



INSTITUTE OF DISTANCE EDUCATION **IDE**
Rajiv Gandhi University



MAPOLS-403

Dynamics of Indian Politics – I

MA POLITICAL SCIENCE

1st Semester

Rajiv Gandhi University

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DYNAMICS OF INDIAN POLITICS-I

MA [Political Science]

First Semester

MAPOLS - 403



RAJIV GANDHI UNIVERSITY

Arunachal Pradesh, INDIA - 791 112

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About the University

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

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

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

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

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

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

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

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

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

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

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UNIT 3: Working of Indian Federalism – Centre State Relations – Inter State Council	Unit 3: Working of Indian Federalism (Pages 81-99)
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INTRODUCTION

The book, *Dynamics of Indian Politics* deals with the nuances of Indian administration. It traces the historical perspective of the framing of the Indian Constitution; the working of the government through separate Executive, Judiciary, and Legislative activities. It broadly observes the basis of the Indian Constitution from its historical perspective and describes the study of constitutional progress and the role played by ideologies in the making of our Constitution. The book outlines the working of the government by the principle of separation of powers between Executive, Legislative and Judiciary. The working of the bureaucracy has also been discussed in detail. The Constitution of India lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties, of the government and spells out the Fundamental Rights, Directive Principles and Duties of citizens. The Parliamentary form of Government was established by the Constitution in 1950 and the working of the Government is divided into Executive, Legislative and Judiciary.

The book highlights the institutional arrangements of urban and local self-governments for the discharge of basic responsibilities of public service. In India, the concept of urban governance is intricately linked with the constitutional and legislative provisions under which the urban local bodies are to function as institutions of self-government. Indian federalism and the relationship between the Union and the States have been discussed from a comparative perspective. Furthermore, the idiosyncrasies and limitations of the federal arrangement of India, and the emergence of autonomy movement in India as a repercussion have also been dealt with. Finally, the book concludes with a discussion on the nature and pattern of coalition politics in India.

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

This book is divided into ten units:

Unit 1: Describes the evolution of the Indian political system from 1858—1950.

Unit 2: Discusses framing of the Indian Constitution along with the Fundamental Rights and Duties and Directive Principles of State Policy.

Unit 3: Covers the working of Indian federalism, thus dealing with Centre—state relations and Inter-State Council.

Unit 4: Discusses the position of the executives conforming to the Centre and states.

Unit 5: Introduces you to electoral reforms and functioning of the Election Commission.

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3.2 FURTHER READING

Hosoya, A. *Indian Government and Politics*, Pearson Education India, 2010.
Pyle, M. V. *An Introduction to the Constitution of India*, Vista Publications, New Delhi, 2007.
Austin, G. *The Indian Constitution: Documents and Materials*, Oxford University Press, United Kingdom, 1970.
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UNIT 1 EVOLUTION OF THE INDIAN POLITICAL SYSTEM: FROM 1858 TO 1950

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Structure

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1.0 INTRODUCTION

Political system is an institution that deals with the governance of a state and its relationship with people. The political system of a country denotes the structure of institutions that constitute the State and its government. It develops through a long evolutionary process and seeks to address the myriad socio-political, economic and cultural expectations and challenges of that period. Thus, dynamism is a key feature of the political system and India is no exception to this. The present political system of India, which makes it a sovereign, socialist, democratic, republic, with a representative parliamentary system of government, is based on the Constitution which came into force on 26th January 1950. However, the Constitution of India, as opted by the Constituent Assembly on 26th November 1949, was not something absolutely new. In fact, it was influenced by a variety of the factors— thousand years of old traditions, customs, cultural ethos, socio-economic diversity, and so on. Moreover, many of the constitutional provisions were picked from the Acts passed by the colonial government. Therefore, it is essential to understand the evolution of the political system in the pre-independence period.

In this unit, you will learn about the evolution of the Indian political system during 1858-1950.

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1.1 UNIT OBJECTIVES

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

- Discuss the constitutional developments that occurred during the British rule in India
- Discuss the role of the Indian National Congress in constitutional development
- Examine the emergence of political organizations, pressure groups and interest groups in India during the British rule

1.2 CONSTITUTIONAL DEVELOPMENTS IN THE COLONIAL PERIOD

The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework and the primary objectives of the organs of the government of a state. The Constitution of a country ideates the basic structure of the political system that governs people.

The concept of constitutionalism has created various means for establishing a governmental structure that exercises power, while, at the same time, ensures individual freedom and liberty. Further, it recommends a method for the reconciliation of the power of the state coupled with individual liberty, by advising on the principles of state organization. Besides, the Constitution is also responsible for defining the powers of the main elements of the states, segregating their responsibilities as well as regulating their relationships amongst each other and with the people. In a nutshell, the Constitution serves as the 'Fundamental Law' of a country; any other laws made must be in conformity with it, in order to be legally endorsed.

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

The structure of Indian administration majorly bequests the British rule. Several functional aspects including education system, public services, political set-up, training, recruitment, official procedure, police system, district administration, revenue administration, budgeting, auditing, etc have existed since the times of the British rule. The British rule in India can be categorized into two phases - the Company Rule until 1858 and the Crown Rule during the period 1858 – 1947. The latter period saw the gradual rise of the Indian constitutional structure in different phases which can be elaborated as follows:

1.2.1 Government of India Act, 1858

The Government of India Act, 1858 transferred the governance of the country directly to the British Crown, ending the Company's rule. The Company's rule was thus terminated and the administration was taken over to be carried out in the name of the Crown through the Secretary of the state who assumed the powers of the company's board of directors and the board of control. The Secretary of State accountable to the British Parliament, needed to be supported by a Council of India, consisting of

15 members. The Crown was required to appoint eight out of these members, while the Board of Directors was to elect the remaining seven. The principal features of this Act were:

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

The Act initiated in 1858 towards the Better Government of India introduced many significant changes in the Home Government, but which were not related with the administrative set-up of India. It was strongly felt that there were extensive changes into the Constitution of India after the severe crisis of 1857 – 1858. Besides these, there have been many other reasons that instigated changes into the Constitution of India. All legislative procedures have been centralized by the Charter Act of 1833. The sole authority for legislating and passing decrees while implementing them for the economy rested with the Legislative Council (Centre). Though the functioning of the Legislative Council was set up by the Charter Acts of 1833, they were not abided by properly. The Council resulted into a debating society or a Parliament on a smaller scale, claiming all privileges and functions of the representative body. While acting as an independent legislature, the Council did not function well with the Home Government. As a result, the first Council Act was passed in 1861 after discussions between the Home Government and the Government of India.

1.2.2 Indian Council Act, 1861

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

If we see in-depth, the Indian Council Act was a part of legislation that was passed by the Parliament of Great Britain in 1861, which further converted the Executive Council of the Viceroy of India into a Cabinet on the portfolio system. This cabinet constituted six ordinary members, each of whom was in charge of an independent department in the Calcutta's government comprising home, government, revenue, law and finance, and post 1874, the public works. The Military Commander in Chief worked with the Council as a special member. Under the Act's provisions, the Viceroy was allowed to overrule the Council in matters, wherever it deemed necessary, for instance in the 1879 case during the tenure of Lord Lytton.

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The Act offered many advantages to the members of the legislative council, who could discuss legislation and give their inputs/suggestions. On the other hand, the drawbacks of the Act were that the members of the council were not allowed to implement any legislation of their own. At that time, Sir Charles Wood was the Secretary of State for India, who was firm on the importance of the Act, and stated, 'The Act is a great experiment. That everything is changing in India is obvious enough and that the old autocratic government cannot stand unmodified is indisputable.' The legislative power that was taken away by the Charter of 1833 was restored through this Act. Power was granted for enacting laws for good government and peace to the Legislative Council of the Calcutta, Bombay and Madras Presidency.

As a matter of fact, the Act added to the executive council of the Viceroy as the fifth member, assumed to be a gentleman of legal professional service and a jurist in place of a technical lawyer. The Act further gave powers to the Governor-General to enact rules for convenient business transactions in the Council. Lord Canning used the power to pioneer the portfolio system in the Government of India. Until then, the Government's rules administered the executive council as a whole, due to which all official documents were made to brought the notice of the council members. As per the provisions of the Act, Canning divided the government amongst the council members, and thus, the foundations of the Cabinet government were formed in India. The Act further declared that each administrative branch would have its own spokesman and Head in the Government, who would be responsible for the entire administration and defence. The new system witnessed the daily administrative matters to be positioned by the member-in-charge. In important cases, the concerned member used to present the matters before the Governor-General and consult with him before deciding on anything. The decentralization of business brought in efficiency, but which could not be accomplished thoroughly.

The Indian Council Act of 1861 also brought in legislative reforms in the country. The Viceroy's executive council was extended by members, wherein it was declared that additional members should be six to the minimum and twelve to the maximum. These were directly nominated by the Governor-General, holding their tenure of two years. Not less than 50 per cent of the members were to be non-official members. The Act also did not make any statutory provisions for admitting Indians. In reality, however, a few non-official seats were offered to the natives of high rank. The council's functions were strictly confined only with the legislative affairs. It did not have any control over the administration, finance and the right of interpellation.

The Act reinstated the legislative powers of implementing and amending laws to the provinces of Madras and Bombay. Nevertheless, the provincial councils could not pass any laws until they had the consent of the Governor-General. Besides, in a few matters, the prior approval was made obligatory of the Governor-General. After the Act declared the provisions, the legislative councils were formed in Bengal, Punjab and the north-western provinces during the years 1862, 1886, 1889, and so forth. The Governor-General was also authorized under the Acts of 1861, to make issuance without having any consent of the Legislative Council that was not to remain in force for over six months.

The Act significantly laid down the eventual construction and consolidation of the mechanical set-up of the government. There were three independent presidencies formed into a common system. The legislative and the administrative authority of the Governor-General-in-Council was affirmed over different provinces and extended to

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all inhabitants. The Act adhered to the local requirements and the growth of the local knowledge. Further, the Act also pronounced legislative authority in the governments of Bombay and Madras. It laid many provisions for creating identical legislative councils in other provinces as well. Due to which, legislative devolution was founded that culminated in autonomy grants to the provinces under the Government of India Act, 1935. However, under the Council Act of 1861, there were no attempts made to distinguish the jurisdiction of the Central Legislature from the Local Legislature in the federal constitution. Furthermore, the main functions of the Legislative Councils as established under the Act were never fulfilled properly. Even the Councils could not perform like a legislature should, either function-wise or composition-wise. The Act also could not establish representative government in India on the basis of the England government. It, however, declared that the colonial representative assemblies would largely discuss financial matters and taxation. In this respect, Sir Charles Wood clarified in unequivocal terms that Her Majesty's Government never intended to form a representative law-making body. However, the Act did pave the way for widespread agitation and public alienation.

1.2.3 Indian Council Act, 1892

The Indian Constitution was incepted after the Act of 1861, the growth of the former then led to political hostility and agitation bringing changes to the Council reforms. These approved reforms were always found inappropriate that caused stimulated public disaffection and hence, demand for more reforms.

The legislative reforms created under the Acts of 1861 failed miserably in meeting the demands and aspirations of the people of India. The small element of non-officials never appeased the people, which mainly comprised big *Zamindars*, Indian princesses or retired officials. These aristocrats were entirely unaware of the problems of the common man.

The late 19th century observed the nationalist spirit beginning to emerge. Many universities in the presidencies were established leading to the educational development. Many educated Indians started speaking English gradually. The gulf between British and Indians in Civil Services field intrigued the Indians. Further, the Acts enacted by Lord Rippon, the Vernacular Press Act and the Indian Arms Act of 1878 also infuriated Indians to a much greater extent. The controversy between the two governments over the banishment of 5 per cent cotton duties acquainted the Indians with the injustice of the British government. The futility and the deceit of the British government were made known to the Indians, which gave rise to the formation of the Indian National Congress in 1885. The Congress's main aim was to organize public opinions in India, make the grievances public and demand reforms known to the constitution.

Initially though the attitude of the British government towards the Indian National Congress was pleasant, but it later changed when Lord Dufferin attacked the Congress from the front. He tried belittling the significance of the representative Congress leaders, ignoring the importance of the movement launched by the Congress. He secretly sent proposals to England to liberalize the councils, whilst appointing a committee thereon for planning for the enlargement of the provincial councils, their status enhancement, development of their functions, inception of elective principals, and the liberalization of their general character as political institutions. The Committee report was sent to the Home authorities in England, to further changes in the Councils' composition and

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functions. The report aimed at giving Indians wider share in the administration. The Conservative Ministry introduced a bill in the House of Lords in England in 1890, based on these proposals. But the measures adopted therein were led very slowly, two years hence the Indian Council Act of 1892. The Indian Council Act of 1892 was known to have dealt entirely with the powers, functions and compositions of the legislative councils in India. In respect of the Central Legislature, the Act ensured that the number of additional members should only be between six and twelve. An increase in the members was regarded worthless. But Curzon supported it stating that the efficiency of the body has no relation with the numerical strength of its members. The Council Act of 1892 affirmed that 2/5th of the total members in the Council should be non-officials, who would be partly nominated and elected. The election principle was compromised to some extent. The Act added to the members of the legislatures, who were given equal rights to express themselves on the financial statements. All financial affairs statements were decided to be prepared on the legislature. But the members thereon were not allowed to either move resolutions or divide the houses as per financial concerns, but only put questions limited to the governmental matters of interest on a six days' notice.

With regard to the provincial legislature, the Indian Council Act of 1892 while addressing the number of members for Bengal fixed it at twenty, for north-western province and Oudh, it was fixed at fifteen. These members had many functions to perform; the chief one being the security of the interpellation of the executive in general public matters of concern. They could discuss government policies and ask questions, which may not be allowed by the Central Government until a solid reason is assigned.

The Indian Council Act of 1892 also brought in many new rules and regulations. However, the only significant feature of the Act was the election procedure it introduced, and the term 'election' was carefully used in it. In addition to the elected official members, the Act pronounced that there should be non-official members as well who should be five in number and should be elected by each of the official members of the four provincial legislatures of Bombay, Madras, Calcutta and the north-western province, and one by the Calcutta Chamber of Commerce. The Governor-General himself nominated the five non-official members. The bodies were allowed to elect the members of District Boards, Municipalities, Universities and the Chamber of Commerce. The election methods, however, were not clearly mentioned. The elected members were officially regarded as 'nominated' despite having taken the recommendations of each legislative body into consideration, which met in a number of sessions for preparing recommendations to the Governor-General or Head of the Provincial Government. Often the person favoured by majority was not considered 'elected', but directly recommended for nomination.

The Indian Council Act of 1892 was simply an extension to the Act of 1861, in that the former broadened the functions of the legislature, whereby the members could make queries and obtain details from the executive. The Act also confirmed the obligation of the financial accounts of the existing year and the budget for the next year to be presented in the legislature. Members were also allowed to make observations on the budget and give their suggestions on how revenue can be increased and expenditure can be reduced.

Besides, the principle of election as introduced by the Acts of 1892 was used as a measure of constitutional significance. Nevertheless, there were numerous faults

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and drawbacks in the Acts of 1892 because of which the Act could not satisfy the dire needs of the Indian nationalists. It was criticized at various sessions of the Indian *National Congress*. The critics opined the election procedure as roundabout junction, whereby though the procedure was followed; the local bodies were the nominated members in actuality. Even the functions of the legislative councils were rigorously confined. Thus we see that despite the Act of 1892 lacked demands as made by the Indian National Congress, it undoubtedly made a great advancement on the existing matters.

However, the most notable feature of this Act can be regarded as the inception of the principle of elections though in an indirect manner. Besides, it enlarged the functions of the legislative councils and provided them with the power of discussing the budget and addressing questions to the executive.

1.2.4 Indian Council Act, 1909

This Act changed the name of the Central Legislative Council to the Imperial Legislative Council. The size of the Councils of provinces was enlarged by including non-officials members so that the official majority has gone. The deliberative functions of the legislative councils were also increased by this Act. However, a positive voice of the Act was separate representation of the Muslim community.

Lord Morley, the Secretary of State for Indian Affairs, announced that his government wished to create new reforms for India, wherein the locals would be granted more powers in legislative affairs, during his speech in the British Parliament in 1906. Effectuating this, a series of exchange of views took place between him and Lord Minto, the Governor-General of India at that time. The two believed that terrorism in Bengal needs to be countered but did not find it necessary to restore stability onto the British Raj post-Lord Curzon's partitioning of Bengal. The Indian government appointed a committee to propose a scheme of reforms. The committee submitted the report, and after Lord Minto and Lord Morley gave their consent to it, the Act of 1909 was passed by the British Parliament, also commonly referred to as the Minto-Morley Reforms. They also agreed on the fact that a step needs to be taken to put heart and soul into loyal ingredients of the Indian upper classes and the emerging Westernized section of the populace. Their Morley-Minto reforms though did not do many efforts in meeting the demands of the Indian National Congress for 'system of government obtaining in Self-Governing British Colonies'.

Apart from the above, the Act of 1909 was also significant on account of the following reasons:

- It facilitated elections of Indians towards different legislative councils in India, effectively for the first time. Prior to this, some Indians were appointed at legislative councils, majority of which remained under the appointments of the British government. Also, the electorate was restricted to certain classes of Indian nationals;
- The electoral principle introduced under the Act laid down the framework for a parliamentary system, though being contrary to Morley's intentions.

As rightly put by Burke and Quraishi:

'To Lord Curzon's apprehension that the new Councils could become 'parliamentary bodies in miniature', Morley vehemently replied that, 'if it could be said that this chapter of reforms led directly or indirectly to the establishment

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of a parliamentary system in India, I for one would have nothing at all to do with it'. But he had already confessed in a letter to Minto in June 1906 that while it was inconceivable to adapt English political institutions to the 'nations who inhabit India...the spirit of English institutions is a different thing and it is a thing that we cannot escape, even if we wished...because the British constituencies are the masters, and they will assuredly insist...all parties alike...on the spirit of their own political system being applied to India.' He never got down to explaining how the spirit of the British system of government could be achieved without its body.'

- Muslims had expressed serious concern that a 'first past the post' British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 as demanded by the Muslim leadership stipulated:
 - that Indian Muslims be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils and in the Imperial Legislature;
 - that the number of reserved seats be in excess of their relative population (25 per cent of the Indian population); and
 - that only Muslims should vote for candidates for Muslim seats ('separate electorates').

Following were the salient features of the Act of 1909:

- The Legislative Council at the Centre had the number of members increased from sixteen to sixty.
- The number of members of the Provincial Legislatures was also widened, as fifty in the provinces of Bengal, Bombay and Madras, and for the rest, it was thirty.
- There ought to be four categories of members of the Legislative Councils both at the Centre and within the provinces, comprising ex-officio members (Governor-General and the members of their Executive Councils), nominated government official members by the Governor-General, nominated non-governmental, non-official members by the Governor-General and members elected by different categories of Indians.
- Muslims were granted with the right to a separate electorate.
- Official members were needed to be in majority, but in provinces, non-official members would be in majority.
- The Legislative Council members were allowed to discuss budgets, recommend for amendments and vote on them, exclusive of items included as non-voted items. The members were also entitled to seek supplementary answers to their concerns during the legislative proceedings.
- India's Secretary of State was empowered to increase the number of executive councils from two to four in Madras and Bombay.
- There were two Indians nominated for Indian Affairs to the Council of the Secretary of State.
- The power for nominating one Indian member to his executive council vested with the Governor-General.

The provision for concessions under the Act was a constant source of strife between the Hindu and Muslim population since 1909-47. British statesmen generally considered reserved seats as regrettable in that they encouraged communal extremism as Muslim candidates did not have to appeal for Hindu votes and vice versa. As

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further power was shifted from the British to Indian politicians in 1919, 1935 and after, Muslims were ever more determined to hold on to, and if possible expand, reserved seats and their weightage. However, Hindu politicians repeatedly tried to eliminate reserved seats as they considered them to be undemocratic and to hinder the development of a shared Hindu-Muslim Indian national feeling.

1.2.5 Government of India Act, 1919

The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand participation of the natives in the government of India. The Act embodied the reforms recommended in the joint report of the Secretary of State for India, Sir Edwin Montagu, and the Viceroy, Lord Chelmsford. The Act covered ten years, from 1919 to 1929. This retraction of British imperialism was a result of India's enthusiastic participation in World War I.

The Act broadly ideated a dual form of government, called diarchy, for the major provinces. It basically comprised a complex set of instructions. A good example would be that of a provincial legislative council of each major province which was directed towards monitoring of activities of provincial ministers. The Act also affirmed that a High Commissioner residing in London would represent India in Great Britain.

The Government of India Act was enacted for ten long years between 1919 and 1929. The reform was conceptualized by Sir Edwin Montagu and Lord Chelmsford. Towards the Act, the imperial and provincial councils were widened, while a new system of diarchy government was introduced. According to the Act, the Viceroy was responsible for controlling areas of defence, communications and foreign affairs, and the Government controlled health and education for the provincial council. Besides there was a bicameral legislature located at the Centre, comprising legislative assembly with 144 members, out of which forty-one got nominated. The Council of States constituted thirty-four elected members and twenty-six nominated members. The Princely States were responsible for keeping a control over political parties. The Indian National Congress was never satisfied with this law, and regarded it as 'disappointing'. There was a special session held in Bombay under Hasan Imama, wherein reforms were degenerated. Nevertheless, leaders such as Surendranath Banerjee appreciated these reforms and left Congress to formulate Indian Liberal Federation playing a minor role in eventual Indian political affairs.

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

1. **System of diarchy in the provinces:** According to this system of the dual government, the subjects of administration were to be divided into two categories- central and provincial. The central subjects were those which exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
2. **Central control over the provinces was relaxed:** Under this provision; subjects of all India importance were brought under the category 'central', while matters primarily relating to the administration of the provinces were classified as 'provincial'. This meant a relaxation of the previous central control over the provinces not only in administrative but also in legislative and financial matters. The provincial budgets were removed off by the government of India

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and the provincial legislatures were empowered to present their own budgets and levy their own taxes relating to the provincial sources of revenue.

- 3. Indian legislature was made more representative:** The Indian legislature was made bicameral. It was to consist of the upper house, named the Council of States, composed of 60 members of whom 34 were elected and the lower house named the Legislative Assembly composed of about 144 members of which 104 were elected. Nevertheless, the Centre did not introduce any responsibility, and the Governor-General in Council remained accountable to the British Parliament by the Secretary of State of India. The Governor-General's overriding powers in respect of central legislation were retained in many forms.

The British Government in 1927 appointed a Statutory Commission as envisaged by the Government of Act of 1919 to make an enquiry into the report on the functioning of the Act and to announce that dominion status was the goal of Indian political developments. Sir John Simon was the Chairman of the Commission which gave its final report in 1930. This report was given consideration at a Round Table Conference that created a White Paper. The Paper was examined by Joint Select Committee of the British Parliament and the Government of India Bill was drafted which came to be known as the Government of India Act of 1935.

1.2.6 Government of India Act, 1935

When the Third Round Table Conference did not succeed, the British government assigned the task of forming the new Act for India to the Joint Select Committee, consisting of sixteen members, each representing the House Commons and the House of Lords, twenty members representing British India, and seven from the princely states. Lord Linlithgow was appointed the President of the Joint Select Committee. After much deliberations stretching to about one and a half years, the Committee finally brought in a Draft Bill on 5 February 1935. The Bill was discussed for forty-three days in the House of Commons and for thirteen days in the House of Lords. After the signatures of the King, the Bill was enforced in July 1935 as the Government of India Act, 1935.

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

Federal features with provincial autonomy: The Act established an all India Federation comprising the provinces and princely states as the units. It segregated powers between the Centre and the units into three lists, viz. the Federal List, the Provincial List and the Concurrent List. Though the Act advocated the use of the provinces and the Indian states as units in a federation, it was optional for the Indian states to join the federation. No Indian state accepted this provision and hence the federation envisaged by the Act was not operational. However, the part related to provincial autonomy was initiated from April 1937. Within its defined sphere the provinces were no longer delegates of the central government, but were autonomous units of the administration. The executive authority of a province was to be exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor acted in consultation with the ministers who were accountable to the legislature. However, the Governor was given some additional powers which can be exercised by him in his 'discretion' or in the exercise of his 'individual judgement' in certain matters without ministerial advice.

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

Bicameral legislature: The Central Legislature was made bicameral which consisted of the federal assembly and council of states. It also introduced bicameralism in six out of eleven provinces, such as Assam, Bombay, Bengal, Madras, Bihar, and the United Province. However, the legislative powers towards the central and provincial legislatures had various limitations attached to them, and neither of them held the features of what a sovereign legislature should have.

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

Division of powers between centre and provinces: Through this Act, the legislative powers were divided between the provinces and the Centre into three lists - the Federal List, the Provincial List, and the Concurrent List. There was provision for Residuary Subjects also. The Federal List for the Centre consisted of fifty-nine items such as External Affairs; Currency and Coinage; Naval, Military and Air forces; and Census. The Provincial List consisted of fifty-four items dealt with subjects such as Police, Provincial Public Services, Education, etc. The Concurrent List comprised thirty-six items dealing with subjects of Criminal Law and Procedure, Civil Procedure, Marriage and Divorces, Abortion etc. The Residuary Powers were vested with the Governor-General. He was empowered to authorize the Federal or the Provincial Legislature to ratify a law for any matter if not listed in any of the Legislative Lists. The provinces were however given autonomy with respect to subjects delegated to them.

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

- The Central Legislature was empowered to pass any bill, which though required the Governor-General's approval before it became Law. The Governor-General too had the power to mount ordinances.
- The Indian Council was eradicated, and in place, few advisors were nominated to assist the Secretary of State of India.
- The Secretary of State was not allowed to interfere in governmental matters through Indian Ministers.
- Sind and Orissa were created as two new provinces.
- Reforms were introduced in N.W.F.P., as in the case of other provinces.
- There were separate electorates in place.

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- One-third of the members could represent the Muslim community in the Central Legislature.
- There were autonomous provincial governments set up in eleven provinces, under ministries accountable to legislatures.
- India was separated from Burma and Aden.
- The Federal Court was established in the Center.
- The Reserve Bank of India was established.

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

1.2.7 Government of India Act, 1947

The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the partition of India. The legislation of the Indian Independence Act was designed by the Prime Minister Clement Attlee as Indian Political Parties, the Indian National Congress, the Muslim League, and the Sikh community came to an agreement on the transfer of power from the British Government to the independent Indian Government and the Partition of India. The Agreement was made with Lord Mountbatten, which was known as the 3 June Plan or Mountbatten Plan.

The Indian Independence Act, 1947 can be regarded as the statute ratified by the Parliament of the United Kingdom propagating the separation of India along with the independence of the dominions of Pakistan and India. The Act was assented on 18 July 1947.

Pretext of the Indian Independence Act and 3rd June Plan

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

- The Principle of Partition of India was agreed upon by the British Government
- The successive governments would be allotted dominion status
- The British Commonwealth was seceded from the implicit rights

Attlee's announcement

On 20 February 1947, the Prime Minister of the UK, Clement Attlee announced:

- (i) Latest by June 1948, the British Government would endow absolute self-government to British India;
- (ii) After deciding on the final transfer date, the future of Princely States would be decided; and
- (iii) The Indian Independence Act, 1947 came into inception from the 3 June Plan.

Structure of the Act

- 20 sections
- 3 schedules

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

The Act

An Act to make provision for the setting up in India of two Independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which applied outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions (18 July 1947).

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Section 1

- (i) Since 15 August 1947, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.
- (ii) The said Dominions are hereafter in this Act referred to as 'the new Dominions', and the said fifteenth day of August is hereafter in this Act referred to as 'the appointed day'.

Section 2

- (i) Subject to the provisions of subsections (iii) and (iv) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (ii) of this section, are to be the territories of Pakistan.
- (ii) Subject to the provisions of subsections (iii) and (iv) of this section, the territories of Pakistan shall be:
 - a. the territories which, on the appointed day, are included in the Provinces of East Bengal and Punjab, as constituted under the two following sections;
 - b. the territories which, at the date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan; and
 - c. if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held on that behalf under his authority in the North-West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.
- (iii) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that:

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- a. no area not forming part of the territories specified in subsection (i) or, as the case may be, subsection (ii), of this section shall be included in either Dominions without the consent of that Dominions; and
 - b. no area forming part of the territories specified in the said subsection (i) or, as the case may be, the said subsection (ii), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.
- (iv) Without prejudice to the generality of the provisions of subsection (iii) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

Section 3

- (i) As from the appointed day:
 - a. the Province of Bengal, as constituted under the Government of India Act, 1935, shall cease to exist; and
 - b. there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal.
- (ii) If, whether before or after the passing of this Act, but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the District of Sylhet are in favour of that District forming part of the new Province of East Bengal, then, as from that day, a part of the Province of Assam shall, in accordance with the provisions of subsection (iii) of this section, form part of the new Province of East Bengal.
- (iii) The boundaries of the new Provinces aforesaid and, in the event mentioned in subsection (ii) of this section, the boundaries after the appointed day of the Province of Assam, shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined:
 - (a) the Bengal Districts specified in the First Schedule to this Act, together with, in the event mentioned in subsection (ii) of this section, the Assam District of Sylhet, shall be treated as the territories, which are to be comprised in the new Province of East Bengal;
 - (b) the remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories, which are to be comprised in the new Province of West Bengal; and
 - (c) in the event mentioned in subsection (ii) of this section, the District of Sylhet shall be excluded from the Province of Assam.
- (iv) In this section, the expression 'award' means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

Section 4

- (i) As from the appointed day:
 - (a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist; and
 - (b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab.
- (ii) The boundaries of the said new Provinces shall be as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined:
 - a. the Districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of Punjab; and
 - b. the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as the territories which are to be comprised in the new Province of East Punjab.
- (iii) In this section, the expression 'award' means in relation to a boundary commission, the decision of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

Section 5

- (i) For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty and shall represent His Majesty for the purpose of the government of the Dominion:
 - a. Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions.

Section 6

- (i) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extra-territorial operation.
- (ii) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion.
- (iii) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty's name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His Majesty's pleasure thereon shall not apply to the laws of the Legislature of either of the new Dominions.

Words 'In His Majesty's name' from the above paragraph was omitted by Constitution (Amendment) Act, 1950, Section 2.

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- (iv) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion unless it is extended thereto by a law of the Legislature of the Dominion.
- (v) No Order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion.
- (vi) The power referred to in subsection (i) of this section extends to the making of laws limiting for the future the powers of the Legislature of the Dominion.

Section 7

- (i) As from the appointed day:
 - (a) His Majesty's Government in the United Kingdom have no responsibility in respect of the government of any of the territories which, immediately before that day, were included in British India.
 - (b) The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise; and
 - (c) There lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing on that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise: Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.
- (ii) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words 'Indiae Imperator' and the words 'Emperor of India' and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

Section 8

- (i) In case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of

the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.

[Constitution (Amendment) Act, 1954, Section 23 inserted at this point:]

In Section 8 of the Indian Independence Act, 1947, after subsection (i), the following shall be inserted:

‘Notwithstanding anything contained in this subsection or in the Government of India Act, 1935, the powers of the Constituent Assembly of Pakistan shall include and shall be deemed always to have included power to make constitutional provisions for the whole of the Federation of Pakistan, as defined in Section 5 of the Government of India Act, 1935, or for any part thereof; and notwithstanding anything contained in section 204 or in any other provision of the Government of India Act, 1935, or of any other law, the power of the Constituent Assembly exercised under this subsection shall not be called in question in any court of law.’

- (ii) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under subsection (i) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935; and the provisions of that Act, and of the Orders in Council, rules and other instruments made there under, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly:

Provided that:

- (a) the said provisions shall apply separately in relation to each of the new Dominions and nothing in this subsection shall be construed as continuing on or after the appointed day any Central Government or Legislature common to both the new Dominions;
 - (b) nothing in this subsection shall be construed as continuing in force on or after the appointed day any form of control by His Majesty’s Government in the United Kingdom over the affairs of the new Dominions or of any Province or other part thereof;
 - (c) so much of the said provisions as requires the Governor-General or any Governor to act in his discretion or exercise his individual judgment as respects any matter shall cease to have effect as from the appointed day;
 - (d) as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty’s pleasure, and no Provincial Act shall be disallowed by His Majesty there under; and
 - (e) the powers of the Federal Legislature or Indian Legislature under that Act, as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers exercisable by that Assembly under subsection (i) of this section.
- (iii) Any provision of the Government of India Act, 1935, which, as applied to either of the new Dominions by subsection (ii) of this section and the orders

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therein referred to, operates to limit the power of the legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provisions of subsection (i) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future, the powers of that Legislature.

Section 9 Surpass

- (i) The Governor-General shall by order make such provision as appears to him to be necessary or expedient:
 - (a) for bringing the provisions of this Act into effective operation;
 - (b) for dividing between the new Dominions and the new Provinces to be constituted under this Act, the powers, rights, property, duties and liabilities of the Governor-General in Council or, as the case may be, of the relevant Provinces which, under this Act, are to cease to exist;
 - (c) for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, and the Orders in Council, rules and other instruments made there under, in their application to the separate new Dominions;
 - (d) or removing difficulties arising in connection with the transition to the provisions of this Act;
 - (e) for authorizing the carrying on of the business of the Governor-General in Council between the passing of this Act and the appointed day otherwise than in accordance with the provisions in that behalf of the Ninth Schedule to the Government of India Act, 1935;
 - (f) for enabling agreements to be entered into, and other acts done, on behalf of either of the new Dominions before the appointed day;
 - (g) for authorizing the continued carrying on for the time being on behalf of the new Dominions, or on behalf of any two or more of the said new Provinces, of services and activities previously carried on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent;
 - (h) for regulating the monetary system and any matters pertaining to the Reserve Bank of India; and
 - (i) so far as it appears necessary or expedient in connection with any of the matters aforesaid, for varying the constitution, powers or jurisdiction of any legislature, court or other authority in the new Dominions and creating new legislatures, courts or other authorities therein.
 - (ii) The powers conferred by this section on the Governor-General shall, in relation to their respective Provinces, be exercisable also by the Governors of the Provinces which, under this Act, are to cease to exist; and those powers shall, for the purposes of the Government of India Act, 1935, be deemed to be matters as respects which the Governors are, under that Act, to exercise their individual judgment.
 - (iii) This section shall be deemed to have had effect as from the 3 June 1947, and any order of the Governor-General or any Governor made

on or after that date as to any matter shall have effect accordingly, and any order made under this section may be made so as to be retrospective to any date earlier than the said third day of June:

Provided that no person shall be deemed to be guilty of an offence by reason of so much of any such order as makes any provision thereof retrospective to any date before the making thereof.

- (iv) Any orders made under this section, whether before or after the appointed day, shall have effect - up to the appointed day, (i) in British India; (ii) on and after the appointed day, in the new Dominion or Dominions concerned; and (iii) outside British India, or, as the case may be, outside the new Dominion or Dominions concerned, to such extent, whether before, on or after the appointed day, as a law of the Legislature of the Dominion or Dominions concerned would have on or after the appointed day, but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of that Dominion.
- (v) No order shall be made under this section, by the Governor of any Province, after the appointed day, or, by the Governor-General, after 31 March 1949, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion.
- (vi) If it appears that a part of the Province of Assam is, on the appointed day, to become part of the new Province of East Bengal, the preceding provisions of this section shall have effect as if, under this Act, the Province Assam was to cease to exist on the appointed day and be reconstituted on that day as a new Province.

Section 10

- (i) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force with the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.
- (ii) Every person who:
 - (a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or
 - (b) having been appointed by His Majesty before the appointed day to be a judge of the Federal Court or of any court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions;
 - (c) shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as

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the case may be, as respect the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day.

- (iii) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under Section 273 of the Government of India Act, 1935, to be governed otherwise than by Orders in Council made (whether before or after the passing of this Act or the appointed day) by His Majesty in Council and rules made (whether before or after the passing of this Act or the appointed day) by the Secretary of State or such other minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946.

Section 10 A

This section was inserted by Constitution (Amendment) Act, 1951, Section 93, which stated:

After Section 10 of the Indian Independence Act, 1947, the following new section shall be inserted, namely:

'For the removal of doubts it is hereby declared that, subject to the other provisions of this Act and the Government of India Act, 1935, the power to alter any order, rule, regulation or other instrument passed or made by the Secretary of State or the Secretary of State in Council and existing immediately before the fifteenth day of August 1947 and continuing on and after that day as part of the law of Pakistan in virtue of section 18 of this Act is vested in the Governor-General and may be exercised by him by order.'

Section 11

- (i) The orders to be made by the Governor-General under the preceding provisions of this Act shall make provision for the division of the Indian armed forces of His Majesty between the new Dominions, and for the command and governance of those forces until the division is completed.
- (ii) As from the appointed day, while any member of His Majesty's forces, other than His Majesty's Indian forces, is attached to or serving with any of His Majesty's Indian forces - (i) he shall, subject to any provision to the contrary made by a law of the Legislature of the Dominion or Dominions concerned or by any order of the Governor-General under the preceding provisions of this Act, have, in relation to the Indian forces in question, the powers of command and punishment appropriate to his rank and functions; but (ii) nothing in any enactment in force at the date of the passing of this Act shall render him subject in any way to the law governing the Indian forces in question.

Section 12

- (i) Nothing in this Act affects the jurisdiction or authority of His Majesty's Government in the United Kingdom, or of the Admiralty, the Army Council, or the Air Council or of any other United Kingdom authority, in relation to any of His Majesty's forces which may, on or after the appointed day, be in either of the new Dominions or elsewhere in the territories which, before the appointed day, were included in India, not being Indian forces.

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- (ii) In its application in relation to His Majesty's military forces, other than Indian forces, the Army Act shall have effect on or after the appointed day:
 - (a) as if His Majesty's Indian forces were not included in the expressions 'the forces', 'His Majesty's forces' and 'the regular forces'; and
 - (b) subject to the further modifications specified in Parts I and II of the Third Schedule to this Act.
- (iii) Subject to the provisions of subsection (ii) of this section, and to any provisions of any law of the Legislature of the Dominion concerned, all civil authorities in the new Dominions, and, subject as aforesaid and subject also to the provisions of the last preceding section, all service authorities in the new Dominions, shall, in those Dominions and in the other territories which were included in India before the appointed day, perform in relation to His Majesty's military forces not being Indian forces, the same functions as were, before the appointed day, performed by them, or by the authorities corresponding to them, whether by virtue of the Army Act or otherwise, and the matters for which provision is to be made by orders of the Governor-General under the preceding provisions of this Act shall include the facilitating of the withdrawal from the new Dominions and other territories aforesaid of His Majesty's military forces, not being Indian forces.
- (iv) The Provisions of subsections (ii) and (iii) of this section shall apply in relation to the air forces of His Majesty, not being Indian air forces, as they apply in relation to His Majesty's military forces, subject, however, to the necessary adaptations, and, in particular, as if:
 - (a) for the references to the Army Act there were substituted references to the Air Force Act; and
 - (b) for the reference to Part II of the Third Schedule to this Act there were substituted a reference to Part III of that Schedule.

Section 13

- (i) In the application of the Naval Discipline Act to His Majesty's naval forces, other than Indian naval forces, references to His Majesty's navy and His Majesty's ships shall not, as from the appointed day, include references to His Majesty's Indian navy or the ships thereof.
- (ii) In the application of the Naval Discipline Act by virtue of any law made in India before the appointed day to Indian naval forces, references to His Majesty's navy and His Majesty's ships shall, as from the appointed day, be deemed to be, and to be only, references to His Majesty's Indian navy and the ships thereof.
- (iii) In section 90 B of the Naval Discipline Act (which, in certain cases, subjects officers and men of the Royal Navy and Royal Marines to the law and customs of the ships and naval forces of other parts of His Majesty's dominions) the words 'or of India' shall be repealed as from the appointed day, wherever those words occur.

Section 14

- (i) A Secretary of State, or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, is hereby authorized to continue the performance for

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the time being, on behalf of whatever government or governments may be concerned, of functions as to the making of payments and other matters similar to the functions which, up to the appointed day, the Secretary of State was performing on behalf of governments constituted or continued under the Government of India Act, 1935.

- (ii) The functions referred to in subsection (i) of this section are with respect to the management of, and the making of payments in respect of government debt, and any enactments relating to such debt shall have effect accordingly:

Provided that nothing in this subsection shall be construed as continuing in force so much of any enactment as empowers the Secretary of State to contract sterling loans on behalf of any such Government as aforesaid or as applying to the Government of either of the new Dominions, the prohibition imposed on the Governor-General in Council by section 315 of the Government of India Act, 1935, as respects the contracting of sterling loans.

- (iii) As from the appointed day, there shall not be any such advisers of the Secretary of State as are provided for by section two hundred and seventy-eight of the Government of India Act, 1935, and that section, and any provisions of that Act which require the Secretary of State to obtain the concurrence of his advisers, are hereby repealed as from that day.
- (iv) The Auditor of Indian Home Accounts is hereby authorised to continue for the time being to exercise his functions as respects the accounts of the Secretary of State or any such other Minister of the Crown as is mentioned in subsection (i) of this section, both in respect of activities before, and in respect of activities after, the appointed day, in the same manner as nearly as may be as he would have done if this Act had not passed.

Section 15

- (i) Notwithstanding anything in this Act, and, in particular, notwithstanding any of the provisions of the last preceding section, any provision of any enactment which, but for the passing of this Act, would authorize legal proceedings to be taken, in India or elsewhere, by or against the Secretary of State in respect of any right or liability of India or any part of India shall cease to have effect on the appointed day, and any legal proceedings pending by virtue of any such provision on the appointed day shall, by virtue of this Act, abate on the appointed day, so far as the Secretary of State is concerned.
- (ii) Subject to the provisions of this subsection, any legal proceedings which, but for the passing of this Act, could have been brought by or against the Secretary of State in respect of any right or liability of India, or any part of India, shall instead be brought:
- in case of proceedings in the United Kingdom, by or against the High Commissioner;
 - in case of proceedings, by or against such person as may be designated by order of the Governor-General under the preceding provisions of this Act or otherwise by the law of the new Dominion concerned, and any legal proceedings by or against the Secretary of State in respect of any such right or liability as aforesaid which are pending immediately before the appointed day shall be continued by or against the High Commissioner, or as the case may be, the person designated as aforesaid:

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Provided that, at any time after the appointed day, the right conferred by this subsection to bring or continue proceedings may, whether the proceedings are by, or are against, the High Commissioner or person designated as aforesaid be withdrawn by a law of the Legislature of either of the new Dominions so far as that Dominion is concerned, and any such law may operate as respects proceedings pending at the date of the passing of the law.

- (iii) In this section, the expression 'the High Commissioner' means, in relation to each of the new Dominions any such officer as may for the time being be authorized to perform in the United Kingdom, in relation to that Dominion, functions similar to those performed before the appointed day, in relation to the Governor-General in Council, by the High Commissioner referred to in section 302 of the Government of India Act, 1935; and any legal proceedings which, immediately before the appointed day, are the subject of an appeal to His Majesty in Council, or of a petition for special leave to appeal to His Majesty in Council, shall be treated for the purposes of this section as legal proceedings pending in the United Kingdom.

Section 16

- (i) Subsections (ii) to (iii) of section 288 of the Government of India Act, 1935 (which confer on His Majesty power to make by Order in Council provision for the Government of Aden) shall cease to have effect and the British Settlements Acts, 1887 and 1945 (which authorize His Majesty to make laws and establish institutions for British Settlements as defined in those Acts) shall apply in relation to Aden as if it were a British Settlement as so defined.
- (ii) Notwithstanding the repeal of the said subsections (ii) to (iv), the Orders in Council in force there under at the date of the passing of this Act shall continue in force, but then said Orders in Council, any other Orders in Council made under the Government of India Act, 1935, in so far as they apply to Aden, and any enactments applied to Aden or amended in relation to Aden by any such Orders in Council as aforesaid, may be repealed, revoked or amended under the powers of the British Settlements Acts, 1887 and 1945.
- (iii) Unless and until provision to the contrary is made as respects Aden under the powers of the British Settlements Acts, 1887 and 1945, or, as respects the new Dominion in question, by a law of the Legislature of that Dominion, the provisions of the said Orders in Council and enactments relating to appeals from any courts in Aden to any courts which will, after the appointed day, be in either of the new Dominions, shall continue in force in their application both to Aden and to the Dominion in question, and the last mentioned courts shall exercise their jurisdiction accordingly.

Section 17

- (i) No court in either of the new Dominions shall, by virtue of the Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940, have jurisdiction in or in relation to any proceedings for a decree for the dissolution of a marriage, unless those proceedings were instituted before the appointed day, but, save as aforesaid and subject to any provision to the contrary which may hereafter be made by any Act of the Parliament of the United Kingdom or by any law of the Legislature

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of the new Dominion concerned, all courts in the new Dominions shall have the same jurisdiction under the said Acts as they would have had if this Act had not been passed.

- (ii) Any rules made on or after the appointed day under subsection (iv) of section one of the Indian and Colonial Divorce Jurisdiction Act, 1926, for a court in either of the new Dominions shall, instead of being made by the Secretary of State with the concurrence of the Lord Chancellor, be made by such authority as may be determined by the law of the Dominion concerned, and so much of the said subsection and of any rules in force there under immediately before the appointed day as require the approval of the Lord Chancellor to the nomination for any purpose of any judges of any such court shall cease to have effect.
- (iii) The reference in subsection (i) of this section to proceedings for a decree for the dissolution of a marriage include references to proceedings for such a decree of presumption of death and dissolution of a marriage as is authorized by section eight of the Matrimonial Causes Act, 1937.
- (iv) Nothing in this section affects any court outside the new Dominions, and the power conferred by section two of the Indian and Colonial Divorce Jurisdiction Act, 1926, to apply certain provisions of that Act to other parts of His Majesty's dominions as they apply to India shall be deemed to be power to apply those provisions as they would have applied to India if this Act had not passed.

Section 18

- (i) In so far as any Act of Parliament, the Orders in Council, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions, references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require:

Provided that nothing in this subsection shall be construed as continuing in operation any provision in so far as the continuance thereof as adapted by this subsection is inconsistent with any of the provisions of this Act other than this section.
- (ii) Subject to the provisions of subsection (i) of this section and to any other express provision of this Act, the Orders in Council made under subsection (v) of section 311 of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions.
- (iii) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, as far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

- (iv) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by his Majesty to the Governor-General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935, relating to such Instruments of Instructions.
- (v) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions.

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Section 19

- (i) References in this Act to the Governor-General shall, in relation to any order to be made or other act done on or after the appointed day, be construed:
- where the order or other act concerns one only of the new Dominions, as references to the Governor-General of that Dominion;
 - where the order or other act concerns both of the new Dominions and the same person is the Governor-General of both those Dominions, as references to that person; and
 - in any other case, as references to the Governor-General of the new Dominions, acting jointly.
- (ii) References in this Act to the Governor-General shall, in relation to any order to be made or other act done before the appointed day, be construed as references to the Governor-General of India within the meaning of the Government of India Act, 1935, and so much of that or any other Act as required references to the Governor-General to be construed as references to the Governor-General in Council shall not apply to references to the Governor-General in this Act.
- (iii) References in this Act to the Constituent Assembly of a Dominion shall be construed as references:
- in relation to India, to the Constituent Assembly, the first sitting whereof was held on the ninth day of December, nineteen hundred and forty-six, modified:
 - by the exclusion of the members representing Bengal, the Punjab, Sind and British Baluchistan; and
 - should it appear that the North-West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province; and
 - by the inclusion of members representing West Bengal and East Punjab; and
 - should it appear that, on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members theretofore representing the Province of Assam and the inclusion of members chosen to represent the remainder of that Province;
 - in relation to Pakistan, to the Assembly set up or about to be set up at the date of the passing of this Act under the authority of the Governor-General as the Constituent Assembly for Pakistan:
'Provided that nothing in this subsection shall be construed as affecting the extent to which representatives of the Indian states take part in either of the

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said Assemblies, or as preventing the filling of casual vacancies in the said Assemblies, or as preventing the participation in either of the said Assemblies, in accordance with such arrangements as may be made in that behalf, of representatives of the tribal areas on the borders of the Dominion for which that Assembly sits, and the powers of the said Assemblies shall extend and be deemed always to have extended to the making of provision for the matters specified in this proviso.'

- (iv) In this Act, except so far as the context otherwise requires, references to the Government of India Act, 1935, include references to any enactments amending or supplementing that Act, and, in particular, references to the India (Central Government and Legislature) Act, 1946;

'India', where the reference is to a state of affairs existing before the appointed day or which would have existed but for the passing of this Act, has the meaning assigned to it by section three hundred and eleven of the Government of India Act, 1935;

'Indian forces' include all His Majesty's Indian forces existing before the appointed day and also any forces of either of the new Dominions;

'pension' means, in relation to any person, a pension whether contributory or not, of any kind whatsoever payable to or in respect of that person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or other additions thereto, of subscriptions to a provident fund;

'Province' means a Governor's Province;

'Remuneration' includes leave pay, allowances and the cost of any privileges or facilities provided in kind.

- (v) Any power conferred by this Act to make any order includes power to revoke or vary an order previously made in the exercise of that power.

Section 20

This Act may be cited as the Indian Independence Act, 1947.

Schedules

First Schedule

Section 3

- Bengal Districts provisionally included in the New Province of East Bengal.
- In the Chittagong Division, the districts of Chittagong, Noakhali and Tippera.
- In the Dacca Division, the districts of Bakarganj, Dacca, Faridpur and Mymensingh.
- In the Presidency Division, the districts of Jessore, Murshidabad and Nadia.
- In the Rajshahi Division, the districts of Bogra, Dinajpur, Malda, Pabna, Rajshahi and Rangpur.

Second Schedule

Section 4

- Districts provisionally included in the new province of West Punjab.
- In the Lahore Division, the districts of Gujranwala, Gurdaspur, Lahore, Sheikhupura and Sialkot.
- In the Rawalpindi Division, the districts of Attock, Gujrat, Jhelum, Mianwali, Rawalpindi and Shahpur.
- In the Multan Division, the districts of Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan and Muzaffargarh.

Third Schedule

Section 12

Modifications of Army Act and Air Force Act in relation to British Forces

Part I: Modifications of Army Act applicable also to Air Force Act

- a. The proviso to section 41 (which limits the jurisdiction of courts martial) shall not apply to offences committed in either of the new Dominions or in any of the other territories, which were included in India before the appointed day.
- b. In section 43 (which relates to complaints), the words 'with the approval of the Governor-General of India in Council' shall be omitted.
- c. In subsections (viii) and (ix) of section 54 (which, amongst other things, require certain sentences to be confirmed by the Governor-General in Council), the words 'India' or the words 'by the Governor-General, or, as the case may be' and the words 'in India, by the Governor-General, or, if he has been tried' shall be omitted.
- d. In subsection (iii) of section 73 (which provides for the nomination of officers with power to dispense with courts martial for desertion and fraudulent enlistment) the words 'with the approval of the Governor-General' shall be omitted.
- e. The powers conferred by subsection (v) of section 130 (which provides for the removal of insane persons) shall not be exercised except with the consent of the officer commanding the forces in the new Dominions.
- f. In subsection (ii) of section 132 (which relates to rules regulating service prisons and detention barracks) the words 'and in India for the Governor-General' and the words 'the Governor-General' shall be omitted except as respects rules made before the appointed day.
- g. In the cases specified in subsection (i) of section 134 inquests shall be held in all cases in accordance with the provisions of subsection (iii) of that section.
- h. In section 136 (which relates to deductions from pay), in subsection (i) the words 'India or' and the words 'being in the case of India a law of the Indian legislature', and the whole of subsection (ii), shall be omitted.
- i. In paragraph 4 of section 137 (which relates to penal stoppages from the ordinary pay of officers), the words 'or in the case of officers serving in India the Governor-General' the words 'India or' and the words 'for India or, as the case may be' shall be omitted.

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- j. In paragraph 12 of section 175 and paragraph 11 of section one hundred and seventy-six (which apply the Act to certain members of His Majesty's Indian Forces and to certain other persons) the word 'India' shall be omitted wherever it occurs.
- k. In subsection (i) of section one hundred and eighty (which provides for the punishment of misconduct by civilians in relation to courts martial) the words 'India or' shall be omitted wherever they occur.
- l. In the provisions of section 183 relating to the reduction in rank of non-commissioned officers, the words 'with the approval of the Governor-General' shall be omitted in both places where they occur.

Part 2: Modifications of Army Act

Section 184 B (which regulates relations with the Indian Air Force) shall be omitted.

Part 3: Modifications of Air Force Act

- a. In section 179D (which relates to the attachment of officers and airmen to Indian and Burma Air Forces), the words 'by the Air Council and the Governor-General of India or, as the case may be', and the words 'India or', wherever those words occur, shall be omitted.
- b. In section 184B (which regulates relations with Indian and Burma Air Forces), the words 'India or' and the words 'by the Air Council and the Governor-General of India or, as the case may', shall be omitted.
- c. Sub-paragraph (e) of paragraph 4 of section 190 (which provides that officers of His Majesty's Indian Air Force are to be officers within the meaning of the Act) shall be omitted.

Nevertheless, the Government of India functioned under the provisos of 1919 Act until 1947. On the other hand, the provisos under the 1935 Act related to federation and diarchy were never executed. Following features were adopted under the Indian Independence Act, 1947:

- By this Act, India ceased to be a dependency and suzerainty of the British Crown over the Indian states and the treaty relations with Tribal Areas also lapsed from the date. The office of the Secretary of the State for India was abolished. India was thereafter declared an independent and sovereign state.
- The 1947 Act formed governments at the Centre as well as the Provinces.
- The Governor-General of India and the Provincial Governors were designated as the Constitutional Nominal Heads.
- The Act assigned dual functions to the Constituent Assembly, namely, Constituency and Legislative, and declared it as a sovereign body.
- The Act also contains temporary provision for the government of the dominions by giving to the two Constituent Assemblies the status of parliament with full powers of Dominion Legislature.
- It prescribed the conditions and terms of the Secretary of State's Services and the Indian Armed forces, the continuance of the jurisdiction or authority of His Majesty's Government over the British army air force and navy.

Check Your Progress

1. Which Act transferred the governance of India directly to the British Crown?
2. What was the significance of the Indian Council Act, 1861?
3. Which Act changed the name of the Central Legislative Council to the Imperial Legislative Council?
4. What do you understand by the system of diarchy introduced by the Indian Council Act, 1919?
5. Which Act officially announced the Independence of India and the partition of India?

1.3 EMERGENCE OF POLITICAL ORGANIZATIONS, PRESSURE GROUPS AND INTEREST GROUPS IN INDIA DURING THE BRITISH RULE

The latter half of the nineteenth century was an era of socio-political awakening in India. In this period, we see a number of social reform movements and growing 'political concessions'. Thus, we see the emergence of various political parties, pressure groups and interest groups in the period of 1858-1950. Detailed analysis of those is not in the purview of our study, however, without a brief discussion on these aspects our study would not be complete. Let us obtain a basic understanding on the emergence of political parties, pressure groups and interest groups in the stated period.

The Indian National Congress formed in 1885 and became synonymous to the Indian national movement. In fact on the eve of independence, the Congress was the only party which had a country-wide network and a social reach which cut across classes, regions and religions. But what had also grown in the shadow of the Congress led anti-colonial struggle was a political space where political parties could come into existence and a political culture which institutionalized the democratic system. Parties like the All India Muslim League, the Akhil Bharatiya Hindu Mahasabha and the Akali Dal which attempted to build an all-India base on the communal line. Communist Party of India had an all-India make-up. However, because of the interests it represented – the working class – it remained restricted to urban industrial spaces. Parties like the Khudai Khidmatgars of NWFP, the Unionist Party of Punjab, the Justice Party of Madras, the Independent Labour Party of Bombay, etc represented social groups – the Pathans, the Muslims of Punjab and the non-Brahmin castes, the Depressed Classes, respectively – within specific regions.

Peasant movement in India arose during the in the early twentieth century. The Kisan Sabha movement started in Bihar under the leadership of Swami Sahajanand Saraswati who had formed in 1929 the Bihar Provincial Kisan Sabha (BPKS) in order to mobilize peasant grievances against the zamindari attacks on their occupancy rights. Gradually the peasant movement intensified and spread across the rest of India. All these radical developments on the peasant front culminated in the formation of the All India Kisan Sabha (AIKS) at the Lucknow session of the Indian National Congress in April 1936 with Swami Sahajanand Saraswati elected as its first President. The modern Indian working class arose in consequence to the development and growth of factory industries in India from the second half of the nineteenth century. By the second decade of twentieth century the unorganized movement of the workers took an organized form; trade unions were formed on modern lines and manifested in the form of All India Trade Union Congress (AITUC) in 1920. Similarly, various organizations representing particular interest groups such as Federation of Indian Chamber of Commerce and Industries (FICCI), All India Women Conference and so on emerged during this period.

1.4 ROLE OF INDIAN NATIONAL CONGRESS IN CONSTITUTIONAL DEVELOPMENT

The nationalist approach emerged out of the nationalist movement and was responsible for strengthening the spirit of nationalism. Its main supporters were as follows:

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Check Your Progress

6. When was the Indian National Congress formed?
7. Name the political organizations/ groups other than the INC which were active in the Indian National Movement.

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- Surendranath Banerjee
- Bal Gangadhar Tilak
- Bipin Chandra Pal
- Lala Lajpat Rai
- Swami Dayanand
- Aurobindo Ghosh
- R.C. Majumdar
- Tara Chand

The nationalist approach basically highlighted the aggressive and the exploitative character of the British colonial rule that subordinated Indian economy to the British economy. The nationalist approach believed in a free India, and held its culture and heritage in great respect. For them, the Indian national movement represented the collective will of the people. They believed that the Indian National Congress (INC) covered under its umbrella all the sections of the Indian people. However, the nationalists were criticized for ignoring the existing class-cleavages rampant in the Indian society.

Political nationalism in India was the outcome of the conflicting British and Indian interests, although Indian nationalism as an organized movement developed only during the last decade of the 19th century. Political nationalism generated with the objective of an increasing share in political power followed by dominion status, home rule and complete independence finally. The revolt of 1857 was the result of an accumulated discontent among the various strata of the old Indian society. The British policy of the Doctrine of Lapse is the annexationist policy of the British and there was also the large-scale ruination of millions of Indian artisans. These factors led to the first major political jolt to the imperialist empire. The revolt of 1857 however cannot be regarded as national in nature, though it was anti-British in sentiment. A new stage in the relationship between India and Britain emerged following the end of the mutiny. The policy of Britain underwent a metamorphosis after 1857. What is also remarkable to note here is the fact that though the revolt of 1857 did not project any conception of the national unification of the Indian people, but it did display, for the first time in the Indian history, that a large-scale alliance between the Hindus and the Muslims against the British rule was possible.

The first formal political expression of Indian nationalism became coherently visible with the rise of the Indian National Congress, founded in 1885 by the liberal Indian intelligentsia with support of some sections of the commercial bourgeoisie. The period between 1857 and 1885 displayed innumerable instances of the widening gulf between the British and the Indians, and the political and economic discontent of the Indian people had almost threatened to reach an explosive point by 1883. The arising popular discontent was seemingly bracketed by the so-called 'safety valve' of A.O. Hume, a British officer, who helped in founding the Indian National Congress. The first session of INC was held in Bombay in 1885 dominated by the liberals like Surendra Nath Banerjee, R.C. Dutt, Badruddin Tayabji, Ferozshah Mehta, Gopal Krishan Gokhale, etc. This liberal intelligentsia dominated the Congress from 1885 to 1905 passing resolutions that were modest in nature and were restricted to the administrative reforms and the introduction of the elective principles in the legislature. These Indian liberals had unlimited faith in British capacity for democracy and

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development, and they thereby looked towards Britain for guiding the Indian people to overcome their cultural and social backwardness. Surprisingly, these liberals did not consider the British and Indian interests as antagonistic. However, the liberals did recognize that the Congress was yet not the representative of the masses but only an interpreter for their grievances. To aid the British, they also rejected all revolutionary and sudden changes. Though the liberals seemed to play a progressive role, the critics believed that they exhibited numerous political misconceptions as they could not comprehend the real nature of the British rule. They believed only in prayer and petition at which the British mocked.

As most of the demands of the liberals went unnoticed and unfulfilled, the liberals of late 19th century were soon disillusioned. Their faith in the British Government started faltering. At the same time most of the other Indians were following competing ideologies, and contrasting views and visions. With the spread of political disillusionment among the liberals, a new group of militant nationalists began to evolve among the ranks of the Congress. Extremists, as they were popularly known, found expressions in a new nationalism as expounded by Bal Gangadhar Tilak, Bipin Chandra Pal and Lala Lajpat Rai. The trio came to be known as 'Lal-Bal-Pal'. The militant nationalist infused nationalist sentiments among the Indian people by invoking the historic Indian past, national pride and self respect. They believed in the principles of *swadeshi* and boycott of foreign goods and institutions. They wanted to make India a self-respecting, self-reliant and self-supporting nation. They even criticized the liberals for looking to Britain for their political salvation. For the extremists, the interests of Britain and of India were antagonistic and not allied. They believed that only self-government could accomplish the goal of social, economic and cultural progress. Needless to say, they wanted to end and not mend the system.

The moderates and the extremists added different colours to the Indian National Movement. It may be considered political awakening in general and nationalism in particular. However, on close observation, one can easily assess that this kind of political activity was either limited to the elites or largely regionalized. It was not until the beginning of the Gandhian phase that one could see mass political mobilization of the Indian people that could finally defeat imperialism. The period after 1919 was marked by a phenomenal growth of the mass movements where various sections of the people—workers, peasants, capitalists, students, lawyers, and above all women—could actively participate. Indian nationalism gained a multi-class character unmatched in any freedom struggle. Beginning with Champaran, Gandhi followed the path of truth and non-violence to attain freedom for India. Whether it was the Non-cooperation Movement, Civil Disobedience or the Quit India Movement, Gandhi generated a new nationalistic fervour in the hearts of Indian people. Indian nationalism found its highest expression in Gandhi. Notable is the fact that Gandhi also took Hindu–Muslim unity to new and greater heights. His impeccable secular credentials consistently strived for this unity till the moment of his assassination.

The following timeline shows the role of the Indian National Congress in constitutional development:

- 1905: Demand for self government
 - o Reaction to the Curzon Regime
 - o Confrontation between the Moderates in the Congress seeking change through constitutional means and peaceful agitation and the Extremist younger elements seeking change through violence if necessary

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- 1906: Demand for Swaraj
- 1909: Minto-Morley Reforms creating the Indian Councils gave representation but also gave impetus to the virus of Communalism by providing for separate electorates
- 1917: Proposal for a Congress Flag (later to become the National Tricolour)
- 1919: Gandhiji organizes countrywide Satyagraha against the Rowlatt Act
- 1919: Jallianwala Bagh Massacre
- 1920: Khilafat Movement
- 1920: Gandhiji tours the country to organize the Non-Cooperation Movement
- 1920: The Congress becomes a mass movement
- 1926: Announcement of Simon Commission for proposing constitutional reforms for India
- 1927: Resolution boycotting the Simon Commission
- 1928: Successful All India Hartal on arrival of Simon Commission
- 1928: All Party Committee appointed under Pt Motilal Nehru to draft a Constitution for Independent India
- 1929: Irwin-Gandhi talks
- 1929: Resolution demanding complete independence
- 1930: Adoption of 26th January as 'Purna Swaraj Day'
- 1930: Call for Civil Disobedience
- 1930: Salt Satyagraha - Dandi March
- 1930: Congress opposition to Round Table Conference
- 1931: Fundamental Rights defined
- 1931: Gandhi authorized to negotiate on behalf of the Congress at the Round Table conference
- 1931: Gandhi - Irwin Pact
- 1932: Poona Agreement guaranteeing reserved seats for the Scheduled Castes and Tribes
- 1934: Congress Constitution amended to make non-violence and khadi its fundamental creeds
- 1935: The Government of India Act
- 1935: Congress condemns the new Constitution but decides to contest Elections
- 1937: Congress wins elections in 5 out of 9 provinces
- 1939: Resignation of Congress Ministries and withdrawal from the Legislative Process
- 1939: Demand for a Constituent assembly to be elected by Universal Franchise
- 9th August 1942 Quit India Resolution
- 1943-44: Allied victories in the war leading to intransigent British position
- 1943-44: Gandhiji and Congress leaders released from prison but British refuse to negotiate

- 1943-44: Jinnah adamant on Partition
- 1945: Simla Conference fails
- 1946: Cabinet Mission to decide fate of India
- 1946: Congress wins an overwhelming majority in Elections to the Constitutional Assembly
- 1946: Muslim League decides to withdraw and Press for the creation of Pakistan 16th August chosen as Direct Action Day
- 1946: Congress and Muslim League join Interim Government
- 1946: Jinnah still adamant
- 1947: India gets independence

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ACTIVITY

Read the book *The Discovery of India* and write a short story on the growth of the Indian nation from the days of the Indus Valley Civilization till the British Raj.

DID YOU KNOW

Nehru Jacket

The ubiquitous Nehru Jacket is named after Jawaharlal Nehru who took to wearing this attire after shunning his Western wardrobe. Barring the distinctive stand-up collar, the Nehru Jacket is similar to the waistcoats or suit jackets. It is the preferred formal wear for many Indian politicians.

1.5 SUMMARY

In this unit, you have learned that:

- The concept of constitutionalism has created various means for establishing a governmental structure that exercises power, while, at the same time, ensures individual freedom and liberty. It recommends a method for the reconciliation of the power of the state coupled with individual liberty, by advising on the principles of state organization.
- The Government of India Act, 1858 made the administration of the country unitary as well as rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant Governor headed by his executive council at the head of each of them, the provincial governments were mere agents of the Government of India.
- The Indian Council Act, 1861 initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Presidencies. Another feature of the Act was its statutory recognition to the portfolio system.
- The Indian Council Act of 1861 also brought in legislative reforms in the country. The Viceroy's executive council was extended by members, wherein it was

Check Your Progress

8. What was the nationalists' approach to Indian national movement?
9. When and where was the first session of the INC held?
10. Which party won an overwhelming majority in elections to the Constitutional Assembly in 1946?

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- declared that additional members should be six to the minimum and twelve to the maximum.
- The Indian Council Act of 1892 was simply an extension to the Act of 1861, in that the former broadened the functions of the legislature, whereby the members could make queries and obtain details from the executive.
 - The Indian Council Act, 1909 facilitated elections of Indians towards different legislative councils in India, effectively for the first time. Prior to this, some Indians were appointed at legislative councils, majority of which remained under the appointments of the British government.
 - The Government of India Act, 1919 embodied the reforms recommended in the joint report of the Secretary of State for India, Sir Edwin Montagu, and the Viceroy, Lord Chelmsford.
 - The British Government in 1927 appointed a Statutory Commission as envisaged by the Government of Act of 1919 to make an enquiry onto the report on the functioning of the Act and to announce that domination status was the goal of Indian political developments. Sir John Simon was the Chairman of the Commission which gave its final report in 1930.
 - The Government of India Act, 1935 established an all India Federation comprising the provinces and princely states as the units. It segregated powers between the Centre and the units into three lists, viz. the Federal List, the Provincial List and the Concurrent List.
 - The Government of India Act, 1935 abolished the Diarchy in the provinces and provided for the adduction of Diarchy at the centre. According to this system the administration of defence, external affairs, ecclesiastical affairs, and of tribal areas, was to be made by the Governor-General in his discretion with the help of 'counsellors' appointed by him who were not responsible to the legislature. With regard to matters other than the above reserved subjects, the Governor-General was to act on the advice of a Council of Ministers who was responsible to the legislature.
 - The legislation of the Indian Independence Act was designed by the Prime Minister Clement Attlee as Indian Political Parties, the Indian National Congress, the Muslim League, and the Sikh community came to an agreement on the transfer of power from the British Government to the independent Indian Government and the Partition of India. The Agreement was made with Lord Mountbatten, which was known as the 3 June Plan or Mountbatten Plan.
 - The Indian Independence Bill was formally introduced in the British Parliament on 4 July 1947 and received the royal assent on the 18th of the same month. It removed all limitations upon the responsible government (or the elected legislature) of the natives, and until they developed their own constitutions, their respective Governor-Generals and Provincial Governors were to enjoy the same powers as their counterparts in other dominions of the Commonwealth.
 - The latter half of the nineteenth century was an era of socio-political awakening in India. In this period, we see a number of social reform movements and growing 'political concessions'.
 - The nationalist approach basically highlighted the aggressive and the exploitative character of the British colonial rule that subordinated Indian economy to the British economy.

- The first formal political expression of Indian nationalism became coherently visible with the rise of the Indian National Congress, founded in 1885 by the liberal Indian intelligentsia with support of some sections of the commercial bourgeoisie.

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1.6 KEY TERMS

- **Bicameral Legislature:** A parliament with two houses—upper house and lower house.
- **Cabinet Mission:** A parliamentary delegation sent by the British Government in 1946 to get first hand information on political situation in India.
- **Colonialism:** Colonialism is a practice of domination, which involves the subjugation of one people to another.
- **Communal Electorate:** A system of representation in which constituencies are divided on communal basis.
- **Concurrent List:** A list containing a matters on which both the federal and the provincial governments could make rules.
- **Diarchy:** Diarchy is a dual set of governments—accountable and non-accountable. This system was first introduced by the Government of India Act, 1919 in the provincial governments. The Government of India Act, 1935 abolished it in the provinces but introduced it at the federal level.

1.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The Government of India Act, 1858 transferred the governance of India directly to the British Crown, ending the Company's rule.
2. The Indian Council Act, 1861 introduced a representative institution in India for the first time, providing that the Executive Council of the Governor-General should comprise some Indians as the non-official members for transactions of legislative business. It initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Presidencies. Another feature of the Act was its statutory recognition to the portfolio system.
3. The Indian Council Act, 1909 changed the name of the Central Legislative Council to the Imperial Legislative Council.
4. According the system of diarchy, the subjects of administration were to be divided into two categories- central and provincial. The central subjects were those which exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
5. The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the partition of India.
6. The Indian National Congress formed in 1885.
7. Besides the INC, other political organizations/groups active in the Indian National Movement included the All India Muslim League, the Akhil Bharatiya

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Hindu Mahasabha, the Akali Dal, the Khudai Khidmatgars, the Unionist Party, the Justice Party and the Independent Labour Party.

8. The nationalist approach basically highlighted the aggressive and the exploitative character of the British colonial rule that subordinated Indian economy to the British economy. The nationalist approach believed in a free India, and held its culture and heritage in great respect. For them, the Indian national movement represented the collective will of the people.
9. The first session of INC was held in Bombay in 1885.
10. The INC won an overwhelming majority in elections to the Constitutional Assembly in 1946.

1.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Why is the Indian Council Act, 1909 considered as an attempt of 'divide and rule'?
2. Write a short note on 'diarchy'.
3. Briefly discuss the composition of bicameral legislature as proposed in the Government of India Act, 1935.

Long-Answer Questions

1. Write an essay on the constitutional development of India in the colonial period.
2. Describe the salient features of the Government of India Act, 1919.
3. Examine the evolution of political parties, pressure group and interest groups in the colonial period.
4. Enlist the main provisions of the Indian Independence Act, 1947.

1.9 FURTHER READING

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UNIT 2 FRAMING OF THE INDIAN CONSTITUTION

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Structure

- 2.0 Introduction
- 2.1 Unit Objectives
- 2.2 Making of the Constitution: Constituent Assembly
 - 2.2.1 Constituent Assembly
- 2.3 Philosophy and Values Embodied in Indian Constitution
- 2.4 Changing Notions of Fundamental Rights, Duties and Directive Principles of State Policy
 - 2.4.1 Fundamental Rights
 - 2.4.2 Fundamental Duties
 - 2.4.3 Directive Principles of State Policy
- 2.5 Summary
- 2.6 Key Terms
- 2.7 Answers to 'Check Your Progress'
- 2.8 Questions and Exercises
- 2.9 Further Reading

2.0 INTRODUCTION

This unit discusses the developments that led to the framing of the Indian Constitution. Our nationalist leaders had long cherished aspirations and dreams during the arduous course of freedom struggle. To realize them, they were thus passionate about making a fresh start in the form and system of our government, which would be substantially different from that of our colonial rulers. Therefore, the arrival of political freedom in 1947 gave impetus to the drafting of our Constitution. The Constituent Assembly of India, which was first set up by the Cabinet Mission plan in 1946; and later restructured following a split in accordance with the Mountbatten Declaration of 3 June 1947, became a sovereign body to frame the Constitution of India. In the process, our Constitution emerged from that great hall of the Constituent Assembly. As a result, 26 November 1949 and 26 January 1950 became two most important dates in Indian history in connection with the Constitution of India. The former marks the day of adoption of the draft Constitution, and the latter stands for the date on which the Constitution of India came into force and thereby, making India a truly sovereign country and a republic as well.

Besides describing the philosophy our Constitution is based on, the unit examines the changing notions of Fundamental Rights, Fundamental Duties and Directive Principles of State Policy.

Part III of the Constitution of India contains the Fundamental Rights, which are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. Fundamental Rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or gender. You, as a citizen of India, can go to courts for their enforcement, subject to certain restrictions.

Fundamental Duties, included in the constitution by the 42nd amendment in 1976, are the obligations of the citizens towards their state. While enjoying our rights most of

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us forget that we also have some duties towards our society and the state. Every right has a corresponding duty. For example, while enjoying your right to freedom of religion, you need to ensure that others have been allowed the same freedom.

The Directive Principles of State Policy refer to guidelines to the central and state governments of India to be kept in mind while framing laws and policies. You cannot go to a court for the enforcement these principles or provisions. These provisions are considered fundamental in the governance of the country. They make it the duty of the State to apply these principles so that a just society is made in the country. The Directive Principles relate to social justice, economic welfare, foreign policy, and legal and administrative matters.

2.1 UNIT OBJECTIVES

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

- Discuss the philosophy underlying the Indian Constitution
- Describe the changing notions of Fundamental Rights and Duties
- Examine the changing notions of the Directive Principles of State Policy

2.2 MAKING OF THE CONSTITUTION: CONSTITUENT ASSEMBLY

The idea of making the constitution cannot only be attributed to the Constituent Assembly but it has also to be seen in the evolutionary perspective. The adoption of the famous Motilal Nehru resolution in 1924 and 1925 on the national demand was a historic event in as much as the Central Legislature had for the first time lent its support to the growing demand of the future Constitution of India should be framed by Indians themselves. In November 1927, when the Simon Commission was appointed without any Indians represented in it, and all party meetings held at Allahabad asserted the demand of the right to participate in the determination of the Constitution of their own country.

Earlier on 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution calling upon the Congress Working Committee to frame a Constitution for India in consultation with the elected members of the central and provincial legislatures and leaders of political parties. Adopted by an overwhelming majority with amendments, it was this resolution on the Swaraj Constitution, which was later amplified and reiterated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927. In all party conferences in Bombay, on 19 May 1929 a committee was appointed, under the Chairmanship of Motilal Nehru to establish the principles of the Constitution of India. The Report of the Committee which was submitted on 10 August 1928 was later to become famous as the Nehru Report. It was significant for the fact that, it was the first attempt by Indians to frame a full-fledged constitution for their country. The Report symbolized the perception of the modern nationalists as well as an outline of a draft constitution for India. The latter was based on the principles of dominion status with full responsible government on the parliamentary pattern. The Report asserted the principle that sovereignty belongs to Indians and laid down a set of Fundamental Rights and provided for a federal system with maximum autonomy granted to units but residuary powers were vested in the central government and joint electorates for elections to the federal lower house and the provincial legislatures with reservation of seats for minorities in certain cases for a limited period.

The report can be seen as the broad parliamentary system with the government responsible to the parliament, a chapter of justifiable fundamental rights and rights of minorities envisaged in the Nehru Report in 1928 very largely embodied in the constitution on the independent India adopted 21 years later, on 26 November 1949.

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

While the Simon Commission and the Round Table conference did not succeed fully, it gave rise to the ratification of the Government of India Act, 1935 adhering to the Indian ambitions and further widened the demand for a Constituent Assembly of the people of India. The Congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no constitution imposed by an outside authority shall be acceptable to India. The resolution asserted that it has to be single-handedly framed by an Indian Constituent Assembly elected by the people of India on adult franchise. On 18 March 1937, Congress adopted another resolution in Delhi asserting the electorate approval of the demand for a Constituent Assembly. It desired to frame a constitution based on national independence through a medium of a Constituent Assembly elected by adult franchise.

After the outbreak of the Second World War in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939. Gandhi wrote an article entitled 'the only way' in the *Harijan* on 19 November 1939, in which he expressed the view that the Constituent Assembly alone can produce a constitution indigenous to the country, truly and fully representing the will of the people. It declared that the only way out to arrive at the just solution of communal and other problem was a Constituent Assembly. The demand for a Constituent Assembly was for the first time authoritatively considered by the British Government, though in an indirect way and with important reservations, in what is known as the 'August Offer of 1940'.

In March 1942, the British Government sent Cripps Mission to India with a draft declaration on the proposals of the British Government, which needed to be implemented at the end of the Second World War, provided for two prime political parties, the Congress and Muslim League, to come to an agreement to accept them. The main proposal of the Mission's were (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give India dominion status – equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the provinces and Indian states; and (iv) any province or Indian state, which was not prepared to accept the Constitution would be free to retain its constitutional position existing at that time and with such non-exceeding provinces, the British government could enter into separate constitutional arrangements.

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

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In 1946, the British Cabinet sent off three members, including Cripps to make another serious attempt to solve the Indian problem. The proposals of the Cabinet delegation sought to affect a compromise between a union of India and its division. But the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims and forwarded the following proposals:

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

To explain the actual meaning of the grouping clauses of the proposals of the Cabinet Mission, on 6 December 1946, the British Government published the following statement: 'Should a constitution come to be framed by the constituent assembly in which large section of the Indian population had not been represented?'

His Majesty's government would not consider imposing such a constitution upon any restrictive part of the country. The British Government for the first time pondered over the likelihood of forming two constituent assemblies and two states. As a result, on 9 December 1946, when the Constituent Assembly met the Muslim League members, it began to perform with the non-Muslim League members.

The Cabinet Mission recommended a basic framework for the Constitution and Election for the 296 seats assigned to the British Indian provinces were completed by July-August 1946. The Congress won 208 seats including all the General seats except for nine, and the Muslim League 73 seats i.e. all but five of the seats allotted to Muslims.

With the partition and independence of the country, on 14–15 August 1947, the Constituent Assembly of India could be set to have become free from the fetters of the Cabinet Mission Plan. It became a full sovereign body and the successor to the British Parliament plenary authority and power in the country. Moreover, following the acceptance of the plan of 3 June, the members of the Muslim League from the Indian dominion also took their seats in the Assembly. The representatives of some of the Indian states had already entered the Assembly on 28 April 1947. By 15 August 1947 most of the states were represented in the Assembly and the remaining states also sent their representatives in due course. The Constituent Assembly thus became a body, it was believed, fully representative of the states and provinces in India and full sovereign of all external authority. It could change any law made by the British parliament while applying to India comprising the Indian Independence Act itself.

Historically, the objective resolution was transferred to the Constituent Assembly by Nehru on 13 December 1946, after it had been in session for some days. The objective resolution which inspired the shaping up the constitution through all the subsequent stages declares, 'its form and solemn resolve to proclaim India as an independent sovereign republic and draw up for her future governance a constitution where in the territories that now comprise British India, the territory that now form the Indian states and such other parts of India as are outside British India and the states as well as such other territories are willing to be constituted into the independent sovereign India, shall be a union of them all. It also declared that the said territories with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of government and administration except the powers of the union. All powers and authority of the

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sovereign independent Indian, its constituent parts and organs of government are derived from the people. It shall be guaranteed and secured to all people of India justice, social, economic and political, equality of status and of opportunities, equality before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality. Adequate safeguard shall be provided for minorities, backward and tribal areas and depressed and other backward classes. The integrity of the territory of the republic and its sovereign rights on land, sea and air according to justice and the law of civilized nation shall be maintained. The ancient land would attain its rightful and honoured place in the world and make it full and will contribute in the promotion of world peace and the welfare of the mankind.’

In the words of Pandit Nehru, the aforesaid resolution was something more than a resolution. It is a declaration, affirm resolve, a pledge, an undertaking and for all of us, a dedication. The resolution is a great document and considered as the foundation of the Constitution of independent India. Thus, the Constitution of India is not a product of a particular point of time and a process of accumulation over a long period of time. The credit goes to the Constituent Assembly to give concrete shape to all the heterogeneous constitutional developments by adopting it to the peculiarities of contemporary India.

2.2.1 Constituent Assembly

The Indian Constituent Assembly was elected to form the Constitution of India. It served as an independent nation to its first Parliament. There were negotiations in between the Indian leaders and the British Cabinet Mission members that led to the setting up of the Constituent Assembly, which was elected indirectly by the Provincial Legislative Assembly members. The Congress maintained a good majority in the general seats of 69 per cent, whereas the Muslim League could manage to sweep almost a majority of seats for Muslims. Also, there were members from the Scheduled Caste Federation, the Unionist Party and the Communist Party of India.

The Constituent Assembly was first held on 9 December 1946, and included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi.

It had 207 representatives, including fifteen women. Twenty-eight of the representatives of the Muslim League could only join the Indian Assembly then. Eventually, ninety-three members got nominated from India’s princely states. Thereafter, the Congress secured a majority of 82 per cent. On 2 September 1946, the interim Government of India was formed from the newly elected Constituent Assembly. On 15 August 1947, India became independent and the Constituent Assembly became the Parliament of India.

The enormous task of drafting free India’s Constitution was taken up by the Constituent Assembly. The Assembly brought into being by the will of the Indian people with the help of the British people, drafted a constitution of India from December 1946 to December 1949. It had been elected for on divided India and held its first setting on 9 December 1946 reassembled on 14 August 1947, at the Constituent Assembly for the dominion of India.

According to the Cabinet Mission Plan of 1946, the Constituent Assembly was established. During its entire sitting, it had 11 sessions and 165 days of actual work. After deliberation spread over three years, the historic document – free India’s Constitution adopted by the Assembly on 26 November 1949, came into force on 26 January 1950.

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Thus, a draft constitution had 315 Articles and thirteen Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules. This shows that the original draft had undergone considerable change. In fact, there were notices for over 7000 amendments to the Draft Constitution. Of these, 2473 were actually moved, debated and disposed of. This alone should show the manner in which the Assembly conducted its business. It was indeed a great democratic exercise; discussion, debates and deliberation were encouraged enormously. There was also great tolerance of criticism and no impatience with long drawn-out debates and no endeavour to imposition. It was truly a full-fledged democratic procedure which deserves utmost admiration.

Meaning

There are divergent opinions on the meaning of Constituent Assembly. According to Dood, 'it is a representative body chosen for the purpose of considering and either adopting or proposing a new constitution and changes in the existing constitution.' Abbe Siezes has defined it as 'an assembly of extraordinary representatives to which the nation shall have entrusted the authority to make a constitution or at any point to define its content.' In simple words, a Constituent Assembly can be defined as a democratic device for formulating and adopting a new constitution or bringing about some fundamental changes in an existing constitution by free people. It implies the right of the people to determine their own future and decide the nature and type of the polity under which they would like to live. The rights of people to give to themselves a constitution of their choice, requires a representative Constituent Assembly as an attribute of national freedom. The making of the constitution by people representing themselves in the Constituent Assembly reflects the sovereign will of the people.

The founding fathers of the Indian Constitution conceived of a Constituent Assembly as something dynamic, not merely a representative but a nation on the move. The principal job of the Constituent Assembly was not only to produce a constitution of the country but to throw away the spell of its past political and possibly social structure and fashioning for itself a new government its own making. According to Sir Ivor Jennings, a constituent assembly comes into being specially in three situations – when there is a great social revolution, when a nation through up its foreign yoke, and when a nation is created by the fusion of smaller political units. Whatever the circumstances, Jennings points on 'the need is felt and some person is set to draft a constitution'. According to this view, the Indian Constituent Assembly falls into the second category. Its task was mainly to put an end to British rule in India and to establish an independent Republic of India. But it was not devoid of revolutionary concept and Pundit Nehru termed it as the psychological revolution that the idea of the Constituent Assembly created in the minds of the Indian people. It was both in the slogan and a creed to concretize the fundamental issue in a struggle for freedom and a method and procedure for the framing of a constitution for an independent India.

Composition

When it comes to the composition of the Constituent Assembly, it should be noted that it was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme in recommendation with the Cabinet Delegations. The prime features of the scheme were:

- Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations, respectively, in the ratio of one to a

million approximately. Due to which the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of 93 seats.

- Each provincial seat was distributed amongst three major communities – Muslim, Sikh and General proportional to their respective populations.
- Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- The selection method for Indian representatives had to be determined through consultation.

In all, the Constituent Assembly was to have 389 members but, when Muslim League boycotted the Assembly, therefore out of 296 members only 211 attended its first meeting on 9 December 1946. Apart from that, the Partition Plan of June 3 1947 gave rise to setting up a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North western Frontier Province, Baluchistan, and the Sylhet district of Assam which had to join Pakistan by a referendum ceased to be member of the Constituent Assembly of India, and there was a fresh election in the new Provinces of West Bengal and East Punjab. Due to which, on 31 October 1947, when the Constituent Assembly reassembled, the House membership was lessened to 299. Out of these, 284 were actually present on 26 November 1949, and attached their signatures to the Constitution to regard it as finally passed.

Committees to draft a Constitution

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

Committees on Procedural Affairs

- (i) The Steering Committee (Chairman Dr K.M. Munshi)
- (ii) The Rules of Procedure Committee (Chairman Dr Rajendra Prasad)
- (iii) The House Committee
- (iv) The Hindi-translation Committee
- (v) The Urdu-translation Committee
- (vi) The Finance and Staff Committee
- (vii) Press Gallery Committee
- (viii) The Committee based on the Indian Independence Act of 1947
- (ix) The Order of Business Committee
- (x) The Credential Committee

Committees on Substantial Affairs

- (i) The Drafting Committee (Chairman B.R. Ambedkar)
- (ii) The Committee for negotiating with States (Chairman Dr Rajendra Prasad)
- (iii) The Union Constitution Committee (Chairman Jawaharlal Nehru)

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- (iv) The Provincial Constitution Committee (Chairman Sardar Patel)
- (v) A Special Committee to examine the Draft Constitution (Chairman Sir Alladi Krishnaswami Iyer)
- (vi) The Union Powers Committee (Chairman Pandit Jawaharlal Nehru)
- (vii) The Committee on Fundamental Rights and Minorities (Chairman Sardar Patel)
- (viii) The Committee on Chief Commissioners Provinces
- (ix) The Commission of Linguistic Provinces
- (x) An Expert Committee on Financial Provisions
- (xi) Ad-hoc Committee on National Flag
- (xii) Ad-hoc Committee on the Supreme Court

Personalities in the Constituent Assembly

After general discussions that took place on the reports of the aforesaid Committees, the Constituent Assembly fixed a Drafting Committee on 29 August 1947. There were six members of the Drafting Committee other than Chairman. They were Sir Krishnaswami Iyengar, N. Gopalswami Iyengar, K.M. Munshi, Saiyed Mohammed Sadulla, Sir B.L. Mittar and D.P. Kaitan. After the first meeting, Sir B.L. Mittar ceased to be a member and in his place, N. Madhava Rao was nominated by the President on 5 December 1947. D.P. Kaitan died in 1948 and was replaced by T.T. Krishnamachari. Under Dr Ambedkar's chairmanship, the Drafting Committee symbolized the Assembly decision with alternative yet additional proposals in the form of a 'Draft Constitution of India' published in February 1948. The Drafting Committee took less than six months to prepare its draft. In all, it sat only for 141 days.

The members of the Constituent Assembly were not selected purely on a party basis but were drawn from all walks of life and represented almost every section of the Indian people. They included some of the leading personalities of Indian public life. The moving spirit of the Assembly was Jawaharlal Nehru, the first Prime Minister of India. Rajendra Prasad who became the President of independent India was the President of the Constituent Assembly. Ballavbhai Patel was one of the most important among the leading lights. While these leaders had contributed more than all others for the formulation of basic principles of the Constitution, it was the drafting Committee headed by Dr B.R. Ambedkar who was in charge of its drafting. He chaired the Drafting Committee and steered the document through nearly a year of debate over its various provisions. Ambedkar was ably assisted in the task of Constitution making by the other members of the Drafting Committee, which included eminent people like Alladi Krishnaswami Aiyer, N. Gopalswami Ayanger, K.M. Munshi, N.T.T. Krishnamachari. Other notable members of the Constituent Assembly were Maulana Azad, Khan Abdul Gaffar Khan, H.N. Kunzru, H.S. Gour, K.V. Shah, Masani, Acharya Kripalini, Dr Radhakrishnan, Dr Jayakar, Liyakat Ali Khan, Khwaja Nazimuddin, Sir Feroz Khan Noor, Suhrawardy, Sir Zafurullah Khan and Dr Sachidananda Sinha.

In the words of Dr Subhash Kashyap, 'nevertheless while others fashioned its structure and shape, most significantly, Nehru gave to the constitution of Indian its spirit and its soul, its philosophy and its vision'. At the very outset he laid down its general outline and continued to influence what the Constituent Assembly did. Here, the Constitution was his handy work. He was the Assembly's philosopher and its prime constitutional thinker.

Working of the Constituent Assembly

On 9 December 1946, the Constituent Assembly met for the first time in the Constitution Hall, known as the Central Hall of Parliament House today. The Chamber was well decorated for the occasion, with bright lamps hanging in from high ceilings of the Hall, and from the wall brackets. Delighted and besieged as they were, the Hon'ble members took their seats in semi-circular rows with the Presidential dais on their front. The desks that could be electrically warmed were positioned on sloping green-carpeted terraces. On the front row were seated Pandit Jawaharlal Nehru, Maulana Abdul Kalam Azad, Sardar Vallabhbhai Patel, Acharya J.B. Kripalani, Dr Rajendra Prasad, Smt Sarojini Naidu, Shri Hare-Krishna Mahatab, Pandit Govind Ballabh Pant, Dr B.R. Ambedkar, Shri Sarat Chandra Bose, Shri C. Rajagopalachari, and Shri M. Asaf Ali. There were 207 representatives, including nine women present inside the Hall.

Sharp at 11 a.m., the inaugural session began introducing Dr Sachchidananda Sinha, the temporary Chairman of the Assembly, by Acharya Kripalani, who said: 'As we begin every work with Divine blessings, we request Dr Sinha to invoke his blessings so that our work may proceed smoothly. Now, I once more, on your behalf, call upon Dr Sinha to take the Chair.'

After occupying the Chair with much commendation, Dr Sinha read out the goodwill messages received from various countries. The members were requested to submit their credentials soon after the inaugural address of the Chairman and the nomination of a Deputy Chairman. The proceedings came to an end after the credentials were submitted by the members and they signed the Register.

The Press representatives and other visitors were seated at some thirty feet above the floor of the Chamber in the galleries. The All India Radio (A.I.R.), Delhi broadcasted an ideal sound picture of the entire proceedings.

As earlier stated, the Constituent Assembly was duly opened on the ninth day of December 1946. It was truly a unique occasion in India's long history; for the first time the representatives of the people were meeting to determine the future Constitution of India. During its first four sittings on 9, 10, 11 and 12 December, the Assembly was involved with matters like the presentation of credential and signing of the registers electing the permanent Chairman, constituting a committee for rules and procedures on the fifth day of the first session of the Constituent Assembly. On 13 December 1946, Nehru moved the historic of objectives Resolution. It gave to the Assembly its guiding principles and the philosophy that was to permeate its task of constitution making.

Objectives Resolution

1. This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
2. WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
3. WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and

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- functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from; and
4. WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
 5. WHEREIN shall be guaranteed and secured to all the people of India justice, social economic and political : equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
 6. WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
 7. WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations; and
 8. WHEREIN this ancient land attains its rightful and honoured placed in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.'

In its second plenary session, the Assembly met from 20 - 26 January 1947, and adopted the Objective Resolution moved by Nehru. The Third Plenary session was held from April 28th to May 2nd. It discussed the reports submitted by the Union Powers Committee and of the Advisory Committee on Fundamental Rights. On August 29, the Assembly adopted resolution setting up a drafting committee for forming a Constitution according to the decision taken by it on the reports of the various committees. As earlier mentioned Dr Ambedkar was appointed the Chairman of this Committee. The second draft was placed before the Assembly on 21 February 1948. After nearly three years, the Assembly finally adopted the Constitution on 26 November 1949. In all, it held eleven sessions, covering 1965 days out of which 114 days were devoted to consideration of the Draft Constitution. In a nutshell, the Constituent Assembly worked in three phases: First Phase : as Constituent Assembly limited under the Cabinet Mission Plan from 6 December 1946 to 14 August 1947; Second Phase : as Constituent Assembly a sovereign body along with a provisional parliament from 15 August 1947 to 26 November 1949; and Third Phase : as a provisional parliament from 27 November 1949 to March 1952.

Salient Features of the Constituent Assembly

In the words of Granville Austin, the members of the Constituent Assembly drafted a constitution that expressed the aspiration of the nation. They selected and modified the provision that they borrowed, helped by experts among their members and the advice given by ministries of the Union and Provincial governments. The Assembly members also applied to their tasks with great effectiveness to a wholly Indian concept, consensus and accommodation. Accommodation was applied to the principles to be embodied in the Constitution. Consensus was the aim of the decision-making process, the single most important source of the Constituent Assembly's effectiveness.

Decision Making by Consensus

The Constituent Assembly adopted the consensus approach in a variety of ways. Most important among them were the Congress Assembly party, meeting where each provision

of the Constitution was subjected to frank and searching debates and whose approval was in fact as important as that of the Assembly itself.

The primary examples of decision-making by consensus were perhaps the federal language provision. The language question strained the Assembly's decision-making machinery to the utmost. For nearly three years, the members searched for a generally acceptable solution.

Principle of Accommodation

In the opinion of Austin, the second of India's original contribution to the Constitution making was the Principle of Accommodation – the ability to apparently reconcile the incompatible concepts. India's constitutional structure is a good example of the Principle of Accommodation on matters of substance. It has reconciled the federal and the unitary system, membership of commonwealth and republican status government, and provisions for Panchayati Raj with the need for a strong central government.

Art of Selection and Modification

The third salient feature of the Constituent Assembly according to Austin is the art of selection and modification. The Assembly was not merely imitative, the borrowing from different political systems did not relieve the Assembly of choice and that the borrowed provision had to be adapted to suit Indian conditions. An example of selection and modification is the method of constitutional amendment. The three mechanisms of the method devised by the assembly have made the constitution flexible while at the same time protecting the rights of the states. They have worked better than the amending process in any other country, where federalism and British Parliamentary system jointly form the bases of the Constitution. In brief, the Assembly selected and modified the provisions from other constitutions with a great deal of professional help.

Issues before the Constituent Assembly

Adult Franchise – There was divergence of opinions on the adoption of the Principle of Adult Franchise. Maulana Azad advocated its deferment for fifteen years. Prasad and Nehru considered Adult Franchise as an act of faith.

Jammu and Kashmir – The Cabinet was divided on the issue of Jammu and Kashmir in the Constituent Assembly favouring Sardar Patel's stand instead of Nehru's. But when the matter came before the Assembly Patel, it put the unity and solidarity of the government before everything else and bagged the Nehru formula of recognizing the Jammu-Kashmir right to frame its own constitution within the Indian union.

Reservation for Minorities – The most delicate issue confronted by the Constituent Assembly was related to the safeguard for minorities. There was difference of opinion among the key leaders like Azad, Nehru and Patel. Azad wanted reservation seats for the Muslims and other minorities within the framework of general electorates. Patel objected such safeguards. Finally, Nehru left it to Patel to jump the hurdle as the Chairman of the Advisory Committee on Minorities.

Office of the President and Governors – There was argument in the Constituent Assembly on whether the President of the republic and the Governors of the constituent states should be elected by popular vote and whether they should have discretionary powers. Nehru and Patel brought a practical approach and finally pushed for indirectly elected heads.

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Link Language - The selection of the national link language was a difficult job for the Constituent Assembly because of differences of opinion among the leaders. However finally, the formula providing for replacement of English with Hindi in fifteen years was embodied in the Constitution.

Fundamental Rights – Nehru was against making the rights justifiable in opposition to Patel's view. However, Patel finally won because he had the backing of a distinguished lawyer and of the overwhelming majority of the members of the Constituent Assembly.

Secular State – There was demand from some quarters to make India a Hindu state. But there was predominantly a Congress section in the Assembly which firmly believed that India should be a secular state.

Socialism – Nehru was in support of greater socialism. However, because of the Patel's contention, he omitted the word 'socialism' from the objective resolution.

Village Panchayat – Rajendra Prasad believed that the necessary articles could be redrafted, making the Village Panchayats the electoral college for electing representatives to the provinces and the Centre. But Rao rejected this suggestion saying that the Assembly had already decided on direct election of lower houses both at the Centre and the provinces and that he was doubtful if vote could be reversed – a remark that indicated the general popularity of a parliamentary constitution.

Criticism

The working procedure, composition and the status of the Constituent Assembly has been criticized on the following grounds:

- **Congress Domination** – It is criticized that the Constituent Assembly was a one-party body. The Assembly was the Congress and the Congress was India.
- **Doubtful Sovereign Status** – The critiques questioned over the sovereign status of the Constituent Assembly. They argued that the Constituent Assembly was meeting with the permission of the British Government and hence cannot be called a sovereign body.
- **Hindu Dominated Constituent Assembly** – Some critiques dubbed it as the non-representative of the Constituent Assembly ever created in any democratic country of the world. British leaders like Churchill and Lord Simon named it as a Hindu body representing the interest of the Hindus alone.
- **An Unrepresentative Body** – Critiques also alleged that the Constituent Assembly was not directly elected by the people on the basis of Universal Adult Franchise. As such, it did not reflect the aspiration of the masses and hence, was unrepresentative in character.
- **Dominated by Lawyers and Politicians** – Some argued that the Constituent Assembly was dominated only by the politicians and lawyers. It did not give much representation to other sections of Indian society.

However, the facts remain that the Constituent Assembly was guided and directed by top leaders of the Congress. Eminent personalities like Nehru, Patel, Prasad, Azad and Munshi dominated the scene. Although indirectly elected and therefore not responsible to the mass of India, the Constituent Assembly was a highly representative body.

The Constituent Assembly was able to conclude its labour within a period of less than three years that was two years, eleven months and seventeen days to be exact. As

elsewhere stated on the 26 November 1949, it could proudly declare on behalf of the people of India that 'we do hereby adopt, enact and give to ourselves the Constitution.' Finally on 24 January 1950, the Constitution was signed by the Constituent Assembly members, and it was the last day of the Assembly. The Constitution started w.e.f. 26 January 1950. It embodied all the objectives of democracy, secularism and economic and social justice. In the sense, the Indian Constituent Assembly occupied a peculiar position. It was created by an agreement with the British Government, it was also an embodiment of the revolutionary spirit of India. Though it did not fully represent the people, yet it represented all important parties and communities in India. It was not, in the beginning, legally sovereign, yet it enjoyed the sovereignty for all practical purposes.

2.3 PHILOSOPHY AND VALUES EMBODIED IN INDIAN CONSTITUTION

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

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

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

Before going to discuss the values that our Constitution upholds, and the objectives it has set to achieve, it is of relevance to discuss their correlation. Value in a layman's understanding is that which is very essential or worth having for its existence as an entity. In that sense, there are some core values and secondary values of each state. Security of one's territory is definitely a basic or mainstay value of every state; whereas 'promotion of cultural relations with other states' could be a lesser value. Objective means what we want to have or we wish to achieve. Here the same values could be the objectives. Thus, objectives and values appear similar since there is a very thin line of difference between the two. For example, social justice or a just society could be both an objective and a value. An objective, usually, is guided by a value. In other words, the objectives set, are directly or indirectly linked with or are drawn from values. There is

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Check Your Progress

1. What were the main proposals of the Cripps Mission?
2. When was the Interim Government of India formed?
3. List the issues that were taken up for discussion by the Constituent Assembly.

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an integral relationship between them. However, value deals with 'what' of the same thing whereas the objective is concerned with the 'how' of that. It means that translation of values is the concern of objectives. Sometimes a value may not be an immediate objective but that still exists. Promotion of international peace may belong to that category.

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

1. Sovereignty

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

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

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

2. Socialism

The word 'socialist' was added to the Preamble by the 42nd amendment act of 1976. However, several articles of our Constitution were already there giving credence to the ideal. The fathers of our Constitution had a wider vision of social transformation. Despite all social, economic and political inequality present and inherent in Indian traditional society, our Constitution started a crusade against that order. The Constitution has deliberately imposed on us the ideal of socialist pattern of society, a kind of Indian model of socialism to suit to our needs and temperament. It stands to end all forms of exploitation in all spheres of our existence. Our Constitution directs the state to ensure a planned and coordinated social advance in all fields while preventing concentration of wealth and power in few hands.

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

3. Secularism

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

4. Democracy

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

5. Republic

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

6. Justice

Justice is called a total value. The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep rooted. Therefore, they stressed that the positive constructive aspect of political freedom has to be instrumental in the creation of a new social order, based on the doctrine of socio-economic justice. The message of socio-economic justice mentioned in the preamble to our Constitution has been translated into several articles enshrined in part-III and part-IV of the Constitution. A number of practical measures have been taken over the years

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to create more favourable social conditions for the millions of downtrodden. These include several developmental policies to provide safeguard to minorities, backward, depressed and tribal people. Our constitution abolishes untouchability; prohibits exploitation of the women, children and the weak and advocates for reservation to raise the standard of the people over ages. Whenever our government undertakes any developmental project it always adds a human face to it. Therefore, this ideal of a just and egalitarian society remains as one of the foremost objectives.

7. Liberty

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

8. Equality

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

9. Fraternity

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

10. Dignity of the individual

Fraternity and dignity of the individuals have a close link. Fraternity is only achievable when the dignity of the individual will be secured and promoted. Therefore, the founding fathers of our Constitution attached supreme importance to it. Our Constitution therefore directs the state through the Directives enshrined in the Part-IV of our Constitution to

ensure the development of the quality of life to all sections of people. Our Constitution acknowledges that all citizens, men and women equally, have the right to an adequate means of livelihood (Art.-39 a) and just and humane conditions of work (Art.-42). Article-17 has abolished the practice of untouchability by declaring it as a punishable offence. Our Constitution too directs the state to take steps to put an end to exploitation and poverty.

11. Unity and integrity of the Nation

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

12. International peace and a just international order

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

13. Fundamental Duties

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

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

2.4 CHANGING NOTIONS OF FUNDAMENTAL RIGHTS, DUTIES AND DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution is the basis of all governments worldwide. In simple terms, constitutional provision is a specific benefit offered and protected by law. Constitutional provisions assist in formulating and establishing laws and therefore create a balance between the state and Centre. Laski had rightly remarked that every state is known by the rights that

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Check Your Progress

4. What does the Preamble emphasize by declaring us as a sovereign entity?
5. What does the ideal of secularism imply in Indian context?
6. What does fraternity stand for?

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it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate 'Fundamental Rights.' As Granville Austin observed:

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

2.4.1 Fundamental Rights

The inclusion of a chapter on Fundamental Rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state. The demand for a Charter of Rights in the Indian Constitution had its deep-seated roots in the Indian National Movement. The inclusion of rights in the Constitution vested on three major reasons:

- (a) to keep a check on the arbitrary action of the executive
- (b) to reach to the desired goal of socio-economic justice
- (c) to ensure security to minority groups in India

The final shape to the Fundamental Rights was given by the Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas, under the Chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make Part III of the Constitution.

The pertinent question that arises here is as to why the rights in Part III alone are considered fundamental. There are other rights as well that are important and even justifiable, for example, the right to vote under Article 325. The justification goes that the rights in Part III are:

- (a) more in consonance with the natural rights
- (b) gifts of the state
- (c) gifts of the Constituent Assembly

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

The Constitution classifies fundamental rights into six categories:

- Right to Equality (Articles 14–18)
- Right to Freedom (Articles 19–22)
- Right against Exploitation (Articles 25–28)
- Right to Freedom of Religion (Articles 25–28)
- Cultural and Educational Rights (Articles 29–30)
- Right to Constitutional Remedies (Article 32)

Right to Equality (Article 14)

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

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

Equal protection of laws: This clause has been taken verbatim from the XIV amendment to American constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not mean that every law must have a universal application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money) in the same position as others. Varying needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be violative of equal protection. The Constitution, however, does not stand for absolute equality. The State may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have same nature, attainments, qualifications or circumstances. It means that the State is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

Prohibition of discrimination (Article 15)

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

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

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

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

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

Article 15(4) allows the State to make special provision for the advancement of any socially and educationally backward classes of citizens, including the scheduled castes and the scheduled tribes. The State is, therefore, free to reserve seats for them in the legislature and the services. This Article only allows the State to make special provisions for these classes. Inserted under Ninety-Third Constitutional Amendment Act, this clause conferred on the State the power to make any special provision by law for the advancement of any socially and educationally backward class or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions.

Equality of opportunity (Article 16)

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

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

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

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

Article 16 (5) allows the State to provide that in case of appointment to religious offices, or offices in religious institutions, the candidates shall possess such additional

qualifications or be members of that religious institution. This is an exception to the general rule that the State shall not discriminate on ground of religion in providing equal economic opportunities to the citizens.

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

Social equality by abolition of untouchability (Article 17)

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

The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament has enacted the Untouchability Offences Act, 1955, which was later amended in 1976. It prescribes punishment for the practice of untouchability, in any form, up to a fine of ` 500 or an imprisonment of 6 months or both, depending upon the seriousness of the crime.

Social equality by abolition of titles (Article 18)

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

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

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

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

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

- Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India

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- Right to reside and settle in any part of the territory of India
- Right to practice any profession, or to carry on any occupation, trade or business

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Freedom of speech and expression

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

Freedom of expression in this clause means right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. It, thus, includes not only the freedom of press but also the expression of one's ideas in any other form.

Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to constitutional and statutory provisions.

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

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

Right of peaceful unarmed assembly

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

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

Freedom of association and unions [Articles 19 (1) and (4)]

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

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

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

- Sovereignty and integrity of India
- Public order
- Morality

Freedom of movement and residence

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

The freedom of movement of a citizen has three aspects

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

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

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

- In the interest of any scheduled tribes
- In the interest of the general public, i.e. public order morality and health

Freedom of profession

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

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

Protection in criminal convictions (Article 20)

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

Right to life and personal liberty (Article 21)

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

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procedure laid down therein. This Article can be invoked only if a person is detained by or under the authority of the State. Violation of the right to personal liberty is not enforceable when it is violated by a private individual violates this right, and then the remedy lies in the constitutional law.

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

Right to Information

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

Right to Education (Article 21(a))

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

Protection against arrest and detention (Article 22)

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

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

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move the high court, for the grant of the writ of habeas corpus.
- The second protection granted by Clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge, nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the time necessary for journey from the place of arrest to the court of the magistrate.

Preventive detention

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

Clause 4 requires that a person may be detained under the Preventive Detention Act for 3 months. If a person is to be detained for more than 3 months, it can be only in the following cases:

- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within 10 weeks from the date of detention; and
- Where the person is detained under law made by the Parliament for this Clause 5 considers two things, namely:
 - (a) That the detainee should be supplied with the grounds of the order of detention; and
 - (b) That he should be provided with the opportunity of making representation against that order to the detaining authority for the consideration of the Advisory Board.

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

Clause 7 of this Article gives exclusive power to the Parliament to:

- Prescribe the circumstances under which and the cases in which a person may be detained for more than 3 months without obtaining the opinion of the an Advisory Board
- The period of such detention (which it has determined to be not more than twelve months); and
- The procedure to be followed by an Advisory Board

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended 7 times, each for a period of 3 years. The revival of anarchist forces obliged Parliament to enact a new Act, named The Maintenance of Internal Security Act (MISA) in 1971, having provision broadly similar to those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPSA still remains in force. Further, in 1980, National Security Act (NSA) was enacted. According to the NSA the Maximum period for which a person may be detained shall be 6 months from the date of detention. Next in the series was Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, try them summarily, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the Government to enact The Terrorist and Disruptive Activities (Prevention) Act (TADA). 1985, which, in fact, empowered the executive for suppression of all kind of dissent and was widely criticized for being undemocratic. In wake of intensified terrorist activities in

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many parts of the country, Vajpayee government was compelled with yet another enactment in 2002, named as Prevention of Terrorism Act (POTA), which has been criticized for its probable misuse.

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Right against Exploitation (Articles 23 and 24)

Clause 1 of Article 23 prohibits traffic of human beings, *begars* and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law. In this context, 'traffic in human beings,' includes the institutions of slavery and prostitution. 'Begar' means involuntary or forced work without payment, e.g. tenants being required to render certain free services to their landlords.

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

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. Our Constitution goes in advance of the American Constitution in laying down a constitutional prohibition against employment of children below the age of 14 in factories, mines or other difficult employments, e.g. railways or transport services. Our Parliament has passed necessary legislation and made it a punishable offence.

Right to Freedom of Religion (Articles 25–28)

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

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

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

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

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

Article 26 guarantees to every religious denomination the following rights:

- To establish and maintain institutions for religious and charitable purpose
- To manage its own affairs in matters of religion

- To own and acquire movable and immovable property; and
- To administer such property in accordance with law

While rights guaranteed by Article 25 are available only to the individuals and not to their groups, those under Article 26 are conferred on religious institutions and not on individuals. In this Article, religious denomination means a religious sect or body having a common faith and organization and designated by a distinctive name. This was the definition accepted by the Supreme Court. This Article grants to a religious denomination complete autonomy in deciding what rites and ceremonies were essential according to the tenets of a religion. No outside authority has any jurisdiction to interfere in its decisions in such matters.

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

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

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

Cultural and Educational Rights (Articles 29–30)

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

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

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

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the state governments, municipalities or other local bodies, universities, statutory bodies, the individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights, because these rights are available only against the State.

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

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

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

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

Political dynamics

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

Article 13 provides that any law passed in violation of Part III of the Constitution dealing with Fundamental Rights is void to the extent of such violation. Initially the Supreme Court, however, adopted a legal attitude by declaring that the directive principles cannot abridge, curtail or stand in the way of the Fundamental Rights. The court, thus, held that the former are subordinated to the latter. But later on the judiciary has substantially modified its attitude towards directive principles. It started taking note of directive principles in determining the scope of fundamental rights. The directives now command more respect from the judiciary than they initially did.

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

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

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Fundamental Duties. But these recommendations were not accepted by the Congress government.

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

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- To abide by the Constitution and respect the national flag and national anthem
- To cherish and follow the noble ideas, which inspired our national freedom struggle
- To protect the sovereignty, unity and integrity of India
- To defend the country
- To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional or sectional diversities and laws to renounce practices derogatory to women
- To preserve the rich heritage of our composite culture
- To protect and improve the natural environment
- To develop the scientific temper and spirit of enquiry
- To safeguard public policy
- To strive towards excellence in all spheres of individual and collective activity
- As a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years (this clause was inserted through Eighty-Sixth Amendment Act 2002)

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

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

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

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2.4.3 Directive Principles of State Policy

After the end of the Great War (1914–18) the Indian National Congress launched, under the leadership of Mahatma Gandhi, a struggle for the political independence of India from the British rule. The Congress did so not because it valued political freedom just for the sake of it (freedom) but because it realized that without political freedom social and economic uplift of many millions in the country would not be possible and large inequalities that had increased in society during the past few decades, would not be reduced. Under Gandhi's influence the Congress, at its Karachi session in December 1931, resolved that '...in order to end the exploitation of the masses political freedom must include real economic freedom. The Congress at the same session went on record in favour of a fixed ceiling on individual incomes, to be lowered by stages to twenty times the national minimum. At the Round Table Conference in London in 1931, Gandhiji stressed that the Congress stood for the 'dumb 7,00,000 villages,' and that the untouchables, the women and the desperately poor needed to be lifted out of their age-old sufferings and exploitation. Jawaharlal Nehru and other Congress leaders said, time and again, during the days of freedom struggle that political independence for the country would have no meaning if the starvation and exploitation of the millions were not ended. The ideology of egalitarianism, thus, began to grow, and the Congress made it a definite part of its faith in 'swaraj.' Year after year, more explicit resolutions were adopted committing an independent India to the socio-economic uplift of the masses.

When 'swaraj' came to the country and the task of framing a Constitution was taken up the ideal of 'egalitarianism' was incorporated in its Preamble and in Part IV entitled 'Directive Principles of State Policy.' The Preamble promised to secure to all citizens of India, JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; and EQUALITY of status and of opportunity.

The Directive Principles of State Policy were incorporated in Articles from 39 to 51 of the Constitution. Article 39 laid down certain principles of policy to be followed by the State with the object of 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 subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production 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; and (f) that childhood and youth are protected against exploitation and against moral and material abandonment. In order that the fruits of political freedom might reach the grass-root level, Article 40 laid down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Under Article 41, the State was directed, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 laid down that the State shall make provision for securing just and humane conditions of work and for maternity relief. In order to uplift, the poor, Article 43 stated that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers (agricultural, industrial, or otherwise) work, a living wage, conditions of work ensuring a decent standard of life

and full enjoyment of leisure and social and cultural opportunities. To the same end, the State was directed to promote cottage industries on an individual or cooperative basis in rural areas.

Article 44 of the Constitution stated that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. Realizing that no programme of socio-economic transformation of the people would be possible without mass literacy the framers of the Constitution laid down, in Article 45, that the State shall endeavour to provide within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years. Special care was required to be taken for the educational and economic interests of the weaker sections of the people, and the Scheduled Castes and Scheduled Tribes in particular were to be protected from social injustice and all forms of exploitation. Under Article 47, the State was entrusted the responsibility of raising the level of nutrition of the people and the improvement of their health, and to this end, it was to bring about prohibition of the consumption of intoxicating drinks and drugs. In view of the fact that 80 per cent of the Indian people lived in villages the State was directed, under Article 48, to organize agriculture and animal husbandry on modern and scientific lines.

In order to preserve the cultural heritage of the country, the founding-fathers of the Indian Republic directed the State to protect every monument or place or object of artistic or historic interest, declared by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export as the case may be. The judiciary was to be separated from the executive. Realizing that the attainment of all these objectives would not be possible if there were no peace and stability in the outside world the architects of a new India directed the State, under Article 51, to endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and (d) encourage settlement of international disputes by arbitration.

Reaffirmation of Ideology of Egalitarianism

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

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

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

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

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

Community Development blocks. A Consultative Council on Community Development was constituted under the chairmanship of the Union Minister of Food and Agriculture to establish coordination between the Union Government and state Ministers, in charge of Community Development.

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

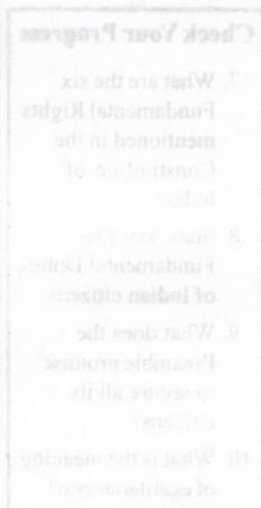
In order to organize agriculture on modern and scientific lines, as enjoined in Article 48 of the Constitution, a number of projects were launched with the purpose of better utilization of river waters for irrigation, for generating electricity and power and for flood control. Some of these were Nagarjunasagar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

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

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

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

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

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

ACTIVITY

Write a news report on any instance of recent violation of Fundamental Rights in India.

DID YOU KNOW

Court justifies judicial activism

Often criticized for alleged judicial overreach, the Supreme Court on Thursday justified its order cancelling 122 licenses for 2G-spectrum, saying it was duty-bound to strike down policies that violate constitutional principles or were contrary to public interest.

An apex court bench said this was needed to 'ensure that the institutional integrity is not compromised by those in whom the people have reposed trust and who have taken oath to discharge duties in accordance with the Constitution and the law without fear or favour, affection or ill will and who, as any other citizen, enjoy fundamental rights but is bound to perform duties.' It said, 'There cannot be any quarrel with the proposition that the court cannot substitute its opinion for the one formed by the experts in the particular field and due respect should be given to the wisdom of those who are entrusted with the task of framing the policies.'

'However, when it is clearly demonstrated before the court that the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognized parameters,' the bench added.

Check Your Progress

7. What are the six Fundamental Rights mentioned in the Constitution of India?
8. State any two Fundamental Duties of Indian citizens.
9. What does the Preamble promise to secure all its citizens?
10. What is the meaning of egalitarianism?

Referring to the PILs filed by the Centre for Public Interest Litigation and Janata Party chief Subramanian Swamy, it said: 'When matters like these are brought before the judicial constituent of the State by public spirited citizens, it becomes the duty of the Court to exercise its power in larger public interest...'

While admitting that TRAI was an expert body assigned with important functions under the 1997 Trai Act, the bench said, the Trai in making recommendations cannot overlook the basic constitutional principles and recommend which should deny majority of people from participating in the distribution of state property.

Source: <http://www.hindustantimes.com/India-news/NewDelhi/Court-justifies-judicial-activism/Article1-805945.aspx>

Accessed on 6 February 2012

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2.5 SUMMARY

In this unit, you have learnt that:

- On 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution calling upon the Congress Working Committee to frame a Constitution for India in consultation with the elected members of the central and provincial legislatures and leaders of political parties.
- In March 1942, the British Government sent Cripps Mission to India with a draft declaration on the proposals of the British Government, which needed to be implemented at the end of the Second World War, provided for two prime political parties, the Congress and Muslim League, to come to an agreement to accept them.
- The Indian Constituent Assembly was elected to form the Constitution of India. It served as an independent nation to its first Parliament.
- According to the Cabinet Mission Plan of 1946, the Constituent Assembly was established. During its entire sitting, it had 11 sessions and 165 days of actual work. After deliberation spread over three years, the historic document - free India's Constitution adopted by the Assembly on 26 November 1949 and came into force on 26 January 1950.
- The founding fathers of the Indian Constitution conceived of a Constituent Assembly as something dynamic, not merely a representative but a nation on the move.
- The salient principles of the proposed Constitution had been outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution.
- The members of the Constituent Assembly were not selected purely on a party basis but were drawn from all walks of life and represented almost every section of the Indian people.

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- The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution.
- In the words of Granville Austin, the members of the Constituent Assembly drafted a constitution that expressed the aspiration of the nation. They skilfully selected and modified the provision that they borrowed, helped by experts among their members and the advice given by ministries of the Union and Provincial governments.
- The values expressed in the Preamble are sovereignty, socialism, secularism, democracy, republican character, justice, liberty, equality, fraternity, human dignity and the unity and integrity of the nation.
- The word 'socialist' was added to the Preamble by the 42nd amendment act of 1976.
- Articles from 25 to 28 ensure freedom of religion to all its citizens.
- Every citizen of India is entitled to equality before law and equal protection of law. As a human being everybody has a dignified self. To ensure its full enjoyment inequality in all forms present in our social structure has been prohibited.
- To maintain the independence of the country intact and enduring, unity and integrity of the nation is very essential. Therefore, the stress has been given on the ideal of fraternity which would foster unity amongst the inhabitants.
- The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state.
- Fundamental Rights in the Indian Constitution guarantee that all Indian citizens have individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion and the right to constitutional remedies for the protection of civil rights.
- The Constitution of India prescribes the following six fundamental rights:
 - (i) Right to Equality
 - (ii) Right to Particular Freedom
 - (iii) Cultural and Educational Rights
 - (iv) Right to Freedom of Religion
 - (v) Right against Exploitation and
 - (vi) Right to Constitutional Remedies
- The Right to Property constituted a Fundamental Right under Article 32 before it was revoked by the Forty-fourth Amendment Act of 1978.
- The Fundamental Rights embodied in Part III of the Indian Constitution guarantee civil liberties common to liberal democracies. Article 19(1) (a) provides freedom of speech and expression.
- The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties.

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- It was during the 'Internal Emergency', declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The Committee suggested for inclusion of a chapter of fundamental duties, provision for imposition of appropriate penalty or punishment for non-compliance with or refusal to observe any of the duties and also recommended that payment of taxes should be considered as one of the fundamental duties.
- The Directive Principles of State Policy of the Constitution of India, constitute directions given to the Central and state governments for the establishment of a just society.
- The Directive Principles commit the State to raise the standard of living and improve public health, and organize agriculture and animal husbandry on modern and scientific lines.

2.6 KEY TERMS

- **Constitution:** A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.
- **Fundamental Duties:** The moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.
- **Fundamental Rights:** A generally regarded set of entitlements in the context of a legal system.
- **Preamble:** The introductory part of a statute or deed, stating its purpose, aims, and justification.
- **Habeas corpus:** It is a writ or legal action that requires a person under arrest to be brought before a judge or into court.
- **Mandamus:** It is a writ or order that is issued from a court of superior jurisdiction that commands an inferior tribunal, corporation, municipal corporation or individual to perform, or refrain from performing, a particular act, the performance or omission of which is required by law as an obligation.
- **Quo warranto:** It is a prerogative writ requiring the people to whom it is directed to show what authority they have for exercising some right or power they claim to hold.
- **Certiorari:** It is a writ from a higher court to a lower one, requesting a transcript of the proceedings of a case for review.

2.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The main proposal of the Mission's were (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give India dominion status – equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the provinces and Indian states; and (iv) any province or Indian state, which was not prepared to accept the Constitution would be free to retain its constitutional position existing

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- at that time and with such non-exceeding provinces, the British government could enter into separate constitutional arrangements.
2. The Interim Government of India formed on 2 September 1946.
 3. The issues that were taken up for discussion by the Constituent Assembly included the following:
 - Adult franchise
 - Jammu and Kashmir
 - Reservation for minorities
 - Link language
 - Fundamental rights
 - Secular state
 - Socialism
 - Village panchayat
 4. By declaring us as a sovereign entity, Preamble emphasizes complete political freedom. It implies that our state is internally powerful and externally free. She is free to determine for herself without any external interference. There is none within her to challenge her authority.
 5. The ideal of secularism in Indian context implies that our country is not guided by any religion or any religious considerations. However, our polity is not against religions. It allows all its citizens to profess, preach and practice any religion of their liking.
 6. Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided. Therefore, to give meaning to all the ideals like justice, liberty and equality our Constitution gives ample stress on fraternity.
 7. Right to Equality, Right to Particular Freedom, Cultural and Educational Rights, Right to Freedom of Religion, Right against Exploitation, Right to Constitutional Remedies.
 8. To support and guard the independence, harmony and integrity of India; To assess and conserve the rich heritage of our multifaceted culture.
 9. Justice, Liberty, Equality
 10. Put together, the Preamble to the Constitution and the Directive Principles of State Policy comprised the ideology of egalitarianism, that is, the rulers of Independent India Committee themselves to bring about political, economic and social equality and bring to an end the age-old sufferings of the people.

2.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. State any three salient features of the Constituent Assembly.
2. List the values embodied in the Constitution of India.
3. Write a note on the Cultural and Educational Rights provided by the Constitution of India.
4. Discuss briefly the Right to Constitutional Remedies available to Indian citizens.

Long-Answer Questions

1. What is the philosophy underlying the Indian Constitution?
2. Explain in detail any three Fundamental Rights specified in the Indian Constitution.
3. Examine the significance of Fundamental Duties.
4. Analyse the implementation of Directive Principles of State Policy in India.

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2.9 FURTHER READING

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UNIT 3 WORKING OF INDIAN FEDERALISM

NOTES

Structure

- 3.0 Introduction
- 3.1 Unit Objectives
- 3.2 Centre–State Relations
- 3.3 Inter-State Council
- 3.4 Summary
- 3.5 Key Terms
- 3.6 Answers to ‘Check Your Progress’
- 3.7 Questions and Exercises
- 3.8 Further Reading

3.0 INTRODUCTION

In this unit, you will learn how federalism works in India. Federalism stands for a union or association of states resulting in the formation of a composite state with a separate and distinct government at the Centre. The government at the Centre and the governments in the states share, on an agreed basis, the totality of governmental power. There is, however, no rigid formula for such sharing of power. Hence, the federal form of government is an elastic form of government depending on the manner in which power is shared between the Centre and the states. The basic objective of federalism, unity in diversity, devolution in authority and decentralization in administration, is clearly evident in every one of them.

As you have learned in the first unit, the Government of India Act, 1935, was the first legal document which envisaged the system of federal states under the ‘Crown’ uniting both the British India and the Indian states. But the proposal was never implemented. The Union Powers Committee formed by the Constituent Assembly under the Chairmanship of Pandit Jawaharlal Nehru, recommended a weak Centre since it had to function under the limitations of the Cabinet Mission Plan, though Pandit Nehru himself had always advocated for a great deal of unitary control in federal India. With the passing of the Indian Independence Act and the actual partition of the country, the complexion of the Constituent Assembly changed and the earlier compulsions that called for a federal India with a high degree of autonomy to the states no longer existed. There emerged, particularly in the wake of the events preceding the partition, then, a unanimous demand in the Constituent Assembly for a strong Centre.

The Constitution of India seeks and defines India to be ‘Union of States’ with a federal structure. Although the term ‘federal’ does not appear in the Constitution, it often arose in Constituent Assembly debates. The founding fathers based their logic on pragmatic considerations and wanted the Constitution to be federal if necessary but not necessarily federal. Indian federation, according to experts, approaches most closely to what has been called ‘co-operative federalism’. The Indian Constitution reflects a very complicated idea of a powerful federal union. It vests exclusive powers in terms of legislative initiative and executive controls in the Central Government. Exercising these can transform the polity. However, these powers are subject to

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different extents of federal agreement, with a constitutional device of checks and balances, and parliamentary accountability. Indian federalism gains prominence in terms of 'differential loadings' and wide-ranging arrangements of distribution of power. The Seventh Schedule to the Constitution categorizes and distributes competence. However, the States are treated on an egalitarian basis. Articles 370, 371, 371A-G further modify this generality in order to provide for special arrangements of power distribution between the Central Government and a particular category of States.

Article 263 of the Constitution of India provides for the establishment of an Inter-State Council. The genesis of the article can be traced directly to Section 135 of the Government of India Act, 1935 which provided for establishment of Inter-Provincial Council with duties identical with those of the Inter-State Council. As Article 263 makes it clear, the Inter-State Council is not a permanent constitutional body for coordination between the States of the Union. It can be established 'at any time' if it appears to the President that the public interests would be served by the establishment of such a Council. If any matter is sought up before the Council by the Central Government or by the Government of any State or Union territory, a formal reference shall be made to the Council, addressed to the Secretary of the Council, with a self-contained note setting out - the issue or issues involved and the reasons for making the reference, together with supporting documents, if any; and the constitutional and legal implications of the said issue or issues.

3.1 UNIT OBJECTIVES

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

- Discuss the various aspects of the Centre-State relations
- Describe the constitution and functions of the Inter-State Council

3.2 CENTRE-STATE RELATIONS

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

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

Centre-State Relations in India

A study of the Centre-State relations in the Indian Constitution shows that the Constitution-makers gave more powers to the Centre as compared to the state. The logic behind this was that a more potent federalism (i.e., more powerful states) would have weakened the feelings of national unity. The trauma of partition, the problem of

integration of princely states and the need for planned economic development for removing backwardness, poverty and food shortage prompted the Constitution-makers to establish a strong centre.

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

Legislative Relations

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

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

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

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

- (i) Under Article 249, if the Rajya Sabha passes a resolution, supported by at least two-thirds of its members, present and voting, declares a particular subject to be of ‘national interest’ the Parliament becomes competent to make law on the specified state subject, for a period of not more than one year at a time.
- (ii) Under Article 250, the Parliament has the power to make laws on state subjects for the whole or any part of the territory of India during the ‘operation of a proclamation of Emergency’.
- (iii) Under Article 251, the law passed by the Parliament under Articles 249 and 250 prevails in case of its inconsistency or repugnancy with the law made by a state legislature.
- (iv) Under Article 252, two or more states may request the Parliament to make laws for them with respect to any state matter. But such law(s) will be applicable to only those states who so desire. Subsequently, other states may also adopt that law by passing resolutions in their legislatures. Such an act can be amended or repealed by the Parliament only and not by the state legislature.

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The provisions of this Article have been used by the states to surrender their powers in favour of the Union, e.g., by the states of Andhra, Maharashtra, Orissa and Uttar Pradesh, authorizing the Parliament to enact laws for the control and regulation of prices.

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

Administrative Relations

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

- (i) According to Article 256, the executive power of every state is to be exercised in such a way as to ensure compliance with the laws made by Parliament.
- (ii) Under Article 257, the Union Executive is empowered to give such directions to a state as may appear to the Government of India to be necessary for the purpose. Not satisfied with the general power of the Union to give directions to the states, the Constitution goes a step further and calls upon every state not to impede or prejudice the executive power of the Union in the State. The Union's powers of giving directions include certain specific matters such as: (a) the construction and maintenance of means of communication which are of national or military importance, and (b) the protection of railways within the states.
- (iii) Article 258 empowers the Union government to entrust to the state, conditionally or unconditionally, any additional functions relating to any matter to which the executive power of the Union extends. In other words, the states can be asked to exercise the executive powers of the Union. In such a case, the Union shall pay the states officials extra costs which they incur in exercising these additional functions.
- (iv) The presence of all-India services like the Indian Administrative Service and the Indian Police Service, further makes the authority of the Central Government dominant over the states. The members of these all-India services are appointed by the President of India on the basis of a competitive examination held by the

Union Public Service Commission. These services serve both the Centre and the states. The creation of these services is not strictly federal, for the states have no say in this matter.

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- (v) Articles 352–360 contain the emergency provisions which empower the President in effect to suspend the Constitution and to take over the administration of a state or states of the Indian Union if he is satisfied that there is a threat to the security of the nation, or a breakdown in the constitutional machinery of a state, or a financial emergency.
- (vi) Governors to the states are appointed by the President on the recommendations of the Central Government.
- (vii) Article 339(2) expressly extends the executive power of the Union to give directions to a state with regard to the drawing up and execution of schemes specified in the direction, to be essential for the welfare of the scheduled tribes in the state.

Machinery for Inter-State Relations

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

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

Financial Relations

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

1. Taxing powers of the Centre and the states

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

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

- (a) Taxes levied by the Union but collected and appropriated by the State, e.g. stamp duties, duties of excise on medicinal and toilet preparations, etc.
- (b) Taxes levied and collected by the Centre and compulsorily distributed between the Union and the State, e.g., taxes on income other than the agriculture.
- (c) Taxes levied and collected by the Centre but assigned to the state, e.g., taxes on railway fares and freight, estate duties, etc.
- (d) Taxes levied and collected by the Centre may be distributed between the Union and the states, if Parliament by law so provides, e.g., Union excise duties, etc.
- (e) Taxes levied and collected and retained by the Centre, e.g., customs, corporation tax, surcharge on income-tax, etc.

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

2. Grants-in-aid

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

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

3. Consolidated fund

Under Article 266, a Consolidated Fund for the Central Government and a separate Consolidated Fund for each of the states have been created. These funds include revenue receipts, loans raised and money received in repayment of loans made by the government.

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

4. Contingency fund

Article 267 provides for the establishment of a Contingency fund of India, and similar contingency fund for each of the states, so that the advances may be made to the

Centre and the state respectively for meeting unforeseen expenditure, pending the legislative authorization.

5. Finance Commission of India

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

6. Planning Commission

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

7. National Development Council (NDC)

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

Areas of Centre–State Friction

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

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

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

1. Political dimension
2. Administrative dimension
3. Economic and financial dimension

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1. Political dimension

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

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

- (a) Identical, i.e., of the same party
- (b) Congenial, i.e., where ideological and/or interest gap is low.
- (c) Hostile, i.e., where the party in power at the state level is radically different in its ideological and political orientation, e.g., Congress and BJP.

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

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

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

(iii) **President's Rule (Article 356):** One of the most conspicuous and widely used instruments of Central power over the States is the provision for President's Rule under Article 356. This was meant as a 'safety valve' in the political system to prevent an authority vacuum in case of a breakdown of constitutional machinery in a particular state. However, in practice, this article has been so frequently used for purely partisan interests that it has become a poison for our political system.

President's rule can be imposed either on the recommendations of Governor or even without, that is, on the satisfaction of President (in other words, the Prime Minister) himself. During the period 1950–89, there were 79 presidential/Central interventions in the State. The bulk of these emergencies were declared

during the Congress rule under Indira Gandhi (48) and during the reign of the Janata Party (16). The dissolution of nine State Assemblies and proclamation of President's rule in 1977 as well as in 1980 was a political move and a blow to the federal democratic structure of the country.

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

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

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

2. Administrative dimensions

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

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

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

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

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

- (ii) **Bureaucracy:** Bureaucracy is another area of friction between the Central Government and the State. The points of issue are neutrality of services and formation of new all-India services. The states criticize the Centre for its discriminatory use of all-India services. The state governments do not have adequate control over these services as far as their developmental responsibilities are concerned. Bureaucrats posted at the State level look to the Centre for protection to the detriment of State's political authority. It is being alleged by

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many state governments that the bureaucrats, appointed by the Centre, do not show loyalty towards the implementation of state government's policies, if the political party at the Centre and the state are hostile to each other.

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

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

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

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

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

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

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

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

3. Economic and financial dimensions

The financial weakness of the states has been a major area of tension between the Centre and the states. From the state's point of view, the allocation of financial resources

between the Centre and the states is faulty. The state's resources in raising the finances are meager whereas they have been assigned a wide range of responsibilities of social welfare, education, and rural development. However, with the advent of the process of globalization in India, the states are now able to attract MNCs and private investors and are now able to generate funds for themselves. Earlier, on their own, the state could not take up any major project. Also, the Centre used to adopt discriminatory attitude based on political reasons in the autonomy allocation of grants-in-aid to the states.

The role of Planning Commission is also another controversial matter. The Planning Commission has been accused of political considerations in allocating developmental projects to the state. The poorer states like Bihar have always complained that they were not being given enough funds.

Demand for State Autonomy

From the above analysis, it becomes clear that consensus and cooperation, which are prerequisites for the smooth functioning of the Union-State relations, have been, time and again, eroded and replaced by a growing politics of confrontation. The states have been developing a feeling of deprivation on the ground that the Centre has denied them the due autonomy. From time to time, a number of Commissions have been appointed to look into Centre-State relations and to suggest reforms like the Administrative Reforms Commission (1967), Sarkaria Commission which submitted its report in 1988. However, the suggestions by these Commissions have not been implemented by the successive governments at the Centre. Therefore, the demand for more autonomy from the Centre has taken different forms like demand of the people of certain areas for secession from the Indian Union (Kashmir), demand of people of certain States for autonomy or more powers, demand of people of certain areas for separate statehood (Bodoland, Vidarbha, etc.), and demand of people of certain union territories for full-fledged statehood.

In conclusion, one can deduce that the tensions in the Centre-State relations are politically motivated. The best way to avoid Centre-State conflict is for the Centre to show imagination, understanding and a spirit of accommodation, and it should grant the states adequate finance without discrimination.

3.3 INTER-STATE COUNCIL

Article 263 of the Constitution of India provides for the establishment of an Inter-State Council. This is the only article of the sub-chapter 'Co-ordination between States' of Chapter II -Administrative Relations of Part XI of the Constitution - Relations between the Union and the States. The text of the article reads as follows:

'263. Provisions with respect to an inter-State Council - *If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of -*

- (a) inquiring into and advising upon disputes which may have arisen between States;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- (c) making recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect

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Check Your Progress

1. The Indian Constitution provides for an independent judiciary in the form of the _____ to reinforce the division of powers as and when it stands violated.
2. Taxes having an inter-state base are levied by the _____ and those with a local base are levied by the _____.
3. What is a Consolidated Fund?

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to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.'

The genesis of the article can be traced directly to Section 135 of the Govt. of India Act, 1935 provided for establishment of Inter-Provincial Council with duties identical with those of the Inter-State Council. At the time of framing of section 135 of the Government of India Act, 1935, it was felt that 'if departments or institutions of coordination and research are to be maintained at the Centre in such matters as Agriculture, Forestry, Irrigation, Education and Public Health and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of Provincial Governments in them must be expressed in some regular and recognized machinery of Inter-Governmental consultations.' It was also intended that the said Council should be set up as soon as the Provincial autonomy provisions of Government of India Act, 1935 came into operation.

In the Constituent Assembly debate held on 13 June 1949, the article on Inter-State Council was adopted without any debate.

Formations

As Article 263 makes it clear, the Inter-State Council is not a permanent constitutional body for coordination between the States of the Union. It can be established 'at any time' if it appears to the president that the public interests would be served by the establishment of such a Council.

The provision of Article 263 of the Constitution was invoked for the first time on 9 August 1952 when President by a notification established the Central Council of Health under the Chairmanship of the Union Minister of Health and Family Planning 'to consider and recommend broad lines of policy in regard to matters concerning health in all aspects'.

By similar notifications the President established the Central Council for Local Government and Urban Development on 6 September 1954 and four Regional Councils for Sales Tax and State Excise Duties on 1 February 1968.

However, the National Development Council was set up on 6 August 1952 by an executive order on the recommendation of the Planning Commission, as the Planning Commission itself was set up by an executive order of the government. Similarly, the National Integration Council was set up in 1962 without any course to Article 263 of the Constitution. The annual conferences of Chief Ministers, Finance Ministers, Labour Ministers, and Food Ministers have been taking place to discuss important issues of coordination between the Centre and the states. In fact, the issues of inter-state and Centre-state coordination and cooperation were being discussed in a multitude of meetings on specific themes and sectors in an ad hoc and fragmented manner.

The Administrative Reforms Commission (1969) felt the 'need for a single' standing body to which all issues of national importance can be referred and which can advise on them authoritatively after taking all aspects of the problem into account'. The Commission recommended the setting up of Inter-State Council under Article 263 (b) and (c) of the Constitution and felt that saddling the proposed Council with functions on inquiring and advising on disputes between States under article 263 (a) would prevent it from giving full attention to the various problems of national concern.

This view was endorsed by the Commission on Centre–State Relations (1988) which recommended that ‘the Council should be charged with duties in broad terms embracing the entire gamut of clauses (b) and (c) of article 263’.

Government accepted the recommendation of the Sarkaria Commission and notified the establishment of the Inter-State Council on 28 May 1990.

Notification

The Inter-State Council was established under Article 263 of the Constitution of India through a Presidential Order dated 28 May 1990.

The Council is a recommendatory body with the following duties: -

- (a) Investigating and discussing such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, as may be brought up before it;
- (b) Making recommendations upon any such subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and
- (c) Deliberating upon such other matters of general interest to the States as may be referred by the Chairman to the Council.

The Council shall consist of:

- (a) Prime Minister – Chairman
- (b) Chief Ministers of all States – Member
- (c) Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly – Member
- (d) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister – Member

The Presidential Order of 1990 has been amended twice vide Orders dated 19 July 1990 and 24 December 1996 providing for Governor of a State under President’s rule to attend the meeting of the Council and nomination by the Chairman of permanent invitees from amongst the other Union Ministers, respectively.

Procedure

In terms of clause 2(d) of the Inter-State Council Order of 28 May 1990, the Council has laid down, with the approval of the Central Government, the procedure to be observed by it in the conduct of its business. The Council has further adopted the guidelines to be followed for identifying and selecting issues to be brought up before it.

If any matter is sought up before the Council by the Central Government or by the Government of any State or Union territory, a formal reference shall be made to the Council, addressed to the Secretary of the Council, with a self-contained note setting out – the issue or issues involved and the reasons for making the reference, together with supporting documents, if any; and the constitutional and legal implications of the said issue or issues.

On receipt of the reference, the Secretariat of the Council shall examine it in all its aspects, inter-alia, with reference to the guidelines adopted by the Council and other relevant material. After reference has been examined, the Secretary of the Council

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shall submit the case to the Chairman with his recommendation for obtaining the orders of the Chairman as to whether the issue or issues raised therein should be included in the Agenda for the meeting of the Council.

It shall be open to the Secretariat to take up any proposal relating to a matter of general interest and submit the same to the Chairman, for his orders as to its inclusion in the agenda.

The meetings of the Council shall be held in Delhi or any other convenient place determined by the Chairman. Ten members including the Chairman shall form the quorum for a meeting of the Council.

The Secretary shall evolve a system of monitoring the action taken on the recommendations of the Council by the Central Government, the Government of any State or the Union territory concerned. He shall, at appropriate stages, cause information in this regard to be made available to the Council.

The meetings of the Council are held in camera. Therefore, the details of the agenda items and proceedings of the meetings cannot be shared in the public domain.

Meetings

The Inter-State Council has met for only ten times. The meetings of the Council are held in camera and therefore the details of the agenda items and the proceedings of the meetings cannot be shared in the public domain.

The **First Meeting** of the Inter-State Council was held in October 1990 to discuss the following agenda items:

1. Report of the Sarkaria Commission on Centre–State Relations
2. Levy of tax on inter-state consignment of goods
3. Transfer of additional excise duties from man-made fabrics to the textile fibres/ yarn stage
4. Setting up of special courts for speedy trial of economic offences and offences under the Narcotic Drugs and Psychotropic Substances Act.

The **Second Meeting** of the Council held on 15th October, 1996 discussed the following agenda items:

1. Consideration of 179 recommendations of Sarkaria Commission on which there was a consensus in the Sub-committee of the Inter-State Council.
2. Methodology for examination of 44 recommendations of Sarkaria Commission on Centre–State financial relations, 11 recommendations on which there was no consensus in the Sub-committee and one recommendation relating to Centre–State relations in the sphere of education.
3. Methodology for examination of the recommendations of Sarkaria Commission relating to emergency provisions including Article 356.
4. Appointment of High-Level Committee.

The **Third Meeting** of the Council held on 17th July, 1997 discussed the following agenda items:

1. Action taken on recommendations adopted at the Second meeting of the Inter-State Council held on 15.10.96.

2. Alternative Scheme of Devolution of Share in Central Taxes to States
3. Amendments to Article 356
4. Chapter X of Sarkaria Commission on Centre-State Financial Relations

The **Fourth Meeting** of the Inter-State Council held on 28th November, 1997 discussed the following agenda items:

1. Chapter X of Sarkaria Commission Report on 'Centre-State Financial Relations'
2. Chapter IV of Sarkaria Commission Report on 'Role of Governor'
3. Chapter XVII of Sarkaria Commission Report on 'Inter-State River Water Disputes'
4. Chapter XI of Sarkaria Commission Report on 'Economic & Social Planning'
5. Chapter XV of Sarkaria Commission Report on 'Forests'
6. Action taken on decisions taken in the Third meeting of the Inter-State Council held on 17th July, 1997.

The **Fifth Meeting** of the Inter-State Council held on 22nd January 1999 discussed the following agenda items:

1. Emergency Provisions (Articles 355 and 356 of the Constitution of India)
2. Guidelines for Conduct of Business of the Inter-State Council
3. Economic & Social Planning
4. Implementation Report on the recommendations endorsed by the Inter-State Council

The **Sixth Meeting** of the Inter-State Council held on 20th May, 2000 discussed the following agenda items:

1. Chapter III of Sarkaria Commission Report on 'Administrative Relations'
2. Chapter V of Sarkaria Commission Report on 'Reservation of Bills'
3. Chapter X of Sarkaria Commission Report on 'Financial Relations'
4. Chapter XII of Sarkaria Commission Report on 'Industries'
5. Chapter XIV of Sarkaria Commission Report on 'Agriculture'
6. Chapter XVI of Sarkaria Commission Report on 'Food and Civil Supplies'
7. Chapter XVIII of Sarkaria Commission Report on 'Trade, Commerce and Intercourse within the Territory of India'
8. Action Taken Report on the issues decided and raised/discussed in the Fifth meeting of the Inter-State Council held on the 22nd January, 1999
9. Implementation Report on the decisions taken by Inter-State Council on the recommendations of the Sarkaria Commission
10. Removal of Restrictions on Movement of Essential Commodities
11. Post-retirement benefits to Governors

The **Seventh Meeting** of the Inter-State Council held on 16th November, 2001 discussed the following agenda items:

1. Chapter II of Sarkaria Commission Report on 'Legislative Relations'
2. Chapter IV of Sarkaria Commission Report on 'Role of the Governor'

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3. Chapter VIII of Sarkaria Commission Report on 'All India Services'
4. Chapter IX of Sarkaria Commission Report on 'Inter Governmental Council'
5. Chapter XIII of Sarkaria Commission Report on 'Mines & Minerals'
6. Chapter XIX of Sarkaria Commission Report on 'Mass Media'
7. Chapter XX of Sarkaria Commission Report on 'Miscellaneous matters' Language, UTs and High Court Judges'
8. Implementation Report on the decisions taken by Inter-State Council in its earlier meetings

The **Eighth Meeting** of the Inter-State Council held on 27th and 28th August, 2003 discussed the following agenda items:

1. Administrative Relations
2. Emergency Provisions
3. Deployment of Union Armed Forces
4. Contract Labour and Contract Appointments
5. Implementation Report on the decisions taken by Inter-State Council on the recommendations of Sarkaria Commission
6. Good Governance - An Action Plan

The **Ninth Meeting** of the Inter-State Council held on 28th June, 2005 discussed the following agenda items:

1. Blue Print of Action Plan on Good Governance
2. Disaster Management - Preparedness of States to Cope With Disaster
3. Implementation Report on the decisions taken by Inter-State Council on the recommendations of Sarkaria Commission

The **Tenth Meeting** of the Inter-State Council held on 9th December, 2006 discussed the following agenda items:

1. Atrocities on Scheduled Castes and Scheduled Tribes and status of implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The Council-Secretariat closely monitors the implementation of the recommendations of the Council with the concerned. In the ten meetings of the Inter-State Council held so far, the Council has taken final view on all the 247 recommendations made by Sarkaria Commission on center-state relations. Out of these 247 recommendations, 65 recommendations have not been accepted by the Council, 179 recommendations have been implemented and 3 recommendations are at various stages of implementation.

Check Your Progress

4. Article 263 of the Constitution of India provides for the establishment of an _____.
5. The Inter-State Council is a permanent constitutional body for coordination between the States of the Union. (True/False)

ACTIVITY

Collect newspaper clippings of events, that you feel, have threatened the national integration of India.

DID YOU KNOW

India's model of Centre-State relations is asymmetric. Different states have different relationships with the Constitution and the Centre. But asymmetric federalism works. So overall it is a positive model. The problem is it leads to policy paralysis, which can only be handled by effective linkage mechanisms.

What needs to be done:

- Centre should allocate more revenue to the states.
- Innovations at the state level should be shared among others to aid development.
- Centre-state institutions like National Development Council should be given more enforcement powers.

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3.4 SUMMARY

In this unit, you have learnt that:

- Though India is a federation, the word 'federal' does not appear in its Constitution. The Indian Constitution describes India to be a 'Union of States'. According to Birch, 'A federal system of government is one in which there is a division of powers between one general and several regional authorities, each of which, in its own sphere, is to coordinate with the others, and each of which acts directly on the people through its own administrative agencies'.
- A study of the Centre-state relations in the Indian Constitution shows that the Constitution-makers gave more powers to the Centre as compared to the state. The logic behind this was that a more potent federalism (i.e., more powerful states) would have weakened the feelings of national unity.
- Articles 245–254 deal with the distribution of legislative powers between the Union and the states. Articles 245–246 provide that the Union Parliament shall have exclusive jurisdiction to make laws for the whole or any part of the territory of India, with regard to all matters included in the Union List. The subjects in the Union List are of national importance and include among its ninety-seven items—defence, foreign affairs, currency.
- In the field of administration, the Centre has still more powers than it possesses in the field of legislation. Normally, the administrative powers of the Centre correspond to the matters over which it has power to make law. This is provided for under the Articles 73 and 162.
- The emphasis in the Constitution is on administrative cooperation and hence provisions are made for it.
- The financial relations between the Centre and the states are regulated according to the provisions of Part XII of the Constitution. The Union and the State Lists also refer to the financial jurisdiction of the Centre and the state. The financial relations are, however, not a matter of concurrent jurisdiction.

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- The major conflict areas between the Union and the states can be broadly classified into three categories of issues, though no rigid compartmentalization is possible, viz. 1. Political dimension 2. Administrative dimension 3. Economic and financial dimension
- Article 263 of the Constitution of India provides for the establishment of an Inter-State Council. This is the only article of the sub-chapter 'Co-ordination between States' of Chapter II -Administrative Relations of Part XI of the Constitution - Relations between the Union and the States.

3.5 KEY TERMS

- **Autonomy:** The right or condition of self-government.
- **Bureaucracy:** A system of government in which most of the important decisions are made by state officials rather than by elected representatives.
- **Dispute:** A disagreement.

3.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Supreme Court of India
2. Centre, states
3. A Consolidated Fund contains all revenue receipts, loans raised and money received in repayment of loans made by the government.
4. Inter-State Council
5. False

3.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the political dimensions of the Centre–state frictions?
2. Write a short note on the financial relations between the Centre and the states.
3. What is the National Development Council (NDC) associated with?
4. Write a note on Article 263 of the Indian Constitution.

Long-Answer Questions

1. Discuss the Centre-state relations from the legislative perspective.
2. Examine the administrative relations between the Centre and state governments.
3. Draw a distinction between the financial powers of the Centre and states.
4. Describe the composition and functions of the Inter-State Council.
5. Explain the procedure to be observed by the Inter-State Council to conduct its business.

3.8 FURTHER READING

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3.2 FURTHER READING

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UNIT 4 POSITION OF THE EXECUTIVES

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Structure

- 4.0 Introduction
- 4.1 Unit Objectives
- 4.2 Union Executive
- 4.3 State Executive
- 4.4 Summary
- 4.5 Key Terms
- 4.6 Answers to 'Check Your Progress'
- 4.7 Questions and Exercises
- 4.8 Further Reading

4.0 INTRODUCTION

In this unit, you will learn about the position of the executive branch of the Government of India, which comprises the Union executive and the state executive. The Union executive consists of the President, the Vice-President, and the Council of Ministers with the Prime Minister as the head to aid and advice the President. The President is elected by members of an electoral college consisting of elected members of both Houses of Parliament and Legislative Assemblies of the states in accordance with the system of proportional representation, by means of single transferable vote. Executive power of the Union is vested in the President, and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Vice-President is elected by members of an electoral college consisting of members of both Houses of Parliament in accordance with the system of proportional representation by means of single transferable vote. There is a Council of Ministers headed by the Prime Minister to aid and advise the President in exercise of his functions. The Prime Minister is appointed by the President, who also appoints other ministers on the advice of Prime Minister. The Council is collectively responsible to the Lok Sabha. It is the duty of the Prime Minister to communicate to the President all decisions of Council of Ministers relating to administration of affairs of the Union and proposals for legislation and information relating to them.

In India, every State has a government to run its own administration. The States have their own executive. The state executive consists of the Governor and the Council of Ministers headed by the Chief Minister. The Constitution provides for the post of the Governor as the Head of a State in India. He is appointed by the President of India. He is both the constitutional Head of a State and an agent of the Central Government in a State. The Governor is appointed for a term of five years. But before the expiry of his full term, the President can dismiss him from office. The Governor may also resign on his own. His term of office may be extended and he may be transferred to another to another State. However, the State Government cannot remove the Governor from his post. To be the Governor, a person must be a citizen of India and should complete 35 years of age. And he cannot be a member of the Parliament or the State legislature. He should not hold any office of profit. The Governor appoints the State Council of Ministers. He appoints the leader of the majority party in the Legislative Assembly as the Chief Minister. On the advice of the Chief Minister, he appoints the other Ministers of the Council of Ministers.

4.1 UNIT OBJECTIVES

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

- Discuss the powers and functions of the Union Executive
 - Describe the powers and functions of the State Executive
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4.2 UNION EXECUTIVE

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

The Constitution of India provides for various conditions of his office. However, any Indian with thirty-five years of age, eligible to be elected to the Lok Sabha, is entitled to contest for the office of the President; in reality, only persons with either exceptional qualities and stature or having the blessings of the leader of majority party in parliament have been elected to the President's office. The elections to the office of the President are indirectly held through an electoral college consisting of the elected members of both the houses of parliament and the elected members of the state legislature assemblies. The President is elected for a term of five years with an entitlement for re-election. However, with the exception of Dr Rajendra Prasad, no President has been re-elected to office. The President may be removed from office by the process of impeachment, which is a cumbersome one, on the charges of violation of the constitution. Though the various aspects of the office of the President have contributed to his figurehead and ceremonial position, the constitution has also ensured him a stable tenure so that he can function without fear or favour in the exceptional cases when he may be required to take a position that is unpleasant to the party in power.

Executive Powers

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

The Executive powers of the President are explained as follows:

- The President is invested with powers of making and unmaking executive appointments. In the first place, he appoints the Prime Minister and on the

latter's advice, the other members of the Union Council of Ministers, to aid and advise him in the exercise of his functions. The President is also authorized to receive and accept their resignations and also to dismiss them individually or collectively as they all hold office during his pleasure.

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

Legislative Powers

The legislative powers of the President are discussed as follows:

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- The President is an integral part of the parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as the Rajya Sabha and the Lok Sabha. So, a bill before becoming an Act must not only be approved by the two houses of Parliament but must also be assented to by the President.
- The President has the power to nominate a maximum of twelve members to the Rajya Sabha on ground that they possess special knowledge or practical experience in the fields of art, science, literature and social service. Article 331 empowers him to nominate not more than two members belonging to the Anglo-Indian community to Lok Sabha. The President appoints the acting Speaker of the Lok Sabha in case both, the Speaker and Deputy Speaker are not available. Similarly, he appoints the acting-Chairman of the Rajya Sabha in case both the Chairman and Deputy Chairman are not available.
- The President administers the oath of office to the members of both the houses of Parliament.
- He/she decides the final authority, after consultations with the Election Commission, as to whether any Member of Parliament (MP) has become ineligible to hold his office as an MP.
- The President has the power to specify the period within which a person who has been elected a member both to parliament and to a state legislature must resign from either of his seats.
- He or she has the power to summon, from time to time, each House of the Parliament in such a manner that six months do not intervene in between the sessions. He or she has the power to prorogue either or both the houses. He is also empowered to summon the joint sitting of the two Houses of parliament in case of deadlocks over non-money bills passed by one House and either rejected or delayed for more than 6 months by the other.
- The President inaugurates the first session of parliament after each general election to the Lok Sabha, and delivers his inaugural address to the two Houses sitting together in a joint session.
- Article 123 authorizes the President to promulgate ordinances during the recess of parliament.
- All bills passed by the Parliament are sent to him for his consideration. He may assent to the bill. And only upon his assent, the bill becomes a law. If, however, he wants the Parliament to modify or amend the bill, he is free to return it for their reconsideration, with or without his recommendations.
- He also has the power to recommend to the parliament to formulate laws to form new states or to alter areas, boundaries, or names of the existing states.
- The President has been authorized by Article 370 to extend the various provisions of the Constitution to the states of Jammu and Kashmir, with the concurrence of its government.
- He/she has also been authorized to consider and approve state laws and ordinances which under various provisions of this Constitution are reserved by

state Governors for his assent. Finally, he has the power to make regulations for the peace, progress, and good government of all the Union Territories, except for Chandigarh and Delhi.

Judicial Powers

Following are the judicial powers of the president:

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

Financial Powers

Following are the financial powers of the President of India:

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

Military Powers

The major military powers of the President are:

- Article 53 makes the President the Supreme Commander of the defence forces of the Union. The exercise of the military power by him is not discretionary. It

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- Last, due to the lack of time-frame, the President must assent to a bill, he may, in his discretion, use the pocket veto to kill a bill.

Does the President have a power to dismiss the Prime Minister on the charges of corruption? These issues have arisen out of the functioning of the Indian Constitution during the last 60 years in the circumstances which either the fathers of the Constitution could not visualize or ignored to provide for the evolution of suitable conventions on the issue. The solution lies not only in evolving healthy conventions on many of the contentions but also in impressing upon the incumbents of the two August constitutional offices, through the people in general and the legal fraternity in particular, to develop and sustain cordial ties between them, for, as Paul R. Brass suggests, the President can wisely function effectively only if he has the confidence of the Prime Minister and not vice versa as the President is by convention reduced to a mere figurehead while the ministry is the real executive.

Vice President of India

The Constitution of India specifies that there shall be a Vice President who shall also be the Ex-officio Chairman of the Council of State and that he shall not hold any other office of profit. However, the Constitution also states that whenever there occurs any vacancy in the office of the President by reason of his death, resignation, removal or otherwise, the Vice President shall act as President until a new President is elected. The Vice President may also be called upon to discharge the functions of the President when he, owing to absence, illness or any other cause, is unable to perform the functions of his office. The Vice President, when he acts as President or discharges his functions, shall be entitled to such emoluments, allowances and privileges as may be determined by law. But during any period when the Vice President acts as President or discharges the function of the President he shall not perform the duties of the office of the Chairman of the Council of States, nor shall he be entitled to any salary or allowance payable to the Chairman of the Council of States.

The method of the election of the Vice President is different from that of the President. He is elected by the members of both the Houses of Parliament, assembled at a joint meeting. The election is done by the method of proportional representation with single transferable vote. The normal tenure of office of the Vice President is five years from the date he enters upon his office. He may, however, resign before the expiry of the term by writing to the President. He may also be removed from the office by a resolution of the House and agreed to, by the House of the People. There is no provision for the impeachment of the Vice President. The Vice President continues to hold office even though his term has expired until his successor enters upon his office.

Constitutional Provisions and Framework: Prime Minister and the Council of Ministers

The Constitution declares that there should be the Prime Minister and a council of ministers to assist the President in carrying out the business of running the country. Let us discuss these offices.

Prime Minister

In the parliamentary system of the Government in India, the Prime Minister (PM) is the real executive in contrast to the ceremonial position of the President of India. The

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

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

A convention has always been followed in India that the PM needs to be a member of the Lok Sabha. However, Dr Manmohan Singh remains an exception, when as a member of the Rajya Sabha, he was elected as the Prime Minister in the United Progressive Alliance (UPA) government. Noteworthy is the fact that the President is free to appoint any person as PM if he is of the opinion that the person to be appointed is likely to enjoy the confidence of the Lok Sabha. He may appoint the PM from amongst the members of either House of the Parliament or even from amongst the outsiders. In case an outsider is appointed as the PM or as a minister, he must become a member of either House of Parliament within six months of his appointment. The continuation of the PM in office depends upon his majority support in the Lok Sabha, though the Constitution provides that the Ministers hold office during the pleasure of the President. However, the pleasure of the President is, in fact, the pleasure of the majority support of the Lok Sabha, to whom the government is collectively responsible and whose vote of no-confidence leads to the withdrawal of the pleasure of the President, resulting in the ouster of the government.

Role, Power and Functions of the Prime Minister

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

The PM's role spans many diverse areas. These include:

- The power to advise the President about the appointment of other ministers to constitute the Union Council of Ministers. He has a free choice in selecting his colleagues. The only thing which he has to keep in mind, while preparing the list of ministers, is that he has given representation to various groups in his party and that ministers are drawn from different states.
- The political life and death of ministers also depend upon the PM. He assigns to them various ministries and departments. He may change their portfolios or may even advise the President to dismiss them.

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- The PM influences to a great extent every other appointment made by the President. The President appoints Chief Justices and Judges of the Supreme Court and the High Courts, Comptroller and Auditor-General, Attorney General, Election Commissioners, Chiefs of Staff of Army, Navy and Air Force, State Governors, Ambassadors and High Commissioners and many other State officers. All these appointments are essentially the choice of the PM.
- The Parliament is summoned and prorogued by the President on the advice of the PM. The PM also advises the President about the dissolution of the Lok Sabha.
- The Prime Minister is the channel of communication between the President and the Council of Ministers.
- As Chairman of the Union Council of Ministers, the Prime Minister summons meetings of the Council of Ministers and presides over them.
- The Prime Minister, being the Chairman of the Council of Ministers, not only supervises the departments under his personal charge but also coordinates and supervises the work of all other departments and ministers.
- The Council of Ministers is collectively responsible to the Lok Sabha. This they can do only if their leader shields and defends them and their actions both in and out of Parliament. They must speak with one voice.
- Important policy matters are initiated by the PM in both the Houses of Parliament. It is he who gives his opening speech on important policy matters and informs the Houses of the purpose the government wants to achieve.
- It has been the prerogative of the PM to take a direct and keen interest in India's international relations.
- The PM, being the leader of the majority party, has to take the whole party into confidence, so that he continues to command the confidence and support of his party.

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

Council of Ministers

The essence of the parliamentary form of government lies in having a collective body of executive in the form of the Council of Ministers, headed by the PM and bearing their collective responsibility to the Parliament. In fact, these small islands of power handle the complex responsibilities of the government efficiently and effectively. The speed and expertise that they offer to the PM are commendable. In India, the Council of Ministers consists of three types of ministers:

- Cabinet ministers
- Ministers of states
- Deputy ministers

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The ministers who hold the rank of the Cabinet ministers form the Cabinet. The Cabinet has gradually come to acquire a very powerful position with the responsibility of taking all important decisions. But with coalitions, the PM may create a coterie of three or four ministers to replace the cabinet; a new phenomenon called 'Inner Cabinet' or 'Kitchen Cabinet' comes into force. Sometimes, even cabinet committees and groups are created to smoothen the functioning of the government.

Functions

- The most important function of the Council of Ministers is the formulation of the executive policy in terms of which the administration of the country is to be carried out.
- The Council of Ministers, coordinates the policies, programmes and activities of various ministries and departments. It also supervises the work of various ministries through the Cabinet Secretariat.
- The Council of Ministers is called to make or approve nominations for various political, ambassadorial or judicial appointments.
- It approves the national awards, which the President confers for meritorious service in different fields of social activity.
- It examines the reports of various ministries and departments, commissions and committees before they are presented to the Parliament for consideration and approval.
- The Council of Ministers also determines legislative and financial policies.
- In the field of international relations also, the Council of Ministers plays an important role. It considers and approves the drafts of India's international treaties and agreements, the questions of ambassadorial appointments and those of the recognition of foreign states and foreign governments.

Council of Ministers and Parliament

The Constitution of India makes the Council of Ministers collectively responsible to the Lok Sabha. Accordingly, the Council of Ministers can remain in office till it has the confidence of Lok Sabha, or else it can be voted out, by a vote of no-confidence rejection of budgetary demands or defeat on any major matter. Clear majority of one political party and discipline ensures that the government shall always be able to exercise control over the Parliament. Thus, the Council of Ministers consisting of the top leadership of the party and assured support of the majority in the Parliament becomes the seat of authority and source of all decisions. The Cabinet has to work within the framework of public opinion, pressure of interest groups, limitations of party programme and promises, media coverage, pressures of opposition, nursing of majority in the House, and also the commitment to its own deeds, misdeeds, errors or omissions. As Subhash C. Kashyap points out that the Indian political system represents a real fusion of the highest executive and legislative authorities. The relationship between the Executive and the Parliament is the most intimate and ideally does not

admit any antagonism or dichotomy. The two are not visualized as competing centres of power, but as inseparable partners or co-partners in the business of government and the service of people. Still there is a clear distinction between the functions of the Executive and the functions of the Parliament. The latter's duty is to legislate, advice, criticize and ventilate public grievances, whereas the former governs on behalf of the Parliament.

Political Trends

Presidents have made a number of interferences in government and law-making processes, which have instituted and challenged some conventions concerning Presidential intervention. Some of the more notable are as follows:

1. In 1979, Prime Minister Charan Singh did not have a Parliamentary majority. He reacted to this by not advising the President to call the Parliament. Ever since, Presidents have been more hard-working in directing incoming Prime Ministers to summon the Parliament and prove their majority within deadlines (2–3 weeks). In the provisional period, the Prime Ministers are normally restrained from making policy resolutions.
2. The Constitution offers the President the power to return a bill unsigned; However, it limits the power to mail it back only once for review. If the Parliament mails back the bill with or without alterations, the President is duty bound to sign it. Ever since the nineties, Parliamentary elections have usually not led to a single party or group of parties having a distinctive majority. In such cases, Presidents have employed their judgment and directed Prime Ministerial candidates to ascertain their credentials before being invited to make the government. Characteristically, the candidates have been asked to produce letters from different party leaders, with the signatures of all the MPs who are pledging support to their entry to make the government. This is an addition to the condition that a Prime Minister proves that he or she has the support of the Lok Sabha (by a vote on the floor of the House) within weeks of being sworn in to office.
3. Since the Constitution does not specify any time limit in which the President is to proclaim his or her assent or refusal, the President could work out this veto by not taking any action for an indistinct time; but if the ministry has a powerful backing in Parliament, it would not be achievable for him or her to do so even though it can be done. President Giani Zail Singh used Pocket Veto in 1986 for the Postal Bill.
4. In the late nineties, President K. R. Narayanan came up with the significant practice of explaining to the nation (by means of Rashtrapati Bhavan communiqués) the thought that resulted in a variety of decisions he took while exercising his discretionary powers; this has resulted in honesty and transparency in the working of the President.
5. In mid-2006, President A.P.J. Abdul Kalam returned a contentious bill regarding enlarging the range of the offices of profit, which banned a person from being a Member of Parliament. The opposition comprising the National Democratic Alliance (NDA) supported the move. The United Progressive Alliance (UPA) decided to send the bill back to the President without any alterations, and after thirty days President Kalam gave the assent.

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Check Your Progress

1. The _____ and _____ are formal executive heads of the union and the _____ is its chairman.
2. Mention one financial power of the President of India.
3. How are the Council of Ministers classified?

4.3 STATE EXECUTIVE

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

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

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

Meaning of constitutional head and real executive

The Governor acts as the nominal head, whereas the real power lies in the hand of the Chief Ministers of the states and the Chief Minister's Council of Ministers. Though the Constitution has given many legislative, executive and judicial powers to the Governor of a state, the latter cannot exercise these powers independently; he/she always has to act on the advice of the Chief Minister's Council of Ministers. This is why the Governor is merely the constitutional head and the Council of Ministers headed by the Chief Minister is the real executive.

Office of the Governor

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

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

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

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

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

- (a) He must be a citizen of India
- (b) He must have completed the age of thirty-five

- (c) He should not be a Member of Parliament or State Legislature
- (d) He shall not hold any office of profit

Powers and Functions of the Governor

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

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- (a) **Executive powers:** The Governor appoints the Chief Minister and his council of ministers. However, following the Parliamentary form of government norms, they are responsible to the State Assembly and remain in power till they enjoy the confidence of the State Assembly. The Governor also appoints the Advocate General and the members of the State Police Service Commission.

All the executive actions of the state are carried out in the name of the Governor. It is the duty of the Chief Minister to communicate to the Governor all the decisions of the council of ministers relating to the administration of the state and proposals for legislation.

- (b) **Legislative powers:** The State Legislature consists of the Governor and the State Legislative Assembly. Thus, the Governor is an integral part of the legislature and enjoys a variety of powers. Governor may summon, address, prorogue and dissolve the legislature. When a bill is passed by the legislature, it has to be presented to the Governor and the Governor shall declare either that he assents to the bill or that he withholds assent or that he reserves the bill for the consideration of the President. Article 213 empowers the Governor to promulgate ordinances during the recess of the legislature. He also has the power of causing to be laid before the state legislature the annual financial statement and recommending money bills.
- (c) **Judicial powers:** The Governor of a state has the power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
- (d) **Discretionary powers:** Apart from the normal functions which the Governor exercises as a constitutional head, he exercises certain discretionary powers. Some of them have been expressly conferred on him, while some others flow by necessary implication.

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

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

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

Position and Role of the Governor

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

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

- (i) As the Constitutional head of the state
- (ii) As the agent of the Centre

Governor as the Head of the State

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

Governor as an Agent of the Centre

According to K.M. Munshi, 'Governor is the watch-dog of Constitutional propriety and the link which binds the State to the Centre, thus securing the Constitutional unity of India'. The Governor performs the following functions as the agent of the Centre in the states:

- (a) The Union government is responsible for good governance in all the states. In case of the constitutional breakdown of state machinery, the Governor may recommend President's rule or emergency in the state under Article 356.
- (b) The Governor sends his report regarding the affairs of the state to the President, periodically.
- (c) The Centre has the power to issue directives to the states and it is the duty of the Governor to see that such directives are followed by the state government.

- (d) The Governor of a state can reserve a bill passed by the State Legislature for the consideration of the President. Moreover, certain types of bills must be reserved by the Governor for the President's consideration.

Constitutional Provisions: Chief Minister and the Council of Ministers

Taking the analogy of the parliamentary system of governance at the state level, the Constitution provides for the office of the Chief Minister to be the real executive of the state. He symbolizes ruling power structure and wields more authority than anybody else in the state.

However, the philosophy underlying the creation of a democratic set-up in the state under the Indian Constitution appears to be guided by the compulsions of the unity and consistency in the governance of the country as a whole. It does not ensure to each state a fair degree of functional autonomy in the true spirit of the federal structure of the Indian polity. Consequently, the position of the Chief Minister is not of a democratic ruler with wide-ranging powers and functions. Rather, it appears to be that of a local ruler with many fetters put on his functional autonomy. These fetters are in the form of the vast discretionary powers afforded to the centrally nominated Governor, by using which he can impair the effectiveness of the Chief Minister as the real ruler of the state elected by the people.

Appointment of the Chief Minister

The Chief Minister is appointed by the Governor, the executive head of the state, who invites the leader of the majority party in the Legislative Assembly to form the government.

However, in practice, the appointment of the Chief Ministers in the states has become more of a game to be played by the Central government through the office of the Governor and other political manoeuvring than the simple constitutional proposition that the Chief Minister shall be appointed by state governments. This is more prominent in the states where none of the parties are able to secure a majority support in the Legislative Assembly. Such situations are exploited by the Centre in order to either keep the functioning of the state government in accordance with its needs and aspirations, or to destabilize the government to install a new puppet government in the state.

The Constitution mentions nothing about the qualification of the Chief Minister. Under the Constitution, all that is required is that such a person is a citizen of India and possesses such qualifications, as are required for becoming a member of the Legislative Assembly (MLA). Such a person could be a member of either house of the legislature or even an outsider. Although constitutionally, a non-legislator does not stand barred from becoming a minister or a Chief Minister, he must, however, become a member of the legislature within six months, failing which he is liable to forfeit his office.

What holds good in the appointment of the Chief Minister also holds true in regard to his removal from office. The Constitution provides that the Chief Minister holds office during the pleasure of the Governor. In practice, the pleasure of the Governor becomes the majority support in the Legislative Assembly under Article 164 (2) of the Constitution. However, what happens in practice is that the removal of the Chief Minister is rarely the decision of the Governor. Acting as an agent of the Centre, the Governor 'removes' the Chief Minister at the behest of the Central government.

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Consequently, Article 356 of the Constitution (President's rule in the states), the instrumentality through which the duly elected governments in the states are generally ousted, has become one of the most abhorred articles of the Constitution by the protagonists of the state autonomy in the country.

Powers and Functions of the Chief Minister

The Chief Minister, being the real executive head of the state, enjoys several powers and functions. They are:

1. He is the working head of the state government, and as such, he advises the Governor in matters relating to the selection of his ministers, change in their portfolios and their removal from his government.
2. He presides over the meetings of his council of ministers and sees to it that the principle of collective responsibility is maintained. He may, thus, advise a minister to resign from his post or may advise the Governor to dismiss a minister, in case he differs from the policy of the Cabinet.
3. He communicates to the Governor such information relating to the administration of the state of affairs and proposals of legislation as he may call for.
4. He furnishes to the Governor such information relating to the administration of the state.
5. He places a matter for the consideration of the council of ministers where the Governor requires him to have the decision of the government. He, thus, acts as the sole channel of communication between his ministers and the Governor.
6. Likewise, the Chief Minister is the sole channel of communication between his ministers and the legislature. All bills and resolutions that are moved in the legislature must have his prior approval. Criticism of his government is answered by him.
7. He may resign any time and then advise the Governor to summon such and such person for the installation of another ministry or to dissolve the House, and thereby place the state under President's rule.
8. Though in theory, all appointments are made by the Governor, in practice, the power of patronage vests with the Chief Minister. He is consulted about the appointment of judges of the state high court. No posting and transfer can take place in the state without his approval. He is consulted in the appointment of State Advocate General and the members of State Public Service Commission.

The Chief Minister and the Legislature

In a parliamentary form of government, the executive headed by Chief Minister, and the legislature are supposed to work in close cooperation with one another. He defines government policies and programmes in the House and faces the opposition. For all practical purposes, the agenda of the House is decided by him. But with respect to the legislature, his most important power is that of the dissolution of the House. At any time, the Chief Minister can advise the Governor that the Vidhan Sabha be dissolved, though the latter is not bound by that. But usually, such an advice is accepted.

The Chief Minister and the Governor

The founding fathers of the Constitution had laid great stress on the need for a harmonious relationship between the Governor and his council of ministers headed

by the Chief Minister. This was the idea behind abandoning the proposal for elected Governors and providing for their nomination by the President.

Thus, the Chief Minister has the obligation to facilitate the exercise of the Governor's right to be consulted for necessary information about the affairs of the administration of the state. The Governor cannot effectively discharge his multi-faceted role as a friend, philosopher and guide to the Council of ministers, as a sentinel of the Constitution and as a live link with the Union.

However, there have been times when the Governor and the Chief Minister had tensions between them. A few years ago, when Digvijay Singh was the Chief Minister of Madhya Pradesh, Bhai Mahavir was the Governor of the State. The state witnessed cold war between the Governor and the Chief Minister. The Governor used to directly summon senior government officials to the Raj Bhawan and issued verbal orders. Digvijay Singh viewed this as an affront to his authority and believed that requests from the Governor should be routed through the state government.

Position of the Chief Minister

The position of a Chief Minister in the state is akin to that of the Prime Minister at the central level, at least in terms of the broad scheme of parliamentary system of governance if not in terms of the substantive holding of the power in ultimate analysis.

To begin with, the Chief Minister has a relatively free hand in deciding the shape and size of his government. However, if the Chief Minister belongs to a national party or heads a coalition, his hands become tied even in using his prerogative of selecting his own ministers and allocating portfolios to them as he has to either consult the party high command or take the prior approval of the coalition partners before announcing the names and ministries of various ministers. Chief ministers having a regional base and comfortable majority in the State Legislatures are in a better and safer position. Still all chief ministers have to ensure that all social segments of society are represented in the ministries; also, there has to be regionally balanced distribution of the ministries, in addition to having capable people running the vital departments like Home, Finance, Education and Defense.

The position of the Chief Minister is pivotal as he has unhindered power to reshuffle his council of ministers.

The relationship of the Chief Minister with the MLAs of the Legislative Assembly depends on two factors: the standing of the Chief Minister in front of the MLAs and the attitude of the former towards the latter. If the Chief Minister does not command a comfortable majority in the Assembly, his position becomes quite precarious in front of the MLAs and he is in a vulnerable position. In substance, a democratic rather than an authoritarian attitude of the Chief Minister towards the MLAs and the legislature itself needs to be the norm of the effective and all-embracing functioning of the Chief Minister.

Since the Prime Minister is the real custodian of the executive power of the Central Government, a regular and harmonious contact between him and the Chief Minister goes a long way in ensuring the trouble-free conduct of relations between the state and Central governments.

The fundamental source of the Chief Minister's prime position in the planning process emanates from his association with the Planning Commission and the National Development Council (NDC), the apex bodies of the planning system in India. Strictly,

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though the Chief Ministers are not a part of the Planning Commission, their participation in the formulation of the Five Year Plans is ensured through the mechanism of the NDC. The NDC consists of the Prime Minister, some key Union ministers and chief ministers of all states, and executive heads of the Union Territories. The chief ministers also remain in touch with the Planning Commission in order to ensure smooth flow of funds for the implementation of several centrally sponsored developmental schemes in the state.

From the above discussion, it is clear that the Chief Minister of a state is vested with many powers, but his real position depends on his personality, political experience, administrative capability, position in the party organization at the state level, backing and equation with the Central leadership, and when he enjoys the support of a single majority party or of a coalition government.

Council of Ministers

Following the model of the parliamentary government, the real government of the state consists of the council of ministers headed by the Chief Minister. In theory, the council of ministers and the Chief Minister exist to aid and advise the Governor. However, in practice, the Governor has to act on the advice of the council of ministers.

The council of ministers is the chief executive body. The quality of the state administration is largely conditioned by the leadership and the direction is provided by the ministers. In short, extraordinary political power is vested in this small group of persons.

Organization

The Governor appoints the Chief Minister and on the advice of the Chief Minister, he appoints the other ministers. However, as mentioned previously, the Chief Minister is not as free to select his team as the convention would have us believe.

The size of the state council of ministers was not previously specified in the Constitution. Thus, the chief ministers were prone to have an unwieldy council of ministers in order to satisfy all the factions contending for power in the state government. But with the passage of the Ninety-First Constitution Amendment Act, 2003, the size of the ministries is limited to only 15 per cent of the total membership of the State Legislative Assembly. Remarkable improvement has been brought about with regard to the frivolous elements finding place among the council of ministers.

Working of the Council of Ministers

The council of ministers is collectively responsible to the Legislative Assembly. This means that every member of the council of ministers accepts responsibility for every decision of the Cabinet. If a minister is unable to accept responsibility, the only alternative left for him is to resign, as there is collective responsibility.

The minister is the political head of the department, whose administrative head is a secretary, who is a career civil servant. Ordinarily, matters pertaining to a department are dealt with by the minister-in-charge. But all important cases are required to be brought before the Cabinet for direct discussion.

Political Trends

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

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

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The Governor's role has been controversial in various respects:

(i) Appointing a Chief Minister in case no party gets a clear majority:

Though the appointment of the Chief Minister, in general, is decided by the party in majority in the Assembly, in certain cases it had become controversial. In March 1982, Haryana Governor, G.D. Tapase, asked Devi Lal, leader of the BJP-Lok Dal, to present before him all the legislators who stood for the alliance. However, the Governor invited Bhajan Lal, leader of the Congress (I) Legislature Party, to form the government. Although Bhajan Lal was sworn in as the Chief Minister of Haryana, he did not claim a majority support in the House at the time of swearing-in, and was therefore given a month's time to prove majority in the assembly, which he did prove. Appointments of Jayalalitha as the Chief Minister of Tamil Nadu by Fatima Bibi in 2001 (despite the former's involvement in various corruption cases) and Nitish Kumar as the Chief Minister of Bihar by Sunder Singh Bhandari in 2000 are some such examples.

In the Assembly election held in Bihar in February 2000, the Rashtriya Janata Dal (RJD), headed by former Chief Minister Laloo Prasad Yadav, emerged as the single largest party, with 123 seats. However, the elections led to a hung Assembly. Being the largest party, it was widely expected that RJD would be invited first to form the government. Curiously, and without proffering any reasons for his decision, the Governor, Sunder Singh Bhandari, invited Nitish Kumar, who represented NDA, to form a government and prove majority in the assembly within ten days. The Governor's action came in for strident criticism because it was very clear that the alliance did not have the required numbers in the Assembly. It was only at the behest of NDA (which was in power at the Centre), the Governor acted as the agent of the Centre.

(ii) Deciding the fate of Chief Minister in case of intra-party defections:

On many occasions, governors have dismissed chief ministers when the State Legislature should have decided the matter. Many a times, the state governments were dismissed when several intra-party defections had taken place and the ruling party was prepared to prove its majority on the floor of the House. But before it could do so, the Governor had given the orders for the dissolution of the State Legislature.

In 1997, Romesh Bhandari, the Governor of Uttar Pradesh, dismissed the Kalyan Singh led BJP (Bharatiya Janata Party) government when the

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Uttar Pradesh Loktantrik Congress (UPLC) withdrew support to the government. Immediately after the dismissal, Bhandari, instead of leaving the fate of the government to the Legislature, swore UPLC leader, Jagadambika Pal, as the new Chief Minister of the state. The Allahabad High Court held the Governor's actions as wrong, as Kalyan Singh should have been given the chance to prove his majority on the floor of the House and not accepted UPLC's claim at face value.

- (iii) **Advising the President for proclamation of emergency under Article 356:** The Governor can advise the President to impose emergency (under Article 356) in case there is a breakdown of the state constitutional machinery in the state. In the past, the Governors of different states dismissed the state governments and imposed emergency due to partisan reasons. This discretionary role of the Governor in dismissing the governments and that of imposition of President's rule became very controversial. The Supreme Court, which till 1993 considered it purely a political matter, in its verdict in March 1994, held the dismissal of governments and imposition of President's rule in Nagaland (1988), Karnataka (1989) and Meghalaya (1991) as unconstitutional. In *S.A. Bommai and others vs. the Union of India*, the Supreme Court tried to give some guidelines so that the Governor's discretionary power of imposing emergency under Article 356 is not misused.

However, in 2005, the use of Article 356 became a centre of debate. During February 2005 elections, no party could get majority in the Bihar Assembly. In such a situation, Governor Buta Singh recommended President's rule to the Central government. His recommendation was accepted by the UPA (United Progressive Alliance) government and was further approved by the President. However, instead of being dissolved, the Assembly was kept under suspended animation, obviously hoping that some leader could be in a position to stake claim to form a government. Thus, the possibility of change in the loyalties of members was accepted as legitimate. Later, when challenged, the Supreme Court invalidated the imposition of President's rule and ordered for fresh elections that were held in October–November 2005.

- (iv) **Using discretionary powers in day-to-day affairs:** Apart from appointing, toppling or dismissing ministries, the Governor has also been interfering in the state government's affairs in the name of discretionary powers.
- (v) **Sending reports to the Central government:** Even the role of the Governors while sending reports to the Central government had also, sometimes, invoked controversy. Governor B.N. Nehru's transfer from Jammu and Kashmir to Gujarat and S.S. Barnala's transfer from Tamil Nadu to Bihar, because of refusal to cooperate with the Centre to topple Farooq Abdullah's government and Karunanidhi's government, respectively, were examples of such controversies.
- (vi) **Reserving a bill for the President's assent:** The power of the Governor to reserve a bill, passed by the State Legislature and against the advice of the state ministry, for the President's assent is yet another issue of contention between the Centre and the states. The Sarkaria Commission found that during the period from 1977 to November 1985, 1130 state

bills were reserved for the consideration of the President. Out of these, the President had given assent to 1039 bills. Opposition-ruled states have raised their complaints against the misuse of Articles 200 and 201, which empowers the Governor to reserve the bill for Presidential assent. As part of their reactions in front of the Sarkaria Commission, states like West Bengal had even asked for these articles to be deleted from the Constitution.

Thus, the Governors, while working as agents of the Centre, no doubt tarnish the image of the federal principle and convert the office into that of a party functionary to destroy not only the federal structure but also the constitutional intent. Unfortunately, this trend continues and consequently remains a major irritant in the Union-State relations.

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ACTIVITY

Prepare a list of Prime Ministers who have held position till date in India.

DID YOU KNOW

Intra-party differences a bugbear for Sadananda

The Hindu, 5 February 2012

Karnataka Chief Minister D.V. Sadananda Gowda has completed six months in office. He was sworn-in as the head of the government on 4 August 2011, and by all accounts, intra-party differences in the state unit of the Bharatiya Janata Party have prevented him from sitting firmly in the saddle.

The national leadership of the BJP is clear that there will be no change of leadership at the present juncture, thus hinting that Mr Sadananda Gowda will continue as Chief Minister for another sixteen months—the end of term of the 13th Legislative Assembly. This assurance has, however, not really helped the incumbent Chief Minister, given the nature of the divisions within the national leadership of the party and rival camps here making the best use of it. Having a firm control over party legislators is also another important matter for a Chief Minister, and it has not been easy for Mr Sadananda Gowda to master this technique.

Yeddyurappa camp

It was in the simmering heat of politics in the state in August 2011 that Mr Sadananda Gowda won an election within the BJP legislature party, amply supported by then outgoing Chief Minister B.S. Yeddyurappa. Ironically, it is this camp which is now stated to be breathing down his neck. He was the dark horse to take charge of the all-important position in the state, and despite the passage of six months, his problems are far from over.

On the contrary, it is expected to aggravate, with the Yeddyurappa camp keen on striking a bargain for the all-important position for its leader.

Interestingly, Governor H.R. Bhardwaj, who was firm that Mr Yeddyurappa should go (ample evidence for the same are his recommendations to the

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Union Government in October 2010 and mid-2011) has been appreciative of the efforts of Mr Sadananda Gowda to restore a semblance of an administration in the State, notwithstanding the differences over the appointment of a new Lokayukta.

Both the Governor and the Chief Minister have stood their ground over the appointment of the ombudsman, with the Karnataka Lokayukta Act of 1984 coming into play on the powers of the Government and that of the Governor.

Fighting a nexus

Mr Sadananda Gowda has been spending long hours in galvanizing the administration, but without much success given the nexus between the bureaucrats and the ruling political leaders of the day. Akin to their political masters, bureaucrats too are divided, with one section reportedly working to the detriment of the interests of the state. It is a known fact that only a strong political head of a government can have a commanding control over the administration.

Little changes noticed

Incidentally, Mr Sadananda Gowda has been more assertive over the last two months particularly after his election to the Legislative Council, as envisaged under Article 164 of the Constitution, since he was not a member of either House of the state legislature when he was sworn-in as Chief Minister.

Eyes on budget

All eyes are now on the presentation of the state budget. The contents of the financial document will indicate the manner in which the government will move ahead in the Legislative Assembly elections.

Source: Adapted from <http://www.thehindu.com/news/states/karnataka/article2862658.ece>

(Accessed on 07 February 2012)

4.4 SUMMARY

In this unit, you have learnt that:

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

Check Your Progress

4. What are the two tiers of government in India?
5. What are the two forms of executives of the state governments?
6. Who is the nominal head of state governments?

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- Being the chief executive of the Indian union, the executive powers of the central government have been vested in the President, to be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution (Article 53). His position is such that every significant institution and functionary is either directly or indirectly connected to him.
- The President is an integral part of the parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as the Rajya Sabha and the Lok Sabha. So, a bill before becoming an Act must not only be approved by the two houses of Parliament but must also be assented to by the President.
- The President appoints the Chief Justice and other judges of the Supreme Court of India in consultation with the former. He or she may dismiss the judges if and only if the two Houses of Parliament pass resolutions to that effect by two-thirds majority of the members present.
- The President has control over the finance of the nation. It is the President who causes the national budget to be laid before each House of Parliament.
- The Constitution of India specifies that there shall be a Vice President, who shall also be the Ex-officio Chairman of the Council of State and that he shall not hold any other office of profit. However, the Constitution also states that whenever there occurs any vacancy in the office of the President by reason of his death, resignation, removal or otherwise, the Vice President shall act as President until a new President is elected.
- In the parliamentary system of the Government in India, the Prime Minister (PM) is the real executive in contrast to the ceremonial position of the President of India. The office of the PM is a prominent one as it has attained immense power and authority in the Indian political system.
- In accordance with the federal characteristics, the Constitution of India envisages two tiers of government—one at the level of the Union and the other at the level of the states. Part IV of the Constitution of India lays down the structure of the state governments and stipulates a parliamentary form of government like that of the Centre.
- According to Article 153 of the Constitution, each state in India has a Governor and the executive power of the state is vested in him. He is appointed by the President of India for a term of five years and holds office during the pleasure of the President (Article 156). This means that a Governor can be removed by the President at any time even before the expiry of the term.
- The Chief Minister is appointed by the Governor, the executive head of the state, who invites the leader of the majority party in the Legislative Assembly to form the government.

4.5 KEY TERMS

- **Diplomatic:** Of or concerning the profession, activity, or skill of managing international relations.
- **Executive:** Having the power to put plans, actions, or laws into effect.

- **Parliamentary:** Relating to, enacted by, or suitable for a parliament.
- **Union government:** Central government also known as a national government.

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4.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. President, Vice-President, Prime Minister
2. The President causes the national budget to be laid before each House Of Parliament.
3. Cabinet ministers, Ministers of State, Deputy ministers
4. Union government, State government
5. Constitutional Head and Real Executive
6. Governor

4.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a note on the legislative powers of the President.
2. What are the emergency powers of the President?
3. Discuss briefly how the Vice President of India is elected.
4. What are the judicial powers of the Governor?
5. State the executive functions of the Chief Minister of a state.

Long-Answer Questions

1. Discuss in detail the executive powers of the President.
2. Explain the judicial functions of the Indian President.
3. Discuss the role, power and functions of the Prime Minister.
4. Examine the 'powers and functions of the Governor'.
5. Critically evaluate the powers and functions of the Chief Minister.

4.8 FURTHER READING

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UNIT 5 ELECTION COMMISSION AND ELECTORAL REFORMS

NOTES

Structure

- 5.0 Introduction
- 5.1 Unit Objectives
- 5.2 Electoral Reforms
- 5.3 Election Commission of India
- 5.4 Summary
- 5.5 Key Terms
- 5.6 Answers to 'Check Your Progress'
- 5.7 Questions and Exercises
- 5.8 Further Reading

5.0 INTRODUCTION

In this unit, you will learn about the Election Commission (EC) of India and electoral reforms in the country. Election at regular intervals is a striking aspect of a democratic polity. Elections form the main ingredient of democracy. People's attitudes, values and beliefs towards their political environment gain recognition as a result. People elect representatives of a government that is empowered with the constitutional right to govern its subjects. Elections are the central democratic procedure through which leaders are selected. People receive the opportunity to express their belief in the political system or government over time and change when required.

The Election Commission of India is an independent constitutional body created by the Constitution of India under Article 324. Clause (1) of Article 324 has vested the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President of India in the Election Commission. Under Clause (2) of Article 324, the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

India's electoral system is constrained by a number of factors, thus encouraging anti-social elements to creep into the electoral conflict. The anomalies in the operations of the electoral system came up, for the first time, in the fifth general elections (1971) followed by successive elections, especially during the 1980s onwards. Often, the Election Commission has expressed its zeal to eliminate obstacles to ensure free and fair polls, thus doing away with corruption. Its recommendations continuously nudged the government about the essentiality of altering the existing laws to control and do away with malpractices that come in the way of the electoral procedure. Electoral reforms have been engaging the attention of the Parliament, the Government, the press and also the EC for a long time.

5.1 UNIT OBJECTIVES

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

- Examine the various electoral reforms that have taken in India
- Discuss the appointment, role and significance of the Election Commission of India

5.2 ELECTORAL REFORMS

In Indian democracy, the Parliament has made a law to ensure free and fair elections and a very comprehensive system of elections. The experience of last fourteen general elections has shown the merits and demerits of the system to the people. Minor changes have since been made in the system. But still our electoral process is beset with many evils and some of them can be easily identified. These are:

- The high expenditure in elections, incurred both by the government on organizing them and, more particularly, by the parties and the candidates on fighting them. Barring a few rich individuals, nobody can finance an election from his own resources. Because of this, the political parties and their candidates have increasingly relied on business sources. The business contributions are mostly in cash and from unaccounted money.
- Even more than the money power factor which vitiates the elections, is the muscle power acting in-aid of the candidates belonging to dominant castes and communities in constituencies. With the aggravation of caste and communal conflict, the eclipse of idealism and ideology in public life, the evil of booth capturing and rigging has virtually made a mockery of free and fair election. The evil practice which started in Bihar has gradually spread to other parts of the country.
- It has also been observed that due to a large number of candidates, the winning candidate very often wins by minority votes. The percentage of votes polled by political parties also does not correspond to their percentage of seats. The majority party generally wins with minority votes.
- The dependency of the Election Commission on the Central and State governments for the conduct of the polls is another defect in the existing electoral system. It has been noticed that many presiding officers at the polling booth have been caught stamping the ballot paper illegally.
- Candidates with criminal records are also contesting elections and get elected by using arms. For example, around 100 MPs in the 14th Lok Sabha have criminal charges against them.

Indeed, the battles of ballots have been turned into the battles of bullets. On the election days booths are captured, polling agents are attacked and bombs are thrown to prevent weaker sections from casting their votes.

In the last few years, the following Electoral Reforms have been introduced in India:

- Lowering of voting age from 21 to 18 years under 61st Amendment Act 1988 (Article 326).
- Under the Representation of People's Act which was amended in 1988, a new Section 13 CC was inserted, which provides that officers and staff engaged in

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- preparation, revision and of electoral roles for elections shall be deemed to be on deputation of Election Commission.
- Number of electors who are required to sign as proposers in nomination papers for elections to Council of States and State Legislative Councils has been increased to 10 per cent of the electors of the constituencies.
 - The representation of the People's Act 1951 was amended to facilitate the use of electronic voting machines in elections.
 - Section 58 A has been inserted in the Representation of People's Act, 1951 by Act I of 1989 providing for adjournment of poll or counter mending of elections because of booth capturing.
 - Any conviction under Section 2 or Section 3 of the prevention of insult to National Honour Act, 1971 shall hereafter entail disqualifications for contesting elections to Parliament and State Legislature for a period of six years from the date of such conviction.
 - The amount of security deposit which a candidate at an election to the House of the People or a State Legislative Assembly has to make has been enhanced as a measure to check the multiplicity of non-serious candidates. A candidate is not eligible to contest elections for more than two Parliamentary and Assembly constituencies at a General election or at the by-elections which are held simultaneously.
 - The names of the candidates listed for the elections in the ballot paper will now appear separately in the following order:
 - o Candidates of recognized political parties
 - o Candidates of registered-unrecognized political parties
 - o Other independent candidates
 - No elections will be countermanded on the death of the contesting candidate. If the candidate was from recognized national or State party, the party will be given an option to nominate another candidate within seven days of the issue of a notice to that effect to the party concerned by the Election Commission.
 - There is prohibition of going armed to or near a polling station under the Arms Act, 1959. It is a cognizable offence punishable with imprisonment up to two years or with fine or with both.
 - All registered electors who are employed in any business, trade, industrial undertaking, or any other establishment shall be entitled to a paid holiday on the day of poll.
 - No liquor and other intoxicants can be sold, given or distributed at any shop, eating place, hotel or any other palace, whether public or private, within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of the poll.
 - The Commission took a historic decision for compulsory identification of voters with reference to some documentary evidence and directed that voters should produce their electoral photo identity card at the polling station. This was introduced in the general election of Haryana Legislative Assembly in February 2000.

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- Section 29 A of the People's Act 1951 provides for registration of political parties by the Election Commission. A party registered with the Election Commission may be granted recognition as a National or State party on the fulfilment of certain criteria based on its poll performance.
- An agreement was done between the Election Commission and the Union of India regarding enforcement of Model Code of Conduct on the following issues: that the Model Code of Conduct may come into force from the date of announcement of election and not from the date of notification thereof; that the announcement of elections would be made ordinarily not more than three weeks prior to the date of notification.
- Facility to opt to vote through proxy was adopted under the Election Law Act 2003. According to this Act, those service voters belonging to the armed forces and members belonging to a force to which provisions of the Army Act applies have been provided the facility to opt to vote through proxy.
- The Parliament on 1 January 2004 enacted the Delimitation Act 2003 whereby Section 4 of the Principal Act was amended to provide that the Delimitation will be held on the basis of the 2001 census figures.
- The Parliament on 28 August 2003 enacted the Representation of the People's Act, 2003 whereby an open ballot system was introduced during elections to the Council of State.

Other Suggested Reforms

- The official tours by the ministers should be suspended in the period between the announcement of elections and the declaration of results.
- Transfer and posting of officials on the large scale on the eve of the elections should be avoided.
- The electoral rolls should be prepared and published fairly in advance, to help scrutinize the names of the voters, and for suggesting addition or deletion.
- Voters should be issued identity cards, with photographs and address to ensure genuine identity.
- Revision of poll petition rules to overcome existing loopholes regarding corrupt practices.
- Candidates, political parties and groups, seeking votes on the basis of religion, caste, tribe or local feelings, or those using money and muscle power to entice intimidate voters should be disqualified and debarred from contesting election for a term of two.
- All parties and candidates contesting elections should affirm their adherence to the principles, values and goals inscribed in the Preamble to the Constitution, as basic credo of the Indian political system, which they are called upon to uphold and to defend.

5.3 ELECTION COMMISSION OF INDIA

India is a Socialist, Secular, Democratic Republic and the largest democracy in the World. The modern Indian nation state came into existence on 15th of August 1947.

Since then free and fair elections have been held at regular intervals as per the principles enshrined in the Constitution, Electoral Laws and System.

The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.

Election Commission of India is a permanent Constitutional Body. The Election Commission was established in accordance with the Constitution on 25th January 1950. The Commission celebrated its Golden Jubilee in 2001.

Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioner and two Election Commissioners.

For the first time two additional Commissioners were appointed on 16th October 1989 but they had a very short tenure till 1st January 1990. Later, on 1st October 1993 two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making power by majority vote.

Appointment and Tenure of Commissioners

The President appoints Chief Election Commissioner and Election Commissioners. They have tenure of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

Transaction of Business

The Commission transacts its business by holding regular meetings and also by circulation of papers. All Election Commissioners have equal say in the decision making of the Commission. The Commission, from time to time, delegates some of its executive functions to its officers in its Secretariat.

The Setup

The Commission has a separate Secretariat at New Delhi, consisting of about 300 officials, in a hierarchical set up.

Two or three Deputy Election Commissioners and Director Generals who are the senior most officers in the Secretariat assist the Commission. They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure. Directors, Principal Secretaries, and Secretaries, Under Secretaries and Deputy Directors support the Deputy Election Commissioners and Director Generals in turn. There is functional and territorial distribution of work in the Commission. The work is organised in Divisions, Branches and sections; each of the last mentioned units is in charge of a Section Officer. The main functional divisions are Planning, Judicial, Administration, Systematic Voters' Education and Electoral Participation, SVEEP, Information Systems, Media and Secretariat Co-ordination. The territorial work is distributed among separate units responsible for different Zones into which the 35 constituent States and Union Territories of the country are grouped for convenience of management.

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At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government. He is, in most of the States, a full time officer and has a small team of supporting staff.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of junior functionaries, perform election work. They all perform their functions relating to elections in addition to their other responsibilities. During election time, however, they are available to the Commission, more or less, on a full time basis.

The gigantic task force for conducting a countrywide general election consists of nearly five million polling personnel and civil police forces. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and half to two months.

Budget and Expenditure

The Secretariat of the Commission has an independent budget, which is finalised directly in consultation between the Commission and the Finance Ministry of the Union Government. The latter generally accepts the recommendations of the Commission for its budgets. The major expenditure on actual conduct of elections is, however, reflected in the budgets of the concerned constituent units of the Union - States and Union Territories. If elections are being held only for the Parliament, the expenditure is borne entirely by the Union Government while for the elections being held only for the State Legislature, the expenditure is borne entirely by the concerned State. In case of simultaneous elections to the Parliament and State Legislature, the expenditure is shared equally between the Union and the State Governments. For Capital equipment, expenditure related to preparation for electoral rolls and the scheme for Electors' Identity Cards too, the expenditure is shared equally.

Executive Interference Barred

In the performance of its functions, Election Commission is insulated from executive interference. It is the Commission which decides the election schedules for the conduct of elections, whether general elections or bye-elections. Again, it is the Commission which decides on the location polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.

Political Parties and the Commission

Political parties are registered with the Election Commission under the law. The Commission ensures inner party democracy in their functioning by insisting upon them to hold their organizational elections at periodic intervals. Political Parties so registered with it are granted recognition at the State and National levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it. The Commission, as a part of its quasi-judicial jurisdiction, also settles disputes between the splinter groups of such recognised parties.

Election Commission ensures a level playing field for the political parties in election fray, through strict observance by them of a Model Code of Conduct evolved with the consensus of political parties.

The Commission holds periodical consultations with the political parties on matters connected with the conduct of elections; compliance of Model Code of Conduct and new measures proposed to be introduced by the Commission on election related matters.

Advisory Jurisdiction and Quasi-Judicial Functions

Under the Constitution, the Commission also has advisory jurisdiction in the matter of post election disqualification of sitting members of Parliament and State Legislatures. Further, the cases of persons found guilty of corrupt practices at elections which come before the Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period. The opinion of the Commission in all such matters is binding on the President or, as the case may be, the Governor to whom such opinion is tendered.

The Commission has the power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

Judicial Review

The decisions of the Commission can be challenged in the High Court and the Supreme Court of the India by appropriate petitions. By long standing convention and several judicial pronouncements, once the actual process of elections has started, the judiciary does not intervene in the actual conduct of the polls. Once the polls are completed and result declared, the Commission cannot review any result on its own. This can only be reviewed through the process of an election petition, which can be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

Media Policy

The Commission has a comprehensive policy for the media. It holds regular briefings for the mass media-print and electronic, on a regular basis, at close intervals during the election period and on specific occasions as necessary on other occasions. The representatives of the media are also provided facilities to report on actual conduct of poll and counting. They are allowed entry into polling stations and counting centres on the basis of authority letters issued by the Commission. They include members of both international and national media. The Commission also publishes statistical reports and other documents which are available in the public domain. The library of the Commission is available for research and study to members of the academic fraternity; media representatives and anybody else interested.

The Commission has, in co-operation with the state owned media - Doordarshan and All India Radio, taken up a major campaign for awareness of voters. The Prasar Bharti Corporation which manages the national Radio and Television networks, has brought out several innovative and effective short clips for this purpose.

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Voter Education

Voters' Participation in the democratic and electoral processes is integral to the successful running of any democracy and the very basis of wholesome democratic elections. Recognising this, Election Commission of India, in 2009, formally adopted Voter Education and Electoral participation as an integral part of its election management.

International Co-operation

India is a founding member of the International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, Sweden. In the recent past, the Commission has expanded international contacts by way of sharing of experience and expertise in the areas of Electoral Management and Administration, Electoral Laws and Reforms. Election Officials from the national electoral bodies and other delegates from the several countries - Russia, Sri Lanka, Nepal, Indonesia, South Africa, Bangladesh, Thailand, Nigeria, Namibia, Bhutan, Australia, the United States and Afghanistan etc. have visited the Commission for a better understanding of the Indian Electoral Process. The Commission has also provided experts and observers for elections to other countries in co-operation with the United Nations and the Commonwealth Secretariat.

New Initiatives

The Commission has taken several new initiatives in the recent past. Notable among these are, a scheme for use of State owned Electronic Media for broadcast/teletcast by Political parties, checking criminalisation of politics, computerisation of electoral rolls, providing electors with Identity Cards, simplifying the procedure for maintenance of accounts and filling of the same by candidates and a variety of measures for strict compliance of Model Code of Conduct, for providing a level playing field to contestants during the elections.

Check Your Progress

1. Mention one evil existing in the electoral process.
2. Mention one electoral reform that has been introduced in India in the last few years.
3. In India, the elections are conducted by an independent constitutional organ called the _____.
4. The establishment of the Election Commission has been provided for in _____ of the Constitution of India.

ACTIVITY

What electoral reforms would you suggest as a citizen of India? Prepare a report.

DID YOU KNOW

- 'Ballot' and 'bullet' are both derived from words for 'balls'. The Greeks dropped a white ball when they favoured a candidate, and a black when they were against. The term 'blackballed' comes from this too!
- Ever heard of 1033 candidates for a single seat? Believe it or not, it did happen for the Modaurichi assembly constituency in Tamil Nadu in 1996. The ballot paper was in the form of a booklet!
- Designed by Electronics Corporation of India Ltd. and Bharat Electronics Ltd, Electronic Voting Machines (EVMs) were first used in Kerala. The highest number of candidates that an electronic voting machine can support is 64. If the number exceeds this, then manual ballot is used!

5.4 SUMMARY

In this unit, you have learnt that:

- In Indian democracy, the Parliament has made a law to ensure free and fair elections and a very comprehensive system of elections. The experience of last fourteen general elections has shown the merits and demerits of the system to the people. Minor changes have since been made in the system. But still our electoral process is beset with many evils and some of them can be easily identified.
- The Parliament on 1 January 2004 enacted the Delimitation Act 2003 whereby Section 4 of the Principal Act was amended to provide that the Delimitation will be held on the basis of the 2001 census figures.
- The Parliament on 28 August 2003 enacted the Representation of the People's Act, 2003 whereby an open ballot system was introduced during elections to the Council of State.
- Candidates, political parties and groups, seeking votes on the basis of religion, caste, tribe or local feelings, or those using money and muscle power to entice intimidate voters should be disqualified and debarred from contesting election for a term of two.
- All parties and candidates contesting elections should affirm their adherence to the principles, values and goals inscribed in the Preamble to the Constitution, as basic credo of the Indian political system, which they are called upon to uphold and to defend.
- In India, the elections are conducted by an independent constitutional organ called the Election Commission. The establishment of the Election Commission has been clearly provided for in Article 324 of the Constitution of India. The Commission consists of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time, fix.
- The Chief Election Commissioner is assisted by two Election Commissioners.
- The President may also appoint, after consultation with the Election Commission, such regional commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by Article 324 of the Constitution.

5.5 KEY TERMS

- **Commission:** The authority to perform a task or certain duties.
- **Election:** A formal and organized process of electing or being elected, esp. of members of a political body.
- **Reform:** Make changes in (something, typically a social, political, or economic institution or practice) in order to improve it.

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5.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Candidates with criminal records are contesting elections and getting elected by using arms.
2. Lowering of the voting age from 21 years to 18 years under the 61st Amendment Act 1988 (Article 326).
3. Election Commission
4. Article 324

5.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the evils in the electoral process in India.
2. Explain how the names of candidates for the election appear on the ballot paper.
3. List the reforms that have been made in the election process in India.
4. Identify the reforms suggested in the election process of India.

Long-Answer Questions

1. Discuss in detail election reforms in the context of the negative features of the electoral process in India.
2. Describe the constitution, powers and functions of the Election Commission of India.

5.8 FURTHER READING

- Fadia, B.L.; *Indian Government and Politics*, Sahitya Bhawan Publication, Agra, 2009.
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- Kashyap, S.; *Our Constitution: An Introduction to India's Constitution and Constitutional Law*, National Book Trust: New Delhi, 1964.
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is regulated according to the law passed by Parliament. In the exercise of his military powers, the President nominates and appoints the Chiefs of the Staff of Army, Navy and Air Force. He is the Chairman of the Defence Council which, besides him, consists of the Prime Minister, the Defence Minister, and the three Chiefs of Staff.

- With the concurrence of the Parliament, the President can declare war and conclude treaties of peace with foreign states.

Diplomatic Powers

The President is invested with the following diplomatic powers.

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

Emergency Powers

The emergency powers of the President include the following:

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

Position of the President

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

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



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