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INDIAN POLITICAL SYSTEM -I

Bachelor of Arts

First Semester

Paper 101

RAJIV GANDHI UNIVERSITY

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UNIT -I

THE MAKING OF INDIAN CONSTITUTION: GOVERNMENT OF INDIA ACTS 1919 AND 1935 AND CONSTITUENT ASSEMBLY

Structure

1.0 Objectives

After reading this unit, you will have the idea about:

- the stages of development of Indian Constitution;
- the influence of various acts and reforms on the Constitution; and
- the role of the Constituent Assembly in making the Constitution of India.

1.1 Introduction

A Constitution is not the product of an accident; it is rather a result of an evolutionary process. Several factors of the past influence its making. Although the Constitution of India is prepared consequent upon the deliberations of the members of the Constituent Assembly, but its different provisions have been drawn from various sources like earlier acts and reforms introduced by the British Indian Government. So, the Constitution of India is not an exception to the evolutionary process. It is in this line of thinking that the present Unit discusses the Constitutional development and the role of the Constituent Assembly in making the Indian Constitution.

1.2 Evolution of Indian Constitution

A Constitution is a written document according to which a country is governed. It regulates the relationship between the state, the citizens and various organs of the Government. It also defines the powers and functions of the Government as a whole. Some Constitutions are the product of the long and gradual process of evolution but some modern Constitutions are the product of the war and revolutions. The Indian Constitutions is neither a product of a long process of evolution like that of the UK Constitution nor an immediate outcome of a political revolution. The Indian Constitution is a product of research and deliberation of the members of the Constituent Assembly who sought to improve upon the existing system of administration introduced by the years of British rule over India. Thus the three hundred years of British rule in India largely influenced the members of Constituent Assembly in making new Constitution for free India. The growth and development of India's Constitution can be studied under two stages i.e. pre- mutiny period and post- mutiny period.

1.2.1 Pre–mutiny Period

The foundation of British authority in India was laid in 1600 AD through the establishment of the East India Company in England under a charter of the British Queen Elizabeth. Under the charter, the company was given an exclusive right of trading with India. In the beginning, the company was purely a trading organization, but later on, due to political circumstances, it acquired the territorial power. With the expansion of political power, the affairs of the company needed some regulation. As a result, a series of acts such as Regulating Act of 1773, Charter Act of 1833, the Charter Act of 1853 etc. were passed. The Regulating Act of 1773 set up a Government in Calcutta Presidency and empowered the British Crown to establish a Supreme Court in Bengal with jurisdiction over Bengal, Bihar and Orissa. The Charter Act of 1833 separated the executive and Legislative function of the Governor General. The Charter Act of 1853 further strengthened the Legislative machinery. Four Indian provinces viz. Madras, Bombay, Bengal and North Western Provinces were represented in the Governor General's Council. However, up to the Sepoy Mutiny of 1857, India was loosely administered by the East India Company. Apart from the acts discussed above, the British Government took a series of measures basically to regulate the affairs of the Company. The Company's activity during this period was one of consolidation of British power in India. Hence, the political evolution of India under the Company's rule had no fundamental significance for the development of the Indian Constitution.

Check Your Progress-I

1 What is the meaning of a Constitution?

2. By which Charter Act the executive and legislature function of the Governor General separate?

3. Which year did Sepoy Mutiny start?

1.2.2 Post-Mutiny Period

The Sepoy Mutiny or the Revolt of 1857 sowed the seeds of nationalism in India. It also served as an eye-opener to the British. Though the revolt was crushed with iron hand, it was a major event in the history of India**,** both as a step forward in the process of Constitutional development and as an awakening of the Indian people. The people of India as a nation challenged the very authority of foreign power on Indian soil.

1.2.2.1 The Act of 1858

The revolt established beyond doubt that Indians wanted a new political system in which they should have their own share. Hence, immediately after the revolt, a bill was introduced in the House of Commons to take over the administration of India by the British Government from the company which became an act in August, 1858. By the Act of 1858, the British Crown assumed the sovereignty over India from the East India Company. This act served as the starting point of our survey because it was dominated by the principle of absolute imperial control without any popular participation in the administration of the country, while the subsequent history up to the making of Indian Constitution is one of gradual relaxation of imperial control and evolution of responsible Government. The act brought substantial changes in the Constitutional set up. Some of the important changes were:-

(i) It abolished the Board of Directors and the Board of Control and vested their powers in one of Her Majesty's Secretary, a minister in the British cabinet.
(ii) He was designated as the secretary of State for India and was empowered to superintend directly and control all the governmental affairs in India
(iii) The Secretary of State was to be assisted by a Council of India
(iv) The Governor General and Governors of the presidencies were to be appointed by the Crown and the members of their councils by the Secretary of State in council.

The essential features of the system introduced by the Act of 1858 were as follows:

(i) Though the territory was divided into provinces, the administration remained unitary and centralized. The Governor was a mere agent of the Government of India.
(ii) There was no separation of power. All powers vested in the Governor General who was responsible to the Secretary of the State only.
(iii) The entire machinery of administration was bureaucratic, totally unconcerned about public opinion in India.

Indian Council Act, 1861: In 1861, the British Government decided to expand the Legislative Council. The Indian Council Act of 1861 introduced a popular element by including certain non-official members in the council.

The main provisions of the Act were as follows:

(i) The Governor General's Council was expanded for legislative purposes by adding 6-12 new members, to be nominated for two years
(ii) Prior sanction of the Governor General was essential for introducing some measures,
(iii) Every Act passed by the Legislature in India was subject to the approval of Her Majesty acting through the Secretary of State in council.
(iv) The Governor General was authorized to exercise a veto and issue ordinances in an emergency and
(v) The strength of the Governor General's council for executive purposes was raised.

1.2.2.2 Indian Council Act, 1892

The Indian Council Act of 1892 further increased the elements of popular participation in the council. This Act was passed to further strengthen and expand the Legislative Council by increasing the numbers of non-official members in the council.

The important provisions of the Act were:

(i) Though the majority of official members were retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and Provincial Legislative Councils, while the non-official members of the Provincial Councils were to be nominated by certain local bodies such as Universities, District Boards, and Municipalities.
(ii) The Councils were to have the power of discussing the annual statement of revenue and expenditure.

1.2.2.3 Morley Minto Reforms, 1909

During the last part of the nineteenth century and early part of the twentieth century, the British Government in India faced many types of pressures from various corners. The formation of Indian National Congress in 1885 already sowed the seeds of nationalism among the Indian masses. While the moderate demanded for more reforms, the extremists were agitating for Swarajya. The revolutionaries also resorted to armed activities to end the foreign rule. Thus, to contain the explosive situation, the British Government introduced a reform named after the then Secretary of State, Lord Morley and the Viceroy, Lord Minto, which is popularly known as Morley-Minto Reforms. This reform was implemented by the Indian Council Act, 1909. The important features of the Act were:

(i) Expansion of Legislative Council both at the Centre and the Provinces. However, the official majority was maintained in the Central Legislature.
(ii) Provision for non-official majority in the Provincial Legislatures
(iii) Enlargement of the functions of Legislative Councils. The Act empowered the members to discuss budget, ask supplementary questions, discuss additional grants and new taxes etc.
(iv) One of the most remarkable but unfortunate feature of the Act was the introduction of separate representation of the Muslim Community. The separate

electorate system sowed the seeds of communalism and separatism that eventually led to the partition of the nation.

1.2.2.4 Government of India Act, 1919

The Morley-Minto Reform of 1909 failed to satisfy the aspiration of the nationalists in India. The nationalists under the banner of Indian National Congress became more active during the First World War and started its campaign for self-rule, which is known as Home Rule League. Further, the British Government in India joined the war against the wishes of the nationalist leaders. Hence, the British promised a positive reform after the war. To fulfil the popular aspirations and wartime promises, the British Government introduced the Montegue Chelmsford Reform, which led to the enactment of the Government of India Act, 1919. This Act was a landmark event in the history of the Constitutional development of India. The main features of the Act of 1919 were:

(i) **Diarchy in the provinces:** Diarchy means the dual set of Government. The subjects of administration were divided into two categories - 'Central' and 'Provincial'. The Central subjects were those, which were exclusively kept under the control of the Central Government. According to the scheme of Diarchy, the Provincial subjects were sub-divided into 'transferred' and 'reserved' subjects. The items under the transferred subjects were to be administered by the Governor with the aid of ministers responsible to the Legislative council. The items under reserved subjects were to be administered by the Governor and his executive council without any responsibility to the Legislature.

(ii) **Relaxation of central control over provinces:** The division of the items of administration into 'Central' and 'Provincial list' directly implied the relaxation of central control over the provinces not only in administrative but also in Legislative and financial matters. Even the sources of revenues were also divided into two categories so that the provinces could run the administration with the help of revenue raised by the provinces themselves. The Provincial budgets were also separated and Provincial Legislatures were empowered to present its own taxes. However, this devolution of power to the provinces should not be mistaken for a Federal distribution of powers; rather, it was a kind of delegation of power from the centre. The Governor General and the Governors had strong control over the Provincial Government. However, the scheme of delegation of power to the provincial government is considered as 'federalism in embryo'. It was the beginning of a federal system in the development of India's Constitution.

(iii) **The Indian Legislature made more representative:** The central Legislature was made bi-cameral. The Upper House i.e. the council of States consisted of 60 members, of whom 34 were elected. The Lower House i.e. Legislative Assembly consisted of about 144 members of which 104 were elected. The powers of the both Houses were co-equal except on money matters.

However, in the process of election, the system of separate electorate introduced in 1909 was retained. The act of 1919 too failed to fulfil the aspirations of the people in India. There were certain shortcomings in the Act. Some of them were-

(i) In spite of substantial devolution of power to the provinces, the administration remained unitary and centralized.

(ii) In respect of Central Legislature, the Governor General enjoyed overriding power. Certain bill required his prior sanction and had power to veto or reserve any bill for consideration of the Crown. He had power to refuse to assent the bill and he had extra-ordinary power to issue ordinances.

(iii) In the provinces, the Diarchy was also a failure. The Governor also enjoyed extra-ordinary power to override the decisions of the Legislature. Since finance was a reserved subject, the ministers could not imitate any progressive measures. There was no provision of collective responsibility and the ministers were appointed individually.

1.2.2.5 Government of India Act, 1935

The Act of 1919 too failed to fulfil the aspirations of the Indian leaders. Hence, the Indian national Congress under the leadership of Gandhiji decided to adopt the policy of progressive non-violent non-cooperation until the Swaraj or self-rule was attained. As a part of non-cooperation movement, the Congress decided to boycott the British goods, courts and offices. At the same time, the British Government appointed a Commission known as Simon Commission to look into the working of Diarchy in the provinces. Since the commission was completely manned by the white men, it was greeted with black flags everywhere it visited. After the appointment of the Simon Commission, the Congress convened all-party meeting and the outcome was the Nehru report. The Nehru Report demanded for self-government on the pattern of Dominion status. When non-cooperation movement failed, Gandhiji started Civil Disobedience movement. The picketing of shops selling foreign goods, boycott of Government offices, schools and colleges and the burning of foreign goods were parts of Civil Disobedience movement. The movement was followed by the Gandhi-Irwin Pact and series of Round Table Conferences. After the Third Round Table Conference, the Government brought out a document called White Paper, which proposed a new constitution for India. The scheme was provided in the Government of India Act, 1935.

The British government enacted the Government of India Act, 1935 to satisfy the rising political aspirations of the Indian people. The Act granted various concessions to the Indians and was the last constitutional reform made by the British parliament. It was a comprehensive and detailed document. The Act consisted of 321 sections and 10 schedules. The main provisions of the Act were:

(i) All India Federation: The Act of 1935 proposed to set up a federation for India, taking eleven provinces and six Chief Commissioner's provinces as units. However, it was optional for the princely states to join the federation. The Act fulfilled the requisite feature of a federation such as written constitution, division

of powers and independent Judiciary. The Act provided for federal list, provincial list, concurrent list and residuary list.

(ii) **Diarchy at centre:** The Act of 1935 introduced diarchy at the Centre. It provided that the subjects enumerated in the federal list would be divided into 'reserved' and 'transferred'. The reserved items like defence, external affairs, administration of tribal areas etc were to be administered by the Governor General with the help of his Executive Council. On the items mentioned in the 'transferred' list, the Governor General was to act on the advice of the Council of Ministers who were responsible to the legislature. However, the Governor General still enjoyed extra-ordinary power to override the powers of the ministers.

(iii) **Central Executive and Legislature:** The Governor General was the Chief Executive at the centre. He enjoyed special powers during the normal and emergency situations. The Lower House was known as Federal Assembly, the members of most of which were elected. The Upper House was known as Council of State which represents the provinces.

(iv) **Provincial Autonomy:** The Act abolished the Diarchy at the provinces introduced in 1919 and instead gave Provincial autonomy. The system of 'transferred' and 'reserved' subject were abolished. All the Provincial subjects became the 'transferred' and the ministers were made responsible to the Legislature only.

(v) **Provincial Executive and Legislature:** The Governor was the chief executive in the provinces. Apart from the normal powers and functions, the Governor enjoyed special powers and responsibilities. The Upper Chamber of the Provincial Legislature was known as Legislative Council and the Lower Chamber was known as Legislative Assembly. Since the Legislative Assembly was a representative body, it enjoyed more power than the council.

Thus, the **enactment** of the Government of India Act 1935 was a landmark event in the process of constitutional development in India. It is said that many of the important provisions of the present Indian Constitution are derived from the Act of 1935. However, the Act did not create much enthusiasm among the Indian people due to the reasons like non-participation of princely states in the federation, excessive central control over the provinces, discretionary power of the Governor-General and the Governors and retention of the separate electorate. Even then, the Congress **contested** the election under the frame work of the Act and formed the Government in 1937. But the Congress ministry resigned in opposition to the unilateral decisions of the British Government regarding India's participation in the Second World War. To diffuse the mounting pressure, the British Government sent the Cripps Mission and proposed the establishment of a Dominion status and a Constituent Assembly. But the Indians demanded nothing short of complete independence and gave the call of Quit India Movement with a slogan of '***Do or Die***'. Though the Quit India Movement was suppressed, the British Government continued the negotiations, which resulted in the formulation of the Cabinet Mission Plan and the Mount batten plan. On the basis of the Cabinet Mission Plan, the Constituent Assembly was set

up in December 1946 and an interim Government was formed. The aggressive attitude of the Muslim League created hurdles in the working of the Constituent Assembly and the interim Government, which ultimately led to the partition of the country. In accordance with the Mount batten Plan, the British granted independence to India on 15th August, 1947 under the India Independence Act.

Check Your Progress-II

1. What were the immediate outcomes of Sepoy Mutiny?
2. By which Act separate electorate was started?
3. When was Diarchy introduced?
4. Why is the Act of 1935 significant?

1.3 Constituent Assembly and the making of Indian Constitution

The Constitution of free India is the result of ultimate labour of the members of the Constituent Assembly. A Constituent Assembly means an assembly or body of persons selected for making the constitution of a nation. The idea of Constituent Assembly in India grew throughout the phases of freedom struggle. The demand for Constituent Assembly to frame India's constitution was first made in 1934 by the Indian National Congress. Thereafter, the Indian National Congress continued to reiterate its demand for the Constituent Assembly. Due to the exigencies of the war and mounting pressure of the Congress, the British Government had to accept the demand and announced the Cabinet Mission Plan. Its proposal contained the scheme for setting up of a constituent assembly which will give new constitution to India. The Constituent Assembly came into being in November, 1946. The election to the Constituent Assembly took place in July, 1946. The Assembly consisted of the representatives of the principal communities of India, seats being distributed among the different provinces and states roughly in ratio of one member to a million of population. For the election of members from the provinces, the Legislative Assembly of each province acted as an electorate, having been divided into communal electoral colleges which on the other hand choose their representatives on the basis of proportional representation by means of single transferable vote. However, the princely States were to be represented by a negotiating committee till such formula was evolved. According to the Cabinet Mission Plan, the original strength of Constituent Assembly was 389, comprised of 292 representatives of the British India Provinces, 4 from the Chief Commissioner's Provinces and 93 from the Princely States. In the election, the Congress party emerged victorious winning 199 seats out of 210 general seats. The rest were captured by other small parties and the independents.

The Assembly met on December, 9, 1946 but the Muslim League decided to boycott the Assembly and reiterated its demand for separate Constituent Assembly for Pakistan. After the partition, the strength of the Assembly came down to 299 members. The Assembly had its final session from 14th November to 26th November 1949. Since the framing of new Constitution was a monumental task, the Assembly appointed various committees such as Procedure Committee, Finance and State Committee, Steering Committee, Advisory Committee, Union Constitution Committee etc. The most important of all these committees was the Drafting Committee chaired

by Dr. B.R. Ambedkar. The Drafting Committee submitted the Draft Constitution consisting of 397 articles and 8 schedules before the Assembly in February 1948. Out of 164 days of working of the Constituent Assembly, 114 days were devoted to the consideration of the draft Constitution. The final discussion on the draft was completed on 26th November 1949 and was declared passed. The new Constitution of India came into effect from 26th January 1950.

The Constituent Assembly consisted of almost all important and distinguished personalities of India of that time. Many of them were great jurists, patriots, freedom fighters, administrators, educationist and eminent scholars. Though these members were indirectly elected, it is difficult to imagine that any better or more representative body could have been chosen at that point of time. The Constituent Assembly functioned as the provisional parliament of India till the first general election was held in 1952. Though the Indian Constitution is criticized for being too lengthy and legalistic in its wordings, it is a unique document. It was framed in the most democratic manner and all shades of opinion and interest are represented in it.

Check Your Progress-III

1. Who was the chairman of the Constituent Assembly?
2. How was the Constituent Assembly formed?
3. What was the role of Constituent Assembly?
4. When was the Indian constitution adopted and enacted?

1.4 Let Us Sum Up

You have seen how the constitution of India had finally been enacted after a prolonged journey. The awareness of the process of making the Indian Constitution and constitutional development helps you to understand the entire process and the role of the Constituent Assembly in making the Indian Constitution. In this unit, we have discussed the various landmarks like Morley-Minto Reforms, Montague-Chelursfort Reforms and the Government of India Act 1935 and the formation of the Constituent Assembly for making the Indian Constitution.

1.5 Key Words

Diarchy : Dual set of Government
Bicameral : where a Legislature is composed of two houses
Devolution of Power : Distribution or decentralization of power
Federation : A Constitution in which the power is shared between the Centre and the Provinces (units)
Mutiny : To refuse to obey the authorities; revolt
Nationalism : Feeling of nationhood; patriotism
Popular participation : Participation of the common people in the political process

Popular Aspiration	:	Wishes of the general public
Ordinance	:	Executive order
Sanctions	:	Permission or approval
Unitary	:	A Government of a country where the power is concentrated at the Central Government only. It is opposite to federalism.

1.6 Check Your Learning

1. Trace the development of Indian Constitution since 1858.
2. Critically examine the working of Diarchy under the act of 1919.
3. Discuss the important Provisions of the Govt. of India Act, 1935.
4. Explain Provincial Autonomy under the Govt. of India Act, 1935. Was it a real autonomy?
5. Examine the composition and role of Constituent Assembly in making India's Constitution.
6. Enumerate the major events leading to India's independence Act, 1947.

1.7 Suggested Readings

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1.8 Hints/Answers to Questions in Check Your Progress

Check Your Progress-I

1. A constitution is a written document according to which a country is to be governed.
2. The Charter Act of 1833 separated the Executive and Legislative function of the Governor General.
3. Sepoy Mutiny started in the year 1857.

Check Your Progress-II

1. After Sepoy Mutiny, the British Government took over the Indian Administration from the East India Company by the Act of 1858.
2. Separate electorate (representation) for the Muslim Community was started by the Act of 1909 (Morley-Minto Reforms) by the British Government.
3. Diarchy was introduced by the Government of India Act, 1935.
4. See Section 1.2.2.5

Check Your Progress-III

1. Dr. Rajendra Prasad was the Chairman of the Constituent Assembly.
2. See Section 1.3
3. The role of the Constituent Assembly was to fulfil the needs and aspirations of the people. You may point out the other role performed by the Constituent Assembly.
4. The Constitution of India was adopted and enacted by the Constituent Assembly on 26th November, 1949.

UNIT-II

PREAMBLE, FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

Structure

Preamble literally means an introduction or an opening statement. The constitution of India also begins with a preamble but it is not the integral part of it. The preamble briefly outlines the major contents of a constitution. The Preamble to the Constitution of India outlines the major objectives of the political system. It also contains the ideological basis of the Constitution of India.

2.0 Objectives

After reading this unit, you will be able

- to explain the meaning of the Preamble;
- to describe the ideological base of the Constitution; and
- to identify the major commitments of the Constitution.
- understand the importance of Fundamental Rights;
- acquaint yourself with various Fundamental Rights as enshrined in the Constitution;
- know your Fundamental Duties as a citizen of India; and
- classify Directive Principles of State Policy and know their features.

2. 1 Introduction

Most of the modern constitutions of the world are based on certain ideology or the other. But the Constitution of Indian is not necessarily based on one particular ideology, rather the various shades of ideologies and principles like liberalism, socialism and Gandhian principles are found reflected in it. The French Revolution, the Russian Revolution and the American War of Independence also greatly influenced the western educated members of the Constituent Assembly and hence, many western concepts are found to be enshrined in our Constitution. Further, the contemporary situations like a century of freedom struggle, trauma of partition and communal riots, famines and poverty also influenced the making of the Indian Constitution. Moreover, there is multiplicity of race, caste, community, religion, region, tribe and language in India. These centrifugal forces had to be contained and the multiplicity of interest had to be accommodated. The socio-political realities of that time greatly influenced the shape of Indian Constitution.

2. 2 Preamble

To know the base of a Constitution, the study of the contents of the Preamble is very much essential. Preamble means an introduction or preliminary statement of a formal document. It expresses the general purpose and principle for which a Constitution stands. So, it is the heart and soul of the Constitution. The Indian Constitution also has a Preamble. It contains the philosophy on which the Constitution is based. The clauses of the Constitution of Indian aim at the realization of the principles mentioned in the Preamble. It is the base of the Constitution and contains the basic principles and objectives of Indian Constitution. For the philosophy underlying the Preamble, we must look back to the historic objective resolution moved by Pandit Nehru which was adopted by the Constituent Assembly. This Resolution of January 22, 1947 inspired the shaping of the Indian Constitution throughout the subsequent stages. The ideal embodied in the said resolution is clearly reflected in the Preamble to the Constitution which summarizes the aims and objects of the Constitution. The Preamble reads as follows:

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

citizens:- JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and unity and integrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty six day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO ourselves this Constitution"

For a proper appreciation of the aims and aspirations embodied in our Constitution, we must turn to the various expressions contained in the Preamble.

The Preamble can be divided into three parts which deals with

2.2.1 Source of authority

The expression, "We, the people of India…..enact and give to ourselves this Constitution" clearly demonstrates that the people are the ultimate source of authority and the sovereignty of the nation rests with them. It speaks of popular participation and popular sovereignty. People are the real makers of the Constitution.

2.2.2 Type of Government

The words like Sovereign, Socialist, Secular and Democratic Republic speak about the type of political system or government in India. The word *Sovereign* shows that India is independent in its internal as well as external affairs. Sovereignty implies freedom of national action, both internal as well as external. India is free from the control of any other nation. The word Socialism in Indian context means *socialistic pattern* of society and polity where there will be mixed economy and equal opportunities to all. It reflects the fact that India is committed to secure justice to all its citizens by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. And all these have to be secured by peaceful, democratic and constitutional means. The words *Socialist* and *Secular* were added to the Preamble by the 42nd Constitution Amendment Act of 1976. The word *Secular* or *Secular State* means the State protects all religions equally and does not uphold any religion as state religion. The state will not discriminate against anybody on the basis of religion. Everybody will be given equal opportunities to profess, practise and propagate his own religion, faith and belief. In other words, India has adopted secularism by guaranteeing equal freedom to all religions. The expression Democratic denotes that India believes in the principles like *universal adult franchise*, *equality before law*, *equal opportunity* and f*reedom of speech and expressions*. The Preamble declares India to be a democratic state wherein the authority of the government rests upon the sovereignty of the people; the government is responsible before the people for its acts. The representative and responsible character of the government symbolises the self-rule of the people. The people are sovereign and enjoy fundamental rights and freedoms which are

enshrined in the Constitution. The term *Republic* denotes that the head of the State is elected or chosen by the people. India is not ruled by a king or a nominated head of the State; rather India has an elected head of the State, the President, who wields power for a fixed term only. The head of the State does not hold office by virtue of any status or birth.

Check Your Progress-I

1 What is Preamble?
2. Who is the source of real sovereignty?
3. What is sovereignty?
4. Which words were added to the Preamble by 42nd Constitutional Amendment Act?

2.2.3 Major Commitments of the Constitution

The Constitution of India has its own commitments. The commitments are reflected in the objectives listed in the Preamble to the Constitution. Some important among them are as follows:

(a) **Justice:** The Preamble aims at securing to all citizens justice - social, economic and political. Though it is not easy to give a precise meaning of the term justice, by and large, it can be stated that the idea of justice is equated with equity and fairness. It is an ethical and moral concept. In simple term, justice implies giving his due share to everybody. *Social justice*, therefore, would mean that all sections of society irrespective caste, creed, sex, place of birth, religion or language, would be treated equally and no one would be discriminated on any of these grounds. The constitution of India prohibits discrimination of any kind. One of the key ideals of the freedom movement was to secure a new social order based on social justice and equality. For this purpose, the constitution grants the right to equality to all its citizens, makes the untouchability a crime and grants special protection to the weaker sections of the society for securing the social equality and justice.

Similarly, *economic justice* would mean that all the natural resources of the country would be equally available to all the citizens and no one would suffer from any undeserved want. There shall not be any discrimination between man and man on the basis of income, wealth and other economic status. The economic justice involves the equal distribution of wealth by removing the concentration and monopolistic control over means of production and distribution of wealth. It aims to secure adequate opportunities to all for earning their livelihood.

The political justice, on the other hand, entitles all citizens equal political rights such as right to vote, right to contest elections and right to hold public office. It stands for the grant of equal political rights without any discrimination on the basis of caste, colour, creed, religion, sex or place of birth. The Preamble

provides for liberal democracy in which all the people have equal right to participate in the political process.

(b) **Liberty:** The Preamble also keeps liberty of thought, expression, belief, faith and worship as its ideals. It means that citizens would be free to follow a religion of their own choice and express their views freely and frankly. The State would not interfere in all these matters. Liberty denotes freedom. Everyone has the freedom to express her view openly. The people can even criticise the policies of the government without fear. Liberty, as promised in the Preamble, has been given to the people in the form of Fundamental Rights. The Fundamental Rights guarantees the freedom of speech and expression, freedom to form associations and unions and the freedom of religion. Liberty of faith and worship is designed to strengthen the spirit of secularism in India.

(c) **Equality:** The Preamble also provides for equality of status and opportunity. It implies that all the citizens would be able to make full use of their talents without any discrimination and develop their talents and personality to the maximum extent possible. It speaks of equality before law and equal protection of law without discrimination on the basis of religion, caste, race, sex and place of birth. Equality before law means everyone is equal in the eye of the law irrespective of the status and sex. Equal protection of law means there will be equality of treatment according to the provisions of the law.

(d) **Fraternity:** Lastly, the Preamble also aims at developing fraternity assuring the dignity of individual and the unity and integrity of the nation. It implies that the constitution of India will strive to develop a sense of brotherhood among the citizens of India without any consideration to his/her or her status in the society. The constitution will also strive to protect the individual dignity of every citizen. Such a brotherhood would also lead to the unity and integrity of the nation. Fraternity seeks to secure a feeling of spiritual and psychological unity without consideration of high or low in the society. The individual dignity of the citizen is very essential to maintain unity and integrity of the nation.

Though, preamble is not a part of the Indian Constitution, it serves as a “Key-note” on the “soul” of the constitution of India. In preamble the entire philosophy or the ideological bases of the Indian Constitution have been reflected. It also outlines the major contents of the constitution. The Supreme Court of India also explained the fact that if any provision of the Indian Constitution is found ambiguous, in that cases the preamble will serve as a keynote to the Indian constitution. Therefore, the preamble of our constitution also contains the basic principles and objectives of the Indian Constitution. In a nutshell, the Preamble aims at a social order wherein the people would be sovereign. The government would be elected by and accountable to the people. The powers of the government would be restricted by the rights of people and people would have ample opportunities to develop their talents. Though the Preamble is not technically enforceable through courts of law, it is useful in interpreting the various provisions of the Constitution and acts as a beacon in conflicting situations.

Check Your Progress-II

1. What do you mean by Justice? How many types of justice were prescribed under preamble?
2. What were the prime considerations before the framers of the constitution?

2.3 Fundamental Rights

Part III of the Constitution, dealing with Fundamental Rights, constitutes the 'Magnacarta' for the people of India. Nehru in the Constituent Assembly described the contents of Fundamental Rights in its deliberation as the 'Conscience' of the Constitution. Part III of the Constitution contains a very comprehensive list of the rights which are Justiciable in spite of the fact that the State may impose 'reasonable restrictions' on their use.

The objects of Fundamental Rights are to establish an ordered society by protecting the rights which are fundamental in the governance. The conflict, freedom and authority form an eternal problem in political science. The greatest challenge is to compromise the authority with the liberty of the individual. The state tries to encroach more and more in the name of ordered society, in the Fundamental Rights of the citizens and the citizens remain always apprehensive of the excess interference. How to reconcile individual freedom with State authority? The provisions of the Fundamental Rights in a Constitution aim at reconciliation of individual freedom with State authority. The Fundamental Rights are not absolute and they are to be exercised by the individual for the good of the society.

Historical Perspective: The framers of our Constitution were especially influenced by the 1789 French national Assembly adoption of "the declaration of rights of man". Subsequent adoption and incorporation of a formal bill of rights by the American Constitution came to be regarded as the distinguishing mark of a democratic State. The Irish Constitution of 1935, the post war Constitution of Japan and finally the declaration of Human Rights by the United Nations has influenced the Constitution making all over the world on the issue of Fundamental Rights of the citizens.

The Indian National Congress Passed a resolution in 1927 in Madras which declared that "the basis of the future Constitution of India must be a declaration of Fundamental Rights. It was in the Nehru committee report of 1928 that a suggestion was made for the inclusion of religious and cultural rights as basic rights of citizens. The Simon Commission, which visited India to review India's Constitutional progress, did not favour the idea of inclusion of Fundamental

Rights in the Constitution. So was the viewpoint of joint parliamentary committee on Indian Constitutional Reforms (1933-34). The Sapru Committee report on Constitutional Proposals (1945) however, supported the idea of inclusion of rights in our Constitution. Hence, the Fundamental Rights are incorporated in our Constitution in Chapter III, making the beginning of a new era of Political Democracy.

Importance of Fundamental Rights: An exhaustive definition of the term 'Fundamental Rights', with its particular reference to the Indian Constitution., is thus furnished by D.D. Basu;" A legal right is an interest which is protected by law and is enforceable in the Courts of law. While an ordinary legal right is protected and enforced by the Ordinary law of the land, a Fundamental Right is one which is protected and guaranteed by the written Constitution of the State. These are called 'fundaments' because while ordinary rights may be changed by the legislature in its ordinary process of legislation, a Fundamental Right, being guaranteed by the Constitution, cannot be attended by any process shorter than that required for amending the Constitution itself. This makes the position of Fundamental Right very strong.

States never give rights, they only recognise them; Governments never grants rights, they only protect them. Our existence as members of society alone ensures our rights. Fundamental Rights are not 'absolute', they are accompanied by implicit reservations necessary for ensuring the security of the State and the stability of the social order. Since welfare of the individuals as members of society lies in a compromise between their rights as individuals and the interest of the society to which they belong. Society is organised in character and an individual obviously can't have any right apart from what the society concedes. So also is our Fundamental Right. By making them a part of the Constitution, Fundamental Rights are invested with certain sanctity and a status higher than that of ordinary law. So Fundamental Rights are the shield of democracy and justiciable in the Court of Law. They protect the individual against governmental autocracy and against the tyranny of the majority.

One of the important features of the Indian bill of Rights is that it is the most elaborate in the world. It covers an entire chapter (III) of the Constitution running into twenty four Articles (12-35). This unprecedented size is due to not merely to the fact that it contains six different categories of rights, but the fact that the Constitution attempts to define every right in minute details and add to each an elaborate set of limitations and reservations in view of our peculiar socio-economic formation. Fundamental Rights in Indian Constitution covers both negative and positives rights. Negative rights are in fact on the nature of Constitutional restrictions on the State rather than of positive privileges extended upon the citizens. Fundamental Rights are legal rights and the Constitution has imposed upon the courts the duty to ensure that the citizen is allowed to exercise his rights without unauthorized intervention. Article 32 confers on every citizen the right to move the State High Court and the Supreme Court by appropriate proceedings for the enforcement of his Fundamental Right through writs provided in Article 32 of our Constitution.

2.4 An Analysis of the Fundamental Rights

The original Constitution itself classified the Fundamental Rights into seven groups. (a) Right to equality, (b) Right to freedom, (c) Right against exploitation, (d) right to freedom of

religion, (e) cultural and educational rights, (f) rights to property, (g) right to Constitutional remedies. Of these, the right to property has been eliminated by the 44th amendment Act of 1978, so that only six Fundamental Rights now remain. The right to property is now only a legal right.

We make an analysis here of six existent rights and the restrictions imposed on them.

2.4.*1* *Right to equality (Article 14 to 18):*

(i) Right to equality: The right to equality is covered mainly by Articles 14-18 of Chapter III although parts of Article 29 and 30 may also be said to be related to this group. Article 14 guarantees to all persons' equality before the law and equal protection of the laws within the territory of India. By ensuring the subjection of all persons to the ordinances law of the land administered by the ordinary counts, this right lays the foundation of the rule of law in India. Equality before the law and equal protection of the laws, however, do not mean that the same law is to be applied to all persons without giving any consideration, difference of circumstances and conditions. It does not prevent classification of persons into groups which may be treated differently, provided the distinction is not made arbitrarily.

The exceptions allowed by the Indian Constitution are: (i) the President or the Governor of a State shall not be answerable to any Court for the exercise and performance of the powers and duties as his office for any act done on purporting to be done by him in the exercise and performance of those powers and duties, (ii) No criminal proceeding whatsoever shall be instituted against President or a Governor in any Court during his term of office, (iii) No civil proceeding in which relief is claimed against the President or the governor of a State shall be instituted during his term of office in any Court in respect of any act done by him. The above immunities, however, shall not bear (a) Impeachment proceedings against the President, (b) suits on other appropriate proceedings against the Government of India on the government of a State. Apart from these Constitutional exceptions, there will of course, remain the exceptions acknowledged by the committee of nations in every civilized country that in favour of foreign sovereigns and ambassadors and high commissioners.

These provisions in Indian Constitution provoked Prof. Jennings to comment that "among equals the law should be equal and should be equally administered, that like should be treated alike". Nor does this right mean that "all persons shall have an absolute equation of positions on status". The purpose of this right has been to see that injustices are not done as much from treating unequal equally as from treating equals unequally.

(ii) Prohibition of discrimination (Article 15): This Article of the Indian Constitution says:

(i) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(ii) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability restriction or condition with regard to

(iii) Access to shops, public restaurants, hotels and place of public entertainment; or

(iv) The use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(v) Nothing in this Article shall prevent the State from making any special provision for women and children.

(vi) Nothing in this Article or in Clause 92 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled tribes.

(iii) Equality of opportunity in matters of Public employment (Article 16):

The Article reads as follows.

Article 16(i). There shall be equality of opportunity for all citizens in matters relating to employment, on appointment to any office under the State. Article 16(2). No citizen shall on ground only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

This Article provides for the establishment of the universality of Indian citizenship. Thus Article 16 provides safeguards not only against communal discrimination but also against local discrimination besides discrimination against the weaker sections. However, the Constitution provides certain exceptions to the rule of equality guaranteed by this Article. The only exceptions to the above rule of equality are (a) Residence within the State may be laid down by parliament as a condition for particular classes of appointment under any State on other local authority, (b) the State may reserve any post on appointment on favour of any backward class of citizens who in the opinion of the State, are not adequately represented, (c) offices connected with a religious on dominated institution may be reserved for members professing the particular religion on belonging to the particular denomination to which the institution relates, (d) the claims of the members of the Scheduled castes and Scheduled tribes shall be taken into consideration on the matter of appointment to services and posts under the union and States, as far as may be consistent with the maintenance of efficiency of the administration.

The balance between meritarian and proportional concepts of Equality postulated in Article 16 and Article 15 bring in its awake certain problems, quite apart from the inherent incongruence between them. The general right of Equality of Opportunity (based on the meritarian concept) exists in favour of an individual, whereas protective discrimination exists in favour of collectivities. The former right is enforced by the courts; the latter is based on the policies of legislatures and their implementation by executives. Conflicts arise out of the varying degrees of emphasis placed on these rights by the Judicial and executive organs of the State.

The Supreme Court has held that while Article 16(4) is apparently without any limitation upon the power of reservation conferred by it, it has to be read together with Article 335, which provides that in taking into considerations the claims of the members of Scheduled castes and Scheduled tribes in the making of appointments in connection with the affairs of the Union or a State, the policies of the State should be consistent with the maintenance of efficiency of

administration. Thus reservations under Article 16(4) may be made in the exercise of executive power without any legislative support.

Despite constitutional guarantee of 'Equality before the law and Equal protection of the Laws', there remains inequality based on sex in law which the legislatures actively endorse and the courts passively accept. Inequality in law exists not only on that basis, but also among women themselves, depending upon their religion. For in India, law governing the family vary according to the religion of communities. The courts have upheld the legal inequality that exists among women themselves on the basis of reasonable classification.

(iv) Abolition of Untouchability (Article 17): Article 17 of the Constitution says - "Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law. This Article enacts two declarations - firstly, it announces that 'untouchability' is abolished and its practice in any form is forbidden. Secondly, it declares that the enforcement of any disability rising out of 'Untouchability' shall be an offence punishable in accordance with law.

The word 'Untouchability' has not however, been defined either in the Constitution or in the above act. It has been assumed that the word has a well-known connotation. The act declares certain acts as offences when done on the ground of 'Untouchability' and prescribes the punishment there of (a) returning admission to any person to public institutions, such as hospital, dispensary, educational institutions, (b) preventing any person from worshiping **or** offering prayers in any place of public worship, (c) subjecting any person to any disability with regard to access to any shop, public restaurant, hotel or public entertainment or with regard to the use of any reserve tap or any source of water, road, cremation ground or any other place where services are rendered to the public.

The scope of the Act has been enlarged in 1976, by legislating (PCRA) (Protection of Civil Rights Act) by including, within the offence of practising Untouchability, the following:

(i) Insulting a member of a Scheduled Caste on the ground of Untouchability
(ii) Preaching Untouchability, directly or indirectly
(iii) Justifying Untouchability on historical, philosophical or religious grounds or on the ground of tradition of the Caste system

The penal section has been enhanced by providing that (a) in the case of subsequent convictions, the punishment may range from one to two years of imprisonment; (b) a person convicted on the offence of 'Untouchability' shall be disqualified for election to the Union or State legislature.

(v) Abolition of titles (Article 18): The purpose of this article is to avoid creation of social distinctions. A democracy should not create titles and titular glories. This will go against the realization of social equality. Article 18 abolishes all titles. The State is prohibited from conferring titles on any person. The Indian citizens are also not allowed to accept any title from any foreign State without the consent of the President of India. However, the State does not prevent institutions like Universities to confer titles or honour on men of merit. The State is also

allowed to confer any distinction or award for social service. This cannot be used as a title. Thus, the award of Bharat Ratna or Padma Vibhushan cannot be used as a title. The government defends them on the ground that they are not titles in the sense that they need not be compulsorily appended to the names of the recipients.

2.4.2 *Right to freedom (Article 19 to 22):*

One of the most important reasons which made the framers of the constitution to include Fundamental Rights was the experience of excessive executive powers. Article 19-22 of the Constitution guarantee to the citizens of India a set of rights collectively described as the right to freedom. According to M.V. Pylee, "Personal liberty is the most fundamental or Fundamental Rights". Article 19 to 22 deals with different aspects of this basic right. These four Articles form a character of personal liberties, which provide the backbone of the charter of Fundamental Rights.

The six freedoms (Article 19): These six freedoms provided by the Article 19 of the Indian Constitution are fundamental freedoms on personal liberties of the Indian citizens. The right to freedom is the most democratic device to check the unlimited powers of the government and guarantee the personal liberty of the citizens.

(a) Six freedoms: Article 19 of the Constitution lays down that the citizens shall have the right

(i) to freedom of speech and expression
(ii) to assemble peacefully and without arms
(iii) to form associations or unions
(iv) to move freely throughout the territory of India
(v) to reside and settle in any part of the territory of India, and
(vi) to practice any profession or to carry on any occupation, trade or business.

However, like all other rights, these freedoms are relative, not absolute. The Article first **st**ates the rights and then proceeds to empower the State to impose specific restrictions on their exercise. These restrictions are known as reasonable restrictions. Every enjoyment of a right is a reasonable claim to freedom in the exercise of certain activities. The Liberal-Democratic system adopted in India ensures the primacy of political rights over social rights and of social rights over the economic rights.

Freedom of speech and expression is a freedom, which is absolutely necessary in a democracy. The second important freedom guaranteed is the right to hold meeting peacefully without arms. The primary object of the provision is that no interference should be made in public meetings, whether political or social. The citizens are also free to form associations or unions. Law may lay down conditions of forming such associations or unions like their registration, licensing etc. But it cannot disallow the individuals to form associations or unions. The citizens are guaranteed right to move freely throughout the territories of India. There is full movement of citizens from one State to another State. It is a great protection against provincialism or localism which may develop if such freedom is not granted. It is followed also

by the right to settle or reside in any part of the territory of India. Lastly they are free to practice any profession or carry out any occupation, trade, or business. Thus the citizens of India are guaranteed ample freedom of life and liberty and are free to pursue their own happiness.

However, these freedoms are not absolute. Article 19(2) further provides that the State can impose 'reasonable restrictions' on the exercise of these rights for the interests of the security of the State, friendly relations with foreign States, public order, decency on modality or in relation to contempt of Court, defamation or incitement to an offence. All the restrictions imposed by the State, whether reasonable or not, are to be decided by the Supreme Court. The intention of the makers of the Constitution is to strike a balance between the absolute freedom guaranteed and the minimum social control necessary. Some critics feel that the expression 'reasonable restrictions' may be elastic terms and widely and recklessly used by the State. These restrictions take away the freedoms which are actually guaranteed to the individuals. The Supreme Court, however, does not accept this view. Interpreting the phrase 'reasonable restrictions', it connotes that the limitation imposed upon a person on enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. Legislation, which arbitrarily on excessively invades the right, cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed and the social control permitted under Article 19, it must be held to be wanting in reasonableness;. Of course, the Court intervenes only when some individual takes the question of the freedom to move the Court, but once the Court is apprised of the matter it has the right to go into all details of the situation for the determination of the reasonableness on the like of it, in the particular case brought before it.

Protection against Conviction for offences (Article 20): Article 20 provides protection against arbitrary and excessive punishment to any person who commits an offence. The protection may be dealt with under four categories:

1. A person can be convicted only if he has violated a law which is in force at the particular time.
2. A person cannot be given greater penalty than what might have been given to him under the law that was prevalent when the offence was committed.
3. No person can be prosecuted and punished more than once for the same offence.
4. No person can be compelled to be a witness against himself. These provisions guarantee "the primacy of the law over the passions of man".

Protection of life and personal liberty (Article 21): Article 21, one of the shortest Articles in the Constitution, reads as follows, "No person shall be deprived of his life or personal liberty except according to the procedure established by law."

This Article implies that the executive shall not be entitled to intervene with the liberty of a citizen without legal justification. Any such action can be justified only with the support of a law. Any such action can be taken only under the procedures established by law. Under our Constitution, personal freedom is secured by the judicial writ of *Habeas Corpus* (Article 32 and 226). Supreme Court has acted as the guardian of the freedom of the person.

Article 21 also does not cover any limitations upon the power of the legislature to impose restriction on the freedoms of a person. It only gives protection to the individual against arbitrary on illegal action on the part of the executive. This implies that the legislature can enact arbitrary laws encroaching upon personal liberty and the validity of such law cannot be challenged in a Court of law on the ground that the law is unreasonable, unsafe or unjust. Thus it may be concluded that personal liberty **in** India is "a liberty confined and controlled by law".

Protection against Arbitrary arrest and detention (Article 22): Article 22 guarantees certain rights to a person who has been arrested. In the first place, he cannot be detained in custody without being informed, as soon as may be of the grounds of his arrest; secondly, he has the right to consult and be defended by a lawyer of his own choice; thirdly, he must be produced before a magistrate within 24 hours of his arrest and fourthly, he cannot be held in custody beyond this period without the authority of the court. These rights, necessary for the protection of personal freedom, are subject to one important exception. They do not apply to (a) enemy aliens and (b) persons held in custody under a law providing for preventive detention. Preventive detention is one of the most controversial features of the Indian Constitution and constitutes a serious restriction on personal liberty. It has no where been authoritatively defined, but is used in contradiction to 'punitive detention'. The latter means detention as a punishment for an offence proved in a Court of law. Preventive detention however, is a precautionary measure and involves imprisonment without trial and before any crime has actually been committed.

The Constitution, however, imposes certain safeguards against abuse of the above power. It is these safeguards which constitute Fundamental Rights against arbitrary detention and it is because of these safeguards that 'preventive detention' has found a place in the part of 'Fundamental Rights 'in our Constitution. When a person has been arrested under a law of preventive detention: (i) the government is entitled to detain such person in custody only for three months. If it seeks to detain the arrested persons for more than three months, it must obtain a report from the Advisory board who will examine the papers submitted by the government and by the accused as to whether the detention is justified. (ii) The persons so detained shall, as soon as may be, informed of the grounds of his detention excepting facts which the detaining authority considers to be against the public interest to disclose (iii) the person detained must have the earlier opportunity of making a representation against the order of detention. A law which violates any of the conditions imposed by Article 22, as Stated above, is liable to be declared invalid and a detainee shall forthwith be set free if his course of detention is invalidated by the Court.

The preventive detention Act was first passed by parliament in 1950, though the act was invalidated by the Supreme Court in the famous Gopalan case on the grounds that it prohibited the detainee from disclosing the grounds of detention to the Court. Still then in India both the parliament as well as State legislatures have been making several acts for preventive detention from time to time. Some of the important such acts, made by parliament of India are: Preventive Detention Act 1950, Maintenance of Internal Security Act (MISA), 1971, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974, National Security Act, 1980, Terrorist and Disruptive Activities (Prevention) Act (TADA) 1985, and the much debated recent act POTA, 2002. Even the APPOCA, 2002 in Arunachal Pradesh comes under this category. Most of these acts have been misused and have seen used for political

purposes several times. The MISA was misused to a great extent during the emergency of 1975-76, when around 1,70,000 persons were detained. On the whole, Article 22 of our Constitution continues to be a draconian provision and more accurately a necessary evil.

2.4.3 Right against Exploitation (Article 23-24)

As an adjunct to the guarantee of personal liberty and prohibition of discrimination the Constitution lays down certain provisions to prevent exploitation of the weaker sections of society by unscrupulous individuals or even by the State.

Article 23 says, (i) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this Article shall prevent this State from imposing compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds only of religion, race, Caste, or class or any of them.

The Constitution also prohibits forced labour of any form which is similar to *begar* in an indigenous system under which landlords sometimes used to compel their tenants to render more service. The clause does not prohibit bonded labour as punishment for a criminal offence. Nor would it prevent the State from imposing compulsory recruitment or conscription for public purposes, such as military or even social service.

Special provision for the protection of children is made in Article 24 which says "No child below the age of fourteen years, shall be employed to work in any factory or mine or engaged in any other hazardous employment". It is to be noted that the prohibition imposed by this Article is absolute and does not admit it any exception for the employment of a child in factory or mine or in any other 'hazardous employment' in a railways on port of. In 1997 the supreme Court directed that the employers of children below 14 years must comply with the provisions of the child labour (Prohibition and regulation) act for providing compensation employment on their parents/guardians and their education.

2.4.4 Right to freedom of Religion (Article 25-28)

India being a secular state observes an attitude of neutrality and impartiality towards all religions. This attitude of neutrality is secured by the constitution by several provisions. This fundamental right is a necessary constitutional response to treat all our religious faiths in the democratic manner. Significantly this fundamental right firmly declares that India does not have any 'state religion'.

(a) **Freedom of conscience and free profession:** practice and propagation of religion: Article 25 of the constitution of India declares that all persons are equally entailed to freedom of conscience and the right to freely profess, practice and propagate religion, subject to public order, morality and health. At the same time the state can make laws 'regulating on restricting any economic, financial, political or other secular activities which may be associated with religious practice on providing for social welfare and reform on throwing open Hindu

religious institutions of a public character to all classes and sections of Hindus. The term Hindu deemed here being to include, Sikhs, Jains and Buddhists, for the purpose of this provision.

Positively this provision guarantees freedom of religion to everybody. Negatively it prohibits the state from compelling any person to practice any particular religion on creed.

(b) Freedom to maintain and establish Religious institutions: Article 26 guarantees different scopes and opportunities for the realization of the provisions enshrined under article 25. In order to make free practice, propaganda and profession of religion meaningful, this Article provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(i) to establish and maintain institutions for religious and charitable purposes
(ii) to manage its own affairs in matters of religion
(iii) to own and acquire movable and immovable property
(iv) to administer such property in accordance with law.

(c) Prohibition of taxes for religious purposes: Article 27 of the Constitution provides that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

(d) Prohibition of religious instructions or educational institution:

According to Article 28 of the Indian Constitution, no religious instruction can be provided in any educational institution wholly maintained out of State funds. And no person attending an educational institution recognized and aided by the State can be compelled to take part in any religious instruction on worship conducted in it. However, while religious instructions are completely banned, it can be imparted in denominations on missionary institutions subject to the consent of the students and the persons concerned. These rights to freedom of religion enumerated in our Constitution gives a strong foundation to a secular democratic Republic. By the 42nd Amendment in 1976, the preamble was amended for the words Sovereign, Democratic, Republic, the words, sovereign, socialist, secular Democratic Republic were substituted. The ambit of the freedom of religion guaranteed by Article 25-28 has been widened by the judicial interpretations and authentative pronouncements given by the Supreme Court of India time to time. It has expanded the meaning of Indian secularism when it interprets that State should not be hostile to any religion rather it should be neutral to different religions. This neutrality would be violated if religion is used for political purposes and used by political parties for their benefits and gains. And further, the right to propagate religion in Article 25(i) would not include the right to convert another by means of force, fraud, inducement or allurement. In such a situation the supreme Court pronounced, the State has the right and duty to intervene in all activities of religion which offends against public order, morality and healthy. It also has given historic verdict in 2002 that the study of religious does not amount to religious instructions. Comparative study of religion is desirable as religion is the foundation for the moral

values in a civilized society. However, the Court cautioned against any penal prejudice in the textbook.

2.4.5 Cultural and Educational Rights (Article 29 and 30)

This Fundamental Right is intended to safeguard the cultural and educational rights of the citizens preferably the minorities. According to Article 29, any section of the citizen residing in the territory of India or any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State on receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

According to Article 30, all minorities are guaranteed cultural freedom. Every minority or section of the people is assured of its right to preserve its language Script and culture. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language. Thus, the State is prohibited to dictate the minorities in their cultural and educational rights. It is to be noted that minorities recognized for the protection of cultural and educational interests also are minority based on religion, community or language. Such recognition is unparalleled in the Constitutions of the world. It is not only the minorities based on religion or language recognized but their language script and culture are also protected and recognized while interpreting the relevant provision of Article 29, the Supreme Court of India in 1965 has ruled that 'the right to agitate for the protection of the language, including political agitation. It is an absolute right and cannot be subjected to reasonable restriction".

No Fundamental Right to properties: Article 19 (i) (f) of the Constitutional guarantees to all citizens the right to acquire, hold and dispose of property. This Article has been replaced by the 44th Amendment act, 1978. The right of property had proved to be perhaps the most controversial of the Fundamental Rights. It had led to a vast amount of litigations. At one stage, it seemed likely to cause a serious clash between parliament and the Supreme Court. Parliament had indeed found it necessary to amend Article 31 thrice in order to limit the power of the Supreme Court to question the validity of legislation for acquisition of property on payment of compensation. Article 31 stated that no person shall be deprived of his property except by law and on payment of compensation. In every country, the State has the right to acquire property for public use without the owner's consent under the principle of 'eminent domain' and to deprive a person of his property in public interest. However, in most countries, the acquisition of property by the State under the principle of 'eminent domain' is subject to payment of fair and just compensation. For instance, the Constitution of USA and Australia formally provide for 'just payment' for acquisition of property and the question whether the compensation is just can be declared by the Court.

However, in Indian Constitution, 'just and fair' in relation to compensation is provided. The amount of compensation to be paid on the principles and the manner for the determination of the compensation shall be specified by the legislature concerned in a law providing for

acquisition of property. It was further provided that no such law passed by the legislature of a State authorizing acquisition of property shall have effect unless the President of India has considered and given his assent to it (31 (3)). In short, the Constitution makers felt that the legislature and not the judiciary should have the last word on the question of compensation. The judiciary, however, did not share this view.

In order to uphold the supremacy of Parliament, the Constitution's 44th amendment was passed during Janata Party Government. This amendment act abolished the right to property as a Fundamental Right and accordingly omitted the sub-heading "right to property' occurring after Article 30 and Article 31 which guaranteed to every person the right not to be deprived of his properties except by authority of law.

Now, the right to property is no more a Fundamental Right. It has been made a legal right under Article 300 (A), which lays down: "No person shall be deprived of his property save by authority of law". The net result is that if an individual's property is taken away by a public official without legal authority or in excess of the power conferred by law in this behalf, he can no longer have speedy remedy direct from the Supreme Court under Article 32. He shall have to find his remedy from the High Court under Article 226 or by an ordinary law.

The right of legislature to decide finally the amount of compensation for the property acquired by the State is a serious cut in the people's right to property. Since there is no Constitutional remedy against a sate act regarding compensation, the people have been left at the mercy of the State and grave injustice may be done to them by the party in power.

2.4.6 Right to Constitutional Remedies (Article 32)

The Constitution of India not only provides for Fundamental Rights but also makes provision for their enforcement. This remedial right is guaranteed under Article 32 which empowers the Supreme Court to uphold the Fundamental Rights and entitle the citizens to go to such Court by appropriate proceedings for the enforcement of their Fundamental Rights. Because the Constitutional experience in all countries shows that the reality of the existence of such rights is tested only on the Court. The idea of providing in the Constitution effective remedies for the enforcement of the Fundamental Rights was present in the minds of the Constitution makers from the very beginning. Accordingly, the right to Constitutional remedy has been included as a Fundamental Right in the Indian Constitution. Also included in this part are the limitations upon the enforcement of the Fundamental Rights.

Article 32 has been called the 'corner stone' of the entire edifice set up by the Constitution. Dr. Ambedkar called it the most important Article in the Constitution. This Article has four sections. The **first** section describes the scope of the right and ensures "the right to move to the Court by appropriate proceedings for the enforcement of the Fundamental Rights. The **second** section deals with the power of the Supreme Court to issue writs in the form of direction or orders in the nature of *habeas corpus, mandamus, prohibition, quo-warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the right conferred by this

part, the **third** section empowers the parliament to confer power of issue of writs or orders on any other court without prejudice to the power of the Supreme Court in this respect. The Constitution in its Article 226 (1) confers similar power of issuing writs on High Courts within their jurisdiction. The last section of Article 32 deals with the conditions under which this right can be suspended. To quote M.V. Pylee, "the first three sections of the Article 32 taken together make Fundamental Rights under the Constitution real and as such; they form the crowning part of the entire chapter'. Justice Patanjali Shastri also observed "Article 32 provides guaranteed remedies for the enforcement of these rights, and this remedial right is itself made a Fundamental Right by being included in part III. The Supreme Court is thus constituted the protector and guarantor of Fundamental Rights and it cannot consistently with the responsibility so laid upon it, refuse to entertain application seeking protection against infringements of such rights" As such Article 32 made the Supreme Court protector and guarantor of the Fundamental Rights, the Supreme Court has both original and appellate jurisdiction over the violation of the Fundamental Right within the territory of India. Only exception is that under Article 359 of the Constitution, the President of India may declare that the right to move any Court for the enforcement of Fundamental Rights shall remain suspended up to a maximum period of the existence of the emergency.

2.5 Provision for the issue of writs

The Constitution has empowered the Supreme Court to issue writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-waranto, and certiorari for the enforcement of the Fundamental Rights. These writs are like prerogatives writs which can be sought by an aggrieved party without bringing any proceeding or suit. The following are the writs which the Court is empowered to issue:

(i) Habeas corpus: Habeas corpus is a Latin term which means 'you may have the body'. It provides a protection against wrongful detention and arrest of a person. By issuing this writ, the Court directs the detaining authority to present the detained person before the Court and justify the case of his detention or arrest. The different purposes for which the writ of habeas corpus is available are as follows: (a) for the enforcement of Fundamental Rights, (b) it will also issue where the order of imprisonment or detention is ultra vires the statute which authorizes the imprisonment or detention.

The writ of *habeas corpus* is however not issued in the following cases: (i) where the person against whom the writ is issued or the person who is detained is not within the jurisdiction of the Court, (ii) to secure the release of a person who has been imprisoned by a Court of law on a criminal charge, (iii) to interfere with a proceeding for contempt by a Court of record or by parliament.

(ii) Mandamus: The Latin word 'mandamus' implies 'we order'. It commands the person to whom it is addressed to perform some public or quasi-public legal duty, which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy. It is therefore, clear that mandamus will not issue unless the applicant has a legal right to the performance of legal duty of a public nature and the party against whom the writ is sought bound to perform that duty.

This writ of ***mandamus*** may be issued (a) for the enforcement of Fundamental Rights. Whenever, a public officer or a government has done some act which violates the Fundamental Right of a person, the Court would issue a writ of mandamus restraining the public officer or the government from enforcing the order, (b) *Mandamus* is available from the High Court for various other purposes (i) to enforce the performance of a statutory duty where a public officer has got the Constitutional or statutory power but refuses to perform. In this case, the Court may issue a mandamus directing him to exercise the power, (iii) to compel a Court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it, (iv) to direct a public officer or the government not to enforce a law, which is unconstitutional.

(iii) Prohibition: This is a judicial writ issued by the Supreme Court on a High Court to an inferior Court for the purpose of preventing the inferior Court from usurping a Jurisdiction with which it is not legally vested or in other words to compel Court entrusted with judicial duties to keep themselves within the limit of the jurisdiction. This writ of prohibition differs from the writ of mandamus in that while mandamus commands activity, prohibition commands inactivity. Further while mandamus is available not only against judicial authorities but also against administrative authorities, prohibition as well as certiorari is issued only against judicial or quasi-judicial authorities.

(iv) Certiorari: The literal meaning of the word 'certiorari' is to be more fully informed of. Certiorari is an old prerogative writ which orders the removal of a case from an inferior Court to a superior Court. It may be used before the trial to prevent an excess on abuse of jurisdiction. It may be invoked also after the trial to quash an order, which has been made without jurisdiction for in defiance of rules of natural justice. The writ of prohibition is the competent of the writ of certiorari. Though prohibition and certiorari are both issued against Courts or tribunals exercising judicial or quasi-judicial powers, certiorari is issued to quash the order or decision of the tribunal while prohibition is issued to prohibit the tribunal from making the ultravires order or decision. While prohibition is available at an earlier stage, certiorari is available at a larger stage, on similar grounds. The objective of both is to secure that the jurisdiction of an inferior Court or tribunal is properly exercised and that it doesn't usurp the jurisdiction, which it does not possess.

(v) Quo Warranto: The writ of quo-warranto is issued to prevent illegal assumption of any public office by anybody till the Court has decided the matter. Literally, "quowarrnto' means "by what authority'. Suppose, a person who is below 18 years is appointed on any government post, the Court can declare him unfit and the post vacant as he is under aged. What the Court has to consider in issuing the writ of quowrranto is whether there has been usurpation of office of a public nature and an office substantive in character.

The conditions necessary for the issue of a writ of quo-warranto are as follows:

(i) the office must be public and it must be created by a statute or by the Constitution itself.
(ii) The office must be a substantive one and not merely the function on employment of a servant at the will and during the pleasure of another.
(iii) There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

The fundamental basis of the proceedings of a quo-warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is however, a discretionary remedy which the Court may grant or refuse according to the facts and circumstances of each case. Quo-warranto is thus a very powerful instrument for safeguarding against the usurpation of public offices.

2.6 Estimation and evaluation of Fundamental Rights

The chapter on Fundamental Rights in our Constitution has been a subject of criticism both in India and outside even since the commencement of the Constitution. Dr. Ivor Jennings called the chapter as the 'Lawyers paradise". Some critics maintained the view that practically the citizens do not enjoy much substantial rights. The chapter on Fundamental Rights may be called as 'apology of the Fundamental Rights' or limitations on Fundamental Rights'. Some critics point out that the spirit that pervades the whole chapter has been taken away by the extraordinary provisions such as preventive detention, suspension of Article 19 and 32 during emergency etc. These rights are called as double-edged weapons and what they give in one hand taken away in other.'

It is criticized on the ground that it omits a number of important categories of social rights such as the right to work, the right to rest and leisure, right to education and social security etc. These rights are clearly found in the Constitution of communist countries. This criticism is hardly justified and the comparison with communist countries is not very helpful. In these countries, Fundamental Rights declared in the Constitutions are primarily propaganda slogans and the extent of their actual availability depends on the will of the government. They are not judicially guaranteed since the countries are not given the power to enforce them against the executive and legislative authorities. In India, on the contrary, every Fundamental Right is a justifiable right and judicial remedies are available to the citizen for its violation by the government. The framers of the Indian Constitution were, therefore, justified in not declaring rights which the State is not in a position immediately to guarantee in practice. The enforcement of the right to employment, for instance, would not only involve gigantic resources, but a complete control of all economic activities in the country by the State. Neither of these factors is available in India, characterized as the country is by limited resources as mixed economy.

Another point of criticism is that there is a vast gap between the Fundamental Rights guaranteed in the Indian Constitution and limited reality their rights in India today. It is pointed out that the legal costs under the issue of enforcing Fundamental Rights beyond the means of the ordinary citizen of India - the majority of whom are very poor. However, of recent times, with

public interest litigation and the establishment of legal aid for the poor, this gap between the rich and the poor is being sought to be reduced. The Fundamental Rights were intended to serve three important purposes namely, (i) to prevent the executive from acting arbitrarily, (ii) to ensure some amount of security and protection to various types of minorities, and (iii) to promote and foster social revolution by establishing the conditions necessary for achieving justice, social, economic and political.

So, Fundamental Rights as contained in Part III of the Constitution, are neither rooted in the doctrine of natural law nor are they based on the theory of 'reserved rights'. They are conferred rights and embody the social values of the present generations. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfil the aspirations of people in the context of changed conditions and the environment in which they live. It was therefore, not the intention of the father framers to render the rights sacrosanct; otherwise they would not have ventured to strike a balance between or to bring about a reconciliation between them and the need for welfare of society. Rights are dynamic realities and they have never been intended to be impediments to progress, development and advancement.

2.7. Fundamental Duties

Duties and rights are the two sides of the same coin. Western States have given prominent place to the rights only and not to the duties in their Constitution. But the Constitution of socialist States, on the contrary, gives equal importance to the Fundamental Rights as well as duties to their citizens. Indian Constitution did not have any chapter on fundamental duties. It was during internal emergency 1975 that the need and necessity of fundamental duty was felt and accordingly a committee under Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The committee emphasized the inclusion of a chapter on fundamental duties in the Constitution. So that people also become conscious of duties as well. The committee recommended to incorporate an eight code of 'fundamental duties' into the Constitution on July 2, 1976 and the same was accepted by the government with minor modifications. Finally, the fundamental duties were incorporated into the Constitution of India by 42nd amendment act, 1976. The new Article 51 (A) inserted by this amendment in the part IV of Indian Constitution prescribes a ten point fundamental duties for the citizens of India. As per the provisions of this Article, it shall be the duty of every citizen of India

(i) To abide by the Constitution and respect the national Flag and the National Anthem;
(ii) To cherish and follow the noble ideals which inspired our national struggle for freedom;
(iii) To protect the sovereignty, unity and integrity of India;
(iv) To defend the country and render national service when called upon to do so;
(v) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory of women;
(vi) To value and preserve the rich heritage of our composite culture;

(vii) To protect and improve the natural environment, including forest, lakes, rivers and wildlife and to have compassion for living creatures;
(viii) To develop scientific temper, humanism and the spirit of inquiry and reform;
(ix) To safeguard public property and abjure violence; and
(x) To strive towards excellence in all spheres of individual and collective entity, so that the nation constantly rises to higher levels of endeavour and achievement.

The legal utility of the fundamental duties is similar to that of the Directives as they stood in the Constitution of 1949. While the Directives were addressed to the State, without any sanction, so are the Duties addressed to the citizen, without any legal sanction for their violation. The citizen, it is expected, should be his own monitor while exercising and enforcing his Fundamental Rights, remembering that he owes the duties specified in Article 51 (A) to the State and that if he does not care for the duties he should not deserve the rights.

The Fundamental Duties inscribed in the Constitution are mixed bag of expectations and exhortations. Quite a good number of these items are those, which are enforceable today even without their being specifically incorporated in the Constitution. In this category fall the items to abide by the Constitution, respect the National Flag and the National Anthem, to defend the country and render national service when called upon to do so and safeguard public property. Fundamental duties require the citizens to respect the ideals of the Constitution and the institutions it establishes, to promote harmony and spirit of common brotherhood amongst all the people of India irrespective of their religion, language inhabiting different parts of the country and to safeguard the public property and to abjure violence. These are clearly intended to meet certain specific political threats that democracy in India has to contend with. The Indian charter of fundamental duties is unique to include the duty to develop the scientific temper, humanism and the spirit of inquiry and reform. It has been incorporated to eradicate superstitions in which India is deeply soaked. The duties to renounce practices derogatory to the dignity of women and to preserve the rich heritage of India's composite culture are two other moral codes to ennoble the society.

These are, in fact, homilies to be taught in schools and colleges, rather than to be incorporated in the Constitution as fundamental duties. Because there is neither any provision in the Constitution for the direct enforcement of these duties nor any guarantee to prevent their violation. In fact the incorporation of the fundamental duties in the part IV of the Constitution has made them constitutionally weak and non-justifiable in character. However, these duties serve as warnings to reckless citizens against anti-social, anti-national and communal activities. Significantly the Supreme Court has held that since the fundamental duties are obligatory on the part of a citizen, the State should strive to achieve the objectives behind its incorporation in the Constitution.

Check Your Progress-I

1. What is Fundamental Right?
2. Name the Rights which are Fundamental.
3. What do you mean by Preventive Detention?

4. What is the importance of Rights to Constitutional Remedies?

2.8. Directive Principles of State Policy

The Directive Principles of State Policy embodied in part IV is unique feature of our Constitution. Besides the precedent of the Irish Constitution, the basic inspiration for the Directive Principles chapter came from the concept of a welfare State. Part IV (Articles 36-51) contains the Directive Principles of State Policy; these principles underline the philosophy of democratic socialism with a rich of Gandhian idealism as incorporated into the fundamental law of our country. The interesting point about the inclusion of Directive Principles of State Policy in the Indian Constitution is that they are not laws in the sense in which the other parts of the Constitution are laws, and in case they are violated the matter cannot be taken to the Courts, since the Courts have no jurisdiction over them.

Sir Ivor Jennings, an eminent authority on Constitutional law, has questioned the utility of incorporating on the Constitution what he called the nineteenth century English philosophy of 'Fabian socialism without the socialism'. Professor K.C. Where, another authority on the Indian Constitution, described them as "paragraphs of generality' and has doubted the usefulness of introducing them in the Constitution. Yet the overwhelming section of public opinion in India and the leading Constitutional authorities in the country have regarded them as an important part of the Constitution in as much as they lay down in clear terms what kind of society India would like to evolve. The framers of the Indian Constitution by making a chapter on Directive Principles of State policy, wanted to use the Constitution as an instrument of social change. The Directive Principles of State Policy are directly connected with the Preamble and paraphrase the objectives laid down there in clear terms. The preamble gives us the fundamental principles on which the Constitution has been founded and the Directive Principles of State policy lay down the fundamental principles according to which the Constitution is to be operated by the State.

The Article included in part IV of the Constitution (Article 36-51) contains certain Directives. It shall be the duty of the State to follow these both in the matter of administration as well as in the making of laws. They embody the aims and objects of the State under the republican Constitution that is a '*Welfare State*' and not a mere '*Police State*'.

Classification of Directive principles

There are as many as 16 Articles which deal with the Directive Principles of State Policy. Those embrace a wide range of State activity including economic, social, educational, legal and international principles. These principles are not properly classified or legally arranged in the Constitution. For the sake of convenience, Professor M.P. Sharma has grouped these principles ideologically into three categories, namely, the socialistic, Gandhian and Liberal. We may discuss these categories of the Directive Principles in detail:

2.8.*1* *Socialistic Principles*

The bulk of the Directive Principles aim at shaping a welfare State based on socialistic principles.

(1) Article 38 declares that the primary concern of the State shall be to promote welfare of the people and create a social order on which justice, social, economic and political, shall be practiced by all the national institutions

(2) Article 39 of the Constitution calls upon the State to direct its policy towards securing – (a) that the citizens, men and women equally, have the right to an adequate means of livelihood, (b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of product to the common detriment, (d) that there is equal pay for equal work for both men and women, (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, (f) that childhood and youth are protected against exploitation and against moral and material abandonment.

(3) Article 41 ensures the right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.

(4) The State shall make provision for securing just and humane conditions of work as well as maternity relief (Article 42).

(5) Article 43 provides that the State should endeavour to secure, by suitable legislation on economic organization or in any other way, to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, and social and cultural opportunities and in particular, the State shall endeavour to promote cottage industries in rural areas.

(6) The State is to ensure elimination of inequalities in States and minimization of inequalities in income.

(7) It is the duty of the State to raise the level of nutrition and the standard of living of its people and also to improve the public health (Article 47).

These Directive Principles undoubtedly embody the objectives of a welfare State and a socialistic pattern of society. This is why Dr. Jennings remarked that, “the ghosts of Sidney and Beatrice will stalk through the text of part IV of the Constitution.”

2.8.2 Gandhian Principles

The father of the nation Mahatma Gandhi had a tremendous influence over the framers of the Constitution. Although he was not a member of the Constituent Assembly, his style of leading the freedom struggle, novel ideology and unique philosophy greatly influenced the framers of the Indian Constitution. As such a good number of Gandhian ideas have been incorporated in the part IV of the Constitution. The Gandhian ideas can be found in the following principles:

1. the State shall organize village panchayats and endow them with such powers as may enable them to function as units of self-governance (Article 40);

2. the state shall promote, with special care, the educational and economic interests of Harijans, Scheduled Castes and Scheduled tribes and other weaker sections of the community (Article 46);
3. the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas;
4. the state shall organize agricultural and animal husbandry on modern scientific lines;
5. the state shall take steps for preserving and improving the cattle and needs and also for prohibiting slaughter of cows and calves and other milk and draught cattle (Article 48); and
6. the state shall bring about prohibition of the consumption, except for medical purposes, of intoxicating drugs and drinks which are injurious to health.

2.8.*3* *Liberal Principles*

The third category of Directive Principles of State Policy contains some general objectives which may be branded as liberal principles. These principles are advocated by the liberal intellectual for the well being of the citizens of India. They include the following principles

(a) the state shall take steps to provide free and compulsory education for all children below the age of 14 years within a period of 19 years from the commencement of the constitution (Article 45).
(b) the state shall secure for all citizens a uniform civil code throughout the territory of the country (Article 44).
(c) the state is to protect every monument or place or object of artistic or historic interest (Article 49)
(d) the state shall take steps to separate the judiciary from the executive (Article 50)
(e) the state shall promote national peace and security, maintain just and honourable relations among nations, foster respect for international law and treaty obligation and encourage the settlement of disputes by arbitration (Article 51).

Changes brought by 42nd and 44th Amendment Act 1976

By the 42nd Amendment, certain changes have been introduced in part IV adding new Directives, to accentuate the socialistic bias of the constitution. This is positive step in the advancement of socialism in the sense of economic justice. These changes are

(i) In article 39 of the constitution clause (f) has been added which is as follows: “that the children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material advancement”.
(ii) Article 39 (A) has been inserted to enjoin the state to provide “free legal aid” to the poor and to take other suitable steps to ensure equal justice to all, which is offered by the preamble.
(iii) Article 43 (A) has been inserted in order to secure the participation of workers in the management of undertakings, establishment on other organizations engaged in any industry.

(iv) Article 48 (A) has been inserted in order to direct the state to protect and improve the environment and to safeguard the forests and wild life of the country.

A modest attempt to clean the way for the implementation of Directive Principle has been made by the 44th constitution amendment. This 44th Amendment act was passed in 1978 by the Janata Party Government which formed the government at the centre in March 1977. By this amendment, the right to property was abolished as a Fundamental Right and the provision relating to the right to acquire hold and dispose of property under Article 19(1) (P) was deleted from the chapter on fundamental rights. In this way the obstacles for the implementation of Directive Principles to achieve socio-economic justice were removed. This is a modest attempt to put an end to the controversy regarding the status of the Directive Principles and Fundamental Rights.

Check Your Progress-II

1. What are the main objectives of Directive Principles of State Policy?
2. Classify the principles in DPSP.
3. Mention the basic changes under the Constitution 42nd and 44th Amendments Act.

2.9 Directive Principles Contrasted with Fundamental Rights

The Directive Principles, however, differ from the Fundamental Rights (Part III of the Constitution) in the following respects:

(i) The Directives are not enforceable in the courts and do not create any justifiable rights in favour of individuals.
(ii) The Directives require to be implemented by legislation, so long as there is no directive, neither the state nor an individual can violate any existing law on legal right.
(iii) The Directives, *per se*, do not confer upon or take away any legislative power from the appropriate legislature: legislative competence must be sought from the legislative lists contained in the 7th Schedule of the Constitution.
(iv) The Courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.
(v) The Courts are not competent to compel the government to carry out any directive or to make any law for that purpose, for example to provide free compulsory education within the time limited by Article 45, or to provide adequate means of livelihood to every citizen.
(vi) The Fundamental Rights define a negative action on the part or the state and impose upon it the obligation not to interfere with the rights guaranteed to the people; the Directive Principles give some positive powers to the state to do things in the society as a whole even if such action comes in the way of individual rights.
(vii) The Fundamental Right enforces the political democracy and Directive Principles protects the socio-economic democracy.

2.10 Criticism of the Directive Principles of State Policy

The Directive Principles of State Policy are subject to severe criticisms as they impose no legal obligations on the state. Some critics called them as mere pious resolutions or a set of New Year's resolutions. Professor K.T. Shah stated that these principles 'are like a cheque on a bank payable, only when the resources of the bank permit', Professor K.C Wheare describes them as a "manifesto of aims and aspirations". As B.N. Rau said, "The Directive Principles of State Policy are in the nature of moral precepts for the state authorities and are open to the facile criticism that the constitution is not the place for the moral precepts." According to Srinivasan, "the formulation of the Directives of State Policy can hardly be considered inspiring. It is both vague and repetitive. The Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice. It is not very clear how India can maintain just and honourable relations among nations. Some critics went to the extent of alleging that these principles are unnatural and unsound in a sovereign state. A sovereign state cannot be restricted by any instruction or direction. There is no point of giving direction to a nation by itself.

2.11 Importance of Directive Principles of State Policy

With all the criticisms levelled against the Directive Principles, they are not without value and effect. These principles are not as useless and vague as they are criticized. But in a democratic country, public opinion is the real force behind these principles. These principles serve as a guide for the legislators and the administrators in India for the discharge of their responsibilities. They impose an obligation on the part of the government to fulfil and bring out reforms proposed by them. The Directive Principles are not enforceable by the courts and, if the government of the day fails to carry out these objectives, no court can make the government ensure them, yet these principles have been declared to be fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws (Article 37).

Professor Alenandrowies has made a strong plea that in as afar as the Directive Principles reflect the social and economic policy of the constituent assembly and embody 'the intentions of the constitution makers, the courts should give the greatest possible weight to the Directive Principles for the purpose of the interpretation of the provisions relating to the fundamental rights'.

Framers of the constitution have acted wisely in not making the means of achieving the ideal rigid by confining them within legal principles. There is, thus, scope for flexibility in the means for the achievement of the ideal inscribed in the Directive Principles. By doing so, they provide an insurance against extremes from right and left. Directive Principles are conceived as essential principles to bring a new social and economic order. They help making India a welfare state. In the words of M.C. Chagla, "If all these principles are carried out, our country would indeed be a heaven on earth." So these principles do not 'represent a temporary will of the majority but deliberate wisdom of the nation expressed through constituent assembly. The government can be judged from the observance of these principles. Socio-economic Justice is

qualitatively higher than Political Justice. Nehru made it clear in the Constituent Assembly, "There will be no full freedom in this country or in the world as long as there is starvation, hunger, lack of clothing, lack of necessities of life and lack of opportunities of growth for every single human being".

2.12 Let Us Sum Up

The study of fundamental Rights and Directive Principles of State Policy reveals that both are an integral part of the constitution and also necessary for the betterment of the individuals as well as the Indian Citizens. The Fundamental Rights are negative in nature because the state has the right to impose certain reasonable restrictions over the Fundamental Rights. However, the Directive Principles of State Policy are positive in nature because certain positive instructions were given to the state to implement for the betterment of the society as a whole.

Fundamental Rights in a constitution also aims at reconciliation of individual freedom with state authority. It is also protected by the law and is enforceable in the courts of law. However, though, Directive principles of State policy are not enforceable by the courts, yet these principles have been declared to be fundamental in the governance of the country. We are living in the welfare state, so this is an obligation on the part of the government to fulfil and implement these directives while carrying out its duty.

2.13 Key Words

Ideology	**:**	A set of ideas or beliefs that form the basis of an economic and political theory, a philosophy or political principles held by a group of persons.
Living Document	**:**	A Constitution is not static or dead. Its provisions keep changing i.e. deleted or added according to the needs of the time.
Mixed economy	:	Where there is co-existence of the private and public enterprises
Popular Sovereignty	**:**	Power of the people.
Unitary Bias	**:**	To tilt towards the unitary system
Implicit	:	hidden within
Enforceable	:	that can be enforced by the Court of Law
Untouchability	:	to look down upon a person on ground of social status
Arbitrary	:	forceful; without sanction of the law
Offence	:	crime
Preventive Detention	:	to detain a person to prevent him from committing an offence
Arbitrary Detention	:	forceful arrest and detention
Legal aid	:	legal help

2.14 Check Your Learning

1. What do you mean by Fundamental Rights? Discuss Indian Constitution in this regard.
2. Analyse the significance of Directive Principles of State policy in Indian Constitution.
3. What are the differences between fundamental Rights and Directive Principles of State Policy? Discuss the changing relationship between Fundamental Rights and Directive Principles of State Policy.
4. Write short notes on the following:
   a) Fundamental Duties
   b) Writs
   c) Right to Constitutional Remedies.

2.15 Suggested Readings

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2.16. Hints/Answers to Questions in Check Your Progress

1. Discuss the ideological background of Indian Constitution.
2. Examine the aims and objectives of the Indian Constitution as laid down in the Preamble.
3. What do you mean by the term Preamble? Explain the significance of the Preamble of the Indian Constitution.
4. What are the major commitments of Indian Constitution as enshrined in the Preamble?

5. Fundamental Rights are those rights of the individuals which is protected and guaranteed by the written constitution and enforceable in the courts of law.
6. Right to Equality, Art-14 to 18, Right to Freedom, Art- 19 to 22, Right against Exploitation, Art-23 and 24, Right to Freedom of Religion, Art- 25 to 28, Cultural and Educational Rights, Art- 29 to 30, Right to Constitutional Remedies, Art-32.
7. Preventive Detention is a precautionary measure which involves imprisonment without trial and before any crime has actually been committed.

UNIT-III

STRUCTURE AND FUNCTION OF PARLIAMENT; POWER AND FUNCTION OF PRESIDENT, PRIME MINISTER AND GOVERNORS

Structure

3.0 Objectives

After reading this unit, you will be able to know;

- the composition of the Parliament;
- the process of election, removal, and powers and functions of the President;
- the power and position of the Prime Minister;
- the composition and role of the Union Council of Ministers; and
- the functions and the role of the State Governor.

3.1 Introduction

Legislative, Executive and Judiciary are the three branches of the government. The Legislature makes the law; the Executive implements it and the Judiciary interprets the same. The Parliament and the State Legislative Assemblies are legislative bodies while the President, the Prime Minister, the Council of Ministers and the Governors of the states belong to the Executive organ of the government. In this unit, the Parliament, powers and positions of the President, the Prime Minister, the Council of Ministers and the Governor have been discussed.

3.2 Parliament

In the modern states, there are usually three organs of government - the Executive, the Legislature and the Judiciary. Legislature makes laws, the Executive implements the laws and Judiciary interprets the laws. Under the Constitution of India, the legislature of the Union is called Parliament. Article 79 declares that there shall be a Parliament for the Union consisting of the office of the President, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The President of India is a part and parcel of the Parliament because he has the right to address, summon and prorogue the two houses of Parliament. Besides, each Bill, before it becomes the law, needs the assent of the President and all the laws are enforced in his name.

India has a bicameral legislature, which means two houses - Rajya Sabha and Lok Sabha. Thus, these two houses and the President together constitute the Parliament. This system is in conformity with the principle and tradition of Parliamentary government.

3.2.1 Lok Sabha- Composition, Qualification and disqualification of members, and the Speaker

The Lok Sabha is the lower house of the Parliament. The members of the Lok Sabha are directly elected by the people. It is the representative of the people.

Composition

The present strength of the Lok Sabha is 545 of which 2 members are nominated by the President to represent the Anglo Indian community. Actually, the maximum strength of the Lower House, as envisaged in the Constitution, is 552. But the Constitution empowers the Lok Sabha to readjust its strength. However, recently, the Vajpayee (NDA) government decided to freeze the strength of the Lok Sabha till 2026 AD.

Qualification for memberships of the Lok Sabha

In order to become a member of Parliament (Lok Sabha), a person must (a) be a citizen of India, (b) not be less than 25 years of age, (c) be registered as voter in any of the Parliamentary constituencies in India, (d) not hold any office of profit. The most important feature of the electoral law is that any citizen of India who fulfils the above qualification may contest from any Parliamentary constituency from any States of India.

Disqualification for membership

A person shall be disqualified to become a Member of Parliament, if

(a) s/he holds any office of profit under the state,
(b) s/he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state,
(c) s/he is of unsound mind,
(d) s/he is an undischarged insolvent, and
(e) s/he is disqualified by, or under any law made by the Parliament

Term of the Lok Sabha

Lok Sabha has a fixed term. The term of the Lok Sabha in India is five years from the date of its first meeting. However, it can be dissolved before the expiration of its full term under certain circumstances. During emergency, it can be extended for one year at a time but not beyond six months after the emergency has ceased to operate.

Quorum

The quorum to constitute a meeting of Lok Sabha shall be 1/10 of the total number of members of the house.

Session

There shall not be a gap of more than six months between the two sessions of House. That means it shall meet twice a year. However, special session can be convened any time whenever required.

Speaker

The Lok Sabha is presided over by the Speaker. He is elected by the members of Lok Sabha from among themselves. The Speaker is elected in the first session of the newly constituted Lok Sabha. His ruling on the proceedings of the house is final. He has the responsibility to uphold the dignity and privileges of the house. In the absence of the Speaker, the Deputy Speaker performs the Speaker's duties.

Term

The term of the Speaker is coterminous with that of the Lok Sabha. Hence, he is elected for five years. However, if the tenure of Lok Sabha gets extended because of emergency, the term of Speaker also automatically extends. But the tenure of the Speaker may be terminated before the completion of his term, if he ceases to be a member of the Lok Sabha. He can also resign, if he so desires before the end of the term. Besides, he can also be removed from his office by a resolution passed by a majority of the members of the house by giving a notice to him in 14 days advance.

Salary and allowances

The Speaker gets a salary and allowances fixed by the law of Parliament from time to time. Apart from the salary, he gets a free official residence and free medical facilities. The Speaker is also eligible to get travelling allowances for himself and members of his family. His salary and expenses are charged to the Consolidated Fund of India.

Powers and functions of the Speaker

The powers of the Speaker of the Lok Sabha are mostly based on conventions borrowed from England. In fact, the Constitution of India is silent on the powers of the Speaker. His powers are as follows:

(i) He conducts the proceedings of the House and it is his duty to see that there is decorum and discipline in the House.
(ii) He allots, in consultation with the leader of the house, the issues to be taken up by the House.
(iii) He prescribes the time limit and who shall hold the floor and speak.
(iv) He decides the admissibility of questions.
(v) He determines the admissibility of adjournment motions to discuss matters of urgent and public importance.
(vi) The Speaker has right to expunge objectionable words, phrases and expressions in the proceedings.
(vii) No resolution can be admitted without the permission of the Speaker.
(viii) He decides all points of order; his decision is final and cannot be questioned in any forums.
(ix) He puts the question to the vote of the House and announces the result of such voting.
(x) The Speaker is the custodian of the rights and privileges of members of the House.
(xi) The Speaker certifies whether a particular Bill is a Money Bill or an ordinary Bill.
(xii) He regulates the entry of visitors to the House, and can ask them to withdraw at any time.
(xiii) He can authorize publications of a Bill in the Gazette.
(xiv) He accepts all resignation of the members of the House, etc.

Thus, from the foregoing discussion of the powers of the Speaker, it is evident that he has vast powers and responsibility. The Speaker represents the house and as such he represents the dignity and freedom of the House.

Pro-tem Speaker

After the Parliamentary election, as soon as the new Lok Sabha is constituted, the President appoints a *Protem* Speaker who is generally the senior-most member of the House. Seniority is counted in terms of the number of terms one is elected. The main function of the *protem* Speaker is to administer oath to the members of newly constituted Lok Sabha. He also presides over the election of a new Speaker. The office of the *protem* Speaker ends as soon as the Speaker is elected.

3.2.2 Rajya Sabha - Composition, Election, and the Chairman

The Council of States or Rajya Sabha is the Upper House of the Parliament. It is the representative of the States of Indian Union. The members of the Rajya Sabha are indirectly elected.

Composition

According to the Article 80 of the Indian Constitution, the Rajya Sabha shall consist of 250 members, out of which, not more than 238 shall be representatives of States and the Union Territories. The 12 members are to be nominated by the President who shall be person having special knowledge or practical experience in the field of literature, science, art and social services. All the States have not been given equal representation in the Council of States. The number of representatives of each state is allotted on the basis of the population of the States.

Election

The election to the Rajya Sabha is indirect and the members are elected by the elected members of the respective state legislative assemblies in accordance with the system of proportional representation by means of single transferable vote system. For the members representing the Union Territories are elected in a manner prescribed by the Parliament by law.

Qualifications

In order to become a member of the Rajya Sabha, a person must (a) be a citizen of India, (b) not be less than 30 years of age, (c) fulfil all the qualifications which are fixed by the Parliament. A new addition was made in August 2, 2003, by modifying the Section-3 of the Representation of the People Act, 1952. The new condition (domicile clause) laid down that the person should be “ordinarily resident in a constituency”. Thus, s/he must be an ordinarily resident in that state. Disqualification of the members is similar to that of Lok Sabha.

Term

The Rajya Sabha is not subject to dissolution. It is a permanent House. The member of this House enjoys a term of 6 years but one third of its members retire on the expiry of every two years.

Session and quorum

The session and quorum of the Rajya Sabha are similar to that of the Lok Sabha.

Chairman and Deputy Chairman

The Vice President of India is the ex-officio chairman of the Rajya Sabha under Article 89 (i). The-Vice President is elected by members of the Rajya Sabha. As the presiding officer of the Rajya Sabha, his power and functions are the same as those of the Speaker of Lok Sabha. The office of the Chairman of Rajya Sabha has been modelled on the lines of the American Constitution. He may be removed from his office by a resolution of the Council passed by a majority of all the members of the Council (Rajya Sabha), which is to be approved by the Lok Sabha by a simple majority. But such a resolution can be moved only by giving at least fourteen days prior notice to the Chairman.

Deputy Chairman is elected by the Rajya Sabha from amongst its members. He presides over the functions and proceedings of the house in the absence of the Chairman or when chairman (Vice President) acts as the President of India or discharges the functions of the President. He may be removed from his office by a resolution passed by a majority of the House (Rajya Sabha) or can resign by writing to the Chairman.

3.2.3 Privileges and immunities of the members of Parliament

There are many types of privileges and immunities. First, the privileges enjoyed by House (both houses) collectively are: (a) the right to publish debates and proceedings and the right to restrain publication by others, (b) the right to execute orders, (c) the right to regulate the internal affairs of the house, and (d) the right to punish members and outsiders for breach of its privileges.

Second, the privileges enjoyed by members individually are: (a) freedom from arrest, this immunity is however, confined to arrest in civil cases and does not extend to arrest in the criminal cases or under the law of Preventive Detention, (b) freedom of speech, a member has the privilege of freedom of speech in the Parliament, and (c) freedom from attendance as witness in any Court of law.

3.2.4 Powers and functions of the Parliament

As per the provision of the Constitution, the Parliament enjoys many powers. Following are the important powers of the Indian Parliament

(i) Legislative Powers

The main function of the Parliament is to make laws; therefore, it enjoys vast powers over the Union List and Concurrent List. If the Rajya Sabha declares by a resolution supported by a special majority that it is necessary in the national interest, the Parliament can make laws on the subjects included in the State List. Apart from the Union List, residual powers are also given to the Centre. During emergency, the Parliament has the right to pass laws on any subject. The Parliament may also enact Laws on the items mentioned in the State List, if two or more State legislatures ask it to do so. However, such laws will have effect only in the states which had requested the Centre and other states may adopt it afterwards.

Besides, the Parliament can change the boundaries and names of the States. It can also create new States by uniting two or more States.

(ii) Financial powers

Parliament controls the Union purse and as such every year annual budget is passed by it. No tax can be levied nor can any expenditure be incurred by the government unless Parliament approved it. The Parliament may pass, reduce or reject the demands for grant presented to it by the government but it cannot increase such demands. If a Money Bill is passed by the Parliament, even the President does not have power to refuse it.

(iii) Control of Executive

The Parliamentary form of government has been adopted in India; hence, the Union Executive works under the control of the Parliament. The Council of Ministers is answerable for all its acts or those of its officers to the Parliament. If a Bill moved by a member of the Council of Ministers is defeated in the Parliament (Lok Sabha), it is tantamount to the loss of majority in the Parliament and the Council of Ministers is bound to resign.

The control of the Parliament is also exercised through adjournment motions, questions, calling attentions notice, censure motions and the other procedures.

(iv) Judicial Powers

Parliament enjoys some of judicial powers also. It has power to make laws related to power, organisation, creation and jurisdiction of the Courts. Parliament can remove Chief Justice and other judges of Supreme Court and High Courts.

3.2.5 Relations between the two Houses of Parliament

In India, the two houses of Parliament do not stand on equal footing. The Rajya Sabha plays secondary role in respect of Money Bill and control over the executive although it enjoys equal powers with the Lok Sabha in the field of ordinary legislation and Constitutional amendments etc.

A Money Bill can be introduced only in the Lok Sabha. As soon as it passes the Bill, it is sent to the Rajya Sabha for recommendation. If the Rajya Sabha fails to return the Bill within 14 days, it will be considered to have been passed by both the Houses. Again, in case of control over the executive, the Council of Ministers is collectively responsible to the Lok Sabha only. It is only Lok Sabha, which can force the government out of office through an adverse vote. However, it does not mean that Rajya Sabha is less important and unnecessary. It is unnecessary on account of the federal character of the Constitution. Rajya Sabha plays a very important role when Lok Sabha is dissolved and during the time of emergency. It is a balancing force. Thus, both houses of Parliament should work together harmoniously for the successful working of Parliamentary democracy in India.

Special powers of the Rajya Sabha

Rajya Sabha has some special powers. Under Article 67, a resolution seeking the removal of the Vice President can originate only in the Rajya Sabha. For the creation of one or more all India Services, the resolution can only be initiated in the Rajya Sabha under Article 312. Again, a resolution seeking legislation on any subject of the state list, under Article 249, can only be originated in it, if it thinks that such is necessary or expedient in the national interest.

Special powers of Lok Sabha

There are certain powers which are constitutionally granted to the Lok Sabha in respect of the Money Bill, and Financial Bills. These can only originate in the Lok Sabha. The Council of Ministers are only responsible to the Lok Sabha and under Article 352. The Lok Sabha in a special sitting can disapprove the continuance of a national emergency proclaimed by the President.

3.2.6 Parliamentary Committees

Due to the paucity of time, and being an unwieldy body, the works of the Parliament are mostly done by the committees, appointed or elected for specific purposes. These committees are classified as (i) the Standing Committees and (ii) the Ad-hoc Committees. The Standing Committees are permanent in nature. The members of the Standing Committees are generally elected or nominated for a term of not more than one year. As far as possible, all the parties in the Parliament are represented in these committees, in proportion to their strength in the Parliament. The Ad-hoc committees are constituted for specific purposes and they cease to exist after completion of the specific work, hence, it is a temporary committee.

Whenever the Speaker is a member of a committee, he is the ex-officio chairman of that committee (s). A minister is not liable to be elected to the committee and if a person is appointed as a minister, he ceases to be a member of that committee. Some of the important committees are Committee on Estimates, Committee on Public Accounts, Committee on Public Undertaking and Committee on Welfare of the SC and ST etc.

In fact, in dealing with legislation and in exercising effective control over the executive, Parliaments largely depend upon the assistance of its committees. Thus, Parliamentary committees are important and indispensable part of the Parliament.

Check Your Progress-II

1. What is the present strength of the Lok Sabha?
2. What is the term of the Lok Sabha?
3. Who can dissolve the Lok Sabha?
4. What is the quorum of the Lok Sabha?
5. What is the tenure of the members of the Rajya Sabha?
6. Who is the ex-officio Chairman of the Rajya Sabha?

3.3 President

The President of India is the head and executive authority of the nation. Article 53 of the Constitution vests him with vast power which he will have to exercise either directly or through officers subordinate to him. As the head of the state, he is the first citizen of India. However, the adoption of the Parliamentary system of government makes it essential for the President to be a nominal and Constitutional head. Therefore, Article 54 of the Indian Constitution provides for an indirect method of election. The President is elected by an Electoral College consisting of elected members of both houses of the Parliament and the elected member of the Legislative Assemblies of the States. The reason for the indirectly elected President was mainly that a directly elected President may not content with the position of mere Constitutional head and could challenge leadership of the Prime Minister that may create a Constitutional deadlock. Besides, it would have involvement of huge financial burden and many more difficulties because of huge population and territory.

3.3.1 Election of the President

Let us see how the President of India is elected.

Qualifications: The Constitution of India prescribes that any person who

(i) is a citizen of India,

(ii) has completed the age of 35 years,
(iii) is qualified for election as a member of the house of the people,
(iv) is not a member of either house of the Parliament or of a house of a state legislature (If a Member of Parliament or State Legislature gets elected as President, s/he shall have to vacate his seat in that house on the date s/he assumes the office of President.), and
(v) has 50 proposers and 50 seconders for his candidature, can be the candidate for the post of the President.

Method of Election

The President of India is elected by indirect election, by an electoral college consisting of the elected members of both houses of Parliament and the elected members of the legislative assemblies of the States in accordance with the system of proportional representation by means of the single transferable vote.

The Constitution provides a special procedure to determine the number (value) of votes to be cast by every member, to secure uniformity in the scale of representation among the States as well as the parity between States as whole and the Union. The total population of each state is divided by the total number of elected members of the state assembly. Again, it is divided by one thousand. The formula is

$$\frac{\text{Total population of the state}}{\text{Total number of elected members of the State Legislative Assembly}} \div 1000$$

If the remainder is less than 500, it is ignored, but if it is more than 500, it is counted as one. To valuate the vote of a Member of Parliament and to maintain the principle of parity between States of India and Union, a formula has been laid down i.e. total value of votes of all the members of the legislative assemblies is divided by the total number of elected member of both houses of Parliament:

$$\frac{\textbf{Total number of votes assigned to all elected MLAs of India}}{\textbf{Total no. of elected Members of Parliament}}$$

If the remainder is more than 500, it is counted as one, if less, it is ignored.

Under the system of proportional representation by means of single transferable vote, the winner has to obtain a certain number of votes (quota i.e. 51 %). It means the total number of votes polled is divided by the total number of members to be returned plus one and by adding one to the quotient. The mathematical formula is -

$$\frac{\textbf{Number of vote polled + 1}}{\textbf{Number of members to be elected + 1}}$$

While casting votes, each voter has to indicate (poll) his preference in favour of various candidates. Suppose, there are three or four candidates, each voter has to mark his performance by putting 1,2,3,4 against the name of each candidate. In counting, the preference votes are counted firstly and if any candidate secured the quota, he is declared elected. In case, if no candidate obtains the required quota in the first counting, the candidate, who had secured the lowest number of votes, is eliminated and his votes are transferred to other candidates by counting second preference vote. The process of counting continues till a candidate obtains the required quota.

Term of the President

The President's term of office is five years from the date on which he assumes office. As per the provision of the Constitution, he is eligible for re-election. However, so far nobody has sought for more than two terms. All the Presidents have so far held office only for one time, except Dr. Rajendra Prasad who held office for two terms.

Vacancy in the office of the President

If the office of President falls vacant due to absence, illness or any other cause, the Vice President shall act as the President until the new President is elected and assumes office. But, in case of the expiry of the term of the sitting President, the Vice President cannot act as the President.

Oath

Every President has to take an oath, before entering upon his office in a prescribed form. The oath is administered by the Chief Justice or by the senior-most judge of the Supreme Court of India.

Emoluments and allowances

The Constitution provides many facilities to the President. He is entitled to use the official residence free of cost. He is also entitled to such allowances and privileges as may be determined by the Parliament by law. The emoluments and allowances of the President cannot be diminished during his term of office.

As per the Constitutional Amendment Act 1998, the President gets a monthly salary of Rs. 50000/-. Besides, he is entitled to an annual pension of Rs. 3, 00,000 on retirement or resignation, provided he is not re-elected to the same office.

3.3.2 Procedure for removal of the President

Under Article 61 of the Constitution, the President can be removed from his office through the process of impeachment for violation of the Constitution. The impeachment is a quasi-judicial in nature. A charge must be levelled in either house of Parliament and it must be in the form of a resolution supported by not less than 1/4th of the total number of members of that house. The motion of impeachment can be moved only after a prior notice of 14 days to the President. If the resolution is passed by a 2/3rd majority of the total member of that house (Originating House), the matter then goes to the other house. The other house will set up a committee to investigate the charges against the President. At this stage, the President can defend himself by taking the service of the Attorney General of India or any other lawyer of his choice. If the second house (investigating house) also passes the resolution by a 2/3 majority, stating that the charges has been sustained, the President stands impeached from the date on which such a resolution has been passed.

3.3.3 Powers of the President

The President is the head of the state. The Constitution formally vests him with many powers. The power of the President may be categorized as under:

Executive power
Legislature power
Financial power
Judicial power
Military power
Diplomatic power
Emergency power

Executive powers

Under the Article 53 of the Constitution, the executive power of the Union is vested in the President and it is exercised by him directly or thorough officers subordinate to him in accordance with the provisions of the Constitution. In fact, all the executive functions of the Union are carried on in the name of the President. All decisions of the government, important agreements and contracts are taken in his name. Constitutionally, he has been empowered to appoint the Prime Minister, other ministers (on the advice of the Prime Minister), Attorney General of India, Chief Justice and Other judges of India, Governor of state and so on.

Legislative powers

The Constitution confers various legislative powers on the President. The President has power to summon and prorogue either house of Parliament and dissolve the Lok Sabha under Article 85 of the Constitution. The President can promulgate ordinance under Article 123 if circumstances compel him to do so. However, such an ordinance must receive the Parliamentary approval within six weeks of the next session of the Parliament; otherwise, it shall become invalid. He addresses both the houses of Parliament jointly in the first session after each general election, the first session of each year and at any time, if necessary.

He nominates 12 members to the Rajya Sabha and 2 members of the Anglo Indian community to the Lok Sabha. Every Bill, to become an act must receive the President's assent. Certain Bills require prior approval of the President for introduction in the Parliament such as Money Bills, financial Bills of first class and Bill for the creation of new state(s) or for alteration of boundaries of a state. The President also enjoys the veto power, usually called pocket veto. Using this power, the President can withhold the Bill for certain period of time.

Financial Powers

The President of India enjoys several financial powers. The Finance Minister lays an annual financial statement before the both houses of Parliament on behalf of the President.

Besides, no money Bill can be introduced or moved in the Parliament without prior recommendation of the President. Any Bill, involving expenditure from the Consolidated Fund of India, cannot be passed by either house of the Parliament without recommendation of the President. Demand for a grant cannot be made without the recommendation of the President.

Judicial power

The President appoints the Chief Justice of India and other judges of the Supreme Court, and the judges of the High Courts. He has power to grant pardons, reprieves, respites or remits punishment or to suspend, remit or commute the sentences. He can refer any matter of Constitutional law to the Supreme Court for advice, which is however not binding.

Military power

The President is the Supreme Commander of the armed forces of India. Declaration of war and peace is done by the President. However, the Parliament, by law, can regulate his power. In fact, President cannot declare war or peace and deploy forces without the sanction of the Parliament or in anticipation of the sanction of the Parliament.

Diplomatic power

The President has the power to negotiate and conclude treaties and agreements with other countries, subject to the verification by the Parliament. He appoints ambassadors and other diplomatic agents of India. He also receives ambassadors and diplomatic representatives of the other countries.

Emergency power

This special power has been given to the President to meet any kind of threat to the country. The President can declare emergency in three circumstances.

National Emergency

The Constitution confers upon the President the power to declare national emergency under Article 352. If he is satisfied that a grave situation exists due to war, external aggressions or armed rebellion which threatens the security of India or any part of it, it will be specified in the proclamation of emergency. The declaration of national emergency can't be challenged in any Court of law. The power of the President to issue such a proclamation is however, subject to certain overriding conditions viz. that the decision of the Union Cabinet recommending such a proclamation has to be given in writing to the President. Such proclamation must be laid before each house of Parliament within a month for formal approval. Such proclamation has to be approved by a 2/3 majority of the total membership of the (both) houses of Parliament. In case, if such a proclamation has been issued at a time when Lok Sabha stands dissolved, it shall remain

in force if approved by the Rajya Sabha within thirty days. But, the newly constituted Lok Sabha must also approve it within 30 days of the first sitting. A proclamation as approved shall remain in force, unless revoked till the expiry of six months from the date of passing of the resolution by the Parliament. For the extension or continuation of such proclamation, both houses of Parliament have to pass another resolution approving for a further period of six months.

So far, national emergency under Article 352 have been declared three times since independence. First, in October 1962, in the wake of the Chinese aggression. The second proclamation was in 1971 when Pakistan attacked India and the third and last in 1975 on ground of internal disturbances.

Effects of national emergency

The proclamation of emergency makes serious inroads into the basic principle of federalism. It is designed with a view to arming the Union government effectively to meet an extraordinary or grave situation, arising out of a threat to the security of India due to external aggression or armed rebellion. First, the executive authority of the States becomes subordinate to the Union. Second, the legislative authority of the Parliament extends to the making of laws on the state list. Third, the operation of Article 19 relating to Right to Freedom stands suspended. Fourth, the President is authorized to suspend by an order, the right to move any Court of law for the enforcement of provisions in part III other than the Article 20 and 21.

Failure of Constitutional machinery in a State

When the President is satisfied that the government of a state cannot be run in accordance with the provisions of the Constitution, either on the report of the governor of the state or otherwise, he may declare an emergency, i.e. impose President's rule on the state under Article 356. Again, if the State government fails to comply with the directives of the Union, President's rule may be imposed on a state. In such an emergency, the President may assume to himself any or all the functions of the state government or he may vest all or any of these functions in the Governor or any other executive authority. He may declare that the power of the state legislature will be exercised by Union Parliament. He may suspend the whole or any part of the provisions of the Constitution relating to any authority in the state other than the High Court.

In constitutional emergency, proclamation must be laid before each house of Parliament and it has to be approved by both house of the Parliament within two months. In case, if such a proclamation has been issued at a time when Lok Sabha stands dissolved, it shall remain in force, if approved by the Rajya Sabha within two months. However, the newly constituted Lok Sabha has to approve it within thirty days of its first sitting. It may be clamped for a maximum period of six months at a time, but can be extended by Parliament for another six months. The maximum duration of such proclamation is three years. If extension is required beyond one year, two conditions are to be satisfied (inserted in the 44th amendment act. 1978) (i) a national emergency (Article 352) is in force and (ii) the Election Commission certified that on account of difficulties, election cannot be held in the state.

For the first time, Article 356 was used in 1951. Since then, it is being used frequently, rather it is alleged that Article 356 is used to dislodge State governments run by parties other than the party in power at the Centre.

Financial Emergency

If the President is satisfied that there is a danger to the financial stability of India or any of its part, he may proclaim a financial emergency under Article 360. Every such proclamation must be put before each house of the Parliament and should be approved by the Parliament as in the case of the other two types of emergencies.

Effect of the financial emergency

When such a proclamation (Article 360) is in operation, (i) the President may instruct the State to observe certain codes of financial discipline. He will have the power to modify the provisions of the Constitution relating to the allocation of financial resources between the Union and the States, (ii) the President may issue directions for the reduction of salaries and allowances of all or any class of persons serving the state or the Union including the judges of the Supreme Courts and the High Court, and (iii) the President may order the States to submit all money bills for his assent after they are passed by the state legislature.

Position of the President

As per the provisions of the Indian Constitution, it appears that the President is the most powerful figure. For instance, Article 53 vested all executive powers in the President. He appoints the Prime Minister and the Chief Justice of India, etc. However in practice, it is quite different. Rather, there arose a controversy on the powers and positions of the President. The controversy was first started by none other than the first President of India, Dr. Rajendra Prasad in 1951, when he sent a note to the Prime Minister in which he expressed the desire to act solely on his own judgment, independently of the Council of Ministers, in matters relating to assenting a Bill, sending message to the Parliament and returning a Bill for reconsideration. Again while laying the foundation stone of the Indian Law institute, Dr. Rajendra Prasad reiterated his stand by saying that a close study should be made of the powers of the President of India under the Constitution, and how far those powers were identical with those of the British monarch.

As India has adopted a Parliamentary form of government wherein the Council of Ministers is answerable to the Parliament, the real power belongs to the ministry. In this sense, the intentions of the framers of India's Constitutions were very clear. They deliberately opted for the Parliamentary form of Government and made President a mere Constitutional head similar to the English Crown. Dr. Ambedkar once said, "The President of the Indian Union will be generally framed by the advice of his ministers, he can do nothing contrary to their advice, nor can he do anything without their advice". The Supreme Court had also, in a number of decisions, uphold the above view. In R. C. Cooper vs. India, the Supreme Court observed that under the Constitution, the President being the Constitutional head normally acts in all matters on the advice of his Council of Ministers. Thus, although there is no specific provision in the Constitution which is binding on the President to accept the advice of his Council of Ministers,

yet, there are many provisions which indicate that the President shall be bound to act in accordance with advice of the Council of Ministers.

As a result of the controversies, the government of Mrs Indira Gandhi amended the Constitution (42nd Amendment Act) in 1976. Article 74(i) was thus substituted, which clearly states that, "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". This was, however slightly modified in the 44th Amendment Act. As of now, it stated that 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.

After the two amendments i.e. 42nd and 44th, the position of the President has become crystal clear and all doubt about his power has been done away. He has to set in accordance with the aid and advice of Council of Ministers. However, still there are many pertinent questions. What would be the position of the President during the extraordinary situation? For instance, when there is no clear-cut majority party in the Lok Sabha. The President is expected to apply his own conscience and discretion. For example R. Venkataraman, by his own conscience and discretion, appointed Chandra Shekhar as Prime Minister in November 1990, though his JD(S) had the support of only 60 members in the Lok Sabha. Particularly, after the end of single party system, the President is no longer a rubber stamp. In December 1986, Rajiv Gandhi Government sent a Bill (Postal Bill) to the President, Mr. Gyani Zail Singh for his assent, but he refused to sign the Bill and vetoed (pocket veto) it. In September 1998, President K.R. Narayanan returned a Union Cabinet resolution, which sought the imposition of President's rule in Bihar, for reconsideration. The present President Mr. Kalam has also returned to the Union Cabinet the ordinance to amend the representation of the People Act, seeking clarification on 22nd August 02.

In the final analysis, the President is not merely figurehead; he has dignity and certain authority. Seeking the advice of the Council of Ministers does not mean a ready acceptance of any advice. The President has the right to tell a ministry that the advice tendered is wrong and should be reconsidered, though the ministry's view may prevail because that view will have the sanction of the Parliament. Thus, in normal times, the President may act as a Constitutional head or act on the advice of Council of Ministers, but he has certain discretions which are to be used in extraordinary situations.

Check Your Progress-I

1. How the President of India is elected?
2. Discuss powers, functions and position of the President of India.
3. What is the term of the President?
4. By whom the oath of the President is administered?
5. By which process the President can be removed from his office?

3.4 Prime Minister

Introduction

The basic characteristics of a Parliamentary democracy is continuous responsibility of the people through this representative, where the Supreme power of the State is vested in the hand of the people and head of the State is only nominal head. India has adopted Parliamentary form of Government in which real power of governance of country is vested in the Council of Ministers, headed by the Prime Minister. This system is based on Westminster model where the Queen is the *de-jure* and the Prime Minster is the de-facto head of the State. The Constitution fathers had two alternatives before them about the form of the Government; namely; Parliamentary form as was in vogue in UK or the Presidential one as was practiced in the USA. Since India was accustomed to and familiar with the working of Parliamentary institutions, it decided to have Parliamentary rather than Presidential form of the Government. In accordance with the conventions of the system, the President is the head of the state and the Chief executive of the nation. All executive powers are vested in him and are to be exercised by him directly or through officers subordinate to him. The real or political executive is the Council of Ministers headed by the Prime Minister. The Council of Ministers, therefore, constitutes the Government and the head of the Government is the Prime Minister.

The Prime Minister of India

According to the Constitution, the Prime Minister is the head of the Council of Ministers (Article 74(i). He occupies a very important and central position in the Indian constitutional system. The special position of Prime Minister is highlighted by a report of Administrative Reform Commission. The Commission has observed, "The Constitution accords to the Prime Minister a special position in the executive machinery of Government. He is not only the head of the Council of Ministers - *Primus inter pares* - but also the President's principal advisor. The high position vests him with a special responsibility to see that the institution functions as a team. The formation of Council of Ministers starts with the appointment of the Prime Minister and the other members of the Council of Ministers are appointed by the President on the recommendation of the Prime Minister. Once the Council of Ministers had been constituted, it is the prerogative of the Prime Minister to allocate the portfolios among them.

3.4.1 Appointment of the Prime Minister

Under the Constitution, the President has the full power and authority to call any person to form the Government. But in actual practice, he has no option but to invite the leader of the majority party in the Lok Sabha to form the Government. Article 75(i) of the Constitution deals with the appointment of the Prime Minister. It says "The Prime Minister shall be appointed by the President''. However, Article 75(I) is silent as to how the President shall choose the Prime Minister. Further it does not say if the Prime Minister should be a member of the Lok Sabha or Rajya Sabha. But according to conventions, the President appoints the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party commands a clear majority in the Lok Sabha, the President can appoint any person whom he thinks is capable of getting support of the majority.

3.4.2 Functions of the Prime Minister

In England, the position of the Prime Minister has been described by Lord Morley as Primus inter pares' i.e. first among equals. In theory, all members of Cabinet have an equal position, all being advisors of the crown, and all being responsible to the Parliament in the same manner. Nevertheless, the Prime Minister has a pre-eminence by convention and usage. The power and position enjoyed by the Prime Minister of India is almost similar to that of the British Prime Minister.

The power of advising the President as regards the appointment of the other Ministers is, thus embodied in Article 75(i). As to the function of acting as the channel of communication between the President and Council of Ministers, Article 78 provides—

"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 to the affairs of Union and proposals for legislation.

(b) To furnish such information relating to the administration of the affairs of the Union and the proposal 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."

Article 78 of the Constitution does not provide the details of the powers and position of the Prime Minister. It does not specifically lay down the relation between the Prime Minister and the other Minister or the various kinds of other functions which the Prime Minister performs. So, the power and function of the Prime Minister have to be understood from observations only. The functions of the Prime Minister can be divided under the following categories:

(i) Formation of Ministry

According to the Article 75, the Prime Minister is appointed by the President and other Ministers are appointed on the advice of the Prime Minister. This implies that formally the Prime Minister is appointed by the President and other Ministers are appointed on the recommendation of the Prime Minister. He has got the absolute power to form his ministry. After the President appoints the Prime Minister, he submits a list of names to the President to be sworn in as Ministers. The President cannot change any name given by the Prime Minister and he has to appoint the persons recommended by the Prime Minister. It is rightly said, "The Prime Minister is central to the formation of ministry, central to its life and central to its death". There can be no Council of Ministers without a Prime Minister. If the Prime Minister resigns, it means the resignation of the entire Council of Ministers. In case the Prime Minister dies, the Council of Minister automatically gets dissolved. He can change any member of the Council of Ministers. The Prime Minister can ask any Minister to resign at any time or request the President to dismiss a Minister if he doesn't resign voluntarily.

(ii) Distribution of Portfolios

The next important task after the formation of the ministry is the distribution of portfolios among the Ministers. The Prime Minister distributes portfolios among the Ministers depending on their seniority and experience. He can appoint somebody who is not an MP as Minister, if he thinks that the person is highly suitable for the post. The Prime Minister is primarily and exclusively responsible to see with whom he can smoothly pull on in the Cabinet and who shall help him in promoting party programmes and policies. It is also exclusively the prerogatives of the Prime Minister to decide to who that portfolio is to be given. But, when a non-member of Parliament becomes a Minister, he has to get elected to either House of Parliament within six months. To ensure proper and efficient functioning of the administration, the Prime Minister can reshuffle his Council of Ministers or re-allocate their portfolios.

(iii) Leader of the Cabinet

In the present day Parliamentary democracy, in spite of the collective nature of the Council of Ministers or Cabinet the Prime Minister has become the main focus of power and responsibility. He is the pivot of the political system and the focus of the political party as well as Legislative and executive branch of the Government. He is the chairman of the Cabinet and presides over its meetings. He determines and regulates the agenda and proceedings of the Council of Ministers. In the Cabinet meetings, generally all decisions are taken by consensus. But the views of the Prime Minister have a decisive effect on the decisions of the Council of Ministers. The Prime Minister also acts as the chairman of various Cabinet commissions and committees, like Political Affairs Committee, Foreign Affairs committee, Planning Commission, Economic Affairs etc. But actual authority of Prime Minister depends on the party position and personality of the Prime Minister.

If the party has clear majority in the Lok Sabha and it has a clearly recognized leader who has a complete control over the party, then he will have a free hand. If there is someone in the party who can challenge him, the choice of Prime Minister both in the selection of his team and distribution of portfolios will be limited. There was such situation during Nehru's Prime Ministership, when Sardar Patel was alive. Such situation again occurred after Nehru's death when Lal Bahadur Shastri became the Prime Minister. If there is a coalition ministry in office, the choice of Prime Minster in the selection of Ministers will be severely limited because in that case coalition partners select their own Ministers.

(iv) Coordinator of Policy

The Prime Minister is responsible for the formulation and implementation of the Government's policy. As such it is his responsibility to exercise general supervision over individual Minister and coordinate the work of the different departments. However, due to pressure of work, it is not possible for Prime Minister to look after this work of coordination personally. Therefore, this work is looked after by different committees of Cabinet. Nevertheless, the right of Prime Minister to be consulted on such matter is there. Whenever differences arise

between the two Ministers, the Prime Minister irons out the differences. In fact, the Ministers always look to the Prime Minister for guidance. It also acts as a link between Parliament, the Council of Minist**ers** and the President.

(v) As a link between the Cabinet and Parliament

The Prime Minister is the chief link between the Cabinet and the Parliament. He is the chief-spokesman of the Government in the Parliament. All major announcements regarding Government's policy are made by him. To clarify the Government's position or policy, he intervenes in the debates of general importance. Sometimes, he comes to the rescue of his Ministers when they are in trouble in Parliament. Prime Minister, being the leader of the House and that of the majority party, greatly influences the working of the Parliament. No official business can come before the House without his explicit approval. All the resolutions and Bills can be moved only with his approval. It is the responsibility of Prime Minister to make all policy statements on the floor of the House and in case any other Cabinet Minister makes such statement, it is implied that it has his approval. On 28th October 1974, Prime Minister Indira Gandhi desired that in order to avoid unnecessary troubles in the House, it would be better if all controversial statements to be made on the floor of the House are sent to her first, so that these can be gone through before these are actually made on the floor of the House.

As a leader of the House, it is also his responsibility to see that failing and faltering of Ministers are not surfaced in the House and the Cabinet appears as a body before the Parliament. Therefore, several times the Prime Minister is required to intervene in the debates, when it is found that Minister concerned is not in a position to convince the House or is going off the point.

6. Link between the President and the Council of Ministers

The Prime Minister is also the channel of communication between the President and the Council of Ministers. He has the Constitutional obligation to keep the President informed of all the decisions taken by the Council of Ministers. If the President so desires, the Prime Minister has to submit for the considerations of the Council of Minister any matter on which a decision has been taken by an individual Minister but which has not been considered by the Council of Ministers. The Prime Minister is further bound to supply such information regarding the proposals of legislation and administration of the Union, as the President may demand. It is to be observed that other Minister is permitted to have direct communication with the President on this issue.

7. Power of patronage

The Prime Minister enjoys extensive power of patronage. All important appointments are made by the President on the recommendation of the Prime Minister. In fact, the entire lists of power formally vested in the President are in reality enjoyed by the Prime Minister. Commenting on the powers and influences of the Prime Minister, Gadgil observes, "The Prime Minister is invested with formidable power and influence and unless he be a genuine democrat by nature, he is very likely to become a dictator".

The Prime Minister takes initiatives on the appointment of ambassadors and high commissioners who are to be sent abroad to represent the country. Similarly initiative lies with him for picking up persons as Governors. Of course, the selection is approved by the Cabinet. There is no appointment in the Government which can be made without Cabinet approval which is headed by the Prime Minister. The Prime Minister approves the selection of person for all such important posts e.g. the chairman of UPSC, Chief Justice and Judges and Commissions for scheduled tribes and scheduled castes etc. before they are placed before the Cabinet or are made public. It is, of course, seen that these positions are manned by those who can deliver the goods and do not invoke any political controversy, yet, there is no doubt, that the power of patronage counts in these appointments.

As already said, by his power of patronage, the Prime Minister can bring any individual on the national scene. But as the head of the team, he can also dismiss any of his Cabinet colleagues. In addition, he can even demand his resignation and if any of the colleagues does not oblige him by tendering the resignation, he can suggest the President to take the extreme step of dismissing such a defiant member of the Cabinet. He can also tender his own resignation on political grounds, which, in effect, means the resignation of the whole Cabinet. In the constituent Assembly, Dr. Ambedkar said about Cabinet's collective responsibility and Prime Minister's role that no person shall be retained as the member of the Cabinet, if the Prime Minister says he shall be dismissed. It is only when the members of the Cabinet, both in matter of this appointment as well as in the matter of this dismissal are placed under the Prime Minister that it would be possible to realize our ideal of collective responsibility.

8. Prime Minister in international politics associated with that of another country

Nowadays, interest of one country is closely monitored. There is no country in the world which can even afford to annoy the smallest country in the world. Because the world has become small and the inter-dependence of the State has very much increased. It is therefore, the duty and responsibility of the Prime Minister to see that the country maintains very good and cordial relations with all the countries of the world. The Prime Minister represents the nation in international treaty and conferences. He is regarded as spokesman of the country and his statements are considered as policy of the nation by other countries. All the Prime Ministers have all along tried to maintain cordial relations with the world nations and used international forums to explain India's stand on every issue which faced the world, created image for India in the international world.

9. Prime Minister as leader of Majority party

The Prime Minister, in the first place, is the leader of his party. He is usually chosen as the Prime Minister because he is the leader of the largest party in the Lok Sabha. As such he is not merely the chairman of the Cabinet, but is also responsible for the party organisation within and outside the House. He owes his office and strength to the party and in turn, the life and health of the party depends upon him.

3.4.3 Position of the Prime Minister

Thus, as a whole, the Prime Minister is not only the leader of the party in the Parliament but also the leader of the nation as a whole. He is invested with formidable power and influence and considered as the 'key stone of the Cabinet arch'. The British Prime Minister, who holds an identical position under the British Government structure, has been described as 'the primus inter pares' (First among equals), 'the steerman of the ship of the State', the 'moon among the lesser stars' and the 'the sun around which all other planets revolve'. All these epithets applied to the British Prime Minister can be equally applied to the Indian Prime Minister. In fact, the Indian Prime Minister has an advantage over his counterpart in Great Britain, in as much as his office has a constitutional basis and does not rest on conventions. The position of the Prime Minister was further strengthened by the 42nd amendment. (This was best sum up at the national seminar of the non CPI opposition thus, "The net effect of the 42nd amendment will be to take away the rights and power of the President, the legislatures, the judiciary, the States, the UPSC, the election Commission and Comptroller and Auditor General and to transfer them all to the Prime Minister who emerged all powerful and above the law"). He is the centre and focus of people's hope and aspirations. To the people at large, he symbolizes the national Government. Jennings, in case of Britain, suggests that the general election is primarily an election of the Prime Minister. From this premise, one British Prime Minister had built up the theory that the Prime Minister, like the American President, is directly responsible to the people. The analogy, is more true in case of India where people vote for persons and where the tradition of hero-worship are deep rooted.

Therefore, Prime Minister's power and prerogatives are almost unlimited. It is his prerogative to form his ministry and dismiss a minister. He has the privilege to formulate new policies and compel compliances with them by his Cabinet. Besides controlling patronage, he enjoys power of recommending the dissolution of the Lok Sabha. But much of this depends on his personality and prestige as well as the support he can get from the party, the personalities of the other members of the Cabinet, the strength of the party in the Parliament and the political and economic condition of the time. In this context, the position of Prime Minister of India has not remained the same throughout. Persons with dynamic personality like Pt. Nehru are bound to be more popular and powerful than others.

In conclusion, it can be said that as against the general understanding of Parliamentary democracy that it hinges on the supremacy of the legislature over the executive, it is the Cabinet that has come to dominate the Parliament which is often described as 'dictatorship of the Cabinet'. And within the Cabinet, the Prime Minister is at the apex. As party leader, as dispenser of patronage, as chairman of the Cabinet, as the representative of the Government and the people in the Parliament, the Prime Minister can wield an authority that a Roman emperor might envy or a modern dictator strive in vain to emulate. But much of this depends on the party position in the Lok Sabha.

Check Your Progress-III

(i) Discuss the role of the Prime Minister in formation of the ministry.
(ii) Who appoints the Prime Minister and the Council of Ministers?

3.5 Council of Ministers

The basic characteristics of a parliamentary democracy are continuous responsibility to the people through their representatives and two executive heads one, formal Constitutional head and the other, real. In other words, the parliamentary form of government refers specifically to a kind of democratic polity wherein the Supreme power vests in the body of people's representatives and head of the State is only nominal head. In accordance with the conventions in India, Head of the State and the executive is the President. All executive power is vested in him and is to be exercised by him directly or through officers subordinate to him. The real or political executive is the Council of Ministers headed by the Prime Minister. The Council of Ministers therefore, constitutes the government and the head of the government is the Prime Minister.

The framers of our Constitution intended that formally all executive powers were vested in the President. He should act as the Constitutional head of the executive like the English Crown, acting on the advice of ministers responsible to the popular House of the legislature.

But while the English Constitution leaves the entire system of Cabinet government to the conventions, the Crown being legally vested with absolute powers and the ministers being in theory nothing more than the servants of the Crown, the framers of our Constitution enshrined the foundation of the Cabinet system in the body of the written Constitution itself, though, of course, the details of its working had necessarily to be left to be filled up by convention and usage.

Article 74(I) of the Indian Constitution provides that there shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise and the President shall act in accordance with the advice tendered after such reconsideration.

Under Article 74 (2) "the question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into any Court."

The scope of this Article i.e. 74 (i) 8(2) is that the President as well as the Governor acts on the aid and advise of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers. The President has been made the formal Constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. Article 74(i) is mandatory and therefore the

President cannot exercise the executive power without the aid and advice of the Council of Ministers. The Council of Ministers is to aid and advise the President in the exercise of his functions without any exception.

Meaning of expression 'aid and advise'

The expression 'aid and advise' in Article 74 may apparently suggest that it is left to the President to accept the advice or ignore the same. Thus the decision on all matters will be of the President himself. But in actual interpretation of the expression, it becomes abundantly clear that the function of Ministers or Council of Ministers is not merely giving advice. They can take decisions which must take effect.

Article 74(2) and 356(5)

While Article 74(2) disables the Court from inquiring into the very existence or nature of contents of ministerial advice to the President, Article 356 (5) makes it impossible for the Courts to question the President's satisfaction 'on any ground'.

Appointment of Ministers

Article 75(i) provides that 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. The allocation of portfolios amongst them is also made by the Prime Minister. Further the President's power of dismissing an individual minister is virtually a power in the hands of the Prime Minister. In selecting the Prime Minister, the President must obviously be restricted to the leader of the party in majority in the House of the people, or a person who is in a position to win the confidence of the majority in that House.

3.5.1 Composition

There is no specific provision regarding the composition of the members of the Council of Ministers in our Constitution. It is determined according to the exigencies of the time. At the end of 1961, the strength of the Council of Ministers of the Union was 47; at the end of 1977, it was reduced to 24, while in July 1989, it was again raised to 58. The National Front Government headed by Shri V.P. Singh started with only 22 ministers. All the ministers however, do not belong to the same rank. The National Democratic Alliance Government headed by Mr. A.B. Vajpayee had 29 Cabinet Ministers and 44 State ministers (no deputy Ministers). The Constitution does not classify the members of the Council of Ministers into different rank. All this has been done informally, following the English practice. It has now got legislative sanction, so far as the Union is concerned. In schedule 2 of the Salaries and Allowances of ministers Act, 1952, 'minister' has been defined as a 'member of the Council of Ministers by whatever name called, and includes a Deputy Minister.

Besides, Article 75(2) provides that the minister shall hold office during the pleasure of the President, and Article 75(4) provides that before a minister enters upon his office, the President shall administer to him the oaths of office and secrecy.

The Council of Ministers is thus a composite body, consisting of different categories. At the Centre, these categories are three, as State above.

The rank of the different ministers is determined by the Prime Minister according to whose advice the President appoints the ministers (Article 75(i) and also allocates business amongst them (Article 77). While the Council of Ministers is collectively responsible to the House of the people (Article 75(3)), Article 78(c) enjoins the Prime Minister, when required by the President, 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. In practice, the Council of Ministers seldom meets as a body. It is the Cabinet, an inner body within the council, which shapes the policy of the government.

While Cabinet ministers attend meetings of the Cabinet at their own right, Ministers of State are not members of the Cabinet and they can attend only if invited to particular meeting. A Deputy Minister assists the minister in charge of a Department of Ministry and takes no part in Cabinet deliberations.

Ministers may be chosen from members of either House and a minister who is a member of one House has a right to speak in and to take part in the proceedings of the other House though he has no right to vote in the House of which he is not a member (Article 88).

Under our Constitution, there is no bar to the appointment of a person from outside the legislature as minister. But he cannot continue as minister for more than 6 months unless he secures a seat in either House of Parliament, (by election or nomination, as the case may be). Article 75 (5) says- "A minister who for any period of six consecutive months is not a member of either House of parliament shall at the expiration of that period, cease to be a minister".

3.5.2 Ministerial responsibility to Parliament

In regards to ministerial responsibility, it may be stated that the Constitution follows the English principle except as to the legal responsibility of individual minister for acts done by or on behalf of the President.

Collective responsibility

The principle of collective responsibility is an important characteristic of the parliamentary form of government. The principle of collective responsibility is confined in Article 75(3) of the Constitution - "The Council of Ministers shall be collectively responsible to the House of the people."

So, the ministry, as a body, shall be under a Constitutional obligation to resign as soon as it loses the confidence of the popular House of the legislature. The collective responsibility is to

the House of the people even though some of the ministers may be members of the Council of the States.

The 'collective responsibility' has two meanings. Firstly, all the members of a government are unanimous in support of its policies and exhibit that unanimity on public occasions although while formulating the policies they might have differed in the Cabinet meeting. Second, the ministers, who had an opportunity to speak for or against the policies in the Cabinet, are thereby personally and morally responsible for their success and failure.

Of course, instead of resignation, the minister shall be competent to advise the President or the Governor to exercise his power to dissolve the legislature on the ground that the House does not represent the views of the electorate faithfully.

Individual Responsibility to the President

The principle of individual responsibility to the head of the State is embodied in Article 75(2) – "The minister shall hold office during the pleasure of the President."

The result is that though the ministers are collectively responsible to the legislature, they shall be individually responsible to the executive head and shall be liable for dismissal even when they may have the confidence of the legislature. But since the Prime Minister's advice will be available in the matter of dismissing other minister individually, it may be expected that this power of the President will virtually be the power of the Prime Minister. Usually, the Prime Minister exercises this power by asking an undesirable colleague to resign, which the latter readily complies with in order to avoid the dismissal.

Legal responsibility

As Stated earlier, the English principle of legal responsibility has not been adopted in our Constitution. In England, the Crown cannot do any public act without the counter signature of a minister who is liable in a Court of Law, if the act done violates the law of the land and gives rise to a cause of action in favour of an individual. But our Constitution does not expressly say that the President can act only through ministers and leaves it to the President to make rules as to how his orders, etc, are to be authenticated. On the other hand, it provides that the Courts will not be entitled to enquire what advice was tendered by the ministers to the executive head. Hence, if an act of the President is according to the rules made by him, authenticated by a secretary to the government of India, there is no scope for a minister being legally responsible for the act even though it may have been done on the advice of ministers.

3.5.3 Functions of the Council of Ministers and the Cabinet

The Indian Constitution does not clearly define the functions of the Council of Ministers and the Cabinet. However, according to observations of the functioning of the Council of Ministers and the Cabinet since 1950, the functions of Cabinet can be divided into following broad categories.

Formulation and implementation of policies

The most important function of the Cabinet is to make polices for the government. Although every policy of the government is subject to the approval by the Parliament, it is the Cabinet that takes the initiative in this regard. After a policy is approved by the Parliament, the Cabinet decides about the ways and means to implement those policies. Therefore, it is actually the Cabinet, which rules the country.

Supervision and control of administration

The Council of Ministers supervises and controls the government officials who carry out the policies made by the Cabinet. Each minister remains in charge of one or more departments and it is the duty of the minister to ensure that his department runs smoothly. The civil servants help and advise the ministers on administrative matters, but it is invariably the individual minister who takes the decisions. Once a decision is taken, the civil servants implement that decision under the supervision of the minister.

(i) Coordination function: The Cabinet works in close coordination with the legislature. All ministers are members of either House of Parliament. The ministers take part in parliamentary proceedings and are answerable to the parliament. The Cabinet also coordinates the working of various departments of the government. The Cabinet acts as a link between the executive and the legislature. This close relationship between the Cabinet and the Legislature is a characteristic feature of the Parliamentary form of government.

(ii) Legislative function**:** The ministers introduce all-important Bills containing rules, regulations and other measures to be taken by the government in the Parliament. The Cabinet prepares and approves all Bills to be introduced in the Parliament. It is also the duty of the Council of Ministers to ensure the safe passage of Bills introduced by them. The Cabinet also prepares the President's annual address to the Parliament. The President delivers his address to the Parliament before the beginning of a new session every year. Usually, the President's address contains the achievements of the government in the past year and an outline of the measures, which the government intends to take in the coming years. The ministers also answer questions put to them by other members of the Parliament.

(iii) Financial Functions**:** The Finance Minister prepares the annual budget, which is discussed and approved by the Cabinet before it is placed in the Parliament. A budget is the annual financial Statement of the government. The budget is presented in the Lok Sabha first and then it is presented in the Rajya Sabha. The Cabinet ensures the safe passage of the budget in the Parliament because any negative vote on the budget by the Parliament is regarded as a vote against the Council of Ministers. So, if any budget proposal is turned down by the Parliament, the Council of Ministers should resign from their posts.

(iv) Miscellaneous functions: The Cabinet performs various functions that can be categorised as miscellaneous functions. The Cabinet approves all appointments to important and key posts. The Cabinet is the Supreme decision-making body of the government. The Cabinet regularly

reviews the social, political and economic conditions of the country. The Cabinet prepares the foreign as well as the internal policies of the government.

3.5.4 Distinction between the Council of Ministers and the Cabinet

Although, the Council of Ministers and the Cabinet appear to be synonymous to an ordinary person, there are certain differences between the two. Firstly, the Council of Ministers comprises all the ministers, including the Cabinet ministers and the Prime Minister. The Cabinet is a smaller body of a few senior and experienced ministers within the Council of Ministers. The Cabinet can be described as the core of the Council of Ministers. So, sometimes the Cabinet is called "wheel within a wheel". Secondly, the entire Council of Ministers does not meet as a body normally. It is the Cabinet, which meets regularly as a whole to decide policy matters. Thirdly, according to Article -74, the Council of Ministers is empowered to aid and advice the President. But in actual practice, it is the Cabinet, which give such, aid and advise. Finally, the Council of Ministers is clearly recognized by the Constitution under Article -74 but the Cabinet is only an informal body within the Council of Ministers and is not directly recognized by the Constitution. However, the Indian Constitution indirectly recognizes the Cabinet under Article 352.

Thus, while discussing the position and functions of the Council of Ministers, it has to be remembered that the real executive authority in a Parliamentary form of government is exercised by the Council of Ministers as a whole. The Council of Ministers guides the country and decides its destiny. Although, in the theory, the Parliament is Supreme and sovereign in India, in practice, the Cabinet controls the Parliament. If a party has an absolute majority in the Lok Sabha, there is very limited scope for what the Parliament can do to control the government. The Parliament can only criticize the government and warn it about the consequence of the proposed government measures.

3.6 Governor

The Constitution of India provides for a federal system of government having a separate system of administration for the Union and the States. The Constitution contains provisions for the governance at both the centre and the States. It provides for a uniform structure for the State governments in part VI of the Constitution. This structure is applicable to all the States except the State of Jammu and Kashmir which has a separate Constitution for its State government.

Broadly speaking, the system of governance in the State is the same as that for the Union. Both have adopted parliamentary system of government. Hence, the executive head of a State, being a Constitutional ruler who is to act according to the advice of Ministers responsible to the State legislature executive at the State level, is virtually a replica of the executive at the Centre. The formal executive authority in the State rests with the Governor, while the real executive authority rests with the Council of Ministers.

All executive actions of the State have to be taken in the name of the Governor. Normally, there shall be a Governor for each State, but an amendment of 1956 makes it possible to appoint the same person as the Governor for the two or more States (Article 153).

3.6.1 Appointment

The Governor of a State is not elected but is appointed by the President and holds his office at the pleasure of the President. Any citizen of India who has completed 35 years of age is eligible for the office. But he must not hold any other office of profit, nor be a member of the legislature of the Union or of any State (Article 158). There is no bar to the selection of a Governor from amongst the member of a legislature but if a member of a legislature is appointed as Governor, he ceases to be a member immediately upon such appointment.

The normal term of a Governor's office shall be five year, but it may be terminated earlier by:

(i) dismissal by the President (Article 156(i),
(ii) resignation (Article 156 (2)

The grounds on which a Governor may be removed by the President are not laid down in the Constitutions, but it is obvious that this power will be sparingly used to meet with cases of gross delinquency, such as bribery, corruption, treason and the like or violation of the Constitution.

There is no bar to persons for being appointed as Governor more than once.

Qualifications

A person eligible to be appointed as the Governor must be (a) a citizen of India, (b) must have completed 35 years of age, (c) should not be a member of either House of Parliament or of the State legislature. If any such person is appointed as a Governor, he is deemed to have vacated his seat in the House as and when he assumes his office as the Governor and (d) should not hold any other office of profits.

Tenure

According to the Constitution, the tenure of the Governor depends on the pleasure of the President. Generally, the Governor is appointed for a term of five years. He can vacate his office earlier by writing to the President. The President can also remove him before the expiry of his term of five years. If the office of the Governor falls vacant due to his death, resignation or removal, the Chief Justice of the High Court acts as the Governor till a new incumbent is appointed.

Conditions of Governor's Office

A Governor gets a monthly salary of Rs. 30000, together with the use of an official residence free of rent and also such allowance and privileges as are specified in the Governor's (emoluments, allowance and privileges) Act, 1982 as amended in 1998 (w.e.f 1.1.1996). The emolument and allowances of a Governor shall not be diminished during his term of office (Article 158 (3)-(4).

Privileges and Immunities

The Governor enjoys a number of privileges and immunities. He is not accountable to any Court of Law for the exercise of his official duties. No civil or criminal proceeding can be instituted against him in any Court of laws as long as he is in office. No proceeding can be instituted for his arrest or imprisonment by any Court.

3.6.2 Powers and functions of the Governor

The Governor has no diplomatic or military power like the President, but he possesses Executive, Legislative and Judicial powers analogous to those of the President.

Executive

Apart from the power to appoint his Council of Ministers, the Governor has the power to appoint the Advocate General, and the Members of the State Public Service Commission. The Ministers as well as the Advocate General hold office during the pleasure of the Governor, but the members of the State Public Service Commission cannot be removed by him, they can be removed only by the President on the report of the Supreme Court on reference made by the President and in some cases, on the happening of certain disqualification (Article 317).

The Governor has no power to appoint judges of the State High Court but he is entitled to be consulted by the President in the matter (Article 217(i)).

Like the President, the Governor has the power to nominate member of the Anglo-Indian community to the Legislative Assembly of his State, if he is satisfied that they are not adequately represented in the Assembly. But while the President's corresponding power with regard to the House of the people is limited to a maximum of two members, in the case of the Governor, the limit is one member only, since the Constitution (23rd amendment) Act, 1969 (Article 333).

As regards, the upper chamber of the State legislature (in State, where the Legislature is bi-cameral), the Governor can nominate a person having special knowledge or practical experience in the field of literature, science, cooperative movement and social service (Article 171(5)).

Legislative

As regard Legislative power, the Governor is a part of the State legislature (Article 164), just as the President is part of the Parliament. He can address the first session of the Legislative Assembly and can summon, prorogue and dissolve it. He can send message and seek information regarding the bill pending in the legislature. No bill can become a law unless it is approved by the Governor. He can withhold his assent for reconsideration of the legislature or can reserve certain bills for the consideration of the President. Further, the Governor can promulgate ordinance when the Assembly is not in session.

His powers of 'veto' over the State Legislations and of making ordinances are dealt with separately (See chapter 14 Governor's power of veto and ordinance-making power of Governor)

Judicial

The Governor has the power to grant pardons, reprieves, respites, or remission of punishment or to suspend, remit or commute the sentence of any person convicted for any offence against any law relating to a matter to which executive power of the State extends (Article 161). He is also consulted by the President in the appointment of the Chief Justice and the Judges of the High Court of the State.

Emergency Power

The Governor has no emergency power to meet the situation arising from external aggression or armed rebellion as the President has (Article 352). But he has the power to make a report to the President whenever he is satisfied that a situation has arisen in which the Government of this state cannot be carried on in accordance with the provisions there and invite the President to assume to himself the functions of the Government of the State or any of them (Article 356). (This is popularly known as "President's rule").

Appointment of Council of Ministers

The Council of Ministers is appointed by the Governor on the advice of the Chief Minister. The Council of Minister shall be collectively responsible to the Legislative Assembly of the State and individually responsible to the Governor. The Ministers are jointly responsible to the Legislature. They are publicly accountable to the people for the acts or conduct in the performance of duties. Any person may be appointed a Minister (Provided he has the confidence of the Legislative Assembly).

Relationship between the Governor and his Ministers

It may be said that, in general, the relation between the Governor and his Minister is similar to that of the President and his Minister. The difference is that while the Constitution does not empower the President to exercise any function in his discretion, it authorizes the Governor to exercise his discretion in certain circumstances. In this respect, the principle of Cabinet responsibility in the State differs from that of the Union.

While exercising his discretionary functions, the Governor will not be required to act according to the advice of his Ministers or even to seek such advice. Again, if any question arises whether any matter is or is not a matter as regards which the Governor is required by the Constitution to act in his discretion, the decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called into question on the ground that he ought or ought not to have acted in his discretion (Article 163(2)).

3.6.3 Role of the Governor

In regards to the role of the Governor, there are different opinions among different Constitutional experts and politicians in our political system. While interpreting the scope of the provision of the Indian Constitution that "The Ministers shall hold office during the pleasure of the Governor", Dr. B.R. Ambedkar, said in the constituent Assembly, " I have no doubt that it is the intention of this Constitution that the ministry shall hold office during such time as it holds the confidence of the majority. It is on this principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been stated that fashion or in those term in any of the Constitution which lays down a parliamentary system of government. 'During Pleasure' is always understood to mean that the 'pleasure' shall not continue, not withstanding the fact that the ministry has lost the confidence of the majority, it is presumed that the Governor will exercise his 'pleasure' in dismissing the ministry and therefore, it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments". This school considers the Governor as the nominal head of the State. The Governor, as conceived by the framers of the Constitution, is to perform his duty on the advice of the Council of Ministers. It has been said that the part of Governor is like an 'old age pension to weary politicians' or consolation prizes for the politicians defeated at polls. The critics argued for the abolition of the governship as it is expensive and unnecessary. According to Mr M.V. Kamath, a Constitutional expert, the Governor "is little more than a puppet controlled by the Chief Minister on the one hand and by the President that is to say virtually by the Prime Minister on the other". Some consider the post of Governor as a mischievous and superfluous office.

The other school which considers that the Governor is not merely a Constitutional ruler has refused to accept that the office of the Governor is superfluous and mischievous. No doubt, his functions are largely formal and are expected to be performed on the advice of the Minister. All executive powers are vested in the Governor. However, he is not always expected to act according to the advice of the Council of Ministers, because he is required by oath of his office, "to preserve, protect and defend the Constitution". In Constitutional crisis, he is expected to act wisely. There are many occasions where the Governor can act on his own without seeking advice of the Council of Ministers.

The appointment of the Chief Minister is a prerogative of the Governor. After every general election, the Governor invites the leaders of the majority party to form the ministry. In case no party forms the majority, the Governor may exercise his discretion. Another prerogative of the Governor is to dismiss the ministry, which has lost the support of the majority in the legislature. In case of advising the President for the proclamation of an emergency, the Governor has a free hand to report the matter to the President. The Governor may exercise his discretionary

power in refusing assent to a Bill passed by the State legislature and sending it back for reconsideration. He can also reserve certain Bills passed by the State legislature for the assent of the President. The Governor can ask the Chief Minister to submit for the consideration of the Council of Minister any matter on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers. He can seek instructions from the President before promulgating an ordinance dealing with certain matters. Thus, it is incorrect to assume that the office of the Governor is a mere superfluous one. As an impartial observer, he has the "right to be consulted, right to encourage and right to warn".

Thus, the Governor acts as a link between the Centre and the State in our federal system. He is an essential part of the Constitutional machinery fulfilling an essential purpose and rendering essential service. However, the Constitutional provisions and the working of the Constitution since 1950 have proved, to some extent that the usual position of the Governor is that of a titular head in a parliamentary system of government. But during the time of the emergency or when there is President's rule in the State, his position is converted into a real executive. Thus, the Governor plays a dual role. In normal times, he is a nominal head in the hands of the Council of Ministers but in abnormal or emergency situation, he is required to act on his discretion. Hence, on certain occasions as a nominee of the President and as an agent of the Central Government, the Governor may act without the advice of the Council of Ministers. But such occasions are very rare. Therefore, the position of the Governor is that of a titular executive under a parliamentary system of government.

The above discussion proves one of the cardinal principles of Indian politics that the Governor of a State did not enter into a thick of everyday politics. His job was ceremonial in nature and confined to cutting ribbons and swearing-in Ministers and Judges. But this position is gradually changing. In one State after another, the Governors are interfering in the smooth functioning of the elected government. Further it has been evident in the recent past that the Governor does have power to act independently using his own discretion in some crucial spheres.

(i) Under Article 164 of the Constitution, he has discretion in appointing a Chief Minister.
(ii) Under Article 174, he has the right to dissolve or prorogue the assembly.
(iii) Under Article 356, he has the power to recommend the imposition of President's rule.

The fears of the opposition parties are not unwarranted. Since 1950, there have been many dismissals of the State governments and the trend has been rising in recent years. It might have been more reassuring for everyone if there had been a fixed set of rules for Governors to go by. But, in the dismissal of a government and the appointment of the new one, the Governor has followed a crazy pattern often with the little regard to the norms of the Constitution.

The powers under Article 356 are even more difficult to define. It is certainly true that the Governor has more say under the Constitution than the President when deciding whether to impose President's rules or not. The Governor's reports recommending President's rule are made completely on his own initiative, unless it is dictated for him in New Delhi. Despite this provision, it has been misused on several occasions. The essence of the opposition case is that

President's rule is imposed all too often to sort out the ruling party's problems and not because the Constitutional machinery has broken down. Echoing a long-standing Marxist demon, West Bengal Chief Minister, Mr Jyoti Basu once said, "Scrap Article 356".

To give them their due, most Governors manage to follow a middle path without too much trouble. But there are clearly others who keep their career in mind. Since Article 155 and 156 of the Constitution says that "A Governor shall be appointed by the President by warrant under his head and seal and shall hold office during the pleasure of the President". In simple language it simply means that the government in power in New Delhi decides everything in regard to the role of the Governors in different States.

While it is indeed right for the Governor to determine which party enjoys a majority, it is also evident that there is no safeguard to ensure an independent decision by the Governor. Many people suggest that an inter-State Council as provided for under Article 263 should be set up to decide if Presidents rules should be imposed. Justice V.M. Tarakunde suggests that the Governor should clearly specify why he is recommending Presidents' rule. This should then be made justifiable. This gives power to the Court to decide whether the imposition of President's rule is just or not.

Check Your Progress-IV

1. Who is the executive head of the State as per the constitution?
2. Under which Article the Governor is appointed?
3. Who is eligible to be the Governor?
4. What is the term of the Governor?
5. Who appoints the governor?
6. What is the salary of the governor?
7. Under which Article the President can dismiss the governor?
8. Under which Article the Governor can exercise his discretionary power in appointing the Chief Minister?
9. What are the powers and functions of the governor?

3.7 Let Us Sum Up

To sum up, this unit discusses about the President of India, the Prime Minister, Council of Ministers, the Parliament and role of State Governors in detailed manner. The framers of the Indian constitution adopted a parliamentary form of government on British pattern under which the President acts as the nominal, titular and ceremonial head of the government, however, in real practice all these powers are vested with the Prime Minister and the Council of Minister. The entire Council of Ministers along with the Prime Minister is collective or individually responsible to the Lower House (Lok Sabha) of the parliament. This Lower House is also subject to dissolution under certain circumstances. The Upper House of the Indian Parliament (Rajya Sabha) is a permanent chamber of the parliament.

3.8 Key Words

Parliamentary Government/Democracy: it is also called responsible or Cabinet form of Government/democracy, because the Cabinet headed by Prime Minister enjoys the real powers of the Government and it is under the control of Parliament.

Collective responsibility: It means that once a decision is taken by the Cabinet,it becomes the responsibility of each Minister to support it in and outside the Parliament, despite the fact that he did not agree to it in the Cabinet meeting.

Leadership of Prime Minister: It refers to leadership of Prime Minister over the Council of Ministers, Cabinet and the party he belongs to. He, being the leader of the majority party in the lower House, is also called the leader of the House.

Nominal and real heads: In the Indian democracy, the President is considered nominal or titular head though it has nowhere been mentioned in the Indian Constitution. The Prime Minister is considered as the real head because the President is bound to accept the advice given to him by Council of Ministers headed by the Prime Minister.

First among the equals: The Prime Minister is considered as the first among the equals because of the privileges and prerogative he enjoys.

Majority party: It is the party who forms the Government and generally the Prime Minister belongs to the party which commands the majority in the Lower House.

Position of the Prime Minister: It refers to the position - role, powers, functions, privileges, prerogatives, etc. of the Prime Minister which makes him the real head.

3.9 Check Your Learning

1. Under which Article the Indian Constitution provides for the Council of Ministers?
2. What is the composition of the Council of Minister?
3. Who appoints the Prime Minister of India?
4. Under which Article the Prime Minister of India is appointed?
5. What is the salary of the ministers?
6. What is collective responsibility?

7. Under which Article, the principle of 'individual responsibility' was provided in our Constitution?
8. What is 'legal responsibility'?
9. Discuss the ministerial responsibility to the Parliament.
10. Discuss the various functions of the Council of Ministers.
11. Distinguish between the Cabinet and the Council of Ministers.
12. Who appoints the Prime Minister of India? Discuss his relationship with the President, Parliament and the Council of Ministers.
13 Discuss powers and functions of the Indian Prime Minister.
14 Examine the Statement - "Our Prime Minister is first among the equals in the Council of Ministers."

3.10 Suggested Readings

Sahay, H.K. : ***The Constitution of India - An Analytical Approach***, Eastern Law House, Pvt. Ltd. New Delhi, Kolkata, 2002.

Limaya, Madhu : ***Contemporary Indian Politics***, Radiant Publishers, New Delhi, 1987.

Narang, A.S. : ***Indian Government and Politics***, Gitanjali Publishing House, New Delhi, 2000.

Basu, D.D. : ***Introduction to the Constitution of India***, Wadhava and Company Law Publishers, Agra, New Delhi.

Bombwall, K. R : ***Constitutional System of the Indian Republic,*** Modem Publications Amble.

3.11 Hints/Answers to Questions in Check Your Progress

Check Your Progress-I

1. The Indian President is elected by an indirect election, by an Electoral College consisting of the elected members of both the Houses of the Parliament, elected members of the state and elected members of the Union Territories of Delhi and Pondicherry in accordance with the proportional representation by means of single transferable note system.
2. See section 6.1.1.3
3. 5 years from the date on which he assumes office.
4. The oath of the President of India is administered by the Chief Justice or the senior most judge of the Supreme Court of India.
5. The President can be removed from his office through the process of impeachment for violation of the constitution.

Check Your Progress-II

1. The present strength of the Lok Sabha is 545, which is freezed by the NDA Government till 2026 AD.
2. The term of the Lok Sabha is fixed by the constitution for 5 years from the date of its first meeting. However, it can be dissolved earlier under certain circumstances.
3. The President of India on the advice of the Prime Minister.
4. The quorum of the Lok Sabha to start its business is 1/10 of the total number of members of the house.
5. 6 years but one third of its members retires on the expiry of every two years.
6. Money Bill can only be introduced in the Lok Sabha.
7. The Vice President of India is the ex-officio chairman of the Rajya Sabha.

Check Your Progress-III

1. See section 6.1.3
2. The President has the power to appoint the Prime Minister but he can only appoint the leader of the majority party in the Parliament as prime Minister. The Council of Ministers is also appointed by the President on the advice of the Prime Minister.

Check Your Progress-IV

1. The Governor
2. Article 153
3. See section 6.1.4, Qualifications.
4. 5 years. But Governor holds his office during the pleasure of the President.
5. President
6. Rs. 30,000/- per month
7. Article 156(1)
8. Article 164
9. See section 6.4.2

UNIT-IV
SUPREME COURTS AND HIGH COURTS

Judiciary is the law adjudication organ of the Government. It maintains balance between Legislative and Executive wings of the Government. The function of the Judiciary is well-defined in the Constitution. But on occasions, it frames its own functional strategy to bring justice to the aggrieved effectively and efficiently.

Public Interest Litigation is such a strategy and is an example of judicial activism. In this unit the emerging role of Judiciary in the present context is discussed.

Structure

4.0 Objectives

In this unit, we will study the Indian Judicial System. After going through this unit, you will be able to know about:

- the composition, powers and functions of the Supreme Court of India;
- the operation of Judicial Review and its criticism;
- Judicial Activism; and
- state High Courts and Subordinate Courts and their functioning.

4.1 Introduction

The Judiciary is the most important organ of the government and the significance of a Constitution, to a large extent, depends on this organ. Particularly in a federal State, there is a distribution of powers between the Centre and the constituent units. In spite of the best efforts of the framers of the Constitution to draft it as precisely as possible, there is always scope for differences of opinion about its interpretation between the Central Government and State Governments. Hence, it is essential that there should be a judicial body which would decide the case impartially and whose decisions would be acceptable to both the parties. The Constitution of India has provided for an independent judiciary with the Supreme Court at its apex. In addition to the Supreme Court, there are High Courts at the State level and other subordinate Courts at lower levels.

4.2 Union Judiciary: The Supreme Court

The Supreme Court stands at the top of the judicial organization in India. Provisions with regard to the Supreme Court were made in Chapter IV, of Part V covering Articles from 124 to 147 of the Indian Constitution.

4.2.1 Composition

The Supreme Court of India consists of a Chief Justice and 25 other Judges. The number of judges of the Supreme Court is determined by the Parliament from time to time. Under the original Constitutional provision, the strength of the judges of the Supreme Court was seven (excluding the Chief Justice), which was raised subsequently to 10 in 1956, 13 in 1960, 17 in 197 and 25 in 1985. In addition, the President can also appoint ad-hoc judges. President also reserves the right to invite the retired judges of the Supreme Court to attend the meetings of the Court.

Appointment

The judges of the Supreme Court are appointed by the President. The President appoints the Chief Justice of the Supreme Court in consultation with such judges of the Supreme Court and the High Courts as he may deem necessary. However, in appointing other judges, the President also consults the Chief Justice of India. It may be observed that the power of the President to appoint judges of the Supreme Court is only a formal power and he always appoints them on the advice of the Council of Ministers.

Qualifications

No person shall be qualified for appointment as a judge of the Supreme Court unless he is

(a) A citizen of India and
(b) Has been for at least 5 years a judge of a High Court, or
(c) Has been for at least 10 years an advocate of a High Court, or

(d) Is in the opinion of the President, a distinguished Jurist.

Tenure

A judge of the Supreme Court holds office until he attains the age of 65 years. No minimum age for appointment is fixed. A judge may, at any time, resign his office by writing addressed to the President. S/he may also be removed by an order of the President to be issued on the basis of a resolution passed by two-thirds majority of the members of each House of Parliament on the grounds of (a) proved misbehaviour, or (b) incapacity.

Salaries and allowances

After the fifth Pay Commission with effect from 1.1.1996, the Chief Justice of India is paid a salary of Rs. 33,000/-. In addition, they are entitled to a rent-free official residence, staff car, and other allowances and rights in respect of leave or absence and pension determined by the Parliament from time to time. The privileges cannot be varied to the disadvantage of the judges after their appointment.

4.2.2 Independence of Judiciary

The framers of the Indian Constitution were quite conscious that only an impartial and independent judiciary could ensure a constitutional government in the country and protect the rights of the citizens without fear or favour. Therefore, they incorporated number of provisions in the Constitution to ensure the independence of the Supreme Court. It is because in a representative democracy, the administration of justice assumes a special significance in view of the rights of individuals which need protection against executive or legislative interference. This protection is given by making the judiciary independent of the other two organs of the government and supreme in relation thereto. An independent and impartial supreme judiciary is also an essential requisite of a federal polity. There is a constitutional division of powers between the federal government and governments of the constituent units and a functional division of powers between the executive, legislature and judiciary. Only an independent judiciary can act effectively as the guardian of the rights of the individual and that of the Constitution. There are many provisions in the Indian Constitution which ensure the independence of the Court, for example, constitutional provisions in regard to the appointment and removal of judges, security of tenure, salaries and service conditions.

All these provisions adequately ensure the independence of the Judiciary.

4.2.3 Jurisdiction of Supreme Court

The Supreme Court of India enjoys three types of jurisdictions, which can be studied under the following heads:

(a) Original Jurisdiction: Article 131 provides that the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in a dispute

(i) between the Government of India and one or more States or

(ii) between the Government of India, and one or more States on one side and one or more States on the other, or
(iii) between two or more States.

It may be noted that disputes in the above cases can be brought before the Supreme Court only if they involve a question of law or fact on which the existence of a legal right depends.

The cases involving enforcement of Fundamental Rights also fall under the original jurisdiction of the Supreme Court. A citizen can move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights and the Supreme Court can issue directions or order or writs in the nature of *Habeas Corpus*, *Mandamus, Prohibition*, *Certiorari* and *Quo Warranto*. Thus, the Constitution envisages the Supreme Court as a protector and guarantor of the Fundamental Rights.

However, the Supreme Court does not enjoy any original power with regard to disputes arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instruments, which had been entered into or executed before the commencement of the Constitution and which continued in operation ever after the commencement of Constitution.

(b) Appellate Jurisdiction: The Supreme Court is the highest Court of appeal in the country and hears appeals against the judgments of the Lower Courts viz. the High Courts of the States in constitutional, civil and criminal matters. In Constitutional matters, an appeal can be made to the Supreme Court, if the High Court certifies under Article 132 that the case involves a substantial question of law as to the interpretation of the Constitution. Even if the high Court does not grant this certificate, the Supreme Court can grant special leave to appeal for any judgment, decree, determination, sentence or order made by any Court or tribunal in India.

In civil matters (under Article 133), an appeal can be made to the Supreme Court against the judgment, decree or final order of a High Court if it grants a certificate (i) that the case involves a substantial question of law of general importance; and (ii) that in its opinion, the said question needs to be decided by the Supreme Court.

In criminal matters (article 134), an appeal lies to the Supreme Court against the judgment, final order or sentence of a High Court, if the High Court certifies that the case is fit for appeal to the Supreme Court. An appeal can also be taken to the Supreme Court without the certificate of the High Court if the Lower Court acquits the accused but the High Court reverses the order of acquittal in appeal and passes a sentence of death; or the High Court withdraws a case from the Lower Court, conducts the trial itself, convicts the accused and awards the death sentence.

The appellate jurisdiction of the Supreme Court can be further extended by the Parliament (Article 134, clause 2). In pursuance of this power, the Parliament passed the Supreme Court (Enlargement of Jurisdiction) Act, 1970 which provides that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court has, on appeal, reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or imprisonment for a period of not less than 10

years; or has withdrawn for trial before itself. Any case from any Court subject to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or imprisonment for a period not less than 10 years. As a result of this enactment, the accused can make an appeal to the Supreme Court as a matter of right without any certificate from the High Court even where the High Court does not award the sentence of death.

***(C) Advisory Jurisdiction*:** The Supreme Court also enjoys advisory jurisdiction. According to Article 143, if at any time it appears to the President that (i) a question of law or fact has arisen or is likely to arise; and (ii) the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court, he may refer the question for the advisory opinion of the Court, and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

However, it is within the discretion of the Supreme Court either to give its opinion or to refuse the same. Till 2004, the President has made 11 references to the Supreme Court. The latest cases referred to the Supreme Court for advisory opinion include Cauvery Water Disputes Tribunal and *Ayodhya* Ram *Janmabhoomi* Dispute.

The Advisory opinion of the Supreme Court is not binding on the President of India because it is merely an advice and the President may or may not accept it.

(d) Other provisions: In addition to these jurisdictions, there are several other provisions dealing with other aspects of the Supreme Court's powers. Firstly, Article 129 of the Constitution declares the Supreme Court as a Court of record which implies that it has all the powers of such a Court including the power to punish for contempt of Court. A Court of record possesses the following features:

(i) Its proceedings are recorded for perpetual verification and testimony;
(ii) Its records are admitted as evidence and can not be questioned when produced in any Court of Law;
(iii) It has the power to punish, by fine and imprisonment, any person guilty of contempt of its authority.

Secondly, the decision of the Supreme Court is binding on all Courts within the territory of India. However, the Supreme Court is not bound by its earlier decision and can depart from it, if it is convinced of its error and its harmful effect in the general interest of the public. For example, in the Golak Nath case, the Supreme Court departed from its earlier decision in Shankari Prasad vs. the Union of India. Later on, the Supreme Court even departed from its decision in the Golak Nath Case in its judgment in Keshwanand Bharti Case.

Thirdly, the decrees and orders etc. issued by the Supreme Court of India are enforceable throughout the territory of India in such a manner as may be prescribed by or under any law made by the Parliament.

Fourthly, the Constitution authorizes the Supreme Court to make rules for broadly regulating the practice and procedure of the Court with the approval of the President. The matters

with regard to which the Supreme Court can make rules include the persons practising before the Court; the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered; proceedings in the Court for the enforcement of any of the rights conferred by part III (Fundamental Rights) of the Constitution; conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review; cost of and incidental to any proceedings in the Court and the fees to be charged in respect of the proceedings therein; granting the bails; stay of proceedings; summary determination of any appeal which appears to the Court to be frivolous or brought for the purpose of delay; and procedure for inquiries etc.

Fifthly, the Supreme Court decides the disputes regarding the election of the President and the Vice President and its decision in this regard is final.

Sixthly, on reference made by the President, the Supreme Court can recommend the removal of the Chairman and other members of the Union Public Service Commission on grounds of misbehaviour.

Check Your Progress-I

1. What was the strength of the Judges of the Supreme Court under original provisions of the Constitution?
2. Who can be appointed as the Judges of the Supreme Court?
3. What is the salary of the Chief Justice of India?
4. What is the age of retirement of the Judges of the Supreme Court?
5. Under which article the criminal appellate jurisdiction of the Supreme Court is discussed?
6. On which ground the President can remove the Judge of the Supreme Court?

4.3 The High Court

The Constitution provides a High Court, which is the highest organ of judicial administration in the states. Article 214 of the Constitution provides that there shall be a High Court for each state. However, the Parliament can by law establish a Common High Court for two or more states or for two or more states and a Union Territory (Article 231).

4.3.1 Composition

The High Court of a state consists of a Chief Justice and such other judges as the President may from time to time determine. This implies that the strength of the High Court has not been fixed by the Constitution and is determined by the President. It is not the same for all the High Courts.

The Chief Justice of the High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the state concerned. The other judges of the High Court are appointed by the President in consultation with the Chief Justice of India, the Chief justice of the High Court and the Governor of the state. The President can also appoint additional judges for a period not exceeding two years to dispose pending works. The Chief Justice of the High Court can invite the retired judges of the High Courts to participate in the proceedings of the High Court with the prior consent of the President.

Qualifications

A person to be eligible for appointment as a judge of a High Court must possess the following qualifications;

(a) He must be a citizen of India.
(b) He must have held a judicial office for at least ten years or
(c) He must be an advocate of a High Court or Courts for at least 10 years.

It may be noted that while an eminent jurist can be appointed as a judge of the Supreme Court, he cannot be appointed as the judge of a High Court.

Term of office

The judges of High Court hold office until they attain the age of 62 years. The judges can be removed from their office earlier on grounds of proved misbehaviour or incapacity. The order for their removal can be issued by the President only after the two houses of Parliament have passed a resolution by a majority of not less than two thirds of the members of each house present and voting and request the president to remove a particular judge. A judge of a High Court can also resign his office by writing to the President.

Salaries and Allowances

Judges of a High Court are entitled to such salaries as are specified in the Second Schedule of the Constitution. At present the Chief Justice of High Court draws a monthly salary of Rs. 30,000 while the other judges receive Rs. 27000 per month. In addition they are entitled to such allowances, leave and pension as the Parliament may determine by law from time to time. The salaries, allowances and pension of the High Court judges cannot be varied to their disadvantage during their tenure of office. However, during a financial emergency their salaries and allowances can be reduced. The salaries and allowances of the judges of the High Court are charged on the Consolidated Fund of India.

4.3.2 Jurisdiction and Powers of the High Courts

The constitution does not attempt detailed definitions and classification of the different types of jurisdiction of the High Courts as it has done in the case of the Supreme Court. The jurisdiction of the High Court is as follows:

(i) ***Territorial Jurisdiction:*** The Jurisdiction of a High Court is confined to the territorial boundaries of the state. But the Parliament has the power to establish a common High Court for two or more states or extend the jurisdiction of a High Court for two or more states (e.g. Guwahati High Court) or extends its jurisdiction to a Union Territory (e.g. Calcutta High Court's jurisdiction extends over Andaman and Nicobar islands, Madras High Court's jurisdiction extends over Pondichery, Common High Court for Punjab, Haryana and Union Territory of Chandigarh). Its jurisdiction stretches to the included territories.

(***ii) Original Jurisdiction:*** The Constitution does not define in detail the jurisdiction of High Courts. It provides that they are subject to the provisions of the present Constitution and to the provisions of any law of the appropriate legislature. The jurisdiction of the High Courts shall be the same as before the commencement of this Constitution. However, there is one improvement found in the present position. Before the commencement of the Constitution, there were certain restrictions upon the jurisdiction in revenue matters. These restrictions no longer exist.

In fact, High Courts are primarily courts of appeal. They have original jurisdiction only in matters of admiralty, probate, matrimonies, contempt of court, enforcement of Fundamental Rights and cases ordered to be transferred from a lower court involving the interpretation of the Constitution to their own life.

(iii) Appellate Jurisdiction: The appellate jurisdiction of the High Court is both Civil and criminal.

In civil matters, an appeal to the High Court may be either a first appeal or a second appeal.

(a) Where a matter is decided by the District Judge or by a subordinate judge and the value of the subject matter exceeds the prescribed value or where an Act so provides, an appeal from such decision straightway lies to the High Court.

(b) Where the District Judge or a subordinate Judge has decided on an appeal from the decision of an inferior court, a second appeal lies to the High Court from the decision of the appellate court under the provisions of S.100 of the Civil Procedure code.

(c) Appeals from all tribunals established under Article 323 and 323 B lie to the Division Bench of a High Court.

(d) In some High Courts, there is provision of intra-court appeals. Appeals lie from the decision of the single judge to a Division Bench of the same High Court. This is a peculiar provision. In UK and other countries no appeal lies from a court to itself. An appeal is always made to a higher court.

In the criminal matters, the appeals are governed by various provisions of the Code of Criminal Procedure, 1973 (SS.374, 376, 376G etc). Without going into details, it may be summarized that appeals lie to the High Court from the decisions of:

(a) A session judge or an additional sessions judge where the sentence passed is imprisonment of 7 years or more.

(b) An Assistant Sessions Judge, Metropolitan magistrate or other magistrate in cases specified by the Criminal Procedure Code.

(iv) Writ Jurisdiction: The High Courts can issue to any person or authority within its jurisdiction, directions, orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari* or any of them for the enforcement of fundamental rights or any other purposes. It may be observed that the use of words 'any other purpose' makes the jurisdiction of the High Court more extensive than that of the Supreme Court. While the Supreme Court's jurisdiction extends to the enforcement of the Fundamental Rights, the High Court's jurisdiction also extends to the enforcement of a legal right or a legal duty.

(***v) A Court of Record:*** Every High Court is also a court of record (Article 215) and has all the powers of such a court including the power to punish for its contempt. It may be observed that these powers of the High Court are similar to the Powers of the Supreme Court.

(v***i) Power of Superintendence***: Under Article 227, every High Court has the power of superintendence overall courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It may be noted that the Supreme Court has no power of superintendence. For the discharge of this function, the High Courts can call for reports from such Courts, make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts, and prescribe forms in which the books, entries ad accounts shall be kept by the officers of any such courts. In exercise of superintendence, *suo moto* orders may be issued. Directions can be given and rules framed for exercise of power. Superintendence covers both administrative as well as judicial.

It is evident from this discussion that the High Courts in India have been vested with quite extensive and effective powers. It has played a vital role in protecting the freedom of Indian citizens and acted a guardian of their rights.

Check Your Progress-II

1. How many types of writs can be issued by the Supreme Court and High Courts? Give their name.
2. Under which article the High Court is declared as a Court of Record?
3. Discuss the Jurisdiction and the power of the High Court?

4.4 Subordinate Courts

Under the High Courts, the hierarchy of Courts is known as Subordinate Courts. The Constitution of India has incorporated detailed provisions concerning the subordinate judiciary. This is mainly due to certain peculiar conditions, which existed in India at the time of the making of the Constitution. In India, it is the subordinate judiciary that comes into most intimate contact with the ordinary people in the judicial field. Therefore, it is necessary that its independence is placed beyond question in order to infuse public confidence in it.

The organization and functions of the subordinate courts are almost uniform throughout the country. For the purpose of judicial administration, each state is divided into several districts, each under a District Judge or District Magistrate. Except for minor local variations, the structure and functions of the subordinate courts are uniform. There are three types of subordinate courts found in each district, viz. Civil, Criminal and Revenue. Let us examine their organization and working in detail.

4.4.1 Civil Courts

There are lowest courts in a district on the civil side which have been established in big towns to dispose of civil cases speedily. They hear cases involving amounts not exceeding the limit fixed by the states. Its decisions are, ordinarily, not applicable and any legal error can however, be rectified in revision. Above the small causes courts are the sub judges of the Second, Third and Fourth Class and they can hear cases relating to amount not exceeding to Rs. 10000, 5000 and 1000 respectively. Then there is a Senior Sub-Judge in every district who can entertain cases involving the amount. Below the sub-Judge there are small causes courts which is known as Munsif courts. All these judges have only original jurisdiction. Appeal from these judges can be taken to district Judge. The session's judge of the district also acts as a district Judge. He has original as well as appellable jurisdiction. He hears appeals from all courts subordinate to him. He has wide powers under the special acts such as Succession Act, the Guardian and Wards act, the Provincial Insolvency Act and Divorce Act. The District Judge is also the guardian of Trusts. He superintends the work of allotted inferior civil courts. An appeal against him lies to the High Court.

4.4.2 Criminal Courts

Like the Civil Courts, the Criminal Courts are also organized in a hierarchical order. At the apex of the hierarchy of criminal courts stands the Court of Session Judge at the district level. It can try all criminal cases involving murder and other serious offences duly committed to it by a First Class Magistrate. The court can award any punishment in accordance with the law, including the death penalty. However, the death penalty awarded by the session's court has to be confirmed by the State High Court. In the hierarchy of Criminal courts, the next are the First Class, Second Class and Third Class Magistrate Courts. The first class Magistrate Court hears appeals against the decision of the Second Class and Third Class Magistrate Courts. It can impose a fine up to Rs. 1000 and award imprisonment up to two years. The second class magistrate Court enjoys original Jurisdiction with regard to cases involving punishments up to six months imprisonment and fine up to Rs. 200. Next below is the Third Class magistrate's Court which enjoys original jurisdiction involving punishment up to one month imprisonment and fine up to Rs. 50.

Besides the three classes of Magistrate Courts, there is, in every district, an Additional district Magistrate or Judicial Officer and a sub-divisional magistrate or Judicial officer and a Sub-Divisional Magistrate. They have been invested with all the powers mentioned under Section 30. They can hear and try all cases except those which merit capital punishment.

4.4.3 Revenue Courts

Apart from the Civil and Criminal Courts, each state has certain revenue Courts which deal exclusively with the revenue cases. The Revenue Courts are also arranged in a hierarchical order. The junior-most officer is Tehsildar which deals with matters relating to recovery of land revenue and other relative cases. Appeals from his court lie to the Collector or Court of the Deputy Commissioner and then to the Commissioner. The topmost Revenue Court is the Board of Revenue or Finance Commissioner, which hears appeals against decisions of lower revenue courts.

4.4.4 Judicial Functions of the panchayats

The Panchayats are also empowered by law to hear Criminal cases arising out of vulgar songs, exchange of hot words leading to physical injuries, cruelty to animals or obstruction in a public passage. Some of the Panchayats have also been empowered to hear and try cases relating to insult of a public servant, unlawful confiscation of property, spreading of infectious diseases, theft involving not more than Rs. 200. A Civil Judge can change the award given by the Panchayat. There is no provision for pleaders in Panchayat system. A Deputy Commissioner can send a case back to the Panchayat for reconsideration.

4.4.5 Lok Adalats

Apart from the above, a new arrangement has also been introduced for providing speedy and affordable justice to the poor and down-trodden. Lok Adalats and Public Interest Litigation are addressed to eliminate the delay in imparting justice. The Lok Adalats and also a new arrangement i.e. Fast Track Courts speed up the clearance of pending cases and resolve cases that have not yet gone to the courts.

Check Your Progress-III

1. What is a sub-ordinate Judiciary?
2. What is Lok Adalat?

4.5 Let Us Sum Up

In this unit, you have seen that the judiciary is the most important organ of the government. The Indian Constitution has provided for an Independent judiciary with the Supreme Court at its apex. In addition to the Supreme Court, High Courts and other subordinate courts are also functioning well at lower levels. The makers of the Indian constitution were conscious that only an independent and impartial judiciary could ensure constitutional government in the country and protect the rights of the citizens without fear or favour.

4.6 Key Words

Justice	**:**	A Standard for judging the legal and oral order for mutual relations of men. When satisfied, it is regarded as achieving social happiness in a context of social order.
Judiciary	**:**	The Judiciary is the body of judges in a constitutional system.
Writ	**:**	A formal document, issued by a law court or a person in authority, stating a legal obligation.
Habeas Corpus	**:**	Literally means a demand to produce the body. It applies in a case where a person is alleged to have been illegally detained.
Jurisdiction	**:**	From the Latin 'jus dicere' the right to speak ordinarily, the right to adjudicate concerning the subject matter in a given case. In a broader sense, the word becomes virtually inter- changeable with 'authority especially when it refers to territorially limited authority or control.

4.7 Check Your Learning

1. Discuss the composition and powers of Supreme Court of India
2. Mention composition and function of the High Courts in India
3. Discuss the importance of independence of Judiciary in India
4. Discuss different types of court system in our judicial system.
   (c) Subordinate Courts (d) Writ jurisdiction
   (e) Appellate Jurisdiction of the Supreme Court
   (f) Lok Adalats
   (g) Advisory Jurisdiction of the Supreme Court.
   (h) The Judicial functions of panchayats.
9. How the judges of the Supreme Court can be removed?

4.8 Suggested Readings

Basu, D.D.	:	I*ntroduction to the Constitution of India,* ,S.C. Shankar and Sons, Calcutta.
H.R, Macmillan	*:*	*Judicial review or Constitution,* Khanna, Delhi.
Palkivala, N.A,	:	*Our Constitution Defaced and Defiled,* Macmillan, Delhi.

Pandey, J.N. , : *The Constitutional Law of India,* Central Law Agency, Allahabad.
Johari, J.C : *Indian Government and Politics,* Vishal Publications, Delhi.

4.9 Hints/Answers to Questions in Check Your Progress

Check Your Progress-I

1. Seven (Excluding Chief Justice.
2. See section 7.2.1.
3. Rs. 33,000/- per month including other allowances.
4. 65 years.
5. Article 134.
6. (a) Proved misbehaviour or (b) incapacity
7. See section 7.3.1

Check Your Progress-II

1. 5 (Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari)
2. Article 215.
3. See section 7.5.2

Check Your Progress-III

1. Check your answer from section 7.6

   Subordinated Judiciary is the name given to the hierarchy of courts working under High Courts of States. They have got the constitutional status.

2. Check your answer from sub-section 7.6.5 and follow the answer pattern of question-1.

Chapter-V

DEMOCRATIC DECENTRALIZATION: 73RD AND 74TH CONSTITUTIONAL AMMENDMENT ACTS

Structure

5.0 Objectives

After reading this unit you will be able to:

- understand the history of the Panchayat Raj in India;
- know the provisions of 73rd Constitutional Amendment Act; and
- understand the challenges before the Panchayat Raj institutions

5.1 Introduction

Panchayat Raj in India symbolises democratic decentralisation. It serves as an effective tool of popular participation at the village level. The instruments of the Panchayat Raj institutions have undergone changes over a period of time in order to meet the rising socio-economic expectations of the people. The 73rd Constitutional Amendment Act is an example in this direction. In this unit, democratic decentralisation is explained with reference to the Panchayat Raj institutions in India.

Contemporary Indian polity has been striving for establishing social, economic and political justice through modernization of its political and administrative institutions. The rising expectations of the people and the Government's commitment to economic development, democratic political ideals, justice, equality etc. are making increasing demands to implement development programmes more effectively with greater public participation. Due to this

changing socio-political milieu, the promotion of democratic decentralization, local autonomy and sharing of responsibilities with people's representatives demand greater attention.

The institutional expression of the policy of democratic decentralization in India is identified with Panchayati Raj. It aims at making democracy real by bringing the millions into the functioning of their representative government at the lowest level. It also means 'grass root democracy' because people at the grassroots level participate in the management of their affairs. In the Indian context, where almost 80 per cent of the people live in villages, Panchayati Raj serves a very effective role in political education of the rural folk. They also present important dimensions of socio-economic and political policy.

5.2 History of Panchayati Raj Institutions up to 73rd Amendment Act

Panchayats have been in existence in one form or the other ever since the Vedic period. Panchayat literally means an assembly of five elected by the villagers. It represents a system by which the innumerable village republics of India were governed. The description of the village communities is found in the Puranas, Mahabharata, Ramayana, Arthasastra, and in many other earlier writings. In fact, the villages in India have been playing the role of the basic units of administration since the earliest Vedic times.

However, the concepts of democratic decentralization can be traced back to the system of rural local self-government evolved during the British rule. It was Lord Rippon, who in 1882 took the initiative of establishing popularly elected institutions at local levels to look after specified functions in their areas. In 1907, the Royal commission on decentralization recommended the development of panchayats as units of Local administration. The Government of India Acts of 1919 and 1935 further gave impetus to local self-government. During the freedom struggle, Mahatma Gandhi stood for the development of Panchayat system in India. He said, "Independence must begin at the bottom. Thus, every village will be republic or Panchayat having full powers."

The dream of Mahatma Gandhi, to make villages self-sustained, was materialized in the independent India by giving constitutional recognition to the village Panchayats vide Article 40. It provides, "The State shall take steps to organize village Panchayats and endow them with such powers as maybe necessary to enable them to function as units of self government". The idea gained further impetus under the proposals of First Five Year Plan. The community Development (CD) and National Extension Services (NES) programmes were launched in 1952 and 1953 respectively for the development of rural areas. But they failed to achieve the expected development. The review of the working of the CD and NES programmes revealed that its attempt to evoke popular initiative was one of its least successful aspects.

5.2.1 Balwant Rai Mehta Committee

The Government of India appointed a committee under the chairmanship of Balwant Rai Mehta in 1956 to study the whole problem and suggested ways and means for implementing the scheme of Panchayati Raj on some uniform lines throughout the country. The committee was

confronted with the problems of how to lay down some uniform lines of Panchayati Raj in view of the vast size and varying social, political and economic conditions prevailing in different parts of the country. However, the committee submitted its report in 1957. Some of the important recommendations of the committee were:

(i) A three-tier system of local self-government from the village to the district, with village at the bottom. The Panchayat Samitis at the intermediate level and Zilla Parishad at the District level;
(ii) A genuine transfer of power and responsibilities to the institutions; and
(iii) Provision of adequate resources for these bodies to enable them to discharge these responsibilities.

The recommendations of the Balwant Rai Mehta Committee were endorsed by the national Development Council in 1959. The Panchayati Raj was first inaugurated in Rajasthan in October 1959 followed by Andhra Pradesh and Tamil Nadu in the same year. Later on, at the initiative of the then Prime Minister, Jawaharlal Nehru, most of the states adopted the Panchayat Raj Acts in their respective states with local variations, the most significant being the primacy given to the Zilla Parishad. Whatever be the local variant, there was general acceptance of the need to decentralize political and administrative power.

5.2.2 Ashok Mehta Committee

However, non-devolution of sources of revenues proved to be the greatest stumbling block in performance of the assigned tastes. This led to mounting pressure on the district-level bureaucracy and ultimately to a hostile attitude of bureaucracy towards these grassroots institutions. There was also a lack of political will to promote these institutions. These institutions could not ensure rural people's participation in the developmental programmes thus as a form of government, it looked like falling out of favour everywhere. So the need for having another look into the working of these institutions was strongly felt. During the Janata Government, the Ashoka Mehta Committee was appointed in 1977 to suggest ways and means for reviving these institutions. The committee emphasized the importance of Panchayati Raj and made the following important recommendations in 1978:

(i) The Committee replaced the three-tier system with a two tier system-Zilla Parishad at the district level and Mandal Panchayat for groups of villages with a population of 20,000 to 30,000 below the Taluka level.
(ii) It is desired that Panchayati Raj institutions have compulsory powers of taxation so as to augment their resources and thereby lessen their dependence on the devolution of funds from State government.
(iii) The State governments should not have absolute powers to supersede Panchayati Raj institutions on political grounds.
(iv) It is also recommended that the district should be the first point for decentralization under popular supervision below the State level and favoured the official participation of political parties at all levels of Panchayat elections.

(v) The committee suggested that all development functions relating to a district should be entrusted to the Zilla Parishad and the local level planning should be done by professionally qualified team.

(vi) The Committee favoured representation of SC and ST on the basis of their population.

Though no action could be taken on the recommendations of the Asoka Mehta Committee at the central level, three states - West Bengal, Andhra Pradesh and Karnataka took steps to revitalize Panchayati Raj in their states keeping the Zilla Parishad as the most important level and delegating substantial powers and functions to the Panchayati Raj institutions.

5.2.3 CAARD Report

However, keeping in view the priorities of the 7th Five Year Plan in respect of rural development and poverty alleviation programmes, the Planning Commission set up the Committee on Administrative Arrangements for Rural Development (CAARD) to review the existing administrative arrangements for rural development and to recommend appropriate structural mechanism to ensure effective implementation. The CAARD was constituted in 1985 with G.V. K. Rao as Chairman. The committee gave the following suggestions:

(i) The Zila Parishads were to be strengthened by introducing system of sub-committees constituted on the basis of proportional representation.

(ii) Plan implementation and monitoring of rural development programmes were to be entrusted to the Panchayati Raj institutions at the district and lower levels.

(iii) Local elections were to be held regularly.

(iv) Zila Parishad should be the apex body for overall planning at the district level. It should be assisted by a District Planning Board which should be an advisory expert body with a planning cell. The plan should be prepared by the DPB and sent to the Zila Parishad for review and authentication.

The Government of India set up another committee in 1986 headed by L.M. Singhvi to prepare a concept paper on the revitalization of the Panchayati Raj institution. The committee recommended that the PRIs should be constitutionally recognized, protected and preserved by the inclusion of a new chapter in the constitution. It also suggested constitutional provisions to ensure regular, free and fair elections of the Panchayat Raj Institutions (PRIs).

The Sarkaria Commission report pointed out that to rectify the malfunctioning of the local self-governing bodies, it is necessary to ensure that elections and sessions of Zila Parishad and Municipal corporations are held regularly and these institutions do not remain superseded for long periods.

The Thungon committee report suggested a three-tier structure for Panchayati Raj institutions and favoured the working of these institutions with the help of the committees. It also proposed reservation of seats for SC/ST as well as for women. The committee recommended for setting up of a Finance Commission in every State to provide financial help to these institutions.

The Congress Committee on policy programmes headed by V.N. Gadgill also made some valuable recommendations. It proposed three-tier PRIs at the village, block and district levels. The representatives to these bodies should be elected regularly for a fixed 5 years time, and in case of dissolution, election must take place within 6 months. There should also be provisions of reservation for SC/ST and women. A constitutional amendment was recommended by the committee to accommodate such provisions.

5.3 Constitutional Amendment Bills on PRIs

In the light of the past experience and in view of the shortcomings, it has been recognized that there is a need to enshrine in the Constitution a chapter dealing with Panchayats. Accordingly the 64th Amendment Bill was passed by the Lok Sabha on 10 August 1989. This was a comprehensive bill covering vital aspects of PRIs including the constitution of a uniform three-tier Panchayati Raj system at the village, block or Anchal and District level in all the States and Union Territories having a population of not less than 20 lakh. Reservation of seats for SC/ST and women was granted. It was proposed to hold regular election to the PRIs. The eleventh schedule was included in to the constitution dealing with the functions of the Panchayats. Unfortunately, this bill could not be enacted as it was not approved by the Rajya Sabha.

In 1990, the issues relating to the strengthening of the Panchayati Raj institutions were considered. It was decided in the Cabinet Committee that a constitution Amendment Bill may be drawn up dealing with the subjects such as regular elections to the PRIs, reservation of seats for SC/ST and women, disqualification of membership, financial devolution election arrangements etc. This matter was brought before the Chief Ministers Conference held in June 1990. The conference endorsed the proposals for the introduction of the constitution Amendment bill regarding the model guidelines for creation of the PRIs. Based on the consensus arrived at during the conference, the constitution Amendment bill and model guidelines were approved by the cabinet in July 1990. Further modifications to the bill were also made thereafter. But the bill could not be moved forward in view of the political changes that took place because of the failure of coalition government.

Check Your Progress-I

1. Which programmes were introduced under the First Five Year Plan for the development of rural areas?
2. Who have recommended first the three-tier structure of Panchayati Raj?
3. When Ashok Mehta Committee was appointed?
4. When the CAARD was constituted? Who was the Chairman of the CAARD?

5.3.1 Panchayati Raj and 73rd Amendment Act

The 73rd constitutional amendment Act was passed by the Parliament on 22nd December, 1992. The Act gave constitutional status to Panchayati Raj institutions.

A separate part IX has been added to the constitution with the addition of Article 243 A and 243 D. A fresh schedule called the 11th Schedule, enumerating the powers and functions of Panchayati Raj institutions has been incorporated. The following are the salient features of the 73rd Amendment Act of 1992:

(i) It made obligatory on the part of all States to provide for the three-tier Panchayati Raj system at the village, intermediate and district levels. However, States having a population of not exceeding 20 lakh may not have Panchayats at the intermediate level. The 73rd amendment does not apply in Jammu and Kashmir, Meghalaya, Mizoram, Nagaland and Delhi.

(ii) All the members to all three levels are to be elected directly on the basis of adult franchise. The elections to the Panchayats shall be held under the direction of State Election Commission. It made mandatory for reservation of seats for SC/ST and for women to the extent of not less than one-third of the total number of seats. Similarly, office of the Chairpersons in the Panchayats at each level shall be reserved for women to the extent of not less than one-third of the total number of chairperson. For SC and STs, the total number of chairpersons of Panchayats at each level would be in proportion to the population of SCs/ STs in the State. In addition, the legislature of any State can make provision for reservation of seats in any Panchayat or office of chairperson in the Panchayat at any level in favour of backward classes.

(iii) The term of office for all categories of Panchayati Raj representatives has been fixed for 5 years and if it is dissolved before the expiry of this term, fresh election must be held within six months from the date of its dissolution.

(iv) The Act authorizes the State governments to enact a law making provisions for vesting Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such laws may contain provisions for the devolution of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic development and social justice as may be entrusted to them. The State government can, by law**,** authorize Panchayats to levy, collect and appropriate taxes, duties, tolls and fees. They can also provide grants to the PRIs for the audit of Panchayats accounts. The Act says that the State machinery will audit the Panchayati Raj accounts.

(v) A new schedule called the 11th schedule comprising 29 items has been added to the constitution which ought to provide an effective role to the PRIS in the planning and implementation of works of local significance ranging from drinking water, agriculture, land and water conservation, poverty alleviation programmes, family welfare, education, cultural activities, maintenance of community assets etc.

(vi) The Act provides for the creation of a new body called the State Finance Commission to be appointed by the Governor. This commission shall be responsible for the review of the financial position of the Panchayats and can make recommendations to the Governor about the distribution of Acts, proceeds of taxes between the States and Panchayats as also about the grants-in-aid to Panchayats from the consolidated fund of the State and also about the measures needed to improve the financial position of the Panchayats.

Thus the various provisions of the 73rd Amendment Act of 1992, give us the impression that the Central Government is quite serious and sincere about making Panchayats legitimate constitutional local self-institutions.

The present Amendment will help not only bringing uniformity in structure but will also achieve the basic philosophy of checking the growing importance and interference of the affluent sections of society. It will gradually help the people in realizing the importance and utility of these grassroots institutions as a catalyst of change and development.

The institutions envisaged under the 73rd Amendment can also greatly contribute to the emancipation of the women, amelioration in the status of the most backward classes, the Dalits and other weaker sections. It is expected that the under privileged classes would be able to play more effective role to make the grass roots democracy more meaningful.

PRIs, by and large, failed because of irregular election and frequent suspension. This problem has rightly been taken care of by the 73rd amendment Act and it is hoped that how they will prove to be viable institutions of grass roots democracy as there will be periodic elections within a time frame. The periodic elections may also help in making the leadership more responsible and action oriented.

It has been suggested that for the stability and strength of the Panchayats, they should be guaranteed independent source of revenue and their representative should be included in the State planning bodies.

The Act requires all the States to legislate afresh or amend their existing Panchayat acts to bring them in conformity with the provisions of the constitutional amendment within one year. On 23rd April 1994, all the States complete the process of enacting fresh legislation on strengthening Panchayat Raj institutions in keeping with the recommendations of the 73rd Amendment. This set the process of devolution of power and decentralization of administration is in motion. Once this process is completed, the rural people in different states shall be able to play an important role at the grass roots level.

However, it will be wrong to believe that the present amendment will prove to be a panacea to all the ills afflicting the PRIs in the past. Even after constitutional recognition, the success of the Panchayat Raj will largely depend on the political will of the State governments.

Structure of Panchayat Raj Institutions

The 73rd amendment provides for three-tier system of Panchayati Raj institutions. The three levels or tiers of Panchayat system exist at the village, block or mandal or Anchal level and district level.

Panchayati Raj at Village Level

At the village level, we have the Gram Sabha or the legislature with Gram Panchayat as its executive organ. The 73rd Amendment has provided constitutional status to both Gram Sabha and Gram Panchayat. The Gram Sabha Constitutes all the adult population of the villages, who elect the members of the Gram Panchayat and to the Sarpanch or the Chairperson of the Panchayat. The members of the Gram Panchayat are elected for a period of 5 years. The Panchayat meets regularly and formulates plans and policies for the development of the villages. Its functions are largely related to civic amenities, social work activities and developmental works. These include supply of safe drinking water, maintenance of streets, rural electrification, promotion of cottage industries, development of agriculture, improvement of cattle, promotion of social education etc. In many States, Panchayat Adalats also function at the village level. This institution supplements the formal judicial system by reviving and legitimizing the traditional system of justice.

Panchayats at the intermediate level

The second level is Panchayat Samiti which functions at the block level in all States. It is identified by different names such as Panchayat Samiti, Anchalik Panchayat, Janapada Panchayat, Panchayat Union Council, Kohetra Samiti, Anchalik Parishad, Anchal Samiti etc. Its chairperson is also known as President, Pramukh, Pradhan, Chairman, etc. The Panchayat Samiti is to be directly elected according to the 73rd amendment Act.

The Panchayat Samiti coordinates and supervises the work of Panchayats; it is also responsible for implementation of various developmental programmes. The functions of the Panchayat Samiti include supply of drinking water, drainage, construction of roads, establishment of primary health centres, distribution of improved seeds and fertilizers, conservation of soil, development of cottage and small scale industries, and opening of cooperatives, etc.

Panchayats at the district level

At the highest level, there is Zilla Parishad it is also known as District/Zilla Panchayat and District Development Council. As per the 73rd Amendment Act, members of Zilla Parishad are elected directly. Its Chairperson is known as President, Chairman, Adhyaksha, Pramuukh. He is elected by the members of the Zilla Parishad. The Zilla Parishad has the overall responsibility of planning and implementation of development programmes. It also coordinates the working of Panchayat Samitis.

The functions of Zilla Parishad are to coordinate the development plans made by the Panchayat Samitis, issue directions of Panchayat Samitis for efficient performance of their duties, advise the State government relating to development activities of the district, distribute funds to Panchayat Samitis, advise the State government on the allocation of work to be made among the Panchayat Raj institution, etc. In some States, it examines and approves the budget of Panchayat Samitis. The Block Development Officer (BDO) is the Secretary of Zilla Parishad.

5.3.2 The Post Seventy third Developments

By April 1994, most of the States enacted legislation as per the requirement of the 73rd Amendment. Madhya Pradesh was the first State to establish a three-tier Panchayat Raj. Later on, other states also passed similar legislation to give constitutional recognition to local units of self-government.

In 1997, the National Institute of Rural Development held a conference on democratic decentralization in which the chairpersons of Zilla Parishads, Civil servants associated with rural governance and academicians participated to review the prospects for Panchayat Raj in India. The conference stressed the need for real devolution of power to Panchayati Raj. It was emphasized that financial autonomy must be given to these institutions. It was stated that we should learn from Chinese experience where local units enjoyed financial autonomy, because they have a bottom-up approach, where in the local level institutions keep a certain percentage of their revenue mobilization with themselves. But in India, our local institutions are still dependent on the government for financial assistance. It was increasingly felt that fiscal powers must be given to the PRIs. The salary and allowances of the members of PRIs was also discussed and it was agreed that they should be given a decent allowance. It was also felt that the organic link which had the three-tier Panchayati Raj system prior to the 73rd Amendment be restored. The Sarpanchs of the village Panchayats should be the members of Panchayat Samitis and the president of Panchayat Samitis should be the member of Zilla Parishads, so that the coordination work is ensured.

In 1997, a study was conducted by the Ministry of Rural Areas and Employment It emphasised upon the functional autonomy of Gram Panchayats. It suggested that a system should be developed in which they should be able to utilize funds without bureaucratic hindrances. It recommended special training programmes to train village sarpanchs and other executive members in understanding the technical formalities. The Central Government also wants a mechanism evolved by which the people in villages know about the availability of funds.

However, it is a common feeling at the grass-roots level that despite the constitutional recognition, the local self-governments are not able to perform their functions with real autonomy. The Central government is reluctant to decentralize its powers in order to be given to the State governments and the State governments in their turn unwilling to share their powers with the Panchayats. There is also lack of political will and thrust in the people in managing their affairs.

5.4 Challenges before Panchayati Raj Institutions

The 73rd and 74th Amendments to the Constitution have belatedly given units of self-government, and made their creation and continued functioning mandatory. However, the fact that most States took their time and delayed the legislation indicates the degree of apathy of the State Governments to the local self-government. Even a casual reading of State enactments shows how considerable measure of control over local bodies is sought to be maintained.

There is one view that already the constitution has been violated in most States by not having elected local Panchayats in place of the due date i.e. 24th April 1994, one year from the date of the 73rd Amendment Act. This is a clear violation of the letter and spirit of the 73rd Amendment as well as the Constitution. There is hardly any protest against this. Even if one assumes that this is only a temporary aberration, it illustrates the degree of callousness and hostility exhibited by the elites in implementing the provisions of the constitution, particularly when it comes to make self-governance real and meaningful and empowering our rural people. This opposition to local bodies comes mainly from the State government, bureaucracy and the political class.

(i) The State governments are apprehensive that their powers will be diminished if power is devolved on the people and their chosen representatives in the local units of self-government.

(ii) The bureaucracy is against the democratization of the grass-roots level. An obscure, centralized patronage base bureaucratic system, which is wholly unaccountable to the local people is resisting the establishment of PRIs at all levels and serving the narrow interests of the politicians.

(iii) The district administrative structure which is nearly 150 years old is calculated to deny the people self-governance. The officers of the All India services, who are largely unaccountable even to the State governments, manning the pivotal public officers in the districts, have created centralized administration. Coupled with that, the proliferation of line departments and their centralization with command and contract in the State capitals militated against any kind of accountability at the grass-roots level.

In this backdrop, it is necessary to give more attention to the following issues to make local self-government more meaningful.

(i) Devolution of Power: The subjects relating to which powers should be entrusted to Panchayats and municipalities are enumerated in the 11th and 12th Schedules of the Constitution under Article 243(G) and 243(N) respectively. These articles direct the State governments to transfer such powers and authority to the local bodies which are necessary to enable them to function as institutions of self government. The powers and responsibilities of Panchayats are to include those in relation to matters listed in the 11th and 12th Schedules, and preparation of plans and implementation of schemes for economic development and social justice. However, many State legislatures regard this provision as only facilitative and not mandatory, consequently many States only listed the

duties of local bodies without giving them real authority. Therefore, the devolution of power is defective and violative of the letter and spirit of the constitution.

(ii) **Control over Bureaucracy:** Devolution of power is futile and meaningless unless it is accompanied by commensurate resources and complete command and control over the local bureaucracies. As Nirmal Mukherjee suggested, "The elected local body must be fully empowered to appoint, transfer and remove its employees so that public servants are wholly accountable to it, otherwise local self government will lose its authority. Accordingly, Article 311 must be suitably amended or altogether abolished, so that effective punitive action is possible against erring public servants to enforce accountability.

(iii) **Removal of State level control of Line staffs:** If local bodies are to be truly effective and responsive, all the relevant departmental employees must be appointed at the local level by these institutions. Wherever any technical consultation will be required by the local bodies they must be provided to them on request. These services should preferably be on payment of a reasonable fee. So that the local bodies can demand high quality of services, and these expert bodies will be compelled to upgrade their knowledge and improve the quality and range of expertise in order to find market for their services.

(iv) **Local disputes:** The judicial process in the country has become very ponderous, slow and inefficient. The delays in adjudication and the complexity of legal process are too well-known and well-documented to require any elaboration. Therefore, in the larger public interest, simple local disputes can be entrusted to the local bodies for speedy trial. It will save both money and time of the local people.

(v) **Reservation of elective offices:** According to the 73rd Amendment Act, the elective officers in local bodies have been reserved for scheduled tribe, scheduled castes, and backward classes women. This reservation must be implemented with great care to yield the desired results. However, in some the States, the reservation policy is designed in such a way that a popular person can not seek re-election from the same constituency because of the rotation of the reserved constituencies. Therefore, some new methods must be designed to reconstitute affirmative action through positive discrimination with the need for adequate incentive for re-election on the basis of good performance.

Thus, there are some formidable challenges which hamper the progress of local self-government people across the country from all cross sections are cynical of our political process. Again, the concerns of the poor, the powerless and the deprived are entirely different from those of the middle and upper class and the elites. Their distinction is the chief cause of the crisis in our policy. Unless this crisis is resolved through effective and earnest devolution of power, and establishment of local tiers of true self government and improvement of quality of governance, there is every danger that the democratic institution which we have inherited may prove to beneficial for the so called elites and upper section of the society.

Check Your Progress-II

1. When the 73rd Constitutional Amendment Act was passed?
2. What is the tenure of the members of the Gram Panchayat as per the 73rdAmendment Act?
3. What are the main challenges before Panchayat Raj Institution?

5.5 Evaluation of Panchayati Raj

The introduction of Panchayati Raj in India has created a good deal of awakening on the part of the people regarding the fair distribution of administrative and developmental benefits to all the sections of rural society. The concentration on privileges and facilities to a few elites of high socio-economic category was deemed to have been given up. Instead, an era of distributing justice to all segments of the Indian countryside has dawned. The millions of underprivileged and underdeveloped rural people could aspire for improvement of their plight through the Panchayati Raj institutions.

For centuries, scheduled castes suffered from social distinction and the scheduled tribes led a relatively isolated life and remained the most backward sections of the community. The old traditional institutions of village Panchayat - a stronghold of a few families of higher caste and class underwent significant changes. The structure of Panchayati Raj institution has been made quite flexible to accommodate the interests of all sections of village community. If the persons belonging to the weaker sections fail to get elected, they will be co-opted in the bodies.

This was necessitated to ensure the involvement and participation of all sections of the rural community in development of administration and the execution of the programme.

As regards the role of Panchayati Raj in development, in the context of centralized national planning, plan priorities, and rigid administrative framework, the Panchayati Raj institutions are neither autonomous nor innovative in character. The main factor responsible for this is the inadequate financial resources in India even the State governments have to bargain with the Centre to get more financial assistance. So the chances of PR Institution to get more financial help sometimes become impossible. The functioning of Panchayati Raj institutions suffers also from the friction between the elected and appointed. The elected look to the Panchayati Raj as a mechanism of power, while the bureaucrats believe that the institutions could be utilized as administrative agencies of the self-government.

Hence, it is argued that if the benefits of Panchayati Raj have to flow to the poor and the poor are to be enabled to participate in Panchayati Raj activities, it is necessary that their position be strengthened. Otherwise the percolation of democracy to the grass roots level gets distorted. The PR institutions shall continue to be effective tools for the upliftment of the people.

The introduction of Panchayati Raj is a great step for ensuring much participation of the people. With all its defects, the very fact that the leaders have to approach the people and to be in close touch with them has certainly showed the seeds for greater democratic participation.

5.6 Let Us Sum Up

To sum up, it can be said that the constitutional amendments related to Panchayati Raj, specifically the 73rd and 74th amendment acts have created new grounds. The PR institutions have now been established all over India. Economic development through the various programmes that are to be taken up during the eighth five year plan which has a massive provision for rural development, has to be canalised by provision of adequate funds to the PRIs. The essential pre-requisites for the success of the PRIs are the political will and administrative backup. The political will has been exhibited by the near unanimous adoption of the Constitution amendment bill. It is expected that States will follow up this with right spirit. However, a great deal of responsibility still rests on the political leaders at the national and State levels, first to give the PRIs adequate powers and functions to fulfil the role assigned to them, and second, to provide proper guidance to the elected representatives of the PRIs for better performance. Problems may crop up. But those problems can be solved with greater cooperation and participation of all.

5.7 Key Words

Grass-roots Democracy	:	Political participation at the village level to manage their own affairs
Gram Panchayat	:	The operation of the institution of Local Self Government at the Village level.
Anchal Samiti	:	The operation of the institution of Local Self Government at the Block level.
Zila Parishad	:	The operation of the institution of Local Self Government at the district level.

5.8 Check Your Learning

1. Trace the history of the Panchayat Raj institutions in India up to the 73rd Amendment.
2. Elaborate the features of the 73rd Amendment Act in respect of Panchayat Raj Institutions.
3. Examine the structure of Panchayat Raj Institutions in India.
4. Explain the working of Panchayat Raj Institutions in our country.
5 Discuss the challenges before the Panchayat Raj Institutions in India.

5.9 Suggested Readings

Basu, D.D.	:	*Introduction to the Constitution of India***,** Wadhwa and Company, Law Publishers, New Delhi.
Fadia, B. L.	:	*Indian Government and Politics*, Sahitya Bhawan Publications, Agra.
Narang, A. S.	:	*Indian Government and Politics*, Gitanjali publishing House, New Delhi.

Austin, Granville : *The Indian Constitution: Cornerstone of a Nation,* Oxford University Press, London.
Raj, Hans : I*ndian Government and Politics,* Surjeet Publications, Delhi.

5.10. Hints/Answers to Questions in Check Your Progress

Check Your Progress-I

1. (CD), The Community Development and (NES) National Extension Service
2. In 1957, Balwant Rai Mehta Committee recommended the three tier structure of Panchayati Raj in India.
3. Ashok Mehta Committee was appointed in 1977 during the Janata Government.
4. The CAARD (Committee on Administrative Arrangements for Rural Development was constituted in 1985. Mr. G.V. K. Rao appointed as Chairman.

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