Board of Control consisting of the chancellor of exchequer, a secretary of state and four members of the Privy Council (to be appointed by the Crown) were to exercise control over the Company's civil, military the board. Thus a dual system of control was set up.

In India, the governor-general was to have a council of three (including the commander-in-chief), and the presidencies of Bombay and Madras were made subordinate to the governor-general.

A general prohibition was placed on aggressive wars and treaties (breached often).

The Act of 1786

Cornwallis wanted to have the powers of both the governor-general and the commander-in-chief. The new Act conceded this demand and also gave him the power.

Cornwallis was allowed to override the council's decision if he owned the responsibility for the decision. Later, this provision was extended to all the governors- general.

The Charter Act of 1793

The Act renewed the Company's commercial privileges for next 20 years.

The Company, after paying the necessary expenses, interest, dividends, salaries, etc., from the Indian revenues, was to pay 5 lakh pounds annually to the British government.

The royal approval was mandated for the appointment of the governor-general, the governors, and the commander- in-chief.

Senior officials of the Company were debarred from leaving India without permission—doing so was treated as resignation.

The Company was empowered to give licences to individuals as well as the Company's employees to trade in India. The licences, known as 'privilege' or 'country trade', paved the way for shipments of opium to China.

The revenue administration was separated from the judiciary functions and this led to disappearing of the Maal Adalats.

The Home Government members were to be paid out of Indian revenues which continued up to 1919.

The Charter Act of 1813

In England, the business interests were pressing for an end to the Company's monopoly over trade in India because of a spirit of laissez-faire and the continental system by Napoleon by which the European ports were closed for Britain. The 1813 Act sought to redress these grievances—

The Company's monopoly over trade in India ended, but the Company retained the trade with China and the trade in tea.

The Company's shareholders were given a 10.5 per cent dividend on the revenue of India.

The Company was to retain the possession of territories and the revenue for 20 years more, without prejudice to the sovereignty of the Crown. (Thus, the constitutional position of the British territories in India was defined explicitly for the first time. Powers of the Board of Control were further enlarged.

A sum of one lakh rupees was to be set aside for the revival, promotion and encouragement of literature, learning and science among the natives of India, every year. (This was an important statement from the point of State's responsibility for education.)

The regulations made by the Councils of Madras, Bombay and Calcutta were now required to be laid before the British Parliament. The constitutional position of the British territories in India was thus explicitly defined for the first time. Separate accounts were to be kept regarding commercial transactions and territorial revenues. The power of superintendence and direction of the Board of Control was not only defined but also enlarged considerably.

Christian missionaries were also permitted to come to India and preach their religion.

The Charter Act of 1833

The lease of 20 years to the Company was further extended. Territories of India were to be governed in the name of the Crown.

The Company's monopoly over trade with China and in tea also ended.

All restrictions on European immigration and the acquisition of property in India were lifted. Thus, the way was paved for the wholesale European colonisation of India.

In India, a financial, legislative and administrative centralisation of the government was envisaged:

The governor-general was given the power to superintend, control and direct all civil and military affairs of the Company.

Bengal, Madras, Bombay and all other territories were placed under complete control of the governor-general.

All revenues were to be raised under the authority of the governor-general who would have complete control over the expenditure too.

The Governments of Madras and Bombay were drastically deprived of their legislative powers and left with a right of proposing to the governor-general the projects of law which they thought to be expedient.

A law member was added to the governor-general's council for professional advice on law-making.

Indian laws were to be codified and consolidated.

No Indian citizen was to be denied employment under the Company on the basis of religion, colour, birth, descent, etc. (Although the reality was different, this declaration formed the sheet-anchor of political agitation in India.)

The administration was urged to take steps to ameliorate the conditions of slaves and to ultimately abolish slavery. (Slavery was abolished in 1843.)

The Charter Act of 1853

The Company was to continue possession of territories unless the Parliament provided otherwise.

The strength of the Court of Directors was reduced to 18. The Company's patronage over the services was dissolved—the services were now thrown open to a competitive examination.

The law member became the full member of the governor-general's executive council.

The separation of the executive and legislative functions of the Government of British India progressed with the inclusion of six additional members for legislative purposes.

Local representation was introduced in the Indian legislature. The legislative wing came to be known as the Indian Legislative Council. However, a law to be promulgated needed the assent of the governor-general, and the governor- general could veto any Bill of the legislative council.

The Government of India Act , 1858

The 1857 revolt had exposed the Company's limitations in administering under a complex situation. Till then, there had not been much accountability. The 1858 Act sought to rectify this anomaly—

India was to be governed by and in the name of the Crown through a secretary of state and a council of 15. The initiative and the final decision were to be with the secretary of state and the council was to be just advisory in nature. (Thus, the dual system introduced by the Pitt's India Act came to an end.)

Governor-general became the viceroy (his prestige, if not authority, increased). The assumption of power by the Crown was one of formality rather than substance. It gave a decent burial to an already dead horse—the Company's administration.

Indian Councils Act, 1861

The 1861 Act marked an advance in that the principle of representatives of non-officials in legislative bodies became accepted; laws were to be made after due deliberation, and as pieces of legislation they could be changed only by the same deliberative process. Law-making was thus no longer seen as the exclusive business of the executive.

The portfolio system introduced by Lord Canning laid the foundations of cabinet government in India, each branch of the administration having its official head and spokesman in the government, who was responsible for its administration.

The Act by vesting legislative powers in the Governments of Bombay and Madras and by making provision for the institution of similar legislative councils in other provinces laid the foundations of legislative devolution.

However, the legislative councils established by the Act of 1861 possessed no real powers and had many weaknesses. The councils could not discuss important matters and no financial matters at all without previous approval of government. They had no control over budget. They could not discuss executive action. Final passing of the bill needed viceroy's approval. Even if approved by the viceroy, the secretary of state could disallow a legislation. Indians associated as non-officials were members of elite sections only.

Indian Councils Act, 1892

In 1885, the Indian National Congress was founded. The Congress saw reform of the councils as the "root of all other reforms". It was in response to the Congress demand that the legislative councils be expanded that the number of non-official members was increased both in the central (Imperial) and provincial legislative councils by the Indian Councils Act, 1892.

The Legislative Council of the Governor-General (or the Indian Legislative Council, as it came to be known) was enlarged.

The universities, district boards, municipalities, zamindars, trade bodies and chambers of commerce were empowered to recommend members to the provincial councils. Thus was introduced the principle of representation.

Though the term 'election' was firmly avoided in the Act, an element of indirect election was accepted in the selection of some of the non-official members.

The members of the legislatures were now entitled to express their views upon financial statements which were henceforth to be made on the floor of the legislatures.

They could also put questions within certain limits to the executive on matters of public interest after giving six days' notice.

Indian Councils Act, 1909

Popularly known as the Morley-Minto Reforms, the Act made the first attempt to bring in a representative and popular element in the governance of the country.

The strength of the Imperial Legislative Council was increased.

With regard to the central government, an Indian member was taken for the first time in the Executive Council of the Governor-General (Satyendra Prasad Sinha was the first Indian to join the Governor-General's—or Viceroy's— Executive Council, as law member.)

The members of the Provincial Executive Council were increased.

The powers of the legislative councils, both central and provincial, were increased.

Under this Act the real power remained with the government and the councils were left with no functions but criticism.

The introduction of separate electorates for Muslims created new problems.

Besides separate electorates for the Muslims, representation in excess of their population strength was accorded to the Muslims. Also, the income qualification for Muslim voters was kept lower than that for Hindus.

The system of election was very indirect. thus, the representation of the people at large remained remote and unreal.

Government of India Act, 1919

This Act was based on what are popularly known as the Montague-Chelmsford Reforms. In August 1917, the British government for the first time declared that its objective was to gradually introduce responsible government in India, but as an integral part of the British Empire.

The Act of 1919, clarified that there would be only a gradual development of self-governing institutions in India and that the British Parliament—and not self-determination of the people of India—would determine the time and manner of each step along the path of constitutional progress.

Under the 1919 Act, the Indian Legislative Council at the Centre was replaced by a bicameral system consisting of a Council of State (Upper House) and a Legislative Assembly (Lower House). Each house was to have a majority of members who were

directly elected. So, direct election was introduced, though the franchise was much restricted being based on qualifications of property, tax or education.

The principle of communal representation was extended with separate electorates for Sikhs, Christians and Anglo-Indians, besides Muslims.

The Act introduced dyarchy in the provinces, which indeed was a substantial step towards transfer of power to the Indian people.

The provincial legislature was to consist of one house only (legislative council).

The Act separated for the first time the provincial and central budgets, with provincial legislatures being authorised to make their budgets.

A High Commissioner for India was appointed, who was to hold his office in London for six years and whose duty was to look after Indian trade in Europe. Some of the functions hitherto performed by the Secretary of State for India were transferred to the high commissioner.

The Secretary of State for India who used to get his pay from the Indian revenue was now to be paid by the British Exchequer, thus undoing an injustice in the Charter Act of 1793.

Though Indian leaders for the first time got some administrative experience in a constitutional set-up under this Act, there was no fulfilment of the demand for responsible government. Though a measure of power devolved on the provinces with demarcation of subjects between centre and provinces, the structure continued to be unitary and centralised. Dyarchy in the provincial sector failed.

The Central Legislature, though more representative than the previous legislative councils and endowed, for the first time, with power to vote supplies, had no power to replace the government and even its powers in the field of legislation and financial control were limited and subject to the overriding powers of the governor-general. Besides his existing power to veto any bill passed by the legislature or to reserve the same for the signification of the British monarch’s pleasure, the governor-general was given the power to secure the enactment of laws which he considered essential for the safety, tranquillity or interests of British India, or any part of British India.

The Indian legislature under the Act of 1919 was only a non-sovereign law-making body and was powerless before the executive in all spheres of governmental activity, as Subhash Kashyap observes.

Simon Commission

The 1919 Act had provided that a Royal Commission would be appointed ten years after the Act to report on its working. In November 1927, two years before schedule, the British government announced the appointment of such a commission—the Indian Statutory Commission. The commission submitted its report in 1930. It recommended that dyarchy be abolished, responsible government be extended in the provinces, a federation of British India and the Princely States be established, and that communal electorates be continued.

Three Round Table Conferences were called by the British government to consider the proposals. Subsequently, a White Paper on Constitutional Reforms was published by the British government in March 1933 containing provisions for a federal set-up and provincial autonomy. A joint committee of the Houses of the British Parliament was set up under Lord Linlithgow to further consider the scheme. Its report submitted in 1934 said that a federation would be set up if at least 50 per cent of the princely states were ready to join it. The bill prepared on the basis of this report was passed by the British Parliament to become the Government of India Act of 1935.

Government of India Act, 1935

The Act, with 451 clauses and 15 schedules, contemplated the establishment of an All-India Federation in which Governors' Provinces and the Chief Commissioners' Provinces and those Indian states which might accede to be united were to be included. (The ruler of each Princely State willing to join was to sign an 'instrument of accession' mentioning the extent to which authority was to be surrendered to the federal government.)

Dyarchy, rejected by the Simon Commission, was provided for in the Federal Executive.

The Federal Legislature was to have two chambers (bicameral)—the Council of States and the Federal Legislative be a permanent body.

There was a provision for joint sitting in cases of deadlock between the houses. There were to be three subject- lists—the Federal Legislative List, the Provincial Legislative List and the Concurrent Legislative List. Residuary legislative powers were subject to the discretion of the governor-general. Even if a bill was passed by the federal legislature, the governor-general could veto it, while even Acts assented to by the governor-general could be disallowed by the King-in-Council.

Dyarchy in the provinces was abolished and provinces were given autonomy, i.e., the distinction between Reserved and Transferred Subjects was abolished and full responsible government was established, subject to certain safeguards.

Provinces derived their power and authority directly from the British Crown. They were given independent financial powers and resources. Provincial governments could borrow money on their own security.

Provincial legislatures were further expanded. Bicameral legislatures were provided in the six provinces of Madras, Bombay, Bengal, United Provinces, Bihar and Assam, with other five provinces retaining unicameral legislatures.

The principles of ‘communal electorates’ and ‘weightage’ were further extended to depressed classes, women and labour.

Franchise was extended, with about 10 per cent of the total population getting the right to vote.

The Act also provided for a Federal Court (which was established in 1937), with original and appellate powers, to interpret the 1935 Act and settle inter-state disputes, but the Privy Council in London was to dominate this court.

The India Council of the Secretary of State was abolished.

The All-India Federation as visualised in the Act never came into being because of the opposition from different parties of India. The British government decided to introduce the provincial autonomy on April 1, 1937, but the Central government

continued to be governed in accordance with the 1919 Act, with minor amendments. The operative part of the Act of 1935 remained in force till August 15, 1947.

The 1935 Act was an endeavour to give India a written constitution, even though Indians were not involved in its creation, and it was a step towards complete responsible government in India. However, the Act provided a rigid constitution with no possibility of internal growth. Right of amendment was reserved for the British Parliament. Extension of the system of communal electorates and representation of various interests promoted separatist tendencies— culminating in partition of India. The 1935 Act was condemned by nearly all sections and unanimously rejected by the Congress. The Congress demanded, instead, convening of a Constituent Assembly elected on basis of adult franchise to frame a constitution for independent India.

Various other developments took place after the 1935 Act. There was the August Offer of 1940, the Cripps Proposals of 1942, the C.R. Formula of 1944 trying to seek the cooperation of the Muslim League, Wavell Plan of 1945 and the Cabinet Mission. Then came the Mountbatten Plan in 1947 and finally the Indian Independence Act, 1947.

SOURCES OF THE INDIAN CONSTITUTION

DEMAND FOR A CONSTITUENT ASSEMBLY

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy, a pioneer of communist movement in India. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf the INC declared that ‘the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise’.

The demand was finally accepted in principle by the British Government in what is known as the ‘August Offer’ of 1940. In 1942, Sir Stafford Cripps, a Member of the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The Cripps Proposals were rejected by the Muslim League, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a

Cabinet Mission was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League

COMPOSITION OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

The features of the scheme were:

1. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the princely states. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four Chief Commissioners' provinces[3], one from each.

2. Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.

3. Seats allocated to each British province were to be divided among the three principal communities–Muslims, Sikhs and General (all except Muslims and Sikhs), in proportion to their population.

4. The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.

5. The representatives of the princely states were to be nominated by the heads of the princely states.

It is, thus, clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise.

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946. The Indian National Congress won 208

seats, the Muslim League 73 seats and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of the Indian society–Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sections. The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi.

WORKING OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was, thus, attended by only 211 members. Dr. Sachchidananda Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice.

Later, Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. In other words, the Assembly had two Vice-Presidents.

Objectives Resolution

On December 13, 1946, Jawaharlal Nehru moved the historic ‘Objectives Resolution’ in the Assembly. It laid down the fundamentals and philosophy of the constitutional structure. It read:

1. “This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

2. 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 India and the States as well as other territories as are willing to be constituted into the independent sovereign India, shall be a Union of them all and

3. 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 there from and

4. Wherein all power and authority of the sovereign independent India, its constituent parts and organs of Government are derived from the people; and

5. 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

6. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

7. 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

8. This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind."

This Resolution was unanimously adopted by the Assembly on January 22, 1947. It influenced the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the Preamble of the present Constitution.

Philosophy of the Constitution

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'.

Preamble

The Preamble to the Constitution of India reads:

We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to 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 wordings 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 to 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. (a) Instead of 'Sovereign Democratic Republic' India was declared 'Sovereign Socialist Secular Democratic Republic.' (b) 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:

(a) Source of the Constitution: The first and the last words of the Preamble, i.e., '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.

(b) Nature of the Indian political system: The Preamble also discusses the nature of Indian political system. The Indian polity is sovereign, socialist, secular, democratic 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 external and internal limitations on the state. It means that Indians have the supreme power in deciding their destiny.

(ii) **Socialist:** After the forty-second Constitutional Amendment, the Constitution of India declares itself a socialist polity. The Indian socialist state aims at securing to its people 'justice—social economic and political'. 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. Secularism in India contains both negative as well as positive connotation. In its negative connotation, it denotes absence of religious discrimination by the State. Positively; it means right to freedom of religion. However, secularism does not mean the right to convert from one religion to another.

(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 the head of the state is elected. The position is not hereditary. The President of India, who is the head of the state, is elected by an electoral college.

(c) Objectives of the political system: The Preamble proceeds further to define the objectives of the Indian political system. These objectives are four in number: Justice, Liberty, Equality and Fraternity.

Justice: The term 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:
(i) 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 should have the full right and opportunity to rise to the highest station in life.

(ii) Socio-economic justice is qualitatively higher than political justice.
(iii) The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the common man. On an empty stomach, adult franchise would soon become a mockery. Political justice too, would soon lose its significance if socio-economic justice is not forthcoming.

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.

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 fullest development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. In the negative sense, it means absence of any arbitrary restraint on the freedom of individual action.

Equality: Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality signifies equality of status, the status of free individuals and equality of opportunity.
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.
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 to create conditions of work which will ensure self-respect.

The use of the words, unity and integrity, has been made to prevent tendencies of regionalism, provincialism, linguist, communalism and secessionism and any other separatist activity so that the dream of national integration on the lines on enlightened secularism is achieved.

CITIZENSHIP

MEANING AND SIGNIFICANCE

Like any other modern state, India has two kinds of people–citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights. They are of two categories–friendly aliens or enemy aliens. Friendly aliens are the subjects of those countries that have cordial relations with India. Enemy aliens, on the other hand, are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens, eg, they do not enjoy protection against arrest and detention (Article 22). The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

1. Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Right to equality of opportunity in the matter of public employment (Article 16).
3. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
4. Cultural and educational rights (Articles 29 and 30).
5. Right to vote in elections to the Lok Sabha and state legislative assembly.
6. Right to contest for the membership of the Parliament and the state legislature.
7. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, Governor of states, Attorney General of India and Advocate General of states.

Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on.

In India both a citizen by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

CONSTITUTIONAL PROVISIONS

The Constitution deals with the citizenship from Articles 5 to 11 under Part
II. However, it contains neither any permanent nor any elaborate provisions in this regard. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act (1955), which has been amended from time to time.
According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

1. A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India; or if either of his parents was born in India; or if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India.

2. A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948 , he had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration.

3. A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration.

4. A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.

To sum up, these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India.

The other constitutional provisions with respect to the citizenship are as follows:

1. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state.

2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament.

3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

CITIZENSHIP ACT, 1955

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution.

Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.

Acquisition of Citizenship

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalization and incorporation of territory:

1. By Birth

A person born in India on or after January 26, 1950 but before July 1, 1987 is a citizen of India by birth irrespective of the nationality of his parents.

A person born in India on or after July 1, 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.

Further, those born in India on or after December 3, 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

2. By Descent

A person born outside India on or after January 26, 1950 but before December 10, 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth.

A person born outside India on or after December 10, 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

December 3, 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry

of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

Further, a minor who is a citizen of India by virtue of descent and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of his attaining full age.

3. By Registration

The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) if he belongs to any of the following categories, namely:-

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the August 15, 1947.

All the above categories of persons must take an oath of allegiance before they are registered as citizens of India.

4. By Naturalisation

The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:

(a) that he is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation;

(b) that, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted;

(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

(d) that during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;

(e) that he is of good character;

(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution ; and

(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India. However, the Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. Every naturalised citizen must take an oath of allegiance to the Constitution of India.

5. By Incorporation of Territory

If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when

Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order (1962), under the Citizenship Act (1955).

Special Provisions as to Citizenship of Persons Covered by the Assam Accord

The Citizenship (Amendment) Act, 1985, added the following special provisions as to citizenship of persons covered by the Assam Accord (which related to the foreigners' issue):

(a) All persons of Indian origin who came to Assam before the January 1, 1966 from Bangladesh and who have been ordinarily residents in Assam since the date of their entry into Assam shall be deemed to be citizens of India as from the January 1, 1966.

(b) Every person of Indian origin who came to Assam on or after the January 1, 1966 but before the March 25, 1971 from Bangladesh and who has been ordinarily resident in Assam since the date of his entry into Assam and who has been detected to be a foreigner shall register himself. Such a registered person shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date of detection as a foreigner. But, in the intervening period of ten years, he shall have the same rights and obligations as a citizen of India, excepting the right to vote.

Loss of Citizenship

The Citizenship Act (1955) prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:

1. By Renunciation

Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.

2. By Termination

When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.

3. By Deprivation

It is a compulsory termination of Indian citizenship by the Central government, if:

(a) the citizen has obtained the citizenship by fraud:

(b) the citizen has shown disloyalty to the Constitution of India:

(c) the citizen has unlawfully traded or communicated with the enemy during a war;

(d) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and

(e) the citizen has been ordinarily resident out of India for seven years continuously.

SINGLE CITIZENSHIP

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship. The citizens in India owe allegiance only to the Union. There is no separate state citizenship. The other federal states like USA and Switzerland, on the other hand, adopted the system of double citizenship.

In USA, each person is not only a citizen of USA but also of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights– one set conferred by the national government and another by the state government. This system creates the problem of discrimination, that is, a state may discriminate in favour of its citizens in matters like right to vote, right to hold public offices, right to practice professions and so on. This problem is avoided in the system of single citizenship prevalent in India.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no

discrimination is made between them. However, this general rule of absence of discrimination is subject to some exceptions, viz,

1. The Parliament (under Article 16) can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory. Accordingly, the Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957, and thereby authorised the Government of India to prescribe residential qualification only for appointment to non- Gazetted posts in Andhra Pradesh, Himachal Pradesh, Manipur and Tripura. As this Act expired in 1974, there is no such provision for any state except Andhra Pradesh and Telangana.

2. The Constitution (under Article 15) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and not on the ground of residence. This means that the state can provide special benefits or give preference to its residents in matters that do not come within the purview of the rights given by the Constitution to the Indian citizens. For example, a state may offer concession in fees for education to its residents.

3. The freedom of movement and residence (under Article 19) is subjected to the protection of interests of any schedule tribe. In other words, the right of outsiders to enter, reside and settle in tribal areas is restricted. Of course, this is done to protect the distinctive culture, language, customs and manners of schedule tribes and to safeguard their traditional vocation and property against exploitation.

4. Till 2019, the legislature of the erstwhile state of Jammu and Kashmir was empowered to:

(a) define the persons who are permanent residents of the state; and

(b) confer any special rights and privileges on such permanent residents as respects:

(i) employment under the state government;

(ii) acquisition of immovable property in the state;

(iii) settlement in the state; and

(iv) right to scholarships and such other forms of aid provided by the state government.

The above provision was based on Article 35-A of the Constitution of India. This Article was inserted in the constitution by “The Constitution (Application to Jammu

and Kashmir) Order, 1954". This order was issued by the President under Article 370 of the Constitution which had provided a special status to the erstwhile state of Jammu and Kashmir. In 2019, this special status was abolished by a new presidential order known as "The Constitution (Application to Jammu and Kashmir) Order, 2019". This order superseded the earlier 1954 order.

The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation. Despite this, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. Thus, the cherished goal of the founding fathers and the Constitution-makers to build an united and integrated Indian nation has not been fully realized.

OVERSEAS CITIZENSHIP OF INDIA

In September 2000, the Government of India (Ministry of External Affairs) had set-up a High Level Committee on the Indian Diaspora under the Chairmanship of L.M. Singhvi. The mandate of the Committee was to make a comprehensive study of the global Indian Diaspora and to recommend measures for a constructive relationship with them.

The committee submitted its report in January, 2002. It recommended the amendment of the Citizenship Act (1955) to provide for grant of dual citizenship to the Persons of Indian Origin (PIOs) belonging to certain specified countries.

Accordingly, the Citizenship (Amendment) Act, 2003, made provision for acquisition of Overseas Citizenship of India (OCI) by the PIOs of 16 specified countries other than Pakistan and Bangladesh. It also omitted all provisions recognizing, or relating to the Commonwealth Citizenship from the Principal Act.

Later, the Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh as long as their home countries all dual citizenship under their local laws. It must be noted here that the OCI is not actually a dual citizenships as the Indian Constitution forbids dual citizenship or dual nationality (Article 9).

Again, the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI in the Principal Act. It has introduced a new scheme called "Overseas Citizen of India Cardholder" by merging the PIO card scheme and the OCI card scheme.

The PIO card scheme was introduced on August 19, 2002 and thereafter the OCI card scheme was introduced w.e.f. December 2, 2005. Both the schemes were running in parallel even though the OCI card scheme had become more popular. This was causing unnecessary confusion in the minds of applicants. Keeping in view some problems being faced by applicants and to provide enhanced facilities to them, the Government of India decided to formulate one single scheme after merging the PIO and OCI schemes, containing positive attributes of both. Hence, for achieving this objective, the Citizenship (Amendment) Act, 2015, was enacted. The PIO scheme was rescinded w.e.f. January 9, 2015 and it was also notified that all existing PIO cardholders shall be deemed to be OCI card holders w.e.f. January 9, 2015.

The Citizenship (Amendment) Act, 2015, replaced the nomenclature of "Overseas Citizen of India" with that of "Overseas Citizen of India Cardholder" and made the following provisions in the Principal Act :

I. Registration of Overseas Citizen of India Cardholder

(1) The Central Government may, on an application made in this behalf, register as an overseas citizen of India cardholder–

(a) any person of full age and capacity,–

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th August, 1947; or

(iv) who is a child or a grandchild or a great grandchild of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.

No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.

(2) The Central Government may specify the date from which the existing persons of Indian origin cardholders shall be deemed to be overseas citizens of India cardholders.

(3) Notwithstanding anything contained in point (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.

II. Conferment of Rights on Overseas Citizen of India Cardholder

(1) An overseas citizen of India cardholder shall be entitled to such rights, as the Central Government may specify in this behalf.

(2) An overseas citizen of India cardholder shall not be entitled to the following rights (which are conferred on a citizen of India)–

(a) He shall not be entitled to the right to equality of opportunity in matters of public employment.

(b) He shall not be eligible for election as President.

(c) He shall not be eligible for election as Vice-President.

(d) He shall not be eligible for appointment as a Judge of the Supreme Court.

(e) He shall not be eligible for appointment as a Judge of the High Court.

(f) He shall not be entitled for registration as a voter.

(g) He shall not be eligible for being a member of the House of the People or of the Council of States.

(h) He shall not be eligible for being a member of the State Legislative Assembly or the State Legislative Council.

(i) He shall not be eligible for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may specify.

III. **Renunciation of Overseas Citizen of India Card**

(1) If any overseas citizen of India cardholder makes in prescribed manner a declaration renouncing the card registering him as an overseas citizen of India cardholder, the declaration shall be registered by the Central Government, and upon such registration, that person shall cease to be an overseas citizen of India cardholder.

(2) Where a person ceases to be an overseas citizen of India cardholder, the spouse of foreign origin of that person, who has obtained overseas citizen of India card and every minor child of that person registered as an overseas citizen of India cardholder shall thereupon cease to be an overseas citizen of India cardholder.

IV. Cancellation of Registration as Overseas Citizen of India Cardholder

The Central Government may cancel the registration of a person as an overseas citizen of India cardholder, if it is satisfied that–

(a) the registration as an overseas citizen of India cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the overseas citizen of India cardholder has shown disaffection towards the Constitution of India; or

(c) the overseas citizen of India cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy; or

(d) the overseas citizen of India cardholder has, within five years after registration, been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or

(f) the marriage of an overseas citizen of India cardholder–

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.

Article No.	Subject Matter
5	Citizenship at the commencement of the Constitution
6	Rights of citizenship of certain persons who have migrated to India from Pakistan
7	Rights of citizenship of certain migrants to Pakistan
8	Rights of citizenship of certain persons of Indian origin residing outside India
9	Persons voluntarily acquiring citizenship of a foreign State not to be citizens
10	Continuance of the rights of citizenship
11	Parliament to regulate the right of citizenship by law

UNIT II

FUNDAMENTAL RIGHTS

Laski had rightly remarked that every state is known by the rights that it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate 'fundamental rights'. As Granville Austin observed:

The fundamental rights, therefore, were to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the state or by society privately. Liberty was no longer to be privilege of the few.

The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state. The demand for a Charter of

Rights in the Indian Constitution had its deep-seated roots in the Indian National Movement. It was most implicit in the formation of the Indian National Congress in 1885 that aimed at ensuring the same rights and privileges for the Indians that the British enjoyed in their own country. However, the first explicitly and systematic demand for fundamental rights appeared in the Constitution of India Bill, 1895.

This bill was also known as Swaraj Bill of 1895. A series of Congress resolutions that were adopted between 1917 and 1919 repeated the demands and claims for civil rights and equity of status. Following this, drafting of seven fundamental rights under the Commonwealth of India Bill, 1925 took place.

The Congress also passed a resolution in Madras in 1927 that declared that the basis of the future Constitution of India must be a declaration of fundamental rights. This demand was further reiterated in the Nehru Report of 1928. In March 1931, the Congress once again adopted a resolution on fundamental rights and economic and social changes. However, the Simon Commission had considered the question but rejected it. The Government of India Act, 1935 did not contain any document pertaining to the declaration of rights. The next major document on rights was the Sapru Report of 1945. On the side of the British, the various British Constitutional

experts like Wheare, Dicey, Jennings and even Laski did not favour the idea. It was only the Cabinet Mission Plan that conceded to the Indian demand for a Bill of Rights for the first time. The inclusion of rights in the Constitution vested on three major reasons:

(a) To keep a check on the arbitrary action of the executive

(b) To reach to the desired goal of socio-economic justice

(c) To ensure security to minority groups in India

The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas, under the chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make it Part III of the Constitution. The pertinent question that arises here is as to why the rights in Part III alone are considered fundamental? There are other rights as well that are important and even justifiable, for example, the right to vote under Article 325. The justification goes that the rights in Part III are:

(a) More in consonance with the natural rights

(b) Gifts of the state

(c) Gifts of the Constituent Assembly

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. These fundamental rights constitute the soul of the Constitution and thereby provide 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 these rights encompass all those rights which human ingenuity has found to be essential for the development and growth of human beings.

The salient features of the fundamental rights are:

- Fundamental rights are an integral part of the Constitution and hence cannot be altered or taken away by ordinary legislation. Any law passed by any legislature in the country would be declared null and void to the extent it is derogatory to the rights guaranteed by the Constitution.
- The chapter on fundamental rights in the Constitution is the most comprehensive and detailed one. It not only enumerates the fundamental rights guaranteed to the Indian citizens, but also provides comprehensive details of each right.
- Fundamental rights as embodied in our Constitution can be divided into two broad categories, namely, those which impose restrictions of negative character on the state without conferring special titles on the citizens. There are positive rights, which confer privileges on the people, e.g. Article 18 desires the State not to confer any special titles on the citizens. Similarly, Article 17 abolishes untouchability. These can be easily categorized in the former category. Right to liberty, equality or freedom to express or worship come under the second category.
- As being justifiable, if any of these rights are violated, the affected individual is entitled to move the court for the protection and enforcement of his rights. The Supreme Court may declare a law passed by the Parliament or a State Legislature in India or the orders issued by any executive authority as null and void, if these are found to be inconsistent with the rights.
- The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations; and reasonable restrictions can be imposed at any time in the larger interests of the community. In some cases, restrictions have been imposed by the Constitution itself. Article 19, for example, guarantees to all citizens, freedom of speech and expression.
- During the operation of an Emergency, the President may suspend all or any of the fundamental rights and may also suspend the right of the people to move the High Courts and the Supreme Court for the enforcement of the fundamental rights. When a National Emergency is declared under Article 352 on account of war or external aggression, fundamental right to freedom

guaranteed under Article 19 stands automatically suspended under Article 358. The President is also empowered under Article 359 to suspend, by order, the enforcement of other fundamental rights also, during the period of Emergency.

Some of these fundamental rights are only guaranteed to the citizens of India, while the rights relating to protection of life, freedom or religion, right against exploitation are guaranteed to every person whether he/she is a citizen or an alien to the country. This means that our Constitution draws a distinction between citizens and aliens in the matter of enjoyment of fundamental rights.

The chapter on fundamental rights is not based on the theory of natural or unremunerated rights. The Indian Courts cannot enquire into any fundamental right that is not enumerated in the Constitution.

The fundamental rights can be amended but they cannot be abrogated because that will violate the basic structure of the Constitution.

They expressly seek to strike a balance between written guarantee of individual rights and the collective interests of the community.

The Constitution classifies fundamental rights into six categories:

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

Right to Equality

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 tobe achieved by the law.

Equality before law: Equality before law does not mean an absolute equality of men which is physically impossible. 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.

Equal protection of laws: This clause has been taken verbatim from the XIV 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) 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 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.

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 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, to 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 any 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, caste, 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
- 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

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.

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, i.e. 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 efficiently of work.

Article 16 (4) allows the state to reserve appointments in favour of a 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 than 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats members 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.

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 6 months or both, depending upon the seriousness of the crime.

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. And, 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.

Right to Freedom (Articles 19, 20, 21 and 22)

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

- 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

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. Freedoms 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. It, thus, 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.

As amended by the First and the Sixteenth Amendment Acts, Clause 2 of Article 19(1)(a) entitles the state to impose restrictions 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.

Right of Peaceful Unarmed Assembly

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

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

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

- Sovereignty and integrity of India
- Public order
- Morality

Freedom of Movement and Residence

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 Parliament by law. 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, i.e. public order morality and health.

Freedom of Profession

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 or private citizens.

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.’

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. Violation of the right to personal liberty is not enforceable when it is violated by a private individual, and then the remedy lies in the Constitutional law.

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.

Right to Information

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. 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 this 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.'

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 to 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 24 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 (i.e. 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 3 months. If a person is to be detained for more than 3 months, it can be only in the following cases:

- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within 10 weeks from the date of detention
- Where the person is detained under law made by the Parliament for this

Clause 5 considers two things, namely:

- That the detainee should be supplied with the grounds of the order of detention
- 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 malafide, 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 3 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 7 times, each for a period of 3 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 (COFEPOSA) 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 6 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, try them summarily, 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 the 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.

Right against Exploitation (Articles 23 and 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, e.g. 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, viz. 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 14 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 14 in factories, mines or other difficult employments, e.g. railways or transport services.

Our Parliament has passed necessary legislation and made it a punishable offence.

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 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. 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
- 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 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 of 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.

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 religions, 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.

Right to Constitutional Remedies (Articles 32, 33, 34 and 35)

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, quowarranto or certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights.

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.

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

- To restrain action this is taken without the authority of law, contrary to law, in excess of law

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.

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 inferior court is stopped from continuing the proceedings in that case, and the case is transferred to another court to secure justice.

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.

DIRECTIVE PRINCIPLES OF STATE POLICY

Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realize the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution. These principles reflect Gandhi's constructive programme for socio-economic welfare of the people of India. These constitute an instrument of instructions to the legislatures and the executives at all levels as to how they should exercise their respective powers and aim at attaining the economic, educational and social welfare of the people. Behind them is the sanction of public opinion which is stronger, and more effective than even the sanction of the courts.

Incorporating most of these principles, the framers of the Constitution were primarily influenced by the identical provisions in the Irish Constitution which, in turn, had drawn inspiration from the Spanish Constitution. They were also, to a great extent, influenced by the Charter of the United Nations and the Charter of Human Rights. No less was the inspiration drawn by them from the Constitutions of socialist democracies, particularly that of the USSR.

These directives relate to specific socio-economic objectives, calling upon the state to strive to promote the welfare of the people in all fields, especially in social, economic and political. These directives lay down the lines on which the machinery of the government should function under this Constitution.

These directives fall into three main categories:

- The ideals, especially economic, which the framers of the Constitution directed the state to strive for
- The instructions and directions to the future legislatures and executives as to the manner in which they should exercise their respective powers
- The economic and educational rights which the citizens are authorized to expect from their duly constituted legislatures and executives

The Directive Principles of State Policy, as included in Part IV of the Constitution, have been enumerated under Articles 36 to 51.

These principles aim at the establishment of a welfare state in India committed to the realization of the ideals proclaimed in the Preamble to the Constitution.

Article 36 defines the term state and declares that it has the same meaning in Part IV as it has in Part III. This means that the Constitution directs not only the legislatures and executives of the Union and the states but also the local authorities, like district boards and village panchayats, to implement these principles through their laws, policies and programmes.

Article 37 describes the nature of these principles as follows:

- That these principles shall not be enforceable by any law
- That these principles shall be fundamental in the governance of the country
- That it shall be the duty of the state to apply these principles in making laws

Article 38 declares 'The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life'.

It declares that the social order envisaged for Indian people would be assured not only in the political field, but also in the social and economic fields. As a matter of fact, the state is charged to frame its policies in such a way as to provide necessary elements of growth and adjustment which are essential for a progressive society.

Article 39 descries that the state is directed to ensure various economic rights to the citizens. In the first place, it is to ensure that the citizens, both men and women, should have the right to an adequate means of livelihood.

Secondly, the state is required to so distribute the ownership and control of the material resources of the community as to sub-serve the common good. It is to ensure the operation of economic system that does not result in the concentration of wealth and means of production in the hands of a few. The objective is to prevent the growth of an economic system which may be detrimental to the interest of the community as a whole.

The state is also to secure 'equal pay for both men and women'. The inclusion of this provision was inspired by a similar provision contained in Article 41 of the International Labour Organization and the Seventh Principle of the Universal

Declaration of Human Rights Article 122. The purpose of this clause is to ensure economic equality with regard to the equal proportion of waves with the work.

The state should ensure that the health and strength of workers, men and women, and the tender-aged children are not abused. The state is to ensure that the citizens are not forced by economic necessity to take up jobs which are unsuited to their age and strength. The state is also to protect childhood and youth against exploitation and against moral and material abandonment.

Article 39(A) has been inserted to enjoin the state to provide ‘free’ aid to the poor and to take other steps to ensure equal justice to all, which is offered by the Preamble.

Article 40 directs the state to organize village panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-government. For the implementation of the provisions of this Article, Seventy-Third Amendment Act was passed vesting various degrees of power of self-government and civil and criminal justice in the hands of the panchayats. Owing to the lack of proper education, narrow-mindedness and local politics, the system of panchayat administration has not been a big success.

Article 41 deals with the economic and educational rights of the citizen. It directs the state to ensure them the right to work, the right to education and the right to public assistance in case of unemployment, old-age, sickness or disablement.

Article 42 directs the state to make provisions for securing just and human conditions of work, and for maternity relief. Adequate provisions have been made by the state through Labour Laws and Factories Acts and the rules of service for the employees of the Union and the states.

Article 43 also deals with the rights of the citizens. It directs the state to ensure all workers, agricultural, industrial or otherwise the following rights:

- Right to work
- Right to a living wage

Right to such conditions of work ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities

Through Forty-Second Amendment Article 43(a) has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertaking. This is a positive step in advancement of socialism in the sense of economic justice.

Article 44 directs the state to endeavour to secure for the citizens a uniform code throughout the territory of India. The purpose of this Article is to enable the legislature to make an attempt to unify the 'personal law' of the country. Under Eighty-Sixth Amendment Act 2002, Article 45 was amended to provide early childhood care and education to children below the age of 6 years.

Article 46 directs the state to promote the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections. It also directs the state to protect these people from social injustice and from all forms of exploitation. For this purpose, seats have been reserved for them in all educational institutions, and a fairly wide range of scholarships have also been provided for them.

Article 47 can be split into two parts:

- The direction to the state to raise the level of nutrition and the standard of living of its people and the improvement of their health
- Direction to the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health, except for medical purposes

The subject matter of Article 48 centres round the preservation and improvement of cattle and the prohibition of cow slaughter. The protection conferred by this Article extends only to cows, calves and the other animals which are capable of yielding milk or being used for some work.

Article 48(a) has been inserted, through Forty-Second Amendment, in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 49 directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The state is to ensure

that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported. The aim of this Article is to preserve the nation's cultural heritage.

Article 50 directs the state to take steps to separate the judiciary from the executive in public services of the state. The separation of judiciary from the executive would eliminate many evils, which follow from the combination of two positions in the same person.

Article 51 directs the state to so shape its foreign policy as to attain the

following objectives:

- Promotions of international peace and security
- Maintenance of just and honourable relations between nations
- Respect for international law and treaty obligations in the dealings of organized people with one another
- Settlement of international disputes by arbitration

India's foreign policy is essentially based on these principles. Nehru's famous formulation of 'Panchsheel', the five principles of peaceful co-existence, have been accepted by most of the civilized nations. Based on Constitutional provisions, these principles are:

- Mutual respect for each other's territorial integrity and sovereignty
- Non-aggression
- Non-interference in each other's internal affairs
- Equality and mutual benefit
- Peaceful co-existence

Relationship between Fundamental Rights and Directive Principles

Fundamental rights incorporated in Part III and the directive principles in Part IV form an organic unit.

Article 13 provides that any law passed in violation of Part III of the Constitution dealing with fundamental rights is void to the extent of such violation. Initially the

Supreme Court, however, adopted a legal attitude by declaring that the directive principles cannot abridge, curtail or stand in the way of the fundamental rights. The court, thus, held that the former are subordinated to the latter. But later on the judiciary has substantially modified its attitude towards directive principles.

It started taking note of directive principles in determining the scope of fundamental rights. The directives now command more respect from the judiciary than they initially did.

Article 37 makes the Directive Principles of the State Policy non-justifiable. In case of the state of Madras vs. Champakam Dorairajan, 1951, the Court laid down the following principles in describing the relationship of the directive principles with fundamental rights:

- The 'Directive Principles of State Policy' cannot override fundamental rights, because the former are unenforceable under Article 37 while the latter are enforceable under Article 32.
- Directive principles cannot abridge, curtail or stand in the way of fundamental rights, because they are sacrosanct and supreme.
- Directive principles have to conform to, and run as subsidiary to fundamental rights.
- The state action under directive principles is subject to legislative and executive powers, i.e. a directive principle can be implemented only by the agency which is authorized to make law on that subject.

If the power of the state with respect to the subject relating to directive principles is limited by the Constitution, the state cannot exceed it. Later, the Court accepted that fundamental rights could be amended by the prescribed procedure and thereby directive principles can be implemented. In this period, the court evolves 'the Principles of Harmonious construction'. This meant that ordinarily the directive principles were subordinate to the fundamental rights and the state could not infringe on fundamental rights of any individual even on the plea of protecting the weaker sections of society as mentioned in the chapter on directive principles. The state, however, could put restrictions on fundamental rights in order to implement directive principles or otherwise by making amendments in the Constitution. This attitude was

reflected through Sajjan Singh vs. State of Rajasthan, 1967, when the court held that directive principles are also fundamental in the government of the country and provisions of Part III must be interpreted harmoniously with these principles.

Fundamental Duties (Article 51(a))

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 6 and 14 years (this clause was inserted through Eighty-Sixth Amendment Act 2002)

Insertion of these Fundamental Duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, the Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their violation. According to 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.

Major Constitutional Amendments

1st Amendment (1951):

Empowered the state to create special provisions for the advancement of socially and economically backward classes.

Ensured the protection of laws related to the acquisition of estates and similar matters.

Introduced the Ninth Schedule to shield land reform laws and other included legislation from judicial review.

Added Articles 31A and 31B after Article 31.

Imposed three additional grounds for restricting freedom of speech and expression: public order, friendly relations with foreign states, and incitement to an offence.

It also rendered these restrictions ‘reasonable’ and, therefore, subject to judicial scrutiny.

Clarified that state trading or nationalization of any trade or business by the state cannot be deemed invalid on the grounds of infringing the right to trade or business.

Second Amendment Act, 1952

The scale of representation in the Lok Sabha was readjusted stating that 1 member can represent even more than 7.5 lakh people.

7th Amendment (1956):

The 2nd and 7th Schedules were amended to implement significant changes:

The classification of states into four categories—Part A, B, C, and D was abolished, and states were reorganized into 14 states and 6 union territories.

The jurisdiction of high courts was extended to include union territories.

Provisions were made for the establishment of a common high court to serve two or more states.

Guidelines were introduced for the appointment of additional and acting judges in high courts.

Ninth Amendment Act, 1960

Adjustments to Indian Territory as a result of an agreement with Pakistan (Indo-Pak Agreement 1958):

Cession of Indian territory of Berubari Union (West Bengal) to Pakistan

Tenth Amendment Act, 1961

Dadra, Nagar, and Haveli incorporated in the Union of Indian as a Union Territory

12th Amendment Act, 1962

Goa, Daman and Diu incorporated in the Indian Union as a Union Territory

13th Amendment Act, 1962

Nagaland was formed with special status under Article 371A

14th Amendment Act, 1962

Pondicherry incorporated into the Indian Union

Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Puducherry were provided the legislature and council of ministers

19th Amendment Act, 1966

System of Election Tribunals was abolished and High Courts were given the power to hear the election petitions

21st Amendment Act, 1967

Sindhi language was language into 8th Schedule of Indian Constitution

24th Amendment Act, 1971

The President’s assent to Constitutional Amendment Bill was made compulsory

25th Amendment Act, 1971

Fundamental Right to Property was curtailed

26th Amendment Act, 1971

Privy Purse and privileges of former rulers of princely states were abolished

31st Amendment Act, 1972

Lok Sabha seats were increased from 525 to 545

35th Amendment Act, 1974

The status of Sikkim as protectorate state was terminated and Sikkim was given the status of ‘Associate State’ of India

36th Amendment Act, 1975

Sikkim was made a full-fledged state of India

40th Amendment Act, 1976

Parliament was empowered to specify from time to time the limits of the territorial waters, the continental shelf, the exclusive economic zone (EEZ) and the maritime zones of India.

42nd Amendment (1976):

It comprised 59 clauses and introduced numerous changes, earning it the title of a “Mini Constitution.”

Incorporated three new terms into the Preamble: socialist, secular, and integrity.

Introduced Fundamental Duties under a new Part IV-A.

Mandated that the President must act in accordance with the advice of the cabinet.

Declared constitutional amendments beyond the scope of judicial review.

Stipulated that laws enacted to implement Directive Principles of State Policy cannot be invalidated for infringing upon certain Fundamental Rights.

Added three additional Directive Principles of State Policy.

Extended the tenure of the Lok Sabha and State Legislative Assemblies from five years to six years.

Facilitated the establishment of an All India Judicial Service.

Enabled the creation of administrative tribunals and other specialized tribunals, introducing Part XIV-A to the Constitution.

44th Amendment (1978):

Restored the original tenure of the Lok Sabha and State Legislative Assemblies to five years.

Reinstated provisions regarding the quorum in Parliament and state legislatures.

Removed references to the British House of Commons in sections related to parliamentary privileges.

Provided constitutional protection for publishing true reports of proceedings in Parliament and state legislatures in newspapers.

Empowered the President to return the cabinet's advice for reconsideration, although the reconsidered advice is binding on the President.

Removed the provision that made the satisfaction of the President, Governors, and Administrators final in the issuance of ordinances.

Restored some of the judicial powers of the Supreme Court and High Courts.

Replaced the term ‘internal disturbance’ with ‘armed rebellion’ in provisions concerning a national emergency.

Required the President to declare a national emergency only upon the written recommendation of the cabinet.

Introduced procedural safeguards for imposing a national emergency and President's Rule.

Deleted the Right to Property from the list of Fundamental Rights, making it a legal right instead.

Ensured that Articles 20 and 21 cannot be suspended during a national emergency.

Removed provisions that denied courts the authority to adjudicate election disputes involving the President, Vice-President, Prime Minister, and Speaker of the Lok Sabha.

52nd Amendment (1985):

Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a new 10th Schedule containing the details in this regard.

61st Amendment (1988):

Reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assembly elections.

65th Amendment Act, 1990

Multi-member National Commission for SC/ST was established and the office of a special officer for SCs and STs was removed.

Candidates can read about these National Commissions from the links provided below:

National Commission for SC

National Commission for ST

69th Amendment Act, 1991

Union Territory of Delhi was given the special status of 'National Capital Territory of Delhi.'

70-member legislative assembly and a 7-member council of ministers were established Delhi

71st Amendment Act, 1992

Konkani, Manipuri and Nepali languages were included in the Eighth Schedule of the Constitution.

Total number of official languages increased to 18

73rd and 74th Amendments (1992):

73rd Amendment Act:

Panchayati Raj Institution was constitutionalized through this amendment.

This act has added a new Part-IX to the Constitution of India and consists of provisions from Articles 243 to 243 O.

In addition, the act has also added a new 11th Schedule to the Constitution and contains 29 functional items of the panchayats.

74th Amendment Act:

Urban local governments were constitutionalized through the 74th Amendment Act during the regime of P.V. Narsimha Rao's government in 1992. It came into force on 1st June 1993.

It added Part IX -A and consists of provisions from Articles 243-P to 243-ZG.

In addition, the act also added the 12th Schedule to the Constitution. It contains 18 functional items of Municipalities.

86th Amendment (2002):

Made elementary education a fundamental right under the Article 21A

Changed the subject matter of Article 45 in Directive Principles

Added a new fundamental duty under Article 51-A

88th Amendment Act, 2003

Provision of Service Tax was made under Article 268-A – Service tax levied by Union and collected and appropriated by the Union and the States

92nd Amendment Act, 2003

Bodo, Dogri (Dongri), Maithili and Santhali were added in the Eighth schedule

Total official languages were increased from 18 to 22

95th Amendment Act, 2009

Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years i.e., up to 2020 (Article 334).

97th Amendment Act, 2011

Co-operative Societies were granted constitutional status:

Right to form cooperative societies made a fundamental right (Article 19)

A new Directive Principle of State Policy (Article 43-B) to promote cooperative societies

A new part IX-B was added in the constitution for cooperative societies

100th Amendment Act, 2015

To pursue land boundary agreement 1974 between India and Bangladesh, exchange of some enclave territories with Bangladesh mentioned

Provisions relating to the territories of four states (Assam, West Bengal, Meghalaya) in the first schedule of the Indian Constitution, amended.

101st Amendment (2016):

It allows both the centre and states to levy the Goods and Services Tax (GST).

Before the 2016 amendment, taxation powers were divided between the centre and states.

102nd Amendment Act, 2018

Constitutional Status was granted to National Commission for Backward Classes (NCBC)

103rd Amendment (2019):

For the first time in independent India, it introduced reservations for the Economically Weaker Sections (EWS).

The amendment to Article 16 provides a 10% reservation for EWS in public employment.

104th Amendment (2020):

The 104th Constitutional Amendment Act, enacted by the Indian Parliament in 2020, discontinued the reserved seats for the Anglo-Indian community in the Lok Sabha and State Legislative Assemblies, while extending the reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) for an additional ten years.

106th Amendment (2023):

The Constitution (106th Amendment) Act, 2023, reserves one-third of all seats for women in Lok Sabha, State legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs.

The reservation will be effective after the publication of the census conducted following the Act's commencement and endures for a 15-year period, with potential extension determined by parliamentary action.

UNIT III

INDIAN FEDERALISM

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the national government and the regional governments. By definition, a unitary government is one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government. A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently. Britain, France, Japan, China, Italy, Belgium, Norway, Sweden, Spain and so on have the unitary model of government while the US, Switzerland, Australia, Canada, Russia, Brazil, Argentina and so on have the federal model of government. In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.

The specific features of the federal and unitary governments are mentioned below in a comparative manner:

The term ‘federation’ is derived from a Latin word foedus which means ‘treaty’ or ‘agreement’. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units. The units of a federation are known by various names like states (as in US) or cantons (as in Switzerland) or provinces (as in Canada) or republics (as in Russia).

A federation can be formed in two ways, that is, by way of integration or by way of disintegration. In the first case, a number of militarily weak or economically backward states (independent) come together to form a big and a strong union, as for example, the US. In the second case, a big unitary state is converted into a federation by granting autonomy to the provinces to promote regional interest (for example, Canada). The US is the first and the oldest federation in the world. It was formed in 1787 following the American Revolution (1775–83). It comprises 50 states (originally 13 states) and is taken as the model of federation. The Canadian Federation, comprising 10 provinces (originally 4 provinces) is also quite old–formed in 1867.

The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons–the large size of the country and its socio-cultural diversity. They realized that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.

However, the term 'federation' has no where been used in the Constitution. Instead, Article 1 of the Constitution describes India as a 'Union of States'. According to Dr. B.R. Ambedkar, the phrase 'Union of States 'has been preferred to 'Federation of States 'to indicate two things:

(i) the Indian federation is not the result of an agreement among the states liketheAmericanfederation;and(ii)thestateshavenorighttosecedefrom the federation. The federation is union because it is indestructible.

The Indian federal system is based on the 'Canadian model' and not on the 'American model'. The 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre. The Indian federation resembles the Candian federation (i) in its formation (i.e., by way of disintegration); (ii) in its preference to the term 'Union' (the Canadian federation is also called a 'Union'); and (iii) in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

FEDERAL FEATURES OF THE CONSTITUTION

The federal features of the Constitution of India are explained below:

1. Dual Polity

The Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with the matters of national importance like defense, foreign affairs, currency, communication and so on. The state governments, on the other hand, look after the matters of regional and local importance like public order, agriculture, health, local government and so on.

2. Written Constitution

The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. At present (2019), it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules. It specifies the structure, organization, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

3. Division of Powers

The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 98 subjects (originally 97), the State List 59 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (ie, which are not mentioned in any of the three lists) are given to the Centre.

4. Supremacy of the Constitution

The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must conform to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high court's through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

5. Rigid Constitution

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre-state relations and judicial organisation) can be amended only by the joint action of the Central and state

governments. Such provisions require for their amendment a special majority of the Parliament and also an approval of half of the state legislatures.

6. **Independent Judiciary**

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.

7. **Bicameralism**

The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

UNITARY FEATURES OF THE CONSTITUTION

Besides the above federal features, the Indian Constitution also possesses the following unitary or non-federal features:

1. **Strong Centre**

The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the US, they are vested in the states. Thus, the Constitution has made the Centre very strong.

2. **States not in destructible**

Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.

3. **Single Constitution**

Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard was the case of Jammu and Kashmir which had its own (state) Constitution.

4. **Flexibility of the Constitution**

The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.

5. **No Equality of State Representation**

The states are given representation in the Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the UpperHouse is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

6. **Emergency Provisions**

The Constitution stipulates three types of emergencies–national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.

7. Single Citizenship

In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or resident joy the same rights all over the country. The other federal states like US, Switzerland and Australia have dual citizenship, that is, national citizenship as well as state citizenship.

8. Integrated Judiciary

The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.

9. All-India Services

In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.

10. Integrated Audit Machinery

The Comptroller and Auditor-General of India audit the accounts of not only the Central government but also those of the states. But, his appointment and removal is

done by the president without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.

11. Parliament's Authority Over State List

Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.

12. Appointment of Governor

The governor, who is the head of the state, is appointed by the President. He holds office during the pleasure of the President. He also acts as an agent of the Centre. Through him, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.

13. Integrated Election Machinery

The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But, this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.

14. Veto Over State Bills

The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills.

But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.

CRITICALE VALUATION OF THE FEDERAL SYSTEM

From the above, it is clear that the Constitution of India has deviated from the traditional federal systems like US, Switzerland and Australia and incorporated a large number of unitary or non-federal features, tilting the balance of power in favour of the Centre. This has prompted the Constitutional experts to challenge the federal character of the Indian Constitution. Thus, KC Where described the Constitution of India as “quasi-federal”. He remarked that “Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features.”

According to K Santhanam, the two factors have been responsible for increasing the unitary bias (tendency of centralisation) of the Constitution. These are: (i) the dominance of the Centre in the financial sphere and the dependence of the states upon the Central grants; and (ii) the emergence of a powerful erstwhile planning commission which controlled the developmental process in the states6a. He observed: “India has practically functioned as a unitary state though the Union and the states have tried to function formally and legally as a federation.”

However, there are other political scientists who do not agree with the above descriptions. Thus, Paul Apple by characterises the Indian system as “extremely federal”. Morris Jones termed it as a “bargaining federalism”. Ivor Jennings has described it as a “federation with a strong centralising tendency”. He observed that “the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth”. Alexandrowicz stated that “India is a case sui generis (i.e., unique in character). Granville Austin called the Indian federalism as a “cooperative federalism”. He said that though the Constitution of India has created a strong Central government, it has not made the state governments weak and has not reduced them to the level of administrative agencies for the execution of policies of the Central government. He described the Indian federation as “a new kind of federation to meet India’s peculiar needs”.

On the nature of Indian Constitution, Dr. B.R. Ambedkar made the following observation in the Constituent Assembly: “The Constitution is a Federal Constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, no rare the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the Constitution; both derive their respective authority from the Constitution.” He further observed: “Yet the Constitution avoids the tight mould of federalism and could be both unitary as well as federal according to the requirements of time and circum-stances”. While replying to the criticism of over-centralization in the Constitution, he stated: “A serious complaint is made on the ground that there is too much centralisation and the states have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relations between the Centre and the states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the states not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The states are in no way dependent upon the Centre for their legislative or executive authority. The states and the Centre are coequal in this matter. It is difficult to see how such a Constitution can be called centralism. It is, therefore, wrong to say that the states have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary”.

In Bommai case (1994), the Supreme Court laid down that the Constitution is federal and characterized federalism as its ‘basic feature’. It observed: “The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-a-vis the states does not mean that the states are mere appendages of the Centre. The states have an independent constitutional existence. They are not satellites or agents of the Centre. Within the sphere allotted to them, the states are supreme. The fact that during emergency and in certain other eventualities their powers are overridden or invaded by the Centre is not destructive of the essential federal feature of the Constitution. They are exceptions and the exceptions are not a rule. Let it be said that the federalism in the Indian Constitution is not a matter of administrative

convenience, but one of principle–the outcome of our own process and recognition of the ground realities".

In fact, the federalism in India represents a compromise between the following two conflicting considerations:

(i) Normal division of powers under which states enjoy autonomy within their own spheres; and

(ii) Need for national integrity and a strong Union government under exceptional circumstances.

The following trends in the working of Indian political system reflects its federal spirit: (i) Territorial disputes between states, for example, between Maharashtra and Karnataka over Belgaum; (ii)Disputes between states over sharing of river water, for example, between Karnataka and Tamil Nadu over Cauvery Water; (iii) The emergence of regional parties and their coming to power in states like Andhra Pradesh, Tamil Nadu, etc.; (iv) The creation of new states to fulfill the regional aspirations, for example, Mizoram or Jharkhand; (v) Demand of the states for more financial grants from the Centre to meet their developmental needs; (vi) Assertion of autonomy by the states and their resistance to the interference from the Centre; (vii) Supreme Court's imposition of several procedural limitations on the use of Article 356 (President's Rule in the States) by the Centre.

Centre-State Relations

The Constitution of India, being federal in structure, divides all powers (legislative, executive and financial) between the Centre and the states. However, there is no division of judicial power as the Constitution has established an integrated judicial system to enforce both the Central laws as well as state laws.

Though the Centre and the states are supreme in their respective fields, the maximum harmony and coordination between them is essential for the effective operation of the federal system. Hence, the Constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states.

The Centre-state relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations.

LEGISLATIVE RELATIONS

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states. Besides these, there are some other articles dealing with the same subject.

Like any other Federal Constitution, the Indian Constitution also divides the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation. Further, the Constitution provides for the parliamentary legislation in the state field under five extraordinary situations as well as the centre's control over state legislation in certain cases. Thus, there are four aspects in the Centre-state's legislative relations, viz.,

- Territorial extent of Central and state legislation;
- Distribution of legislative subjects;
- Parliamentary legislation in the state field; and
- Centre's control over state legislation.

1. Territorial Extent of Central and state Legislation

The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states in the following way:

(i) The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories ,and any other area for the time being included in the territory of India.

(ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.

(iii) The Parliament one can make ‘extra territorial legislation’. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

However, the Constitution places certain restrictions on the plenary territorial jurisdiction of the Parliament. In other words, the laws of Parliament are not applicable in the following areas:

(i) The President can make regulations for the peace, progress and Good government of the five Union Territories–the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Ladakh. A regulation so made has the same force and effect as an act of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.

(ii) The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.

(iii) The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

2. **Distribution of Legislative Subjects**

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule:

(i) The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 98 subjects (originally 97 subjects) like defense, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.

(ii) The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 59 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.

(iii) Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (originally 47 subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is,(a)education,(b)forests,(c)weights and measures,

(d) Protection of wild animals and birds, and (e) administration of justice; constitution and organization of all courts accept the Supreme Court and the high courts.

(iv) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state even though that matter is one which is enumerated in the State List. This provision has reference to the Union Territories or the Acquired Territories (if any).

(v) The 101st Amendment Act of 2016 has made a special provision with respect to goods and services tax. Accordingly, the Parliament and the state legislature have power to make laws with respect to goods and services tax imposed by the Union or by the State. Further, the parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of inter-state trade or commerce.

(vi) The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.

From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.

In US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration– Federal and Provincial, and the residuary powers are vested in the Centre.

The Government of India Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the governor-general of India. In this respect, India follows the Canadian precedent.

The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.

In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the Central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the president and has received his assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

3. Parliamentary Legislation in the State Field

The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

When Rajya Sabha Passes a Resolution

If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws with respect to goods and services tax a or a matter in the State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force.

This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.

During a National Emergency

The Parliament acquires the power to legislate with respect to goods and services tax3bor matters in the State List, while a proclamation of national emergency is in operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate.

Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.

When States Make a Request

When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states.

The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.

Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.

To Implement International Agreements

The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfill its international obligations and commitments.

Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS.

During President's Rule

When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the president's rule. This means that the period for which such a law remains in force is not coterminous with the duration of the President's rule. But, such a law can be repealed or altered or re-enacted by the state legislature.

4. Centre's Control over State Legislation

Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways:

(i) The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The president enjoys absolute veto over them.

(ii) Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president. (For example, the bills imposing restrictions on the freedom of trade and commerce).

(iii) The Centre can direct the states to reserve money bills and other financial bills passed by the state legislature for the President's consideration during a financial emergency.

From the above, it is clear that the Constitution has assigned a position of superiority to the Centre in the legislative sphere. In this context, the Sarkaria Commission on Centre-State Relations (1983–88) observed: "The rule of federal supremacy is a technique to avoid absurdity, resolve conflict and ensure harmony between the Union and state laws. If this principle of union supremacy is excluded, It is not difficult to imagine its deleterious results.Therewillbeeverypossibilityofourtwo-tierpoliticalsystembeing stultified by interference, strife, legal chaos and confusion

caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-state concern will be stymied. The federal principle of unity in diversity will be very much a casualty. This rule of federal supremacy, therefore, is indispensable for the successful functioning of the federal system".

ADMINISTRATIVE RELATIONS

Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states. In addition, there are various other articles pertaining to the same matter.

Distribution of Executive Powers

The executive power has been divided between the Centre and the states on the lines of the distribution of legislative powers, except in few cases. Thus, the executive power of the Centre extends to the whole of India: (i) to the matters on which the Parliament has exclusive power of legislation (i.e., the subjects enumerated in the Union List); and (ii) to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement. Similarly, the executive power of a state extends to its territory in respect of matters on which the state legislature has exclusive power of legislation (i.e., the subjects enumerated in the State List).

In respect of matters on which both the Parliament and the state legislatures have power of legislation (i.e., the subjects enumerated in the Concurrent List), the executive power rests with the states except when a Constitutional provision or a parliamentary law specifically confers it on the Centre. Therefore, a law on a concurrent subject, though enacted by the Parliament, is to be executed by the states except when the Constitution or the Parliament has directed otherwise.

Obligation of States and the Centre

The Constitution has placed two restrictions on the executive power of the states in order to give ample scope to the Centre for exercising its executive powerinanunrestrictedmanner.Thus,theexecutivepowerofeverystateis to be exercised in such a way (a) as to ensure compliance with the laws made by the Parliament and any existing law which apply in the state ;and

(b) as not to impede or prejudice the exercise of executive power of the Centre in the state. While the former lays down a general obligation upon the state, the latter imposes a specific obligation on the state not to hamper the executive power of the Centre.

In both the cases, the executive power of the Centre extends to giving of such directions to the state as are necessary for the purpose. The sanction behind these directions of the Centre is coercive in nature. Thus, Article365 says that where any state has failed to comply with (or to give effect to) any directions given by the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. It means that, in such a situation, the President's rule can be imposed in the state under Article 356.

Centre's Directions to the States

In addition to the above two cases, the Centre are empowered to give directions to the states with regard to the exercise of their executive power in the following matters:

(i) The construction and maintenance of means of communication (declared to be of national or military importance) by the state;

(ii) The measures to be taken for the protection of the railways within the state;

(iii) The provision of adequate facilities for instruction in the mother- tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and

(iv) The drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state.

The coercive sanction behind the Central directions under Article 365 (mentioned above) is also applicable in these cases.

Mutual Delegation of Functions

The distribution of legislative powers between the Centre and the states is rigid. Consequently, the Centre cannot delegate its legislative powers to the states and a single state cannot request the Parliament to make a law on a state subject. The distribution of executive power in general follows the distribution of legislative powers. But, such a rigid division in the executive sphere may lead to occasional conflicts between the two. Hence, the Constitution provides for inter-government delegation of executive functions in order to mitigate rigidity and avoid a situation of deadlock.

Accordingly, the President may, with the consent of the state government, entrust to that government any of the executive functions of the Centre. Conversely, the governor of a state may, with the consent of the Central government, entrust to that government any of the executive functions of the state.This mutual delegation of administrative functions may be conditional or unconditional.

The Constitution also makes a provision for the entrustment of the executive functions of the Centre to a state without the consent of that state. But, in this case, the delegation is by the Parliament and not by the president. Thus, a law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorize the conferring of powers and imposition of duties by the Centre upon a state (irrespective of the consent of the state concerned). Notably, the same thing cannot be done by the state legislature.

From the above, it is clear that the mutual delegation of functions between the Centre and the state can take place either under an agreementor by a legislation. While the Centre can use both the methods, a state can use only the first method.

Cooperation Between the Centre and states

The Constitution contains the following provisions to secure cooperation and coordination between the Centre and the states:

(i) The Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.

(ii) The President can establish (under Article 263) an Inter-State Council to investigate and discuss subject of common interest between the Centre and the states. Such a council was set up in 1990.7

(iii) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state.

(iv) The Parliament can appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to the interstate freedom of trade, commerce and intercourse. But, no such authority has been appointed so far.

All-India Services

Like in any other federation, the Centre and the states also have their separate public services called as the Central Services and the State Services respectively. In addition, there are all-India services–IAS, IPS and IFS. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns. But, they are recruited and trained by the Centre.

These services are controlled jointly by the Centre and the states. The ultimate control lies with the Central government while the immediate control vests with the state governments.

In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognized by the Constitution as All-India Services. In 1966, the Indian Forest Service (IFS) was created as the third All-India Service. Article 312 of the Constitution authorizes the Parliament to create new All-India Services on the basis of a Rajya Sabha resolution to that effect.

Each of the three all-India services, irrespective of their division among different states, forms a single service with common rights and status and uniform scales of pay throughout the country.

Though the all-India services violate the principle of federalism under the Constitution by restricting the autonomy and patronage of the states, they are supported on the ground that (i) they help in maintaining high standard of administration in the Centre as well as in the states; (ii) they help to ensure uniformity of the administrative system throughout the country; and

(iii) They facilitate liaison, cooperation, coordination and joint action on the issues of common interest between the Centre and the states.

While justifying the institution of all-India services in the Constituent Assembly, Dr. B.R. Ambedkar observed that: “The dual polity which is inherent in a federal system is followed in all federations by a dual service. In all federations, there is a Federal Civil Service and a State Civil Service.

The Indian federation, though a dual polity, will have a dual service, but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. There can beano doubt that the standard of administration depends upon the caliber of the civil servants who are appointed to the strategic posts. The Constitution provides that without depriving the states of their rights to form their own civil services, there shall be an all-India service, recruited on an all India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to those strategic posts throughout the Union”.8

Public Service Commissions

In the field of public service commissions, the Centre-state relations are as follows:

(i) The Chairman and members of a state public service commission, though appointed by the governor of the state, can be removed only by the President.

(ii) The Parliament can establish a Joint State Public Service Commission (JSPSC) for two or more states on the request of the state legislatures concerned. The chairman and members of the JSPSC are appointed by the president.

(iii) The Union Public Service Commission (UPSC) can serve the needs of a state on the request of the state governor and with the approval of the President.

(iv) The UPSC assists the states (when requested by two or more states) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

Integrated Judicial System

Though India has a dual polity, there is no dual system of administration of justice. The Constitution, on the other hand, established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. This is done to eliminate diversities in the remedial procedure.

The judges of a state high court are appointed by the president in consultation with the Chief Justice of India and the governor of the state. They can also be transferred and removed by the president.

The Parliament can establish a common high court for two or more states. For example, Maharashtra and Goa or Punjab and Haryana have a common high court.

Relations During Emergencies

(i) During the operation of a national emergency(underArticle352), the Centre becomes entitled to give executive directions to a state on ‘any’ matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

(ii) When the President’s Rule is imposed in a state (under Article 356), the President can assume to himself the functions of the state government and powers vested in the Governor or any other executive authority in the state.

(iii) During the operation of a financial emergency (under Article 360), the Centre can direct the states to observe canons of financial propriety and can give other necessary directions including the reduction of salaries of persons serving in the state.

Other Provisions

The Constitution contains the following other provisions which enable the Centre to exercise control over the state administration:

(i) Article 355 imposes two duties on the Centre: (a) to protect every state against external aggression and internal disturbance; and (b) to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.

(ii) The governor of a state is appointed by the president. He holds office during the pleasure of the President. In addition to the Constitutional head of the state, the governor acts as an agent of the Centre in the state. He submits periodical reports to the Centre about the administrative affairs of the state.

(iii) The state election commissioner, though appointed by the governor of the state, can be removed only by the President.

Extra-Constitutional Devices

In addition to the above-mentioned constitutional devices, there are extra-constitutional devices to promote cooperation and coordination between the Centre and the states. These include a number of advisory bodies and conferences held at the Central level.

The non-constitutional advisory bodies include the NITI Ayog (which succeeded the planning commission), the National Integration Council, the Central Council of Health and Family Welfare, the Central Council of Local Government, the Zonal Councils, the North-Eastern Council, the Central Council of Indian Medicine, the Central

Council of Homoeopathy, the Transport Development Council, the University Grants Commission and so on.

The important conferences held either annually or otherwise to facilitate Centre state consultation on a wide range of matters are as follows: (i) The governors' conference (presided over by the President). (ii) The chief ministers' conference (presided over by the prime minister). (iii) The chief secretaries' conference (presided over by the cabinet secretary). (iv) The conference of inspector-general of police. (v)The chief justices' conference (presided over by the chief justice of India). (vi) The conference of vice- chancellors. (vii) The home ministers' conference (presided over by the Central home minister). (viii) The law ministers' conference (presided over by the Central law minister).

FINANCIAL RELATIONS

Articles 268 to 293 in Part XII of the Constitution deal with Centre-state financial relations. Besides these, there are other provisions dealing with the same subject. These together can be studied under the following heads:

Allocation of Taxing Powers

The Constitution divides the taxing powers between the Centre and the states in the following way:

- The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List (which are 13 in number).

- The state legislature has exclusive power to levy taxes on subjects enumerated in the State List (which are 18 in number).

- There are no tax entries in the Concurrent List. In other words, the concurrent jurisdiction is not available with respect to tax legislation. But, the 101st Amendment Act of 2016 has made an exception by making a special provision with respect to goods and services tax. This Amendment has conferred concurrent power upon Parliament and State Legislatures to make laws governing goods and services tax.

• The residuary power of taxation (that is, the power to impose taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax and expenditure tax.

The Constitution also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied and collected. For example, the income-tax is levied and collected by the Centre but its proceeds are distributed between the Centre and the states.

Further, the Constitution has placed the following restrictions on the taxing powers of the states:

(i) A state legislature can impose taxes on professions, trades, callings and employments. But, the total amount of such taxes payable by any person should not exceed ₹2,500 per annum.

(ii) A state legislature is prohibited from imposing a tax on the supply of goods or services or both in the following two cases:(a)where such supply takes place outside the state; and (b) where such supply takes place in the course of import or export. Further, the Parliament is empowered to formulate the principles for determining when a supply of goods or services or both takes place outside the state, or in the course of import or export.

(iii) A state legislature can impose tax on the consumption or sale of electricity. But, no tax can be imposed on the consumption or sale of electricity which is (a) consumed by the Centre or sold to the Centre; or (b) consumed in the construction, maintenance or operation of any railway by the Centre or by the concerned railway company or sold to the Centre or the railway company for the same purpose.

(iv) A state legislature can impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by Parliament for regulating or developing any inter-state river or river valley. But, such a law, to be effective, should be reserved for the president’s consideration and receive his assent.

Distribution of Tax Revenues

The 80th Amendment Act of 2000 and the 101st Amendment Act of 2016 have introduced major changes in the scheme of the distribution of tax revenues between the centre and the states.

The 80th Amendment was enacted to give effect to the recommendations of the 10th Finance Commission. The Commission recommended that out of the total income obtained from certain central taxes and duties, 29% should go to the states. This is known as the 'Alternative Scheme of Devolution' and came into effect retrospectively from April 1, 1996. This amendment has brought several central taxes and duties like Corporation Tax and Customs Duties at par with Income Tax (taxes on income other than agricultural income) as far as their constitutionally mandated sharing with the states is concerned.

The 101st Amendment has paved the way for the introduction of a new tax regime (i.e., goods and services tax - GST) in the country. Accordingly, the Amendment conferred concurrent taxing powers upon the Parliament and the State Legislatures to make laws for levying GST on every transaction of supply of goods or services or both. The GST replaced a number of indirect taxes levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The Amendment provided for subsuming of various central indirect taxes and levies such as (i) Central Excise Duty, (ii) Additional Excise Duties, (iii) Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, (iv) Service Tax, (v) Additional Customs Duty commonly known as Countervailing Duty, (vi) Special Additional Duty of Customs, and (vii) Central Surcharges and Cases so far as they related to the supply of goods and services. Similarly, the Amendment provided for subsuming of (i) State Value Added Tax / Sales Tax, (ii) Entertainment Tax (other than the tax levied by the local bodies), (iii) Central Sales Tax (levied by the Centre and collected by the States), (iv) Octroi and Entry Tax, (v) Purchase Tax, (vi) Luxury Tax, (vii) Taxes on lottery, betting and gambling, and (viii) State Surcharges and Cases in so far as they related to the supply of goods and services. Further, the Amendment deleted Article 268-A as well as Entry 92-C in the Union List, both were dealing with service tax. They were added earlier by the 88thAmendment Act of 2003. The service tax was levied by the Centre but collected and appropriated by both the Centre and the States.

After the above two amendments (i.e., 80thAmendment and 101stAmendment), the present position with respect to the distribution of tax revenues between the centre and the states are as follows:

A. Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268): This category includes the stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.

The proceeds of these duties levied within any state do not form a part of the Consolidated Fund of India, but are assigned to that state.

B. Taxes Levied and Collected by the Centre but Assigned to the States (Article 269): The following taxes fall under this category:

(i) Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce.

(ii) Taxes on the consignment of goods in the course of inter-state trade or commerce.

The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in accordance with the principles laid down by the Parliament.

C. Levy and Collection of Goods and Services Tax in Course of Inter- State Trade or Commerce (Article269-A):The Goods and Services Tax (GST) on supplies in the course of inter-state trade or commerce are levied and collected by the Centre. But, this tax is divided between the Centre and the States in the manner provided by Parliament on the recommendations of the GST Council. Further, the Parliament is also authorized to formulate the principles for determining the place of supply, and when a supply of goods or services or both takes place in the course of inter-state trade or commerce.

D. Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270): This category includes all taxes and duties referred to in the Union List except the following:

(i) Duties and taxes referred to in Articles 268, 269 and 269-A (mentioned above);

(ii) Surcharge on taxes and duties referred to in Article 271 (mentioned below); and

(iii) Any cess levied for specific purposes.

The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

E. Surcharge on Certain Taxes and Duties for Purposes of the Centre (Article271): The Parliament can at any time levy the surcharges on taxes and duties referred to in Articles 269 and 270 (mentioned above). The proceeds of such surcharges go to the Centre exclusively. In other words, the states have no share in these surcharges.

However, the Goods and Services Tax (GST) is exempted from this surcharge. In other words, this surcharge cannot be imposed on the GST.

F. Taxes Levied and Collected and Retained by the States: These are the taxes belonging to the states exclusively. They are enumerated in the state list and are 18 in number. These are18: (i) land revenue; (ii) taxes on agricultural income; (iii) duties in respect of succession to agricultural land;

(iv) estate duty in respect of agricultural land; (v) taxes on lands and buildings; (vi) taxes on mineral rights; (vii) Duties of excise on alcoholic liquors for human consumption; opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or narcotics; (viii) taxes on the consumption or sale or electricity; (ix) taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-state trade or commerce or sale in the course of international trade or commerce of such goods;(x) taxes on goods and passengers carried by road or inland waterways; (xi) taxes on vehicles; (xii) taxes on animals and boats; (xiii) tolls; (xiv) taxes on professions, trades, callings and employments; (xv) capitation taxes; (xvi) taxes on entertainments and amusements to the extent levied and collected by

a Panchayat or a Municipality or a Regional Council or a District Council; (xvii) stamp duty on documents (except those specified in the Union List); and (xviii) fees on the matters enumerated in the State List (except court fees).

Distribution of Non-tax Revenues

A. The Centre

The receipts from the following form the major sources of non-tax revenues of the Centre: (i) posts and telegraphs; (ii) railways; (iii) banking; (iv) broadcasting(v) coinage and currency; (vi) central public sector enterprises; (vii) escheat andlapse; and(viii) others.

B. The States

The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprises; (v) escheat and lapse; and (vi) others.

Grants-in-Aid to the States

Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

Statutory Grants

Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state. Also, different sums may be fixed for different states. These sums are charged on the Consolidated Fund of India every year.

Apart from this general provision, the Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam.

The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission.

Discretionary Grants

Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to the states.

“These grants are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion. These grants have a two-fold purpose: to help the state financially to fulfill plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan.”

Other Grants

The Constitution also provided for a third type of grants-in-aid, but for a temporary period. Thus, a provision was made for grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa and West Bengal. These grants were to be given for a period of ten years from the commencement of the Constitution. These sums were charged on the Consolidated Fund of India and were made to the states on the recommendation of the Finance Commission.

Goods and Services Tax Council

The smooth and efficient administration of the goods and services tax (GST)requires a co-operation and co-ordination between the Centre and the States. In order to facilitate this consultation process, the 101st Amendment Act of 2016 provided for the establishment of Goods and Services Tax Council or the GST Council.

Article 279-A empowered the President to constitute a GST Council by an order. The Council is a joint forum of the Centre and the States. It is required to make recommendations to the Centre and the States on the following matters:

(a) The taxes, cesses and surcharges levied by the Centre, the States and the local bodies that would get merged in GST.

(b) The goods and services that may be subjected to GST or exempted from GST.

(c) Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce and the principles that govern the place of supply.

(d) The threshold limit of turnover below which goods and services may be exempted from GST.

(e) The rates including floor rates with bands of GST.

(f) Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.

Finance Commission

Article 280 provides for a Finance Commission as a quasi-judicial body. It is constituted by the President every fifth year or even earlier. It is required to make recommendations to the President on the following matters:

- The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states, the respective shares of such proceeds.

- The principles which should govern the grants-in-aid to the states by the Centre (i.e., out of the Consolidated Fund of India).

- The measures needed to augment the Consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the State Finance Commission.2• Any other matter referred to it by the President in the interests of sound finance.

Till 1960, the Commission also suggested the amounts paid to the States of Assam, Bihar, Orissa and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products.

The Constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India.

Protection of the States' Interest

To protect the interest of states in the financial matters, the Constitution lays down that the following bills can be introduced in the Parliament only on the recommendation of the President:

- A bill which imposes or varies any tax or duty in which states are interested;
- A bill which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income tax;
- A bill which affects the principles on which moneys are or may be distributable to states; and
- A bill which imposes any surcharge on any specified tax or duty for the purpose of the Centre.

The expression "tax or duty in which states is interested" means: (a) a tax or duty the whole or part of the net proceeds whereof are assigned to any state; or (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable, out of the Consolidated Fund of India to any state.

The phrase 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection. The net proceeds of a tax or a duty in any area is to be ascertained and certified by the Comptroller and Auditor-General of India. His certificate is final.

Borrowing by the Centre and the States

The Constitution makes the following provisions with regard to the borrowing powers of the Centre and the states:

- The Central government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament.

- Similarly, a state government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state.

- The Central government can make loans to any state or give guarantees in respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.

- A state cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.

Inter-Governmental Tax Immunities

Like any other federal Constitution, the Indian Constitution also contain the rule of 'immunity from mutual taxation' and makes the following provisions in this regard:

Exemption of Central Property from State Taxation

The property of Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats and so on. But, the Parliament is empowered to remove this ban. The word 'property' includes lands, buildings, chattels, shares, debts, everything that has a money value, and every kind of property–movable or immovable and tangible or intangible. Further, the property may be used for sovereign (like armed forces) or commercial purposes.

The corporations or the companies created by the Central government are not immune from state taxation or local taxation. The reason is that a corporation or a company is a separate legal entity.

Exemption of State Property or Income from Central Taxation

The property and income of a state is exempted from Central taxation. Such income may be derived from sovereign functions or commercial functions. But the Centre can tax the commercial operations of a state if Parliament so provides. However, the Parliament can declare any particular trade or business as incidental to the ordinary functions of the government and it would then not be taxable.

Notably, the property and income of local authorities situated within a state are not exempted from the Central taxation. Similarly, the property or income of corporations and companies owned by a state can be taxed by the Centre.

The Supreme Court, in an advisory opinion (1963), held that the immunity granted to a state in respect of Central taxation does not extend to the duties of customs or duties of excise. In other words, the Centre can impose customs duty on goods imported or exported by a state, or an excise duty on goods produced or manufactured by a state.

Effects of Emergencies

The Centre-state financial relations in normal times (described above) undergo changes during emergencies. These are as follows:

National Emergency

While the proclamation of national emergency (under Article 352) is in operation, the president can modify the constitutional distribution of revenues between the Centre and the states. This means that the president can either reduce or cancel the transfer of finances (both tax sharing and grants-in-aid) from the Centre to the states. Such modification continues till the end of the financial year in which the emergency ceases to operate.

Financial Emergency

While the proclamation of financial emergency (under Article 360) is in operation, the Centre can give directions to the states: (i) to observe the specified canons of financial propriety; (ii) to reduce the salaries and allowances of all class of persons serving in the state; and (iii) to reserve all money bills and other financial bills for the consideration of the President.

TRENDS IN CENTRE-STATE RELATIONS

Till 1967, the centre-state relations by and large were smooth due to one- party rule at the Centre and in most of the states. In 1967 elections, the Congress party was defeated in nine states and its position at the Centre became weak. This changed

political scenario heralded a new era in the Centre-state relations. The non-Congress Governments in the states opposed the increasing centralisation and intervention of the Central government. They raised the issue of state autonomy and demanded more powers and financial resources to the states. This caused tensions and conflicts in Centre-state relations.

Tension Areas in Centre-State Relations

The issues which created tensions and conflicts between the Centre and states are: (1) Mode of appointment and dismissal of governor; (2) Discriminatory and partisan role of governors; (3) Imposition of President's Rule for partisan interests; (4) Deployment of Central forces in the states to maintain law and order; (5) Reservation of state bills for the consideration of the President; (6) Discrimination in financial allocations to the states; (7) Role of Planning Commission in approving state projects; (8) Management of All-India Services (IAS, IPS, and IFS); (9) Use of electronic media for political purposes; (10) Appointment of enquiry commissions against the chief ministers;(11)Sharing of finances (between Centre and states);and (12) Encroachment by the Centre on the State List. The issues in Centre-State relations have been under consideration since the mid 1960s. In this direction, the following developments have taken place:

Administrative Reforms Commission

The Central government appointed a six-member Administrative Reforms Commission (ARC) in 1966 under the chairmanship of Morarji Desai (followed by K Hanumanthayya). Its terms of references included, among others, the examination of Centre-State relations. In order to examine thoroughly the various issues in Centre-state relations, the ARC constituted a study team under M.C.Setalvad. On the basis of the report of this study team, the ARC finalized its own report and submitted it to the Central government in 1969. It made 22 recommendations for improving the Centre-state relations. The important recommendations are:

- Establishment of an Inter-State Council under Article 263 of the Constitution.

- Appointment of persons having long experience in public life and administration and non-partisan attitude as governors.
- Delegation of powers to the maximum extent to the states.
- Transferring of more financial resources to the states to reduce their dependency upon the Centre.
- Deployment of Central armed forces in the states either on their request or otherwise.

No action was taken by the Central government on the recommendations of the ARC.

Rajamannar Committee

In 1969, the Tamil Nadu Government (DMK) appointed a three-member committee under the chairmanship of Dr. P.V. Rajamannar to examine the entire question of Centre-state relations and to suggest amendments to the Constitution so as to secure utmost autonomy to the states. The committee submitted its report to the Tamil Nadu Government in 1971.

The Committee identified the reasons for the prevailing unitary trends (tendencies of centralisation) in the country. They include: (i) certain provisions in the Constitution which confer special powers on the Centre;

(ii) one-party rule both at the Centre and in the states; (iii) inadequacy of states' fiscal resources and consequent dependence on the Centre for financial assistance; and (iv) the institution of Central planning and the role of the Planning Commission.

The important recommendations of the committee are as follows: (i) An Inter-State Council should be set up immediately; (ii) Finance Commission should be made a permanent body; (iii) Planning Commission should be disbanded and its place should be taken by a statutory body; (iv) Articles 356,357and 365(dealing with President's Rule)should be totally omitted;

(v) The provision that the state ministry holds office during the pleasure of the governor should be omitted; (vi) Certain subjects of the Union List and the Concurrent List should be transferred to the State List;(vii)the residuary powers

should be allocated to the states; and (viii) All-India services (IAS, IPS and IFS) should be abolished.

The Central government completely ignored the recommendations of the Rajamannar Committee.

West Bengal Memorandum

In 1977, the West Bengal Government (led by the Communists) published a memorandum on Centre-state relations and sent to the Central government. The memorandum inter alia suggested the following: (i) The word 'union' in the Constitution should be replaced by the word 'federal'; (ii) The jurisdiction of the Centre should be confined to defence, foreign affairs, currency, communications and economic co-ordination; (iii) All other subjects including the residuary should be vested in the states; (iv) Articles 356 and 357 (President's Rule) and 360 (financial emergency) should be repealed; (v) State's consent should be made obligatory for formation of new states or reorganisation of existing states; (vi) Of the total revenue raised by the Centre from all sources, 75 per cent should be allocated to the states; (vii) Rajya Sabha should have equal powers with that of the Lok Sabha; and (viii) There should be only Central and state services and the allIndia services should be abolished.

The Central government did not accept the demands made in the memorandum.

Sarkaria Commission

In 1983, the Central government appointed a three-member Commission on Centre state relations under the chairmanship of R.S. Sarkaria, are tired judge of the Supreme Court. The commission was asked to examine and review the working of existing arrangements between the Centre and states in all spheres and recommend appropriate changes and measures. It was initially given one year to complete its work, but its term was extended four times. It submitted its report in 1988.

The Commission did not favor structural changes and regarded the existing constitutional arrangements and principles relating to the institutions basically sound. But, it emphasized on the need for changes in the functional or operational aspects. It observed that federalism is more a functional arrangement for co-operative action

than a static institutional concept. It out rightly rejected the demand for curtailing the powers of the Centre and stated that a strong Centre is essential to safeguard the national unity and integrity which is being threatened by the fissiparous tendencies in the body politic. However, it did not equate strong Centre with centralisation of powers. It observed that over-centralisation leads to blood pressure at the centre and anemia at the periphery.

The Commission made 247 recommendations to improve Centre-state relations. The important recommendations are mentioned below:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.

2. Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.

3. The institution of All-India Services should be further strengthened and some more such services should be created.

4. The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.

5. When the president withholds his assent to the state bills, the reasons should be communicated to the state government.

6. The National Development Council (NDC) should be renamed and reconstituted as the National Economic and Development Council (NEDC).

7. The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.

8. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.

9. The Centre should consult the states before making a law on a subject of the Concurrent List.

10. The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself.

11. The net proceeds of the corporation tax may be made permissibly shareable with the states.

12. The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly.

13. The governor's term of five years in a state should not be disturbed except for some extremely compelling reasons.

14. No commission of enquiry should be set up against a state minister unless a demand is made by the Parliament.

15. The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.

16. The present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue.

17. Steps should be taken to uniformly implement the three language formula in its true spirit.

18. No autonomy for radio and television but decentralization in their operations.

19. No change in the role of Rajya Sabha and Centre's power to reorganise the states.

20. The commissioner for linguistic minorities should be activated. The Central government has implemented 180(out of 247) recommendations of the Sarkaria Commission. The most important is the establishment of the Inter-State Council in 1990.

Punchhi Commission

The Second commission on Centre-State Relations was set-up by the Government of India in April 2007 under the Chairmanship of Madan Mohan Punchhi, former Chief Justice of India. It was required to look into the issues of Centre-State relations keeping in view the sea-changes that have taken place in the polity and economy of

India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago. The terms of reference of the Commission were as follows:

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

(ii) In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission was required to keep in view the social and economic developments that have taken place over the years, particularly over the last two decades and have due regard to the scheme and framework of the Constitution. Such recommendations were also needed to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty and illiteracy in the early decades of the new millennium.

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

(a) The role, responsibility and jurisdiction of the Centre vis-a-vis States during major and prolonged outbreaks of communal violence, caste violence or any other social conflict leading to prolonged and escalated violence.

(b) The role, responsibility and jurisdiction of the Centre vis-a-vis States in the planning and implementation of the mega projects like the inter-linking of rivers, that would normally take 15–20 years for completion and hinge vitally on the support of

the States.

(c) The role, responsibility and jurisdiction of the Centre vis-a-vis States in promoting effective devolution of powers and autonomy to Panchayati Raj Institutions and Local Bodies including the Autonomous Bodies under the sixth Schedule of the Constitution within a specified period of time.

(d) The role, responsibility and jurisdiction of the Centre vis-a-vis States in promoting the concept and practice of independent planning and budgeting at the District level.

(e) The role, responsibility and jurisdiction of the Centre vis-a-vis States in linking Central assistance of various kinds with the performance of the States.

(f) The role, responsibility and jurisdiction of the Centre in adopting approaches and policies based on positive discrimination in favour of backward States.

(g) The impact of the recommendations made by the 8thto12thFinance Commissions on the fiscal relations between the Centre and the States, especially the greater dependence of the States on devolution of funds from the Centre.

(h) The need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of Value Added Tax regime.

(i) The need for freeing inter-State trade in order to establish a unified and integrated domestic market as also in the context of the reluctance of State Governments to adopt the relevant Sarkaria Commission's recommendation in chapter XVIII of its report.

(j) The need for setting up a Central Law Enforcement Agency empowered to take up suo moto investigation of crimes having inter- State and/ or international ramifications with serious implications on national security.

(k) The feasibility of a supporting legislation under Article 355 for the purpose of suo moto deployment of Central forces in the States if and when the situation so demands.

The Commission submitted its report to the government in April 2010. In finalizing the 1,456 page report, in seven volumes, the Commission took extensive help from the Sarkaria Commission report, the National Commission to Review the Working of the Constitution (NCRWC) report and the Second Administrative Reforms Commission report. However, in a number of areas, the Commission report differed from the Sarkaria Commission recommendations.

After examining at length the issues raised in its Terms of Reference and the related aspects in all their hues and shades, the Commission came to the conclusion that 'cooperative federalism' will be the key for sustaining India's unity, integrity and social and economic development in future. The principles of cooperative federalism thus may have to act as a practical guide for Indian polity and governance.

In all, the Commission made over 310 recommendations, touching upon several significant areas in the working of Centre-state relations. The important recommendations are mentioned below:

1. To facilitate effective implementation of the laws on List III subjects, it is necessary that some broad agreement is reached between the Union and states before introducing legislation in Parliament on matters in the Concurrent List.

2. The Union should be extremely restrained in asserting Parliamentary supremacy in matters assigned to the states. Greater flexibility to states in relation to subjects in the State List and "transferred items" in the Concurrent List is the key for better Centre- state relations.

3. The Union should occupy only that many of subjects in concurrent or overlapping jurisdiction which are absolutely necessary to achieve uniformity of policy in demonstrable national interest.

4. There should be a continuing auditing role for the Inter-state Council in the management of matters in concurrent or overlapping jurisdiction.

5. The period of six months prescribed in Article 201 for State Legislature to act when the bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a state bill reserved for consideration of the President.

6. Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers.

7. Financial obligations and its implications on state finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time.

8. While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit :

(i) He should be eminent in some walk of life

(ii) He should be a person from outside the state

(iii) He should be a detached figure and not too intimately connected with the local politics of the state

(iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past

9. Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.

10. The procedure laid down for impeachment of President, mutatis mutandis can be made applicable for impeachment of Governors as well.

11. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. Infact, the area for the exercise of discretion is limited and even in this limited area; his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.

12. In respect of bills passed by the Legislative Assembly of a state, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.

13. On the question of Governor's role in appointment of Chief Minister in the case of an hung assembly, it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions. These guidelines may be as follows:

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.

(ii) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.

(iii) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated here.

(a) The group of parties which had pre-poll alliance commanding the largest number

(b) The largest single party staking a claim to form the government with the support of others

(c) A post-electoral coalition with all partners joining the government

(d) A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside

14. On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.

15. The Governor should have the right to sanction for prosecution of a state minister against the advice of the Council of Ministers, if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material.

16. The convention of Governors acting as Chancellors of Universities and holding other statutory positions should be done away with. His role should be confined to the Constitutional provisions only.

17. When an external aggression or internal disturbance paralyses the state administration creating a situation of a potential break down of the Constitutional machinery of the state, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Article 356 should be limited strictly to rectifying a “failure of the Constitutional machinery in the state”.

18. On the question of invoking Article 356 in case of failure of Constitutional machinery in states, suitable amendments are requiredtoincorporatetheguidelinessetforthinthelandmarkjudgementofthe Supreme Court in S.R. Bommai V. Union of India (1994). This would remove possible misgivings in this regard on the part of states and help in smoothening Centre-state relations.

19. Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of “last resort” ,and the duty of the Union to protect states under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for “localized emergency” would ensure that the state government can continue to function and the Assembly would not have to be dissolved while providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I and Entry 1 of List II of the Seventh Schedule.

20. Suitable amendments to Article 263 are required to make the Inter-State Council a credible, powerful and fair mechanism for management of interstate and Centre-state differences.

21. The Zonal Councils should meet at least twice a year with an agenda proposed by states concerned to maximise co-ordination and promote harmonisation of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.

22. The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-state coordination on fiscal matters. There is need to institutionalize similar models in other sectors as well. A forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to co- ordinate policies of sectors like energy, food, education, environment and health.

23. New all-India services in sectors like health, education, engineering and judiciary should be created.

24. Factors inhibiting the composition and functioning of the Second Chamber as a representative forum of states should be removed or modified even if it requires amendment of the Constitutional provisions. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the friction points which emerge between Centre and states in fiscal, legislative and administrative relations.

25. A balance of power between states interse is desirable and this is possible by equality of representation in the Rajya Sabha. This requires amendment of the relevant provisions to give equality of seats to states in the Rajya Sabha, irrespective of their population size.

26. The scope of devolution of powers to local bodies to act as institutions of self-government should be constitutionally defined through appropriate amendments.

27. All future Central legislations involving states' involvement should provide for cost sharing as in the case of the RTE Act. Existing Central legislations where the states are entrusted with the responsibility of implementation should be suitably amended providing for sharing of costs by the Central Government.

28. The royalty rates on major minerals should be revised at least every three years without any delay. States should be properly compensated for any delay in the revision of royalty beyond three years.

29. The current ceiling on profession tax should be completely done away with by a Constitutional amendment.

30. The scope for raising more revenue from the taxes mentioned in article 268 should be examined afresh. This issue may be either referred to the next Finance Commission or an expert committee be appointed to look into the matter.

31. To bring greater accountability, all fiscal legislations should provide for an annual assessment by an independent body and the reports of these bodies should be laid in both Houses of Parliament/state legislature.

32. Considerations specified in the Terms of Reference (ToR) of the Finance Commission should be even handed as between the Centre and the states. There should be an effective mechanism to involve the states in the finalization of the ToR of the Finance Commissions.

33. The Central Government should review all the existing cesses and surcharges with a view to bringing down their share in the gross tax revenue.

34. Because of the close linkages between the plan and non-plan expenditure, an expert committee may be appointed to look into the issue of distinction between the plan and non-plan expenditure.

35. There should be much better coordination between the Finance Commission and the Planning Commission. The synchronization of the periods covered by the Finance Commission and the Five-Year Plan will considerably improve such coordination.

36. The Finance Commission division in the Ministry of Finance should be converted into a full-fledged department, serving as the permanent secretariat for the Finance Commissions.

37. The Planning Commission has a crucial role in the current situation. But its role should be that of coordination rather that of micro managing sectoral plans of the Central ministries and the states.

38. Steps should be taken for the setting up of an Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-I. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should

be final and binding on all states as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.

The Report of the Commission was circulated to all stakeholders including State Governments / UT Administrations and Union Ministries / Departments concerned for their considered views on the recommendations of the Commission. The comments received from the Union Ministries / Departments and the State Governments /UT Administrations are under the consideration of the Inter-State Council.

Emergency Provisions

The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.

During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal during normal times to unitary during Emergency is a unique feature of the Indian Constitution. In this context, Dr. B.R. Ambedkar observed in the Constituent Assembly that :

'All federal systems including American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, the Constitution of India can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of Emergency, it is so designed as to make it work as though it was a unitary system.'

The Constitution stipulates three types of emergencies:

1. An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as 'National Emergency'. However, the Constitution

employs the expression ‘proclamation of emergency’ to denote an emergency of this type.

2. An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as ‘President’s Rule’. It is also known by two other names–‘State Emergency’ or ‘constitutional Emergency’. However, the Constitution does not use the word ‘emergency’ for this situation.

3. Financial Emergency due to a threat to the financial stability or credit of India (Article 360).

NATIONAL EMERGENCY

Grounds of Declaration

Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion. It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.

The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation. This provision was added by the 38th Amendment Act of 1975.

When a national emergency is declared on the ground of ‘war’ or ‘external aggression’, it is known as ‘External Emergency’. On the other hand, when it is declared on the ground of ‘armed rebellion’, it is known as ‘Internal Emergency’.

A proclamation of national emergency may be applicable to the entire country or only a part of it. The 42nd Amendment Act of 1976 enabled the president to limit the operation of a National Emergency to a specified part of India.

Originally, the Constitution mentioned ‘internal disturbance’ as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation. Hence, the 44th Amendment Act of 1978 substituted the words ‘armed rebellion’ for ‘internal disturbance’. Thus, it is no longer possible to

declare a National Emergency on the ground of ‘internal disturbance’ as was done in 1975 by the Congress government headed by Indira Gandhi.

The President, however, can proclaim a national emergency only after receiving a written recommendation from the cabinet. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the prime minister. In 1975, the then Prime Minister, Indira Gandhi advised the president to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a fait accompli. The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the prime minister alone taking a decision in this regard.

The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978. Further, in the Minerva Mills case , (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

Parliamentary Approval and Duration

The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th Amendment Act of 1978. However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months. This provision for periodical parliamentary approval was also added by the 44th Amendment Act of 1978. Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired. However, if the dissolution of the Lok Sabha takes place during the

period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the mean-time approved its continuation. Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is,

(a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the members of that house present and voting. This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament.

Revocation of Proclamation

A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th Amendment Act of 1978. Before the amendment, a proclamation could be revoked by the president on his own and the Lok Sabha had no control in this regard.

The 44th Amendment Act of 1978 also provided that, where one-tenth of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the president if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving the continuation of the proclamation.

A resolution of disapproval is different from a resolution approving the continuation of a proclamation in the following two respects:

1. The first one is required to be passed by the Lok Sabha only, while the second one needs to be passed by the both Houses of Parliament.

2. The first one is to be adopted by a simple majority only, while the second one needs to be adopted by a special majority.

Effects of National Emergency

A proclamation of Emergency has drastic and wide ranging effects on the political system. These consequences can be grouped into three categories:

1. Effect on the Centre-state relations,

2. Effect on the life of the Lok Sabha and State assembly, and

3. Effect on the Fundamental Rights.

Effect on the Centre-State Relations

While a proclamation of Emergency is in force, the normal fabric of the Centre-state relations undergoes a basic change. This can be studied under three heads, namely, executive, legislative and financial.

(a) Executive During a national emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. In normal times, the Centre can give executive directions to a state only on certain specified matters. However, during a national emergency, the Centre becomes entitled to give executive directions to a state on ‘any’ matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

(b) Legislative During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament. Thus, the normal distribution of the legislative powers between the Centre and states is suspended, though the state Legislatures is not suspended. In brief, the Constitution becomes unitary rather than federal.

The laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate.

Notably, while a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session.

Further, the Parliament can confer powers and impose duties upon the Centre or its officers and authorities in respect of matters outside the Union List, in order to carry out the laws made by it under its extended jurisdiction as a result of the proclamation of a National Emergency.

The 42nd Amendment Act of 1976 provided that the two consequences mentioned above (executive and legislative) extends not only to a state where the Emergency is in operation but also to any other state.

(c) Financial while a proclamation of national emergency is in operation, the President can modify the constitutional distribution of revenues between the centre and the states. This means that the president can either reduce or cancel the transfer of finances from Centre to the states. Such modification continues till the end of the financial year in which the Emergency ceases to operate. Also, every such order of the President has to be laid before both the Houses of Parliament.

Effect on the Life of the Lok Sabha and State Assembly

While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. For example, the term of the Fifth Lok Sabha (1971–1977) was extended two times by one year at a time.

Similarly, the Parliament may extend the normal tenure of a state legislative assembly (five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights

Articles 358 and 359 describe the effect of a National Emergency on the Fundamental Rights. Article 358 deals with the suspension of the Fundamental Rights guaranteed by Article 19, while Article 359 deals with the suspension of other

Fundamental Rights (except those guaranteed by Articles 20 and 21). These two provisions are explained below:

(a) Suspension of Fundamental Rights under Article 19

According to Article 358, when a proclamation of national emergency is made, the six Fundamental Rights under Article 19 are automatically suspended. No separate order for their suspension is required.

While a proclamation of national emergency is in operation, the state is freed from the restrictions imposed by Article 19. In other words, the state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Article 19. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the six Fundamental Rights guaranteed by Article 19. When the National Emergency ceases to operate, Article 19 automatically revives and comes into force. Any law made during Emergency, to the extent of inconsistency with Article 19, ceases to have effect. However, no remedy lies for anything done during the Emergency even after the Emergency expires. This means that the legislative and executive actions taken during the emergency cannot be challenged even after the Emergency ceases to operate.

The 44th Amendment Act of 1978 restricted the scope of Article 358 in two ways. Firstly, the six Fundamental Rights under Article 19 can be suspended only when the National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion. Secondly, only those laws which are related with the Emergency are protected from being challenged and not other laws. Also, the executive action taken only under such a law is protected.

(b) **Suspension of other Fundamental Rights**

Article 359 authorizes the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. This means that under Article 359, the Fundamental Rights as such are not suspended, but only their enforcement. The said rights are theoretically alive but the right to seek remedy is suspended. The suspension of enforcement relates to only those Fundamental

Rights that are specified in the Presidential Order. Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country. It should be laid before each House of Parliament for approval.

While a Presidential Order is in force, the State can make any law or can take any executive action abridging or taking away the specified Fundamental Rights. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the specified Fundamental Rights. When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified Fundamental Rights, ceases to have effect. But no remedy lies for anything done during the operation of the order even after the order ceases to operate. This means that the legislative and executive actions taken during the operation of the Order cannot be challenged even after the Order expires.

The 44th Amendment Act of 1978 restricted the scope of Article 359 in two ways. Firstly, the President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 to 21. In other words, the right to protection in respect of conviction for offences (Article 20) and the right to life and personal liberty (Article 21) remain enforceable even during emergency. Secondly, only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected.

Distinction Between Articles 358 and 359

The differences between Articles 358 and 359 can be summarised as follows:

1. Article 358 is confined to Fundamental Rights under Article 19 only whereas Article 359 extends to all those Fundamental Rights whose enforcement is suspended by the Presidential Order.

2. Article 358 automatically suspends the fundamental rights under Article 19 as soon as the emergency is declared. On the other hand, Article 359 does not

automatically suspend any Fundamental Right. It only empowers the president to suspend the enforcement of the specified Fundamental Rights.

3. Article 358 operates only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion). Article 359, on the other hand, operates in case of both External Emergency as well as Internal Emergency.

4. Article 358 suspends Fundamental Rights under Article 19 for the entire duration of Emergency while Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.

5. Article 358 extends to the entire country whereas Article 359 may extend to the entire country or a part of it.

6. Article 358 suspends Article 19 completely while Article 359 does not empower the suspension of the enforcement of Articles 20 and 21.

7. Article 358 enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19 while Article 359 enables the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

There is also a similarity between Article 358 and Article 359. Both provide immunity from challenge to only those laws which are related with the Emergency and not other laws. Also, the executive action taken only under such a law is protected by both.

Declarations Made So Far

This type of Emergency has been proclaimed three times so far–in 1962, 1971 and 1975.

The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA (North-East Frontier Agency–now

Arunachal Pradesh), and was in force till January 1968. Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965.

The second proclamation of national emergency was made in December 1971 in the wake of attack by Pakistan. Even when this Emergency was in operation, a third proclamation of National Emergency was made in June 1975. Both the second and third proclamations were revoked in March 1977.

The first two proclamations (1962 and 1971) were made on the ground of 'external aggression', while the third proclamation (1975) was made on the ground of 'internal disturbance', that is, certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.

The Emergency declared in 1975 (internal emergency) proved to be the most controversial. There was widespread criticism of the misuse of Emergency powers. In the elections held to the Lok Sabha in 1977 after the Emergency, the Congress Party led by Indira Gandhi lost and the Janta Party came to power. This government appointed the Shah Commission to investigate the circumstances that warranted the declaration of an Emergency in 1975. The commission did not justify the declaration of the Emergency. Hence, the 44th Amendment Act was enacted in 1978 to introduce a number of safeguards against the misuse of Emergency provisions.

PRESIDENT'S RULE

Grounds of Imposition

Article 355 imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state. This is popularly known as 'President's Rule'. It is also known as 'State Emergency' or 'Constitutional Emergency'.

The President's Rule can be proclaimed under Article 356 on two grounds–one mentioned in Article 356 itself and another in Article 365:

1. Article 356 empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the president can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report).

2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.

Parliamentary Approval and Duration

A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of President's Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the mean time.

If approved by both the Houses of Parliament, the President's Rule continues for six months. It can be extended for a maximum period of three years with the approval of the Parliament, every six months. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.

Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that House present and voting.

The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year. Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:

1. a proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and

2. the Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Consequences of President's Rule

The President acquires the following extraordinary powers when the President's Rule is imposed in a state:

1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.

2. He can declare that the powers of the state legislature are to be exercised by the Parliament.

3. He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

Therefore, when the President's Rule is imposed in a state, the President dismisses the state council of ministers headed by the chief minister. The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President. This is the reason why a proclamation under Article 356 is popularly known as the imposition of 'President's Rule' in a state. Further, the President either suspends or dissolves the state legislative assembly. The Parliament passes the state legislative bills and the state budget.

When the state legislature is thus suspended or dissolved:

1. the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him in this regard,

2. the Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities,

3. the President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament, and

4. the President can promulgate, when the Parliament is not in session, ordinances for the governance of the state.

A law made by the Parliament or president or any other specified authority continues to be operative even after the President's Rule. This means that the period for which such a law remains in force is not coterminous with the duration of the proclamation. But it can be repealed or altered or re-enacted by the state legislature.

It should be noted here that the President cannot assume to himself the powers vested in the concerned state high court or suspend the provisions of the Constitution relating to it. In other words, the constitutional position, status, powers and functions of the concerned state high court remain same even during the President's Rule.

Use of Article 356

Since 1950, the President's Rule has been imposed on more than 125 occasions, that is, on an average twice a year. Further, on a number of occasions, the President's Rule has been imposed in an arbitrary manner for political or personal reasons. Hence, Article 356 has become one of the most controversial and most criticised provision of the Constitution.

For the first time, the President's Rule was imposed in Punjab in 1951. By now, all most all the states have been brought under the President's Rule, once or twice or more.

When general elections were held to the Lok Sabha in 1977 after the internal emergency, the ruling Congress Party lost and the Janta Party came to power. The new government headed by Morarji Desai imposed President's Rule in nine states (where the Congress Party was in power) on the ground that the assemblies in those

states no longer represented the wishes of the electorate. When the Congress Party returned to power in 1980, it did the same in nine states on the same ground.

In 1992, President's Rule was imposed in three BJP-ruled states (Madhya Pradesh, Himachal Pradesh and Rajasthan) by the Congress Party on the ground that they were not implementing sincerely the ban imposed by the Centre on religious organisations. In a landmark judgement in Bommai case (1994), the Supreme Court upheld the validity of this proclamation on the ground that secularism is a 'basic feature' of the Constitution. But, the court did not uphold the validity of the imposition of the President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991.

Dr. B.R. Ambedkar, while replying to the critics of this provision in the Constituent Assembly, hoped that the drastic power conferred by Article 356 would remain a 'deadletter' and would be used only as a measure of last resort. He observed :

"The intervention of the Centre must be deemed to be barred, because that would be an invasion on the sovereign authority of the province (state). That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be under some obligation which the Constitution imposes upon the Centre. The proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead- letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precautions before actually suspending the administration of the province."

However, the subsequent events show that what was hoped to be a 'dead- letter' of the Constitution has turned to be a 'deadly-weapon' against a number of state governments and legislative assemblies. In this context,

H.V. Kamath, a member of the Constituent Assembly commented a decade ago: 'Dr. Ambedkar is dead and the Articles are very much alive'.

Scope of Judicial Review

The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged in any court on any

ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review In Bommai case (1994), the following propositions have been laid down by the Supreme Court on imposition of President's Rule in a state under Article 356:

1. The presidential proclamation imposing President's Rule is subject to judicial review.

2. The satisfaction of the President must be based on relevant material. The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.

3. Burden lies on the Centre to prove that relevant material exist to justify the imposition of the President's Rule.

4. The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.

5. If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.

6. The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation. Until such approval is given, the president can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.

7. Secularism is one of the 'basic features' of the Constitution. Hence, a state government pursuing anti-secular politics is liable to action under Article 356.

8. The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated.

9. Where a new political party assumes power at the Centre, it will not have the authority to dismiss ministries formed by other parties in the states.

10. The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

Cases of Proper and Improper Use

Based on the report of the Sarkaria Commission on Centre-state Relations (1988), the Supreme Court in Bommai case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper Imposition of President's Rule in a state would be proper in the following situations:

1. Where after general elections to the assembly, no party secures a majority, that is, 'Hung Assembly'.

2. Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.

3. Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.

4. Where a constitutional direction of the Central government is disregarded by the state government.

5. Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.

6. Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

The imposition of President's Rule in a state would be improper under the following situations:

1. Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President's Rule without probing the possibility of forming an alternative ministry.

2. Where the governor makes his own assessment of the support of a ministry in the assembly and recommends imposition of President's Rule without allowing the ministry to prove its majority on the floor of the Assembly.

3. Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.

4. Internal disturbances not amounting to internal subversion or physical breakdown.

5. Maladministration in the state or allegations of corruption against the minis-tryor stringent financial exigencies of the state.

6. Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.

7. Where the power is used to sort out intraparty problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

FINANCIAL EMERGENCY

Grounds of Declaration

Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

The 38th Amendment Act of 1975 made the satisfaction of the president in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review.

Parliamentary Approval and Duration

A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until

30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:

1. there is no maximum period prescribed for its operation; and

2. repeated parliamentary approval is not required for its continuation. A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting.

A proclamation of Financial Emergency may be revoked by the president at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Effects of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

1. The executive authority of the Centre extends to the giving of (a) directions to any state to observe such canons of financial propriety as may be specified in the directions; and (b) such other directions to any state as the President may deem necessary and adequate for the purpose.

2. Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.

3. The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.

Thus, during the operation of a financial emergency, the Centre acquires full control over the states in financial matters. H.N. Kunzru, a member of the Constituent Assembly, stated that the financial emergency provisions pose a serious threat to the

financial autonomy of the states. Explaining the reasons for their inclusion in the Constitution, Dr. B.R. Ambedkar observed in the Constituent Assembly :

“This Article more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933, which gave the president power to make similar provisions in order to remove the difficulties, both economical and financial, that had overtaken the American people, as a result of the Great Depression.”

No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

CRITICISM OF THE EMERGENCY PROVISIONS

Some members of the Constituent Assembly criticized the incorporation of emergency provisions in the Constitution on the following grounds :

1. ‘The federal character of the Constitution will be destroyed and the Union will become all powerful.

2. The powers of the State–both the Union and the units–will entirely be concentrated in the hands of the Union executive.

3. The President will become a dictator.

4. The financial autonomy of the state will be nullified.

5. Fundamental rights will become meaningless and, as a result, the democratic foundations of the Constitution will be destroyed.’

Thus, H.V. Kamath observed: ‘I fear that by this single chapter we are seeking to lay the foundation of a totalitarian state, a police state, a state completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continuous jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert . It will be a day of shame and sorrow when the President makes use of these Powers having no parallel in any Constitution of the democratic countries of the world’ .

K.T. Shah described them as: ‘A chapter of reaction and retrogression. I find one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter: (a) to arm the Centre with special powers against the units and (b) to arm the government against the people. Looking at all the provisions of this chapter particularly and scrutinising the powers that have been given in almost every article, it seems to me, the name only of liberty or democracy will remain under the Constitution’.

T.T. Krishnamachari feared that ‘by means of these provisions the President and the Executive would be exercising a form of constitutional dictatorship’.

H.N. Kunzru opined that ‘the emergency financial provisions pose a serious threat to the financial autonomy of the States.’

However, there were also protagonists of the emergency provisions in the Constituent Assembly. Thus, Sir Alladi Krishnaswami Ayyar labelled them as ‘the very life-breath of the Constitution’. Mahabir Tyagi opined that they would work as a ‘safety-valve’ and thereby help in the maintenance of the Constitution.

While defending the emergency provisions in the Constituent Assembly, Dr. B.R. Ambedkar also accepted the possibility of their misuse. He observed, ‘I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes’.

UNIT IV

UNION GOVERNMENT

PRESIDENT

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.

The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.

The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of electoral college consisting of:

1. the elected members of both the Houses of Parliament;

2. the elected members of the legislative assemblies of the states; and

3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.

The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each

elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

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

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

2. Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament. This can be expressed as:

$$\text{Value of the vote of an MP} = \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

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

$$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1=(2)} + 1$$

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

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as President cannot be challenged on the ground that the electoral college was incomplete (ie, existence of any vacancy among the members of electoral college). If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force.

Some members of the Constituent Assembly criticised the system of indirect election for the President as undemocratic and proposed the idea of direct election. However, the Constitution makers chose the indirect election due to the following reasons.

1. The indirect election of the President is in harmony with the parliamentary system of government envisaged in the Constitution. Under this system, the President is only a nominal executive and the real powers are vested in the council of ministers headed by the prime minister. It would have been anomalous to have the President elected directly by the people and not give him any real power.

2. The direct election of the President would have been very costly and time- and energy-consuming due to the vast size of the electorate. This is unwarranted keeping in view that he is only a symbolic head.

Some members of the Constituent Assembly suggested that the President should be elected by the members of the two Houses of Parliament alone. The makers of the Constitution did not prefer this as the Parliament, dominated by one political party,

would have invariably chosen a candidate from that party and such a President could not represent the states of the Indian Union. The present system makes the President a representative of the Union and the states equally.

Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could better be called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications for Election as President

A person to be eligible for election as President should fulfil the following qualifications:

1. He should be a citizen of India.

2. He should have completed 35 years of age.

3. He should be qualified for election as a member of the Lok Sabha.

4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority. A sitting President or Vice-president of the Union, the Governor of any state and a minister of the Union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled. Before 1997, number of proposers and seconders was ten each and the amount of security deposit was ₹2,500. In 1997, they were increased to discourage the non-serious candidates.

Oath or Affirmation by the President

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears:

1. to faithfully execute the office;

2. to preserve, protect and defend the Constitution and the law; and

3. to devote himself to the service and well-being of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior most judge of the Supreme Court available.

Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

2. He should not hold any other office of profit.

3. He is entitled, without payment of rent, to the use of his official residence (the Rastrapathi Bhavan).

4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

5. His emoluments and allowances cannot be diminished during his term of office.

In 2018, the Parliament increased the salary of the President from ₹1.50 lakh to ₹5 lakh per month4a. Earlier in 2008, the pension of the retired President was increased

from ₹3 lakh per annum to 50% of his salary per month. In addition, the former Presidents are entitled to furnished residence, phone facilities, car, medical treatment, travel facility, secretarial staff and office expenses upto ₹1,00,000 per annum. The spouse of a deceased President is also entitled to a family pension at the rate of 50% of pension of a retired President, furnished residence, phone facility, car, medical treatment, travel facility, secretarial staff and office expenses upto ₹20,000 per annum.

The President is entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

TERM, IMPEACHMENT AND VACANCY

Term of President's Office

The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President. Further, he can also be removed from the office before completion of his term by the process of impeachment.

The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms. However, in USA, a person cannot be elected to the office of the President more than twice.

Impeachment of President

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the

impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges. The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the resolution is so passed.

Thus, an impeachment is a quasi-judicial procedure in the Parliament. In this context, two things should be noted: (a) the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election; (b) the elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

No President has so far been impeached.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.

2. By his resignation.

3. On his removal by the process of impeachment.

4. By his death.

5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In case of any delay in conducting the election of new President by any reason, the outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge. This is provided by the Constitution in order to prevent an 'interregnum'. In this situation, the Vice President does not get the opportunity to act as President or to discharge the functions of the President.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy. The newly-elected President remains in office for a full term of five years from the date he assumes charge of his office.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the senior most judge of the Supreme Court available) acts as the President or discharges the functions of the President. When any person, ie, Vice-President, chief justice of India, or the senior most judge of the Supreme Court is acting as the President or discharging the functions of the President, he enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are determined by the Parliament.

POWERS AND FUNCTIONS OF THE PRESIDENT

The powers enjoyed and the functions performed by the President can be studied under the following heads.

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

Executive Powers

The executive powers and functions of the President are:

(a) All executive actions of the Government of India are formally taken in his name.

(b) He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.

(c) He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.

(d) He appoints the prime minister and the other ministers. They hold office during his pleasure.

(e) He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.

(f) He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.

(g) He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.

(h) He can require the Prime Minister to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.

(i) He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.

(j) He can appoint an inter-state council to promote Centre-state and inter-state cooperation.

(k) He directly administers the union territories through administrators appointed by him.

(l) He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

Legislative Powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

(a) He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.

(b) He can address the Parliament at the commencement of the first session after each general election and the first session of each year.

(c) He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.

(d) He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

(e) He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

(f) He can nominate two members to the Lok Sabha from the Anglo- Indian Community.

(g) He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.

(h) His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.

(i) When a bill is sent to the President after it has been passed by the Parliament, he can:

(i) Give his assent to the bill, or

(ii) Withhold his assent to the bill, or

(iii) Return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

(j) When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:

(i) Give his assent to the bill, or

(ii) Withhold his assent to the bill, or

(iii) direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the state legislature and sent again to him for his consideration.

(k) He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.

(l) He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

(m) He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Ladakh. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

Financial Powers

The financial powers and functions of the President are:

(a) Money bills can be introduced in the Parliament only with his prior recommendation.

(b) He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).

(c) No demand for a grant can be made except on his recommendation.

(d) He can make advances out of the contingency fund of India to meet any unforeseen expenditure.

(e) He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

(a) He appoints the Chief Justice and the judges of Supreme Court and high courts.

(b) He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

(c) He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:

(i) In all cases where the punishment or sentence is by a court martial;

(ii) In all cases where the punishment or sentence is for an offence against a Union law; and

(iii) In all cases where the sentence is a sentence of death.

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He

represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Military Powers

He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:

(a) National Emergency (Article 352);

(b) President's Rule (Article 356 & 365); and

(c) Financial Emergency (Article 360)

VETO POWER OF THE PRESIDENT

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or

2. He may withhold his assent to the bill, or

3. He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

Thus, the President has the veto power over the bills passed by the Parliament. that is, he can with hold his assent to the bills. The object of conferring this power on the

President is two-fold–(a) to prevent hasty and ill-considered legislation by the Parliament; and (b) to prevent a legislation which may be unconstitutional.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto, that is, withholding of assent to the bill passed by the legislature.

2. Qualified veto, which can be overridden by the legislature with a higher majority.

3. Suspensive veto, which can be overridden by the legislature with an ordinary majority.

4. Pocket veto that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with three–absolute veto, suspense veto and pocket veto. There is no qualified veto in the case of Indian President; it is possessed by the American President. The three vetos of the President of India are explained below:

Absolute Veto

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

(a) With respect to private members' bills (ie, bills introduced by any member of Parliament who is not a minister); and

(b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

In 1954, President Dr. Rajendra Prasad withheld his assent to the PEPSU Appropriation Bill. The bill was passed by the Parliament when the President's Rule was in operation in the state of PEPSU. But, when the bill was presented to the President for his assent, the President's Rule was revoked.

Again in 1991, President R Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. The bill was passed by the Parliament (on the last day before dissolution of Lok Sabha) without obtaining the previous recommendation of the President.

Suspensive Veto

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. This means that the presidential veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required in USA).

As mentioned earlier, the President does not possess this veto in the case of money bills. The President can either give his assent to a money bill or withhold his assent to a money bill but cannot return it for the reconsideration of the Parliament. Normally, the President gives his assent to money bill as it is introduced in the Parliament with his previous permission.

Pocket Veto

In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto. The President can exercise this veto power as the Constitution does not prescribe any time-limit within which he has to take the decision with respect to a bill presented to him for his assent. In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the pocket of the Indian President is bigger than that of the American President.

In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restrictions on the freedom of press and hence, was widely criticised. After three years, in 1989, the next President R Venkataraman sent the bill back for reconsideration, but the new National Front Government decided to drop the bill.

It should be noted here that the President has no veto power in respect of a constitutional amendment bill. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

Presidential Veto over State Legislation

The President has veto power with respect to state legislation also. A bill passed by a state legislature can become an act only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).

When a bill, passed by a state legislature, is presented to the governor for his assent, he has four alternatives (under Article 200 of the Constitution):

1. He may give his assent to the bill, or

2. He may withhold his assent to the bill, or

3. He may return the bill (if it is not a money bill) for reconsideration of the state legislature, or

4. He may reserve the bill for the consideration of the President.

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

1. He may give his assent to the bill, or

2. He may withhold his assent to the bill, or

3. He may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his assent, the President is not bound to give his assent to the bill. This means that the state legislature cannot override the veto power of the President. Further, the Constitution has not prescribed any time limit within which the President has to take decision with regard to a bill reserved by the governor for his consideration. Hence, the President can exercise pocket veto in respect of state legislation also

ORDINANCE-MAKING POWER OF THE PRESIDENT

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

The ordinance-making power is the most important legislative power of the President. It has been vested in him to deal with unforeseen or urgent matters. But, the exercises of this power is subject to the following four limitations:

1. He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

2. He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action. In Cooper case. (1970), the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament. The 38th Constitutional Amendment Act of 1975 made the President's satisfaction final and conclusive and beyond judicial review. But, this provision was deleted by the 44th Constitutional Amendment Act of 1978. Thus, the President's satisfaction is justiciable on the ground of malafide.

3. His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:

(a) An ordinance can be issued only on those subjects on which the Parliament can make laws.

(b) An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights.

4. Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act. If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it. If the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks is calculated from the later of those dates. This means that the maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament). If an ordinance is allowed to lapse without being placed before Parliament, then the acts done and completed under it, before it ceases to operate, remain fully valid and effective.

The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.

An ordinance like any other legislation, can be retrospective, that is, it may come into force from a back date. It may modify or repeal any act of Parliament or another ordinance. It can alter or amend a tax law also. However, it cannot be issued to amend the Constitution.

The ordinance-making power of the President in India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA, and UK. In justification of the ordinance-making power of the President, Dr. B.R. Ambedkar said in the Constituent Assembly that the mechanism of issuing an ordinance has been devised in order to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session13. It must be clarified here that the ordinance-making power of the President has no necessary connection with the national emergency envisaged in Article 352. The

President can issue an ordinance even when there is no war or external aggression or armed rebellion.

The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation by ordinance should also be placed before the House.

So far, no case has gone to the Supreme Court regarding promulgation of ordinance by the President.

But, the judgement of the Supreme Court in the D.C. Wadhwa case (1987) is highly relevant here. In that case, the court pointed out that between 1967–1981 the Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years by promulgation from time to time. The court ruled that successive repromulgation of ordinances with the same text without any attempt to get the bills passed by the assembly would amount to violation of the Constitution and the ordinance so repromulgated is liable to be struck down. It held that the exceptional power of law-making through ordinance cannot be used as a substitute for the legislative power of the state legislature.

PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

1. Punishment or sentence is for an offence against a Union Law;

2. Punishment or sentence is by a court martial (military court); and

3. Sentence is a sentence of death.

The pardoning power of the President is independent of the Judiciary; it is an executive power. But, the President while exercising this power, does not sit as a court of appeal. The object of conferring this power on the President is two-fold: (a) to keep the door open for correcting any judicial errors in the operation of law; and, (b) to afford relief from a sentence, which the President regards as unduly harsh.

The pardoning power of the President includes the following:

1. **Pardon**

It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

2. Commutation

It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

3. **Remission**

It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

4. **Respite**

It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

5. **Reprieve**

It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law. But, the pardoning power of the governor differs from that of the President in following two respects:

1. The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.

2. The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence. In other words, both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the President.

2. The President can examine the evidence afresh and take a view different from the view taken by the court.

3. The power is to be exercised by the President on the advice of the union cabinet.

4. The President is not bound to give reasons for his order.

5. The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.

6. There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President.

7. The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, mala fide or discriminatory.

8. Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition.

CONSTITUTIONAL POSITION OF THE PRESIDENT

The Constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the prime minister. In other

words, the President has to exercise his powers and functions with the aid and advise of the council of ministers headed by the prime minister.

Dr. B.R. Ambedkar summed up the true position of the President in the following way; "In the Indian Constitution, there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of the functionary reminds of the President of the United States. But beyond the identity of names, there is nothing in common between the form of government prevalent in America and the form of government adopted under the Indian Constitution. The American form of government is called the presidential system of government and what the Indian Constitution adopted is the Parliamentary system. Under the presidential system of America, the President is the Chief head of the Executive and administration is vested in him. Under the Indian Constitution, the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in administration is that of a ceremonial device or a seal by which the nation's decisions are made known. He is generally bound by the advice of his ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any secretary at any time. The President of the Indian Union has no power to do so, so long as his ministers command a majority in Parliament".

In estimating the constitutional position of the President, particular reference has to be made to the provisions of Articles 53, 74 and 75. These are:

1. The executive power of the Union shall be vested in President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 53).

2. There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who 'shall', in the exercise of his functions, act in accordance with such advice (Article 74).

3. The council of ministers shall be collectively responsible to the Lok Sabha (Article 75). This provision is the foundation of the parliamentary system of government.

The 42nd Constitutional Amendment Act of 1976 (enacted by the Indira Gandhi Government) made the President bound by the advice of the council of ministers headed by the prime minister. The 44th Constitutional Amendment Act of 1978 (enacted by the Janata Party Government headed by Morarji Desai) authorised the President to require the council of ministers to reconsider such advice either generally or otherwise. However, he 'shall' act in accordance with the advice tendered after such reconsideration. In other words, the President may return a matter once for reconsideration of his ministers, but the reconsidered advice shall be binding.

In October 1997, the cabinet recommended President K.R. Narayanan to impose President's Rule (under Article 356) in Uttar Pradesh. The President returned the matter for the reconsideration of the cabinet, which then decided not to move ahead in the matter. Hence, the BJP-led government under Kalyan Singh was saved. Again in September 1998, the President KR Narayanan returned a recommendation of the cabinet that sought the imposition of the President's Rule in Bihar. After a couple of months, the cabinet re-advised the same. It was only then that the President's Rule was imposed in Bihar, in February 1999.

Though the President has no constitutional discretion, he has some situational discretion. In other words, the President can act on his discretion (that is, without the advice of the ministers) under the following situations:

(i) Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.

(ii) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.

(iii) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

Cabinet

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority is our politico- administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

CONSTITUTIONAL PROVISIONS

Article 74—Council of Ministers to aid and advise President

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

2. The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75–Other Provisions as to Ministers

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

2. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91st Amendment Act of 2003.

3. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.

4. The ministers shall hold office during the pleasure of the President.

5. The council of ministers shall be collectively responsible to the Lok Sabha.

6. The President shall administer the oaths of office and secrecy to a minister.

7. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.

8. The salaries and allowances of ministers shall be determined by the Parliament.

Article 77–Conduct of Business of the Government of India

1. All executive action of the Government of India shall be expressed to be taken in the name of the President.

2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

3. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 78–Duties of Prime Minister

It shall be the duty of the Prime Minister

1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation

2. To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for

3. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Article 88–Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall not be entitled to vote.

NATURE OF ADVICE BY MINISTERS

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President. Further, the nature of advice tendered by ministers to the President cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the President and the ministers.

In 1971, the Supreme Court held that ‘even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office. Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advise of the council of ministers. Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74’. Again in 1974, the court held that ‘wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions’.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister.

A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,

2. to uphold the sovereignty and integrity of India,

3. to faithfully and conscientiously discharge the duties of his office, and

4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union minister except as may be required for the due discharge of his duties as such minister.

In 1990, the oath by Devi Lal as deputy prime minister was challenged as being unconstitutional as the Constitution provides only for the Prime Minister and ministers. The Supreme Court upheld the oath as valid and stated that describing a person as Deputy Prime Minister is descriptive only and such description does not confer on him any powers of Prime Minister. It ruled that the description of a minister as Deputy Prime Minister or any other type of minister such as minister of state or deputy minister of which there is no mention in the Constitution does not vitiate the oath taken by him so long as the substantive part of the oath is correct.

The salaries and allowances of ministers are determined by Parliament from time to time. A minister gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc. In 2001, the sumptuary allowance for the prime minister was raised from ₹1,500 to ₹3,000 per month, for a cabinet minister from ₹1,000 to ₹2,000 per month, for a minister of state from ₹500 to ₹1,000 per month and for a deputy minister from ₹300 to ₹600 per month.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of ommission and commission. They work as a team and swim or sink together. When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet. For example, Dr. B.R. Ambedkar resigned because of his differences with his colleagues on the Hindu Code Bill in 1953. C.D. Deshmukh resigned due to his differences on the policy of reorganisation of states. Arif Mohammed resigned due to his opposition to the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister. In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advice the President to dismiss him. By exercising this power, the Prime Minister can ensure the realisation of the rule of collective responsibility. In this context, Dr. B.R. Ambedkar observed:

“Collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility.”

No Legal Responsibility

In Britain, every order of the King for any public act is countersigned by a minister. If the order is in violation of any law, the minister would be held responsible and would be liable in the court. The legally accepted phrase in Britain is, “The king can do no wrong.” Hence, he cannot be sued in any court.

In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister–the supreme governing authority of the country.

The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/ departments or can be attached to cabinet ministers. In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/ departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

It must also be mentioned here that there is one more category of ministers, called parliamentary secretaries. They are the members of the last category of the council of ministers (which is also known as the ‘ministry’). They have no department under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties. However, since 1967, no parliamentary secretaries have been appointed except during the first phase of Rajiv Gandhi Government.

At times, the council of ministers may also include a deputy prime minister. The deputy prime ministers are appointed mostly for political reasons.

COUNCIL OF MINISTERS VS CABINET

The words ‘council of ministers’ and ‘cabinet’ are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role.

ROLE OF CABINET

1. It is the highest decision-making authority in our politico- administrative system.

2. It is the chief policy formulating body of the Central government.

3. It is the supreme executive authority of the Central government.

4. It is chief coordinator of Central administration.

5. It is an advisory body to the president and its advice is binding on him.

6. It is the chief crisis manager and thus deals with all emergency situations.

7. It deals with all major legislative and financial matters.

8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

9. It deals with all foreign policies and foreign affairs.

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of cabinet in Britain holds good in the Indian context also. These are mentioned below.

Ramsay Muir

“The Cabinet is the steering wheel of the ship of the state.”

Lowell

“The Cabinet is the keystone of the political arch”.

Sir John Marriott

“The Cabinet is the pivot around which the whole political machinery revolves”.

Gladstone

“The Cabinet is the solar orb around which the other bodies revolve”.

Barker

“The Cabinet is the magnet of policy”.

Bagehot

“The Cabinet is a hyphen that joins, the buckle that binds the executive and legislative departments together”.

Sir Ivor Jennings

“The Cabinet is the core of the British Constitutional System. It provides unity to the British system of Government”.

L.S. Amery

“The Cabinet is the central directing instrument of Government”.

The position of the Cabinet in the British Government has become so strong that Ramsay Muir referred to it as the ‘Dictatorship of the Cabinet’. In his book ‘How Britain is Governed’, he writes “A body which wields such powers as these may fairly be described as ‘omnipotent’ in theory, however, incapable it may be of using its omnipotence. Its position, whenever it commands a majority, is a dictatorship only qualified by publicity. This dictatorship is far more absolute that it was two generations ago”. The same description holds good in the Indian context too.

KITCHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the ‘Inner Cabinet’ or ‘Kitchen Cabinet’ has become the real centre of power. This informal body consists of the Prime Minister and two to four influential colleagues in whom he has faith and with whom

he can discuss every problem. It advises the prime minister on important political and administrative issues and assists him in making crucial decisions. It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister.

Every prime minister in India has had his ‘Inner Cabinet’–a circle within a circle. During the era of Indira Gandhi, the ‘Inner Cabinet’ which came to be called the ‘Kitchen Cabinet’ was particularly powerful.

The prime ministers have resorted to the device of ‘inner cabinet’ (extra-constitutional body) due to its merits, namely:

1. It being a small unit, is much more efficient decision-making body than a large cabinet.

2. It can meet more often and deal with business much more expeditiously than the large cabinet.

3. It helps the Prime Minister in maintaining secrecy in making decisions on important political issues.

However, it has many demerits also. Thus,

1. It reduces the authority and status of the cabinet as the highest decision-making body.

2. It circumvents the legal process by allowing outside persons to play an influential role in the government functioning.

The phenomenon of ‘kitchen cabinet’ (where decisions are cooked and placed before the cabinet for formal approval) is not unique to India. It also exists in USA and Britain and is quite powerful in influencing government decisions there.

PARLIAMENT

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government.

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent. He also performs certain functions relating to the proceedings of the Parliament, for example, he summons and pro-rogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session, and so on.

In this respect, the framers of the Indian Constitution relied on the British pattern rather than the American pattern. In Britain, the Parliament consists of the Crown (King or Queen), the House of Lords (Upper House) and the House of Commons (Lower House). By contrast, the American president is not an integral part of the

legislature. In USA, the legislature, which is known as Congress, consists of the Senate (Upper House) and the House of Representatives (Lower House).

The parliamentary form of government emphasises on the interdependence between the legislative and executive organs. Hence, we have the 'President-in-Parliament' like the 'Crown-in-Parliament' in Britain. The presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, the American president is not regarded as a constituent part of the Congress.

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the Rajya Sabha has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president.

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

1. **Representation of States**

The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members–2 from each state.

2. **Representation of Union Territories**

The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This

election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the nine union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The populations of other six union territories are too small to have any representative in the Rajya Sabha.

3. **Nominated Members**

The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community.

At present, the Lok Sabha has 545 members. Of these, 530 members represent the states, 13 members represent the union territories and 2 Anglo-Indian members are nominated by the President.

1. **Representation of States**

The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

2. **Representation of Union Territories**

The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly,

the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.

3. **Nominated Members**

The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha. Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

DURATION OF TWO HOUSES

Duration of Rajya Sabha

The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and renomination any number of times.

The Constitution has not fixed the term of office of members of the Rajya Sabha and left it to the Parliament. Accordingly, the Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Sabha shall be six years. The act also empowered the president of India to curtail the term of members chosen in the first Rajya Sabha. In the first batch, it was decided by lottery as to who should retire. Further, the act also authorised the President to make provisions to govern the order of retirement of the members of the Rajya Sabha.

Duration of Lok Sabha

Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of the Lok Sabha can be extended during the period of national emergency be a law of Parliament for one year at a time for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

MEMBERSHIP OF PARLIAMENT

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.

2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears

(a) To bear true faith and allegiance to the Constitution of India

(b) To uphold the sovereignty and integrity of India

3. He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.

4. He must posses other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. The requirement that a candidate contesting an election to the Rajya Sabha from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.

2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament:

1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).

2. if he is of unsound mind and stands so declared by a court.

3. if he is an undischarged insolvent.

4. if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and

5. if he is so disqualified under any law made by Parliament.

The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.

2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.

3. He must not have failed to lodge an account of his election expenses within the time.

4. He must not have any interest in government contracts, works or services.

5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.

6. He must not have been dismissed from government service for corruption or disloyalty to the State.

7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.

8. He must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.

On the question whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinion of the election commission and act accordingly.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified from being a member of Parliament if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

1. if he voluntary gives up the membership of the political party on whose ticket he is elected to the House;

2. if he votes or abstains from voting in the House contrary to any direction given by his political party;

3. if any independently elected member joins any political party; and

4. if any nominated member joins any political party after the expiry of six months.

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India). In 1992, the Supreme Court ruled that the decision of the Chairman/ Speaker in this regard is subject to judicial review.

LEADERS IN PARLIAMENT

Leader of the House

Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House. There is also a 'Leader of the House' in the Rajya Sabha. He is a minister and a member of

the Rajya Sabha and is nominated by the prime minister to function as such. The leader of the house in either House is an important functionary and exercises direct influence on the conduct of business. He can also nominate a deputy leader of the House. The same functionary in USA is known as the ‘majority leader’.

Leader of the Opposition

In each House of Parliament, there is the ‘Leader of the Opposition’. The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognised as the leader of the Opposition in that House. In a parliamentary system of government, the leader of the opposition has a significant role to play. His main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977. They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognised for the first time. The same functionary in USA is known as the ‘minority leader’.

The British political system has an unique institution called the ‘Shadow Cabinet’. It is formed by the Opposition party to balance the ruling cabinet and to prepare its members for future ministerial offices. In this shadow cabinet, almost every member in the ruling cabinet is ‘shadowed’ by a corresponding member in the opposition cabinet. This shadow cabinet serves as the ‘alternate cabinet’ if there is change of government. That is why Ivor Jennings described the leader of Opposition as the ‘alternative Prime Minister’. He enjoys the status of a minister and is paid by the government.

Whip

Though the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively. The office of ‘whip’, on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government.

Every political party, whether ruling or Opposition has its own whip in the Parliament. He is appointed by the political party to serve as an assistant floor leader. He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue. He regulates and monitors their behaviour in the Parliament. The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

SESSIONS OF PARLIAMENT

Summoning

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice ayear. There are usually three sessions in a year, viz,

1. the Budget Session (February to May);

2. the Monsoon Session (July to September); and

3. the Winter Session (November to December).

A ‘session’ of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha). During a session, the House meets everyday to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is called ‘recess’.

Adjournment

A session of Parliament consists of many meetings. Each meeting of a day consists of two sittings, that is, a morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm. A sitting of Parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution (in the case of the Lok Sabha). An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment Sine Die

Adjournment sine die means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die. The power of adjournment as well as adjournment sine die lies with the presiding officer of the House. He can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session. However, the President can also prorogue the House while in session.

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. The dissolution of the Lok Sabha may take place in either of two ways:

1. Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or

2. Whenever the President decides to dissolve the House, which he is authorised to do. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse. They (to be pursued further) must be reintroduced in the newly- constituted Lok Sabha. However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:

1. A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).

2. A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.

3. A bill not passed by the two Houses due to disagreement and if the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.

4. A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.

5. A bill passed by both Houses but pending assent of the president does not lapse.

6. A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House or joint sitting of both the Houses are decided by a majority of votes of the members present and voting, excluding the presiding officer. Only a few matters, which are specifically mentioned in the Constitution like impeachment of the President, amendment of the Constitution, removal of the presiding officers of the Parliament and so on, require special majority, not ordinary majority.

The presiding officer of a House does not vote in the first instance, but exercises a casting vote in the case of an equality of votes. The proceedings of a House are to be valid irrespective of any unauthorised voting or participation or any vacancy in its membership.

The following points can be noted with respect to the voting procedure in the Lok Sabha:

1. On the conclusion of a debate, the Speaker shall put the question and invite those who are in favour of the motion to say 'Aye' and those against the motion to say 'No'.

2. The Speaker shall then say: 'I think the Ayes (or the Noes, as the case may be) have it.' If the opinion of the Speaker as to the decision of a question is not challenged, he shall say twice: The Ayes (or the Noes, as the case may be) have it' and the question before the House shall be determined accordingly.

3. (a) If the opinion of the Speaker as to the decision of a question is challenged, he shall order that the Lobby be cleared.

(b) After the lapse of three minutes and thirty seconds, he shall put the question a second time and declare whether in his opinion the 'Ayes' or the 'Noes' have it.

(c) If the opinion so declared is again challenged, he shall direct that the votes be recorded either by operating the automatic vote recorder or by using 'Aye' and 'No' Slips in the House or by the Members going into the Lobbies.

4. If in the opinion of the Speaker, the Division is unnecessarily claimed, he may ask the members who are for 'Aye' and those for 'No' respectively to rise in their places and, on a count being taken, he may declare the determination of the House. In such a case, the names of the voters shall not be recorded.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his mother-tongue. In both the Houses, arrangements are made for simultaneous translation. Though English was to be discontinued as a floor

language after the expiration of fifteen years from the commencement of the Constitution (that is, in 1965), the Official Languages Act (1963) allowed English to be continued along with Hindi.

Rights of Ministers and Attorney General

In addition to the members of a House, every minister and the attorney general of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he is a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

1. A minister can participate in the proceedings of a House, of which he is not a member. In other words, a minister belonging to the Lok Sabha can participate in the proceedings of the Rajya Sabha and vice- versa.

2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses. It should be noted here that a person can remain a minister for six months, without being a member of either House of Parliament.

Lame-duck Session

It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

DEVICES OF PARLIAMENTARY PROCEEDINGS

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice.

A starred question (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An unstarred question, on the other hand, requires a written answer and hence, supplementary questions cannot follow.

A short notice question is one that is asked by giving a notice of less than ten days. It is answered orally.

In addition to the ministers, the questions can also be asked to the private members. Thus, a question may be addressed to a private member if the subject matter of the question relates to some Bill, resolution or other matter connected with the business of the House for which that member is responsible. The procedure in regard to such question is the same as that followed in the case of questions addressed to a minister.

The list of starred, unstarred, short notice questions and questions to private members are printed in green, white, light pink and yellow colour, respectively, to distinguish them from one another.

Zero Hour

Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure. Thus it is an informal device available to the members of the Parliament to raise matters without any prior notice. The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie, regular business of the House) is taken up. In other words, the time gap between the question hour and the agenda is known as zero hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Motions

No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members.

The motions moved by the members to raise discussions on various matters fall into three principal categories:

1. Substantive Motion: It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.

2. Substitute Motion: It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.

3. Subsidiary Motion: It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub- categories:

(a) Ancillary Motion: It is used as the regular way of proceeding with various kinds of business.

(b) Superseding Motion: It is moved in the course of debate on another issue and seeks to supersede that issue.

(c) Amendment: It seeks to modify or substitute only a part of the original motion.

Closure Motion

It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. There are four kinds of closure motions:

(a) Simple Closure: It is one when a member moves that the ‘matter having been sufficiently discussed be now put to vote’.

(b) Closure by Compartments: In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.

(c) Kangaroo Closure: Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.

(d) Guillotine Closure: It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over).

Privilege Motion

It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to censure the concerned minister.

Calling Attention Motion

It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter. Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure.

Adjournment Motion

It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

1. It should raise a matter which is definite, factual, urgent and of public importance;

2. It should not cover more than one matter;

3. It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;

4. It should not raise a question of privilege;

5. It should not revive discussion on a matter that has been discussed in the same session;

6. It should not deal with any matter that is under adjudication by court; and

7. It should not raise any question that can be raised on a distinct motion.

No-Confidence Motion

Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Confidence Motion

The motion of confidence has come up as a new procedural device to cope with the emerging situations of fractured mandates resulting in hung parliament, minority governments and coalition governments. The governments formed with wafer-thin majority have been called upon by the President to prove their majority on the floor of the House. The government of the day, sometimes, on its own, seeks to prove its majority by moving a motion of confidence and winning the confidence of the House. If the confidence motion is negative, it results in the fall of the government.

Motion of Thanks

The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year. This address of the president, which corresponds to the ‘speech from the Throne in Britain’, is discussed in both the Houses of Parliament on a motion called the ‘Motion of Thanks’. At the end of the discussion, the motion is put to vote. This motion must be passed in the House. Otherwise, it amounts to the defeat of the government. This inaugural speech of the president is an occasion available to the members of Parliament to raise discussions and debates to examine and criticise the government and administration for its lapses and failures.

No-Day-Yet-Named Motion

It is a motion that has been admitted by the Speaker but no date has been fixed for its discussion. The Speaker, after considering the state of business in the House and in consultation with the leader of the House or on the recommendation of the Business Advisory Committee, allots a day or days or part of a day for the discussion of such a motion.

Dilatory Motion

It is a motion for the adjournment of the debate on a bill / motion / resolution etc. or a motion to retard or delay the progress of a business under consideration of the House. It can be moved by a member at any time after a motion has been made. The debate on a dilatory motion must be restricted to the matter contained in such motion. If the Speaker is of the opinion that such a motion is an abuse of the rules of the House, he may either forthwith put the question thereon or decline to propose the question.

Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. It is usually raised by an opposition member in order to control the government. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.

Half-an-Hour Discussion

It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact. The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

Short Duration Discussion

It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions. There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

Special Mention

A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha. Its equivalent procedural device in the Lok Sabha is known as 'Notice (Mention) Under Rule 377'.

LEGISLATIVE PROCEDURE IN PARLIAMENT

The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House. A bill is a proposal for legislation and it becomes an act or law when duly enacted.

Bills introduced in the Parliament are of two kinds: public bills and private bills (also known as government bills and private members' bills respectively). Though both are governed by the same general procedure and pass through the same stages in the House.

The bills introduced in the Parliament can also be classified into four categories:

1. Ordinary bills, which are concerned with any matter other than financial subjects.

2. Money bills, which are concerned with the financial matters like taxation, public expenditure, etc.

3. Financial bills, which are also concerned with financial matters (but are different from money bills).

4. Constitution amendment bills, which are concerned with the amendment of the provisions of the Constitution.

The Constitution has laid down separate procedures for the enactment of all the four types of bills. The procedures with regard to ordinary bills, money bills and financial bills are explained here.

Ordinary Bills

Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book:

1. **First Reading**

An ordinary bill can be introduced in either House of Parliament. Such a bill can be introduced either by a minister or by any other member. The member who wants to introduce the bill has to ask for the leave of the House. When the House grants leave to introduce the bill, the mover of the bill introduces it by reading its title and objectives. No discussion on the bill takes place at this stage. Later, the bill is published in the Gazette of India.

If a bill is published in the Gazette before its introduction, leave of the House to introduce the bill is not necessary. The introduction of the bill and its publication in the Gazette constitute the first reading of the bill.

2. **Second Reading**

During this stage, the bill receives not only the general but also the detailed scrutiny and assumes its final shape. Hence, it forms the most important stage in the enactment of a bill. In fact, this stage involves three more sub- stages, namely, stage of general discussion, committee stage and consideration stage.

(a) **Stage of General Discussion**

The printed copies of the bill are distributed to all the members. The principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed.

At this stage, the House can take any one of the following four actions:

(i) It may take the bill into consideration immediately or on some other fixed date;

(ii) It may refer the bill to a select committee of the House;

(iii) It may refer the bill to a joint committee of the two Houses; and

(iv) It may circulate the bill to elicit public opinion.

A Select Committee consists of members of the House where the bill has originated and a joint committee consists of members of both the Houses of Parliament.

(b**)** **Committee Stage**

The usual practice is to refer the bill to a select committee of the House. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it. After completing the scrutiny and discussion, the committee reports the bill back to the House.

(c) **Consideration Stage**

The House, after receiving the bill from the select committee, considers the provisions of the bill clause by clause. Each clause is discussed and voted upon separately. The members can also move amendments and if accepted, they become part of the bill.

3. **Third Reading**

At this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments are allowed, as the general principles underlying the bill have already been scrutinised during the stage of second reading. If the majority of members present and voting accept the bill, the bill is regarded as passed by the House. Thereafter, the bill is authenticated by the presiding officer of the House and transmitted to the second House for consideration and approval. A bill is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.

4. **Bill in the Second House**

In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. There are four alternatives before this House:

(a) it may pass the bill as sent by the first house (ie, without amendments);

(b) it may pass the bill with amendments and return it to the first House for reconsideration;

(c) it may reject the bill altogether; and

(d) it may not take any action and thus keep the bill pending.

If the second House passes the bill without any amendments or the first House accepts the amendments suggested by the second House, the bill is deemed to have been passed by both the Houses and the same is sent to the president for his assent. On the other hand, if the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not take any action for six months, a deadlock is deemed to have taken place. To resolve such a deadlock, the president can summon a joint sitting of the two Houses. If the majority of members present and voting in the joint sitting approves the bill, the bill is deemed to have been passed by both the Houses.

5. **Assent of the President**

Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the president for his assent. There are three alternatives before the president:

(a) he may give his assent to the bill; or

(b) he may withhold his assent to the bill; or

(c) he may return the bill for reconsideration of the Houses.

If the president gives his assent to the bill, the bill becomes an act and is placed on the Statute Book. If the President withholds his assent to the bill, it ends and does not become an act. If the President returns the bill for

reconsideration and if it is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus, the President enjoys only a “suspensive veto.”

Money Bills

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains ‘only’ provisions dealing with all or any of the following matters:

1. The imposition, abolition, remission, alteration or regulation of any tax;

2. The regulation of the borrowing of money by the Union government;

3. The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund;

4. The appropriation of money out of the Consolidated Fund of India;

5. Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;

6. The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state; or

7. Any matter incidental to any of the matters specified above.

However, a bill is not to be deemed to be a money bill by reason only that it provides for:

1. the imposition of fines or other pecuniary penalties, or

2. the demand or payment of fees for licenses or fees for services rendered; or

3. the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the president. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the president for assent, the Speaker endorses it as a money bill.

The Constitution lays down a special procedure for the passing of money bills in the Parliament. A money bill can only be introduced in the Lok Sabha and that too on the recommendation of the president. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration. The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, whether with or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.

If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the Lok Sabha does not accept any recommendation, the bill is then deemed to have passed by both the Houses in the form originally passed by the Lok Sabha without any change.

If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha. Thus, the Lok Sabha has more powers than Rajya Sabha with regard to a money bill. On the other hand, both the Houses have equal powers with regard to an ordinary bill.

Finally, when a money bill is presented to the president, he may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the Houses. Normally, the president gives his assent to a money bill as it is introduced in the Parliament with his prior permission.

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term ‘financial bill’ in a technical sense. Financial bills are of three kinds:

1. Money bills–Article 110

2. Financial bills (I)–Article 117 (1)

3. Financial bills (II)–Article 117 (3)

This classification implies that money bills are simply a species of financial bills. Hence, all money bills are financial bills but all financial bills are not money bills. Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110 of the Constitution. These are also certified by the Speaker of Lok Sabha as money bills. The financial bills (I) and (II), on the other hand, have been dealt with in Article 117 of the Constitution.

Financial Bills (I)

A financial bill (I) is a bill that contains not only any or all the matters mentioned in Article 110, but also other matters of general legislation. For instance, a bill that contains a borrowing clause, but does not exclusively deal with borrowing. In two respects, a financial bill (I) is similar to a money bill–(a) both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha, and (b) both of them can be introduced only on the recommendation of the president. In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill. Hence, it can be either rejected or amended by the Rajya Sabha (except that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the recommendation of the president i.e., the recommendation of president is not required for moving an amendment making provision for the reduction or aboli-sition of a tax). In case of a disagreement between the two Houses over such a bill, the president can summon a joint sitting of the two Houses to resolve the deadlock. When the bill is presented to the President, he can either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the Houses.

Financial Bills (II)

A financial bill (II) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110. It is treated as an ordinary bill and in all respects, it is governed by the same legislative procedure which is applicable to an ordinary bill. The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill. Hence, financial bill (II) can be introduced in either House of Parliament and recommendation of the President is not necessary for its introduction. In other words, the recommendation of the President is not required at the introduction stage but is required at the consideration stage. It can be either rejected or amended by either House of Parliament. In case of a disagreement between the two Houses over such a bill, the President can summon a joint sitting of the two Houses to resolve the deadlock. When the bill is presented to the President, he can either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the Houses.

BUDGET IN PARLIAMENT

The Constitution refers to the budget as the ‘annual financial statement’. In other words, the term ‘budget’ has nowhere been used in the Constitution. It is the popular name for the ‘annual financial statement’ that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

1. Estimates of revenue and capital receipts;

2. Ways and means to raise the revenue;

3. Estimates of expenditure;

4. Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and

5. Economic and financial policy of the coming year, that is, taxation proposals, prospects of revenue, spending programme and introduction of new schemes/projects.

Till 2017, the Government of India had two budgets, namely, the Railway Budget and the General Budget. While the former consisted of the estimates of receipts and expenditures of only the Ministry of Railways, the latter consisted of the estimates of receipts and expenditure of all the ministries of the Government of India (except the railways).

The Railway Budget was separated from the General Budget in 1924 on the recommendations of the Acworth Committee Report (1921). The reasons or objectives of this separation were as follows:

1. To introduce flexibility in railway finance.

2. To facilitate a business approach to the railway policy.

3. To secure stability of the general revenues by providing an assured annual contribution from railway revenues.

4. To enable the railways to keep their profits for their own development (after paying a fixed annual contribution to the general revenues).

In 2017, the Central Government merged the railway budget into the general budget. Hence, there is now only one budget for the Government of India i.e., Union Budget.

Constitutional Provisions

The Constitution of India contains the following provisions with regard to the enactment of budget:

1. The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.

2. No demand for a grant shall be made except on the recommendation of the President.

3. No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.

4. No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.

5. No tax shall be levied or collected except by authority of law.

6. Parliament can reduce or abolish a tax but cannot increase it.

7. The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:

(a) A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha–it must be introduced only in the Lok Sabha.

(b) The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha.

(c) The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard.

8. The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.

9. The budget shall distinguish expenditure on revenue account from other expenditure.

10. The expenditure charged on the Consolidated Fund of India shall not be submitted to the vote of Parliament. However, it can be discussed by the Parliament.

Passing of Appropriation Bill

The Constitution states that ‘no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law’. Accordingly, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:

(a) The grants voted by the Lok Sabha.

(b) The expenditure charged on the Consolidated Fund of India.

No such amendment can be proposed to the appropriation bill in either house of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure charged on the Consolidated Fund of India.

The Appropriation Bill becomes the Appropriation Act after it is assented to by the President. This act authorises (or legalises) the payments from the Consolidated Fund of India. This means that the government cannot withdraw money from the Consolidated Fund of India till the enactment of the appropriation bill. This takes time and usually goes on till the end of April. But the government needs money to carry on its normal activities after 31 March (the end of the financial year). To overcome this functional difficulty, the Constitution has authorised the Lok Sabha to make any grant in advance in respect to the estimated expenditure for a part of the financial year, pending the completion of the voting of the demands for grants and the enactment of the appropriation bill. This provision is known as the ‘vote on account’. It is passed (or granted) after the general discussion on budget is over. It is generally granted for two months for an amount equivalent to one-sixth of the total estimation.

Passing of Finance Bill

The Finance Bill is introduced to give effect to the financial proposals of the Government of India for the following year. It is subjected to all the conditions applicable to a Money Bill. Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be moved in the case of finance bill.

According to the Provisional Collection of Taxes Act of 1931, the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the president) within 75 days.

The Finance Act legalises the income side of the budget and completes the process of the enactment of the budget.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year, various other grants are made by the Parliament under extraordinary or special circumstances:

Supplementary Grant

It is granted when the amount authorised by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

Additional Grant

It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

Excess Grant

It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year. Before the demands for excess grants are submitted to the Lok Sabha for voting, they must be approved by the Public Accounts Committee of Parliament.

Vote of Credit

It is granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha.

Exceptional Grant

It is granted for a special purpose and forms no part of the current service of any financial year.

Token Grant

It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. A demand for the grant of a token sum (of Re 1) is submitted to the vote of the Lok Sabha and if assented, funds are made available. Reappropriation involves transfer of funds from one head to another. It does not involve any additional expenditure.

Supplementary, additional, excess and exceptional grants and vote of credit are regulated by the same procedure which is applicable in the case of a regular budget.

Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

1. Consolidated Fund of India (Article 266)
2. Public Account of India (Article 266)
3. Contingency Fund of India (Article 267)

Consolidated Fund of India

It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all revenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India. All the legally authorised payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

Public Account of India

All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India. This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on. This account is operated by executive action, that is, the payments from this account can by made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.

Contingency Fund of India

The Constitution authorised the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950. This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorisation by the Parliament. The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.

PRIME MINISTER

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (de jure executive) and Prime Minister is the real executive authority (de facto executive). In other words, president is the head of the State while Prime Minister is the head of the government

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. However, this does not imply that the president is free to appoint any one as the Prime Minister. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in

the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month. This discretion was exercised by the President, for the first time in 1979, when Neelam Sanjiva Reddy (the then President) appointed Charan Singh (the coalition leader) as the Prime Minister after the fall of the Janata Party government headed by Morarji Desai.

There is also one more situation when the president may have to exercise his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor. This is what happened when Indira Gandhi was assassinated in 1984. The then President Zail Singh appointed Rajiv Gandhi as the Prime Minister by ignoring the precedent of appointing a caretaker Prime Minister Later on, the Congress parliamentary party unanimously elected him as its leader. However, if, on the death of an incumbent Prime Minister, the ruling party elects a new leader, the President has no choice but to appoint him as Prime Minister.

In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister. The President may first appoint him the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period. For example, Charan Singh (1979), V.P. Singh (1989), Chandrasekhar (1990), P.V. Narasimha Rao (1991), A.B. Vajyapee (1996), Deve Gowda (1996), I.K. Gujral (1997) and again A.B. Vajpayee (1998) were appointed as Prime Ministers in this way.

In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.

Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament. For example, three Prime Ministers, Indira Gandhi (1966), Deve Gowda (1996) and Manmohan Singh (2004), were members of the Rajya Sabha. In Britain, on the other hand, the Prime Minister should definitely be a member of the Lower House (House of Commons).

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India,

2. to uphold the sovereignty and integrity of India,

3. to faithfully and conscientiously discharge the duties of his office, and

4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the Prime Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union Minister except as may be required for the due discharge of his duties as such minister.

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc. In 2001, the Parliament increased his sumptuary allowance from ₹1,500 to ₹3,000 per month

POWERS AND FUNCTIONS OF THE PRIME MINISTER

The powers and functions of Prime Minister can be studied under the following heads:

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.

2. He allocates and reshuffles various portfolios among the ministers.

3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

4. He presides over the meeting of council of ministers and influences its decisions.

5. He guides, directs, controls, and coordinates the activities of all the ministers.

6. He can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the council of ministers. It is the duty of the prime minister:

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

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

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

2. He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.

2. He can recommend dissolution of the Lok Sabha to President at any time.

3. He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

1. He is the chairman of the NITI Ayog (which succeded the planning commission), National Integration Council, InterState Council, National Water Resources Council and some other bodies.

2. He plays a significant role in shaping the foreign policy of the country.

3. He is the chief spokesman of the Union government.

4. He is the crisis manager-in-chief at the political level during emergencies

5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.

6. He is leader of the party in power.

7. He is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr. B.R. Ambedkar stated, ‘If any functionary

under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union'.

RELATIONSHIP WITH THE PRESIDENT

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

1. Article 74

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

2. Article 75

(a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the president on the advice of the Prime Minister; (b) The ministers shall hold office during the pleasure of the president; and (c) The council of ministers shall be collectively responsible to the House of the People.

3. Article 78

It shall be the duty of the Prime Minister:

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

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

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

SPEAKERS

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha. A panel of chairpersons for the Lok Sabha and a panel of vice-chairpersons for the Rajya Sabha is also appointed.

Speaker of Lok Sabha

Election and Tenure

The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting). Whenever the office of the Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy. The date of election of the Speaker is fixed by the President.

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

1. if he ceases to be a member of the Lok Sabha;

2. if he resigns by writing to the Deputy Speaker; and

3. if he is removed by a resolution passed by a majority of all then members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

When a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present. However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes.

It should be noted here that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets.

Role, Powers and Functions

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

matters is final. He is thus much more than merely the presiding officer of the Lok Sabha. In these capacities, he is vested with vast, varied and vital responsibilities and enjoys great honour, high dignity and supreme authority within the House.

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

1. He maintains order and decorum in the House for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.

2. He is the final interpreter of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.

3. He adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.

4. He does not vote in the first instance. But he can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any question, the Speaker is entitled to vote. Such vote is called casting vote, and its purpose is to resolve a deadlock.

5. He presides over a joint setting of the two Houses of Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.

6. He can allow a ‘secret’ sitting of the House at the request of the Leader of the House. When the House sits in secret, no stranger can be present in the chamber, lobby or galleries except with the permission of the Speaker.

7. He decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.

8. He decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule. In 1992, the Supreme Court ruled that the decision of the Speaker in this regard is subject to judicial review.

9. He acts as the ex-officio chairman of the Indian Parliamentary Group which is a link between the Parliament of India and the various parliaments of the world. He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country.

10. He appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Independence and Impartiality

As the office of the Speaker is vested with great prestige, position and authority, independence and impartiality becomes its sine qua non.

The following provisions ensure the independence and impartiality of the office of the Speaker:

1. He is provided with a security of tenure. He can be removed only by a resolution passed by the Lok Sabha by a special majority (ie, a majority of all the then members of the House) and not by an ordinary majority (ie, a majority of the members present and voting in the House). This motion of removal can be considered and discussed only when it has the support of at least 50 members.

2. His salaries and allowances are fixed by Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.

3. His work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion.

4. His powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court.

5. He cannot vote in the first instance. He can only exercise a casting vote in the event of a tie. This makes the position of Speaker impartial.

6. He is given a very high position in the order of precedence. He is placed at seventh rank, along with the Chief Justice of India. This means, he has a higher rank than all cabinet ministers, except the Prime Minister or Deputy Prime Minister.

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

Deputy Speaker of Lok Sabha

Like the Speaker, the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members. He is elected after the election of the Speaker has taken place. The date of election of the Deputy Speaker is fixed by the Speaker. Whenever the office of the Deputy Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the Lok Sabha. However, he may vacate his office earlier in any of the following three cases:

1. if he ceases to be a member of the Lok Sabha;

2. if he resigns by writing to the Speaker; and

3. if he is removed by a resolution passed by a majority of all the then members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of the House. In both the cases, he assumes all the powers of the Speaker. He also presides over the joint sitting of both the Houses of Parliament, in case the Speaker is absent from such a sitting.

It should be noted here that the Deputy Speaker is not subordinate to the Speaker. He is directly responsible to the House.

The Deputy Speaker has one special privilege, that is, whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

Like the Speaker, the Deputy Speaker, while presiding over the House, cannot vote in the first instance; he can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present.

When the Speaker presides over the House, the Deputy Speaker is like any other ordinary member of the House. He can speak in the House, participate in its proceedings and vote on any question before the House.

The Deputy Speaker is entitled to a regular salary and allowance fixed by Parliament, and charged on the Consolidated Fund of India. Upto the 10th Lok Sabha, both the Speaker and the Deputy Speaker were usually from the ruling party. Since the 11th Lok Sabha, there has been a consensus that the Speaker comes from the ruling party (or ruling alliance) and the post of Deputy Speaker goes to the main opposition party.

The Speaker and the Deputy Speaker, while assuming their offices, do not make and subscribe any separate oath or affirmation. The institutions of Speaker and Deputy Speaker originated in India in 1921 under the provisions of the Government of India Act of 1919 (Montague-Chelmsford Reforms). At that time, the Speaker and the Deputy Speaker were called the President and Deputy President respectively and the same nomenclature continued till 1947. Before 1921, the Governor- General of India used to preside over the meetings of the Central Legislative Council. In 1921, the Frederick Whyte and Sachidanand Sinha were appointed by the Governor-General of India as the first Speaker and the first Deputy Speaker (respectively) of the central legislative assembly. In 1925, Vithalbhai J. Patel became the first Indian and the first elected Speaker of the central legislative assembly. The Government of India Act of 1935 changed the nomenclatures of President and Deputy President of the Central Legislative Assembly to the Speaker and Deputy Speaker respectively. However, the old nomenclature continued till 1947 as the federal part of the 1935 Act was not implemented. G.V. Mavalankar and Ananthasayanam Ayyangar had the distinction of being the first Speaker and the first Deputy Speaker (respectively) of the Lok Sabha. G.V. Mavalankar also held the post of Speaker in the Constituent

Assembly (Legislative) as well as the provisional Parliament. He held the post of Speaker of Lok Sabha continuously for one decade from 1946 to 1956.

Panel of Chairpersons of Lok Sabha

Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons. Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker. He has the same powers as the Speaker when so presiding. He holds office until a new panel of chairpersons is nominated. When a member of the panel of chairpersons is also not present, any other person as determined by House acts as the Speaker.

It must be emphasised here that a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant. During such time, the Speaker's duties are to be performed by such member of the House as the President may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Speaker Pro Tem

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly-elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the Speaker Pro Tem. Usually, the seniormost member is selected for this. The President himself administers oath to the Speaker Pro Tem.

The Speaker Pro Tem has all the powers of the Speaker. He presides over the first sitting of the newly-elected Lok Sabha. His main duty is to administer oath to the new members. He also enables the House to elect the new Speaker.

When the new Speaker is elected by the House, the office of the Speaker Pro Tem ceases to exist. Hence, this office is a temporary office, existing for a few days.

Chairman of Rajya Sabha

The presiding officer of the Rajya Sabha is known as the Chairman. The vice-president of India is the ex-officio Chairman of the Rajya Sabha. During any period when the VicePresident acts as President or discharges the functions of the

President, he does not perform the duties of the office of the Chairman of Rajya Sabha.

The Chairman of the Rajya Sabha can be removed from his office only if he is removed from the office of the Vice-President. As a presiding officer, the powers and functions of the Chairman in the Rajya Sabha are similar to those of the Speaker in the Lok Sabha. However, the Speaker has two special powers which are not enjoyed by the Chairman:

1. The Speaker decides whether a bill is a money bill or not and his decision on this question is final.

2. The Speaker presides over a joint sitting of two Houses of Parliament.

Unlike the Speaker (who is a member of the House), the Chairman is not a member of the House. But like the Speaker, the Chairman also cannot vote in the first instance. He too can cast a vote in the case of an equality of votes.

The Vice-President cannot preside over a sitting of the Rajya Sabha as its Chairman when a resolution for his removal is under consideration. However, he can be present and speak in the House and can take part in its proceedings, without voting, even at such a time (while the Speaker can vote in the first instance when a resolution for his removal is under consideration of the Lok Sabha).

As in case of the Speaker, the salaries and allowances of the Chairman are also fixed by the Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.

During any period when the Vice-President acts as President or discharges the functions of the President, he is not entitled to any salary or allowance payable to the Chairman of the Rajya Sabha. But he is paid the salary and allowance of the President during such a time.

Deputy Chairman of Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.

The Deputy Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the Rajya Sabha;

2. if he resigns by writing to the Chairman; and

3. if he is removed by a resolution passed by a majority of all the then members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President. He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.

It should be emphasised here that the Deputy Chairman is not subordinate to the Chairman. He is directly responsible to the Rajya Sabha.

Like the Chairman, the Deputy Chairman, while presiding over the House, cannot vote in the first instance; he can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Chairman is under consideration of the House, he cannot preside over a sitting of the House, though he may be present.

When the Chairman presides over the House, the Deputy Chairman is like any other ordinary member of the House. He can speak in the House, participate in its proceedings and vote on any question before the House.

Like the Chairman, the Deputy Chairman is also entitled to a regular salary and allowance. They are fixed by Parliament and are charged on the Consolidated Fund of India.

Panel of Vice-Chairpersons of Rajya Sabha

Under the Rules of Rajya Sabha, the Chairman nominates from amongst the members a panel of vice-chairpersons. Any one of them can preside over the House in the absence of the Chairman or the Deputy Chairman. He has the same powers as the Chairman when so presiding. He holds office until a new panel of vice-chairpersons is nominated.

When a member of the panel of vice chairpersons is also not present, any other person as determined by the House acts as the Chairman. It must be emphasised here that a member of the panel of vice- chairpersons cannot preside over the House, when the office of the Chairman or the Deputy Chairman is vacant. During such time, the Chairman's duties are to be performed by such member of the House as the president may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Secretariat of Parliament

Each House of Parliament has separate secretarial staff of its own, though there can be some posts common to both the Houses. Their recruitment and service conditions are regulated by Parliament. The secretariat of each House is headed by a secretary-general. He is a permanent officer and is appointed by the presiding officer of the House.

PARLIAMENTARY COMMITTEES

MEANING

The Parliament is too unwieldy a body to deliberate effectively the issues that come up before it. The functions of the Parliament are varied, complex and voluminous. Moreover, it has neither the adequate time nor necessary expertise to make a detailed scrutiny of all legislative measures and other matters. Therefore, it is assisted by a number of committees in the discharge of its duties.

The Constitution of India makes a mention of these committees at different places, but without making any specific provisions regarding their composition, tenure, functions, etc. All these matters are dealt by the rules of two Houses. Accordingly, a parliamentary committee means a committee that:

1. Is appointed or elected by the House or nominated by the Speaker / Chairman
2. Works under the direction of the Speaker / Chairman

3. Presents its report to the House or to the Speaker / Chairman

4. Has a secretariat provided by the Lok Sabha / Rajya Sabha

The consultative committees, which also consist of members of Parliament, are not parliamentary committees as they do not fulfil above four conditions.

CLASSIFICATION

Broadly, parliamentary committees are of two kinds–Standing Committees and Ad Hoc Committees. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing Committees

On the basis of the nature of functions performed by them, standing committees can be classified into the following six categories:

1. **Financial Committees**

(a) Public Accounts Committee

(b) Estimates Committee

(c) Committee on Public Undertakings

2. **Departmental Standing Committees (24)**

3. Committees to Inquire

(a) Committee on Petitions

(b) Committee of Privileges

(c) Ethics Committee

4. **Committees to Scrutinise and Control**

(a) Committee on Government Assurances

(b) Committee on Subordinate Legislation

(c) Committee on Papers Laid on the Table

(d) Committee on Welfare of SCs and STs

(e) Committee on Empowerment of Women

(f) Joint Committee on Offices of Profit

5. **Committees Relating to the Day-to-Day Business of the House**

(a) Business Advisory Committee

(b) Committee on Private Members' Bills and Resolutions

(c) Rules Committee

(d) Committee on Absence of Members from Sittings of the House

6. **House-Keeping Committees or Service Committees (i.e., Committees concerned with the Provision of Facilities and Services to Members):**

(a) General Purposes Committee

(b) House Committee

(c) Library Committee

(d) Joint Committee on Salaries and Allowances of Members

Ad Hoc Committees

Ad hoc committees can be divided into two categories, that is, Inquiry Committees and Advisory Committees.

1. Inquiry Committees are constituted from time to time, either by the two Houses on a motion adopted in that behalf, or by the Speaker / Chairman, to inquire into and report on specific subjects. For example:

(a) Committee on the Conduct of Certain Members during President's Address

(b) Committee on Draft Five-Year Plan

(c) Railway Convention Committee

(d) Committee on Members of Parliament Local Area Development Scheme (MPLADS)

(e) Joint Committee on Bofors Contract

(f) Joint Committee on Fertilizer Pricing

(g) Joint Committee to Enquire into Irregularities in Securities and Banking Transactions

(h) Joint Committee on Stock Market Scam

(i) Joint Committee on Security in Parliament Complex

(j) Committee on Provision of Computers to Members of Parliament, Offices of Political Parties and Officers of the Lok Sabha Secretariat

(k) Committee on Food Management in Parliament House Complex

(l) Committee on Installation of Portraits / Statues of National Leaders and Parliamentarians in Parliament House Complex

(m) Joint Committee on Maintenance of Heritage Character and Development of Parliament House Complex

(n) Committee on Violation of Protocol Norms and Contemptuous Behaviour of Government Officers with Members of Lok Sabha

(o) Joint Committee to Examine Matters Relating to Allocation and Pricing of Telecom Licences and Spectrum

2. Advisory Committees include select or joint committees on bills, which are appointed to consider and report on particular bills. These committees are distinguishable from the other ad hoc committees in as much as they are concerned with bills and the procedure to be followed by them is laid down in the Rules of Procedure and the Directions by the Speaker / Chairman.

When a Bill comes up before a House for general discussion, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the two

Houses. A motion to this effect has to be moved and adopted in the House in which the Bill comes up for consideration. In case the motion adopted is for reference of the Bill to a Joint Committee, the decision is conveyed to the other House, requesting the members to nominate members of the other House to serve on the Committee.

The Select or Joint Committee considers the Bill clause by clause just as the two Houses do. Amendments to various clauses can be moved by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the Bill. After the Bill has thus been considered, the Committee submits its report to the House. Members who do not agree with the majority report may append their minutes of dissent to the report.

FINANCIAL COMMITTEES

Public Accounts Committee

This committee was set up first in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence. At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed from amongst its members by the Speaker. Until 1966 - ‘67, the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the Opposition.

The function of the committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the President. The CAG submits three audit reports to the President, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.

The committee examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy,

prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.

In more detail, the functions of the committee are:

1. To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts shows the annual receipts and disbursements of the Union Government.

2. In scrutinising the appropriation accounts and the audit report of CAG on it, the committee has to satisfy itself that

(a) The money that has been disbursed was legally available for the applied service or purpose

(b) The expenditure conforms to the authority that governs it

(c) Every re-appropriation has been made in accordance with the related rules

3. To examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them (except those public undertakings which are allotted to the Committee on Public Undertakings)

4. To examine the accounts of autonomous and semi-autonomous bodies, the audit of which is conducted by the CAG

5. To consider the report of the CAG relating to the audit of any receipt or to examine the accounts of stores and stocks

6. To examine the money spent on any service during a financial year in excess of the amount granted by the Lok Sabha for that purpose

In the fulfillment of the above functions, the committee is assisted by the CAG. In fact, the CAG acts as a guide, friend and philosopher of the committee.

On the role played by the committee, Ashok Chanda (who himself has been a CAG of India) observed: “Over a period of years, the committee has entirely fulfilled the expectation that it should develop into a powerful force in the control of public expenditure. It may be claimed that the traditions established and conventions developed by the Public Accounts Committee conform to the highest traditions of a parliamentary democracy.”

However, the effectiveness of the role of the committee is limited by the following:

(a) It is not concerned with the questions of policy in broader sense.

(b) It conducts a post-mortem examination of accounts (showing the expenditure already incurred).

(c) It cannot intervene in the matters of day-to-day administration.

(d) Its recommendations are advisory and not binding on the ministries.

(e) It is not vested with the power of disallowance of expenditures by the departments.

(f) It is not an executive body and hence, cannot issue an order. Only the Parliament can take a final decision on its findings.

Estimates Committee

The origin of this committee can be traced to the standing financial committee set up in 1921. The first Estimates Committee in the post- independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this committee. These members are elected by the Lok Sabha every year from amongst its own members, according to the principles of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members and he is invariably from the ruling party.

The function of the committee is to examine the estimates included in the budget and suggest ‘economies’ in public expenditure. Hence, it has been described as a ‘continuous economy committee’.

In more detail, the functions of the committee are:

1. To report what economies, improvements in organisation, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected

2. To suggest alternative policies in order to bring about efficiency and economy in administration

3. To examine whether the money is well laid out within the limits of the policy implied in the estimates

4. To suggest the form in which the estimates are to be presented to Parliament

The Committee shall not exercise its functions in relation to such public undertakings as are allotted to the Committee on Public Undertakings. The Committee may continue the examination of the estimates from time to time, throughout the financial year and report to the House as its examination proceeds. It shall not be incumbent on the Committee to examine the entire estimates of any one year. The demands for grants may be finally voted despite the fact that the Committee has made no report.

However, the effectiveness of the role of the committee is limited by the following:

(a) It examines the budget estimates only after they have been voted by the Parliament, and not before that.

(b) It cannot question the policy laid down by the Parliament.

(c) Its recommendations are advisory and not binding on the ministries.

(d) It examines every year only certain selected ministries and departments. Thus, by rotation, it would cover all of them over a number of years.

(e) It lacks the expert assistance of the CAG which is available to the Public Accounts Committee.

(f) Its work is in the nature of a postmortem.

Committee on Public Undertakings

This committee was created in 1964 on the recommendation of the Krishna Menon Committee. Originally, it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha). However, in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). The members of this committee are elected by the Parliament every year from amongst its own members according to the principle of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only. Thus, the members of the committee who are from the Rajya Sabha cannot be appointed as the chairman.

The functions of the committee are:

1. To examine the reports and accounts of public undertakings

2. To examine the reports of the Comptroller and Auditor General on public undertakings

3. To examine (in the context of autonomy and efficiency of public undertakings) whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices

4. To exercise such other functions vested in the public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the Speaker from time to time

The committee is not to examine and investigate any of the following:

(i) Matters of major government policy as distinct from business or commercial functions of the public undertakings

(ii) Matters of day-to-day administration

(iii) Matters for the consideration of which machinery is established by any special statute under which a particular public undertaking is established

Further, the effectiveness of the role of the committee is limited by the following:

(a) It cannot take up the examination of more than ten to twelve public undertakings in a year.

(b) Its work is in the nature of a post-mortem.

(c) It does not look into technical matters as its members are not technical experts.

(d) Its recommendations are advisory and not binding on the ministries.

DEPARTMENTAL STANDING COMMITTEES

On the recommendation of the Rules Committee of the Lok Sabha, 17 Departmentally-Related Standing Committees (DRSCs) were set up in the Parliament in 1993. In 2004, seven more such committees were setup, thus increasing their number from 17 to 24.

The main objective of the standing committees is to secure more accountability of the Executive (i.e., the Council of Ministers) to the Parliament, particularly financial accountability. They also assist the Parliament in debating the budget more effectively.

The 24 standing committees cover under their jurisdiction all the ministries / departments of the Central Government.

Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha). The members of the Lok Sabha are nominated by the Speaker from amongst its own members, just as the members of the Rajya Sabha are nominated by the Chairman from amongst its members.

A minister is not eligible to be nominated as a member of any of the standing committees. In case a member, after his nomination to any of the standing committees, is appointed a minister, he then ceases to be a member of the committee.

The term of office of each standing committee is one year from the date of its constitution.

Out of the 24 standing committees, 8 work under the Rajya Sabha and 16 under the Lok Sabha.

The functions of each of the standing committees are:

1. To consider the demands for grants of the concerned ministries / departments before they are discussed and voted in the Lok Sabha. Its report should not suggest anything of the nature of cut motions

2. To examine bills pertaining to the concerned ministries / departments

3. To consider annual reports of ministries / departments

4. To consider national basic long-term policy documents presented to the Houses

The following limitations are imposed on the functioning of these standing committees:

(i) They should not consider the matters of day-to-day administration of the concerned ministries / departments.
(ii) They should not generally consider the matters which are considered by other parliamentary committees.
(iii) It should be noted here that the recommendations of these committees are advisory in nature and hence not binding on the Parliament.

The following procedure shall be followed by each of the standing committees in their consideration of the demands for grants, and making a report thereon to the Houses.

(a) After general discussion on the budget in the Houses is over, the Houses shall be adjourned for a fixed period.

(b) The committees shall consider the demands for grants of the concerned ministries during the aforesaid period.

(c) The committees shall make their report within the period and shall not ask for more time.

(d) The demands for grants shall be considered by the House in the light of the reports of the committees.

(e) There shall be a separate report on the demands for grants of each ministry.

The following procedure shall be followed by each of the standing committees in examining the bills and making report thereon.

(a) The committee shall consider the general principles and clauses of bills referred to it.

(b) The Committee shall consider only such bills as introduced in either of the Houses and referred to it.

(c) The Committee shall make report on bills in a given time.

The merits of the standing committee system in the Parliament are:

(1) Their proceedings are devoid of any party bias.

(2) The procedure adopted by them is more flexible than in the Lok Sabha.

(3) The system makes parliamentary control over executive much more detailed, close, continuous, in-depth and comprehensive.

(4) The system ensures economy and efficiency in public expenditure as the ministries / departments would now be more careful in formulating their demands.

(5) They facilitate opportunities to all the members of Parliament to participate and understand the functioning of the government and contribute to it.

(6) They can avail of expert opinion or public opinion to make the reports. They are authorised to invite experts and eminent persons to testify before them and incorporate their opinions in their reports.

(7) The opposition parties and the Rajya Sabha can now play a greater role in exercising financial control over the executive.

COMMITTEES TO INQUIRE

Committee on Petitions

This committee examines petitions on bills and on matters of general public importance. It also entertains representations from individuals and associations on matters pertaining to Union subjects. The Lok Sabha committee consists of 15 members, while the Rajya Sabha committee consists of 10 members.

Committee of Privileges

The functions of this committee are semi-judicial in nature. It examines the cases of breach of privileges of the House and its members and recommends appropriate action. The Lok Sabha committee has 15 members, while the Rajya Sabha committee has 10 members.

Ethics Committee

This committee was constituted in Rajya Sabha in 1997 and in Lok Sabha in 2000. It enforces the code of conduct of members of Parliament. It examines the cases of misconduct and recommends appropriate action. Thus, it is engaged in maintaining discipline and decorum in Parliament.

COMMITTEES TO SCRUTINISE AND CONTROL

Committee on Government Assurances

This committee examines the assurances, promises and undertakings given by ministers from time to time on the floor of the House and reports on the extent to which they have been carried through. In the Lok Sabha, it consists of 15 members and in the Rajya Sabha, it consists of 10 members. It was constituted in 1953.

Committee on Subordinate Legislation

This committee examines and reports to the House whether the powers to make regulations, rules, sub-rules and bye-laws delegated by the Parliament or conferred by the Constitution to the Executive are being properly exercised by it. In both the Houses, the committee consists of 15 members. It was constituted in 1953.

Committee on Papers Laid on the Table

This committee was constituted in 1975. The Lok Sabha Committee has 15 members, while the Rajya Sabha Committee has 10 members. It examines all papers laid on the table of the House by ministers to see whether they comply with provisions of the Constitution, or the related Act or Rule. It does not examine statutory notifications and orders that fall under the jurisdiction of the Committee on Subordinate Legislation.

Committee on Welfare of SCs and STs

This committee consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). Its functions are: (i) to consider the reports of the National Commission for the SCs and the National Commission for the STs; (ii) to examine all matters relating to the welfare of SCs and STs, like implementation of constitutional and statutory safeguards, working of welfare programmes, etc.

Committee on Empowerment of Women

This committee was constituted in 1997 and consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). It considers the reports of the National Commission for Women and examines the measures taken by the Union Government to secure status, dignity and equality for women in all fields.

Joint Committee on Offices of Profit

This committee examines the composition and character of committees and other bodies appointed by the Central, state and union territory governments and recommends whether persons holding these offices should be disqualified from being elected as members of Parliament or not. It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha).

COMMITTEES RELATING TO THE DAY-TO-DAY BUSINESS OF THE HOUSE

Business Advisory Committee

This committee regulates the programme and time table of the House. It allocates time for the transaction of legislative and other business brought before the House by the government. The Lok Sabha committee consists of 15 members including the Speaker as its chairman. In the Rajya Sabha, it has 11 members including the Chairman as its exofficio chairman.

Committee on Private Members' Bills and Resolutions

This committee classifies bills and allocates time for the discussion on bills and resolutions introduced by private members (other than ministers). This is a special committee of the Lok Sabha and consists of 15 members including the Deputy Speaker as its chairman. The Rajya Sabha does not have any such committee. The same function in the Rajya Sabha is performed by the Business Advisory Committee of that House.

Rules Committee

This committee considers the matters of procedure and conduct of business in the House and recommends necessary amendments or additions to the rules of the House. The Lok Sabha committee consists of 15 members including the Speaker as its ex-officio chairman. In the Rajya Sabha, it consists of 16 members including the Chairman as its exofficio chairman.

Committee on Absence of Members

This committee considers all applications from members for leave of absence from the sittings of the House, and examines the cases of members who have been absent for a period of 60 days or more without permission. It is a special committee of the Lok Sabha and consists of 15 members. There is no such committee in the Rajya Sabha and all such matters are dealt by the House itself.

HOUSE-KEEPING COMMITTEES

General Purposes Committee

This committee considers and advises on matters concerning affairs of the House, which do not fall within the jurisdiction of any other parliamentary committee. In each House, this committee consists of the presiding officer (Speaker / Chairman) as its ex-officio chairman, Deputy Speaker (Deputy Chairman in the case of Rajya Sabha), members of panel of chairpersons (panel of vice-chairpersons in the case of Rajya Sabha), chairpersons of all the departmental standing committees of the House, leaders of recognised parties and groups in the House and such other members as nominated by the presiding officer.

House Committee

This committee deals with residential accommodation of members and other amenities like food, medical aid, etc., accorded to them in their houses and hostels in Delhi. Both the Houses have their respective House Committees. In the Lok Sabha, it consists of 12 members.

Library Committee

This committee considers all matters relating to library of the Parliament and assists the members in utilising the library's services. It consists of nine members (six from Lok Sabha and three from Rajya Sabha).

Joint Committee on Salaries and Allowances of Members

This committee was constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954. It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha). It frames rules for regulating payment of salary, allowances and pension to members of Parliament.

CONSULTATIVE COMMITTEES

Consultative committees are attached to various ministries / departments of the Central Government. They consist of members of both the Houses of Parliament. The Minister / Minister of State in charge of the Ministry concerned acts as the chairman of the consultative committee of that ministry.

These committees provide a forum for informal discussions between the ministers and the members of Parliament on policies and programmes of the government and the manner of their implementation.

These committees are constituted by the Ministry of Parliamentary Affairs. The guidelines regarding the composition, functions and procedures of these committees are formulated by this Ministry. The Ministry also makes arrangements for holding their meetings both during the session and the inter-session period of Parliament.

The membership of these committees is voluntary and is left to the choice of the members and the leaders of their parties. The maximum membership of a committee is 30 and the minimum is 10.

These committees are normally constituted after the new Lok Sabha is constituted, after General Elections for the Lok Sabha. In other words, these committees shall stand dissolved upon dissolution of every Lok Sabha and shall be reconstituted upon constitution of each Lok Sabha.

In addition, separate Informal Consultative Committees of the members of Parliament are also constituted for all the Railway Zones. Members of Parliament belonging to the area falling under a particular Railway Zone are nominated on the Informal Consultative Committee of that Railway Zone.

Unlike the Consultative Committees attached to various ministries / departments, the meetings of the Informal Consultative Committees are to be arranged during the session periods only.

SUPREME COURT

Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws. In USA, on the other hand, the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. There is thus a double system of courts in USA–one for the centre and the

other for the states. To sum up, India, although a federal country like the USA, has a unified judiciary and one system of fundamental law and justice.

The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its predecessor. This is because; the Supreme Court has replaced the British Privy Council as the highest court of appeal.

Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.

COMPOSITION AND APPOINTMENT

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges). In 2019, the centre notified an increase in the number of Supreme Court judges from thirty-one to thirty- four, including the Chief Justice of India. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2019. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977, to twenty-five in 1986, to thirty in 2008 and to thirty-three in 2019.

Appointment of Judges

The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

Controversy over Consultation

The Supreme Court has given different interpretation of the word ‘consultation’ in the above provision. In the First Judges case (1982), the Court held that consultation

does not mean concurrence and it only implies exchange of views. But, in the Second Judges case (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court. But, the Chief Justice would tender his advice on the matter after consulting two of his senior most colleagues. Similarly, in the Third Judges case (1998), the Court opined that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'. The sole opinion of the chief justice of India does not constitute the consultation process. He should consult a collegium of four senior most judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government. The court held that the recommendation made by the chief justice of India without complying with the norms and requirements of the consultation process are not binding on the government.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegiums system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegiums system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case (2015). The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Appointment of Chief

Justice From 1950 to 1973, the practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A.N. Ray was appointed as the Chief Justice of India by superseding three senior judges. Again in 1977, M.U. Beg was appointed as the chief justice of India by superseding the then senior-most judge. This discretion of the government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the senior most judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.

2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

1. to bear true faith and allegiance to the Constitution of India;

2. to uphold the sovereignty and integrity of India;

3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and

4. to uphold the Constitution and the laws.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹1 lakh to ₹2.80 lakh per

month and that of a judge from ₹90,000 to ₹2.50 lakh per month. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

TENURE AND REMOVAL

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.

2. He can resign his office by writing to the president.

3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two–proved misbehaviour or incapacity.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/ Chairman.

2. The Speaker/Chairman may admit the motion or refuse to admit it.

3. If it is admitted, then the Speaker/ Chairman is to constitute a three- member committee to investigate into the charges.

4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.

5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.

6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.

7. Finally, the president passes an order removing the judge.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The first case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

ACTING, ADHOC AND RETIRED JUDGES

Acting Chief Justice

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

1. the office of Chief Justice of India is vacant; or

2. the Chief Justice of India is temporarily absent; or

3. the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period. He can do so only after consultation with the chief justice of the High Court concerned and with the previous consent of the president. The judge so appointed should be

qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judge

At any time, the chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period. He can do so only with the previous consent of the president and also of the person to be so appointed. Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

SEAT AND PROCEDURE

Seat of Supreme Court

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

Procedure of the Court

The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges. All other cases are decided by single judges and division benches. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

INDEPENDENCE OF SUPREME COURT

The Supreme Court has been assigned a very significant role in the Indian democratic political system. It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.

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

1. Mode of Appointment

The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

2. Security of Tenure

The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.

3. Fixed Service Conditions

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency.

Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

4. **Expenses Charged on Consolidated Fund**

The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).

5. **Conduct of Judges cannot be Discussed**

The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

6. **Ban on Practice after Retirement**

The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour anyone in the hope of future favour.

7. **Power to Punish for its Contempt**

The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody. This power is vested in the Supreme Court to maintain its authority, dignity and honour.

8. **Freedom to Appoint its Staff**

The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive. He can also prescribe their conditions of service.

9. **Its Jurisdiction cannot be Curtailed**

The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

10. **Separation from Executive**

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

JURISDICTION AND POWERS OF SUPREME COURT

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament). It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers. Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: “The Supreme Court of India has more powers than any other Supreme Court in any part of the world.” The jurisdiction and powers of the Supreme Court can be classified into the following:

1. Original Jurisdiction.
2. Writ Jurisdiction.
3. Appellate Jurisdiction.
4. Advisory Jurisdiction.
5. A Court of Record.
6. Power of Judicial Review.
7. Constitutional Interpretation
8. Other Powers.

1. **Original Jurisdiction**

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

(a) Between the Centre and one or more states; or

(b) Between the Centre and any state or states on one side and one or more other states on the other side; or

(c) Between two or more states.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

depends. Thus, the questions of political nature are excluded from it. Two, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained under this.

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

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

(b) A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extent to such a dispute.

(c) Inter-state water disputes.

(d) Matters referred to the Finance Commission.

(e) Adjustment of certain expenses and pensions between the Centre and the states.

(f) Ordinary dispute of Commercial nature between the Centre and the states.

(g) Recovery of damages by a state against the Centre.

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

1957, passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted. One, the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right.

2. **Writ Jurisdiction**

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the fundamental rights of an aggrieved citizen. In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

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

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

of the Supreme Court. But, the Parliament can confer on the Supreme Court, the power to issue writs for other purposes also.

3. Appellate Jurisdiction

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

(a) Appeals in constitutional matters.

(b) Appeals in civil matters.

(c) Appeals in criminal matters.

(d) Appeals by special leave.

(a) Constitutional Matters

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

(b) Civil Matters

In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies–

(i) that the case involves a substantial question of law of general importance; and

(ii) that the question needs to be decided by the Supreme Court.

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

(c) **Criminal Matters**

The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court–

(i) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or

(iii) certifies that the case is a fit one for appeal to the Supreme Court.

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

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

(i) has on appeal, reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or for ten years; or

(ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to imprisonment for life or for ten years.

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

(d) **Appeal by Special Leave**

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

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

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

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

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

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

4. **Advisory Jurisdiction**

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

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

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

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the president. But, in the second case, the Supreme Court 'must' tender its opinion to the president. In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the president; he may follow or may not follow the opinion. However, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

So far (2019), the President has made fifteen references to the Supreme Court under its advisory jurisdiction (also known as consultative jurisdiction). These are mentioned below in the chronological order.

1. Delhi Laws Act in 1951

2. Kerala Education Bill in 1958

3. Berubari Union in 1960

4. Sea Customs Act in 1963

5. Keshav Singh's case relating to the privileges of the Legislature in 1964

6. Presidential Election in 1974

7. Special Courts Bill in 1978

8. Jammu and Kashmir Resettlement Act in 1982

9. Cauvery Water Disputes Tribunal in 1992

10. Rama Janma Bhumi case in 1993

11. Consultation process to be adopted by the chief justice of India in 1998

12. Legislative competence of the Centre and States on the subject of natural gas and liquefied natural gas in 2001

13. The constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly Elections in 2002

14. Punjab Termination of Agreements Act in 2004

15. 2G spectrum case verdict and the mandatory auctioning of natural resources across all sectors in 2012

5. A Court of Record

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

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

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

Contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which–(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

6. Power of Judicial Review

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

7. Constitutional Interpretation

The Supreme Court is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the constitution and the verbiage used in the constitution.

While interpreting the constitution, the Supreme Court is guided by a number of doctrines. In other words, the Supreme Court applies various doctrines in interpreting the constitution. The important doctrines are mentioned below:

1. Doctrine of Severability

2. Doctrine of Waiver

3. Doctrine of Eclipse

4. Doctrine of Territorial Nexus

5. Doctrine of Pith and Substance

6. Doctrine of Colourable Legislation

7. Doctrine of Implied Powers

8. Doctrine of Incidental and Ancillary Powers

9. Doctrine of Precedent

10. Doctrine of Occupied Field

11. Doctrine of Prospective Overruling

12. Doctrine of Harmonious Construction

13. Doctrine of Liberal Interpretation

8. Other Powers

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

(a) It decides the disputes regarding the election of the president and the vicepresident. In this regard, it has the original, exclusive and final authority.

(b) It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.

(c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self- correcting agency. For example, in the

Kesavananda Bharati case (1973), the Supreme Court departed from its previous judgement in the Golak Nath case (1967).

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

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

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

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

SUPREME COURT ADVOCATES

Three categories of Advocates are entitled to practice law before the Supreme Court. They are:

1. **Senior Advocates**

These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

2. **Advocates-on-Record**

Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

3. Other Advocates

These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court

UNIT V
STATE GOVERNMENT

GOVERNOR

The Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. Part VI of the Constitution deals with the government in the states.

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president. He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government. It is

an independent constitutional office and is not under the control of or subordinate to the Central government.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons

1. The direct election of the governor is incompatible with the parliamentary system established in the states.

2. The mode of direct election is more likely to create conflicts between the governor and the chief minister.

3. The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amount of money.

4. The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.

5. An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.

6. The election of governor would create separatist tendencies and thus affect the political stability and unity of the country.

7. The system of presidential nomination enables the Centre to maintain its control over the states.

8. The direct election of the governor creates a serious problem of leadership at the time of a general election in the state.

9. The chief minister would like his nominee to contest for governorship. Hence, a second rate man of the ruling party is elected as governor.

Therefore, the American model, where the Governor of a state is directly elected, was dropped and the Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

1. He should be a citizen of India.

2. He should have completed the age of 35 years.

Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so that the smooth functioning of the constitutional machinery in the state is ensured. However, both the conventions have been violated in some of the cases.

CONDITIONS OF GOVERNOR'S OFFICE

The Constitution lays down the following conditions for the the governor's office:

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.

2. He should not hold any other office of profit.

3. He is entitled without payment of rent to the use of his official residence (the Raj Bhavan).

4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.

6. His emoluments and allowances cannot be diminished during his term of office.

In 2018, the Parliament has increased the salary of the governor from ₹1.10 lakh to ₹3.50 lakh per month Like the President, the governor is also entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

Before entering upon his office, the governor has to make and subscribe to an oath or affirmation. In his oath, the governor swears:

(a) to faithfully execute the office;

(b) to preserve, protect and defend the Constitution and the law; and

(c) to devote himself to the service and well-being of the people of the state.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the senior-most judge of that court available.

Every person discharging the functions of the governor also undertakes the similar oath or affirmation

TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President.

The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time

The Constitution does not lay down any grounds upon which a governor may be removed by the President. Hence, the National Front Government headed by V.P.

Singh (1989) asked all the governors to resign as they were appointed by the Congress government. Eventually, some of the governors were replaced and some were allowed to continue. The same thing was repeated in 1991, when the Congress Government headed by P.V. Narasimha Rao changed fourteen governors appointed by the V.P. Singh and Chandra Sekhar governments.

The President may transfer a Governor appointed to one state to another state for the rest of the term. Further, a Governor whose term has expired may be reappointed in the same state or any other state.

A governor can hold office beyond his term of five years until his successor assumes charge. The underlying idea is that there must b a governor in the state and there cannot be an interregnum.

The President can make such provision as he thinks fit for the discharge of the functions of the governor in any contingency not provided for in the Constitution, for example, the death of a sitting governor. Thus, the chief justice of the concerned state high court may be appointed temporarily to discharge the functions of the governor of that state.

POWERS AND FUNCTIONS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

The powers and functions of the governor can be studied under the following heads:

1. Executive powers.
2. Legislative powers.

3. Financial powers.

4. Judicial powers.

Executive Powers

The executive powers and functions of the Governor are:

1. All executive actions of the government of a state are formally taken in his name.

2. He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.

3. He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.

4. He appoints the chief minister and other ministers. They also hold office during his pleasure. There should be a Tribal Welfare minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

5. He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.

6. He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.

7. He appoints the chairman and members of the state public service commission. However, they can be removed only by the president and not by a governor.

8. He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.

9. He can require the chief minister to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

10. He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.

11. He acts as the chancellor of universities in the state. He also appoints the vice chancellors of universities in the state.

Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.

2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.

3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.

4. He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.

5. He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.

6. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.

7. He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.

8. When a bill is sent to the governor after it is passed by state legislature, he can:

(a) Give his assent to the bill, or

(b) Withhold his assent to the bill, or

(c) Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state legislature with or without amendments, the governor has to give his assent to the bill, or

(d) Reserve the bill for the consideration of the president. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court. In addition, the governor can also reserve the bill if it is of the following nature:

(i) Ultra-vires, that is, against the provisions of the Constitution.

(ii) Opposed to the Directive Principles of State Policy.

(iii) Against the larger interest of the country.

(iv) Of grave national importance.

(v) Dealing with compulsory acquisition of property under Article 31A of the Constitution.

2. He can promulgate ordinances when the state legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly. He can also withdraw an ordinance anytime. This is the most important legislative power of the governor.

3. He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

The financial powers and functions of the governor are:

1. He sees that the Annual Financial Statement (state budget) is laid before the state legislature.

2. Money bills can be introduced in the state legislature only with his prior recommendation.

3. No demand for a grant can be made except on his recommendation.

4. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.

5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

The judicial powers and functions of the governor are:

- He can grant pardons, reprives, respites and remissions of punishment or suspend, remit and 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

- He is consulted by the president while appointing the judges of the concerned state high court.

- He makes appointments, postings and promotions of the district judges in consultation with the state high court.

- He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

CONSTITUTIONAL POSITION OF GOVERNOR

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief

minister. In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:

(a) The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).

(b) There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).

(c) The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.

From the above, it is clear that constitutional position of the governor differs from that of the president in the following two respects

1. While the Constitution envisages the possibility of the governor acting at times in his discretion, no such possibility has been envisaged for the President.

2. After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.

The Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion. The governor has constitutional discretion in the following cases:

1. Reservation of a bill for the consideration of the President.

2. Recommendation for the imposition of the President's Rule in the state.

3. While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).

4. Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration

5. Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

In addition to the above constitutional discretion (i.e., the express discretion mentioned in the Constitution), the governor, like the president, also has situational discretion (i.e., the hidden discretion derived from the exigencies of a prevailing political situation) in the following cases:

1. Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.

2. Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.

3. Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Moreover, the governor has certain special responsibilities to discharge according to the directions issued by the President. In this regard, the governor, though has to consult the council of ministers led by the chief minister, acts finally on his discretion. They are as follows:

1. Maharashtra–Establishment of separate development boards for Vidarbha and Marathwada.

2. Gujarat–Establishment of separate development boards for Saurashtra and Kutch.

3. Nagaland–With respect to law and order in the state for so long as the internal disturbance in the Naga Hills-TUensang Area continues.

4. Assam–With respect to the administration of tribal areas.

5. Manipur–Regarding the administration of the hill areas in the state.

6. Sikkim–For peace and for ensuring social and economic advancement of the different sections of the population.

7. Arunachal Pradesh–With respect to law and order in the state.

8. Karnataka - Establishment of a separate development board for Hyderabad-Karnataka region

Thus, the Constitution has assigned a dual role to the office of a governor in the Indian federal system. He is the constitutional head of the state as well as the representative of the Centre (i.e., President).

STATE LEGISLATURE

The state legislature occupies a preeminent and central position in the political system of a state.

Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature. Though these are similar to that of Parliament, there are some differences as well.

ORGANISATION OF STATE LEGISLATURE

There is no uniformity in the organisation of state legislatures. Most of the states have an unicameral system, while others have a bicameral system. At present (2019), only six states have two Houses (bicameral). These are Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra and Karnataka. The Jammu and Kashmir Legislative Council was abolishes by the Jammu and Kashmir

Reorganisation Act, 2019 The Tamil Nadu Legislative Council Act, 2010 has not come into force. The Legislative Council in Andhra Pradesh was revived by the Andhra Pradesh Legislative Council Act, 2005. The 7th Amendment Act of 1956 provided for a Legislative Council in Madhya Pradesh. However, a notification to this effect has to be made by the President. So far, no such notification has been made. Hence, Madhya Pradesh continues to have one House only.

The twenty-two states have unicameral system. Here, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect. Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting. This Act of Parliament is not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (ie, by simple majority).

“The idea of having a second chamber in the states was criticised in the Constituent Assembly on the ground that it was not representative of the people, that it delayed legislative process and that it was an expensive institution.” Consequently the provision was made for the abolition or creation of a legislative council to enable a state to have a second chamber or not according to its own willingness and financial strength. For example, Andhra Pradesh got the legislative council created in 1957 and got the same abolished in 1985. The Legislative Council in Andhra Pradesh was again revived in 2007, after the enactment of the Andhra Pradesh Legislative Council Act, 2005. The legislative council of Tamil Nadu had been abolished in 1986 and that of Punjab and West Bengal in 1969.

In 2010, the Legislative Assembly of Tamil Nadu passed a resolution for the revival of the Legislative Council in the state. Accordingly, the Parliament enacted the Tamil Nadu Legislative Council Act, 2010 which provided for the creation of Legislative Council in the state. However, before this Act was enforced, the Legislative Assembly of Tamil Nadu passed another resolution in 2011 seeking the abolition of the proposed Legislative Council.

COMPOSITION OF TWO HOUSES

Composition of Assembly

Strength

The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state. However, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.

Nominated Member

The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly. Originally, this provision was to operate for ten years (ie, upto 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this is to last until 2020.

Territorial Constituencies

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it isthe same throughout the state. In other words, the Constitution ensures that there is uniformity of representation between different constituencies in

the state. The expression ‘population’ means, the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census

After each census, a readjustment is to be made in the (a) total number of seats in the assembly of each state and (b) the division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

The 42nd Amendment Act of 1976 had frozen total number of seats in the assembly of each state and the division of such state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment has been extended for another years (i.e., upto year 2026) by the 84th Amendment Act of 2001 with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in a state on the basis of the population figures of 1991 census. Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the total number of seats in the assembly of each state.

Reservation of seats for SCs and STs

The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.

Originally, this reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.

Composition of Council

Strength

Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40. It means that the size of the council depends on the size of the assembly of the concerned state. This is done to ensure the predominance of the directly elected House (assembly) in the legislative affairs of the state. Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament.

Manner of Election

Of the total number of members of a legislative council:

1. 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,

2. 1/12 are elected by graduates of three years standing and residing within the state,

3. 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,

4. 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and

5. the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, 5/6 of the total number of members of a legislative council are indirectly elected and 1/6 are nominated by the governor. The members are elected in accordance with the system of proportional representation by means of a single

transferable vote. The bonafide or propriety of the governor's nomination in any case cannot be challenged in the courts.

This scheme of composition of a legislative council as laid down in the Constitution is tentative and not final. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

DURATION OF TWO HOUSES

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

Further, the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. This means that the assembly should be re-elected within six months after the revocation of emergency.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year. The retiring members are also eligible for re-election and re- nomination any number of times.

MEMBERSHIP OF STATE LEGISLATURE

1. **Qualifications**

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

(a) He must be a citizen of India.

(b) He must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose. In his oath or affirmation, he swears

(i) To bear true faith and allegiance to the Constitution of India

(ii) To uphold the sovereignty and integrity of India

(c) He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.

(d) He must posses other qualifications prescribed by Parliament.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

(a) A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.

(b) A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.

(c) He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

2. **Disqualifications**

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

(a) if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature),

(b) if he is of unsound mind and stands so declared by a court,

(c) if he is an undischarged insolvent,

(d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and

(e) if he is so disqualified under any law made by Parliament.

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. These are mentioned here:

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.

2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.

3. He must not have failed to lodge an account of his election expenses within the time.

4. He must not have any interest in government contracts, works or services.

5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.

6. He must not have been dismissed from government service for corruption or disloyalty to the state.

7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.

8. He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.

On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he should obtain the opinion of the Election Commission and act accordingly.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule.

The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor). In 1992, the Supreme Court ruled that the decision of Chairman/Speaker in this regard is subject to judicial review

3. **Oath or Affirmation**

Every member of either House of state legislature, before taking his seat in the House, has to make and subscribe an oath or affirmation before the governor or some person appointed by him for this purpose.

In this oath, a member of the state legislature swears:

(a) to bear true faith and allegiance to the Constitution of India;

(b) to uphold the sovereignty and integrity of India; and

(c) to faithfully discharge the duty of his office.

Unless a member takes the oath, he cannot vote and participate in the proceedings of the House and does not become eligible to the privileges and immunities of the state legislature.

A person is liable to a penalty of ₹500 for each day he sits or votes as a member in a House:

(a) before taking and subscribing the prescribed oath or affirmation; or

(b) when he knows that he is not qualified or that he is disqualified for its membership; or

(c) when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by Parliament or the state legislature.

Members of a state legislature are entitled to receive such salaries and allowances as may from time to time be determined by the state legislature.

4. **Vacation of Seats**

In the following cases, a member of the state legislature vacates his seat:

(a) Double Membership: A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.

(b) Disqualification: If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.

(c) Resignation: A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.

(d) Absence: A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.

(e) Other Cases: A member has to vacate his seat in the either House of state legislature,

(i) if his election is declared void by the court,

(ii) if he is expelled by the House,

(iii) if he is elected to the office of president or office of vice- president, and

(iv) if he is appointed to the office of governor of a state.

PRESIDING OFFICERS OF STATE LEGISLATURE

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and a Chairman and a Deputy Chairman for the legislative council. A panel of chairman for the assembly and a panel of vice-chairman for the council is also appointed.

Speaker of Assembly

The Speaker is elected by the assembly itself from amongst its members.

Usually, the Speaker remains in office during the life of the assembly.

However, he vacates his office earlier in any of the following three cases:

1. if he ceases to be a member of the assembly;

2. if he resigns by writing to the deputy speaker; and

3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice.

The Speaker has the following powers and duties:

1. He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.

2. He is the final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.

3. He adjourns the assembly or suspends the meeting in the absence of a quorum.

4. He does not vote in the first instance. But, he can exercise a casting vote in the case of a tie.

5. He can allow a ‘secret’ sitting of the House at the request of the leader of the House.

6. He decides whether a bill is a Money Bill or not and his decision on this question is final.

7. He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.

8. He appoints the chairman of all the committees of the assembly and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

1. if he ceases to be a member of the assembly;

2. if he resigns by writing to the speaker; and

3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days’ advance notice.

The Deputy Speaker performs the duties of the Speaker’s office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker.

The Speaker nominates from amongst the members a panel of chairman. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy

Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairman is nominated.

Chairman of Council

The Chairman is elected by the council itself from amongst its members.

The Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;

2. if he resigns by writing to the deputy chairman; and

3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by the Chairman. The

Speaker decides whether a bill is a Money Bill or not and his decision on this question is final.

The salaries and allowances of the Speaker and the Deputy Speaker of the assembly and the Chairman and the Deputy Chairman of the council are fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members.

The deputy chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;

2. if he resigns by writing to the Chairman; and

3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the Chairman.

The Chairman nominates from amongst the members a panel of vice- chairman. Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He has the same powers as the chairman when so presiding. He holds office until a new panel of vice- chairman is nominated.

SESSIONS OF STATE LEGISLATURE

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, ie, the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks.

Adjournment sine die means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment sine die lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session.

However, the governor can also prorogue the House which is in session.

Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).

2. A Bill passed by the assembly but pending in the council lapses.

3. A Bill pending in the council but not passed by the assembly does not lapse.

4. A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.

5. A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total

number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the council and so on require special majority, not ordinary majority. The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Language in State Legislature

The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the House in his mother-tongue. The state legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965). In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

In addition to the members of a House, every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or

any of its committees of which he is named a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

1. A minister can participate in the proceedings of a House, of which he is not a member.

2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses.

LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

Ordinary Bills

Bill in the Originating House

An ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by any other member. The bill passes through three stages in the originating House, viz,

1. First reading,

2. Second reading, and

3. Third reading.

After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

Bill in the Second House

In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading.

When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

1. it may pass the bill as sent by the assembly (i.e., without amendments);

2. it may pass the bill with amendments and return it to the assembly for reconsideration;

3. it may reject the bill altogether; and

4. it may not take any action and thus keep the bill pending.

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the Houses and the same is sent to the the governor for his assent. On the other hand, if the assembly rejects the amendments suggested by the council or the council rejects the bill altogether or the council does not take any action for three months, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the assembly for the second time.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months–three months in the first instance and one month in the second instance. The Constitution does not provide for the mechanism of joint sitting of both the Houses to resolve the disagreement between the two Houses over a bill. On the other hand, there is a provision for joint sitting of the Lok Sabha and the Rajya Sabha to resolve a disagreement between the two over an ordinary bill. Moreover, when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.

Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre.

Assent of the Governor

Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

1. he may give his assent to the bill;

2. he may withhold his assent to the bill;

3. he may return the bill for reconsideration of the House or Houses; and

4. he may reserve the bill for the consideration of the President.

If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a suspense veto. The position is same at the Central level also.

Assent of the President

When a bill is reserved by the governor for the consideration ofthe President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council. If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.

If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.

Finally, when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission.

When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

POSITION OF LEGISLATIVE COUNCIL

The constitutional position of the council (as compared with the assembly) can be studied from two angles:

A. Spheres where council is equal to assembly.

B. Spheres where council is unequal to assembly.

Equal with Assembly

In the following matters, the powers and status of the council are broadly equal to that of the assembly:

1. Introduction and passage of ordinary bills. However, incase of disagreement between the two Houses, the will of the assembly prevails over that of the council.

2. Approval of ordinances issued by the governor

3. Selection of ministers including the chief minister. Under the Constitution the, ministers including the chief minister can be members of either House of the state legislature. However, irrespective of their membership, they are responsible only to the assembly.

4. Consideration of the reports of the constitutional bodies like State Finance Commission, state public service commission and Comptroller and Auditor General of India.

5. Enlargement of the jurisdiction of the state public service commission.

Unequal with Assembly

In the following matters, the powers and status of the council are unequal to that of the assembly:

1. A Money Bill can be introduced only in the assembly and not in the council.

2. The council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.

3. The assembly can either accept or reject all or any of the recommendation of the council. In both the cases, the money bill is deemed to have been passed by the two Houses.

4. The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.

5. The final power of passing an ordinary bill also lies with the assembly. At the most, the council can detain or delay the bill for the period of four months–three months in the first instance and one month in the second instance. In other words, the council is not even a revising body like the Rajya Sabha; it is only a dilatory chamber or an advisory body.

6. The council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).

7. The council cannot remove the council of ministers by passing a no-confidence motion. This is because, the council of ministers is collectively responsible only to the assembly. But, the council can discus and criticise the policies and activities of the Government.

8. When an ordinary bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.

9. The council does not participate in the election of the president of India and representatives of the state in the Rajya Sabha.

10. The council has no effective say in the ratification of a constitutional amendment bill. In this respect also, the will of the assembly prevails over that of the council.

11. Finally, the very existence of the council depends on the will of the assembly. The council can be abolished by the Parliament on the recommendation of the assembly.

From the above, it is clear that the position of the council vis-a-vis the assembly is much weaker than the position of the Rajya Sabha vis-a-vis the Lok Sabha. The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regard to the control over the Government. On the other hand, the council is subordinate to the assembly in all respects. Thus, the predominance of the assembly over the council is fully established.

Even though both the council and the Rajya Sabha are second chambers, the Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons:

1. The Rajya Sabha consists of the representatives of the states and thus reflect the federal element of the polity. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre. Therefore, it has to be an effective revising body and not just an advisory body or dilatory body like that of the council. Onthe other hand, the issue of federal significance does not arise in the case of a council.

2. The council is heterogeneously constituted. It represents different interests and consists of differently elected members and also include some nominated members. Its very composition makes its position weak and reduces its utility as an effective revising body. On the other hand, the Rajya Sabha is homogeneously constituted. It represents only the states and consists of mainly elected members (only 12 out of 250 are nominated).

3. The position accorded to the council is in accordance with the principles of democracy. The council should yield to the assembly, which is a popular house. This pattern of relationship between the two Houses of the state legislature is adopted from the British model. In Britain, the House of Lords (Upper House) cannot oppose

and obstruct the House of Commons (Lower House). The House of Lords is only a dilatory chamber–it can delay an ordinary bill for a maximum period of one year and a money bill for one month.

Keeping in view its weak, powerless and insignificant position and role, the critics have described the council as a ‘secondary chamber’, ‘costly ornamental luxury’, ‘white elephant’, etc. The critics have opined that the council has served as a refuge for those who are defeated in the assembly elections. It enabled the unpopular, rejected and ambitious politicians to occupy the post of a chief minister or a minister or a member of the state legislature.

Even though the council has been given less powers as compared with the assembly, its utility is supported on the following grounds:

1. It checks the hasty, defective, careless and ill-considered legislation made by the assembly by making provision for revision and thought.

2. It facilitates representation of eminent professionals and experts who cannot face direct elections. The governor nominates one-sixth members of the council to provide representation to such people.

PRIVILEGES OF STATE LEGISLATURE

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities.

The Constitution has also extended the privileges of the state legislature to those persons who are entitled to speak and take part in the proceedings of a House of the state legislature or any of its committees. These include advocate-general of the state and state ministers.

It must be clarified here that the privileges of the state legislature do not extend to the governor who is also an integral part of the state legislature.

The privileges of a state legislature can be classified into two broad categories–those that are enjoyed by each House of the state legislature collectively, and those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.

2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.

3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.

4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).

5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.

6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.

7. The courts are prohibited to inquire into the proceedings of a House or its Committes.

8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

9. Individual Privileges

10. The privileges belonging to the members individually are:

11. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.

12. They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.

13. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

CHIEF MINISTER

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (de jure executive) and the Chief Minister is the real executive authority (de facto executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

APPOINTMENT OF CHIEF MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no

party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and asks him to seek a vote of confidence in the House within a month.

The governor may have to exercise his individual judgement in the selection and appointed of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.

The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases.

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

OATH, TERM AND SALARY

Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the Chief Minister swears:

1. to bear true faith and allegiance to the Constitution of India,

2. to uphold the sovereignty and integrity of India,

3. to faithfully and conscientiously discharge the duties of his office, and

4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.

But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

POWERS AND FUNCTIONS OF CHIEF MINISTER

The powers and functions of the Chief Minister can be studied under the following heads:

In Relation to Council of Ministers

The Chief Minister enjoys the following powers as head of the state council of ministers:

(a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.

(b) He allocates and reshuffles the portfolios among ministers.

(c) He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.

(d) He presides over the meetings of the council of ministers and influences its decisions.

(e) He guides, directs, controls and coordinates the activities of all the ministers.

(f) He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the governor:

(a) He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:

(i) to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;

(ii) to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and

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

(b) He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:

(a) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.

(b) He can recommend the dissolution of the legislative assembly to the governor at any time.

(c) He announces the government policies on the floor of the house.

Other Powers and Functions

In addition, the Chief Minister also performs the following functions:

(a) He is the chairman of the State Planning Board.

(b) He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.

(c) He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.

(d) He is the chief spokesman of the state government.

(e) He is the crisis manager-in-chief at the political level during emergencies.

(f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.

(g) He is the political head of the services.

Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

RELATIONSHIP WITH THE GOVERNOR

The following provisions of the Constitution deal with the relationship between the governor and the Chief Minister:

1. Article 163: There shall be a council of ministers with the Chief Minister as the head to aid and advise the governor on the exercise of his functions, except in so far as he is required to exercise his functions or any of them in his discretion.

2. Article 164:

(a) The Chief Minister shall be appointed by the governor and other ministers shall be appointed by the governor on the advise of the Chief Minister;

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

(c) The council of ministers shall be collectively responsible to the legislative assembly of the state.

3. Article 167: It shall be the duty of the Chief Minister:

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

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

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

STATE COUNCIL OF MINISTERS

As the Constitution of India provides for a parliamentary system of government in the states on the Union pattern, the council of ministers headed by the chief minister is the real executive authority in the politico- administrative system of a state. The council of ministers in the states is constituted and function in the same way as the council of ministers at the Centre.

The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while

Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

CONSTITUTIONAL PROVISIONS

Article 163–Council of Ministers to aid and advise Governor

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advice the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.

2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

3. The advice tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164–Other Provisions as to Ministers

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than

12. This provision was added by the 91st Amendment Act of 2003.

3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.

4. The ministers shall hold office during the pleasure of the Governor.

5. The council of ministers shall be collectively responsible to the state Legislative Assembly.

6. The Governor shall administer the oaths of office and secrecy to a minister.

7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.

8. The salaries and allowances of ministers shall be determined by the state legislature.

Article 166–Conduct of Business of the Government of a State

1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

3. The Governor shall make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act in his discretion.

Article 167–Duties of Chief Minister

It shall be the duty of the Chief Minister of each state

1. To communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation

2. To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for

3. If the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council

Article 177–Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he may be named a member. But he shall not be entitled to vote.

NATURE OF ADVICE BY MINISTERS

Article 163 provides for a council of ministers with the chief minister at the head to aid and advise the governor in the exercise of his functions except the discretionary ones. If any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion. Further, the nature of advice tendered by ministers to the governor cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the governor and the ministers.

In 1971, the Supreme Court ruled that a council of ministers must always exist to advise the governor, even after the dissolution of the state legislative assembly or resignation of a council of ministers. Hence, the existing ministry may continue in the office until its successor assumes charge. Again in 1974, the Court clarified that except in spheres where the governor is to act in his discretion, the governor has to act on the aid and advice of the council of ministers in the exercise of his powers and functions. He is not required to act personally without the aid and advice of the council of ministers or against the aid and advice of the council of ministers. Wherever the Constitution requires the satisfaction of the governor, the satisfaction is not the personal satisfaction of the governor but it is the satisfaction of the council of ministers.

APPOINTMENT OF MINISTERS

Chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

But, there should be a tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha. Originally, this provision was applicable to Bihar, Madhya Pradesh and Odisha. The 94th Amendment Act of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now and the fraction of population of the Scheduled Tribes is very small. The same Amendment also extended the above provision to the newly formed states of Chhattisgarh and Jharkhand.

Usually, the members of the state legislature, either the legislative assembly or the legislative council, are appointed as ministers. A person who is not a member of either House of the state legislature can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he ceases to be a minister.

A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House. But, he can vote only in the House of which he is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,

2. to uphold the sovereignty and integrity of India,

3. to faithfully and conscientiously discharge the duties of his office, and

4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his

consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council.

Alternatively, the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also means that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advice the governor to dismiss him. By exercising this power, the chief minister can ensure the realisation of the rule of collective responsibility.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

COMPOSITION OF THE COUNCIL OF MINISTERS

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation.

Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister– supreme governing authority in the state.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and

do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

At times, the council of ministers may also include a deputy chief minister. The deputy chief ministers are appointed mostly for local political reasons.

CABINET

A smaller body called cabinet is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

1. It is the highest decision making authority in the politico- administrative system of a state.
2. It is the chief policy formulating body of the state government.
3. It is the supreme executive authority of the state government.
4. It is the chief coordinator of state administration.
5. It is an advisory body to the governor.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

Cabinet Committees

The cabinet works through various committees called cabinet committees. They are of two types–standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.

They are set up by the chief minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition varies from time to time.

They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

HIGH COURT

In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary ina state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state.

The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras. In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state.

The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory.

At present (2019), there are 25 high courts in the country. Out of them, only three high courts have jurisdiction over more than one state. Among the nine union territories, Delhi alone has a separate high court (since 1966). The union territories of Jammu and Kashmir and Ladakh have a common high court. The other union territories fall under the jurisdiction of different state high courts. The Parilament can

extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts.

COMPOSITION AND APPOINTMENT

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president. Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

Appointment of Judges

The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

In the Second Judges case (1993), the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India. In the Third Judges case (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegium of two senior-most judges of the Supreme Court. Thus, the sole opinion of the chief justice of India alone does not constitute the ‘consultation’ process.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the Collegium System of appointing judges to the Supreme Court and High Courts with a new body called the

National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case (2015). The Court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges

A person to be appointed as a judge of a high court, should have the following qualifications:

1. He should be a citizen of India.

2. (a) He should have held a judicial office in the territory of India for ten years; or

(b) He should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of the Supreme Court, the Consitution makes no provision for appointment of a distinguished jurist as a judge of a high court.

Oath or Affirmation

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears:

1. to bear true faith and allegiance to the Constitution of India;

2. to uphold the sovereignty and integrity of India;

3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and

4. to uphold the Constitution and the laws.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹90,000 to 2.50 lakh per month and that of a judge from ₹80,000 to

2.25 lakh per month. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

TENURE, REMOVAL AND TRANSFER

Tenure of Judges

The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

1. He holds office until he attains the age of 62 years5. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.

2. He can resign his office by writing to the president.

3. He can be removed from his office by the President on the recommendation of the Parliament.

4. He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Removal of Judges

A judge of a high court can be removed from his office by an order of the President. The President can issue the removal order only after an address by the Parliament

has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two–proved misbehaviour or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.

2. The Speaker/Chairman may admit the motion or refuse to admit it.

3. If it is admitted, then the Speaker/ Chairman is to constitute a three- member committee to investigate into the charges.

4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.

5. If the committee finds the judge to be guilty of misbehaviour or suffering from incapacity, the House can take up the consideration of the motion.

6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.

7. Finally, the president passes an order removing the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.

It is interesting to know that no judge of a high court has been impeached so far.

Transfer of Judges

The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

In 1977, the Supreme Court ruled that the transfer of high court judges could be resorted to only as an exceptional measure and only in public interest and not by way of punishment. Again in 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges. But, only the judge who is transferred can challenge it.

In the Third Judges case (1998), the Supreme Court opined that in case of the transfer of high court judges, the Chief Justice of India should consult, in addition to the collegium of four seniormost judges of the Supreme Court, the chief justice of the two high courts (one from which the judge is being transferred and the other receiving him). Thus, the sole opinion of the chief justice of India does not constitute the 'consultation' process.

ACTING, ADDITIONAL AND RETIRED JUDGES

Acting Chief Justice

The President can appoint a judge of a high court as an acting chief justice of the high court when:

1. the office of chief justice of the high court is vacant; or
2. the chief justice of the high court is temporarily absent; or
3. the chief justice of the high court is unable to perform the duties of his office.

Additional and Acting Judges

The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:

1. There is a temporary increase in the business of the high court; or
2. There are arrears of work in the high court.

The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is:

1. Unable to perform the duties of his office due to absence or any other reason; or

2. Appointed to act temporarily as chief justice of that high court.

An acting judge holds office until the permanent judge resumes his office. However, both the additional or acting judge cannot hold office after attaining the age of 62 years.

Retired Judges

At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period. He can do so only with the previous consent of the President and also of the person to be so appointed. Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of that high court. But, he will not otherwise be deemed to be a judge of that high court.

INDEPENDENCE OF HIGH COURT

The independence of a high court is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

1. **Mode of Appointment**

The judges of a high court are appointed by the president (which means the cabinet) in consultation with the members of the judiciary itself (i.e., chief justice of India and the chief justice of the high court). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

2. **Security of Tenure**

The judges of a high court are provided with the security of tenure. They can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the president, though they are appointed by him. This is obvious from the fact that no judge of a high court has been removed (or impeached) so far.

3. **Fixed Service Conditions**

The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. But, they cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of a high court remain same during their term of office.

4. **Expenses Charged on Consolidated Fund**

The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state. Thus, they are non- votable by the state legislature (though they can be discussed by it). It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.

5. **Conduct of Judges cannot be discussed**

The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

6. **Ban on Practice after Retirement**

The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts. This ensures that they do not favour anyone in the hope of future favour.

7. **Power to Punish for its Contempt**

A high court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody. This power is vested in a high court to maintain its authority, dignity and honour.

8. **Freedom to Appoint its Staff**

The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive. He can also prescribe their conditions of service.

9. **Its Jurisdiction cannot be Curtailed**

The jurisdiction and powers of a high court in so far as they are specified in the Constitution cannot be curtailed both by the Parliament and the state legislature. But, in other respects, the jurisdiction and powers of a high court can be changed both by the parliament and the state legislature.

10. **Separation from Executive**

The Constitution directs the state to take steps to separate the judiciary from the executive in public services. This means that the executive authorities should not possess the judicial powers. Consequent upon its implementation, the role of executive authorities in judicial administration came to an end.

JURISDICTION AND POWERS OF HIGH COURT

Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the Constitution. Besides, it has supervisory and consultative roles.

However, the Constitution does not contain detailed provisions with regard to the jurisdiction and powers of a high court. It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution. But, there is one addition, that is, the Constitution gives a high court jurisdiction over revenue matters (which it did not enjoy in the pre-con-stitution era). The Constitution also confers (by other provisions) some more additional

powers on a high court like writ jurisdiction, power of superintendence, consultative power, etc. Moreover, it empowers the Parliament and the state legislature to change the jurisdiction and powers of a high court.

At present, a high court enjoys the following jurisdiction and powers:

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Supervisory jurisdiction.
5. Control over subordinate courts.
6. A court of record.
7. Power of judicial review.

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions, (b) the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Cirminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908.

1. **Original Jurisdiction**

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:

(a) Matters of admirality and contempt of court.

(b) Disputes relating to the election of members of Parliament and state legislatures.

(c) Regarding revenue matter or an act ordered or done in revenue collection.

(d) Enforcement of fundamental rights of citizens.

(e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

(f) The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction. This was fully abolished by the Criminal Procedure Code, 1973.

2. **Writ Jurisdiction**

Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase 'for any other purpose' refers to the enforcement of an ordinary legal right. The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32). It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly. However, the writ jurisdiction of the high court is wider than that of the Supreme Court. This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

In the Chandra Kumar case (1997), the Supreme Court ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution. Hence, it cannot be ousted or excluded even by way of an amendment to the Constitution.

3. **Appellate Jurisdiction**

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

(a) Civil Matters

The civil appellate jurisdiction of a high court is as follows:

(i) First appeals from the orders and judgements of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.

(ii) Second appeals from the orders and judgements of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not questions of fact).

(iii) The Calcutta, Bombay and Madras High Courts have provision for intra-court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.

(iv) Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of the high courts. Consequently, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

(b) Criminal Matters

The criminal appellate jurisdiction of a high court is as follows:

(i) Appeals from the judgements of sessions court and additional sessions court lie to the high court if the sentence is one of imprisonment for more than seven years. It should also be noted here that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.

(ii) In some cases specified in various provisions of the Criminal Procedure Code (1973), the appeals from the judgements of the assistant sessions judge, metropolitan magistrate or other magistrates (judicial) lie to the high court.

4. Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may–

(a) call for returns from them;

(b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;

(c) prescribe forms in which books, entries and accounts are to be kept by them; and

(d) settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power of superintendence of a high court is very broad because, (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not; (ii) it covers not only administrative superintendence but also judicial superintendence; (iii) it is a revisional jurisdiction; and (iv) it can be suo-motu (on its own) and not necessarily on the application of a party.

However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals. It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to, (i) excess of jurisdiction, (ii) gross violation of natural justice, (iii) error of law, (iv) disregard to the law of superior courts, (v) perverse findings, and (vi) manifest injustice.

5. Control over Subordinate Courts

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:

(a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).

(b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).

(c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.

(d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

6. **A Court of Record**

As a court of record, a high court has two powers:

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

(b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

The expression ‘contempt of court’ has not been defined by the Constitution. However, the expression has been defined by the Contempt of Court Act of 1971.

Under this, contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which–(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

As a court of record, a high court also has the power to review and correct its own judgement or order or decision, even though no specific power of review is conferred on it by the Constitution. The Supreme Court, on the other hand, has been specifically conferred with the power of review by the constitution.

7. **Power of Judicial Review**

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

Though the phrase ‘judicial review’ has no where been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court. The constitutional validity of a legislative enactment or an executive order can be challenged in a high court on the following three grounds:

(a) it infringes the fundamental rights (Part III),

(b) it is outside the competence of the authority which has framed it, and

(c) it is repugnant to the constitutional provisions.

The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position.