

# APPOLO STUDY CENTRE

(INDIAN POLITY)  
DEC MONTHLY TEST - 2 (TEST 13)  
Fundamental Rights

Fundamental Rights		
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6<sup>th</sup> term I  
Unit 2 - Achieving Equality

- The society that we live in comprises people from various social groups who are different in many ways. Since we believe in 'Unity in Diversity', we should have been living peacefully with one another irrespective of those differences. Often, we see that diversity is not accepted, and people harbour attitudes of hostility towards those who are 'different' from them. They form opinions about the other groups and this often leads to tension in the society. Such 'opinions' are often 'prejudiced'.

### 1. Prejudice

- Prejudice means to judge other people in a negative or inferior manner, without knowing much about them. It happens when people have false belief and ideas.

Prejudice -----► Pre + Judge

- The word 'prejudice' refers to prejudgement. Prejudices can be based on many things like people's religious beliefs, the region they come from, the colour of their skin, their accent or the clothes they wear. The types of prejudice are gender prejudice, racial prejudice, class prejudice, disability prejudice and so on.
- For example, urban people are more civilised than rural people in attitudes and behaviour, is one such prejudice.

### Causes for Prejudice

Some common social factors that contributes to the rise of prejudice are

1. Socialization
2. Conforming behaviours
3. Economic benefits
4. Authoritarian personality
5. Ethno-centrism
6. Group closure
7. Conflicts

### 2. Stereotypes

- When prejudice gets stronger, it develops into a stereotype. Stereotype is a false view or idea about something. For example, girls are not good at sports. Stereotype is learned at a very early age, and children grow to have very strong ideas or opinions about things, groups or ideologies. As children grow up, the lines of like and hate for other things, people, cultures, beliefs, languages become sharper.

### Example

- Ragu was hit in his eye with a soft ball and to everyone's surprise, he started to cry. The others started to laugh at him; Mani felt sad for him but started laughing along with others. Now we understand that when we fix people in our image, we create a stereotype. In the above example, we have a general opinion that girls cry and boys don't cry. When Ragu cried out of pain, others laughed at him.
- Gender-based stereotypes are often portrayed in films, advertisements and TV serials. Almost all the advertisements related to detergents, washing machines, dishwashers and others show a woman as the main lead or user of that product. On the other hand, all the stunts shown in a bike advertisement is performed by ferocious looking men.

### 3. Inequality and Discrimination

- Inequality means difference in treatment. The different forms of inequalities such as caste inequality, religious inequality, race inequality or gender inequality give rise to discrimination.
- Discrimination can be defined as negative actions towards people. Discrimination can happen on the basis of colour, class, religion, gender etc. Treating dark-skinned people differently from fair-skinned people, giving more importance to people of higher than to those of lower caste and thinking boys are smarter than girls are all thoughts of discrimination.
- Article 15(1) of the Constitution states that the State shall not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

### **End of Apartheid**

After 27 years in prison, former South African President, Nelson Mandela, was freed in 1990 and successfully achieved the end of apartheid in South Africa, bringing peace to a racially divided country and leading the fight for human rights around the world.

### **Dr. Bhimrao Ramji Ambedkar**

- He is popularly known as Baba Saheb.
  - He was an Indian jurist, economist, politician and social reformer.
  - He earned his M.A. in 1915 and then obtained a D.Sc at the London School of Economics before being awarded Ph.D by Columbia University in 1927.
- He served as the chairman of drafting committee of the constituent assembly and hence regarded as the father of Indian Constitution.  
He was independent India's first Law Minister.  
He was posthumously awarded the Bharat Ratna in 1990.

### **Caste Discrimination**

- Caste system is the most dominant reason for inequality and discrimination in India. In the beginning, the society was divided into different groups on the basis of occupation, known as Varnas.
- Many people in India have fought against caste oppression. The most prominent among them was Dr. B.R. Ambedkar. He belonged to a such depressed family and suffered discrimination throughout his childhood. He fought actively for equality among the citizens of India.

### **Gender Discrimination**

- Gender discrimination refers to health, education, economic and political inequalities between men and women in India. For example, A girl is not allowed to go to college

after finishing her schooling. Similarly, most of the girls are not allowed to select a career of their choice rather they are forced into marriage. In some families, girls are not allowed to wear modern dresses while boys in such families often wear modern dresses.

### Religious Discrimination

- Religious discrimination is unequal treatment of an individual or group based on their beliefs. Religious discrimination has been around for a long time. There have been problems between people of different religions for thousands of years. Some people are not allowed to enter in public places; especially the places of worship because they belong to another religion. Some religious people often end up in conflict with each other because of their rituals and way of life.

### Socio-Economic Inequality

- In the socio-economic field, the benefits of growth have not been spread evenly. However, the income inequality is much higher than the inequality in human development. The low-income districts are associated with low industrial development, low agricultural productivity

#### Literacy rate - 2011 Census

High			Low		
s.no	District Name	Percentage	S.No	District Name	Percentage
1.	Kanyakumari	91.75%	1.	Dharmapuri	68.54%
2.	Chennai	90.18%	2.	Ariyalur	71.34%
3.	Thoothukkudi	86.16%	3.	Krishnagiri	71.46%
4.	The Nilgiris	85.20%	4.	Villupuram	71.88%

#### Sex Ratio - 2011 Census Number of females per 1,000 males

High			Low		
S.no	District Name	Percentage	S.No	District Name	Percentage
1.	The Nilgiris	1041	1.	Dharmapuri	946
2.	Thanjavur	1031	2.	Salem	954
3.	Nagapattinam	86.16%	3.	Krishnagiri	956
4.	Thoothukkudi	85.20%	4.	Ramanathapuram	977

and low human development. Similarly, the Districts with literacy rate are found to be with lower sex ratio..

### Remedial Measures for Abolishing Inequality and Discrimination

- The remedial measures for abolishing inequality and discrimination in Indian society are as follows.
1. Wider access to quality basic services like healthcare and education for all.
  2. Be aware of current gender bias.
  3. Make women more visible in public life and institution to eradicate gender disparity.
  4. Be open to learning about other religions.
  5. Promoting community dining in the classroom may help the students to sit together without any bias of caste, religion or gender.
  6. Socialise with people of all types outside home.
  7. Effective implementation of laws.

### **Constitution of India and Equality**

- A Constitution is a set of rules and regulations guiding the administration of a country. Article 14 of the constitution of India provides equality before the law or equal protection within the territory of India and prohibits the unreasonable discrimination between persons.
- Our Constitution says ours is a land of diversity; therefore, equality has to be ensured for all. Two significant parameters to ensure equality in society are respecting diversity and ensuring freedom. The different kinds of freedom are freedom to follow their religion, speak their language, celebrate their festivals and express their views freely.
- The Constitution is a legal framework of rules and regulations by which a nation would function. Equality is where untouchability is seen as a crime. In India, as per the Article 17 of the Indian Constitution, untouchability is totally abolished and its any form is forbidden. Even today, different types of discrimination are reported across the country. Women, peasants, tribes and people from lower social classes are still striving for equality in India.

## 6<sup>th</sup> term -II

### Unit -2 -THE CONSTITUTION OF INDIA

#### Pathway

The Lesson speaks about the formation of the constitution of India. It gives guidelines to govern the country, while ensuring the fundamental rights and duties of the citizens and how it protects them.

- Yazhinian and Sudaroli are brothers. Yazh is student of standard six and Sudar is in standard four. Yazh was preparing for his class test. Sudar after completing his home assignments was watching an animated series on television. Sudar was watching it but the noise level disturbed Yazh. Sudar was totally engrossed in the series and laughed and clapped loudly. Yazh could not concentrate on his lessons.
- So he asked Sudar to reduce the volume. But Sudar was not ready to adhere to his elder brother's advice. In spite of Yazh's continuous request Sudar did not reduce the volume.
- Yazh complained to his father that Sudar did not decrease the volume of the television in spite of requesting him several times. Yazh made it clear that he had a class test the following day.
- "Isn't your brother preparing for his class test? Weren't you wrong in troubling him?" continued his father.
- "I was watching the TV. Yazh kept disturbing and stopped me from watching it." said Sudar.
- "Studying for the test and watching television are not the same" said his father.
- But Sudar was not ready to accept the fact. Sudar was consistent that he had all rights to watch a film as much as Yazh had the right to study.
- His father admitted that both had equal rights. But one must not hinder another's freedom. Sudar didn't realise the fact that he was very stubborn.
- "Look Sudar. You have all rights to watch the film" said his father.
- "Yes dad"
- "Similarly, Yazh also has the right to listen to his favourite song on TV Couldn't he?"
- "How can that happen? When I watch the television he cannot do that."

- “When you can watch a film by increasing its volume, Yazh can also hear music loudly.” said father.
- “How will I watch the movie?”.
- “How will Yazh study?” .
- “Oh! I didn’t think of it. Okay dad, I will not watch the movie while Yazh studies.” .
- “No my child. You can watch the movie without causing trouble to anyone,” .
- “Don’t be angry Yazh. You study and I promise I will not disturb you.”
- Yazh smiled and patted Sudar’s back and left the place.
- Sudar’s mother was watching everything silently. She said, “ Even to run a small family don’t we need to follow so many rules and regulations? How much more of that will we need to administer a country?” she exclaimed.
- “It is an ocean Deepa. In order to administer people who follow different religions, speak different languages and belong to different castes and culture and treat everyone equally, we need to have a good code of laws and guidelines which we call as ‘The Constitution of India.’
- The next day Sudar and Yazh went to school. It was the Republic Day also.
- The celebration was a jubilant. The students and teachers were standing in line around the flag post. Immediately after the hoisting of the flag, a discussion was held with the chief guest for the day, Mr. Arumugam, an expert in social sciences.
- “Wish you a happy Republic Day!” wished Mr. Arumugam.
- “Wish you the same Sir.”
- “Do you know why do we celebrate the Republic Day?”
- “Our Constitution was framed and came into existence from 26th January 1950. That is why every year we observe this day as the Republic Day.” said the history teacher Malarmathi
- “Yes, it is true. There are other reasons why this constitution came into existence on 26th January 1950. When the Congress met at Lahore in 1929, the members of the Congress unofficially declared the same day as the Day of Poorna Swaraj or the Day of complete self governance. The next year, 26th January 1930 was celebrated as the Independence Day. That day has been observed as our Republic Day.”
- “What do you mean by the “Constitution of India” asked Nathar.

- “Before that, let me ask a few questions. You answer me. Then I will explain in detail about the constitution of India.”.

“All right sir.”

(The students were prepared to answer the questions)

“Are you following any rules and regulation at home?”

“Yes sir”

“Are you following any rules at school?”

“Yes sir”

“Are both of them the same or different?”

“Mostly, they are different”

“Is it necessary to follow certain rules in public places?”

“Yes, Sir”

“Why is it necessary?”

“We should not disturb anybody in public” said Tamilselvi.

“It’s true. Also no one should disturb us” said Selva

- “Yes, I do accept it. But what if someone compels you to follow some rules? How would you feel?”

“It would be difficult to do so.”

“How do you feel when you are asked to make your own rules?”

- “We would be proud and pleased to obey our own rules.” (Everyone agreed and nodded their heads)
- The constitution is an authentic document containing the basic ideas, principles and laws of a country. It also defines the rights and duties of citizens. The laws governing a country originate from the constitution. Every country is ruled on the basis of its constitution”
- “What are the things that make the constitution of India?” asked Deepika.



- “The constitution of India is the ultimate law. We have to abide by it. It explains the fundamental concepts of structure, methods, powers and the duties of Government bodies. It also lists the fundamental rights and duties of the citizens. Directive Principles are also mentioned in the constitution. So it is holistic in nature.”
- “When did they begin to frame the constitution?” asked Christopher.

### Constituent Assembly

- In 1946, nearly 389 members of the constituent Assembly who belonged to different parties from different places came together to frame the Constitution of India. The Chairman of the committee was Mr. Rajendra Prasad.
- Jawaharlal Nehru, Sardar Vallabai Patel, Moulana Azad, S. Radhakrishnan, Vijalakshmi Pandit and Sarojini Naidu were the significant members in the Constituent Assembly. 15 women members were in the Constituent Assembly.
- “Who were the other significant members in the Constituent Assembly?”

“How many women members were there in the Constituent Assembly?”

The Father of the Constitution of India is Dr. B.R. Ambedkar.

“15 women members were in the Constituent Assembly”

### Drafting committee

- The Drafting committee was formed with eight members and its Chairman was B.R. Ambedkar; B.N. Rao was appointed as an advisor. The committee met for the first time on 9th December 1946. On the same day, the drafting of constitution of India started.

“How did they form the Indian constitution?”

### Features of Constitution

- The constitutions of nearly 60 countries including the UK, USA, former USSR, France, Switzerland etc., were thoroughly examined and their best features have been adopted by our constitution.
- No, nearly 2000 amendments were made before the draft was finalised
- It took a period of 2 years, 11 months, and 17 days. It was completed on 26th November 1949.
- The constitution was accepted by the Constituent Assembly. So, 26th November is celebrated as the Day of the Constitution. The Preamble of our constitution stresses on the justice, liberty, equality and fraternity.

- “How much was spent to frame the constitution of India?” asked Nathar.
- “They spent almost 64 lakhs”.
- “What are the objectives of the Constitution?”
- “The Preamble of our constitution stresses on the justice, liberty, equality and fraternity.”

“What is a Preamble?” “

### **PREAMBLE**

- “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens
- JUSTICE, social, economic and political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and of opportunity; and to promote among them all
- FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
- IN OUR CONSTITUENT ASSEMBLY this 26th day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”
- The preface of the constitution is the Preamble. According to it, India is a Sovereign, Socialist, Secular Democratic Republic.

### **Features of Preamble**

- The constitution has granted the people the right to rule. The members of the parliament and the legislative assembly are elected by the people. The right to decide is only in the hands of the representatives. Sovereignty refers to the ultimate power of the country.
- Law allows all the citizens of a country, the right to follow different faith and religious beliefs. All citizens enjoy the freedom of worship. The country does not have a religion of its own. All the religions in our country hold the same status.

## Type of Government

- The Constitution of India provides a Parliamentary form of Government, both at the centre and the state. In a Parliamentary System, the Executive is collectively responsible to the Legislature. The party which has the majority forms the government.

## Fundamental Rights

- “What are fundamental rights?”  
Fundamental rights are the basic human rights of all citizens.

## Directive Principles

- “You mentioned about Directive Principles. What do you mean by that?”
- There are certain guidelines to be followed while the governments frame law. Though these are not mandatory, they should be taken into account.”

## Universal Adult Franchise

“What is Universal Adult Franchise?”

- Every Indian citizen has the right to vote when they attain 18 years of age, irrespective of any caste, religion, gender or economic status.
- “Like fundamental rights, every citizen will have duties too, won't they?”

## Fundamental duties

- There are duties respecting the National flag and National Anthem, respect and protect the Constitution, follow our great leaders who fought for our freedom, to protect our country, readiness to serve our country if necessary, treating everyone as brothers irrespective of their castes, religions, languages, races etc., to conserve our ancient heritage, and conserve natural elements like forests, rivers and lakes and fauna, to develop science, humanity and feelings of reformation to avoid non-violence and protect government property, parents or guardians providing educational opportunities to children between 6-14 years etc., have been added as our duties

**7<sup>th</sup> term 1**  
**UNIT 1- EQUALITY**

**Introduction:**

- Nature has made man unequal in colour, height, talent, physical strength etc., and the natural inequalities can never be rectified. Even the twins looking like the similar are not equal in their abilities. Man made inequalities on the basis of caste, money religion etc can be rectified. It is universally accepted that people are differed in their capacity, ability, attitude etc but at the same time, it is also accepted that they should be given equal opportunities for the development of their skills and talents.
- Equality is ensuring individuals or groups that are not treated differently or less favorably on the basic of specific protected characteristic, including areas of race, gender, disability, religion or belief, sexual orientation and age. According to Prof Laski "Equality does not mean identity of treatment, the sameness of reward. It means first of all absence of social privilege, on the second it means that adequate opportunities are laid upon to all".

**Importance of Equality**

- Equality is a powerful moral and political ideal that has inspired and guided human society for many centuries. The concept of equality invokes the idea that all human beings have equal worth regardless of their caste, color, gender, race or nationality. The democratic ideals such as liberty, equality etc are meaningful and effective only when they are implemented with justice.

**Kinds of Equality**

**Social equality**

- Social equality means that all citizens are entitled to enjoy equal status in society. There should not be any discrimination of caste, creed, color and race. All should have equal opportunity to develop their personality and to complete goals.

**Civil Equality**

- **Civil equality is enjoyment of civil rights by all citizens. There should not be any discrimination of superior or inferior, the rich or the poor, caste or creed. Equal rights should be available to all the persons and nobody should be denied enjoyment of any rights. Rule of law is in force in England and in the eyes of law all are equal and equal treatment is given to all by the rule of law. In India the same rule of law is followed.**

**NOTE**

- Rule of law was advocated by A.V.Dicey, the British legal luminary.

## Political Equality

- All the democratic countries including India have guaranteed the political rights to all citizens. It includes
  - ❖ Right to vote
  - ❖ Right to hold public Office
  - ❖ Right to criticize the government
- Citizens should have equal opportunity to actively participate in the political life. These rights can be enjoyed through the Universal Adult Franchise. In India the voting right is given to all the citizens who have attained 18 years of age without any discrimination. India is the first country to give right to vote to women from the very first general election held in the year 1952. In Switzerland the right to vote is given to women in 1971. Any person who has completed the age of 25 years can contest in the election. Right to criticize the government is also very important right and the people can express their resentment through demonstrations. The value of the vote of the Prime Minister and value of vote of common man in general election is same which denotes political equality.

## Gender Equality

- All human beings, both men and women, are free to develop their personal abilities and make choices without any limitations. Women were not given equal rights and they were considered as weak as compared to man and they were placed in a secondary position to men. They should be treated equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender Equality is the equal right of both men and women to have access to opportunities and resources. They have right to participate in the economic sphere and make important decisions. Women with their talent and hard work have proved that their ability is not less than men in any aspect. Nowadays, women are successfully working in many fields like Border security force, Indian Air Force, etc. For the uplift of women 50% reservation has been given for women in local bodies.

## NOTE

- UNICEF says Gender Equality “means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and provisions. It does not require that girls and boys, or women and men, be same, or that they be treated exactly alike.” As of 2017, gender equality is the fifth of seventeen sustainable development goals of the United Nations.

## Equality of Opportunity and Education

- All the individuals should have similar chances to receive education. They should have similar opportunities to develop their personality. We need equality to get equal treatment in society. If we treat equality we can earn respect and dignity.

## Equality in Indian constitution

- ❖ Almost the constitution all the countries in the world have guaranteed equality. Likewise, the constitution of India has also guaranteed equality to all citizens by providing Articles from 14-18.
- ❖ Article 14 - guarantees to all the people equality before law.
- ❖ Article 15 - deals with the prohibition of discrimination.
- ❖ Article 16 - provides equality of opportunity in matters relating to employment.
- ❖ Article 17 - abolishes the practice of untouchability .
- ❖ Article 18 - abolishes the titles conferred to citizen.
- ❖ Equality before law and equal protection of law have been further strengthened in the Indian constitution under Article 21.

## We can promote equality by

- ❖ Treating all fairly
- ❖ Creating an inclusive culture
- ❖ Ensuring equal access to opportunities
- ❖ Enabling to develop full potential
- ❖ Making laws and policies
- ❖ Education.

## Conclusion

- India is a the largest democratic country in the world. Equality and justice are the pillars of democracy. Justice can be achieved when people are treated equality. Equality is so important because it preserves the dignity of an individual. Equality is an important principle for a society to function.

## NOTE

- Efforts were made by many social activists from the 19th century onwards. The noted champions of this cause were Raja Rammohan Roy, IshwarchandraVidyasagarDayanandSaraswati, MahadevGovindRanade, TarabaiShinde, BegumRokeyaSakhawatHussain. They worked hard to get equal status to the women.

## **8<sup>th</sup> term I**

### **UNIT 2- CITIZENS AND CITIZENSHIP**

- The word 'Citizen' is derived from the Latin word 'Civis' which means resident of a City State of Ancient Rome. After the disappearance of City-State system, it has been used to mean a member of the State. The citizens of a state enjoy full civil and political rights.

#### **Citizen and Citizenship**

- Citizen is a person of a country who is entitled to enjoy all the legal rights and privileges granted by a state and is obligated to obey its laws and to fulfil his duties.
- Citizenship is the status given to the citizens which provide them the right to legally live in a country as long as they want.

#### **Types of Citizen**

There are two types of citizens, Natural and Naturalised citizens.

1. Natural citizens: are the citizens by birth.
2. Naturalised citizens: are the one who acquires citizenship.

#### **Acquisition of citizenship**

- The citizenship Act of 1955 prescribes five ways of acquiring citizenship. They are by birth, descent, registration, naturalisation and incorporation of territory.

##### **1) By Birth**

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

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

##### **2) By Descent**

- A Person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth. A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth. From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth.

### 3) By Registration

- A Person of Indian origin who is ordinarily resident in any country or place outside undivided India. A Person of Indian origin who is ordinarily resident in India for seven years before making an application for registration. A Person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration

### 4) By Naturalisation

- The Central Government may, on an application, grant a certificate of naturalization to any person if he is not a citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country. A citizen of any country, renounce the citizenship of that country he has either resided in India or been in the service of a Government in India or throughout the period of twelve months he is a good character and has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution. (presently 22 languages)

### 5) By incorporation of Territory

- If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the citizenship (Pondicherry) order, 1962.

### Loss of Indian Citizenship

- Part II of the Constitution of India (Article 5-11) prescribes three ways of losing citizenship.

**Renunciation:** (is a voluntary act) when a person after acquiring the citizenship of another country gives up his/her Indian citizenship.

**Termination:** (takes place by operation of law) When an Indian citizen voluntarily acquires the citizenship of another country; he/she automatically ceases to be an Indian citizen.

**Deprivation:** (is a compulsory termination) The citizenship is deprived on the basis of an order of the Government of India in cases involving acquisition of Indian citizenship by fraud, false representation or being disloyal to the Constitution.

### Single citizenship

- Our Indian Constitution provides for only Single citizenship, that is, the Indian citizenship. But federal states like USA and Switzerland has dual citizenship. (National



citizenship and the State citizenship). In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country.

### **Rights and Duties of Citizen**

- Our Constitution confers the following rights for the citizen of India.
  - ❖ Fundamental Rights
  - ❖ Right to vote in the election to the Lok Sabha and the State Legislature
  - ❖ Right to hold certain public offices
  - ❖ Right to become the Member of Parliament and State Legislature.
  - ❖ According to 42 Amendment of our Constitution, a set of Fundamental Duties are prescribed for all citizens of India. (For e.g. paying taxes honestly, respecting the rights, beliefs and opinions of others, defending the country, respect and obey state and local laws and so on)

### **Qualities of a good citizen**

- ❖ Loyalty to the Constitution.
- ❖ Obeys laws.
- ❖ Contributes to society and community and performs civic duty.
- ❖ Quality of goodness and justice.
- ❖ Respecting diversity.

### **Global Citizenship**

- Global citizenship is an idea that everyone, no matter where they live is part of a worldwide community rather than as the citizen of particular nation or place. All people have rights and civic responsibilities. It is fundamental in enabling young people to access and participate in shaping modern society.
- Our Constitution of India has introduced Single citizenship and provides uniform rights for the people of India to promote the feeling of fraternity and unity among them to build an integrated Indian nation.

### **NOTE**

#### **Indian Citizenship Act, 1955**

- This act is to provide for the acquisition and termination of Indian citizenship.

#### **Nationality and citizenship**

- Nationality is the status of belonging to a particular nation by origin, birth basically, it's an ethnic and racial concept. Nationality of a person cannot be changed. Citizenship

is granted to an individual by the government of the country when he/she complies with the legal formalities. Citizenship can be changed.

- As per the order precedence President is the first citizen of our country. Alien and immigrant are two terms that are used to refer to non-nationals of a country. Alien refers to all non-citizens or non-nationals residing in a country. eg. tourists, foreign students. Immigrant refers to alien who has been granted the right to reside and work permanently without restriction in a particular country. Overseas Indians' Day Pravasi Bharatiya Divas (PBD) Sponsored by Ministry of External Affairs of Government of India is celebrated once in every two years, to "mark the contributions of Overseas Indian Community in the development of India". The day commemorates the arrival of Mahatma Gandhi in India from South Africa.



10th vol I  
UNIT 1 - INDIAN CONSTITUTION

**Introduction**

- The Constitution is the fundamental law of a country which reflects the fundamental principles on which the government of that country is based. It is the vehicle of a Nation's progress. More particularly, it is concerned with institutional fabric and the framework of the distribution of powers between the various organs of the government and between the Union and the States. The concept of constitution was first originated in U.S.A.

**The Need for a Constitution**

- All Democratic countries have a constitution that governs them. A constitution puts down certain principles that form the basis of any kind of a state that we as citizens, desire to live in. A constitution tells us the fundamental nature of our society. A country is usually made up of different communities of people who have different beliefs; it will be helpful in fulfilling the beliefs of different segments of citizens.

**Making of Indian Constitution**

- The Constitution of India was framed by a Constituent Assembly setup under the Cabinet Mission Plan, 1946. The Assembly consisted of 389 members representing Provinces (292), States (93), the Chief Commissioner's provinces (3) and Baluchistan (1). The Assembly held its first meeting on December 9, 1946. Dr.SachchidanandaSinha, the oldest member, was elected as the temporary President of the Assembly. While the work was in progress, Dr.SachchidanandaSinhadied. Dr.Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. The Assembly met for 11 sessions along with 166 days of meetings. During the discussion, 2473 amendments were presented. Some of them were accepted. The Assembly worked through various committees and the draft of the Constitution was prepared by the Drafting Committee under the chairmanship of Dr. B.R. Ambedkar. He is recognised as the 'Father of the Constitution of India'. After the draft had been discussed by the people, the press, provincial assemblies and others, the Constitution was finally adopted on November 26, 1949, contained a Preamble, 22 parts, 395 Articles and 8 Schedules. The drafted Constitution came into force on 26th January, 1950. Thursday is known as the Republic Day. It is being observed every year.

**Salient features of Indian Constitution**

- ❖ It is the lengthiest of all the written constitutions of the world.
- ❖ It has borrowed most of its provisions from the constitutions of various countries.
- ❖ It is partly rigid and partly flexible.
- ❖ It establishes a federal system of government.

- ❖ It establishes the parliamentary system not only at the Centre but also in the states.
- ❖ It makes India as a secular state.
- ❖ It provides an independent judiciary.
- ❖ It introduces Universal Adult Franchise and accords the right to vote to all citizens above 18 years of age without any discrimination.
- ❖ It provides single citizenship.
- ❖ It makes special provisions for minorities, Scheduled Castes, Scheduled Tribes, etc.

### Preamble

- The term 'preamble' refers to the introduction or preface to the Constitution. It consists of the ideals, objectives and basic principles of the Constitution. It contains the summary or essence of the Constitution. It has great value and has been described as the 'key to the Constitution'. The Preamble to the Indian Constitution is based on the 'Objective Resolution', drafted by Jawaharlal Nehru, which was adopted by the Constituent Assembly on January 22, 1947. It has been amended once by the 42nd Constitutional Amendment Act of 1976, which added three new words - socialist, secular and integrity. The Preamble begins with the phrase 'We, the People of India'. This clearly implies that the Constitution derives its authority from the People of India. Thus, we can say that the people of India are the source of our Constitution. The Preamble of our Constitution states that India is a Sovereign Socialist Secular Democratic Republic. Its aim is to secure to all Indian citizens Social, economic and political justice. The Constitution guarantees Liberty of thought, expression, belief, faith and worship to all. It gives Equality of status and of opportunity to all. It wants to promote Fraternity among all Indians.

### Citizenship

- The word 'Citizen' is derived from the Latin term 'Civis'. It means resident of a City State. The Constitution of India provides for a single and uniform citizenship for the whole of India. Articles 5 to 11 under part II of the Constitution deals with the citizenship.

### Citizenship Act of 1955

- The Citizenship Act of 1955 provides for acquisition and loss of citizenship after the commencement of the Constitution. This Act has been amended so far eight times. Originally, the Citizenship Act (1955) also provided for the commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.

### Acquisition of Citizenship

- The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalisation and incorporation of territory: According to the

Citizenship Act, 1955, the citizenship could be acquired through any of the following methods.

**By Birth:** All persons born in India on or after January 26, 1950 are treated as citizens by birth.

**By Descent:** A person born outside India on or after January 26, 1950 shall be a citizen of India by descent, if his father is a citizen of India at the time of his birth.

**By Registration:** A person can acquire citizenship of India by registration with appropriate authority.

**By Naturalisation:** A foreigners can acquire Indian citizenship, on application for naturalization to the Government of India.

**By Incorporation of Territory:** In the event of a certain territory being added to the territory of India, the Government of India shall specify the persons of that territory who shall be citizen of India.

### **Loss of Citizenship**

- The Citizenship Act of 1955 prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation.
- It can be voluntarily renounced by a citizen. It can be terminated if a person acquires the citizenship of some other country.
- The central government can deprive a naturalized citizen, if it satisfied that the citizenship was acquired by fraud, false representation or concealment of material facts or indulges in trade with enemy countries or if the person has been sentenced to imprisonment for a period of 2 years.

### **Fundamental Rights**

- The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA. Originally, the Constitution provided for seven Fundamental Rights. At present, there are only six Fundamental Rights. Part III of the Constitution is rightly described as the Magna Carta of India. While Fundamental Rights are available to all persons, certain Fundamental Rights are available only to Indian Citizens.

### **Right to constitutional remedies (Articles 32)**

- A writ is an order or command issued by a court in writing under its seal. It is in the nature of a command or prohibition from performing certain acts that are specified in the orders of the court. Both the Supreme Court and the High Courts are empowered to issue five kinds of writs of habeas corpus, mandamus, prohibition, quo warranto

and certiorari. That is why the Supreme Court is called the “Guardian of the Constitution”. According to Dr. Ambedkar, Article 32 is “the heart and soul of the Constitution”.

**Habeas Corpus:** Safeguards people from illegal arrests.

**Mandamus:** It protects the petitioner who requires legal help to get his work done by respective public authorities.

**Prohibition:** It prohibits a subordinate court from acting beyond its jurisdiction.

**Certiorari:** It quashes an order issued by a subordinate court by overstepping its jurisdiction.

**Quo Warranto:** It prevents usurpation of public office through illegal manner.

**Suspension of Fundamental Rights**

- When the President makes a Proclamation of Emergency under Article 352, the freedoms guaranteed under Article 19 are automatically suspended. The President can suspend other fundamental rights through specific orders. These orders must be approved by the Parliament. But he cannot suspend the freedoms given under Arts. 20 and 21 (protection in respect of conviction for offences and protection of life and personal liberty respectively) in any circumstances.

**Directive Principles of State Policy**

- The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual. These principles are not enforceable by the courts. But they are fundamental for the governance of the country. The Government is duty bound to apply these principles while making laws. They aim at promoting the Social Welfare of the people. Dr. B.R. Ambedkar described these principles as ‘novel features’ of the Indian Constitution.

**Differences between Fundamental Rights and Directive Principles of State Policy**

<b>Fundamental Rights</b>	<b>Directive Principles of State Policy</b>
It was derived from the Constitution of the USA.	It was drawn on the model of the Constitution of Ireland.
Even the Government cannot take away or abridge	These are mere instructions to the Government.

these rights.	
These are enforceable by a court of law.	These are not enforceable in any court.
These have legal sanctions.	These have moral and political sanctions.
These rights strengthen political democracy in the country.	The implementation of these principles ensures social and economic democracy.
These are natural rights.	These lead to protect human rights.

### **Fundamental Duties**

- The Fundamental Duties in the Indian Constitution are inspired by the Constitution of former USSR. In 1976, the Congress party set up the Sardar Swaran Singh Committee to make recommendations on fundamental duties. The 42nd Amendment Act of 1976 added some responsibilities of citizens to our Constitution called the Fundamental Duties. This amendment added a new part, namely, Part IVA to the Constitution. This new part consists of only one Article that is Article 51A which for the first time specified a code of ten fundamental duties of the citizens.

### **List of Fundamental Duties**

Article 51A declares it to be the duty of every citizen of India.

- To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- To cherish and follow the noble ideals which inspired the national struggle for freedom
- To uphold and protect the sovereignty, unity and integrity of India
- To defend the country and render national service when called upon to do so
- To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women
- To value and preserve the rich heritage of our composite culture

- g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures
- h) To develop scientific temper, humanism and the spirit of inquiry and reform
- i) To safeguard public property and to abjure violence
- j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement
- k) To provide opportunities for education to his child or ward between the age of six and fourteen years. (The 86th Constitutional Amendment Act, 2002 has also introduced the 11th Fundamental Duty under 51A(k) under which all citizens of India or parents shall provide opportunities for education to their children between age of 6 and 14 years)

### **Centre-State Relations**

- The Constitution of India, being federal in structure, divides all powers between the Centre and the States. The Centre-State relations can be studied under three heads:

### **Legislative relations**

- The Union Parliament has the power to legislate for the whole or any part of the territory of India, which includes not only the States but also the Union Territories or any other area for the time being, included in the territory of India. The Seventh Schedule of the Constitution embodies three lists namely, the Union List, State List and Concurrent List consisting of 97, 66 and 47 items respectively. The Parliament enjoys the exclusive power to legislate on subjects enumerated in the Union List. The State Legislature has exclusive right to legislate on the State List. Both Parliament and State Legislatures have power to legislate on subjects contained in the Concurrent List. But in case of conflict between the law of the State and the Union on a subject in the Concurrent List, the law of Parliament prevails.

### **Administrative relations**

- The Administrative power of a State extends only to its own territory and with respect to which it has legislative competence, whereas the Union has exclusive executive power over:
- The matters with respect to which Parliament has exclusive power to make laws and the exercise of its powers conferred by any treaty or agreement.



### **Financial relations**

- Article 268-293 in Part XII deal with the financial relations between centre and the states. The Centre and States are empowered by the Constitution to impose various kinds of taxes. And certain taxes are imposed and collected by the centre and divided between centre and states based on the recommendation of the Finance Commission appointed by the President under Article 280 of the Constitution. Late Prime Minister Indira Gandhi appointed the Sarkaria Commission in 1983 to make an enquiry into the Centre-State relations. The Central government has implemented 180 (out of 247) recommendations of the Commission. The most important is the establishment of the Inter-State Council in 1990.

### **Official Language**

- Part XVII of the Constitution deals with the official language in Articles 343 to 351. Its provisions are divided into four heads namely, Language of the Union, Regional languages, Language of the judiciary and texts of laws and Special directives. The First language committee was appointed in 1955. It submitted its report in 1956. As a follow up of the report, parliament enacted the Official Language Act, 1963. The act laid down that even after 15 year, English may continued to be used along with Hindi for all official purposes of the Union and also for transaction of business in parliament. Again through the Official Languages (Amendment) Act, 1967, it was provided that the use of English would continue indefinitely. The Constitution also permitted certain regional languages to be used for intra-state official transactions. Initially, the Constitution recognised 14 regional languages which were included in the Eighth Schedule. At present, 22 languages are recognised.

### **Emergency Provisions**

- The Central Government has been vested with extraordinary powers to deal with conditions of emergency. Three types of emergencies are envisaged in the Constitution:

#### **National Emergency (Article 352)**

- The President under Article 352 can declare emergency if he is satisfied that India's security is threatened due to war, external aggression or armed rebellion, or if there is an imminent danger or threat. When a national emergency is declared on the ground of war or external aggression it is known as external emergency. On the other hand, when it is declared on the ground of armed rebellion it is known as internal emergency. This type of emergency has been declared three times so far: in 1962, 1971 and 1975.

#### **State emergency (Article 356)**

- Under Article 356, the President can declare an emergency in a state if the Governor reports that a situation has arisen under which the government of a State cannot be carried on in accordance with the provisions of the Constitution. The continuance of

such an emergency beyond one year is possible only if emergency under Art. 352 are in operation or the Election Commission certifies that there are difficulties in holding Assembly elections. Maximum duration of the emergency can be three years. In this kind of emergency, the States lose much of their autonomy in legislative and executive matters. After such an announcement state legislature is suspended and the State is governed by the Governor on behalf of the President. For the first time, the President's Rule was imposed in Punjab in 1951.

### **Financial emergency (Article 360)**

- Article 360 authorises the President to declare financial emergency if he is satisfied that the financial stability or credit of India or of any of its parts is in danger. In this type of emergency, salaries and allowances of any class of persons serving State or Union, including judges of the Supreme Court and High Court can be reduced by an order of the President. This type of emergency has not been declared in India so far.

### **Amendment of the Constitution**

- The term amendment denotes change, improvement and modification. Usually this term is associated with one or more changes made in the Constitution of a country. Article 368 of the Constitution in Part XX, deals with the powers of Parliament to amend the Constitution and its procedure.

### **Procedure of Amendment**

- An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to
- The President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill. The constitution amendment can be brought about only by the Parliament. State legislatures cannot initiate for any amendment to the Constitution.

### **Types of Amendments**

- Article 368 provides for three ways of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority. But, some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process). Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368. Therefore, the Constitution can be amended in three ways:

- ❖ Amendment by simple majority of the Parliament
- ❖ Amendment by special majority of the Parliament
- ❖ Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

### **Constitutional Reform Commissions**

- The National Commission to Review the Working of the Constitution was set up by a resolution of the Government of India in 2000 headed by M.N.Venkatachaliah. In April 2007, a three member commission headed by the former Chief Justice of India M.M.Punchhi was set up by the then Government to take a fresh look at relative roles and responsibilities of various levels of Government and their inter-relations.



## 11<sup>th</sup>vol I

### UNIT - 3 BASIC CONCEPTS OF POLITICAL SCIENCE

#### SOVEREIGNTY

##### Introduction

##### Let us discuss about Sovereignty

- Do you think you are powerful? How do you know you are powerful? But, you can say your country is powerful. Do you know how? It is because we are a sovereign nation.
- Sovereignty, the term has been derived from the Latin word 'superanus' which means supreme or paramount. Roman jurist and the civilians during the middle ages employed the term 'summa' potestas and 'Plenitude potestas' to designate the supreme power of the state. In political science the use of the term 'sovereignty' dates back to the publication of Bodin's 'The Republic' in 1576.
- The stability of a nation depends on the supremacy of the sovereignty the nation enjoys. Sovereignty as a concept represents the legal supremacy of the state. Constitution lays down rules and laws of the state and the constitution of the state is just the representation of the sovereignty. The word sovereign in the preamble of the constitution of India means that the state has the power to legislate on any subjects in conformity with constitutional limitations.

##### We shall now study the characteristics of Sovereignty. What are they?

##### 1. Permanence

- The chief characteristic of sovereignty is permanence. Sovereignty lasts as long as the state lasts. The death of the king or the overthrow of the government does not affect sovereignty. Hence, the people of England say 'King is dead, Long live the king'.

##### 2. Exclusiveness

- Exclusiveness here implies that there cannot be two sovereign in one independent state and if it exists the unity of the state will be destroyed.

##### 3. All comprehensiveness

- Every individual and every association of the individual is subject to the sovereignty of the state. However rich or powerful association or group may be, it cannot resist or disobey the sovereign authority.

#### 4. Inalienability

Sovereignty is the life and soul of the state and it cannot be alienated without destroying the state itself.

#### 5. Unity and Everlasting

The spirit of sovereignty lies in its unity. Sovereignty is not bound by time and lasts until the state lasts.

#### 6. Indivisibility

Indivisibility is the life line of sovereignty.

#### 7. Absoluteness

- Sovereignty is unconditional and unlimited. Sovereignty is beyond obedience and it is entitled to do whatever it likes.

#### 8. Originality

- Sovereignty wields power by virtue of its own right and not by anybody's mercy.

#### What are the two aspects of Sovereignty?

- **Internal sovereignty:** An assembly of people in every independent state has the final legal authority to command and enforce obedience. This sovereignty exercises its absolute authority over all individuals or associations of the individuals in the state.  
**External sovereignty:** In simple terms external sovereignty means National Freedom. Every state enjoys absolute liberty to determine its foreign policy and join any power block it likes. External sovereignty implies that every state is independent of other states.

Sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality to another without self destruction

- Lieber

#### Quotable Quote

Sovereignty of the people therefore can mean nothing more the power of them the majority of the electorate, in a system of approximate universal suffrage prevails, acting through legally established channels to express their will and make it prevail.

- Dr.Garner

**Types of Sovereignty**

<b>Nominal and Real Sovereignty</b>	<b>Legal Sovereignty</b>	<b>Political Sovereignty</b>	<b>Popular Sovereignty</b>
a. Ancient times many states had monarchs. Kings exercised real sovereignty and were considered Real Sovereigns	a. The authority of the state has the legal power to issue final commands	a. Political Sovereign in the representative democracy is understood as the whole mass of the people, i.e. electorate or the public opinion.	a. Popular Sovereignty designates public as supreme
b. The French revolution transformed the situation	b. the power which has the legal authority to issue and enforce these law is legal sovereignty	b. Political sovereignty rests in the class of people under whose influence the mass of the people are with.	b. During ancient period popular sovereignty was used as a weapon to challenge the absolutism of the monarchs.
c. The Council of Minister were considered the real Sovereign while the King enjoyed only nominal power.	c. The legal sovereigns always definite and determinate and the authority of sovereign is absolute and supreme.		

**"De - facto and De-jure sovereignty"**

<b>De-facto sovereignty</b>	<b>De-Jure-Sovereignty</b>
De-facto sovereign is one who has no legal claim to sovereignty but possesses it in fact and exercises necessary force to make and enforce its laws.	De-jure sovereignty is one who has a legal claim to sovereignty but does not possess it in fact.

**What is Pluralism?**

- Pluralism is a powerful protest against the monistic theory of sovereignty, which endows the state with supreme and unlimited power. The pluralistic theory originated in the writings of Otto V. Gierke. The pluralist challenges the claims of the state to

supremacy on the ground that the society consists of many associations and the state is one among them. Hence, the state cannot be endowed with sovereign power of the community. There exists many social, political, cultural and economic institutions in society and many of these institutions are prior to the state. For example, Family and church are prior to the state.

### Exponents of pluralist theory

- Harold J. Laski
- J.N. Figgis
- Ernest Barker
- G.H Cole
- Maciver

### Pluralist Theory

The nature of the state is such attempts to resolve the disputes or conflicts that arise between these various groups in a way that is in everyone's best interests.

### The dawn of pluralist theory

- In democracy, the authority of the ruler is confined, the cabinet becomes more powerful but the state remains sovereign and supreme. With the advent of the welfare state there came a rapid increase in the functions of the state and there remained no sphere of life with which the state did not interfere, the sovereign and the supreme state also faced revolt and reaction. This reaction against the sovereign and supreme state resulted into the dawn of pluralism.

### Is Pluralism important?

- Pluralism upholds the importance of associations and claim more autonomy for it.
- For democracy to flourish the sovereign state must not be subject to any legal authority.
- Division of sovereignty leads to the destruction of sovereignty and in the absence of sovereignty, anarchy will prevail in society.

### What are the criticisms for Pluralism?

- It is the Sovereign state that brings about unity and regulates all the associations existing in society.
- Laws are framed by the state unlike the belief of pluralist.
- State is needed for protecting people from the excess of associations.

## EQUALITY

### Introduction

#### Understanding equality

- The idea that human beings are equal is enigmatic. A nation that seeks equality creates laws to bring change in its society. A law for equality is inadequate and opposed where pluralistic pattern of society has become the order of the day whether it's a developed or under developed nation. Liberty and rights lead to a third principle in political theory, which is of equality. Equality determines how rights are to be distributed amongst the individuals as citizens and groups, both whether equally or unequally. If unequally then what are the grounds for unequal treatment?. On what ground the state or the public authority relate with citizens, individuals and groups unequally. When we talk of equality, we imply different meanings at different times. In liberal perspective, legal and political equality may be emphasized more than economic equality. On the other hand, in a socialist and Marxian framework emphasis is more on economic equality. A feminist would argue that gender equality is vital while in a caste divided society like India, it could be argued that social equality is more essential, if other dimensions are to be meaningful.

#### Meaning of Equality

- Equality, which means state of being equal, is derived from aequus/ aequalis, meaning fair. It signifies 'having the same rights, privileges, treatments, status, and opportunities'. Equality is treated as something that relates to distributive principle because of which rights, treatments, and opportunities are distributed amongst the beneficiaries in a fair manner. Fairness does not mean all to be treated equally in all circumstances. In fact it very well means unequal treatment for those who are unequal. Essentially it relates to the principle of justice because it requires fair distributive principle.
- However those who are equal should not be treated as unequal and the unequal as equal.

#### Importance of Equality

#### Why equality is important?

- The most powerful moral and political ideal that has inspired and guided human society for several centuries is equality. Every all faith and religion invariably proclaim that all human beings are creation of God. The concept of equality as a political ideal invokes the idea that all human beings have an equal worth regardless of their color, gender, race, or nationality. It urges among human beings equal consideration and respect because of the common humanity. The belief in this notion of humanity led us to the declaration of universal human rights.



- Equality became the slogan in the struggle against states and social institutions which uphold inequalities of rank, wealth, status or privilege, among people during the modern period. In the eighteenth century, the French revolutionaries used the slogan 'Liberty, Equality and Fraternity' to revolt against the landed feudal aristocracy and the monarchy. The demand for equality was also raised during anti-colonial struggle in Asia and Africa during the twentieth century. It continues to be raised by struggling groups such as women or Dalits who feel marginalized in our society.
- Equality now has become a widely accepted ideal which is embodied in the constitutions and laws in the world. However the most visible and disturbing factor around us in the world and as well in our society is inequality. We can see in country slums existing side by side with luxury housing, schools which may lack even drinking water facilities or toilets, waste of food as well as starvation. There are visible differences between what law promises and what we see around us.
- India through its constitution attempts to fill the gap between equal and unequal with the principle of equality as enshrined in the constitution.

### **Dimensions of Equality**

#### **What is Equality?**

- We live amidst distinctions between human beings on the ground of race and color, knowing well it is unacceptable. In fact such distinctions violate our intuitive understanding of equality which tells us that all human beings are entitled to similar respect and consideration because of their common humanity. No society treats all its members in exactly the same way under all circumstances. There can be no identity of treatment so long as men are different in wants, capacities, and needs. Injustice arises much from treating unequals equally as from treating equals unequally. And most importantly apart from the natural inequalities, there are inequalities created by the society- inequality based upon birth, wealth, knowledge and religion.
- The movement of history is not towards greater equality because as fast as we eliminate one inequality, we create another one: the difference being that the one we discard is unjustifiable while the one we create seems reasonable. Hence the social, political, educational equalities are always in need of reinforcement and reinterpretation by every new generation. Like liberty, equality can also be understood in its negative and positive aspects. Negative equality was associated with the end of such privileges and positively it meant the availability of opportunity.

#### **According to Laski equality means:**

- Absence of privileges. It means that will of one is equal to the will of any other. It means equality of rights
- Adequate opportunities are laid open to all. Opportunities should be given to all to realize the implications of his personality.

- All must have access to social benefits and no one should be restricted on any ground. The inequalities by birth or because of parentage and hereditary causes are unreasonable
- Absence of economic and social exploitation

**According to Barker, the concept of equality means**

- Fundamental equalities of all
- Equality of opportunity
- Equality of conditions where there is an attempt to make the conditions of life equal
- Equality of outcome of results

A State divided into a small number of rich and large number of poor will always develop a government manipulated by the rich to protect the amenities represented by their property.

- Harold laski

**Equality of opportunities**

- The concept of equality implies that all people as human being are entitled to the same rights and opportunities to develop the skills and talents, to pursue their goals and ambitions. However, it is not the lack of equality of status or wealth or privilege that is significant but the inequality in peoples access to such basic goods, as education, health care, safe housing that make for an unequal and unjust society.

**Natural inequality and social inequality**

- Natural inequalities are those that emerge between people as a result of their different capabilities and talents. These kinds of inequalities are different from socially produced inequalities which emerge as a consequence of inequalities of opportunity or the exploitation of some groups in a society by others. Natural inequalities are considered to be the result of the different characteristics and abilities with which people are born with. Social inequalities on the other hand are those created by society. Unequal treatment in society based on race, color, gender and caste are of social inequalities. Women were denied equal rights for centuries similarly; Blacks were treated as slaves until the institution of slavery was questioned. Even people born with disability with modern technological innovations are able to contribute like any other normal person. Stephen Hawkings, contribution despite his disability is remarkable. Political philosophers have contributed various theories, philosophies and ideologies for further understanding and innovation to place society on equal platform.

<b>Types of Equality</b>				
<b>Civil Equality</b>	<b>Political Equality</b>	<b>Social Equality</b>	<b>Natural Equality</b>	<b>Economic Equality</b>

No Discrimination (religion, belief, etc)	Access to authority Voting	Opportunity Privileges	Natural rights	Wealth
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### (i) Social Equality

- Social equality means no one should be discriminated in the distribution of rights, privileges and opportunities based on birth, caste, religion, race, colour, gender or social status. Each one should be given equal opportunity to develop his personality. Social equality implies few important aspects. They are: removal of discrimination based on social status, absence of special privileges to few and finally ensuring equal opportunity in terms of acquiring education. History reveals that certain forms of social inequality world over were rejected and the demand for social equality are being raised. Slavery in South Africa, west Asia and America, untouchability in India, Racial discrimination in USA against Blacks, Policy of Hitler against Jews and gender related inequalities and discrimination are few examples of social inequalities with countries world over are trying to redress with the policy of government. Civil rights movement in United States of America for Blacks by Martin Luther king Jr and Dr.B.R. Ambedkar's effort for the social equality for the lower caste in India are few examples that set movement for social equality in motion.
- The American declaration announced that 'all men are created equal', French declaration of Rights of Man and citizens declared that 'men are born and always continue free and equal in their rights. The United Nations organization on 10th December, 1948, declared the charter of human rights which laid stress on social equality. However according to the report of Amnesty International, these rights have been violated frequently by a number of countries in the past and still efforts are being made to address the issues of social inequality world over.

### (ii) Civil Equality

- The word 'civil' is derived from the Latin word civilis or civis, which means citizen. Civil equality means equality in which each citizen is provided with equal civil rights and liberties. Civil equality consists of similar civil liberties and civil
- There should not be any discrimination of superior and inferior, the rich and the poor, caste and creed, colour and race, clans and tribes, groups and classes. In England, Rule of law is in force and in the eyes of the rule of law all are equal. Equal treatment is given to all by the rule of law. It is from the British constitution India had adopted the rule of law.

### (iii) Political Equality

- Political Equality means equal right of all citizens, without any distinction, allowed to participate in the affairs of the state. Political right of all citizen is ensured through

universal adult franchise. The other factors that ensure the political rights of citizens are:

- Right to vote
  - Right to contest in election
  - Right to hold public office
  - Right to petition the government and criticize public policy
- Political equality guarantees the enjoyment of similar political rights to all citizens. Universal adult franchise is a means to this end. Political equality is actually the test on the experiments of democracy. It is also believed that political equality in itself is not adequate to disperse political power, it also needs socio-economic equality to achieve political equality.

“Economic Equality is the attempt to expunge all differences in wealth, allotting to every man and woman an equal share in worldly goods”.

- Lord Bryce

#### **(iv) Economic Equality**

- Economic equality is justifiable only when all people have reasonable opportunities to develop themselves fully. Economic equality is meaningful only when there is an adequate scope for employment, reasonable wages, adequate leisure and equal share in the management of economic concern. Professor Laski explains economic equality, “Political equality is, therefore, never real unless it is accompanied with virtual economic liberty; political power otherwise is bound to be the hand-maid of economic power”.
- Economic equality here means the provision of equal opportunities to all so that they may be able to make their economy progress. Ideologically this is possible in Socialism and not in Capitalism.

#### **(v) Equality of opportunity and education**

- Equality of opportunity and education means, all the citizens should be given equal and similar opportunities by the state. All the citizens should have similar chances to receive education and equal opportunities be given to develop their personality. Social inequalities such as race, caste, religion, language, rich, poor and gender based discrimination should be eradicated. In India, constitution provides provisions for equal opportunities and equal education.

#### **Relation between Liberty and Equality**

- There is no value of liberty in the absence of equality. They are understood from different perspectives by political thinkers such as Lord Acton, De Tocqueville and Harold. J.Laski. Lord Acton and Alexis De Tocqueville were the ardent advocates of

liberty. They were of the opinion that where there is liberty, there is no equality and vice versa. "The passion for equality made vain the hope for liberty." - Lord Acton  
Professor H.J. Laski believed that liberty and equality should go together. If an individual is given unrestrained liberty to do whatever he likes, he may cause harm to others. Unrestrained liberty will bring only chaos in the society. In the nineteenth century, the Individualists wrongly interpreted the term Liberty. They did not attach any importance to economic equality and laid stresses on Laissez Faire to be adopted by the government said Laski.

- Professor H.J. Laski in his remark said that 'Where there are rich and poor, educated and uneducated, we always find a relation of master and servant'.

Laissez faire is an economic system in which transaction between private parties are free from government intervention such as regulation privileges, tariffs and subsidies.

- Adam Smith was the ardent supporter of the view that the Individualists maintained that there should be a free competition between the capitalists and labor leaders. They did not want the government to involve in the economic matters. Formula of Demand and Supply was adopted. It was expected that the economic difficulties will be removed by this formula, but resulted in dangerous consequences in Europe.
- The capitalists exploited the opportunity to the core and as a result of it, the gap between rich poor got wider. The labor class was worst affected and the reaction against individualism resulted in the dawn of Socialism. Socialism rose to condemn and refute the principles of Individualism. The transition made clear that Liberty is meaningless in the absence of economic equality.
- Economic equality is essential for the existence of political freedom. Otherwise it will be a capitalist democracy in which the labourers will have right to vote but they will not get their purpose served. Hence liberty is possible only in socialistic democracy where liberty and equality go together. There is only one solution to liberty. It lies in equality. Thus liberty and equality are complimentary to each other said Pollard.

### Problems with Equality

1. Variety of meanings: equal treatment, equal outcomes, equal opportunities (and lots of shades of meaning within these broad categories)
2. Conflicts between each type: equal outcomes: equal outcomes violate equal treatment.
3. Equal opportunities conceptually flawed by problem of regression: is education and training an outcomes or an opportunity? Is an entry level job an outcome or an opportunity?
4. Equal treatment reinforces difference in opportunities and lacks a theory of what should count as a relevant difference and irrelevant differences eg obesity.

5. Equal outcomes are not in fact generally desired as a goal: fairness rather than egalitarianism is the model of social justice being sought. Equality is an aspect of fairness, but also in equality is desired on the ground of fairness to reward 'merit' and to accommodate to choose a way of life.

### How Equality can be promoted

- The difference as we understand between liberals and socialists lead us to the desirable way of achieving the goal of equality. The wide debate on the means of promoting equality may lead us to few methods. They are,
  - ✓ Establishing formal equality
  - ✓ Equality through Differential Treatment
  - ✓ Affirmative action

### Perspectives of various Ideologies on Equality by Andrew Heywood

- **Liberals** believe that people are 'born' equal in the sense that they are of equal moral worth. This implies formal equality, notably Legal and political equality of opportunity, but social equality is likely to be purchased at the expense of freedom and through the penalizing of talent. Nevertheless, whereas classical liberals emphasize the need for strict meritocracy and economic incentives, modern liberals have argued that genuine equal opportunities require relative social equality.

**Conservatives** have traditionally viewed society as natural hierarchical and have thus dismissed equality as an abstract and unachievable goal. Nevertheless, the new right evinces a strong industrialist belief in equality of opportunity while emphasizing the economic benefits of material inequality.

**Socialists** regard equality as a fundamental value and in particular, endorse social equality. Despite shifts within social democracy towards a liberal belief of opportunity, social equality, whether in its relative (social democratic) or absolute (communist) sense, has been seen as essential to ensuring social cohesion and fraternity, establishing justice or equity and enlarging freedom in a positive sense.

**Anarchists** place a particular stress upon political equality, understood as an equality and absolute right to personal autonomy, implying that all forms of political inequality amount to oppression. Anarcho-communists believe in absolute social equality achieved through the collective ownership of productive wealth.

**Fascists** believe that humankind is marked by racial inequality, both between leaders and followers and between the various nations or race of the world. Nevertheless, the emphasis on the nation or race implies that all members are equal, at least in terms of their core identity.

**Feminists** take equality to mean sexual equality, in the sense of equal rights and equal opportunities (liberal feminism) or equal social, economic power (social feminism) irrespective of gender. However, some radical feminists argued that the demand for equality may simply lead to women being 'male-identified'.

Ecologists advance the notion of bio centric equality, which emphasizes that all life forms have an equal right to 'live and blossom'. Conventional notions of equality are therefore seen as anthropocentric, in that they exclude the interest of all organisms and entities other than humankind.

*Heywood, Andrew. (2004) Political Ideologies: An Introduction, 4th ed. New York: Macmillan.*

### **Ways of establishing formal Equality**

- Social, economic and political inequalities all over the world have been protected by customs and legal systems that prohibited some sections of society from enjoying certain kinds of opportunities and rewards. Poor were denied of right to vote. Women were not allowed to be a carrier oriented women in some part of the world. The caste system in India prevented people from the lower castes from doing anything except manual labour. In some countries only some families can occupy important positions. Equality cannot be achieved unless these privileges are stalled.
- For ages these systems have the sanction of law, hence for achieving equality government intervention is needed by means of law. Our constitution as a fundamental or supreme law of the land does it. The constitution of India prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Our constitution also abolishes untouchability. Most of the modern states and democratic governments have incorporated in their constitution the principle of equality.

### **Equality in Indian Constitution**

#### **The concept of Equality in Indian constitution**

- The Indian constitution under article 14 provides for equality before law or the equal protection of laws to all persons. This is a statement of formal equality and gives meaning to what preamble seeks to ensure in terms of 'equality of status and of opportunity'. This also means that laws of the land will apply to all equally and there should not be discrimination on grounds of birth, caste, color, gender, language, race, religion, etc. in fact article 15 of the constitution substantiates article 14 further by prohibiting any such discrimination.
- Equality before law and equal protection of law have been further strengthened in the Indian constitution under article 21. It ensures that 'No Person shall be deprived of his life or personal liberty except according to procedure established by law. This means that a reasonable fair and just procedure should be followed for depriving a person of

his personal liberty and life. It admits no arbitrariness, discriminatory procedure or unequal treatment for different individuals’.

### **Right to Equality (Article 14 - 18)**

- ✓ Equality before law (Article 14)
- ✓ Prohibition of discrimination on grounds of religion (Article 15)
- ✓ Equality of opportunity in matters of public employments (Article 16)
- ✓ Abolition of Untouchability (Article 17)
- ✓ Abolition of titles (Articles 18)

- How Equality can be achieved through differential treatment? It is necessary sometime to treat people differently in order to ensure that they can enjoy equal rights. Certain differences may have to be taken into account for this need. Some special consideration for the disabled and protection for women employees especially in the corporate and IT industries when they travel amidst work in the night are provided. These acts should not be treated as an infringement of equality but an enhancement of equality. Similarly some of the policies are needed to overcome the hindrances of equality by the government. For example, India follows the principle of reservation and other countries follow affirmative action.

### **Affirmative action**

#### **Perception of Affirmative action**

- Affirmative action implies that it is not sufficient to establish formal equality by law. In order to eliminate deep rooted inequalities, some positive measures are necessary and such positive measures could minimize and eliminate slowly the entrenched forms of social inequalities. Most of the policies of affirmative action are thus designed to correct the cumulative effect of past inequalities. In our country we have adopted a policy of quotas or reserved seats in education and jobs to provide equality of opportunity to deprived groups, and this has been the subject of considerable debate and disagreement. The policy has been defended on the grounds that certain groups have been victims of social prejudice and discrimination in the form of exclusion and segregation. Therefore in the interest of creating an egalitarian and just society they need to be given special protection and help. However these measures of affirmative actions are time bound and temporary. It is expected that these special consideration will enable these communities to overcome existing disadvantages with others on equal terms.
- The critics of positive discrimination contend that the provision of reservation and quota arbitrarily denies the rights of other sections right to equal treatment. They think that reservations are of reverse discrimination where the principle of equality remained questioned. Equality is meant for treating all equals instead it creates a distinction among individuals on the basis of caste and racial prejudices. Hence this theorist wants to do away with social distinctions that divide society. Whatever the debate may be the



fact is health and education for rural and slum children are glaringly deprived while comparing with the children in elite schools.

### **Affirmative Action Definition**

A Policy or program providing advantage for people of a minority group who are seen to have traditionally been discriminated against, with the aim of creating a more egalitarian society through preferential access to education, employment, health care, social welfare, etc.

- These students face hurdles in gaining access to special coaching and fees for professional courses may also be high. Hence they cannot compete on equal terms with the more privileged sections. We all know that such social and economic inequalities of this kind remain as hinder to equal opportunities. Theorists of today acknowledge this but what they contest is not the goal of equal opportunity but the policies that the state should pursue to achieve the goal of equality.

Of equal - As it harmed me, giving others the same chances and rights as myself- As it were not indispensable to my own rights that others possess the same.

## **Liberty**

### **Introduction to Liberty**

- You have liberty to enjoy the freedom sanctioned as per law. The business of law is to safeguard the liberty of an individual. In the safety of an individual lies the status of one's freedom. The law and liberty are twins and are connected to each other to sanction equal treatment equally for all. Here we all know that, it is the objective of the state to safeguard the liberty of its citizens.
- Do you know something that the law of the state propels a reasonable restriction on every individual? That doesn't mean the privileges of citizens are compromised. The main objective of the state is to protect, what is due for him as his right. And in the process care for the equality of an individual becomes an agenda of state.
- Shall we take a journey into the world of liberty, we intend to enjoy
- In a classroom setting, the liberty of a student varies. In the view of some student, some teachers are strict and some are liberal, in terms of liberty and freedom he/she enjoys in the classroom. Teachers have a privilege to sanction reasonable restriction against student's undue advantage in a classroom. The sanction of reasonable restriction by teacher is actually for the smooth conduct of a student and as well for the effective learning in the classes. Understanding the concept of liberty begins in the classroom by the conduct and attitude of student towards his teacher and his classmates. Raising questions to clarify doubts to his class teacher is his/her right, but the sanction of it becomes liberty. Liberty is just the sanction of law and the restrictions imposed are also

a kind of liberty. Conducive learning environment of classroom, conditions the student to understand the meaning and the purpose of liberty.

Shall we trace the origin of Liberty?

- Liberty remained an essential element for both man and state for progress. History records very well the cruelty of absolute monarchy that ignored the claims of liberty in ancient and medieval ages of England. People could no longer tolerate and rose in revolt against the absolute monarchy. The struggle continued until Emperor John had to bow down and ensure freedom for his subjects. Attempt of emperors after Tudor and Stuart, and the continued absolute monarchy resulted in civil war. King Charles was beheaded and even during the period of Cromwell people could not attain freedom.
- This resulted in the famous “Glorious revolution” in England in the year 1688, containing the absolute monarchy for some period and later led to the outbreak of French revolution in 1789.
- However it had not given a desired liberty. The successors of Napoleon behaved like monarchs. The fall of Napoleon III, resulted in establishing the Third Republic. After the fall of Third Republic in 1940 and Fourth Republic in 1958, Fifth republic was established. Struggle against countries that colonized got liberated after a long struggle for independence. Italy in nineteenth century and India in twentieth century made untold sacrifices for attaining national liberty.

### Historical Context

- ✓ Response to the rationalism of the Enlightenment
- ✓ Response to the French Revolution (1789)
- ✓ The revolutionaries in France fought for “liberty, equality, and fraternity”
- ✓ Ideas of the French Revolution influenced writers in England – they were inspired by the fight for democracy and the common man
- ✓ Response to industrialism
- ✓ Longing for nature and simplicity

### Meaning of Liberty

- The term ‘liberty’ has been derived from the Latin word ‘Liber’ which means free from all shackles. The Latin word ‘Liber’ denotes the absence of all restraints. It means one can do whatever one likes, regardless of all conditions. Liberty does not permit a person to do whatever one likes. The basic fact of liberty is that law is the condition of liberty. According to Professor Barker “Liberty is possible only in an ordered state, a state where the legal and political aspects of sovereignty coincide or nearly coincide. Laski believes that ‘Historical experience has evolved for us rules of convenience which promote right living and to compel obedience to them is a justifiable limitation of freedom.’”

## Exponents views on Liberty

- ✓ "Liberty is the positive power of doing and enjoying those things which are worthy of enjoyment and work" -**Gettel**
- ✓ "Liberty is the freedom of the individual to express without external hindrances to personality" -**Professor G.D.H. Cole.**
- ✓ "Liberty does not means the absence of restraint but it lies in development of liberty" - **Mahatma Gandhi**
- ✓ "Without right then cannot be liberty, because without rights, men are the subjects of law unrelated to the needs of personality" .-**Harold. J. Laski**

## Two Phases of Liberty

- Positive liberty: Positive liberty mean freedom to do something that the individual should have rights and opportunities to develop his personality. Negative Liberty: For J.S. Mill liberty means Negative liberty He submitted that there should not be any restraint imposed upon man and his actions. He also asserted that there should not be any hindrance in the path of man.

### i. Natural Liberty

- The concept of Natural liberty indicates unrestrained freedom to do what ever one likes. Natural liberty means absence of all restraint -an unrestrained freedom to do whatever one likes.
- JohnLocke: In the state of Nature people enjoyed the rights to life, liberty and property.
- Critic: It is absolutely incorrect because it is only the state that guarantee the enjoyment of these rights. In the state of nature people possessed not rights, but the power of animal.

Rousseau: "Man was born free, but everywhere he is in chains"

- Critic: Rousseau does not appear sound because there is no scope for the growth of human personality. According to social contractualist, liberty looks like a license than a liberty. If he is allowed to do whatever he likes, there will be only chaos in the society.

### ii. Civil Liberty

- The concept of civil liberty reflects "Rule of law" civil liberty indicates the liberty man enjoyed in the society it prevails in the state. It denotes the enjoyment of our rights within the limits of law. The protection of civil liberty is guaranteed by the laws of the state.

### iii. Political Liberty

- The concept of political liberty means liberty of citizen to participate in the political life and the affairs of the state. Leacock calls political liberty as constitutional liberty and Gilchrist considers political liberty as a concept synonymous with democracy. Political liberty includes minimum rights. These rights are the right to vote, the right to contest elections, the right to hold public views and criticize the government and right to petitions.

#### **iv. Personal Liberty**

- The concept of personal liberty means the availability of those conditions in which the individual can act as he pleases without being under any type of arbitrary and illegitimate restraint. It also means that every individual has the right not to permit any other individual to interfere in the affairs of his personal life. Every individual should have the liberty to dress, food, standard of living, marriage and education of children etc. The state should not interfere in the personal matters of the individual such liberty is essential for the free development of human society.

#### **v. Economic Liberty**

- The concept of economic liberty means the liberty to earn one's daily bread. Beyond the distinction of caste, colour, creed and gender every individual should have liberty to earn his daily bread by fair means.

#### **Liberty unfurled**

- Liberty is an important condition in a state that gives an opportunity for human beings to develop their personality.

#### **vi. Fiscal Liberty**

- According to this principle; there should be no taxation without representation. It was the slogan given by middle classes who claimed that they should be allowed to decide as to how and on whom their money was to be spent. Both civil and fiscal liberty were related to property and the rights of their owners. It was felt by the middle classes that without fiscal and civil liberty they would not be able to exist and be exploited by arbitrary rulers.

#### **vii. Domestic Liberty**

- It covers equal right for women and children. They need to be protected against maltreatment, cruelty and exploitation. They were also having the right to education. It means the liberty of the nation or the country. National liberties exist where the nation or the community is independence and sovereign. National liberty can otherwise also call as National sovereignty. Every nation wishes to stay independent and without this independence the progress of the nation or the state is not possible. Liberation remains an ultimate slogan for all those nations enslaved by imperialistic forces. Nations

colonialized by imperialist force struggled against foreign empire until freedom is restored.

- The struggle of Italy against Austria, England against Hitler and Napoleon struggle of African countries against imperialist forces and Indians struggle against England are few examples where struggle was made ultimately for restoring the liberty of the Nation. When India was attacked by China in 1962, and by Pakistan in 1965 and 1971 the Government of India made all efforts to safeguard the freedom of nation.

### **ix. International Liberty**

- This concept implies peace and international cooperation and the formation of world federation of states. Liberals were opposed to the use of force as an instrument of national policy. Capitalism needed peace and international cooperation for the free flow of goods from one country to another and they needed all political and other barriers to be removed that stood in the way of the development of world resources.

### **Perspective of various ideologies on Freedom by Andrew Heywood**

- Liberals give priority to freedom as the supreme individualist values. While classical liberals support negative freedom, understood as the absence of constraints or freedom of choice, modern liberals advocate positive freedom in the sense of personal development and human flourishing. Conservatives have traditionally endorsed a weak view of freedom as the willing recognition duties and responsibilities, negative freedom posing a threat to the fabric of society. The new right however, endorses negative freedom in the economic sphere, freedom of choice in the market place.
- Socialists have generally understood freedom in positive terms to refer to self-fulfilment achieved through either free creative labour or cooperative social interaction. Social democrats have drawn close to modern liberalism in treating freedom as the realization of individual potential. Anarchists regard freedom as an absolute value believing it to be irreconcilable with any form of political authority. Freedom is understood to mean the achievement of personal autonomy, not merely being 'left alone' but being rationally self-willed and self-directed.
- Fascist rejected any form of liberty as nonsense. 'True' freedom, in contrast, means unquestioning submission to the will of the leader and absorption of the individual to the national community. Ecologists particularly deep ecologist, treat freedom as achievement of oneness, self-realization through the absorption of the personal ego into the ecosphere or universe. In contrast with the political freedom, this is sometimes seen as inner freedom, freedom as self-actualization.
- Religious fundamentalist see freedom as essentially an inner or spiritual quality. Freedom means conformity to reveal the will of god, spiritual fulfilment being associated with submission to religious authority. Heywood, Andrew. (2004) Political Ideologies: An Introduction, 4th ed. New York: Macmillan

How liberty, sovereignty and law are related to each other?

- Liberty does not mean the complete absence of laws. Liberty exist only in a state in order. The state makes law and the sovereign state operates through these laws. There exist a close relationship between liberty, sovereignty and law. The anarchist and syndicalist wanted to abolish the states. They are of the opinion that if state is more powerful than individual liberty will also be curtailed.

### **Individualist views**

- They regarded the control of the state as harmful to the individual and therefore supported the confinement of the authority of the state. Though this doctrine resulted in dangerous consequences in England. It is now universally accepted that laws are the protectors of liberty. Liberty ceases to exist in the absence of law.

### **How does law protect liberty?**

- i. Provides congenial atmosphere for the smooth running of civilized life in society. Law punish criminal and defends the rights of the individuals.
- ii. Law guarantee the enjoyment of individual rights and duties and protect them. The state punishes the individual who causes harm to others and hinders path of others.
- iii. Constitution is custodian of liberty and it confines the authority of the state and protects the fundamental right of the people.

How liberty is safeguarded?

#### **i. Democracy**

- Liberty is safer in democracy than in any other form of government. Democratic government is the government of the people where as in other forms of government like monarchy and dictatorship all power are centralized in the hand of one person or a group of person. Opposite parties are given due respects in democracy and criticism of government is accepted and tolerated in democracy.

#### **ii. Constitutions**

- Authority of the state dwells in the constitution of the respective nation.
- Let us read the Preamble of our Constitution very carefully and understand the meaning of each of its key words.
- The Preamble of Constitution reads like a poem on democracy. It contains the philosophy on which the entire Constitution has been built. It provides a standard to examine and evaluate any law and action of government, to find out whether it is good or bad. It is the soul of the Indian Constitution.

### iii. Fundamental rights

- Fundamental rights confine the authority of the state. Fundamental rights assure us that the state cannot interfere in the matters of personal life.

### iv. Decentralization of powers

- Decentralization of power is required for the safeguard of liberty. Power should be divided into central, provincial and local government and such decentralization leads to efficient administration.

### Independent judiciary

Safeguard of Liberty depends upon the independence of judiciary. It should be free from the control of the executive. In the communist countries or in the countries which have dictatorship, fundamental rights are given to the people but judiciary is not free from the influence of the executive. In such countries, the safeguard and security of fundamental rights, liberty and constitution is not possible.

### v. Economic security

- Economic security Economic security is a condition to liberty. "Where there are rich and poor, educated and uneducated, we always find a relation of master and servant". - Laski

Poverty is not an accident. Like slavery and apartheid, it is man-made and can be removed by the actions of human beings.

**Nelson Mandela**

### vii. Rule of law

- Rule of law is established in England, USA and India Rule of law mean that there should not be any distinction of caste and creed colour and race. In the eyes of law all are equal and all are liable to be punished if they commit crime.
- The rule of law was further popularised in the 19th century by British jurist A. V. Dicey. The concept, if not the phrase, was familiar to ancient philosophers such as Aristotle, who wrote "Law should govern".

### viii. Political education and eternal vigilance

- Permanent safeguard of liberty is possible. Educated are acutely aware of their rights and duties. Eternal vigilance is the price of liberty and in its absence one can act according to his will whenever the government crosses the barrier of its authority and

interference in the personal life of the people, may rise in revolt against the government.

- “It is the proud spirit of the citizens, less than the letter of the law, that is the most real safeguard” - Harold . J. Lask

**Sovereign:** People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India.

**Republic:** The head of the state is an elected person and not a hereditary position.

**Justice:** Citizens cannot be discriminated on the grounds of caste, religion and gender. Social inequalities have to be reduced. Government should work for the welfare of all, especially of the disadvantaged groups.

**Liberty:** There are no unreasonable restrictions on the citizens in what they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action.

**Socialist:** Wealth is generated socially and should be shared equally by society. Government should regulate the ownership of land and industry to reduce social-economic inequalities.

**Secular:** Citizens have complete freedom to follow any religion. But there is no official religion. Government treats all religious beliefs and practices with equal respect.

**Democratic:** A form of government where people enjoy equal political rights, elect their rulers and hold them accountable. The government is run according to some basic rules.

**Equality:** All are equal before the law. The traditional social inequalities have to be ended. The government should ensure equal opportunity of all.

**Fraternity:** All of us should behave as if we were member of the same family. No one should treat a fellow citizen as inferior.

**We, the people of India:** The constitution has been drawn up and enacted by the people through their representatives, and not handed down to them by a king or any outside powers.

**Sovereignty:** The supreme power which cannot be distorted and divided. The pre-Independent India was ruled over by British empire and India didn't possess sovereignty a country is ruled over by other nation, sovereignty resides with the ruling one and not the ruled. In the globalized era sovereignty is under threat, since the global exchange is unavoidable.



**Preamble:** Like preface of any book preamble is a gist or glimpses of any constitution in the world. If you want to understand about the basic structure of a political system, preamble is an apt one to read. Our Indian constitution's preamble states, India is democratic, republic and sovereign.

**Universal Suffrage:** Voting rights to all the people invariable of gender, caste, color, religion, property and other divisive factors. India introduced adult suffrage immediately after the freedom. The superpowers like USA, UK have not implemented the suffrage to all the people after their freedom.

**Statutes:** A written law passed by the legislative body of a country. It is also added in the parliamentary laws after having had appropriate discussion.

**Justice:** Justice was the main concept discussed by many Greek philosophers. Justice is the main phenomenon which has to be maintained regardless of all kinds of discriminations.

**Fiscal:** Monetary oriented. Government of all types always used to concentrate in fiscal policy.

**State of Nature:** The stage of antiquity in which there was no organized form of government and society.

**Anarchy:** A complete chaos or the stage of confusion. Particularly in the modern era Iraq and Afghanistan haven't possess concrete government structure since they are under American occupation.

**City-state:** Small states in which people are considered as powerful in decision-making. It exists in Greece 2300 years back.

**Vasudaivakudumbagam:** One world one family. It is a global idea which interlinks the entire nation-states into one family in which there will not be any distinctions.

**Inalienable:** That one which cannot be separated.

**Ordinances:** Special orders issued by the president on adhoc occasions.

**De-jure:** On accordance with law.

**De-facto:** Factually, one who rules really and concretely.

## UNIT - 4 Basic Concepts of Political Science Part-II

### LAW

#### Introduction

- Law is the prescription of rules and regulations sanctioned by the sovereignty for the state. Law as, Bodin said, is the command of the sovereign. Similarly Aristotle has rightly pointed out that if there is no law even man will behave like a beast. In order to preserve society and protect the progressive nation, law has become an integral part of the system world over. The enormous power of law could not be a complete solution to maintain an order in the society due to the limitations it is framed with. Law is a tyrant for criminal and a guardian for its citizen.
- There is always an intense debate that happens on, why the law is lenient in some part of the world and so powerful in another part of the world. The question of leniency and powerful the law is, ascertained by its functions especially the punishment it involves. For example, law in a democratic country is much different and concerned than the law in a totalitarian state. And more, how the law unfurls freedom for its citizens matters a lot while executing and exercising it. Ignorance of law is not an excuse anywhere in the world. Hence it is pertinent to introduce the concept of law to the young minds to understand it as the basic rules and regulations as sanctioned by our constitution.

#### Meaning of Law

- The term 'Law' was derived from an old Teutonic root 'lag' "which means something which lies fixed or evenly. Without law life may witness utter chaos and confusion and in fact it is law that regulates life. The word law is used to denote 'uniform'. There are two kinds of laws. They are: physical and human law. Physical law regulates nature where as human law regulates human life. The term law in political science is used to mean body of rules to guide human action. The function of state is done through government and the government in turn interprets the will of the state through law.

#### Views on Law

- "Law is the command of the sovereign" according to John Austin
- "Law is the collection of rules which the state recognizes and applies in the administration of Justice" said Salmond
- According to Krabbe "Law is the expression of the judgments of value which we human beings make by virtue of our disposition and nature"
- "Law is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government." Said Woodrow Wilson

- “A law is of general rule of external human action enforced by a sovereign political authority.” Said Holland

### **What is the purpose of Law?**

- According to MacIver “A law does not become a law until and unless it is backed by the state. The purpose of law is to establish sure foundations in the certitude of which men can rebuild the many mansions of society.” The term ‘Law’ is considered as a body of rules to govern human action and as well to regulate human life by the discipline Political Science. ‘It is not the issuing of law that makes the state, it is the force of the state that makes law” believe Hocking.

### **What are the purposes of Law?**

- Protect basic human rights
- Promote fairness
- Help resolve conflicts
- Promote justice
- Promote order and stability
- Promote desirable social and economic behaviour
- Represent the will of the majority (on some issues)
- Protecting the rights of minorities

### **Are you aware of the classification of Laws?**

#### **i. Private laws**

The relationship of citizens and the regulation of relations among one another are determined by private laws.

#### **ii. Public laws**

The laws that determine the relation of citizens to the state are public laws. Public law perceives state as an arbiter as well as one of the parties interested in it.

#### **iii. Constitutional laws**

The common law differs from statutory law because it mainly based on precedent. Statutory law of a more formal body of the legal system that consists of written legislation. This legislation will mainly be based on rules and regulation either mandating or prohibition certain behaviours of the general public. Common law, on the other hand, will allow judges to decide cases based on the ruling of prior cases with similar circumstances.

- Constitutional laws are the basic laws according to which the government in a state conducts itself. The laws that define interpret and regulate the functions of the government are known as constitutional laws. For example, the election of President,

the powers and functions of the Supreme Court and method of the appointment of the governor are constitutional affairs. The laws which are not related to the forms and functions of the government and to the fundamental rights but are related to the social and economic affairs of all citizens are known as ordinary laws. For example, the abolition of child marriage and prohibition etc come under ordinary laws.

#### **iv. Statute Laws**

- Statute laws are the laws which are framed by the Legislative Assembly or by the Parliament. Democratic Government being popular in most of the countries, the laws of those governments are framed mostly by the Parliaments in those countries.

#### **v. Ordinances**

- Ordinances are generally issued by the executive branch of the government as per the law of the state. Ordinances are temporary by nature and are issued by the President in the absence of parliament, especially to face the emergency.

#### **vi. Common Laws**

- Common laws are those laws which rest on customs but are enforced by the courts like statute law. Common laws are popular in England.

#### **vii. Administrative Laws**

- The office and responsibilities of government servants are interpreted and governed by Administrative law. It is the Administrative law that enable the public officers to separate law and procedure from private individuals. These laws also make an attempt to interpret the privileges of government officials. Administrative laws are not popular in England, U.S.A. and India. They are popular in France and a few countries of Europe. For example, When any dispute arises between a citizen and government servant the administrative court resolves the issue with administrative laws.

#### **viii. International Laws**

- The rule that determine the conduct of the civilized states in their relation with other states in international arena is otherwise called International law. There are no such framed laws that govern international relations but backed by public opinion and the rule of UNO as an international body matters for any nation to enjoy its sovereign status. There are also laws such as Sea law, where there are International borders and as well Air law that demands aircraft of other nation to fly with permission of respective nations.

## Do you want to know the sources of Law?

### i. Customs

- Customs play an important role in the framing of the laws. Most of the laws that came from customs are recognized by state later. Since ancient period we can notice that the dispute among tribal were resolved by the head of the Tribes using their customs and traditions. Customs became laws when tribes extended into the formation of state. State cannot actually ignore the customs of the country. The common law of England for example sprang mainly from customs.
- For example Bull-Taming sport culture of Tamils of India resulted into the creation of Jallikattu Law in 2017. (Read the box for more information about Jallikattu Law of 2017) Read the text and write six questions, one for each of the Question word: What, where, when, which, how and why.

### ii. Religion

- The religion practiced by Primitive communities played a decisive role in evolving the laws of the state later. Religion was a basis of law for most of the nation. The origin of Hindu law can be traced in the code of Manu. The origin of Mohammedian law can be traced in Shariat law. Divine law is a law revealed through man from God. God is the ultimate source of divine law. For Christians Ten Commandments were the first law given by the Lord Almighty to his people and was considered as the basis of law.

“Indeed the early law of Rome was little more than a body of technical religious rules, a system of means for obtaining religious rights through the proper carrying out of certain religious formulas”.

- Woodrow Wilson

### iii. Judicial decisions

- Gettell maintains that the ‘state arose not as the creator of law but as the interpreter and enforcer of custom’. The function of the Judiciary is to interpret and declare the law. While discharging its function the judiciary creates new laws. The laws later gets recognized by the state. Judicial decisions thus became an another source of law. Some time the verdict of High Court and Supreme Court are treated as laws.

### iv. Equity

- When laws are ambiguous and do not fit in, the principles of equity are applied and cases are decided according to common sense and fairness.

“Equity is body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to superior sanctity inherent in those principles.”

- Sir Henry Maine

## Equity

- The name given “Equity” is the set of legal principles in countries following the English common law tradition, which supplement strict rules of law where their application would operate harshly, so as to achieve what is sometimes referred to as “natural justice”
- It also means “fairness”
- Equity has been described as “a gloss (meaning a supplement) on the common law, filling in the grapes and making the English legal system more complete
- In English Law, equity means that body of rules originally enforced only by the court of chancery.

### v. Scientific commentaries

- Another source of law are scientific commentaries. when the commentary appears it is understood only as an argument, later on its authority is recognized as more authoritative than the Judicial decision.

He opinion of learned writes on law have often been accepted as correct law: in England, for instance the opinions of coke and Blackstone in America of story and ken, in India of Vijnaneswara and Apararka”

- A. Appadurai

### vi. Legislature

- Most of the laws in the modern times are framed by legislature and it is one of the most important source of law. Indian constitution is a classic example where the best provisions of other constitutions are borrowed and made it available for the best of our nation

“The state is founded on the minds of its citizens, who are moral agents... a bad people means a bad state and a bad laws.”

- Gilchrist

### Sources of the Indian Constitution

1. **Government of India Act 1935:** The federal scheme. Office of the Governor. Role of federal judiciary. Emergency provisions
2. **UK Constitution:** Law making procedures, Parliamentary Government, Rule of Law, Single citizenship and Bicameral Legislature.
3. **US Constitution:** Fundamental Rights, Independent judiciary, Judicial Review, Impeachment of the President, Procedure for the removal of the judges of the Supreme Court, High Courts and Role of Vice President.

### How law is related to state and morality?

- Law and morality are complimentary to each other. Ethics reveals its citizens the code of conduct. Similarly the laws framed by state also aim to achieve the same goal. The sole aim of the state lies in the promotion of the welfare of the people. As there is a close affinity between law and morality, there also exist a good relationship between law and state.

He best state is that which is nearest in virtue to the individual. If any part of the body politic – suffers, the whole body suffers”.

- Plato

- A bad state will have bad citizens and a good state will have good citizens. So it is the sole function of the state to keep a good standard of morality. Government of India is trying its best to eliminate the evil of untouchability. It has framed laws against untouchability. Though there is law against social ills it is understood that it is rather a sin to adopt the policy of discrimination on the grounds of caste and creed, colour and race, clans and tribes, groups and classes. The government is taking measures to prohibit the drinking of wine and also prohibits child marriages. Generally democracy does not have any such law as opposed to morality. Wilson maintains that the aim of the law of a state is to develop morality in the state. Hence the sovereign law-making authority pays due attention to the code of the intimacy between law and morality.

“We regard the state as the condition or morality. The state and law continually affect both public opinion and actions; in its turn law reflects public opinion and thus acts as the index or moral progress”

- Maclver

### Distinction between Law and Morality:

- Laws are enforced by the state, if not obeyed to the commands of law, he is likely to be punished by the state.
- The severe punishment one can be awarded to a person for not observing the scruples of morality is the social boycott.
- Morality is concerned with both internal and external affairs of man whereas law is concerned only with the external affairs of man. Hence, law punishes only those persons who violate laws by their external actions.
- Law punishes a person only when he commits a theft or dacoity or murder or any other physical crime.
- Law cannot punish a person for telling a lie or for abusing some one.
- Telling lies, condemning someone and being ungrateful and many other actions of man are sins but they are not crimes. Machiavelli maintained that even the immoral practices are legal, if they are applied for the benefit of the state.

### What is Moral law?

- A law framed with a purpose of eliminating evils such as drinking of wine, gambling, theft, dacoity and murder are moral laws. The laws which are based on morality remain permanent

### How Law and Public opinion are related to each other?

- The power of democracy lies in the participation of people in the democratic exercise of electing their representatives. People are not directly involved in the framing of laws, yet they could elect their representatives to legislature. People elect their representatives to execute the will of the electorate. The elected body are just expected to represent the will of the public. Here we can understand the close affinity of law and public opinion.
- In democracy laws are framed only based on the support of public opinion. People carry out peaceful demonstrations to express their opinion or resentment. Common welfare of the people and social progress are the primary considerations of public opinion.

The Modern state appeals to motility, to religion, and to natural law as the ideological foundation of its existence. At the same time it is prepared to infringe any are all of these in the interest of self-preservation.

- J.M.Coetzee

#### Quotable Quote

O turn all moral obligations, legal obligations would be to destroy morality. There is thus a legal conscience, and they do not always coincide".

- Maclver

Law and order exist for the purpose of establishing justice and when they fail in this purpose they become the dangerously structured dams that block the flow as social progress.

- Martin Luther King, Jr

## CITIZENSHIP

### Introduction

- In political theory, citizenship refers not only to a legal status as a member of a country but also a normative ideal which means the ruled are full and equal participants in the political process. Democracy and citizenship go hand in hand. Democracy focuses on political parties, electoral systems, rule of law, etc., while citizenship focuses on the attributes of individual citizens. Citizens have certain rights that differ from one country to another. Today, we are following a modern state and citizenship connotes a status which is defined as a set of rights and duties of the people.



- Are you a natural citizen? or a naturalised citizen of your country? What are the differences between the two? Natural citizens are the citizens by virtue of their birth but naturalised citizens are the ones who acquire citizenship. Aristotle defined citizenship with reference to the birth place, family lineage and culture. Stoics viewed citizenship as a cosmopolitan ideal. Confucius emphasized it as the restoration of commonwealth, where everyone worked for harmony and welfare. In India too, there persisted the concept of “VasudevaKutumbakam”.

### **Citizenship and the City-state:**

- Citizenship was an important theme in the ancient Greek and Roman Republics but they disappeared from the feudal systems. This was later revived as a desirable aspect of civic humanism during the Renaissance. Citizenship was considered only as participation of duties during the ancient Athens. Citizenship was considered as a pivotal importance to Aristotle as he perceives ideal state is possible only in a law-based state where citizens are law abiding. He states that an individual is a political animal who finds fulfilment only within the polis and hence desiring for political posts is natural. He says that citizenship is a criterion wherein the rule must be applicable to all irrespective of whether they are residents, aliens or even slaves from other countries. A citizen is one who enjoys the right to share in the deliberative and judicial offices and is able to exercise his political rights effectively under the constitutional system.

### **Marshall's Analysis**

- Marshall, a liberal-social democrat links citizenship to social class in the context of capitalism. According to Marshall, citizenship has three essential divisions: civil, political and social. Every individual requires a right for freedom and that is what is in as civil component. This is also an important ingredient of rule of law. As a citizen we have the right to participate in political decision-making process. This is reflected in the political division. No citizen can be deprived of the prevailing

### **Aristotle**

- defines citizenship as “he who has the power to take part in the deliberative or judicial administration of any state.” Greeks enjoyed the privilege of being governed by democracy; their government was made up of commoners, and they were allowed freedom of speech to a large extent through public speaking rights. Standard of living and they have all the rights to enjoy the fruits of this. Hence, Marshall stresses upon the social services.

## Citizenship and Education

In this, we shall study about the influence of education towards citizenship, according to various philosophers. Aristotle considers three qualities to be necessary for a man universally. They are:

- ❖ Loyalty to the constitution
  - ❖ High degree of capacity to one's duties and
  - ❖ Quality of goodness and justice.
- A democratic nation upholds political and economic equality for which identification between a good man and good citizen are always necessary. Plato considers education is a cure to corruption and political instability. Hence, he speaks for effective and responsible form of education. Aristotle, Hume and Rousseau, point out that the citizens will need knowledge of the attitudes and the expectations of their fellow citizens. J.S. Mill and Tocqueville on the other hand stress upon the need of political knowledge and in order to participate and conduct the affairs of the local government, voluntary association or jury service, education is very much necessary.

## Citizenship in India

- India is a secular, democratic and nation state. Why do you think Independence Movement began? The main reason was to bind together people of different religions, regions and cultures. Though there were differences with the Muslim League during the Partition of the Country, yet this strengthened the Indian National Leaders to maintain the secular and inclusive character of the Indian Nation state.

In USA, dual citizenship system prevails where a citizen is both the citizen of the country (USA) and the respective state. IN India single citizenship system prevails where a citizen is only the citizen of the country (India).

The Maintenance and welfare of Parents and Senior Citizens Act was passed in 2007 by to provide maintenance and support to elderly parents and senior citizens.

What the Act states

- The Act established the Maintenance Tribunal to provide speedy and effective relief to elderly person.
- Maintenance, according to the Act, pertains to "provision for food, clothing, residence and medical attendance and treatment".
- The only condition for claiming maintenance under this Act is that the persons must be unable to maintain themselves from their own earnings and property.
- The Act mandates that the maximum maintenance paid will be 10,000/- per month. The maintenance amount is determined by the needs of the claimant and the aim is provide maintenance for the person to lead a normal life.
- Parents or senior citizens can avail the services of the State government appointed maintenance officer to represent their interests during proceedings before the Maintenance Tribunal. Lawyers are not allowed to present cases before the Tribunal

according to the Act.

- Any person who is responsible for the protection and care of a senior citizen and intentionally abandons the senior citizen completely is liable to pay a fine of 5000/- or be imprisoned for three months or both.

### Global citizenship and National citizenship

- National citizenship assumes that our state can provide us with protection and rights we need to live. However, states today are to tackle a lot of problems and hence individual rights are guaranteed to protect the safety of the people. Global citizenship on the other hand, deals with the importance of citizenship across the national boundaries. Here, one may need the cooperative action by the people and the governments of many states.

Therefore, citizenship for all can resolve many socio- economic inequalities. Moreover, global citizenship reminds us that we live in a world where the states are interconnected with each other and strengthening the links is most important.

### RIGHTS AND DUTIES

#### Introduction

- The language of rights has formed part of our moral, legal and political vocabulary for many centuries. Rights are so common in our world that we might suppose that they are woven into a fabric of human rights. The significance of rights in the modern era is not limited to their entrenchment in the constitutions and their announcement in international declarations. If all human beings possess rights merely in virtue of being human, then all humans possess rights merely in virtue of being human, then all humans possess a certain equality of moral standing which cuts across differences of class, caste or race or religion.

#### Do you know about rights?

- **Rights** are important conditions of social life without which no person can generally realise his best self. It is only when people get and enjoy rights that they can develop their personalities and contributes their best service to the society. They are the common claims of the people which every cultures society recognizes as essential claims for their development and which are therefore enforced by the state.

“Rights are powers necessary for the fulfilment of man’s vocation as a moral being...”

- T.H. Green

- **Isaiah Berlin** defines rights in terms of positive liberties and negative freedoms. A positive right is an entitlement to: A right to free expression, for instance, entitles one to voice opinions publicly. A negative right is a freedom from; Freedom of person is a right to be free of bodily interference.

## Features

- Rights are the important rational and moral claims of the people for the societal development.
- They are available to all the people irrespective of caste, creed, race or gender bias.
- Rights and duties are interrelated to each other. "No duties, no rights." "If I have rights it is my duty to respect the rights of others in the society".
- Rights are justiciable.
- Rights are protected and enforced by the laws of the state. It is the duty of the state to protect the rights of the people.

## Let us differentiate Rights and Responsibilities

- Rights and responsibilities are inseparable. When someone is borne with a lot of responsibilities, they are automatically bestowed upon with enough rights. Rights actually enable an individual to perform their responsibilities in the different roles we play on a day to day basis.

What are your responsibilities?

- ❖ To safeguard the unity and integrity of India.
- ❖ To protect the public property.
- ❖ To conserve and protect the natural resources of the country like wildlife, lakes, forests and rivers.
- ❖ To maintain the spirit of brotherhood and create harmony among all irrespective of caste, creed, colour and economic status.
- ❖ To preserve the rich Indian culture and heritage.
- ❖ To maintain the spirit of brotherhood and create harmony.
- ❖ To respect the National Anthem and National Flag.

Are you aware of the different types of Rights?

### i. Natural Rights

- a. These rights are parts of human nature and reason. Political theory explains that an individual has certain basic rights and the government cannot deny these rights. In classical political philosophy, "natural right" denotes to the objective rightness of the right things, whether the virtue of a soul the correctness of an action, or the excellence of a regime.

### ii. Moral Rights

- a. Moral rights include rules of good conduct, courtesy and moral behaviour. Moral Rights include rules of good conduct, courtesy and of moral behaviour and stand for moral perfection of the people.

### iii. Legal Rights

- Legal rights are equally available to all the citizens and they follow without any discrimination. Legal rights are those which are accepted and enforced by the state. Legal rights are of three types:
  - ❖ **Civil Rights:** These are the rights which provide opportunity to each person to lead a civilized social life and that which are protected by the state. Right to life, liberty and equality are civil rights.
  - ❖ **Political Rights:** These are the rights by virtue of which the people get a share in the political process. These rights include the right to vote, right to get elected, right to hold public office, etc.
  - ❖ **Economic Rights:** These are the rights which provide the economic security to the people. The people are empowered to make proper use of their civil and political rights. Right to work, right to adequate security, right to social security. Legal rights are what the law says there are, insofar as the law is enforced. They gain importance through legislation or decree by a legally authorized authority.

### iv. Contractual Rights

- These rights originate from the practice of promise – keeping. They apply to particular individuals to whom contractual promises have been made. The numerous examples of contractual rights include rights to purchase a product or service, right to sell a product or service.

### v. Human Rights

- Human Rights are the rights of highest order. They are morally important and are possessed in virtue of the universal moral status of human beings. They are protected and supported by international and national laws and treaties.

### Have you heard of Bill of Rights and Fundamental Rights?

- The Bill of Rights, in the United States, was adopted as a single unit on December 15, 1791, and they constitute a collection of mutually reinforcing guarantees of individual rights and limitations on federal and state governments. The Bill of Rights, in the United States, was adopted as a single unit on December 15, 1791, and they constitute a collection of mutually reinforcing guarantees of individual rights and limitations on federal and state governments.
- The Bill of Rights derives from the Magna Carta (1215), the English Bill of Rights (1689), the colonial struggle against king and Parliament. The United States Bill of Rights plays a central role in American law and government, and remains a fundamental symbol of the freedoms and culture of the nation.

James Madison Proposed the Bill of Rights. Bill of Rights was influenced by George Masori's 1776 Virginia Declaration of Rights & 1689 English Bill of Rights.

- James Madison

### **Fundamental Rights:**

- India won independence from the British Imperial-colonial rule in 1947. India emerged as democratic, secular country that had high emphasis on Rights.
- On August 29, 1947, the Constituent Assembly set up a drafting committee under the chairmanship of Dr. B.R. Ambedkar. The total number of amendments that were made was approximately 7635, out of which nearly 2473 were actually moved. The 12th session of the Assembly held on January 24, 1950 elected Rajendra Prasad as the first President of the Indian Union. The legal and political luminaries of the Assembly affixed their signatures on the official copies of the Indian Constitution.
- Part-III of the Indian Constitution contains Fundamental Rights that is the critical foundation of the Democratic ethos of the Indian Constitution. The Indian Constitution in its text and scope is the most detailed and the most elaborate in the world. Every minute aspect of the fundamental rights is enumerated in the Constitution which is also one of the important aspects for it to be voluminous. The various facets of the Fundamental Rights are elaborated below:

### **Right to Equality**

It took the constituent Assembly 2 years 11 months and 20 days to frame the constitution.

- Right to Equality guarantees equality before law to all the people irrespective of their caste, creed, gender and race, etc. It also emphasizes on the prevention of discrimination to visit any public places. This permits anyone to visit temples, restaurants, hotels and places of public entertainment. It also guarantees equality of opportunity to employment to citizens in Union or states. Right to equality forbids any form of untouchability and considers this as a serious offence.
- Right to Freedom Equality and freedom or liberties are the two kinds of rights necessary for democracy. This article assures freedom of speech and expression, freedom to assemble peacefully and without arms, freedom to form associations and to move freely throughout India. Do you know that this Article also provides you the freedom to practise any profession of your choice? Yes, you can. You can set up a clinic, a pharmacy or even a supermarket.
- Right to Life and Personal Liberty No citizen can be denied of his personal liberty. This means no person can be detained without informing the grounds of his arrest. An arrested person has also the liberty to consult and be defended by a lawyer of his choice. Besides this, he is not to be kept under custody beyond 24 hours and must be produced before the Magistrate. Preventive Detention Preventive Detention is

considered as a check on the actions of the miscreants which is actually the dire need of the hour. If the State feels that a person can be a threat to law and order as well as to peace and security of the nation, it can arrest or detain that person.

- Right against Exploitation There are millions and millions in our country who are exploited and used. They are the underprivileged and the deprived, in the society. In the today's scenario, human trafficking has become a serious exploitation of human beings. Human trafficking is buying and selling of human beings and treating them as slaves. Apart from human trafficking, child labour is another problem being faced where children are put into forced labour without payment.
- This is the reason why the Constitution has provided with the Right against exploitation, wherein trafficking in human beings and beggary are forms of forced labour. It also prohibits the children below the age of 14 years from employment in any factory or mine or any kind of hazardous labour.

### **Right to Freedom of Religion**

- In India, all the people have the right to choose their own religion and faith. None can stop them from practising their religion as well as propagating it. These rights include the social as well as the personal aspects of the religion which are enjoyed by every citizen in the country.
- Right to freedom of religion guarantees to all persons freedom of conscience and authorises them to profess, practice and propagate any religion subject to the prescribed limitations of public order, morality and health. Article 26 allows establishing and maintaining institutions related to religious affairs and charitable purposes also. You can own a movable or an immovable property and administer the property in accordance with law.

### **Cultural and Educational Rights**

- There are certain non-political rights of religious, cultural and linguistic minorities, groups or sections of people. Constitution guarantees these rights for them.
- No citizen is denied the admission to the State or the State aided educational institutions owing to caste, creed, gender, etc. The citizens have their right to get educated in any schools or colleges of their choice. If in case the institutions are found to practise discrimination, the government will not extend aid to such institutions. Moreover, the State should not dictate the pattern of education to these institutions too and must allow them to decide in order to preserve our culture.

### **Right to Constitutional Remedies**

- Constitutional Remedies provides the rights to the citizens to move the Supreme Court or the High Court to protect their rights. Article 32 provides the remedies to the

citizens at the Supreme Court while Article 226 by the High Court. The courts can issue writs or orders in the nature of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition or Injunction. Therefore, fundamental rights are critical and instrumental in protecting the rights and liberties of the individuals in the country. By doing so, they establish the democratic way of living through these cardinal principles of equality and justice.

- Fundamental Rights therefore constitute the cornerstone of our national liberty, which are cherished and attained after trials and tribulations.

Be aware of the new rights

### **Right to Information**

- Do you have any queries to the Government? You can very well ask them about how they work and who are the members who aid in their working. Wondering how? Yes, Right to Information Act of 2005 provides you this with this mandate of posing queries to the working of the Government. This is to empower the citizens and initiate transparency and accountability. An informed citizen is kept more vigilant on the instruments governing the functions of the government thereby making them accountable.

### **Right to Privacy**

- People of India will surely not surrender the most precious aspects of human persona, like, life, liberty and freedom. The citizen will surely not surrender all these rights to the mercy of the state. Right to privacy is moreover an integral part of human dignity. "The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution"

### **Rights of Transgender**

- Who are transgender? Have you seen them? Yes, transgender people are individuals of any age or sex and their appearance and characteristics are different from how men and women are supposed to be. They exist in every culture, race and class, ages back. Today they are addressed as the third gender. The Supreme Court has indeed directed the Union and the State Governments to grant legal recognition of their gender identity. Moreover, the fundamental rights must be available. They are also entitled with the provision of public health and sanitation and socio-economic rights.

### **Directive Principles of State Policy**

- Part-IV of the Indian Constitution is Directive Principles of State Policy. It constitutes the most comprehensive political, economic and social programme for the welfare state. They have set up the blueprint for a humanitarian socialistic perspective. The Directive Principles are a set of rules enforced upon the State to direct policies towards securing adequate means of livelihood for men and women equally. It also enforces



equal pay for equal work for both men and women. These principles ensure a decent standard of living and full enjoyment of leisure and social and cultural opportunities. The incorporation of Gandhian Principles under the Directive Principles of State Policy directs in promoting cottage industries on an individual or cooperative basis in the rural areas. These principles also endeavour in controlling the consumption of intoxicants.

- Liberal Democratic Principles of the Directive Principles helps in securing a uniform civil code throughout the country. It also seeks to provide free and compulsory education to all children between the age group of 6 and 14 years. It also ensures that no child is subjected to any physical punishment or mental harassment.
- Liberal Democratic Principles of the Directive Principles helps in securing a uniform civil code throughout the country. It also seeks to provide free and compulsory education to all children between the age group of 6 and 14 years. It also ensures that no child is subjected to any physical punishment or mental harassment.

### **Political Obligation**

- Do you feel or expect that the Government must be transparent and accountable to the citizens of the nation? If yes, then how are you reciprocating back to the Government? This is what Political Obligation is. It is related to moral affair. Every individual has to perform certain duties such as payment of taxes, participate in voting, perform judicial and military functions, but for what? It is in order to maintain the political institutions of the country.
- Political obligation binds a person to the performance of duties as mentioned in the Constitution. An individual has to follow the rules and regulations in the society for his own welfare and the society's welfare. When the State is responsible towards the citizen, the citizen must also reciprocate to the Government. The proper functioning of the State depends upon the proper functioning of the systems of the government.
- The word 'political' actually deals with policy and the government's administration. The framework of the political system is framed and then the limitations of the power are identified.
- T.H. Green states political obligation as, "it is intended to include the obligation of the subject towards the sovereign, the obligation of the citizen toward the state, and the obligation of the individual to each other as enforces by the political superior."

### **Political Obligation and Political Authority**

- When the state has a political authority, it has the right to compel the non-compliers. For example if anything within the State's authority to levy the taxes, then the State has all the rights to compel the non-compliers to pay the taxes. However, even if the State

does not enforce its authority, still it is the moral duty of the citizens to comply with the laws.

- Hence, every human being is subject to political obligation owing to the omnipresence of the modern nation state. Political obligation otherwise involves three major aspects:
- The identifiable authority to which political obligation is rendered: If a person has an obligation to do or refrain from doing, he has to be directed by a person who has the authority or the power to direct or instruct. However, a person's political obligation has a certain link to the citizenship of the state. A foreigner will not have political rights but will have legal obligation and protection.
- To what extent political obligation can be rendered: The State can enforce laws and expect minimum obligation. This means that the people cannot be selective about the laws but have to obey the laws. Examples to quote can be voting, military duty, etc. These are the basic duties of the citizens which have to be compulsorily implied without being selective.
- The basis of Political Obligation: Political obligations have gained momentum only after the sixteenth century. Earlier, the people considered Political obligation as the will of God. But, modern political theory differs in its explanation. This theory says that no person is forced to do a work but they voluntarily assume their own duties as their valid obligations.
- Do you know why the people assume in such a way? The reasons are self-interest and realisation of the state's basic duties. The State is providing the people with physical safety and security. People are aware that securing justice or maximizing happiness cannot happen without the political authority. When these are provided by the state, naturally the people are responsible for political obligations.

#### Features of Political Obligation

- ❖ There prevails a source of political spirit and social service
- ❖ Honesty and integrity are the essential aspects when it comes to the performance of public duty.
- ❖ There must prevail political legitimacy and effectiveness
- ❖ The citizens also have the responsibility of guarding their guardians
- Let us think over the kinds of Political Obligations Political Obligations are of four kinds. What are they?

**Moral Obligation:** Are you hospitable to the guests who come to your house? Do you help the poor? Will you not take care of your parents in their old age? These are your moral obligations. They do not legally bind the community and the individuals and if you do not behave within the moral obligations, you can also not be punished. However, this is your ethics and moral principle innate in you.

**Legal Obligation:** Our nation is a welfare state where the Government focuses on providing us with the infrastructural facilities. Roads, health centres, hospitals, education, etc are few of the examples of concern.

**Positive Obligation:** There are certain rules made by the state which cannot be disobeyed and hence they are considered as the positive obligation. Can you think of some examples related to positive obligations? Yes, paying tax and serving the defence are some of the examples under positive obligation.

**Negative Obligation:** This is the direct opposite of positive obligation. Here, an individual is not permissible to do what the government prevents him from doing so.

- Now, think of some examples under negative obligation. Have you seen some people get drunk and behave in a very disorderly manner? Some drink and drive, some of them cause a lot of problems to the family after being drunk. In the same way, commission of crime is also a negative obligation. Hope, you understood what negative obligations are?

### **The Constitution and important obligations**

- The Constitution is considered as a rule book of the state and it expects the citizens to adhere to the rules. If the Constitution has to work successfully, then people's cooperation is also a must. "Law is a means to an end and never an end to itself". There is a concept called the steam roller legislature. In case a law does not serve good then it has to be changed. There are situations where some laws are framed by the Government which are harmful and yet they get a support, which is called the Steam roller legislature. It is the duty of the citizen to resist such laws too. Hence, the concept of political obligation not only informs people to obey the rules and regulations of the authority of power but also informs to resist if the laws are found not to be good for the society.
- Theories of Political Obligation All of us have some theories, values in life. We practise whatever is right and do not follow misleading principles. In the same way, theories are applicable for political obligations too. There are different types of theories of political obligation:

#### **i. The Divine theory**

- In the olden days, people thought that the God created the state and the king was his representative. But this theory could be popular only during the ancient and middle ages but not during the modern era.

#### **ii. The Consent Theory**

- This theory proposes that the authority of the state is based on the people's consent. Hobbes, Locke and Rousseau justified this theory on the grounds that the authority of

power was dependent on the people's consent. But, later it could not be accepted because it treated state as an artificial organisation.

### iii. The Prescriptive Theory

- This theory states that the respect to the political authority is based on the principle of customary rights. It is a fact that political institutions are continuous from the past, this idea has been supported by Edmund Burke. But over a period of time, it lost its effect due to its overemphasis on the respect for the well-established practices.

### iv. The Idealistic Theory

- This theory regards man and the state as two entities. "Man" is regarded as a political and rational creature while "state" is considered as a self-sufficing community. This idealistic theory propounds that when the individual receives his rights from the state, he can have no rights that can conflict with the state. However, this theory proved to be quite abstract and which could not be understood by man.

### v. The Marxian Theory

- The Marxian theory is actually different from the other theories. It has been classified into three stages:

**Pre- revolutionary stage:** This stage explains political non-obligation

**Revolutionary Stage:** It is an eventual change from political non-obligation stage to a stage of total political obligation.

**Post- revolutionary stage:** This stage is a complete transition from total political obligation to social development.

- The Marxian theory of politics explains the state as an instrument of power in the hands of the proletariat. Towards the success of the revolution to consolidate the socialist order, it may lead to what is called as 'withering away' of the state. However, this theory was also considered to be illogical since it made man subservient to the state.

### Why should we obey the State? Is it necessary?

- Though the theories mention about the political obligation, yet some seem to be abstract while some are illogical too. But, have you ever thought why should we obey the state? Is it because you fear or you have a sense of patriotism? Shall we see, what are the reasons that make an individual to obey the state?

**i. Fear of Punishment:** Do you fear being punished by your teacher with an imposition if you go to school with an incomplete homework? Does your father obey the traffic signals properly fearing being penalised? Yes, fear is always there if we do not

perform our tasks properly. In the same way, individuals perform their functions fearing punishments. In other ways, it is actually the coercive authority of the state that compels a man to conform to the system of regulations.

**ii. Patriotism:** Why do we stand up for our National Anthem? It is because of patriotism. We love our nation. Hence, to keep our surroundings as well as to keep the streets and roads garbage free is also our duty. So, the members of the state are conscious about the state they live as without that they cannot live as civilized human beings. The members develop a binding towards the state.

**iii. Fear of disorder and anarchy:** Do you like your house to be run in a disorganised manner? Imagine you have breakfast in the afternoon everyday and the clothes are strewn here and there. Would you like if your place is unclean? We don't. It is a general principle that human beings always wish for peace and order. They not only obey the laws but also look upon the ones who do not obey.

**iv. Habits and traditions:** We are all brought about to follow good habits like being courteous, honest, discipline and obedient. This is what our traditional values instilled. Hence, in a nation, even the citizens wish to establish good traditions, and obedience to the state, that which becomes a habit.

- Therefore, let us understand that political obligations are necessary for the citizen to maintain a good system nationwide. Every individual hence has to abide by the laws for a good reciprocation from the state as well.

## Property

- Property is considered as a natural right which is necessary for human dignity, freedom and dignity of life. Property refers to the legal relations between the persons with respect to specific things which may be material or abstract. Abstract can be the copyrights of a book or a film, etc. Property does not only refer to the private property. Private property is one of the various forms of the property. The notion of private property relies upon the following features:

i. Do you own a house? If so, it is called as your private property where you are the owner and no one can access your property or claim.

ii. As an owner you can use your property but altering or destroying the same requires the necessary authorised permission.

iii. The third feature is, if in case you wish to transfer, some forms of transfer may be forbidden or penalized by taxation, like gift tax or capital transfer tax. Other forms of property include the public property, common property or the state property. Property rights grant the owner an exclusive power to decide what will happen to a particular thing or resource. Public properties include transport, railways, etc.

## Locke and the Utilitarian Justification

- According to Locke, the Government's main function is to guarantee every citizen the protection of their individual rights and secure conditions to enjoy their properties peacefully. Humans need property which is also the necessary means of life. Humans do not plan their lives from moment to moment but rather plan with future material security.
- Security is an important aspect which can provide peace and happiness in the minds of the people. Hence, the utilitarian's state that the system of property rights is necessary if the individuals is to achieve a sense of happiness. If at all the governments want to promote the happiness of its people, productivity must be encouraged by protecting individual's property rights. No government should take away the property from the people who are expected to possess and enjoy.

## Twentieth Century Developments

- Most of the developed and developing nations practised social welfare policies after World War II. The main components of these policies entailed taxation on property, transfer of basic industries, and basic public amenities like health and education to state control.

## Feminist Perspectives

- With the advent of women empowerment in the 20th century, women too claim equal status. Feminist scholars state that an important condition for the subjugation of women has been owing to denial of access of women to resources to income, such as land. This is owing to the prevailing patterns of male ownership and control of such resources. Owing to this, status of women has been one of the dependence on men. This dependent status has actually led to their rights to own and claim property.
- The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to acquire, hold and dispose of property as a fundamental right. However, Article 300 (A) was inserted in another part of the Constitution. This was to affirm that no person shall be deprived of his property save by authority of law. Hence, this has become a statutory right now.
- Hence, in a civilized society, the scope for coercion and forcible acquisitions needs to be minimal. Unless circumstances are compelling, no forcible acquiring of property must be initiated. The state should neither act as brokers nor as agents of big businesses but should be in according stronger property rights to the farmers too.

12<sup>th</sup>vol I  
unit - 1 Indian Constitution

**Meaning, Functions and Significance of the Constitution**

- Nationalism during the colonial period strived not only for political independence but also for territorial integration, constitutionalism and democratization.
- India is a culturally diverse country, yet united as a political state. Indians are dependent upon each other in many ways, and they cooperate in many ways. There is a felt need to have specific agreed basic rules and regulations which could facilitate the people of this country to live together. The absence of the basic rules and regulations may imperil the very statehood of India also make the people feel insecure. Colonial rule was based on Charters, councils Acts and government of India Acts. The leaders and political movements of the newly emerging Indian nation to based on a definite written constitution. The central legislative body was converted into a constituent Assembly (i.e. a constitution waking body). The proposed constitution was meant to bind different shatter and different categories of society into one state, facilitating a union of states and co-operation and co-ordination between various segments that constitute the federal narrow.
- The most critical function of a constitution is to provide a set of basic rules that allow for optimal coordination amongst members of the state. A constitution is a body of necessary codes according to which a state is constituted and governed. The constitution specifies the necessary allocation of power between the various segments of the state. Indian diversities necessitated a Union of states, and the freedom movements favoured a democratic form of government. For example, Accordingly the Parliament in India decides laws and policies.
- Constitution empowers the government to fulfill the aspirations of a society and create conditions for a just society. The part four of the Indian Constitution has provisions for the government to make laws to address many problems prevalent in Indian society. The constitution expresses the fundamental identity of the people in a country. People in a community may have many similar ethnic identities that exist before the enactment of the constitution. The people of a country will have a political identity after the promulgation of the structure by accepting the fundamental laws of the state put forth by the constitution. The individual's objectives, aspirations, and freedoms should comply with the constitutional regulations of a country. The constitution puts forth specific fundamental laws which cannot be violated by its citizens. It also protects certain fundamental rights of the people living in a country. The constitution of a country defines who are all the citizens of a nation. It also sets the framework that illustrates the relationship between the states or parts of a country with each other and even with the central government. Most of the constitutions in the world are written documents that comprise many articles and schedules. There are still a few constitutions like that of the United Kingdom which do not have one single document,

which could be called as a district constitution. The United Kingdom, instead has a series of customs, conventions and historical precedents which are collectively referred to as its coconstitutional components.

### **Formulation**

- Formulation refers to how a constitution comes into being, who crafted it and their authority. Indian nstitutional components.
- Constitution like the United States was drafted after a successful national movement. The Constitution of India has the legitimacy since it has been drafted by a constituent assembly consisting of people's representations. The Constitution of India reflected the consensus of most of the sections of people in India during Independence. There are instances where some countries have subjected their constitution to a full-fledged referendum.

### **Referendum**

- A referendum is a method of referring a question or set of questions to the electorate directly rather than allowing them to be settled by the people's representatives in the legislature. The referendum is also often used to determine issues of morality which divide a government of party and to settle local matters which it is thought are best left to individual areas to decide. The referendum is seen as conferring legitimacy and popular approval on an individual and sanctions absolute authority.
- Neither Indian Constitution nor the amendments made later were subjected to a referendum which could also be seen as a setback in Indian democracy perhaps the conditions prevailing at that time were not conducive to a referendum. In this regard may be useful to study the working of referendum in Switzerland.

### **Provisions of a Constitution**

- An ideal constitution should accommodate the aspirations of all sections of people in society. Constitutions that are discriminative based on religion, caste and language may not get the overwhelming acceptance from all in the nation. The fundamental laws of the structure would reveal the nature of a constitution. Any constitution could be successful only when it preserves the freedom and equality of all its citizens.

### **Secularism in India**

- The 42nd Amendment enlarged the Preamble of the Indian Constitution from "Sovereign Democratic Republic" to a "Sovereign, Socialist Secular Democratic Republic," and also changed the words "unity of the nation" to "unity and integrity of the nation." Former Prime Minister Indira Gandhi enacted the 42nd Amendment in 1976, during the Emergency, obviously to emphasise the latent secular and socialist ideals as inalienable sprit of the constitution.



- Well-drafted constitution does not concentrate all powers in a single person or a single institution as it may lead to abuse of power by few or one institution. One method that may be incorporated to address this issue is to divide powers among different organs in a balanced way.

The Indian Constitution separates the power horizontally amongst institutions like the legislature, executive and judiciary that prevents any of the organs from subverting the Constitution and enhances its success and durability. Indian Constitution is not too rigid and not too flexible, which is evident from the restrictions and flexibility in the name of the basic structure of constitution and

- amending provisions respectively. A well-drafted constitution will maintain the core values and also adapt itself to changing environment. The Indian Constitution balanced the possibility to not only change the provisions but also limits on such changes. The framers of the Indian Constitution had ensured that it would survive during the test of times.

### **Making of Indian Constitution**

- The members of Constituent Assembly drafted the Indian Constitution. The Constituent Assembly held its first meeting on 9 December 1946 and re-assembled after partition of Pakistan as Constituent Assembly for the remaining India on 14th August 1947. The members of the Provincial Legislative Assemblies indirectly elected the members of the Constituent Assembly.
- The Constituent Assembly was composed of members along the lines suggested by the plan proposed by the Committee of the British Cabinet, also known as the Cabinet Mission.

*(February 1948: some members of the Drafting Committee of the Constituent Assembly of India: (seated from left) N. MadhavaRao, Saiyid Muhammad Saadulla, Dr. B. R. Ambedkar, Sir AlladiKrishnaswamyAyyar and Sir B. N. Rao. Also in the Picture are (Standing from Left) S.N. Mukherjee. Jugal Kishore Khanna and Kewal Krishnan)*

### **According to this plan**

- Provinces and princely states or group of states were allotted seats proportional to their respective population roughly in the ratio of 1:1 million. The provinces were to elect 292 members while the princely states were to send a minimum of 93 seats.
- The seats of each province were distributed among three main communities, namely, the Hindus, Muslims, and Sikhs, in proportion to their respective populations in their province.
- Members of each community in the Provisional Legislative Assembly elected their representatives by the method of proportional representation with a single transferable vote.

- The method of selection of representatives of Princely States was to be determined by the princely states themselves.

### The composition of the Constituent Assembly

- Two hundred eighty-four members were present on 26 November 1949 and appended their signature to the Constitution as finally passed.
  - The 1st meeting of the Constituent Assembly took place in Constitution Hall, New Delhi, on Monday, the 9th December 1946, at Eleven of the Clock. The title of the first debate was "Election of Temporary Chairman," Acharya J. B. Kripalani (United Provinces: General) requesting **Dr. SachchidanandaSinhato** take the Chair as temporary Chairman. (Constituent Assembly Debates) □ The Final meeting held on 24.01.1950 with the title of "Signing of the Constitution" and **Dr. Rajendra Prasad** is the Chairman of the debate. □ The Constituent assembly debate consists of 12 Volume and it held between **9th December 1946 to 24th January 1950**
- 1.2 Sources of Indian Constitution** The primary sources of the Indian Constitution are as follows: The framers of the Constitution adopted the features of the Indian Constitution from several sources. The primary sources that inspired the framers of the Indian Constitution are:

### Salient Features of Indian Constitution

**Longest written constitution:** The Indian Constitution is considered to be the longest written constitution in the world. It contains different provisions for states and centre and their inter-relationship. The framers of the Constitution have borrowed provisions from several sources and several other constitutions of the world. The Indian Constitution contains the detailed list of individual rights as fundamental rights, directive principles of state policy and details of administrative procedures.

**A unique blend of rigidity and flexibility:** Indian Constitution may be called rigid as well as flexible based on its amending procedure.

**Sovereign, Socialist, Secular, Democratic and Republic:** Its people govern India through their representatives elected by the universal adult franchise. India as a sovereign country means it manages its internal and external affairs freely without the interference of any external factors. The term socialist was added to the Indian Constitution through the 42nd Amendment in 1976. Socialism in Indian context means achievement of socialist goals through democratic, evolutionary and non-violent means. In India, we follow the mixed model of the socialist and capitalist economy. Secularism in Indian context means that it recognizes all religions equally without having any state religion. Republic in Indian context means the head of the state in India is elected and not the monarch.

**Parliamentary System of Government:** Parliament controls the functioning of the Council of Ministers, and hence it is called the Parliamentary system. In a parliamentary system of government, (i.e.) the executive is responsible to the legislature and remains in power only

when it enjoys the confidence of the majority legislators. The President of India, remaining in office for a five-year duration, is the nominal, titular or constitutional head, and the executive head. However, the Prime Minister in India is the real executive and head of the Council of Ministers who are collectively responsible to the Lok Sabha.

**Single Citizenship:** Indian Constitution has the provision for single citizenship provided by the union and recognized by all the states across India.

**Universal Adult Franchise:** The Constitution of India establishes political equality in India through the method of the universal adult franchise which operates with the principle of 'one person one vote.' All Indians who are eighteen years of age or above is entitled to vote in the elections. There is no discrimination in voting rights for the citizens of India based on caste, religion, gender, race or status.

**Independent and Integrated Judicial System:** In India, the judicial system is an autonomous organ kept free from the influence and intervention of the executive and the legislature in exercising its functions. The integrated Indian judicial system has the Supreme Court at the apex, the high courts and lower courts are subordinate to it.

**Fundamental Rights:** Fundamental Rights are significant provisions of the Indian Constitution and are inviolable and normal times. Fundamental Rights in India can be suspended during emergencies; and can be amended by extra ordinary means. The provisions of Fundamental Rights are enforceable in the court of law when it is violated.

- **“Right to Education** -The Indian Constitution (Eighty - Sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education to all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.”

**Directive Principles of State Policy:** Fourth part of the Indian Constitution titled the Directive Principles of State Policies provides the guidelines to be followed by the states regarding governance and are not enforceable in the court of law.

**Fundamental Duties:** The Fundamental Duties were added to the Indian Constitution through the 42nd Amendment. Fundamental duties provided in part IVA Article 51A are moral conscience which ought to be followed by the Indian Citizens.

- **Federal or Unitary:** India is an indestructible Union with destructible states which means it acquires a unitary character during the time of emergency. The Union is not strictly a federal polity but a quasi-federal polity with some vital elements of unitariness. Though federal in form, the Indian Constitution, unlike other federal Constitutions, is both unitary as well as federal according to the requirements of the times and the circumstances.

### **Balancing Parliamentary supremacy with Judicial Review:**

- The Constitution recognizes the need to provide for the review of the judgment or the order of the Supreme Court by itself. Subject to the provisions of any law made by Parliament or any rules made by the Supreme Court under Article 145, the Supreme Court has the power to review any judgment pronounced or made by it. The independent judiciary in India with the power of judicial review is a prominent feature of our constitution. The harmonization which our Constitution has effected between Parliamentary Sovereignty and a written Constitution with a provision for Judicial Review is a remarkable achievement of the framers of our Constitution. **Indian Citizenship** identifies those who are the lawful members of a country. The Citizenship Act, 1955 regulates the determination and acquisition of citizenship after the adoption of the Indian Constitution. The Indian Constitution provides for citizenship by birth, descent, registration, naturalization and by incorporation of territory. The Constitution also provides for renunciation and termination of citizenship under certain circumstances. The Constitution contains provisions regarding registration of Overseas Citizens of India and their rights. The Citizenship (Amendment) Bill, 2015 was introduced in Lok Sabha by the Minister of State, Ministry of Home Affairs, on February 27, 2015 that amends the Citizenship Act, 1955. The Act allows a person to apply for citizenship by registration or naturalization if they fulfill specific qualifications. A person may apply for a certificate of naturalization if they have resided in India or have served the Government in India for twelve months immediately preceding the date of application. The Bill allows the Central Government to relax the requirement of twelve months stay or service if extraordinary circumstances exist.

### **Fundamental Rights:**

- The Constitution of India asserts the basic principle that every individual is entitled to enjoy certain essential rights. The provisions for Fundamental Rights are mentioned in Part III of the Indian Constitution. Fundamental Rights are categorized into six heads, firstly Right to Equality, secondly Right to Freedom, thirdly Right against Exploitation, fourthly Right to Freedom of Religion, fifthly Cultural and Educational Rights and lastly Right to Constitutional Remedies. Initially there was a provision for Right to Property under Article-31 which was also a Fundamental Right. The 44th Amendment Act, 1978 had omitted Right to Property from the Fundamental Rights Part and added it as Article 300A therefore considered as a legal right. Fundamental rights provided in Part III of the Indian Constitution are judicially enforceable, thereby the individual can move the judiciary, if there is a violation on any of these rights. The right to move straight to the Supreme Court for the enforcement of fundamental rights has been guaranteed under Article 32 that is named as Right to Constitutional Remedies. Fundamental rights in India are however not absolute and rational restrictions can be imposed keeping in view of the security requirements of the state. It ensures political justice for the people.

## Directive Principles of State Policy:

- One of the unique provisions of the Indian Constitution is the chapter on Directive Principles of State Policy. These principles are like directives to the government to implement them for establishing social and economic justice in India. It comprises significant provisions for equal pay for both men and women, free and compulsory primary education, and right to work. Part IV of the Indian Constitution also has provision for public assistance in case of old age, unemployment, sickness and disablement, the organisation of village Panchayats,adequate means to livelihood, special privilege to the economically backward sections of the people and distribution of wealth. Most of these principles could help in making India a welfare state. Though the provisions given in the Directive Principles of State Policy is not justifiable, these principles are considered very significant in the governance of the country.

## Panchayati Raj: Gandhi VsAmbedkar:

- Gandhi wanted the central government to have minimal power, and he wanted the villages to rule themselves traditionally with village chiefs and councilors. According to Ambedkar, village possessed a cruel reality of communalism and caste system; thus it will lead to the cornering of minorities.
- Gandhi through his social and political initiatives facilitated the country to realize that the power of people which could be facilitated only through effective local self-government. "I shall work for an India in which the poorest shall feel that it is their country, in whose making they have an effective voice." Gandhi time and again emphasized need for power in the hands of the people in India through the Panchayat Raj model. Gandhi said, "The greater the power of the people, the better for the people."

**My idea of Gram Swaraj is that it is a complete republic, independent of its neighbours for its own vital wants and yet interdependent for many others in which dependence is necessary. - Mahatma Gandhi**

- For Ambedkar, those villages were nothing "but a sink of localism, a den of ignorance and communalism." The dominant and influential communities would make villages their monopoly and that would render other communities voiceless. The result was that the Constitution that was drafted under his Chairmanship did not mention a word about Panchayati Raj. Many Gandhians persuaded the committee to have a provision for the village panchayats in Part IV of the Indian Constitution titled Directive Principle of State Policy vesting the responsibility in State legislatures. Article 40 states that the State shall take steps to organize village panchayat and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

## Fundamental Duties

- Part IVA of Indian Constitution defines as Fundamental duties. (51A) - It shall be the duty of every citizen of India -
  - (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
  - (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
  - (c) To uphold and protect the sovereignty, unity, and integrity of India;
  - (d) To defend the country and render national service when called upon to do so;
  - (e) To promote harmony and the spirit of universal brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
  - (f) To value and preserve the rich heritage of our composite culture;
  - (g) To protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures;
  - (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
  - (i) To safeguard public property and to abjure violence;
  - (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
  - (k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

## Parliamentary democracy in India.

- Under Article 79, the Parliament of the Union consists of the President and two Houses known respectively as the Council of States (RajyaSabha) and the House of the People (LokSabha). The Union Legislature is bicameral, and the need for a bicameral system of the legislature in a federation is admitted: the Upper **Activity** House represents the units, the Lower House represents the people; the two Houses respectively at once functioning to preserve the integrity of the units and to secure the integration of the Union. The RajyaSabha consists of 250 members, where the President nominates twelve in the manner provided. The remaining 238 members will be the representatives of the States and the Union territories. The LokSabha consists of 543 members chosen by direct election from territorial constituencies in the States and not

more than twenty-five members to represent the Union territories selected in such manner as Parliament may by law provide.

### Relevance of RajyaSabha

- The 'Council of States' which is also known as RajyaSabha, a nomenclature that was announced by the Chair on 23rd of August 1954 as its distinguishable feature. It is the second chamber of the Parliament. The origin of the second Chamber can be traced to the Montague- Chelmsford Report. The Government of India Act, 1919 provided for the creation of a 'Council of State' as a second chamber of the then legislature with a restricted franchise which came into existence in 1921. The Governor-General was the ex-officio President of the then Council of State. The Government of India Act, 1935, hardly made any changes in its composition. An extensive debate took place in the Constituent Assembly regarding Second Chamber and decided to have a bicameral legislature due to a vast country with immense diversities. RajyaSabha is a federal chamber where 238 members are elected by the elected members of Assemblies of the States and Union Territories. Apart from elected, the President can nominate 12 members to RajyaSabha, thus making a total of 250. The Vice-President acts as the Chairman of RajyaSabha. In his absence, the deputy chairman takes the place of the chairman who is elected by the members of RajyaSabha. The 1st sitting of RajyaSabha was held on 13th May 1952, unlike LokSabha, RajyaSabha can never be dissolved.
- The Rules of Procedure and Conduct of Business in RajyaSabha is the booklet that provides explicit conduct of its members. There are various discussions namely: half an hour discussion, short duration discussion and motions of matters in public interests.

### RajyaSabha

- ❖ The RajyaSabha means "Council of States," and it is the upper house of the Parliament of India.
- ❖ The RajyaSabha held its first sitting (1st session) on 13th May 1952, and recent sitting (246th session) held on 1st August 2018.
- ❖ Generally, during a year, three sessions of the RajyaSabha are held, as follows: **First Session** (Budget Session) is held between mid or late February and mid-May. **Second Session** (Monsoon Session) is generally held in mid-July to end of August. **Third Session** (Winter Session) is held from the end of November to end of December.
- ❖ □ (Leaders of the House in the RajyaSabha in 1952 to Till Date)

**Important Debate 1st August 2014:** Use of Tamil as court language in Tamil Nadu

**Important** "India, that is Bharat, shall be a Union of States. Article 1(1)"

## Constructive debates in Tamil Nadu State legislative Assembly

- The first Assembly (1952-1957) under the constitution of India discussed the scheme of elementary education launched by the Rajaji Government and criticized by many including a few in the Congress party that it would perpetuate caste-based social hierarchy. After Kamaraj succeeded him, Education Minister C. Subramaniam in May 1954 informed the House that the scheme would be dropped. The Rajaji days are remembered for landmark laws to protect tenants of farmlands and landless agriculturists. "Premier of Madras Presidency, C. Rajaji presenting his first budget in 1937. Location is Madras Legislative Assembly, Senate House, Chepauk Campus of Madras University Date 1937" In 1967, the Dravida Munnetra Kazhagam came to power with C.N. Annadurai as Chief Minister. The Hindu Marriage Act was amended to recognize "self-respect marriages" or those marriages free of religious rituals. His successor and five-time Chief Minister, M. Karunanidhi, piloted several Bills and moved numerous motions. In his last bill (2006-2011), laws for exclusive reservation for Muslims and Christians within the quota of Backward Classes and Arundathiyars within the reservation of Scheduled Castes were made.
- The 10-year-long rule (1977-1987) of the Government, headed by M.G. Ramachandran of the All India Anna Dravida Munnetra Kazhagam, was noted for various measures in the area of revenue administration. Notably, the system of hereditary village officers such as "karnam" was abolished at one stroke. He upgraded the mid-day meal scheme into Nutritious Meal Scheme.

### Public Accounts Committee

The Chairperson of the Public Accounts Committee is appointed by the Speaker from amongst its Members of Lok Sabha. The Speaker, for the first time, appointed a Member of the Opposition as the Chairperson of the Committee for 1967-68.

□ Since the Committee became a Parliamentary Committee under the control of the Speaker from January 1950, it has presented 1596 Reports till April 2018.

- After the Supreme Court delivered the Mandal Commission judgment in November 1992 for reservation in education and employment at 50 percent, the Assembly responded through legislation aimed at safeguarding the existing 69 percent quota for Backward Classes, Most Backward Classes, Scheduled Castes, and Scheduled Tribes.

### Constitutional Amendments of India

- The framers of the Indian Constitution have given provisions to amend the Constitution according to the changing needs of society. The Constitution has not lost its ideals and basic premises though many such amendments have already taken place. The Indian judiciary has played a critical role in protecting the Constitution and also in



interpreting the Constitution. The Indian Constitution like many other constitutions is a document that keeps evolving and responding to changing circumstances and political upheavals. The Indian Constitution continues to function as the primary framework within which the Government of India operates. The framers of the Constitution were very farsighted that they provided for many solutions for future situations. The Indian Constitution accepts and accommodates the necessity of modifications according to changing situations of the society. There has been enough flexibility in implementing the Constitution which has made the Indian Constitution a living document than a rigid rulebook. The framers of the Constitution sought a balance to ensure that it is not a static and unalterable document and also a sacred document where the basic structure is not altered. The framers of the Constitution desired it to be 'flexible' and at the same time 'rigid' and also to protect it from unnecessary and frequent changes. Article 368 of the Indian Constitution has the provision through which Parliament may in the exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution by the procedure laid down in this article. Since the Constitution was framing a federal polity, the basic rights and powers of the States may not be changed without the consent of the States. Some features of the Constitution were so central to the spirit of it that the framers wanted to protect these from change and so made it uncompromising. These considerations by the framers of the Constitution led to different ways of amending the Constitution.

**There are three types of Constitutional Amendments, they are;**

1. A simple majority (requires addition)
  2. Amendment can be made by a special majority of the two houses of the Parliament. (2/3 of members present and at least 50 percent of the total members)
  3. The third method requires a special majority of the Parliament and consent of half of the State legislatures.
- All these types of amendments to the Constitution are initiated only in the Parliament. Based on the provisions given no referendum are required for ratification of the amendment. The amendment bill will be presented before the President for his assent. The President has no powers to send it back for reconsideration in these cases. The elected representatives of the people are empowered to consider and take final decisions of the question of amendments.

**Constitution Amendment Bills**

Bills seeking to amend all other provisions of the Constitution including those enumerated in the provisions to article 368(2) are called by the title 'Constitution Amendment Bills'. These Bills can be introduced in either House of Parliament

**Private Member Bills:**

- If any member other than a minister introduces a bill, it is called a private member bill. The bill can be introduced by both ruling and opposition party MP's. Private member

bill is a bill proposed by a member who is not a member of the cabinet and executive. The session for private member bill is held at alternative Fridays from 2 pm to 6 pm.

- This bill needs a month of notice; this has no impact on the health of the government when the private member bill gets rejected. Till date, parliament has passed fourteen private member bills; the last one was passed on 1970. Most of the bill passed by the private member is not even read or discussed and dismissed. Private members bills are accepted even those are constitutional amendment bills but not that those are money bills.

### **The Rights of Transgender Persons Bill, 2014**

- ❖ In Lok Sabha, the last two and half hours of a sitting on every Friday, and in Rajya Sabha two and half hours, i.e., from 2.30 p.m. to 5.00 p.m. on every alternate Friday are allotted for transaction of "Private Members' Business", i.e., Private Members' Bills and Private Members' Resolutions.
- ❖ The last time a private member's Bill was passed by both Houses was in 1970.
- ❖ Till Now, only Fourteen Private Member's bill have been passed by the Parliament. **The Rights of Transgender Persons Bill, 2014:** The Rights of Transgender Persons Bill, 2014 is a private member bill introduced by Trichy Shiva, which seeks to end the discrimination faced by transgender people in India. The Bill was passed by the upper house Rajya Sabha on 24 April 2015. It was introduced in the lower house Lok Sabha on 26 February 2016. The Bill is considered historic as for being the first private member's bill to be passed by any house in 36 years and by Rajya Sabha in 45 years.

### **Article 370:**

- The article 370 in the Constitution is about Jammu and Kashmir region given the provision which grants special autonomous status. According to this law, except defence, foreign affairs, communication, and finance, the central government requires the State Government's permission for applying all other laws. The State and its residents have a separate set of laws relating citizenship, property right and fundamental right from other citizens of India. The centre has no power to impose financial emergency through article 360 over the State. An emergency is declared only during the time of war and external aggression. Therefore the central government cannot declare an emergency for a case of internal disturbance or other dangers unless the state requests the centre.

### **Sankarlinganar**

- Sankarlinganar is a Tamil Indian Independence activist and Gandhian. He was born in Manmalai Medu in Virudhunagar District to Karupphasamy and Valliammal in 1895. He joined the Indian National Congress in 1917. He also participated in the Salt March

in 1930 along with Gandhi under Rajaji's influence. The consequence of PottiSreeramalu fasted demanding for a separate state of Telugu from Madras state for Telugu speaking people and Madrascity to be its capital in 1952 led to new agitation in Madras state in need to change its name.

- In 1956, Sankarlinganar started to fast on demand for change in the name of the state from Madras to Tamil Nadu. He started his hunger strike on 27th July on 1956 in Virudhunagar for 12 demands. Despite the request of C.N.Annadurai, M.P Sivaganam, and Jeevanardham, he continued to fast and died on the 76th day on 13th October 1956.

### **Tamil Nadu**

- ❖ ThiyagiSankaralinganar observed Fasting 76 days from 27.07.1956 to 10.10.1956, for the name conversion of Chennai Presidency as "Tamizhagam."
- ❖ The State of Madras changed the name as State of Tamil Nadu by the Madras State (Alteration Of Name) Act, 1968.
- ❖ He was the person in India History to end his life by observing fast for many days in Gandhian Way

### **Select Committee**

- The Select Committee is made up of a small number of parliamentary members appointed to deal with particular aspects originating in the Westminster System of parliamentary democracy.
- Under Rule 125 of the RajyaSabha Rules and Procedures, any member may move a bill which is referred to a select committee and, when the motion is admitted, the bill shall be referred to such a committee.
- The quorum needs to be one-third of the total number of members of the committee. In case of a tie on any matter, the chairman (or any other person presiding) will cast his vote. The select committee may appoint a sub-committee to examine any particular points connected with the bill. If any doubt arises on any aspect of the procedure the chairman may refer the point to the RajyaSabha Chairman, whose decision will be final.

### **Important joint sittings**

6 and 9 May 1961 on Dowry Prohibition Bill, 1959  
26 March 2002 on Prevention of Terrorism Bill, 2002.

- Whenever a bill passed by one house is rejected by another house or any disagreement or more than six months has elapsed, the President of India may call a joint sitting of

the two Houses to resolve the deadlock. The bill will be passed in both Houses by a majority of the total number of members of both Houses present and voting. There is no provision in the Indian Constitution for a joint sitting of both houses on a money bill or a Constitution Amendment Bill.

## 9<sup>th</sup> Full Book

### Unit 4 - Forms of Government

- Government is the main agency of the state. It comprises of several members belonging to political and administrative wings. It serves as the instrument for delegation and execution of the state policies for the welfare of the people. It formulates expresses and realizes the will of the state. It exercises certain legislative, executive and judicial powers based on the constitution and the laws. There are three organs in government, namely - Legislature, Executive and Judiciary. These organs carry out the activities of the state. Governments are classified into unitary, federal, parliamentary and presidential forms.

#### Meaning

- 'Government' refers to the executive functions of the state. It denotes a body having authority to make and enforce laws applicable to the civil, corporate, religious, academic or other groups.

#### Unitary Form of Government

- A unitary system of government or unitary state is a sovereign state governed as a single entity. The central government is supreme and the administrative divisions exercise only powers that the central government has delegated to them.
- England, France, Japan and Sri Lanka are examples of Unitary Form of governments.
- In a Unitary form of government, all the authority and power is vested in a single centre, whereas in a federal form of government authority and power is distributed between centre and the constituent units. Even in a unitary form of Government, there might be a lot of decentralization of authority, but we cannot claim it as a federal system.

#### Merits of unitary form of government

- Suitable for small countries.
- There is no conflict of authority and responsibility.
- A unitary government will make prompt decisions and take speedy action.

- A unitary government is less expensive.
- Amendments to the constitution are easy.
- There is unity, uniformity of law, policy and administration.

### **De-merits of unitary form of government**

- It is not suitable for big countries.
- The central government will have to tackle so many complex problems that lead to administrative delay
- The central government will not concentrate on local problems, local interest and initiative.
- The concentration of powers may pave way for the despotism of the central government.

### **Unitary features of the indian constitution**

- Strong Centre
- Central Government's control over state territory
- Single Constitution
- Flexibility of the Constitution
- Unequal representation of states
- Emergency Provisions
- Single Citizenship
- Single Integrated Judiciary
- All India Services
- Appointment of Governor by the central government

### **Federal form of government**

- The classification of governments into unitary and federal is based on the nature of relations between the national and the regional governments.
- A federal government is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently. U.S.A, Switzerland, Australia, Canada, Russia, Brazil, Argentina have federal form of governments. In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.

### **Merits of federal form of government**

- Reconciliation of local autonomy with national unity
- Division of power between centre and states leads to administrative efficiency
- It gives rise to big states

- Distribution of powers check the despotism of central government
- More suitable for bigger countries
- It is good foreconomic and cultural progress

### De-merits of federal form of government

- Federal government is weaker when compared to the unitary government.
- Federal government is more expensive
- Provincial tendencies are very common
- Lack of uniformity in Administration
- Threat to national unity
- Distribution of powers between centre and states lead to conflicts
- Double Citizenship
- Rigid constitution cannot be mended easily for changing needs
- The state governments sometimes place hindrances in the foreign policy

Country	Name of Parliament
Israel	Knesset
Germany	Bundestag
Denmark	Folketing
Norway	Storting
U.S.A	Congress

### Federal features of the Indian constitution

- Dual Government
- Written Constitution
- Division of Powers
- Supremacy of the Constitution

### Difference between Unitary Form and Federal Form of Government

Unitary Form of Government	Federal Form of Government
Only one level of Government or Sub units	Two levels of Government
Mostly Single Citizenship	Dual Citizenship
Sub units cannot operate independently	Federal Units are answerable to Central Government
No Division of Power	Division of Power
Centralisation of Power	Decentralisation of Power

### Parliamentary form of government

- Modern democratic governments are classified into parliamentary and presidential on the basis of the nature of relations between the executive and the legislative organs of the government.

- The parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts.
- The parliamentary government is also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada and India among others.

### **Features of parliamentary form of government**

- Nominal and Real Executives
- Majority Party Rule
- Collective Responsibility
- Dual Membership
- Leadership of the Prime Minister
- The Constitution is the supreme law of the land. The laws enacted by the Centre and the states must conform to its provisions.
- Rigid Constitution
- Independent Judiciary
- Bicameralism

### **Merits of the parliamentary form of government**

- Harmony between Legislature and Executive
- Responsible Government
- Prevents Dictatorship
- Wide Representation

### **Demerits of the parliamentary form of government**

- Unstable Government
- No Continuity of Policies
- Dictatorship of the Cabinet
- Against Separation of Powers

### **The Presidential form of government**

- The Presidential Form Of Government is also known as non-responsible or non-parliamentary or fixed executive system of government, basically built on the principle of separation of power and is prevalent in the USA, Brazil, Russia and Sri Lanka among other.

### **Features of Presidential form of government**

- The American President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of the government.

- The President is elected by an electoral college for a fixed tenure of four years. He cannot be removed by the Congress, except by impeachment for a grave unconstitutional act.
- The President governs with the help of a cabinet or a smaller body called 'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him, are responsible only to him and can be removed by him any time.
- The President and his secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress, nor attend its sessions. The President cannot dissolve the House of Representatives—the lower house of the Congress.
- The doctrine of separation of powers is the basis of the American presidential system. The legislative, executive and judicial powers of the government are separated and vested in three independent organs of the government.

### **Merits of the presidential system of government**

- Democratic
- Effective Control by the President
- Facilitate decision-making
- State government

### **Demerits of the presidential system of government**

- Can degenerate into Dictatorship
- Strain relationship between executive and legislature
- Lack of Harmony between the Legislature and Executive

### **Difference between the Parliamentary Form of Government and Presidential Form of Government**

<b>Presidential Form of Government</b>	<b>Parliamentary Form of Government</b>
President is directly elected by the people	Prime Minister is from the majority party
President is Supreme	Central Legislature is Supreme
Separation of Powers	Absence of Separation of Powers Centralisation.
Independent branches	Independent branches with overlapping functions
President - Head of the State	President - Head of the State
President - Head of the Government	Prime Minister - Head of the Government
Individual Leadership	Collective Leadership
President is not accountable to Congress	Collectively and Individual Responsibility

### **The relationship between the Centre and the State in India**

India is a union of States where the power is shared between the centre and the states, as per the procedures mentioned in the Constitution of India. Though the powers are shared



between the Central and State Governments, the final decision is by the Central government in all matters. The relationship between the centre and the states are

1. Legislative relations (Articles 245-255)
2. Administrative relations (Articles 256-263)
3. Financial relations (Articles 268-293)

Both the Central and State governments have the power to make laws, but the matters differ. The centre can make laws applicable to the whole nation on certain matters called as the union list. The States have the powers to make laws in some matters only, applicable to their own state, called as the State list. The concurrent list includes the subjects on which both Central and State government have the power to make laws.

**Union List:** Union list has 100 subjects. These include Foreign affairs, Defence, Armed forces, Posts and Telegraphs, inter-state trade and commerce and so on.

**State List:** The state list consists of 61 subjects, which include Public order in the state, police, prisons, Local Governments, agriculture and so on.

**Concurrent List:** The Concurrent list has 52 subjects which include Criminal and Civil procedures, marriage and divorce, economic and special planning, newspapers, books and printing presses, population control and so on.

## THE CONCEPT OF GOVERNANCE

### From Government to Governance

- Good governance is an indeterminate term used in the international development literature to describe how public institutions conduct public affairs and manage public resources. Governance is 'the process of decision-making and the process by which decisions are implemented'.
- 'Government' and 'governance' are synonyms, both denoting the exercise of authority in an organization, institution or state.

### Characteristics of good governance

- Participation
- Rule Of Law
- Transparency
- Responsiveness
- Consensus Orientation
- Equity
- Effectiveness And Efficiency
- Accountability

### Gross National Happiness (GNH):

Gross National Happiness is a developing philosophy as well as an 'index' which is used to measure the collective happiness in any specific nation. The concept was first

mentioned in the constitution of Bhutan, which was enacted on 18 July 2008.

The term 'Gross National Happiness' was coined by the fourth king of Bhutan, Jigme Singye Wangchuck, in the 1970s. The GNH's central tenets are: "Sustainable and socio-economic development; environmental conservation; preservation and promotion of culture; and good governance".

GNH is distinguishable by valuing collective happiness as the goal of governance and by emphasizing harmony with nature and traditional values.



## UNIT 5 - LOCAL SELF GOVERNMENT

### Meaning of Local Self Government

- Local Self-Governments are institutions that look after the administration of an area or a small community such as a village, a town or a city. Local Self- Government operates at the lowest level of society. It works at the grassroot level, close to the people, touching their everyday life. Local Self-Government is the management of local affairs by such local bodies which have been elected by the local people. These local bodies provide services to the local community as well as act as an instrument of democratic self-government.

### Historical Background

- The idea of local self government is a very old concept in India. It was at its peak under the later Cholas or the Imperial Cholas of Tanjore. There are historical records of references to local self government under Mauryan administration. Local self government existed throughout the country with its own diverse characteristics of ancient India. During the medieval period, local self governments had somewhat declined due to the onslaught of feudalism. It was revived during the British period in the last quarter of the 19th century, with Western orientation of training in democracy with Lord Ripon's Resolution in 1882. Lord Ripon was known as the 'Father of Local Government for laying the foundations of local self governments in modern times.
- Under the Government of India Act, 1935 provincial autonomy was introduced. This Act came into force in 1937. In the provinces where the Congress formed its Government, rural development received special attention. It was an essential part of Gandhi's programme that PanchayatRaj institutions would be built from villages to the highest level.
- After Independence, the Gandhian ideal of GramaSwaraj (Village Republic) greatly influenced the constitution makers. India being the land of villages, the creation of village panchayats became a social movement. Restoration of panchayats has become an article of faith during our freedom struggle. Hence with the dawn of independence and framing of the constitution of India, Article 40 was incorporated in the constitution which reads as: "the State should take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as the units of self Governments."

### Lord Ripon

- Lord Ripon was the one who gave Indians the first taste of freedom by introducing the Local Self Government in 1882. Ripon took some steps towards liberalizing the administration in India. He formulated the local self government and made it clear that he was advocating for the decentralization of administration.

- He tried to remove obstacles in the sphere of Local Self government by his resolution of 1882. He led a series of enactments in which larger powers of the local self-government were given to the rural and urban bodies and the elected people received wider rights.

### Local Self Governments since Independence

- The conceptualization of the system of local self-government in India took place through the formation and effort of four important committees from the year 1957 to 1986. The Community Development Programme (1952) and National Extension Service (1953) became a basis for 'The Great Charter on Panchayat Raj' in 1957.

### Salient Features of the 73rd and 74th Constitution Amendment Acts (1992)

- **Panchayats and Municipalities will be 'institutions of self-government'.**
- Basic Units of Democratic System - GramaSabhas (Villages) and Ward Committees (Municipalities) comprising all the adult members registered as voters.
  - Three-tier system of panchayats at village, intermediate block/taluk/mandal and district levels. Two-tier for smaller states with population below 2 million.
  - Seats at all levels filled by direct elections.
  - Seats reserved for Scheduled Castes (SCs) and chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
  - One-third of the total number of seats reserved for women. One-third of the seats reserved for SCs and STs also reserved for women. One-third offices of chairpersons at all levels reserved for women.
  - Uniform five year term and elections to constitute new bodies to be completed before the expiry of the term. In the event of dissolution, elections must be held compulsorily within six months.

### **Salient Features of the Tamil Nadu Panchayati Raj Act, 1994**

- The New PanchayatRaj System came into being in Tamil Nadu after the enactment of a new law for local body institutions in the year 1994. The salient features of the new Act are as follows:
  1. A three-tier system
  2. Gram Sabha
  3. Establishment of Election Commission
  4. Constitution of Finance Commission
  5. Reservation of seats for SC/ST's proportionate to their population One third reservation of seats for women and
  6. Constitution of District Planning Committees.

## Village Panchayat

- Local governments which are function in villages are called Village Panchayats. The President and ward members are directly elected by the people. (Those who have attained the age above 18) and their term of office is five years. District Collector act as the Inspector of Village Panchayat. Village Panchayats are constituted in each and every village wherever the population is above 500.

### Functions of the Village Panchayat

- Supply of drinking water
- Maintenance of street lights
- Maintenance of roads
- Maintenance of village libraries
- Maintenance of small bridges
- Granting permission to the housing plots
- Maintenance of drainage
- Construction of group houses
- Cleaning of streets
- Maintenance of burial grounds
- Maintenance of common lavatory facilities

### Voluntary Functions.

- According to the Tamil Nadu Local Government Act passed in 1994, the following functions to be performed as voluntary functions by the local governments.
  - Maintenance of street lights in the villages
  - Maintenance of markets and fairs
  - Implantation of trees
  - Maintenance of play grounds
  - Maintenance of parking vehicles, slaughter houses and cattle sheds
  - Control over places of exhibition

### Revenue

Village Panchayat was the only local government which was empowered to levy taxes in the three-tier system of Village Panchayat.

### Taxes

- Property Tax
- Professional Tax
- House Tax
- Taxes for connection of drinking water
- Land Tax

- Taxes levied on shops

### **Meeting of Gram Sabha**

- In each and every village, the people living within its jurisdiction will be the members of Panchayat. The President of the Panchayat will preside over its meetings. In the meeting of the GramaSabha, the income and expenditure and the beneficiary of the schemes in the village are discussed.

### **Meetings of the GramaSabha are conducted four times a year**

1. January 26 - Republic Day
2. May 1 - Labourer Day
3. August 15 - Independent Day
4. October 2 - Gandhi Jayanthi

### **Panchayat Union**

- Panchayat Union is formed by grouping of villages. Members of the Panchayat Union are directly elected by the people. The Chairman of the Panchayat Union is chosen from among the members.

### **Functions of the Panchayat Union**

- Supply of drinking water
- Maintenance of Village Health Centres
- Maintenance of roads
- Establishment of Maternity Homes
- Establishment of Public fairs
- Establishment of Veterinary hospitals
- Maintenance of Social forests
- Repairing of Primary School buildings

### **District Panchayat**

- A District Panchayat is constituted in each district. One district Panchayat is constituted for every 50,000 people and the ward members are directly elected by the people. The Chairman is elected from one among its members and their term is 5 years.

### **Functions of District Panchayat**

- Advising the government about the developmental schemes of the Village Panchayat and Panchayat Union.
- Supervising the functions of District Planning Commission.

## Urban Local Government

- Town Panchayat
- Municipality
- Corporation

## Gandhi's Concept of Gram Swaraj

- Gandhi really wanted 'Swaraj', the self rule by the people of India who represent the rural mass. He observed 'India's soul lives in the village'. He dreamt of village republics in terms of Panchayat in free India. Mahatma Gandhi advocated Panchayat Raj, a decentralized form of government, where each village is responsible for its own affairs, as the foundation of India's political system. In simpler words, Gandhi's ideal village should be basically self-reliant, making provision for all necessities of life-food clothing, clean water, sanitation, housing, education, and other requirements, including government and self-defense.

## Town Panchayat

- The area where more than 10,000 people live is called a Town Panchayat. Members and President of the town Panchayat are directly elected by the people. There is an Executive Officer to look after the administration of the Town Panchayat and their term of office is 5 years.

## Municipality

- The area where more than 1,00,000 people live is called a Municipality. The Members and the Chairman of the Municipalities are directly elected by the people and their term of office is five years. A Municipal Commissioner is appointed by the government to administer the Municipality.

## Corporation

- Municipal corporations are established in big cities where the city has many lakhs of population. The Municipal Commissioner is the Administrative Officer. The Mayor is the Chairman of the corporation. The term of office of the Mayor and other members is five years. In Tamil Nadu, there are 12 Corporations. They are in Chennai, Kovai, Madurai, Trichy, Tirunelveli, Salem, Erode, Vellore, Tuticorin, Tirupur, Tanjore, Dindigul. The Municipal Commissioner will be a person from the Indian Administrative Service (IAS). All the decisions of the Corporation Council will be implemented by him. He will be assisted by the office of the corporation.

## Important functions of the Mayor

- He acts as a bridge between the members of the corporation and the government
- He presides over the meetings of the Corporation Council

- He receives the dignitaries from foreign countries

### **Types of other Urban Panchayats**

- Notified Area Committee
- Town Area Committee
- Cantonment Board
- Township
- Port Trust
- Special Purpose Agency

### **Elections to the local government in Tamil Nadu**

- The State Election Commission conducts the elections to the local government like general elections. The electoral roll is prepared ward wise. Seats are reserved for the SC & ST and also for the women in proportion to the population by rotation basis.

### **Problems and Challenges facing the Local Self Governments**

- Local self governments are the crucial basis for our democracy. The Constitutional status of local self governments adds more significance to their functioning. There are, however, a few critical concerns in the working of local self governments in India. Major problems and challenges may be mentioned as below:
  - Lack of clear demarcation of powers and functions of local bodies
  - Allocation of funds and needs assessment are not matched
  - Role of caste, class and religion in decision-making at the local self governments
  - Poor accountability of elected members and officials at the grassroots levels of democracy

### **Piped water supply scheme in Erode Municipality:-**

- Periyar E.V.Ramasamy became the Chairman of Erode Municipality in 1917. During his tenure in Erode Municipality, Periyar worked effectively for Providing piped drinking water supply and health facilities to the people. Piped water supply scheme was implemented in 1919 by Periyar. This scheme was said to be first of kind in the history of Indian Municipal administration.



## UNIT 2 - CENTRAL GOVERNMENT

### Introduction

The Central Government is the supreme government in our country. The head quarter of the Central Government is at New Delhi. Articles 52 to 78 in part V of Indian Constitution deals with the Union Executive. Our Constitution provides for a democratic form of government. The makers of the Indian constitution, by giving due recognition to the vastness and plural character of our nation, have provided a federal arrangement for her governance. The Central Government consists of three organs, namely, Union Executive, Legislature and Judiciary. The Union Executive consists of the President of India, the Vice-President, and the Council of Ministers headed by the Prime Minister, and the Attorney General of India. The Legislature is known as the Parliament. It consists of two houses, namely the Rajya Sabha and the Lok Sabha. The Union Judiciary consists of the Supreme Court of India.

### The President of India

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority. The chief executive of the Indian union is the President. He is designated as the First citizen of India. He is the supreme commander of the armed forces. The President is also the Constitutional head of the Union Executive. He is also responsible for constituting the judiciary. According to Article 53 of the constitution, the executive power of the Union shall be vested in the President which shall be exercised by him directly or through officers subordinate to him in accordance with Constitution.

### Qualification for the election as President

The constitution lays down qualifications for a Presidential candidate.

- He should be a citizen of India.
- He must have completed the age of thirty five years.
- He must not hold any office of profit under the Union, State or local Government.
- He should have the other qualifications required to become a member of the Lok Sabha.
- His or her name should be proposed by at least ten electors and seconded by another ten electors of the Electoral College which elects the President.
- The President cannot be a Member of Parliament or of a State Legislature; if he is a member of any legislature, his seat will be deemed to have been vacated on the date he / she assumes the office of President.

### Election of the President

The President is elected by an electoral college in accordance with the system of proportional representation by means of single transferable vote. The Electoral College consists of the elected members of both houses of Parliament and the elected members of the states and elected members of National Capital Territory of Delhi and Puducherry.

Once elected as the President has to take an oath of office before the Chief Justice of India. The President is elected for a term of five years and can be re-elected.

### **Powers of the President**

The powers and functions of the President of India can be broadly classified under the following categories.

#### **Executive Powers**

The constitution vests in the President of India all the executive powers of the Central Government. Article 77 requires that every executive action of the Union shall be taken in the name of the President. So he has to make many appointments to key-offices to run the administration.

He appoints the Prime Minister and the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister. He is responsible for making a wide variety of appointments. These include the appointment of Governors of States, the Chief Justice and other Judges of the Supreme Court and high Courts, the Attorney General, the Comptroller and Auditor General, the Chief Election Commissioner and other Election Commissioners the Chairman and other Members of the Union Public Service Commission Ambassadors and High Commissioners to other countries.

He appoints a commission to investigate into the conditions of SCs, STs and other backward classes. He is the supreme commander of the defence forces of India, in this capacity the President can appoint Army, Navy, and Air Chiefs.

#### **Legislative Powers**

The President is an integral part of the Union Parliament. He inaugurates the session of the Parliament by addressing it after the general election and also at the beginning of the first session each year. This address is essentially identical in nature to a Speech from the Throne. The President summons Parliament at least twice in a year. He may send messages to either House of the Parliament with respect to a bill pending in the House. All bills passed by the Parliament become "Laws of Acts" only after getting assent of the President. Money bills cannot be introduced in the Parliament without his approval. President terminates the sessions of both or any of the Houses of Parliament. He can even dissolve the Lok Sabha before the expiry of the term of the House. He nominates 12 persons who are eminent in literature, science, sports, art and social service to the Rajya Sabha. He can also nominate two persons belonging to Anglo- Indian Community to the Lok Sabha, if in his opinion, that community is inadequately represented in the House.

#### **Financial Power**

Money bill can be introduced in the Parliament only with his prior recommendation. Annual Budget of the Central Government is presented before the Lok Sabha by the Union Finance Minister only with the permission of the President. He causes to be laid before the Parliament the annual financial statement (the Union Budget). The Constitution of India places the Contingency Fund of India is at the disposal of the President. No demand for a grant can be made except on his recommendation. He can

make advances out of the contingency fund of India to meet any unexpected expenditure. He constitutes a finance commission after every five years or on the demand of the states to recommend the distribution of revenues between the Centre and the States.

### **Judicial Powers**

Article 72 confers on the President power to grant pardons, reprieves, respites or remissions of punishment, or to commute the sentence of any person convicted of an offence. In all cases where the punishment or sentence is by a court martial; in all cases where the punishment or sentence is for an offence against a Union law; and in all cases where the sentence is a sentence of death. The President is not answerable to any court of law for exercise of his/she power (however He can be subjected to impeachment by the Parliament).

### **Military Powers**

Article 53(2) lays down that “the supreme command of the Defence Force of the Union shall be vested in the President and the exercise thereof shall be regulated by law”. The President is thus declared to be the Supreme Commander of the defence Force of the country. In the exercise of this power, it is the President, who can declare war against a country and make peace.

### **Diplomatic Powers**

The President appoints Indian diplomats to other countries and receives foreign diplomats posted to India. The ambassador designate becomes ambassador after calling on the President and presenting his credentials. All treaties and agreements with foreign States are entered into, in the name of the President.

### **Emergency Powers**

The President has been empowered by the Constitution to proclaim Emergency. They are follows:

- Article 352 confers power on the President to make a proclamation of Emergency on the grounds of war, external aggression, or armed rebellion. This is known as National Emergency.
- Article 356 confers power on the President to make a proclamation of State Emergency by declaring that the Government in a State cannot be run on in accordance of the provisions of the Constitution.
- Under Article 360, the President is vested with the power to proclaim Financial Emergency, if he is satisfied that the financial stability or, the credit of India or any part of India is threatened, by any reason.

### **Removal of the President**

The President shall hold office for a term of five years from the date on which He enters the office. The President may by writing under his hand addressed to the Vice-President, resign his office. The President may, for violation of the Constitution, be

removed from office by impeachment in the manner provided in Article 61; The Impeachment action can be brought about in the form of resolution in either house of the Parliament. It must be supported by not less than One- Fourth of the total strength of the House for its introduction. The President shall, in spite of the conclusion of his term, continue to hold office until his successor enters upon his office.

### **Privileges of the President**

According to Article 361(1) the President, or the Governor of a state, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

#### **List of Presidents of India**

1. Thiru. Rajendra Prasad	1950 to 1962
2. Thiru. Sarvepalli Radhakrishnan	1962 to 1967
3. Thiru. Zakir Hussain	1967 to 1969
4. Thiru. V.V Giri	1969 to 1974
5. Thiru. Fakhruddin Ali Ahmed	1974 to 1977
6. Thiru. Neelam Sanjiva Reddy	1977 to 1982
7. Thiru. Giani Zail Singh	1982 to 1987
8. Thiru. R Venkataraman	1987 to 1992
9. Thiru. Shankar Dayal Sharma	1992 to 1997
10. Thiru. K R Narayanan	1997 to 2002
11. Thiru. APJ Abdul Kalam	2002 to 2007
12. Tmt. Pratibha Patil	2007 to 2012
13. Thiru. Pranab Mukherjee	2012 to 2017
14. Thiru. Ram Nath Kovind	2017 to till now

### **Vice-President**

The vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modelled on the lines of the American Vice- President. Article 63 of the constitution provides for a Vice President of India. This office has been created to maintain the political continuity of the state.

### **Qualification for the election as Vice President**

The constitution lays down qualifications for a Vice Presidential candidate.

- He should be a citizen of India.
- He must have completed the age of thirtyfive years.
- He must not hold any office of profit under the Union, State or local Government.
- He should have the other qualifications required to become a member of the Rajya Sabha.

### **Election and term of the Vice-President**

Article 66(1) the Vice- President, like the president, is elected not directly by the people but the method of indirect election. He is elected by the members of an electoral college consisting of the member of both Houses of Parliament. The term of office of the Vice President is five years. His office may terminate earlier than the fixed term either by resignation, death or by removal. He is eligible for re-election. The Constitution does not provide a mechanism of succession to the office of the Vice - President. Under such circumstances, election to the Vice President shall be held early as possible. Till then deputy chairman of the Rajya sabha can perform the duties of the chairman of the Rajya sabha.

### **Removal of the VicePresident**

The Vice President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the council and agreed to by the House of the People. A resolution for this purpose may be moved only after a notice of at least a minimum of 14 days has been given of such an intention.

### **Functions of the Vice President**

The Vice-President is Ex-Officio Chairman of the Rajya Sabha. As the Chairman of the House, he carries out several functions.

- He regulates the proceeding of the House.
- He decides the order of the House.
- He decides the admissibility of a resolution or questions.
- He suspends or adjourns the House in case of a grave disorder.
- He issues directions to various committees on matters relating to their functions.
- When the President is unable to discharge his duties due to illness or absence from the country, he attends to the functions of the President. When the President is unable to do so due to sickness or when the post of President becomes vacant due to resignation, death, or removal by impeachment etc. the Vice-President can act as the President for a maximum period of six months.

### **Prime Minister**

Article 74 (1) says: There shall be a council of ministers with the Prime Minister as the head to aid and advice the President. He may direct the council to reconsider their advice, but is bound by the advice given after reconsideration. The post of Prime Minister of India has adopted the Westminster (England) model of constitutional democracy. The leader of the majority party in Lok Sabha is appointed by the President as the Prime Minister. The other ministers are appointed by the President on the advice of the Prime Minister. If no party commands absolute majority in the Lok Sabha, the President can summon the leader of any party who, in his opinion, can manage to form a ministry. The President administers to the ministers the oath of office and of secrecy. The salaries and

allowances of the Prime Minister and the ministers are determined by the Parliament. A person who is not a member of the Parliament can be appointed as a minister but he has to get himself elected to the Parliament within six months. Ministers are individually as well as collectively responsible to the Lok Sabha.

### **Duties and functions of Prime Minister**

Article 78 mentioned the duties of the Prime Minister:

- The Prime Minister decides the rank of his ministers and distributes various departments.
- The Prime Minister decides the dates and the agenda of the meeting of the Cabinet which he presides.
- The Prime Minister is the Head of the Cabinet and the other ministers are his colleagues.
- The Prime Minister informally consults two or three of his senior colleagues when he does not convene a Cabinet meeting.
- The Prime Minister supervises the work of various ministers.
- To converse to the President all decisions of the Council of Ministers connecting to the government of the affairs of the Union and proposals for legislation.
- The Prime Minister act as the link between the President and the Council of Ministers.
- The Prime Minister is the leader of the Nation and chief spokesman of the country.
- As the leader of the nation, the Prime Minister represent our nation at all international conferences like the commonwealth, summit of the non aligned nations and SAARC nations.

### List of Prime Ministers of India

1. Thiru. Jawaharlal Nehru	1947-64
2. Thiru. Lal Bahadur Shastri	1964-66
3. Tmt. Indira Gandhi	1966-77
4. Thiru. Morarji Desai	1977-79
5. Thiru. Charan Singh	1979-80
6. Tmt. Indira Gandhi	1980-84
7. Thiru. Rajiv Gandhi	1984-89
8. Thiru. V.P. Singh	1989-90
9. Thiru. Chandra Shekhar	1990-91
10. Thiru. P.V. Narasimha Rao	1991-96
11. Thiru. Atal Bihari Vajpayee	May 1996
12. Thiru. D. Deve Gowda	1996-97
13. Thiru. I.K. Gujral	1997-98
14. Thiru. Atal Bihari Vajpayee	1998-2004
15. Thiru. Manmohan Singh	2004-14
16. Thiru. Narendra Modi	2014-till now

### Council of Ministers

After the elections, the President of India, on the advice of the Prime Minister, appoints the council of ministers. Sometimes a non - member of the Parliament too may be appointed. However, he must get elected to either of the Houses of the Parliament within a period of six months. The Constitution of India restricts the number of the Council of Ministers including the Prime Minister to fifteen per cent of the total members of the Lok Sabha.

### Categories of the Ministers

The ministers are classified under three ranks

- (i) Cabinet Ministers
- (ii) Ministers of State
- (iii) Deputy Ministers.

### Cabinet Ministers

The Cabinet is an informal body of senior ministers who form the nucleus of administration. Important decisions of the government are taken by the Cabinet, such as defence, finance, external affairs and home.

The Cabinet recommends to the President to promulgate an ordinance. It is instrumental in moving Amendments to the Constitution. The Finance bills have their origin in the

Cabinet and then they are introduced in the Lok Sabha with the Presidents recommendations. The

Cabinet decides the foreign policy of the Government approves international treaties and plays a significant role in the appointment of Ambassadors to various countries.

### **Ministers of State**

These ministers belong to the second category of ministers in the council. They are also in charge of ministries or departments but they do not participate in the meetings of the cabinet unless invited to do so.

### **Deputy Ministers**

They are the lowest ranked ministers in the cabinet. They assist either the Ministers of Cabinet or State in the performance of the duties entrusted to them.

## **PARLIAMENT OF INDIA**

The parliament is the legislative organ of the Union government. Article 79 to 122 in Part V of the constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the Parliament. The Parliament of India consists of three parts they are the President, Rajya Sabha (the council of States) and Lok Sabha (the House of the People). The Rajya Sabha is the Upper House and the Lok Sabha is the Lower House it is termed as bicameral legislature.

### **Rajya Sabha**

The council of State or Rajya Sabha consists of 250 members out of whom 238 represent the states and the Union Territories, elected by the method of indirect election. The 12 nominated members shall be chosen by the President from amongst persons having 'special knowledge or practical experience in the field of literature, science, sports, art and social service.

### **Qualification of the Members**

A person seeking membership of Rajya Sabha must possess the following qualifications

- He should be a citizen of India.
- He should not be less than 30 years of age.
- He should not hold any office of profit under any Government.
- He should be a person with sound mind and monetarily solvent.
- He should have such other qualification as may be approved by the Parliament for that reason from time to time.
- He should not be the member of Lok Sabha or any other legislature.



## Term of House

The Rajya Sabha is a permanent house and it cannot be dissolved. The members of the Rajya Sabha are elected for a term of six years. One third of the members of Rajya Sabha retire every two years, and new members are elected to fill the seats thus vacated. The Vice President of India is the Ex-officio Chairperson of the Rajya Sabha. The Deputy Chairperson of the Rajya Sabha is elected by the members of the Rajya Sabha.

## Election

Members of Rajya Sabha are elected by the elected members of the 'State Legislative Assemblies' in accordance with the system of proportional representation by means of the single transferable vote. This process of election is called "indirect election" as they are not elected by the people directly.

## Functions of the Rajya Sabha

- Any bill (except the money bills) needs to be approved by Rajya Sabha to get passed. If the bill gets stuck for more than six months then President calls for a joint session of both the houses to resolve the deadlock.
- It has the same power as Lok Sabha, for passing any bill for constitutional amendment.
- The members of Rajya Sabha have the electoral power for selection of President, Vice President. Together with the members of Lok Sabha and all the State Legislative Assemblies they elect the President and Vice President.
- It has power in the impeachment procedure of president and judges of Supreme Court and high court.
- Rajya Sabha has the power to make a state list subject into National Importance. If two third majority of the members of Rajya Sabha passes a resolution to support it. Rajya Sabha can also create or abolish an All India Service. If majority of members (2/3 of Total Members) supports it.

## Lok Sabha

The Lok Sabha is the popular house of the Indian Parliament and contains elected representatives of the people. Maximum number of members can be elected for Lok Sabha is 552. The Lok Sabha as of today has 543 elected members. Out of these, 530 members are elected from different states and 13 members from the Union Territories. The President generally nominates two members belonging to the Anglo-Indian community. At present, the Lok Sabha consists of 545 members.

## Qualification of the Members

- He should be a citizen of India.
- He should not be less than 25 years of age.

- He should have his name in electoral rolls in some part of the country. He should not hold any office of profit under the Union or State Government.
- He should be mentally sound and economically solvent.

### The term of the House

Generally the Lok Sabha enjoys a term of five years from the date of its first session. It can be dissolved by the President before the expiry of its term on the advice of the Prime Minister. The emergency provisions of the Constitution enable the President to prorogue or dissolve the Lok Sabha either on the advice of the Prime Minister or on being convinced that no party or no alliance of parties enjoys necessary majority support in the House.

### Election

The members of the Lok Sabha are directly elected by the people of the constituencies created on the basis of population. The Election Commission of India arranges, supervises and conducts elections to the Lok Sabha. For sake of elections to Lok Sabha the entire nation is divided into number of constituencies which are formed more or less on the basis of the population. "Universal Adult Franchise" is followed while electing the members of the Lok Sabha. All Indian Citizens above 18 years of age who are registered as voters will vote for their representatives.

### Functions of the Lok Sabha

- Any bill can be introduced and passed in the Lok Sabha (Including Money Bill).
- It has the same power as Rajya Sabha to participate in case of impeachment of president and the judges of Supreme Court.
- It has equal power as Rajya Sabha in passing any bill for constitutional amendment.
- Lok Sabha members have the power to elect the president, vice president.
- Motion of no confidence can only be introduced in Lok Sabha. If it is passed then the prime minister and other council of ministers need to resign from their post.

### The Speaker

The Lok Sabha is presided over by the 'speaker' who is elected by its members. The office of the Speaker occupies an essential position in our Parliamentary democracy. The Speaker continues to be in the office even in the houses dissolved, till a new Speaker is elected by the new Lok Sabha. The Speaker presides over a joint sitting of the two Houses of Parliament. He has the power to decide whether a Bill is Money Bill or an ordinary one. The decision of the Speaker on whether a Bill is Money Bill is final. Under the anti defection of 1985, the speaker is empowered to decide whether a member of the Lok Sabha is disqualified or not on the basis of the 10<sup>th</sup> schedule of the constitution. While the office of speaker is vacant or the speaker is absent from the sitting of the house, the deputy speaker presides, except when a resolution for his own removal is under consideration.

## **Powers and Functions of the Parliament**

- The Parliament of India has the functions of Legislation, overseeing of administration, passing of Budget, ventilation of public grievances, discussion of various subjects like development plans, international relations and internal policies.
- Parliament is also vested with powers to impeach the President and to remove Judges of the Supreme Court and High Courts, Chief Election Commissioner and Comptroller and Auditor-General of India in accordance with the procedure laid down in the Constitution.
- The Parliament exercises control over the executive through asking questions and supplementary questions, moving motions of adjournment, discussing and passing resolutions, discussing and pushing censure motion or vote of no-confidence.
- The Parliament has the power to change the boundaries of the States.

## **Attorney General of India**

The Constitution (Article 76) has provided for office of the Attorney General for India. He is the highest law officer in the country. He is appointed by the President. He must be a person who is qualified to be appointed the Judge of the Supreme Court. In other words, he must be a citizen of India and he must have been a judge of some High Court for five years or an advocate of some High Court for 10 years or eminent jurist, in the opinion of the President. He holds office during the pleasure of the President. This means that he may be removed by the President at any time. He may also quit his office by submitting his resignation to the President.

## **Duties and Functions of Attorney General of India**

To give advice to the Government of India upon such legal matters which are referred to him by the President. To perform such other duties of a legal character that are assigned to him by the President and discharge the functions conferred on him by the constitution are any other law. In the performance of his official duties, Attorney General of India has the right of audience in all courts in the territory of India. Further he has the right to speak and to take part in the proceedings of both Houses of the Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of Parliament.

## **JUDICIARY**

Judiciary is the third organ of the government. It plays a vital role in protecting the rights and freedom of the citizens. It also plays an important role in analyzing and interpreting the provisions of laws and the Constitution.

## **Supreme Court**

The “Supreme Court is the Guardian of the Constitution”. Our constitution provides for the establishment of an independent and integrated judiciary with ‘supreme court’ as the uppermost court in the country. Our judiciary is autonomous of the Legislative and Executive wing of the Union and State Government. An integrated judiciary means a single judicial hierarchy for the whole country. The judiciary plays an important role in defensive the rights and freedom of the citizens. It plays an important role in analyzing and interpreting the necessities of laws and the constitution.

### **Composition of the Supreme Court**

At the commencement of the constitution in 1950 our supreme court consisted of 8 judges including the chief justice. At present, the Supreme Court consists of 28 judges including the chief justice.

### **Appointment of Judges**

The Chief Justice of Supreme Court in India is appointed by the President of India. The other judges are appointed by the President in consultation with the collegiums with Chief Justice Head.

### **Qualification of Supreme Court Judges**

- He must be a citizen of India.
- He should have worked as a Judge of a High Court for at least 5 years.
- He should have worked as an advocate of High Court for at least 10 years.
- He is in the opinion of the President, a distinguished Jurist.

The constitution also provides for the appointment of judges to the Supreme Court on an ad-hoc (temporary) basis. The Chief Justice and other judges of the Supreme Court hold the office up to the age of 65 years. The judges of the Supreme Court can resign before their term by giving their resignation in writing to the President. The Parliament also has power to remove the Judges by invoking impeachment provisions. The Supreme Court has its permanent seat in “New Delhi”. It may also sit any other place in India which may be decided by the Chief Justice of India with the approval of the President of India.

### **Powers and Functions of the Supreme Court**

#### **(a) Judicial Functions**

The “Supreme Court is the Guardian of the Constitution”. The followings are the functions of the Supreme Court.

#### **(b) Original Jurisdiction**

The cases which are brought directly in the first instance to the Supreme Court come under original jurisdiction. These may be (i) dispute between the Government of India and one or more States of (ii) Dispute between two or more states (iii) the cases involving fundamental rights (dispute over the enforcement) come under the jurisdiction of the Supreme Court. The writs issued by the Supreme Court for the

enforcement of the fundamental rights are, (a) Habeas Corpus (b) Mandamus (c) Prohibition (d) Certiorari (e) Quo Warranto.

**(c) Appellate Jurisdiction**

The Supreme Court is the final appellate court in the country. As regard the Appellate jurisdiction, the Supreme Court hears appeals against the decisions of High Court in “civil, criminal and Constitutional” cases with a certificate from the High Court that it is fit to appeal in the Supreme Court. Such a case can be brought before the Supreme Court only if the High Court certifies that the case invites a substantial question of law as to the interpretation of the Constitution.

**(d) Advisory Jurisdiction**

The Constitution confers on the President the power to refer to the Supreme Court any question of law or fact which in his opinion is of public importance.

**(e) Miscellaneous Jurisdiction**

The Supreme Court is

- The law declared by Supreme Court is binding on all courts within the territory of India.
- The Supreme Court is authorized to make rules for regulating, generally the practice and procedure of the court with the approval of the President.
- The Supreme Court has complete control over its own establishment.

**(f) Judicial Review**

The power of the judiciary to declare a law as unconstitutional is known as “Judicial Review”. The Supreme Court enjoys this power. The Supreme Court of India has Individual Review Power with regard to

1. Dispute between the Centre and the States
2. To interpret and clarify a provision of the constitution about which there are some doubts and differences of opinion.
3. Protecting the fundamental rights,
4. Those laws passed by the legislatures which are not in accordance with the Constitution.

**NOTE**

- It is a well known fact that the President of India resides at **Rashtrapati Bhavan** in New Delhi. The residence and the office of the President are located in the same building. However he has two other office cum residences where he conducts office at least once a year. They are '**The Retreat Building**' at Shimla and the '**Rashtrapati Nilayam**' at Hyderabad. These locations one in North and other one is South symbolise the unity of the country and unity of the diverse culture of the people.
- **Kerala and Punjab** are the States where the President's Rule was imposed for maximum number of times i.e., **nine times in both States**.
- **Casting Vote**

According to **Article (100)** of the Constitution, the **vice-president can only cast his vote when there is a tie** over the Bill in the **Rajya Sabha**. It means that there is need for one vote only to pass the Bill. So vice-president using his discretion power cast his vote in favour or against the Bill. No members have any right to oppose his decision.

- If the posts of **President and Vice-President lie vacant**, Chief Justice of India works as President. This situation happened in 1969 when **Chief Justice M.Hidayatulla** was appointed as President of India.
- **Money Bill**  
**Rajya Sabha does not have any power to amend or reject the Money bill.** Lok Sabha can only introduce Money bill and once it is approved by the Lok Sabha, it is passed to Rajya Sabha for its approval. If Rajya Sabha fails to pass **it within 14 days** then the bill gets passed without the approval of Rajya Sabha. Also, Lok Sabha does not need to consider the amendments proposed by the Rajya Sabha. Lok Sabha can reject all the proposals and pass it.
- Elected members of the Parliament from Tamil Nadu.
  - ❖ Rajya Sabha - 18 members
  - ❖ Lok Sabha - 39 members
- **Parliament Session**
  - ❖ Budget Session from February to May
  - ❖ Monsoon Session from July to September
  - ❖ Winter Session from November to December
- The Supreme Court of India, New Delhi was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935.

## 10<sup>th</sup> Volume I

### Unit 3 – State Government

#### Introduction

- The Constitution of India envisages for a federal government, having separate systems of administration for the union and the states. There are 29 states, 6 union territories and one national capital territory known as Delhi in India. The constitution contains provisions for the governance of both the union and the states. It lays down a uniform structure for the State Government, in part VI of the constitution from Article 152 to 237, which is applicable to all the states, save only the state of Jammu and Kashmir which has a separate constitution for its government under Article 370. The structure of the State Government, as formed in the Centre, consists of three branches. These are the Executive, the Legislature and the Judiciary.

#### The Executive

##### The Governor

- The Governor is the constitutional head of the state executive. The administration of a State is carried on in the name of the Governor. Generally, there is a separate Governor in each State but if the situation warrants so, the same person may be appointed as the Governor of two or more States.
- Article 154 vests the executive power of the State in the Governor. Article 154(1) holds that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution.

#### Appointment

- The Governor of a State shall be appointed by the President. His usual term of office is five years but he holds office during the pleasure of the President. Generally, the Governor does not belong to the State where he is appointed. He can also be transferred from one state to another by the President. He can also resign any time by addressing his resignation to the President.
- The Legislature of a State or a High Court has no role in the removal of a Governor. A person may be appointed as a Governor for any number of terms. Two conventions have been set up in the matter of appointing a person as Governor of a State. He should not be a resident of the State concerned and, the State Government concerned is consulted and its views are sought regarding the proposed choice.

- According to Article 158 (3A), where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

### **Qualification**

- Article 157 and Article 158 of the Constitution of India specify eligibility requirements for the post of governor. They are as follows:
  - He should be a citizen of India.
  - He must have completed 35 years of age.
  - He should not be a member of Parliament or of any State Legislature. If he is a member of any of Legislature, he automatically vacates his seat on assuming the office.
  - He should not hold any other profitable occupation.

### **Powers and Functions of the Governor**

- The Governor is the head of the state executive and he has enormous powers. In the exercise of functions and powers, the Governor, except in certain cases, is to be guided by the aid and advice of the Council of Ministers headed by the Chief Minister (under Article 163). As the executive head in the state level, the Governor has following functions and powers.



## Executive Powers

- The Constitution vests all executive powers of the State Government in the Governor. He may exercise this power either directly or through officers subordinate to him. He is the constitutional head of the State. All the administration is carried on in his name.

The executive powers and functions of the Governor are:

- He appoints the leader of the majority party in the State Legislative Assembly as the Chief Minister of the State.
- He appoints other members of the Council of Ministers on the recommendation of the Chief Minister.
- He appoints the Advocate - General of the state and determines his remuneration.
- The Advocate General holds office during the pleasure of the Governor.
- He appoints the Chairman and Members of the State Public Service Commission. However, they can be removed only by the president and not by a governor.
- He appoints the state election commissioner and determines his conditions of service and tenure of office.
- However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.
- He acts as the chancellor of universities in the state. He also appoints the Vice Chancellors of universities in the state.
- He directly rules a State when there is the imposition of the President's rule in the State.

## Legislative Powers

- The Governor is an integral part of the state legislature. But, he is not a member in either house of the legislature. In this capacity, he enjoys the following legislative powers and functions:
  - He has the right to summon, prorogue the state legislature and dissolve the State Legislative Assembly.
  - He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
  - He can send messages to the houses of the state legislature relating to a bill pending in the legislature.
  - He can appoint any member of the Legislative Assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
  - He can nominate one member to the state legislature assembly from the Anglo-Indian Community.

- He nominates 1/6 of the members of the State Legislative Council from amongst the persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
- He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
- Every bill passed by the state legislature will become law only after his signature.
- But, when a bill is sent to the Governor after it is passed by the legislature, he has the options to give his assent to the bill or withhold his assent to the bill or return the bill for the reconsideration of the legislature.
- He has to reserve any bill passed by the state legislature which endangers the position of the state High Court, for the consideration of the President.
- He can promulgate ordinances when the state legislature is not in session under Article 213. But, these ordinances must be approved by the legislature within six months. He can also withdraw an ordinance at anytime.
- He has to lay the annual reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor General relating to the accounts of the state, before the state legislature.

### Financial Powers

- The Constitution confers on the Governor, the duty to get prepared and introduced to the State Legislature, the annual budget and also the supplementary budgets, if necessary.
- He causes the Annual Financial Statement (Budget) of the State to be presented in the Legislative Assembly.
- He presents through the Minister of Finance of the State the Supplementary Budget of the State to the Legislative Assembly if there be such a need.
- Money Bills can be introduced in the State Legislature only with his the prior recommendation.
- No demand for any grant can be made except on his recommendation.
- He can make advances out of the state Contingency Fund to meet any unforeseen expenditure.
- He constitutes a Finance Commission after every five years to review the financial position of the panchayats and the municipalities.

### Judicial Powers

- He appoints the Advocate-General of the State.
- He appoints Judges to the Subordinate Courts in the State.
- He makes appointment, postings and promotions of the District Judges in consultation with the State High Court.
- The Chief Justice of the High Court in the State is appointed by the President in consultation with him.
- He can pardon, commute or reprieve punishment on receipt of appeals for mercy.

### Discretionary Powers

- The Governor can reserve a bill for the consideration of the president.
- He recommends for the imposition of the President's rule in the state.
- He seeks information from the Chief Minister relating to the administrative and legislative matters of the state.
- He can call the leader of any party to form ministry in the state when there is no clear-cut majority to any party in the Legislative Assembly after the general elections.
- He can dismiss the Council of Ministers when it is unable to prove the confidence of the Legislative Assembly; and
- He can dissolve the Legislative Assembly if the Council of Ministers has lost its majority.

### Emergency Powers

- If the Governor is satisfied that the government of the state is not carried on in accordance with the provisions of the Constitution, he may, under Article 356, recommend to the President to impose President Rule in that State. As soon as the President Rule is imposed, the administration of the State is carried on by the Governor as the representative of the President.

### Privileges of the Governor

Article 361(1) provides for the following privileges for the Governor;

- The Governor of a State, is not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
- No criminal proceedings whatsoever shall be instituted or continued against the Governor of a State, in any court during his term of office.
- No process for the arrest or imprisonment of the Governor of a State, shall issue from any court during his term of office.
- No civil proceedings in which relief is claimed against the Governor of a State.

### Chief Minister

- In the scheme of Parliamentary system of government provided by the constitution, the governor is the nominal executive authority and the Chief Minister is the real executive authority. In other words, the governor is the head of the State while the Chief Minister is the head of the government.

### The appointment of the Chief Minister

- The Chief Minister is appointed by the Governor of the State. The leader of the majority party or majority group in the State Legislative Assembly is appointed as the

Chief Minister. In case no party commands absolute majority, in the Legislative Assembly or the majority fails to elect its leader, the Governor can use his power and invite the leader of the other largest party to form the ministry. He has to prove the confidence (majority support) in the Legislative Assembly within the period stipulated by the Governor. The term of the Chief Minister is not fixed. He may remain as the Chief Minister as long as he enjoys the support of the majority of the members of the Legislative Assembly. He has to resign when he loses confidence of the majority in the assembly. It is understood that normally he completes 5 years term like other members in the Legislative Assembly.

#### Chief Ministers of Tamil Nadu from 1947

Thiru O.P. Ramaswamy	1947-1949
Thiru P.S. Kumaraswamy Raja	1949-1952
Thiru C. Rajagopalachari	1952-1954
Thiru K. Kamaraj	1954 - 1963
Thiru M. Bakthavatsalam	1963 - 1967
Thiru C.N. Annadurai	1967-1969
Thiru M. Karunanidhi	1969-1976
Thiru M. G. Ramachandran	1977-1987
Tmt. Janaki Ramachandran	January 1988
Thiru M. Karunanidhi	1989 -1991
Selvi J. Jayalalithaa	1991 - 1996
Thiru M. Karunanidhi	1996-2001
Selvi J. Jayalalithaa	2001
Thiru O. Panneerselvam	2001 -2002
Selvi J. Jayalalithaa	2002-2006
Thiru M. Karunanidhi	2006-2011
Selvi J. Jayalalithaa	2011-2014
Thiru O. Panneerselvam	2014 - 2015
Selvi J. Jayalalithaa	2015-2016
Thiru O. Panneerselvam	2016-2017
Thiru Edappadi K. Palaniswami	2017- till now

#### Powers and functions of the Chief Minister

The Chief Minister is the real executive head of the State administration. He has the following powers and functions.

- Relating to the council of ministers
- Relating to the Governor
- Relating to the State Legislature Other functions and powers.

#### Relating to the Council of Ministers

As the head of the Council of Ministers, the Chief Minister enjoys the following functions and powers.

- The Chief Minister recommends the persons who can be appointed as ministers by Governor.
- He allocates the portfolios among the ministers.
- He shuffles and reshuffles his ministry.
- He can ask a minister to resign or to advise the Governor to dismiss him in case of difference of opinion.
- He presides over the meetings of the Council of Ministers and influences its decisions.
- He can bring about the collapse of the council of ministers by resigning from office.
- He guides, directs, controls and coordinates the activities of all the ministers.

### **Relating to the Governor**

- The Chief Minister is the principal channel of communication between the Governor and the Council of Ministers, and he advises the Governor in relation to the appointment of the following officials:
  - Advocate General of the State.
  - State Election Commissioner.
  - Chairman and Members of the State Public Service Commission.
  - Chairman and Members of the State Planning Commission.
  - Chairman and Members of the State Finance Commission.

### **Relating to State Legislature**

- The Chief Minister advises the Governor with regard to the summoning and proroguing the sessions of the state legislature.
- He announces the government policies on the floor of the house.
- He can introduce the bills in the Legislative Assembly.
- He can recommend for the dissolution of the Legislative Assembly to the Governor anytime.

### **Other function and powers**

- As the leader of the ruling party, the Chief Minister has to control the party and develop the disciplines.
- As the leader of the state, he has to keenly consider the demands of the different sections of the people.
- As the political head of the various services, he has to supervise, control and coordinate the secretaries of various departments in the state level.
- For smooth functioning of the state and for good centre-state relations, he has to develop a rapport with the union government.

## Council of Ministers

- The Council of Ministers are collectively responsible to the State Legislature. All the members of the Council of Ministers must be the members of the State Legislature. Those who are not the members at the time of their appointment must secure their seats in the Legislature within a period of 6 months. All the ministers work as a team under the Chief Minister. As long as the Chief Minister is in office, the Council of Ministers will also be in power. If a no-confidence motion is passed by the Legislative Assembly, the State Ministry shall resign.
- Article 163 provides for a Council of Ministers to aid and advise the Governor. According to Article 163(1) there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

## Other Provisions relating to Ministers

- Article 164(1) holds that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Article 164(1A) states that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen percent of the total number of members of the Legislative Assembly.

## The functions and powers of the Council of Ministers

- It formulates and decides the policies of the state and implements them effectively.
- It decides the legislative programmes of the Legislative Assembly and sponsors all important bills.
- It controls the financial policy and decides the tax structure for the public welfare of the state.
- It chalks out programmes and schemes for the socio-economic changes so that the state makes headway in various interrelated fields.
- It makes the important appointments of the Heads of Departments.
- It discusses and takes efforts on the dispute with other states
- It advises the Governor on the appointment of Judges of the subordinate courts.
- It frames the proposal for incurring expenditure out of state reserves.
- It decides all the bills whether ordinary bills or money bills to be introduced in the Legislative Assembly.
- Each minister of the Council of Ministers supervises, controls and coordinates the department concerned.
- Annual Financial Statement called as the Budget is finalised by the Council of Ministers.

## The State Legislature

- The Constitution provides a legislature for every state. Most of the States have only unicameral legislature i.e., Legislative assembly. Some State has bicameral legislatures (example Bihar, Karnataka, Maharashtra, Uttar Pradesh, Andhra Pradesh, Telangana and Jammu-Kashmir). The lower house, legislative assembly represents the people of the state the upper house; Legislative Council represents special interests like teachers, graduates and local governments.



## The Legislative Assembly (Lower House)

- The Legislative Assembly is a popular house. It is the real centre of power in the State. It consists of members directly elected by the people on the basis of adult franchise. The strength of the Assembly varies from State to State depending on the population. However, the maximum strength of the Assembly must not exceed 500 or its minimum strength not below 60. The term of office of the legislative assembly is 5 years. It can be dissolved even before the expiry of its term.
- The size of the Legislative Council cannot be more than one-third the membership of the Legislative Assembly (lower house) of that state. But its size cannot be less than 40, except in Jammu and Kashmir where there are 36 by an act of Parliament. The members draw the salary and allowances passed by the State legislature from time to time.

## Composition

- The Legislative Assembly of Tamil Nadu consists of 235 members out of which 234 members are directly elected by the people from the constituencies on the basis of adult franchise and one member is nominated by the Governor from the Anglo-Indian community.
- However, seats shall be reserved in the house for the scheduled castes and scheduled tribes.

## Cabinet and Cabinet Committees

- A smaller body called Cabinet is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. The cabinet works through various committees called cabinet committees. They are of two types - standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.



## The Speaker

- The Legislative Assembly elects two of its members as the Speaker and Deputy Speaker. The Speaker vacates his office, if he cannot continue to be a member of the Assembly. He may also resign his office at any time. The Speaker may be removed from office by a resolution of the Assembly after giving a 14 days' notice. Such a resolution must be passed by a majority of the members present at the time of voting. The Speaker does not vacate his office, when the Assembly is dissolved. He continues to be the Speaker until the first sitting of the new Assembly. While the office of the Speaker is vacant, the Deputy Speaker performs his functions.

## The Legislative Council (Upper House)

- The Legislative Council is the upper House of the State Legislature. It is constituted as a permanent House. Article 171(1) provides that the total number of members in the Legislative Council of a State shall not exceed one-third of the total number of members in the Legislative Assembly of that State, but not less than 40 members in any case.
- The Vidhan Parishads (Legislative Council) forms a part of the state legislatures of India. In seven of India's 29 states (Bihar, Karnataka, Maharashtra, Uttar Pradesh, Andhra Pradesh, Telangana and Jammu - Kashmir) the Legislative Council serves as the indirectly elected upper house of a bicameral legislature. It is also a permanent house because it cannot be dissolved. Every Member of Legislative Council (MLC) serves for a six-year term, with terms staggered so that the terms of one-third of members expire every two years. MLCs must be citizens of India not under 30 years of age, mentally sound and not bankrupt, and his name should be in the voter's list of the state from which he or she is contesting the election.

## Election to Legislative Council

- 1/3 of the members are elected by local bodies.
- 1/12 of the members are elected by Graduates of the universities in the State.
- 1/12 of the members are elected by Graduate teachers.
- 1/3 of the members are elected by the members of the Legislative Assembly.
- 1/6 is nominated by the Governor who is eminent in the field of literary excellence, art, social services or Co-operation.

## The Chairman

- The Chairman (chair person he / she) is the Presiding Officer of the Upper house. The Members elect a Chairman and a deputy chairman from among themselves. In the absence of the chairman, the deputy chairman officiate the functions of the Legislative Council.

## Abolition or Creation of Legislative Councils

- Article 169 deals with the creation or abolition of Legislative Council in a State. Article 169 holds that if the state Legislative Assembly passes a resolution by a majority of not less than 2/3rd of the members present and voting and by the majority of total strength of the House, requesting the Parliament to create or abolish the state Legislative Council then the Parliament may by law provide for the abolition and creation of the Legislative Council.

### **Functions of the State Legislature**

- The powers and functions of the State Legislature are almost the same as that of Parliament.

### **Legislative powers**

- The State Legislature can pass laws on all subjects mentioned in the State List as per the constitution. It can also pass laws on concurrent subjects. The State made law in a concurrent subject will become inoperative when the centre also passes a law on the same subject. The passing of Bill into law follows the same procedure, as in the union parliament. Every bill passes through three readings. Then it becomes an Act with the Governor's assent.

## Financial Powers

- The Legislature controls the finances of the State. The Lower House enjoys greater power than the Upper House in money matters. Money bills can be introduced only in the Lower House or the Assembly. No new tax can be levied without the sanction and permission of the Assembly.

## Controls over the Executive

- The Legislature controls the Executive. The Council of Ministers is responsible to the Assembly. The Ministers have to answer questions asked by the members of the Legislature. They can be removed from office if the Assembly passes a vote of “no confidence motion” against the Ministry.

## Wide powers

- In State having two Houses, the Legislative Assembly enjoys more powers than the Legislative Council. The Assembly has complete control over the state finance. The Council cannot vote for grants. The Council of Ministers is responsible only to the Assembly.

## JUDICIARY OF STATE

### High Courts

- The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state. The High Courts are the highest courts at State level, but being part of integrated Indian judiciary they work under the superintendence, direction and control of the Supreme Court. The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory. For example, the States of Punjab and Haryana and the Union Territory of Chandigarh have a common High Court situated at Chandigarh. Similarly, the High Court of Guwahati is common for seven northeastern States of Assam, Nagaland, Manipur, Meghalaya, Mizoram, Tripura and Arunachal Pradesh. Delhi, though not a State, has its own separate High Court. Every High Court has a Chief Justice and a number of judges. The number of judges varies from State to State. The number of judges of each High Court is determined by the President. At present there are 25 High Courts for 29 States (including new Andhra Pradesh High Court established in 1st January 2019 at principal seat in Amravati) and seven Union Territories.

## Appointment of the Judges

- Every High Court consists of a Chief Justice and such other Judges as appointed by the President from time to time (Article 216).

### **Jurisdiction and Powers of High Court**

- At present, a high court enjoys the following jurisdiction and powers:

#### **Original Jurisdiction**

- In their judicial capacity, the High Courts of the Presidency towns (Bombay, Calcutta and Madras) have both original and appellate jurisdictions, while other High Courts have mostly appellate jurisdiction. Only in matters of admiralty, probate, matrimonial and contempt of Court, they have original jurisdiction. The Presidency High Courts have original jurisdiction in which the amount involved is more than `2000 and in criminal cases which are committed to them by the Presidency Magistrates.

#### **Appellate Jurisdiction**

- As Courts of appeal, all High Courts entertain appeals in civil and criminal cases from their subordinate Courts as well as on their own. They have, however, no jurisdiction over tribunals established under the laws relating to the Armed Forces of the Country.

#### **Writ Jurisdiction**

- Under Article 226 of the constitution, the High Courts are given powers of issuing writs not only for the enforcement of the Fundamental Rights, but also for other purposes. In exercise of this power, a Court may issue the same type of writs, orders or directions which the Supreme Court is empowered to issue under Article 32. The jurisdiction to issue writs under this Article is larger in the case of High Courts, for which the Supreme Court can issue them only where a Fundamental Right has been infringed, a High Court can issue them not only in such cases, but also where an ordinary legal right has been infringed.

#### **Habeas Corpus**

- The writ of habeas corpus is issued to a detaining authority, ordering the detainer to produce the detained person in the issuing court, along with the cause of his or her detention, if the detention is found to be illegal, the court issues an order to set the person free.

#### **Mandamus**

- The writ of mandamus is issued to a subordinate court, an officer of government, or a corporation or other institution commanding the performance of certain acts or duties.

#### **Prohibition**

- The writ of prohibition is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to it.

### **Quo Warranto**

- The writ of quo Warranto is issued against a person who claims or usurps a public office. Through this writ the court inquires 'by what authority' the person supports his or her claim.

### **Certiorari**

- The writ of certiorari is issued to a lower court directing that the record of a case be sent up for review, together with all supporting files, evidence and documents, usually with the intention of overruling the judgment of the lower court. It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

### **Supervisory Jurisdiction**

- High court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals) Thus, it may
  - a) Call for returns from them;
  - b) Make an issue, general rules and prescribe forms for regulating the practice and proceedings of them.
  - c) Prescribe forms in which books, entries and accounts are to be kept by them; and
  - d) Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

### **Control over Subordinate Courts**

A high court has an administrative control and other powers over them

- a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).
- c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that requires the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgment.

- d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.



### **Court of Record**

- All the decisions and decrees issued by the High Court are printed and are kept as a record for future references by the Court as well as by the lawyers, in such a need arises. Thus, it also acts as a Court of Record.

### **Power of Judicial Review**

- Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. Though the phrase judicial review has nowhere been used in the Constitution, the provisions of Articles 226 and 227 explicitly confer the power of judicial review on a high court. The 42nd Amendment Act of 1976 curtailed the judicial review power of a high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position.



**11<sup>th</sup> Volume I**

**UNIT - 6 FORMS OF GOVERNMENT**

## Introduction

- The Government is the main agency of the state. It comprises several members belonging to political and administrative wings. It serves as the instrument for delegation and execution of the state policies for the welfare of the people. It formulates expresses and realises the will of the state. It exercises certain legislative, executive and judicial powers based on the constitution and the laws. There are three organs in government, namely - Legislature, Executive and Judiciary. These organs carry out the activities of the state. Governments are classified under Unitary, Federal, Parliamentary and Presidential forms.

## Approaches to the study of Government

- Studying governments from different approaches help us to understand government from its evolution to its performance in the contemporary times. The approaches to study the Government are

### 1. Comparative-Historical Approach

- This approach studied the western political institutions from ancient to modern times, this approach is descriptive in nature, Aristotle, Montesque and Locke adopted this approach to study and analyse governments in those days.
- For instance before writing his monumental work politics Aristotle studied 158 constitutions. Montesquieu studied the working of the British constitution and came to the conclusion that the stability of British constitution was due to the adherence to the principle of separation of powers.



## 2. Legal-Institutional Approach

- Scholars like Bentham, Austin and Dicey adopted this approach, This approach focuses on formal legal structure of political institutions. They helped to develop certain theories which explain the relationship and interconnection between government and Law. Bentham is the distinguished legal reformer in England Likewise Austin provided a legal base to sovereignty which is indivisible, inalienable and absolute. A.V.Dicey judged the government on the basis of law and its applicability to different branches of government.

## 3. Political Economy Approach

- This approach deals with economic aspects of the government which gives economic interpretation of politics also deals with role of market, mode of production and delivering goods to the society. This approach is classified into liberal political economy and the Marxist political economy approach.

## 4. Political Sociology Approach

- This approach derived its ideas from sociology and anthropology also known as systems approach. Political sociology asserts that government or political system is a sub system of a larger social system. This approach examines the interaction between the larger and the sub systems.
- Early Montesque proposed a three-fold division of Government namely Republican, Monarchical and Despotic government  
Republican Government: "People possess the sovereign Power".

**Monarchical Government:** "Rule by one single person and governed by fixed and established laws"

**Despotic government:** "Rule by one single person but there is no fixed rule for governance, everything conducted by his will. According to Montesquethe survival of the government depends on "persistence in given society of that particular spirit which is characteristic of the form".

## Meaning, Definition and Nature of Government

- Government refers to the executive functions of the state. It denotes a body having authority to make and enforce laws applicable to the civil, corporate, religious, academic or other groups.
- The term Government is derived from an old French word “governor”, derived from Latin word “gubernare” which means to direct, rule, guide, govern.
- Aristotle’s Classification of Governments Aristotle identified a combination of two criteria to classify the constitution that he analysed.
- Criteria One: Number of People having Power – One, Few, Many; Thus he distinguished between Monarchy, Aristocracy and Polity Criteria Two: To whose interest the Government works for – Working in General Interest, Working in Personal Interest. The respective perverted forms of the three types are Tyranny, Oligarchy and Democracy

## Unitary Form of Government

- A unitary system of government, or unitary state, is a sovereign state governed as a single entity. The central government is supreme, and the administrative divisions exercise only powers that the central government has delegated to them.

## England, France, Japan, Sri Lanka are examples of Unitary Form of governments.

- In a Unitary form of government all authority and power vested in a single centre whereas in a federal form of government authority and power distributed between centre and the constituent units. Even in a Unitary form of Government there might be a lot of decentralization of authority but we cannot claim it as a federal system.

### Definition:

Some leading political thinkers defined unitary form of government as follows:

**A.V.DICEY:** “Habitual exercise of supreme legislative authority is by one central power”

**GARNER:** “Where the whole power of government is conferred by the constitution upon a single central organ”

**C.F.STRONG:** “Two important qualities of the Unitary Government”.

They are:-

- The supremacy of the central government;
- The absence of the subsidiary sovereign bodies.
- The distinction between subsidiary law-making bodies and subsidiary sovereign bodies is the distinction between the local authorities in a unitary state and constituent units in a federal state.
- Where: A constitution, Unitary and highly centralised on paper, may be almost federal in practice;
- A federal constitution may be, in practice, Unitary, as indeed are the so-called federal constitutions of Mexico, Venezuela, Brazil and Argentina”.

### **Merits of Unitary Form of Government**

- a. Suitable for small countries.
- b. There is no conflict of authority and responsibility.
- c. A unitary government will make prompt decisions and take speedy action.
- d. A unitary government is less expensive.
- e. Amendments to the constitution are easy.
- f. There is unity, uniformity of law, policy and administration.

### **De-Merits of Unitary Form Government**

- a. It is not suitable for big countries.
- b. The central government will have to tackle so many complex problems that lead to administrative delay.
- c. The central government will not concentrate on local problems, local interest and initiative.
- d. The concentration of powers may pave way for the despotism of the central government.

### **Unitary Features of Indian Constitution**

#### **i. Strong Centre**

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

#### **ii. Central Government's control over state territory**

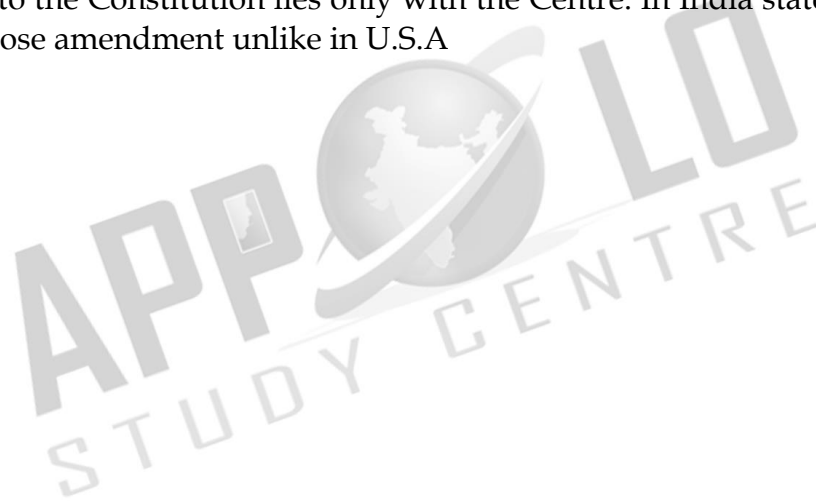
- Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state.

### **iii. Single Constitution**

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

### **iv. Flexibility of the Constitution**

- The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In India states don't have the right to propose amendment unlike in U.S.A



#### **v. Unequal representation of states**

- In a federation states are given with equal representation with regard to upper house, but in India states are not given with equal representation with regard to Rajya Sabha.

#### **vi. Emergency Provisions**

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

#### **vii. Single Citizenship**

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

#### **viii. Single Integrated Judiciary**

- It means that all the courts of India are in a hierarchical order from the lower courts to the Supreme Court of India. Courts in India have Original and Appellate Jurisdiction.

#### **ix. All India Services**

- It has the features of All India Services or Central Services, and the State Civil Services. The Central and All India services promotes uniform administrative system and process throughout India.

#### **Federal Form of Government**

- The classification of governments into unitary and federal is based on the nature of relations between the national government and the regional governments. A federal government is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently. US, Switzerland, Australia, Canada, Russia, Brazil, Argentina have the federal form of government. In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.

#### **Federal Features Of Indian Constitution**

**a. Dual Government**

- The Indian Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.

**b. Written Constitution**

- The articles of the Constitution are written and cannot be easily changed without due parliamentary approval.

**c. Division of Powers**

- The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule.

**d. Supremacy of the Constitution**

- The Constitution is the supreme law of the land. The laws are enacted by the Centre and the states must conform to its provisions.

**e. Rigid Constitution**

- Amendment of the Constitution is by a procedure of 2/3rd majority in each of the house and laws cannot be easily changed by any ruling party.

### **f. Independent Judiciary**

- The Judiciary is separated from the Executive and Legislature. The Judiciary gave its national and state level jurisdictions, exercises Original, Appellate and Judicial Review functions. It functions independently of the Executive and Legislature.

### **g. Bicameralism**

- It provides for a two-house legislature that has an Upper chamber and Lower chamber. With the Lower house having powers of enacting financial legislation.

### **Merits of Federal Form Government**

- a. Reconciliation of local autonomy with national unity.
- b. Division power between centre and states leads to administrative efficiency.
- c. It gives rise to big states.
- d. Distribution powers checks the despotism of central government.
- e. More suitable for bigger countries.
- f. It is good for economic and cultural progress.
- g. De-Merits Of Federal Form Government.
- h. Federal government is weaker when compared to the unitary government.
- i. Federal government is more expensive.
- j. Provincial tendencies are very common.
- k. lack of uniformity in Administration.
- l. Threat to national unity.
- m. Distribution powers between centre and states lead to conflict.
- n. Double Citizenship.
- o. Rigid constitution cannot be amended easily for the changing needs.
- p. The state governments sometimes place hindrances in the foreign policy.

S.NO	Unitary Form of Government	Federal Form of Government
1	Only one Level of Government or Subunits	Two Levels of Government
2	Mostly Single Citizenship	Dual Citizenship
3	Sub Units cannot operate Independently	Federal Units are answerable to Central Government
4	No Division of Power	Division of Power
5	Centralisation of Power	Decentralisation of Power

### Parliamentary form of government

- Modern democratic governments are classified into parliamentary and presidential on the basis of nature of relations between the executive and the legislative organs of the government. The parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts. The presidential system of government, on the other hand, is one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature in respect of its term of office.
- The parliamentary government is also known as cabinet government irresponsible government or Westminster model of government and is prevalent in Britain, Japan, Canada, India among others.
- Ivor Jennings called the parliamentary system as 'cabinet system' because the cabinet is the nucleus of power in a parliamentary system. The parliamentary government is also known as 'responsible government' as the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter's confidence.
- It is described as 'Westminster model of government' after the location of the British Parliament, where the parliamentary system originated. In the past, the British constitutional and political experts described the Prime Minister as 'primus inter pares' (first among equals) in relation to the cabinet. In the recent period, the Prime Minister's power, influence and position have increased significantly vis-a-vis the cabinet. He has come to play a 'dominant' role in the British politico-administrative system.

### Features of parliamentary form of government

- Nominal and Real Executives: The President is the nominal executive (de jure executive or titular executive) while the Prime Minister is the real executive (de facto executive). Thus, the President is head of the State, while the Prime Minister is head of the government.
- Majority Party Rule: The political party which secures majority seats in the Lok Sabha forms the government. The leader of that party is appointed as the Prime Minister by



the President; other ministers are appointed by the President on the advice of the prime minister. However, when no single party gets the majority, a coalition of parties may be invited by the President to form the government.

**Collective Responsibility:** This is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament.

**Double Membership:** The ministers are members of both the legislature and the executive.

**Leadership of the Prime Minister:** The Prime Minister plays the leadership role in this system of government. He is the leader of council of ministers, leader of the Parliament and leader of the party in power. In these capacities, he plays a significant and highly crucial role in the functioning of the government.

### **Merits of the parliamentary form of government**

**Harmony between Legislature and Executive:** The greatest advantage of the parliamentary system is that it ensures harmonious relationship and cooperation between the legislative and executive organs of the government. The executive is a part of the legislature and both are inter dependent at work. As a result, there is less scope for disputes and conflicts between the two organs.

**Responsible Government:** In the parliamentary system establishes a responsible government. The ministers are responsible to the Parliament for all their acts of omission and commission. The Parliament exercises control over the ministers through various devices like question hour, discussions, adjournment motion, no confidence motion, etc.

**Prevents Despotism:** Under this system, the executive authority is vested in a group of individuals (council of ministers) and not in a single person. This dispersal of authority checks the dictatorial tendencies of the executive. Moreover, the executive is responsible to the Parliament and can be removed by a no-confidence motion.

**Wide Representation:** In a parliamentary system, it is possible to provide representation to all sections and regions in the government. The prime ministers while selecting his minister scan take this factor into consideration.

### **Demerits of the parliamentary form of government**

**Unstable Government:** The parliamentary system does not provide a stable government. There is no guarantee that a government can survive its tenure. The ministers depend on the majority legislators for their continuity and survival in office. A no-confidence motion or political defection or evils of multiparty coalition can make the government unstable.

**No Continuity of Policies:** The parliamentary system is not conducive for the formulation and implementation of long-term policies. This is due to the uncertainty of the tenure of the government. A change in the ruling party is usually followed by changes in the policies of the government.

**Dictatorship of the Cabinet:** When the ruling party enjoys absolute majority in the Parliament, the cabinet becomes autocratic and exercises nearly unlimited powers.

Harold J Laski says that the parliamentary system gives the executive an opportunity for tyranny.

Ramsay Muir, the former British Prime Minister, also complained of the 'dictatorship of the cabinet'.

**Against Separation of Powers:** In the parliamentary system, the legislature and the executive are together and inseparable. The cabinet acts as the leader of legislature as well as the executive. Hence, the whole system of government goes against the letter and spirit of the theory of separation of powers.

Raju Ramachandran, senior advocate at the Supreme Court of India.

- This debate is academic. A switchover to the presidential system is not possible under our present constitutional scheme because of the 'basic structure' doctrine propounded by the Supreme Court in 1973 which has been accepted by the political class without reservation, except for an abortive attempt during the Emergency by Indira Gandhi's government to have it overturned. The Constituent Assembly had made an informed choice after considering both the British model and the American model and after Dr. B.R. Ambedkar had drawn up a balance sheet of their merits and demerits. To alter the informed choice made by the Constituent Assembly would violate the 'basic structure' of the Constitution. I must clarify that I have been a critic of the 'basic structure' doctrine.

### **Abuse of power worries**

- A presidential system centralizes power in one individual unlike the parliamentary system, where the Prime Minister is the first among equals. The surrender to the authority of one individual, as in the presidential system, is dangerous for democracy. The over centralization of power in one individual is something we have to guard against. Those who argue in favour of a presidential system often state that the safeguards and checks are in place: that a powerful President can be stalled by a powerful legislature. But if the legislature is dominated by the same party to which the President belongs, a charismatic President or a "strong President" may prevent any move from the legislature. On the other hand, if the legislature is dominated by a party opposed to the President's party and decides to checkmate him, it could lead to a stalemate in governance because both the President and the legislature would have democratic legitimacy.
- A diverse country like India cannot function without consensus-building. This "winner takes it all" approach, which is a necessary consequence of the presidential system, is

likely to lead to a situation where the views of an individual can ride roughshod over the interests of different segments.

### **What about the States?**

- The other argument, that it is easier to bring talent to governance in a presidential system, is specious. You can get 'outside' talent in a parliamentary system too. Right from C.D. Deshmukh, T.A. Pai, Manmohan Singh, M.G.K. Menon and Raja Ramanna talent has been coming into the parliamentary system with the added safeguard of democratic accountability, because the 'outsiders' have to get elected after assuming office. On the other hand, bringing 'outside' talent in a presidential system without people being democratically elected would deter people from giving independent advice to the chief executive because they owe their appointment to him/her.
- Those who speak in favour of a presidential system have only the Centre in mind. They have not thought of the logical consequence, which is that we will have to move simultaneously to a "gubernatorial" form in the States. A switch at the Centre will also require a change in the States. Are we ready for that? Changing to a presidential system is the best way of ensuring a democracy that works.
- Our parliamentary system is a perversity only the British could have devised: to vote for a legislature in order to form the executive. It has created a unique breed of legislator, largely unqualified to legislate, who has sought election only in order to wield executive power. There is no genuine separation of powers: the legislature cannot truly hold the executive accountable since the government wields the majority in the House. The parliamentary system does not permit the existence of a legislature distinct from the executive, applying its collective mind freely to the nation's laws.
- For 25 years till 2014, our system has also produced coalition governments which have been obliged to focus more on politics than on policy or performance. It has forced governments to concentrate less on governing than on staying in office, and obliged them to cater to the lowest common denominator of their coalitions, since withdrawal of support can bring governments down. The parliamentary system has distorted the voting preferences of an electorate that knows which individuals it wants but not necessarily which parties or policies.

### **Failures in the system**

- India's many challenges require political arrangements that permit decisive action, whereas ours increasingly promote drift and indecision. We must have a system of government whose leaders can focus on governance rather than on staying in power.
- A system of directly elected chief executives at all levels - panchayat chiefs, town mayors, Chief Ministers (or Governors) and a national President elected for a fixed term of office, invulnerable to the whims of the legislature, and with clearly defined

authority in their respective domains - would permit India to deal more efficiently with its critical economic and social challenges.

- Cabinet posts would not be limited to those who are electable rather than those who are able. At the end of a fixed period of time – say the same five years we currently accord to our Lok Sabha the public would be able to judge the individual on performance in improving the lives of Indians, rather than on political skill at keeping a government in office.
- The fear that an elected President could become a Caesar is ill-founded since the President's power would be balanced by directly elected chief executives in the States. In any case, the Emergency demonstrated that even a parliamentary system can be distorted to permit autocratic rule. Dictatorship is not the result of a particular type of governmental system.

### **Direct accountability**

- Indeed, the President would have to work with Parliament to get his budget through or to pass specific Bills. India's fragmented polity, with dozens of political parties in the fray, makes a U.S.-style two- party gridlock in Parliament impossible. An Indian presidency, instead of facing a monolithic opposition, would have the opportunity to build issue-based coalitions on different issues, mobilising different temporary alliances of different smaller parties from one policy to the next - the opposite of the dictatorial steamroller some fear a presidential system could produce.
- Any politician with aspirations to rule India as President will have to win the support of people beyond his or her home turf; he or she will have to reach out to different groups, interests, and minorities. And since the directly elected President will not have coalition partners to blame for his or her inaction, a presidential term will have to be justified in terms of results, and accountability will be direct and personal.
- Democracy, as I have long argued, is vital for India's survival: we are right to be proud of it. But few Indians are proud of the kind of politics our democracy has inflicted upon us. With the needs and challenges of one-sixth of humanity before our leaders, we must have a democracy that delivers progress to our people. Changing to a presidential system is the best way of ensuring a democracy that works. It is time for a change.
- UpendraBaxi, legal scholar and the former vice-chancellor of Delhi University
- I think the debate has a life cycle of its own. It has been brought up and discussed whenever there has been a super-majority government. From Jawaharlal Nehru to Indira Gandhi to the present, the presidential system has been debated extensively around two aspects: is it desirable, and second, is it feasible?

- To tackle the second aspect first, unless the Supreme Court changes its mind, any such amendment would violate the 'basic structure' of the Constitution as was decided with, and since, the KesavnandaBharthi case. There is no way to get around this unless the Supreme Court now takes a wholly different view.

### **Different models**

- On the desirability aspect, which presidential system are we talking about when we pit the American presidential system against the Westminster model? In the American system, the President appoints his officers; they have limited tenure and their offices are confirmed by the Senate (Upper House). Then, we have the Latin American model, where some Constitutions give Presidents a term often amounting to a life tenure like in Cuba. There are plenty of models to choose from and there are arguments against each. So, which system is being argued for when the votaries of change seek a shift to the presidential system?
- Our RajyaSabha cannot be compared to the U.S. Senate where each state has its own Constitution and has the power to change it. The relationship between the states and the federal government is extraordinary; as is the status of their courts and the manner of appointment of judges. I do not think people have thought about it. Merely stating that a change to the presidential system is needed does not mean much. The Indian debate currently is not focussed on the kind of presidential system envisaged. What is the term we are seeking for the President? Should he/ she be re-elected? If so, for how many terms? Then, who decides the change?
- Parliament? All this requires a massive amendment to the 'basic structure' of the Constitution. The Supreme Court has spelt its view on the 'basic structure' of the Constitution.
- Giving an opinion is one thing. A judgment is a more carefully considered conclusion. Those who support the presidential system should do their homework when they argue against the parliamentary system. There is also the matter of separation of powers. In the U.S., the President, who is also the Supreme Commander, has the power to veto the Congress. Does India need this? The manner of removing the U.S. President through impeachment is a very complex process. There is also the possibility of aggregating more powers to the President.
- One could argue that the parliamentary system too runs a similar risk. I do not think it has been thought over. It is not on the table yet.

### **Reform the process**

- On the other hand, there are ideas going around about reforming the electoral processes to make democracy more robust. From limiting expenditure of political parties and deciding the ceiling on the expenditure, to holding simultaneous elections, declaring the results for a combination of booths instead of constituencies – I think it

is advisable to debate this and ensure that the gaping loopholes in the electoral processes are speedily plugged.

- The present parliamentary system has been tried and tested for nearly 70 years. Rather than change the system, why not reform thoroughly and cleanse the electoral processes?
  - Why the framers of the Indian Constitution adopted for the Parliamentary Form of Government
  - Familiarity with the System
  - Preference to More Responsibility
  - Need to Avoid Legislative—Executive Conflicts
1. Nature of Indian Society, India is one of the most heterogeneous States and most complex plural societies in the world. Hence, the Constitution-makers adopted the parliamentary system as it offers greater scope for giving representation to various section, interests and regions in the government. This promotes a national spirit among the people and builds audited India.

### **Presidential Form of Government**

- The Presidential Form of Government is also known as non-responsible or non-parliamentary or fixed executive system of government basically built on the principle of separation of power, and is prevalent in USA, Brazil, Russia, Sri Lanka among others.

### **Features of Presidential Form of Government**

- The American President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of government.
- The President is elected by an electoral college for a fixed tenure of four years. He cannot be removed by the Congress except by impeachment for a grave unconstitutional act.
- The President governs with the help of a cabinet or a smaller body called 'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him, are responsible only to him, and can be removed by him any time.
- The President and his secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress nor attend its sessions.

- The President cannot dissolve the House of Representatives – the lower house of the Congress.
- The doctrine of separation of powers is the basis of the American presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.

### Difference between Parliamentary Form of Government and Presidential Form of Government

S.No	Presidential Form of Government	Parliamentary Form of Government
1	President is directly elected by the People	Prime Minister is the leader of majority Party Central
2	President is Supreme	Legislature is supreme
3	Separation of Powers	Absence of Separation Powers Centralization
4	Independent branches	Independent branches with Overlapping functions
5	President - head of the State	President - head of the State
6	President - head of the Government	Prime Minister - head of the Government
7	Separation of Powers	Centralization
8	Independent branches	Independent branches with Overlapping functions
9	Individual Leadership	Collective leadership
10	President is not accountable to Congress	Collective and Individual Responsibility

“World Bank - World Development Report 1997 : The State In A Changing World”.

- The report is devoted to the role and effectiveness of the state: what it should do, how it should do it, and how it can improve in a rapidly changing world. Governments with both centrally-planned and mixed economies are shrinking their market role because of failed state interventions.
- This report takes an opposite stance: that state's role in the institutional environment underlying the economy, that is, its ability to enforce a rule of law to underpin transactions, is vital to making government contribute more effectively to development. It argues against reducing government to a minimalist state, explaining that development requires an effective state that plays a facilitator role in encouraging and complementing the activities of private businesses and individuals.
- The report presents a state reform framework strategy: First, focus the state's activities to match its capabilities; and second, look for ways to improve the state's capability by re-invigorating public institutions.

- According to this report, five fundamental tasks are core of every government's mission, without which sustainable, shared and poverty reducing development is impossible.

#### They are...

- Establishing a foundation of law
- Maintaining macroeconomic stability
- Investing in basic social services and infrastructure
- Protecting the vulnerable
- Protecting the environment

#### The Concept of Governance from Government to Governance

- Good governance is an indeterminate term used in the international development literature to describe how public institutions conduct public affairs and manage public resources. Governance is “the process of decision-making and the process by which decisions are implemented”.

“Government” and “governance” are synonyms, both denoting the exercise of authority in an organization, institution or state. Government and governance became distinguished along the following dimensions:

- What activities are encompassed in the act of governing?
  - What actors are involved in governance?
  - What processes have made this redefinition necessary?
  - What criteria are used to evaluate good governance?
  - What capacities should be developed to achieve it?
- Governance is the exercise of political, economic and administrative authority to manage a nation's affairs ...Governance embraces all of the methods - good and bad- that societies use to distribute power and manage public sources and problem (UNDP, 1997):
  - Governance is the manner in which power is exercised in the management of a country's social and economic resources for development (ADB, 2000)
  - The movement from government to governance is not merely a task of creating new institutions but also that of refurbishing old ones. The state has to be strengthened to play a new role. It is also for the civil society to accept that democracy is not going to polls every five years but being vigilant and monitoring institutional performance and holding them accountable throughout these years.

#### Partnership with civil society



- In the shift of government to governance the role of civil society has been very significant. There have been two kinds of strands in this role,
  - a. Social Movements
  - b. Non-Governmental Organizations
- Social Movements which works for the cause of poor and marginalized do influence the governments to be responsive to their needs through changes in institutions, laws and procedures.
- NGO's have taken up diverse roles that also involve implementation of government programmes.
- Social movements and NGO's occupied new spaces in the political process and delivering public services.

### **Characteristics of good governance**

#### **Participation**

- All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests.
- Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

#### **Rule of Law**

- Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

#### **Transparency**

- Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

#### **Responsiveness**

Institutions and processes try to serve all stakeholders.

#### **Consensus orientation**

- Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and, where possible, on policies and procedures.

### **GOOD GOVERNMENT**

#### **Equity**

All men and women have opportunities to improve or maintain their well-being.

### **Effectiveness and efficiency**

- Processes and institutions produce results that meet needs while making the best use of resources.

### **Accountability**

- Decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external to an organization.

### **Strategic Vision**

- Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

### **How to evaluate the performance of a government?**

- It is difficult to evaluate the performance of a government with unifactor analysis; the actual assessment can be done only after considering various aspects of governance, namely Socio, Cultural, Political, Economic, and Environmental factors. To evaluate the performance of a government the following factors can be considered.

#### **Socio Cultural factors**

- Gender Parity Index
- Religious Freedom
- Equality Based on caste
- Protection of religious and Linguistic Minority Rights
- Gender Budgeting

#### **Political factors**

- Effective functioning of Democracy
- Free and fair elections
- Corruption free Politics and Administration
- Transparency in Administration Independent Press
- Independent Judiciary
- Human Rights

### **Economic factors**

- Human Development Index (HDI)
- Gross Domestic Product (GDP)
- Purchasing Power Parity (PPP)
- Growth Vs Development
- Equal Distribution of Wealth

### **Environmental factors**

- Sustainable Development Goals
- National Action Plan for Climate change(NAPC)
- Green Budget
- Disaster management

### **Gross National Happiness (GNH):**

- Gross National Happiness is a developing philosophy as well as an “index” which is used to measure the collective happiness in any specific nation. The Concept was first mentioned in the constitution of Bhutan, which was enacted on 18 July 2008.
- The term “gross national happiness” was coined by the fourth king of Bhutan, Jigme Singye Wangchuck, in the 1970s. The GNH's central tenants are: “Sustainable and equitable socio-economic development; environmental conservation; preservation and promotion of culture; and good governance”. GNH is distinguishable by for example valuing collective happiness as the goal of governance, and by emphasizing harmony with nature and traditional values.

### **Bicameral Legislature**

- A legislature that comprises two parts or chambers. The USA Congress is a bicameral legislature; its two chambers are the House of Representatives and the Senate. Compare with unicameral legislature.

### **Capitalism**

- An economic system in which the means of production and distribution are mainly in private ownership for private gain at the expense of the non-owners. Mechanisms include free markets and freedom of contract.

## Checks and Balances

- A principle of a system of government whereby each branch of the government can check the actions of the others. As originally conceived, this was true of the government of the USA.

## Concurrent Powers

Powers held jointly by the national and state governments.

## Confederal System

- A league of independent states, each having essentially sovereign powers. The central government created by such a league has only limited powers over the states.

## Confederation

- A voluntary association of states; usually limits central authority to foreign affairs and is less permanent than a federation. A political system where state or regional governments retain ultimate authority, except for powers expressly delegated to a central government.

## Constitution

- The fundamental law of a nation. Defines the power of the government; specifies offices and their authority.

## Consent of the People

- Governments and laws are legitimate implicitly from the consent of those governed.

## Democratic Republic

- A republic in which the representatives elected by the people make and enforce laws and policies.

### **Devolution.**

- Transfer of powers from the national or central government to state or local government. This happened in the United Kingdom in the late twentieth century.

### **Direct Democracy**

- A system of government where political decisions are made by the people directly, rather than by their elected representatives.

### **Dominant Culture**

- Values, customs, and language of the group(s) that control politics and government in a society.

### **Federal System**

- A system of government where power is divided between a central government and regional, or sub divisional, governments. Each of those levels has a domain where its policies are dominant. And each has political or constitutional guarantee of authority.

### **Federalism**

- A political system in which authority is shared between a central government and a state or regional government.

### **Federation**

- An association of states; usually more permanent than a confederation. A political system where states or regional governments retain ultimate authority, except for powers expressly delegated to a central government.

### **Legislature**

That part of government primarily responsible for making laws.

**Legitimacy**

Acceptance by the citizens of the right and power of a government or ruler to exercise authority.

**Liberal Democracy**

Democratic government that provides for the protection of individual human rights, in order to prevent a majority from oppressing a minority.

**Liberalism**

Advocacy of positive government action to improve the welfare of individuals, support for civil rights, and tolerance for political and social change.

**Limited Government**

A government whose powers are limited, particularly by institutional checks.

**Parliamentary System**

Representative democracy where political power is vested in an elected legislature. Used in most European countries.

**Presidential System**

Representative democracy where political power is vested in separately elected and appointed branches of national government. This system is used in the USA.

**Representative Democracy**

A form of government in which representatives are elected by the people to make and enforce laws and policies. Political decisions are made by the officials elected by the people. [Some such democracies retain a monarchy in a ceremonial role.]

**Republic**

A form of government in which sovereignty rests with the people (or a portion of the people), as opposed to a king or monarch or dictator. This form of Representative Democracy was created by the framers of the US constitution.

### **Separation of Powers**

The division of governmental functions and powers among different branches of government, so that the various self-interests of each group would moderate those of the others.

### **Theocracy. [From Greek theos = god and krateein = to rule.]**

Rule by a god, which in practice means rule by a priesthood. No separation of church and state. Compare with aristocracy.

### **Totalitarian**

A regime of command by the government and obedience by the citizens. The regime controls all aspects of political and social life (as in George Orwell's 1984). In contrast with an authoritarian state, all social and economic institutions are under government control.

**Unicameral Legislature** A legislature that comprises a single part or chamber. In the USA (early 21st century) only the state of Nebraska has a unicameral legislature. Compare with bicameral legislature.

### **Unitary System**

A centralized governmental system where local or regional governments exercise only the powers that the central government gives them.

### **Universal Suffrage.**

[From Latin suffragium = voting tablet, vote.] The right and privilege of all adults to vote for their representatives.

## 11<sup>th</sup> Volume II

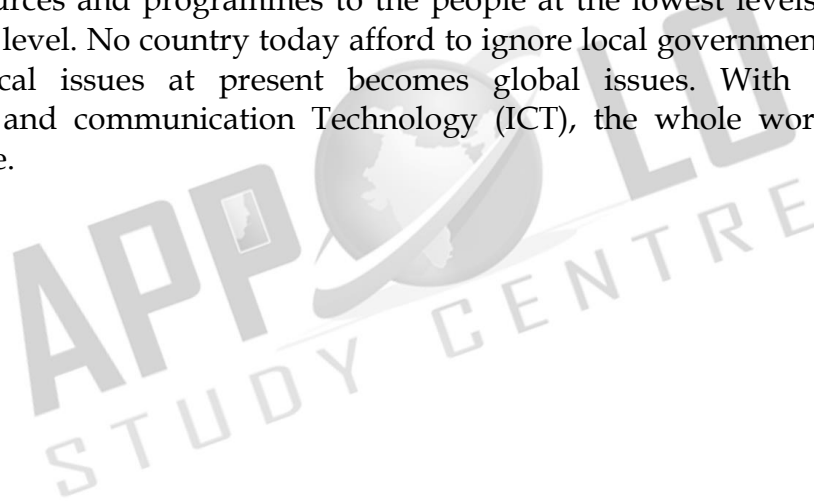
### Unit 12 - Local Government

#### Meaning, Nature and Importance of Local Government

- Local Government means, the government which manages services and amenities in our villages, towns and cities with focus on local problems. The local governments normally function within a specified limited territory of a village, a town, a city and also a large metropolitan city. The local governments function as the basic link between the people in a village or town with the government. As and when people have problems such as road repairs, water stagnation in the streets, non functioning of street lights and construction of small water bodies recreation parks, etc. The local governments have the responsibility to attend to any emergency situations, birth or death of persons in the village or town. The local governments are the institutions, which issues certificates of proof of residence, birth, death and incomes etc to the residents in that area. In total, the local governments are the institutions which are responsible for all such local needs of the people. They are the lowest unit of administration in the administrative structure of the government. The local government has council, which is normally elected by the people of the village or town concerned, which is responsible for the representing the problems of the citizens in the council and find solutions to the problems. The council representatives are elected once in five years, or four years, depending upon the law in operation in the country.
- The local governments are representative institutions, representing people in the council. There are legally mandated to discuss and give solutions to the problems of the people of that area and also represent the problem to the higher levels of the government such as state. Since the local governments are established on the basis of democratic process, all the problems discussed by the council of the local governments should go through the process of discussion, debate and deliberations and unanimously accepted by the council. The members of the council are given freedom to discuss and also to take decisions at same time within the framework of the fundamental law of the land called Constitution.
- 
- The importance of the local government lies in the nature of the problems handled by the local governments, which are basically “local” in nature and also the variety of problems attended by the local government cannot be attended by the higher levels of the government like state or central governments. Because the local problems are specific to the local areas and the solutions found for those problems should also be relevant to the situation. An irrelevant solution to the problems may hamper the situation and also it is also concerned with the spending of the taxes collected from the people. If solutions are irrelevant to the local problems, the resources used for that programme may be wasted and it gives more burden on the people again.



- Therefore, local governments are the institutions created for the purposes of solving the local issues and addressing the local level problems. The local governments normally consist of elected representatives drawn from the local population representing the local people and they represent the local issues in the council and try to find solutions to the problems. The local governments are the important channel of flow of resources and programmes to the people at the lowest levels normally called “grassroots” level. No country today afford to ignore local governments because of the fact that local issues at present becomes global issues. With development of Information and communication Technology (ICT), the whole world have become global village.
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## Classification of local government institutions

- Local governments are classified as Rural and Urban based local governments. The Rural and Urban divide is made based on the nature of the occupation of the residents viz; agriculture based or non-agriculture based occupations. The agriculture based occupation means that almost or most of the residents of an area are engaged in agriculture related occupation and the nature of the functions normally would be farming, dairying, poultry, and other similar types of activities. Whereas, in urban areas the citizens would engaged in industrial, trade and business and other activities.
- The urban areas are the places where the people's livelihood is based on occupations in industry, trade, commercial institutions and administration like government offices and private company offices. The urban areas are the link between the outside world to the local villages. The local governments formed in rural and urban areas are called rural local governments and urban local governments respectively.
- In India, the rural local governments have given general name "Panchayati Raj" which means the system of Panchayat institutions, that is, the institutions which does the panchayat, (deliberate, discuss, and deliberate). The Urban local governments in India are classified in to various types depending upon the political and economic basis of the formation of the urban local governments such as, Municipal Corporations, Townships, Area Planning Committees and Cantonment Boards. For example, in India the urban local governments are classified into various types such, Municipal Corporations in metropolitan cities, Municipalities in small towns, Townships in industrial towns, Cantonment Boards in military establishments.

- Types of Urban Local bodies
- Municipal Corporations
- Municipalities
- Municipal Townships
- Town Panchayats
- Cantonment Boards

- The Municipal Corporations are established in metropolitan cities with population with 1 million plus cities, which are large and need an elaborate machinery for providing amenities and services to the metropolitan population.
- The increase in the number of the population in metropolitan cities due to migration of people from rural and other small and medium towns and other metropolitan areas over the years make these cities mega polis.
- The Municipalities are established in small and medium cities and town with population of less that 1 million. The Municipalities too are reclassified as Class I, Class -II etc., depending upon the number of the population and also range of the revenue

collection. The grades of the Municipalities are reviewed periodically by the higher levels of the governments to facilitate the classification of the municipalities.

- The Townships and the Notified Area Committees are emerging urban areas, where the new industries are established, the changing occupations of the residents of that area from farm employment to non-farm employment.
- The Cantonment Boards are established in military establishments, where the defense establishments such as Training institutes for defense personnel, defense industry etc. Both the Rural and Urban local governments are lowest tier in the government hierarchy.
- In various countries of the world, rural and urban local governments are organized differently. However, the basis and principles of which local governments are being established are almost same. Local governments are being established for the local people with revenue predominantly derived from local resources. The upper layer of the governments normally does the function of supervision and monitoring the local bodies
- Local Government around the world
- Local Governments are as old as that of human civilization and in many countries around the world local governments are the foundation upon which the modern state is established. A preliminary reading about the Local Governments in various countries of the world show us that large or small, developed or under developed, some form of Local governments exist to deliver amenities and services at local level.
- However they differ widely in their structure, powers, functional domain, fiscal resources etc. In many of the European countries there has been efforts on the part of the government to decentralize the powers and functions, which were otherwise centralized. The question of devolution of finances, the jurisdictional issues in policing, transport and inter-state commerce are some of the pending and irritants in the case of the developed countries. Whereas in the developing countries, there is more and more attempt on the part of the central or federal governments to centralize the powers and financial resources. In India the constant pressure is being exerted on the central government for more devolution of administrative and financial powers to state as well as local governments.

### **Origin and development of Local Governments in India**

- In tracing the origin and development of local governments in India, one finds the evidences of the existence of local governments even before the times of Christ (BCE). The period between 600 BCE to C.E. 600 witnessed the rise and fall of republics. During this period, there emerged Mahavira (founder of Jainism) and Buddha (founder of Buddhism). Villages were classified according to size and mode of habitation in Jain and Buddhists literature.

- The religious orders founded by Buddha and Mahavira observed highly democratic procedures in arriving at decisions. Kautilya's Arthshastra (Treatise) gives a comprehensive account of the system of village administration prevailing in his time. In the days of Maurya the village and the district were units of administration.
- In the South Indian peninsula, the existence of the local self governing institutions could be traced well before the period of the Christian calendar. The historical period can be grouped into the early Chola period, Kalabira period, and the later Chola period, the emergence of Vijayanagara empire, entry of Muslims and Moghuls and the British. There was very little evidence available about the system of local governance in the early Chola period (which dates back to before Christ) and the Kalabira period.
- But there were some accounts of the existence of local governments during the times of Pandiyas (rulers of deep south India) and the Pallavas (rulers of mid south India). But Cholas (rulers who ruled mid Tamil country) period witnessed a well developed local self government. The inscriptions of Paranthaka Chola - I (919.C.E. - 922.C.E) from Utthiramerur in Kanchipuram district of Tamilnadu state, give detailed account of local self government. They inform that each village had an assembly consisting of all adult males and their involvement in general matters. These assemblies are of two types, the "Ur" and the Mahasabha". The third kind was the nagaram (town) confined to mercantile towns (trading centers) and the fourth was the "nadu". Hence two types of institutions were mentioned one nadu (village and other areas) and nagaram (urban centers).
- In general there is little information on the functioning of any village assemblies prior to the 9th century. Both "nadu" and "Nagaram" were concerned about the control and regulation of land holdings, management of irrigation works, temples, collection and remission of taxes, floating of loans for capital works and the management of charitable institutions. The "ur" and the "mahasabha" were the two institutions that assisted the officers in executing the orders of the king.
- It has been found that Raja Raja Chola, the First, ordered the "mahasabha" of the Viranarayana Chaturvedi Mangalam to confiscate the property of traitors. Many historians such as Sir Charles Metcalfe, Sir George Birdwood and Elphinstone opined that a strong system of local government existed in Ancient and medieval South India. But doubts are expressed by some of the historians about the elaborate existence of the local self government in ancient and medieval South India.
- During the Moghul period A.D (C.E.)1500 to A.D (C.E.)1777, the fundamental principles of central local relationships hardly changed with change of kingdoms. When the Mughal Empire was at its zenith of glory, it was divided into provinces (Subhas), and Provinces into sub divisions (Sarkars), and Sarkars into union of villages (Paraganas). At each level the government is organized and the officials were appointed by the Emperor. In the Twilight of the Mughul Empire, the self governing

institutions in rural areas had been severely damaged at vital points, but they had withstood the onslaughts with remarkable tactics.

- After the Battle of Plassey in A.D (C.E.) 1757, the British East India Company derived land taxing rights (Diwani rights) from Bengal ruler (Nawab), which was the first step in the ascendancy of the British rule in India. The rural and the other urban trading centers during the British East India company rule, was not under any control or supervision, except the three Presidency towns of Calcutta, Bombay and Madras. The District administration under the charge of the district collector was the king pin in the British control over vast rural areas.
- The important mile stone during the company rule was the establishment of the Municipal Corporations , as mentioned earlier at Calcutta (Kolkata), Bombay (Mumbai) and Madras (Chennai). Viceroy Lord Rippon in 1882 brought out a resolution, proposing a smaller unit for constituting rural local boards, a sub division, tehsil (taluk) and district boards to supervise.
- Lord Rippon's resolution emphasized that the institutions he proposed should have a majority of non-officials who should be elected wherever it was feasible. Nearly 500 rural boards were created with a two third majority of non officials who depended upon the district magistrate (district collector) for the favour of nomination. The main activities of the district boards till 1909 were police, public works, education and village sanitation.
- The rural local government introduced by Lord Rippon faced many criticisms and in the A.D (C.E.) 1907, the British government appointed a commission to enquire into the question of administrative and financial relations between the Government of India, Provincial governments and subordinate authorities under them so as to simplify and improve the prevalent system through devolution or otherwise. With the passing of Government of India Act, 1919, the local governments were entrusted with the elected elements of the provincial government under the diarchy system of government.
- The number of the village bodies in Tamilnadu increased from 1417 in 1926 to 6250 in 1937. There are three tier system of rural local bodies viz; District Boards, Taluk Boards, and Village Boards. The District and Taluk boards have undergone changes by 1923, the non-official chairman in all provinces replaced official chairman. In Tamilnadu, most of the District Boards came to be dominated by Justice Party members, which stood at 545 in 1927. From 1937 upto 1947, the rural local authorities faced many challenges including the national freedom movement.
- After Indian Independence in 1947, an attempt was made to revive local governments in India. Mahatma Gandhi argued for the decentralized administrative system in India entrusting responsibility of governance with the village panchayats (self sufficient Gram Swaraj). ShrimaNaryan with blessings of Gandhiji published a blue print of the Gandhian Constitution for Free India wherein panchayats are the basic institutions for organizing social, economic and political activities of the citizens. In addition to the

civic, political and administrative roles, the Panchayat was to play the economic role of organizing production and distributing resources in such a way that the village communities became self sufficient for meeting most of their basic needs.

#### Diarchy

- The diarchy system envisaged that the subjects of the administration had been divided into reserved subjects and transferred subjects. The police, law and order, finance are the reserved subjects, which will be under the Governor and other subjects like education and other as mentioned earlier will be entrusted to the elected representatives.
- Thus Article 40 came to be incorporated in the Constitution, as part of the Directive Principles of the State policy (Part -IV) of the Constitution of India adopted on Nov. 26th 1949. The Art. 40. States that, “ the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government”
- In compliance with the provisions of the Directive Principles of the State Policy, an ambitious rural sector initiative, the Community Development Programme was launched in 1952 with main focus of securing social- economic transformations of village through people’s own democratic and cooperative organizations with the government providing technical services, supply and credit. This programme was extended to most of the blocks as National Extensions Service aimed at transferring scientific and technical knowledge to agricultural, animal husbandry and rural craft sectors. In 1956, under the Second Five Year Plan, (1956-1961), it was recommended that village panchayats should organically link with popular organizations at higher levels and in stages, the popular body should take over the whole administration. In 1957, Government of India appointed a Committee on Plan Projects under the Chairmanship of Balwant Rai Mehta. The Mehta Committee recommended two points namely, the administration should be decentralized and the administration should be placed under the control of local bodies.
- Secondly, the community development blocks should be designed as administrative democratic units with an elected Panchayat Union to operate as a fulcrum of developmental activity in the area. It also recommended for the formation of District Development Councils (Zila Parishad) at the district level consisting of all the Presidents of the Panchayat Unions (Samities), Member of legislative assemblies and Members of Parliament with district level officers of the public health, agriculture, veterinary and education departments as members and the collector as the chairman. The district body is only an advisory body. The recommendation of the Mehta Committee were generally welcomed and Panchayati Raj legislations were enacted and by 1960s about 90 per cent of the population were covered by the Panchayati Raj bodies.
- In 1977, the Government of India formed a committee under the chairmanship of Ashoka Mehta to go in to the working of the Panchayati Raj bodies and suggest

measures to strengthen it. It recommended that Panchayati Raj should emerge as the system of democratic local government, discharging developmental, municipal and ultimate regulatory functions. Hence the first recommendation was to set up district Panchayat (ZillaParishad) as the directly elected body. As a temporary arrangement, the committee recommended continuation of the Panchayat union at the block level. Not as a unit of local self government but as a nominated middle level support arm for the District Development Council. The Ashoka Mehta Committee submitted its report in 1978, which was well received and led many states to introduce appropriate amendments in their Panchayat Acts such as Karnataka, Maharashtra, Andhra Pradesh, West Bengal and Gujarat.

- A number of committees were formed between 1978 and 1986, to look into various aspects of strengthening the local self government institutions, such as, C.H.HanumanthaRao Committee, G.V.K Rao Committee and L.M.Singhvi Committee. Only minor changes were suggested by these committees from the Ashok Mehta committee. The next landmark was the introduction of 64th and 65th Constitutional Amendment Bills, in July 1989 by Rajiv Gandhi government, which could not be passed in the Council of States (RajyaSabha).
- After many attempts, in 1992, incorporating important features of earlier exercises on this subject, government drafted and introduced the 73rd and 74th Constitutional Amendment bills in Parliament in 1992 which was passed by the Indian Parliament in 1993. The 73rd and 74th Constitutional Amendments introduced new parts IX and IXA in the Indian Constitution containing Articles 243 to 243 ZG.

### **73rd Constitutional Amendment - implementation and implications.**

- Article 243 B of the Constitution which was inserted into the Constitution under the 73rd Constitutional Amendment, envisages that states and union territories except those with population not exceeding 20 lakhs, will have to constitute a three tier system of Panchayati, village, intermediate and district levels. While the district has been defined as a normal district in state, the jurisdiction of village and intermediate levels have not been specifically defined in the Act.
- The territorial area of a village Panchayat can be specified by a public notification by the Governor of the state, and may consist of more than one village. Similarly, the intermediate level which can be a Taluk or Block is also to be specified by the Governor through a public notification in this regard. This provides a certain amount of flexibility to the States in constituting Panchayats at the lower and middle levels.
- A new schedule, Eleventh Schedule was inserted in to the Constitution of India, which provided for obligatory and discretionary functions of the Panchayats at three levels,
  - The Village Level
  - The District Panchayat at the district level

➤ The Intermediate Panchayat which stands between the village and district Panchayats in the states where the population is above 20 lakhs

- All the seats in a Panchayat shall be filled by persons by direct election from territorial constituencies in the Panchayat area. The electorate is named as “Gram sabha” consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat.
- The Chairperson of each Panchayat shall be elected according to the law passed by a State and such State law shall also provide for the representation of Chairpersons of Village and Intermediate Panchayats in the District Panchayat, as well as members of the Union and State legislature in the Panchayats above the village level.
- Hence, the new Amendment Act provided for participation of Members of Parliament and Members of Legislative Assemblies in the Panchayat Union Councils and also in the District Panchayats. The Amendment Act also provided reservation of seats in the three tiers for Scheduled Castes and Scheduled Tribes and not less than one third of the total seats for women. The tenure of the Panchayats shall be five years.
- The law provides that any person who is eligible to be elected to the state legislature shall be qualified to be chosen as a member of a Panchayat. The responsibilities of the Panchayats are clearly laid down in the Eleventh Schedule. (Box.1). Like the National Finance commission, the Constitution Amendment Act also provided for the State Finance commission for recommending the formula for transfer of the financial aid to local governments from the states.

- There are around 2,50,000 village panchayats in India as per 2011 Census

- Consequent to the 73rd Constitutional Amendment as well as the Supreme court’s rulings which effectively mandate that local authorities are also to be treated as “Government or state”, The Panchayats that have acquired substantial legitimacy are recognized as an instrument of the Government and have created participatory structure of grass roots democracy for the rural people. Creation of constitutional bodies like the State Election Commissions and the State Finance Commissions have also given permanency and stability to these institutions. However, most Panchayats continue to be treated as agencies of the state for implementation of prescribed schemes, even though essential services such as provision of drinking water, rural sanitation, preventive health and primary education are accepted as their legitimate core functions. The structure of district administration under the control of the Collector, characteristically by a command structure and lack of horizontal coordination at the grass roots level, has become somewhat anachronistic in the modern democratic framework of our polity. In order to make local administration more responsive transparent and accountable to citizens there is a need to have a representative government not only in the Union and



States but also at the District and Village levels with an equitable division of functions among them.

- Panchayati Raj (1959 - 2009)
- Golden Jubilee Year - on 2nd October 1959, Pt. Jawaharlal Nehru laid the foundation of Panchayati Raj in Nagaur, Rajasthan; the most revolutionary step in the context of governance of rural India. The journey which commenced with the commitment of comprehensive development of villages and to put power in the hands of people.

- Three tier Panchayati Raj system under 73rd Constitutional Amendment(1993)
- 
- District Panchayats
- (Elected and nominated)
- Panchayat Union Councils (Elected)
- Village Panchayats (Elected)
- Gram Sabha (All Voters in a village) (Advisory Body)

#### **74th Constitutional Amendment Implementation and Implications**

- Under the 74th Constitutional Amendment, the urban areas comprise different types of municipal bodies constituted with reference to character, size and importance of different towns and cities. Municipal Corporations, Municipal Committees, Notified Area Committees, Town Area Committees, and Cantonment Boards are the usual types of municipal bodies and while the first four types were created under the state municipal laws, the Cantonment Boards owed their origin to the Central Act called the Cantonments Act, 1924.
- In most of the states, all these types of urban local bodies existed except the Town Area Committees, which had since been abolished and converted into class - III Municipal Committees. Town Area Committees were semi municipal committees constituted for small towns by a separate act of the state legislative assembly.
- After passing the Constitution (74th Amendment) Act, 1992, the Government of India notified the Amendment in June 1993. The Act of 1992 provided for a period of one year from the date of its commencement, the states were required to change amend or modify there legislations in order to incorporate the Central Amendment. Various states and union territories have enacted legislations for the governance of the urban local bodies in their respective jurisdictions. For example, the Punjab government enacted the Punjab Municipal Bill, 1998 to replace the Punjab Municipal Act, 1911.

- The GramaSabha meetings are held four times in a year ie. January, 26 (Republic Day), May, 01 (May Day) August, 15 (Independence Day) and October, 02 (Gandhi Jayanthi).

- A three tier structure of urban local bodies were proposed in the 74th Constitutional Amendment act namely, Nagar Panchayat or Town Panchayat, Municipalities and Municipal Corporations. We shall discuss briefly the details of the above three urban local bodies established under the 74th Constitutional Amendment Act.

### **Nagar Panchayat or Town Panchayat**

- A Nagar Panchayat or Town Panchayat is constituted for a transitional area, i.e., an area in transition from a rural area to an urban area. The population of such an area is 5000 or more but less than 15,000 and the revenue generated from tax and sources exceeds such amount per capita per annum as may be specified by the government from time to time. Every Nagar Panchayat is a body corporate and has a perpetual succession and a common seal with power to acquire and hold, or dispose of properties and may sue and be sued.
- A Town panchayat shall consist of such number of elected members not less than 9 or not more than 15, as the state government may determine by rules. The members of the legislative assembly representing the constituencies comprising transitional area or any part of thereof, and two members nominated by the state government from amongst persons having special knowledge or experience in municipal administration. The nominated members shall not have the right to vote in the Town panchayat meetings. The term of a Town Panchayat shall be 5 years.
- The government shall divide a transitional area (town panchayat area) into a number of territorial constituencies known as wards and each ward shall elect only one member. Out of the total number of seats in Town Panchayat to be filled by direct election, seats are reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in the same proportion of the population of SCs and STs to the total population of that town panchayat area. In addition, one third of the total number of seats of that area are reserved for women, including the seats reserved for SCs and STs. The town panchayat members shall be elected from amongst its members, One President and one Vice President in a meeting convened by the Deputy commissioner. Every Town Panchayat shall perform obligatory functions such as water supply, drainage, clearing the streets etc. Every town panchayat shall have an executive officer appointed by the state government

### **Municipal Council**

- A Municipal Council or municipality is constituted for a small urban area with a population of 15,000 or more but is less than 3 lakhs and the revenue generated from the tax and other sources exceeds such amount per capita per annum as may be specified by state government from time to time.

• Municipality Grade	• Population
• Class A	• 1 Lakh or more
• Class -B	• 50,000 -

	<ul style="list-style-type: none"> <li>• less than one lakh</li> </ul>
<ul style="list-style-type: none"> <li>• Class - C</li> </ul>	<ul style="list-style-type: none"> <li>• Less than 50,000</li> </ul>

- A Municipal Council or Municipality for example in Class-A, not less than 20 and not more than 50 elected members; Class-B 15-30, and Class-C, 10-15. The members of State Legislative Assembly representing the constituencies lying within the municipal area are “Ex-Officio” members of the Municipal Council. Not more than 3 members are nominated by the state government. The nominated members do not have the right to vote in the elections of the chairpersons and vice chairpersons. The members are elected through secret ballot.
- The whole municipal area is divided into wards, as per the number of councillors to be elected, say 15 or 30 or 10. The electoral rolls of the legislative assembly in relation to municipal area are generally taken as the voters list. The candidates contesting in the elections are allotted symbols. The symbols of the recognized political parties are allotted only to the candidates sponsored or adopted by them.
- The Deputy Commissioner has to call the meeting of the elected members within 14 days of the notification of the election results to administer the Oath of office and to hold the election of the President and Vice-President. As that of Town Panchayats, seats are reserved for the SCs and STs according to the proportion of the population of SCs and STs to the total population of the municipal area. In addition, 30 per cent of total seats are reserved for women including the SCs and STs seats.
- The 74th Amendment provides the constitution of ward committees consisting of one or more wards within the territorial area of a Municipality, having a population of 3 lakhs or more. A member of a Municipality representing a ward within the territorial area of the ward committee shall be a member of the ward committee. The Standing Committees shall be constituted for each Municipality consisting of the President, senior Vice-President, and Vice-president and 4 other members in the case of Class-A, 2 in the case of Class-B from among the elected members for a period of 2 and half years. The term of office of Municipality is five years. The elected municipality can be dissolved if it is not performing as per the provisions of law.
- The Municipal Council meets at least once in a month, presided over by the President or in his/her absence Vice-President. The Municipal Council with the increasing load of work, elects subcommittees comprising councillors from amongst itself to study a problem in depth and make recommendation for its solution. The subcommittees are of two types statutory committees and, non-statutory committees. Municipal bodies also appoint special subcommittees for certain specific purposes and follow the same procedure for their election as it adopts the constitution of standing subcommittees.
- A Municipal Council elects its President from amongst members within one month of the constitution of Municipal Council. The Municipal Council is constituted after elections are held. The President is elected for a period of 5 years. The Municipal Council also elects one or two Vice-Presidents. The Presidents of the municipalities in

various states draw monthly salary in addition to travelling allowance . The President convenes and presides over the meeting of the Municipal Council. He / She is empowered to take disciplinary action against offending councilors. The President is the chief spokesperson of the Municipal Council and represents it at official functions and also with regard to correspondence with the government.

- The state government in every municipality appoints an Executive Officer. The Executive Officer is the principal executive authority and all municipal staff is subordinate to him/ her. He/ She is the important officer to execute, supervise monitor and report the activities of the Municipalities to the council. The Municipal Council is the governing body of the Municipality, responsible for Municipal Administration. It makes by laws the governing place and time of council meetings, the manner of giving notices, the conduct of meetings.
- The councilors are expected to keep themselves in touch with the citizens and enquire about their grievances against municipal staff, and bringing to the notice of the appropriate administrative head or to raise the matter in the council meetings. The powers and responsibilities of municipalities are enshrined in the Twelfth Schedule of the Constitution. (See Box-2)
- The 74th Constitutional Amendment provided the constitution of committee for district planning, to prepare a draft development plan for the district as a whole. The Committee shall consolidate the plans prepared by the panchayats and municipalities in the district. The composition of the District Planning Committee as provided in the Act of 1992, consists of that not less than 4/5th of the total members of the committee. They shall be elected by and from amongst the elected members of the Panchayats at the district level and of the municipalities in the district, in proportion to the ratio between the population of the rural areas and of the urban areas in the district.
- The Municipalities have been provided with the power to raise revenue for discharging its duties and performing its functions such as the taxes, duties and fees which could be levied and collected by the Municipalities (For example: tax on lands and buildings, scavenging tax on octroi, a tax on advertisements, a fire tax, toll on roads and bridges etc) the 74th Amendment Act made it obligatory for the state governments to Constitute State Finance Commission within one year from the commencement of Act.

Box No-2 : Twelfth Schedule of the constitution: Powers and  
Responsibilities of Municipalities  
Subject

- Urban Planning including town planning
- Regulation of land use and construction of buildings
- Planning for economic and social development
- Roads and Bridges
- Water supply for domestic purposes,

- Public Health, sanitation conservancy, and solid waste management
- Fire services
- Urban forestry, protection of the environment, and promotion of ecological aspects
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded
- Slum improvement and up gradation
- Urban poverty alleviation
- Provision of urban amenities and facilities such as parks, gardens and play grounds
- Promotion of cultural, educational and aesthetic aspects
- Burials and burial grounds, cremations, cremation grounds and electric crematoriums
- Cattle ponds, prevention of cruelty to animals
- Vital statistics including registration of births and deaths
- Public amenities including street lighting , parking, bus stops and public conveniences
- Regulation of slaughter houses and tanneries

- The State Finance Commission shall make recommendations regarding:
  - Distribution between the state government and municipalities of the net proceeds of taxes, duties, tolls and fees to be assigned or appropriated by the state;
  - Allocation of share of such proceeds between the municipalities at all levels in the states;
  - Determination of taxes, duties tolls and fees to be assigned or appropriated by the municipalities;
  - Grants-in-aid to fund the state;
  - Measures needed to improve the financial position of the municipalities.

- However in practice, the Municipalities in our country undertake only such functions which have been specifically assigned to them by respective state legislative enactments. This restrictive approach to municipal functions no longer holds good in the changed political context and needs of the country. There has been increasing tendency on the part of the state government to take over more and more local functions either directly or by creating special purpose agencies.
- **Municipal Corporations** The Municipal Corporations constitute the highest or the top most form of urban local government in India. They are created for big cities by the enactments of the State Legislatures or of the Parliament in the case of Union Territory. The various categories of the cities are determined by its population, area or revenues. Municipal Corporations in the early period were established in three Presidency towns viz; Bombay, Madras and Calcutta. A Municipal Corporation is based on the democratic principle of management of local affairs by the representatives of the people of the city concerned, who are to be elected periodically on the basis of universal adult franchise with reservation of seats for SCs and STs in proportion to their population and also for women. The Municipal Corporation is marked by statutory separation of deliberative and executive wings.
- The Corporation Council and the Standing Committees Constituted the deliberative wing and the executive wing. The Council, consisting of elected representatives and a

few nominated members, is responsible for the exercise of legislative powers. The Standing Committees function as an auxiliary of the Corporations. All the matters to be passed by the council pass through it after it considers the proposals and recommendation made by the Municipal Commissioner. The Municipal Commissioner is the chief executive and implementing the decisions taken by the council.

- Municipal Corporations in India are generally structured on the pattern of Bombay Municipal Corporation. The tenure of the Municipal Corporation is 5 years. The 74th Amendment provides wards committees, which shall be considered for one or more wards within the territorial areas of the Corporation. The chairperson shall be elected for one year and shall be eligible for re - election. A ward committee supervises provision of water supply, pipes and sewage, drainage connections to premises removal of accumulated water on streets or public places due to rain or other, collection and removal of solid waste, provision of health immunization, services for the civic services in slum and lighting, repair of roads, maintenance parks drains and etc.,.
- A Municipal Corporation shall have a Standing Committee constituted by it, consisting of Mayor, the senior deputy Mayor and other councilors elected by the councilors of the Corporation from amongst the members. The Mayor shall be the chairperson of the Standing Committee. The Municipal Corporation also constitutes committees to deal with subject matters such as water supply, sewage etc.,. Each subject committee shall consist of not less than three and not more than five members.
- The term of the subject committees is one year. The Municipal Corporations have been provided with financial resources to carry out its duties assigned to it by the 74th Amendment. A list of 18 functions to be performed by Municipal Corporations has been given in the 12th Schedule of the Constitution. Like the 73rd Amendment Act, the 74th Amendment Act also provided for a committee planning metropolitan area.
- The Committee consists of not less than 2/3rd of the members who shall be elected by and from the elected members of the Municipalities and chairpersons of the panchayats in the metropolitan area in proportion to the ratio between the population of Municipalities and of the Panchayats in that area.
- All Municipal Corporations are provided with the office of the Mayor and Deputy Mayor. Mayor in some states are directly elected by all the voters with in the metro city. In some states, Mayor is elected from amongst the elected councilors. The Mayor presides over council meetings, guide its deliberations to maintain decorum and exclude any objectionable portion from the record of the proceedings of the council. He/ She is also empowered to expel and even suspend members for gross misconduct or disorderly behaviour. In case of a tie he/she exercises his /her casting vote.
- The Municipal Commissioner is the chief executive officer of the Corporation. Normally the commissioner is being appointed from officers in I.A.S (Indian Administrative Service) cadre. The commissioner's appointment vested in the state

government, has been a subject of great controversy. The term of the commissioner is three years, which can be extended by the state government. He/she is one of the statutory municipal authorities to carry out the provisions of the Corporation Act.

### **The case of Tamilnadu**

- The Tamilnadu State Election Commission established under the 73rd and 74th Constitutional Amendments, gives a brief account of the status of local government in the state of Tamilnadu.
- As stated by the Tamilnadu State Election Commission, under the 73<sup>rd</sup> Constitutional Amendment Act (Rural Local Bodies) the government of Tamilnadu as a constitutional obligation has taken into account important points including: formation of Gram Sabha in every village with powers of general supervision over the elected village Panchayat and the power to grant approval to the annual plans of the Panchayats; formation of three tier Panchayats i.e., District Panchayats, Panchayat Unions and Village Panchayats made obligatory; reservation of seats for weaker sections of society like SCs, STs and Women; powers to impose taxes and provision for grants , assignments etc., from government funds through constitution of a State Finance Commission.

- The State of Tamilnadu has 12,564 village panchayats, 388 panchayat unions and 31 district panchayats.

- Under the 74th Constitutional Amendment Act, devolution of more functions and taxing powers; revenue sharing with state governments; regular conduct of elections; reservation of seats for SCs and STs and for women; uniform composition of the urban bodies throughout the country were provided.
- Following 73rd constitutional amendment the Tamilnadu Panchayats Act was passed in 1994, which replaced the earlier Tamilnadu Panchayats Act, 1958. The Tamilnadu Panchayats Act, 1994 was amended in 1996. The Act of 1996 provided as far as Panchayats are concerned : to plan for their developmental needs, constitution of District Planning Committee; constitution of State Election Commission and constitution of State Finance Commission. In the first elections under the 1994 Act, 1,17,000 representatives were elected for the three different tiers of local government across Tamilnadu.
- **Urban Local Governments**
- As far as urban local bodies are concerned, the 74th Constitutional Amendment Act, paved the way for setting up urban local bodies in various states. Elections were held to the rural and urban local bodies in Tamilnadu in 1996, 2001, 2006 and 2011.

### **Contemporary Issues**

- There are many issues which are highlighted by the experts in the field of local governance from time to time. The main issues brought out by the experts are provided in the following section. First there is considerable expansion in responsibilities of local governments, which were previously state government responsibilities.
- Taking into account the capacities of the levels of government and the line of control, throughout government apparatus should be considered and reclassification of list is needed. Second, maintenance of village courts is also an important issue, where the policing is state wise centralized, which can not entrusted practically to the local governments.
- Third, urban local bodies are entrusted with many functions out of which many of them are connection with the state government departments.
- In sum, the 73rd and 74th Constitutional Amendment Acts brought reforms in local government in India. The rural and urban local bodies prior to the reforms were the creation of the British. Many new and innovative changes were brought in the amendments. So far only 18 states in India have ratified or approved the amendments in their legislative assemblies, which is required as per the law. In addition, many state government even after enacting the amendments and ratified them, have not put in to operation many provisions, because of the issues mentioned above. Unless these issues are resolved, the objectives for which the 73rd and 74th amendments were made, could not realized.

#### **Panchayati Raj (1959 - 2009)**

- The Tamilnadu Municipal Laws (Fourth Amendment) Bill, 2018 and the Tamilnadu Panchayats (Second Amendment) Bill, 2018 - for extending the tenure of the special officers of the urban and rural local bodies for a period of six more months.
- There are 12 Municipal Corporations, 148 Municipalities and 561 Town Panchayats in Tamilnadu as urban local bodies.



## 12<sup>th</sup> Volume I

### Unit 2 - Legislature

#### Introduction

- Legislature is one of most important institution for the functioning of representative democracy. The basic objective of the legislature is to hold its representatives accountable, responsible for the interest of the people in the country. Legislature is generally referred as the highest law-making body, having elected representation from all the constituents of the state to make or change the laws of the country. In India, legislature at the Centre is called as Parliament and is also referred as National Legislature. The legislatures in The State and the Union Territory are called as Legislative Assemblies.
- The Parliament consists two houses namely; House of the People (Lok Sabha - Lower House) and Council of States (Rajya Sabha - Upper House). This is known as bicameral system of Parliament, and has inspired by the British Parliamentary system and the bicameral system of the USA. Similarly, the States have Legislative Assembly and Legislative Council. But in many of the States only unicameral legislatures exist without any Legislative Councils. In India, the Parliament shares its law making function and responsibilities of implementation with twenty eight states as well as nine union territories. The Union Territories are directly governed by the Union Government.

#### Union Legislature: The Parliament

- The Parliament is known as Union Legislature or National Legislature, which is a supreme body of decision making and symbol of democratic governance. The Parliament is the most powerful platform with accountability for debating on the issues regarding welfare of the country and its people and enacting laws and making changes to the constitution
- It has two important powers and functions called as legislative and financial. The legislative powers are for law making and the financial powers are to prepare money bill as called as budget. Also the parliament has electoral functions with regard to elect the President and the Vice- President of India.
- The Parliament has judicial function also on the matters of the proposals for the removal of the President, Vice - President, Judges of the Supreme Court and High Courts and the process of removal is called 'impeachment'. It is the duty of the President to summon the Parliament and it must have not less than two sessions in a year. Every year, at the commencement of the first session of the parliament, the President delivers his special address which would be the future course of action of the parliament in view of giving framework for new policies, programmes and initiatives

of the government. The parliament of India has functions of legislation, overseeing of administration, passing of the budget, ventilation of public grievances, and discussing national policies and issues of concern. The cabinet, both individually and collectively is accountable to and removable by the Lok Sabha.

### **Functioning of House of People (Lok Sabha)**

- The parliament has two houses and both houses carry the same values and responsibilities with a few exceptions such as passing the finance bills. The first one is the Lok Sabha (Lower House or House of People) with 543 members elected from 543 Parliamentary constituencies across the country directly by the people who have attained the age of 18 and above and registered as voters. The Lok Sabha has 2 nominated members from the Anglo-Indian community.

**Quorum of the House:** One tenth of the total number of members of Lok Sabha / Rajya Sabha constitutes the quorum for a meeting of the House.

- The grand total number of members in the Lok Sabha is 545, but the nominated members cannot decide the government when it proves majority on the floor of the House. The Lok Sabha is the highest forum for discussion, debate on public issues, interest and policies to cater to the socio-economic needs of the people.
- The members of both houses are generally called by the public as Member of Parliament. Member of Parliament, Lok Sabha is one who represents the constituency of the state, comprising of six Assembly constituencies, directly elected by the people through elections. The term of the Lok Sabha is for five years.

### **Roles and Responsibilities of the Speaker**

- The leader of the House of the People is the Speaker – who is elected by the Lok Sabha, from among its members. The Speaker's duties are to conduct, facilitate the debates and discussions as well as the answers to questions, regulating the conduct of Members of the House and taking care of their privileges and rights. The Speaker of Lok Sabha is the administrative head of the parliamentary secretariat.
- The Speaker also ensures that the members adhere to the appropriate procedures, and to allow the members to raise questions, allotting time to speak and withdraw the objectionable remarks from record and moving a motion of thanks to the President's speech. The Speaker has the power to expel the members if they flout or violate the norms and rules of the house.
- The permission of the Speaker is required to move amendments to a bill. It is up to the Speaker to decide whether the bill has to be moved or not. The Speaker plays the role of guardian of the rights and privileges of the house, its various Committees such as consultative, select, advisory and of members of that Committees. Another important power of the Speaker is to refer any question of privilege to the Committee of

privileges for examining, investigating and reporting. The questions raised by the members and answers, explanations and reports are addressed to the Speaker.

Jawaharlal Nehru, one of the chief architects of India and a driving force behind its democratic principles of the Constitution, placed the office of the Speaker in India in the proper context when he said: "The Speaker represents the House. He/she represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes a symbol of nation's freedom and liberty. Therefore that should be an honoured position, a free position and should be occupied always by persons of outstanding ability and impartiality".

- The Speaker is the final authority to decide on the question of point of order. Under the constitution, the Speaker enjoys special provisions and certifies money bills. The Speaker of the House of the People presides the joint sessions of the parliament in case a special occasions or in the event of disagreement between the two houses on certain legislativemeasures. The Speaker decides whether a Bill is a Money Bill or not and his decision on this question is final. It is the Speaker who decides on granting recognition to the Leader of Opposition in the House of People. Under 52<sup>nd</sup> Constitution Amendment, the Speakerhas the disciplinary power to disqualify a member of the house on the grounds of defection. Even though, the Speaker also one of the members of the House and holds neutral, does not vote in the house except rare occasions when there is a tie at the end of the decision.
- The RajyaSabha or the Council of States is called as upper house. It has a total number of 250 members including 238 from all the states and union territories and 12 members nominated by the President. The council of states RajyaSabha is called as second chamber of the Parliament of India. The RajyaSabha is an institution to protect the rights and interests of the states like the senate in USA. It was constituted on 3rd April, 1952.
- The members for RajyaSabha are elected by the members of the respective State Legislative Assemblies (MLAs). Apart from the members of the states, twelve distinguished members from the Parliament Not more than 250 Members Not more than 552 Members 12 nominated Not more than 20 representatives of Union Territories Not more than 238 representatives of States and Union Territories Not more than 530 representatives of States plus not more than 2 nominated Anglo-Indians Council of the States House of the People fields of literature, science, art, and social service were nominated by the President of India. Unlike House of People, Council of States is not subject to dissolution but one third of the members retire every second year. The term of the individual member is six years. The members of the Council of States are elected by their respective state legislative assemblies in accordance with the system of proportional representation by means of the single transferable vote.

## Functioning of RajyaSabha

- The Vice-President of India is the ex-officio Chairman of the RajyaSabha. The Chairman presides over the proceedings and regulates the RajyaSabha. Except the Money/Financial Bill all other bills will be placed before the RajyaSabha for discussion, questions, motions and resolutions under the rules of procedure and conduct of business. The functions of RajyaSabha may broadly be categorised as: Legislative, Financial, Deliberative and Federal. Legislation is by far the most important business of RajyaSabha, as indeed of Parliament and in this sphere, RajyaSabha enjoys almost equal powers with LokSabha. In the U.S.A, the representatives in the state council is called as Senate where every state has equal representation irrespective of size and population of the states. But in India, the representation in the RajyaSabha is based on its size of population.
- For example, Uttar Pradesh with the highest population elects 31 members to RajyaSabha; on the other hand, Sikkim, the least populated state, elects only one member to RajyaSabha. Tamil Nadu elects 18 members to the RajyaSabha. The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution. Members of the RajyaSabha are elected for a term of six years and then they can be re-elected. The RajyaSabha is known as Permanent House of the Parliament that never gets fully dissolved. Some of the important privileges and immunities are given to the Members of RajyaSabha as follows.

### Who can be a Member of RajyaSabha?

- ❖ Must be a citizen of India
- ❖ Must not be less than 30 years
- ❖ Under the Representation of the People Act, 1951, a person had to be an elector in a parliamentary constituency in the State from where he seeks election to RajyaSabha.
- ❖ It may, however, be mentioned that the Representation of the People (Amendment) Act, 2003, which amended Section 3 of the Representation of the People Act, 1951, has done away with the requirement of being a resident of State or Union territory from which a person seeks to contest elections to RajyaSabha.
- ❖ He/She has to be an elector in a parliamentary constituency anywhere in India.

### Powers and Privileges of Members of Parliament

1. Freedom of speech in Parliament and immunity of a member from any proceedings in any court in respect of anything said or any vote given by him in parliament or any Committee thereof.
2. Immunity to a person from proceedings in any court in respect of the publication by under the authority of either House of Parliament of any report, paper, votes or proceedings.
3. Prohibition on the court to inquire into proceedings of parliament.
4. Immunity to a person from proceedings in any court in respect of the publication in Newspaper of a substantially true report of any proceedings of either House of Parliament

unless the publication is proved to have been made with malice.

5. Freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before the commencement and forty days after its conclusion.

6. Exemption of a member from service of legal process and arrest within the precincts of the House.

### **Parliament: LokSabha, RajyaSabha**

- ❖ The LokSabha is the most powerful political institution which reflects the political, social and economic conditions of the country, holds highest responsibility and virtually represents the entire population.
- ❖ The LokSabha is constituted with members elected directly by the people. These members represent the varied interests of the people. Thus it becomes the apex democratic institution. It is here that the nation's policies, programmes and laws emerge.
- ❖ The LokSabha makes the Laws on the matters of Union List and Concurrent List. It can exact new laws and repeal existing law or amend the same. It has an exclusive authority over money bills.
- ❖ The special power of the LokSabha is that once it passes the budget or any other money related law, the RajyaSabha cannot reject it. But the RajyaSabha can only delay the law for 14 days and if RajyaSabha suggests any changes regarding the law, it is upto the LokSabha to accept or reject it.
- ❖ One of the privileges of the LokSabha is preparing and presenting the budget and financial statement, which is an explicit expression of people's control over the nation's economy.
- ❖ The LokSabha controls the executive by asking questions, supplementary questions, passing resolutions, motions and no confidence motion.
- ❖ The LokSabha has the power to amend the constitution and approve the proclamation of emergency.
- ❖ The LokSabha involves in electing the President and Vice-President of India.
- ❖ The LokSabha has power to establish new Committees and commissions and tabling their reports for debate and discussion and further consideration for implementation.
- ❖ The LokSabha controls the council of Ministers and a Prime Minister, who enjoys the majority support of it. If the Prime Minister loses the confidence of the LokSabha, the entire government has to quit and face the election.

### **Powers of RajyaSabha**

#### **Position of RajyaSabha**

- The Constitutional position of the RajyaSabha (as compared with the LokSabha) can be studied from three angles:
  1. Where RajyaSabha is equal to LokSabha?
  2. Where RajyaSabha is unequal to LokSabha?
  3. Where RajyaSabha has special powers that are not all shared with the LokSabha?

### **Equal Status with Lok Sabha**

- In the following matters, the powers and status of the Rajya Sabha are equal to that of the Lok Sabha:
  - ❖ Introduction and passage of ordinary bills.
  - ❖ Introduction and passage of Constitutional amendment bills.
  - ❖ Introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
  - ❖ Election and impeachment of the President.
  - ❖ Election and removal of the Vice- President. However, Rajya Sabha alone can initiate the removal of the vice- President. He is removed by a resolution passed by the Rajya Sabha by a special majority and agreed to by the Lok Sabha by a simple majority.
  - ❖ Making recommendation to the President for the removal of Chief Justice and judges of Supreme Court and high courts, chief election commissioner and comptroller and auditor general.
  - ❖ Approval of ordinances issued by the President.
  - ❖ Approval of proclamation of all three types of emergencies by the President.
  - ❖ Selection of ministers including the Prime Minister. Under the Constitution, the ministers including the Prime Minister can be members of either House. However, irrespective of their membership, they are responsible only to the Lok Sabha.
  - ❖ Consideration of the reports of the constitutional bodies like Finance Commission, Union Public Service Commission, comptroller and auditor general, etc.
  - ❖ Enlargement of the jurisdiction of the Supreme Court and the Union Public Service Commission.

### **Unequal Status with Lok Sabha**

- In the following matters, the powers and status of the Rajya Sabha are unequal to that of the Lok Sabha:
  - ❖ A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha.
  - ❖ Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations.
  - ❖ The Lok Sabha can either accept or reject all or any of the recommendation of the Rajya Sabha. In both the cases, the money bill is deemed to have been passed by the two Houses.
  - ❖ A financial bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both the Houses have equal powers.
  - ❖ The final power to decide whether a particular bill is a Money Bill or not is vested in the Speaker of the Lok Sabha.
  - ❖ The Speaker of Lok Sabha presides over the joint sitting of both the Houses.

- ❖ The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties.
- ❖ Rajya Sabha can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the Lok Sabha).
- ❖ A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.
- ❖ The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticize the policies and activities of the government.

### Special Powers of Rajya Sabha

- Due to its federal character, the Rajya Sabha has been given two exclusive or special powers that are not enjoyed by the Lok Sabha:
  - ❖ It can authorize the Parliament to make a law on a subject enumerated in the State List (Article 249).
  - ❖ It can authorize the Parliament to create new All-India Service common to both the Centre and states (Article 312).
- An analysis of the above points makes it clear that the position of the Rajya Sabha in our constitutional system is not as weak as that of the House of Lords in the British constitutional system nor as strong as that of the Senate in the American constitutional system. Except in financial matters and control over the council of ministers, the powers and status of the Rajya Sabha in all other spheres are broadly equal and coordinate with that of the Lok Sabha.

Even though the Rajya Sabha has been given less powers as compared with the Lok Sabha, its utility is supported on the following grounds:

- ❖ It checks hasty, defective, careless and ill-considered legislation made by the Lok Sabha by making provision of revision and thought.
- ❖ It facilitates giving representation to eminent professionals and experts who cannot face the direct election. The President nominates 12 such persons to the Rajya Sabha.
- ❖ It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

#### Article 120

Hindi and English have been declared by the Constitution to be the languages for conducting business in Parliament. The Presiding Officer may, however, allow any member not proficient in either to address the House in his mother tongue (Article 120).

## Law Making Process

- The law making process in Indian Parliament stands evident for its democratic credentials. In the law making process, the role of opposition parties becomes much more important to reflect upon the relevance of the bill and its context so as to streamline the democratic governance.
- The law is a guiding force to regulate the society, politics and economy for the welfare of the state and people. The law is primarily introduced in the Parliament in the form of 'bill' as proposed legislation for consideration of the legislature. The bill will be taken for thorough discussion in the parliament to have an understanding within the framework of the constitution.
- The bill will become law once the legislature passed it and approved by the President. The law becomes an act only after getting consent from the President of India. The primary function of the Parliament is to make fresh laws and bring changes in the existing laws in accordance with the constitutional procedures. The Parliament of India passes two types of bills such as:

### 1. Money Bill

### 2. Non-Money Bill or ordinary or public bills

- An ordinary bill has to pass through different stages before becoming an Act. The procedures prescribed in the Constitution for passing the bills are of two different categories. These are as follows: An ordinary bill under consideration has to go through following stages and has to pass through both houses with discussions, suggestions and approval. An ordinary bill may be introduced in either House of the Parliament.
- The first stage of the bill relates to the introduction of the bill in either house as 'Reading of the Bill'. Most of the bills are introduced by the Ministers concerned. The bill is drafted by the technical experts in that particular field and then council of ministers will approve the bill. The ordinary Member of Parliament can also introduce a bill which is called as 'Private Member Bill'. For the introduction of the bill it should be informed to the Speaker of the Lok Sabha or The Chairman of Rajya Sabha one month in advance. Then the date of introduction for the Private Member Bill will be fixed and allowed to move the bill in the floor of house. Generally, there will be no discussion on the proposed bill at this reading stage which is only a formal affair.
- After the introduction of bill, it will be published in Gazette of India. The Speaker or the Chairman may allow some bills to be published in the Gazette even before the first reading, in that case, no motion for leave to introduce bill is necessary.
- The Second Reading of the bill usually takes place after an interval of two days after the first reading. At this stage, any of the four courses are adopted.



- The bill may be taken for consideration by the House at once.
  - It may be sent to a select Committee of the House.
  - It may be sent to a joint select Committee of the two Houses or
  - It may be circulated for eliciting public opinion. Very rarely bills are taken up for consideration straight away.
- When the bill is adopted for circulation (i.e. 4th course), the secretariat of the House concerned requests the State Governments to publish the bill in the State Gazettes inviting opinions from local bodies and recognized associations. Such opinions are circulated among the members of the House.

### **Committee Stage**

- If the bill is referred to a select Committee, the mover selects the members of the Committee, the Speaker or the Chairman of the House appoints one member of the Committee and the Chairman of the Committee. The Committee will study of the bill and reports back to the House.

### **Report Stage**

- The report stage is the most important stage where a bill is debated clause by clause. In this stage, the report is circulated along with original bill and the report of the Select Committee. The report stage is for giving final shape to the bill. Then the bill will be submitted for the Third Reading in which the bill is to be passed with majority of votes. The Third Reading is for formal approval by the Parliament.
- After the bill is adopted at the Third Reading in either of the house, it is transmitted to the other House, where it goes through all the stages. The other house may accept the bill as it is. After coming across all the stages, it is sent to the President's assent.
- Once a bill is passed in its originating house, it also may be rejected in the other house. Otherwise, it may introduce amendments not acceptable to the original House, or may not return the bill within six months. In such a case, a constitutional deadlock develops between the two Houses. The President may call a joint session of the two Houses to resolve the deadlock. The Speaker or in his absence the Deputy Speaker presides over such joint sessions. The deadlock is dissolved by majority vote.
- Finally, the bill is passed by both Houses and goes to the President for his assent. If the President assents to the bill, it becomes a law. But the President may return the bill for reconsideration. If the bill is sent back to the President with or, without amendments,

the President cannot withhold his assent. Such a complicated and time-consuming procedure is adopted to prevent hasty legislation.

### **Private Member Bills:**

- If any member other than a minister introduces a bill, it is called a private member bill. The bill can be introduced by both ruling and opposition party MPs. Private member bill is a bill proposed by a member who is not a member of the cabinet and executive. The session for private member bill is held at alternative Fridays from 2 pm to 6 pm.
- This bill needs a month of notice; this has no impact on the health of the government when the private member bill gets rejected. Till date, the parliament has passed fourteen private member bills; the last one was passed on 1970. Most of the bill passed by the private member is not even read or discussed and dismissed. Private members bills are accepted even those are constitutional amendment bills but not that those are money bills.

### **The Rights of Transgender Persons Bill, 2014**

- ❖ In Lok Sabha, the last two and half hours of a sitting on every Friday, and in Rajya Sabha two and half hours, i.e., from 2.30 p.m. to 5.00 p.m. on every alternate Friday are allotted for transaction of "Private Members' Business", i.e., Private Members' Bills and Private Members' Resolutions.
- ❖ The last time a private member's Bill was passed by both Houses was in 1970.
- ❖ Till Now, only Fourteen Private Member's bill have been passed by the Parliament.

**The Rights of Transgender Persons Bill, 2014:** The Rights of Transgender Persons Bill, 2014 is a private member bill introduced by Trichy Shiva M.P. of Tamil Nadu, which seeks to end the discrimination faced by transgender people in India. The Bill was passed by the upper house Rajya Sabha on 24 April 2015. It was introduced in the lower house Lok Sabha on 26 February 2016. The Bill is considered historic as for being the first private member's bill to be passed by any house in 36 years and by Rajya Sabha in 45 years

### **Distribution of powers of the legislature**

- The legislative powers and functions of the Union and the States are clearly demarcated in seventh schedule of the Constitution of India. The powers on which both union and the states can legislate is clearly defined. The Constitution has classified the subjects for which the legislation can be made to perform the duties and responsibilities with specific powers for division of powers to avoid the seventh schedule of the constitution which provides for trifurcation of legislative powers;
- **The Union List**
- **The State List and**
- **The Concurrent List**

- The Union List includes the subjects over which the parliament has exclusive authority to make laws and change the existing laws. The State Legislature has exclusive authority over subjects mentioned in the state list. In the subjects enumerated in the 'Concurrent List' both the Union and the States can legislate. In the event of contradictions between the Union and States, the Union's authority will prevail. The residuary power is vested in the Centre.

### Difference between Ordinary Bill and Money Bill

S.No	Ordinary Bill	Money Bill
1	It can be introduced either in the Lok Sabha or the Rajya Sabha	It can be introduced only in the Lok Sabha and not in the Rajya Sabha
2	It can be introduced either by a minister or by a private member	It can be introduced only by a minister.
3	It is introduced without the recommendation of the President	It can be introduced only on the recommendation of the President
4	It can be amended or rejected by the Rajya Sabha	It cannot be amended or rejected by the Rajya Sabha. The Rajya Sabha should return the bill with or without recommendations, which may be accepted or rejected by the Lok Sabha
5	It can be detained by the Rajya Sabha for a maximum period of six months.	It can be detained by the Rajya Sabha for a maximum period of 14 days only.
6	It does not require the certification of the speaker when transmitted to the Rajya Sabha (if it has originated in the Lok Sabha)	It requires the certification of the speaker when transmitted to the Rajya Sabha.
7	It is sent for the president's assent only after being approved by both the houses. In case of the deadlock due to disagreement between the two Houses, a joint sitting of both the houses can be summoned by the president to resolve the deadlock.	It is sent for the president's assent even if it is approved by only Lok Sabha. There is no chance of any disagreement between the two Houses and hence, there is no provision of joint sitting of both the houses in this regard.
8	Its defeat in the Lok Sabha may lead to the resignation of the government (if it introduced by a minister)	Its defeat in the Lok Sabha leads to the resignation of the government
9	It can be rejected, approved or returned for reconsideration by the President	It can be rejected, or approved but cannot be returned for reconsideration by the President

### Lists of powers

Union	State	Concurrent
Defence	Agriculture	Education
Atomic Energy	Police	Transfer of property other than Agricultural land

Foreign Affairs	Prison	Forests
War and Peace	Local Government	Trade Unions
Banking	Public health	Adulterations
Railways	Land	Adoption and Succession
Post and Telegraph	Liquor	
Airways	Trade and Commerce	
Ports	Livestock and Animal Husbandry	
Foreign Trade	State Public Services	
Currency & Coinage		

- **An amendment of this Constitution may be initiated through the introduction of a Bill in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill.**

### **Amendment process and Procedure**

- The Constitution of India has a unique provision to make the Constitution relevant to changing conditions and needs but without changing the basic structure. Article 368 deals with the amendment of the Constitution. As per this article, the Parliament has the Supreme power to initiate the amendment process. The Parliament may amend the constitution through by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

The bill must be passed in each house by a special majority, that is, majority by more than 50 percent of the total membership of the house and a majority of two - thirds of the members of the house present and voting. Each house must pass the bill separately. In case of a disagreement between the two houses, on issues concerning amendment there is no provision for holding a joint-sitting of the two houses. If the bill seeks to amend the federal provisions of the constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members present and voting in such legislatures.

After duly passed by both the houses of parliament and ratified by the state legislatures wherever necessary, the bill is forwarded to the President for assent. The President must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament. After President's assent, the bill becomes an Act (i.e., A Constitutional Amendment Act) and the constitution stands amended in accordance with the terms of the Act.

### **Types of Amendments**

The Constitution can be amended in three ways;

- ❖ Simple majority of the parliament

- ❖ Special majority of the parliament, and
- ❖ Special majority of the parliament and the ratification of half of the State legislatures.

### **Simple Majority of Parliament:**

According to Article 368 a number of provisions in the constitution can be amended by a simple majority of the two houses of parliament. These provisions include

- ❖ Admission or establishment of new states, formation of new States and alteration of areas, boundaries, or names of existing states.
- ❖ Abolition or creation of legislative councils in states.
- ❖ Second schedule - emoluments, allowances, privileges and so on of the President, the Governors, the Speakers, judges, etc.
- ❖ Quorum in parliament.
- ❖ Salaries and allowances of the members of parliament.
- ❖ Rules of procedure in parliament.
- ❖ Privileges of the parliament, its members and its members and its Committees.
- ❖ Use of English language in parliament.
- ❖ Number of judges in the Supreme Court.
- ❖ Conformant more jurisdiction on the Supreme Court.
- ❖ Use of official languages.
- ❖ Citizenship - acquisition and termination.
- ❖ Elections to parliament and state legislatures.
- ❖ Delimitation of constituencies.
- ❖ Union territories.
- ❖ Fifth schedule - administration of schedule areas and scheduled tribes
- ❖ Sixth schedule - administration of tribal areas.

### **By Special Majority of Parliament**

- The majority of the provisions in the constitution need to be amended by a special majority of the parliament, that is, a majority (i.e., more than 50 per cent) of the total membership of each
  - house and a majority of two-thirds of the members of each house present and voting. The expression total membership of the house is irrespective of fact whether there are vacancies or absentees. The special majority is required only for voting at the third reading stage of the bill. The constitution's clauses which can be amended in this way include:
    - ❖ Fundamental rights
    - ❖ Directive Principles of State policy: and
    - ❖ All other provisions which are not covered by the first and third categories

### **Amendments by Special Majority of Parliament and Consent of States**

The basic structures of the constitution which are related to the federal structure of the polity can be amended by a special majority of the parliament and also with the consent of half of the state legislatures by a simple majority. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- ❖ Election of the President and its manner.
- ❖ Extent of the executive power of the union and the states.
- ❖ Supreme Court and high courts.
- ❖ Distribution of legislative powers between the union and the states.
- ❖ Any of the list in the seventh schedule.
- ❖ Representation of states in parliament.
- ❖ Power of parliament to amend the constitution and its procedure (Article 368).

### **State Legislature: Structure, Powers and Functions**

#### **Structure of State Legislature**

- The state is the second stratum of the federal structure of the Constitution. The provisions for the governance of all the state is dealt in the Part VI of the Constitution except Jammu & Kashmir because it has separate Constitution for its state government. The articles from 152 to 237 deals thoroughly on the subjects of the state legislature. The state legislature which has only Legislative Assembly as House of People is called as Unicameral. Most of the powers and functions are shared by the state legislature is almost like the same as the Union legislature. In a Bicameral system of legislature, the state legislature consists of the Legislative Assembly and Legislative Council.

#### **The Governor**

- There shall be a Governor as the Constitutional Head of the State executive, and executive power of the state vested with the Governor and all executive actions of the state has to be taken in the name of the Governor. The Governor of the State shall be appointed by the President. The Governor is appointed for a term of five years or can hold the office during the pleasure of the President or until his successor enters upon his office. The eligibility of appointment of the Governor is that he/she must be the citizen of India, shall not hold any office of the profit and should have completed thirty five years of age. The Governor can be appointed more than once and can hold office for more than one state two states in an exigency or as a transitional arrangement.

#### **Council of Ministers headed by the Chief Minister**

##### **Position of the Chief Minister**

- The Chief Minister is the head of the cabinet and the council of ministers. In practice, he is the real executive head of the state. As per Article 164(1) of the Constitution of India, the Chief Minister of a state shall be appointed by the Governor of the State.

### **Powers and functions of the Chief Minister**

- As the real executive head of the state, the Chief Minister enjoys wide powers and performs a number of functions. The important powers and functions of the Chief Minister are:
  - ❖ As the head of the council of ministers, the Chief Minister has more powers in ministry-making. He can recommend appointment of ministers and designate them as cabinet ministers or ministers of state or deputy ministers. He can change the portfolios of the ministers. He can even recommend the removal of ministers.
  - ❖ He presides over the meetings of the cabinet and makes major policy decisions of the Government.
  - ❖ He acts as the sole channel of communication between the council of ministers and the Governor. He communicates to the Governor all the decisions of the cabinet relating to administrative and legislative proposals.
  - ❖ He scrutinizes all papers, bills, resolutions, etc. that are to be placed before the legislature.
  - ❖ Though, in theory, all major appointments are made by the Governor, in practice, all such appointments are actually made on the advice of the Chief Minister.

### **State Council of Ministers**

#### **Introduction**

- Article 163(1) of the Constitution of India provides that there shall be a council of ministers headed by the Chief Minister to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion.
- The state council of ministers is formed in the same manner as the union council of ministers is formed. The leader of the majority party or coalition of parties in the legislative assembly is appointed as the Chief Minister by the Governor. The other ministers in the council of ministers are appointed by the Governor on the advice of the Chief Minister.

#### **Term of office of the council of ministers**

- As per the constitution, the council of ministers hold office during the pleasure of the Governor. But, in reality, the council of ministers hold office during the pleasure of the Chief Minister, because the Governor acts on the advice of the Chief Minister. The council of ministers are individually responsible to the Chief Minister. The council of ministers are collectively responsible to the legislative assembly of the state. That means, the council of ministers shall speak in one voice.

## The State Cabinet

- The council of ministers consists of cabinet ministers, ministers of state and deputy ministers. Of the council of ministers, the cabinet ministers constitute the state cabinet. The cabinet ministers of the state cabinet are, generally, the prominent ministers of the council of ministers. It is headed by the Chief Minister. The cabinet takes decisions on behalf of the council of ministers, and so, all the ministers are bound by the decisions of the cabinet.

### Officials and Committees in State Legislative Assembly

#### Speaker of the State Legislative Assembly:

- The Speaker is elected by the Members of Legislative Assembly itself, and is the Presiding Officer of the Assembly. The Speaker has the responsibilities and powers of conducting business of the assembly in orderly manner, maintaining decorum and regulating its procedure in terms of allowing the members to question, speak on matters of importance, budget and grants. The Speaker is the interpreter of the provisions of the Constitution, rules of procedure in the assembly proceedings, rules of procedure and legislative precedents within the Assembly. The Speaker has the power to adjourn, suspend and resume the sessions and suspend the members from participating in the session when there is a violation of rules, procedures and regulations of the assembly.
- The Speaker has to generally maintain neutrality and impartiality while conducting the business of the house. The Speaker's vote becomes more important when there is a tie on any issue regarding passing of bill, motion and resolutions. The Speaker's decision is final in regulating the conduct of members and in matters of procedure or maintaining order in the house. And in such matters the Speaker is not to be subjected to judicial intervention. The Speaker appoints the Chairmen of all the Committees and supervises their functioning. The Deputy Speaker
- The Deputy Speaker is also elected by the members of the Assembly from amongst themselves. He performs the duties and responsibilities of the Speaker as his absence and presides over the Assembly in the absence of the Speaker. The deputy Speaker has also powers on par with the Speaker within the House. Any member existing in a panel can preside over the House in case of absence of Speaker and the deputy Speaker.

### Committees of the Parliament

- Broadly, parliamentary Committees are of two kinds - Standing Committee and Ad Hoc Committees. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.



## Standing Committees

- On the basis of the nature of functions performed by them, standing Committees can be classified into the following six categories

## Financial Committees

- a) Public Accounts Committee
- b) Estimates Committee
- c) Committee on Public Undertakings

## Departmental Standing Committees (24) Committees to Inquire

- a) Committee on Petitions
- b) Committee of Privileges
- c) Ethics Committee

## Committees to Scrutinise and Control

- a) Committee on Government Assurances
- b) Committee on Subordinate Legislation
- c) Committee on Papers Laid on the Table
- d) Committee on Welfare of SC's and ST's
- e) Committee on Empowerment of Women
- f) Joint Committee on Offices of Profit

## Committees Relating to the Day-to- Day Business of the House

- a) Business Advisory Committee
- b) Committee on Private Members' Bills and Resolutions
- c) Rules Committee
- d) Committee on Absence of Members from Sitzings of the House

## Ad Hoc Committee

Ad Hoc Committees can be divided into two categories, that is, Inquiry Committees and Advisory Committees.

**Committee on Estimates:** The major responsibility of the Committee is to suggest the examiner, estimator and recommendation on matters related to economic related policy issues and alternative policies, administrative reform, undertaking the tours and visits within and outside the state to study various schemes under execution in regard to the estimates under examination.

**Committee on Public Accounts:** The important functions of the Committee are to

scrutinise the Appropriation Accounts of the State and the Report of the Comptroller and Auditor-General of India (Civil). Also looks into the Revenue receipts and the disbursement of money shown in the accounts applicable to the services or purposes to which they had been applied and charged.

**Committee on Public Undertakings:** This Committee is to examine the Audit reports and accounts of Public Undertaking from time to time. The Committee also examines the autonomy and efficiency of the Public Undertakings. This Committee is also taking note on the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices. The Committee also examines the Reports of the Comptroller and Auditor General of India on the Public Undertakings. The Committee examines the working of the Undertakings under its purview, hears officials or takes evidence connected with such undertakings and makes recommendations to the House.

### Unit - 3 Executive

#### Introduction

#### Form of the state

The preamble of the constitution of India, Declares India a sovereign. Socialist secular Democratic Republic. Unlike England where a hereditary monarch, either a Queen or a king is the head of the State, India has an elected President

#### The Union Executive

- ❖ The President of India
- ❖ The Vice President of India
- ❖ The Council of Ministers and the Cabinet, Headed By the Prime Minister

The preamble of the constitution of India, Declares India a sovereign. Socialist secular Democratic Republic. Unlike England where a hereditary monarch, either a Queen or a king is the head of the State, India has an elected President

as head of the state with fixed tenure of office. The President is the supreme head of all the constitutional wings of the State, i.e the legislature. Executive, judiciary and armed forces. The President supervises their functions and ensures adherence to constitutional provisions by these bodies. The President represents the entire nation and upholds the constitution in every sphere of State's activity. But unlike the President of the USA, Where the President of the republic wields de-facto (real, functional) executive powers, the President of Indian Republic is not vested with direct executive responsibilities; Such direct and real executive responsibilities are assigned by the Constitution, to a Council of ministers led by the prime minister, and such council of ministers, both collectively and individually responsible and accountable to the union legislature. Thus our Republican

form of State is different from American form of Republic. Where it is Presidential executive.

## President

The President is the head of the Indian State. He is the First Citizen of India and acts as the symbol of Unity, Integrity and Solidarity of the Nation.

### Qualification and Election of the President

Article 58 says;

1. No person shall be eligible for election as President unless he is

- ❖ a citizen of India
- ❖ has completed the age of 35 years
- ❖ is qualified for election as a member of the Lok Sabha

2. A person shall not be eligible for election as President if he holds any office of profit under the government of India, or the government of any state, or under any local or other authority subject to the control of any of the said governments.

*Article 52 of our Constitution lays down that there shall be a President of India. Article 53 lays down that the executive power of the Union shall be vested in the President and shall be exercised by him directly or indirectly.*

Further Article 52 provides that the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and seconded by another 50 electors of the Electoral College. Every candidate has to make a security deposit of ₹15,000/- in the Reserve Bank of India.

This amount will be forfeited if the candidate does not secure 1/6 of the votes polled.

The President is elected not directly by the people but by members of Electoral College consisting of ;

The elected members of both the houses of Parliament

The elected members of the legislative assemblies of the states

The elected members of the legislative assemblies of the union territories of Delhi and Pondicherry.

The President's election is held in accordance with the system of proportional representation by means of single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes.

$$\text{Electoral Quota} = \frac{\text{Total number of valid polled in the election}}{\text{Number of electors to be elected}} + 1$$

Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4

### **Oath by the President**

Before entering upon his office, the President has to make and subscribe an oath or affirmation.

In his oath, the President swears:

- To faithfully execute the office;
- To preserve, protect and defend the constitution and the law; and
- To devote himself to the service and wellbeing of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence in the presence of the senior most judge of the Supreme Court. etc against the names of the candidates. This means the voter can indicate as many preferences as there are candidates in the fray. In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is carried out. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

### **Entitlement to the President**

- ❖ He is entitled without payment of rent, to the use of his official residence (The Rashtrapathi Bhavan)
- ❖ He is entitled to such emoluments, allowances and privileges as maybe determined by the Parliament
- ❖ The President is entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings

### **Term, Impeachment and Succession**

#### **Term**

Article 56 says that the President shall hold office for a term of 5 years from the date on which he enters upon his office. However he can resign from his office at any time by addressing the resignation letter to the Vice President. Further he can aslo be removed from the office before completion of his term by the process of impeachment. The

President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office.

### Impeachment

Article. 61 of the Constitution lays down a detailed procedure for the impeachment of the President. For the impeachment of the President, first, a charge for impeachment has to be made in either House of the Parliament by a resolution signed by atleast one fourth of the total number of members of the House and moved by giving atleast 14 days' advance notice. Such a resolution must be passed by a majority of not less than two thirds of the total number of members of the House when a charge is so presented by one House, it should be investigated by the other House. After the investigation, if a resolution is passed by the other house by a majority of two thirds of its total number of members, the President stands removed by impeachment from his office from the date of passing of the resolution.

### Succession

A vacancy in the President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years
2. By his resignation
3. On his removal by impeachment
4. By his death
5. When he becomes disqualified to hold office or when his election is declared void

If the vacancy occurs due to resignation, removal or death then election to fill vacancy should be held within six months and the Vice President acts as the President until a new President is elected. Further when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice President discharges his functions until the President resumes his office. In case the office of the Vice President is vacant, the Chief Justice of India or if his office is also vacant, the senior most judge of the Supreme Court acts as the President or discharges the functions of the President.

### Functions and Powers of the President

Vast are the functions and powers of the President. He convenes the parliament, addresses and prorogues the same. He nominates 12 members of eminence in different fields to the Rajya sabha and two Anglo Indian members to the Lok Sabha. He enjoys veto power over non-money bills of the parliament and can send back non-money bills for reconsideration of the parliament, he can convene joint sessions of Rajya Sabha and Lok sabha; He can promulgate ordinances for a period not exceeding six months. He can also has veto powers over certain State legislations.

He prompts and facilitates the institution of council of ministers headed by the Prime Minister, and ensures that the council of Ministers enjoy the support of the majority in the

Lok Sabha. The President alone installs the ministers and distributes portfolios to them, he can also, dismiss the ministry, if he feels that the ministry does not enjoys the majority support in the Lok sabha. He nominates members to various constitutional bodies, including the judiciary, armed forces and diplomatic corps. The President enjoys enormous powers during the periods of emergencies, can suspend any law, can dissolve ministries and legislatures for specified periods. He can commute capital punishments.

Executive	Legislative	Financial	Judicial	Emergency	Miscellaneous
1. Running of all administrative functions in his name, making of rules for the conduct of government business and allocation of work among the ministers	1. Summoning and proroguing sessions of Parliament and dissolving Lok Sabha.	1. Introduction of money bill in Lok Sabha with his prior recommendation.	1. Granting commutation of sentence, reprieve or pardon, respites or remissions or suspension of punishments by virtue of holding prerogative of mercy.	1. The constitution confers extraordinary powers on the President to deal with three types of emergencies <ul style="list-style-type: none"> <li>❖ National emergency (Art.352)</li> <li>❖ President's rule (Art.356 &amp; 365)</li> <li>❖ financial emergency (Art. 360)</li> </ul>	1. Reference of any matter of public importance involving a question of law or fact to the advisory opinion of the Supreme Court.
2. Having information of all important decisions of the Cabinet, referring any matter for the consideration of the Cabinet.	2. Making nomination of 12 members to the Rajya Sabha and 2 to the Lok Sabha.	2. Keeping control over Contingency Fund of India.	2. He appoints the Chief Justice of India and other judges of Supreme Court and High Courts.	2. Art.352- President declares national emergency when security is threatened due to war, external aggression and internal rebellion.	2. Determining the strength of Judges in the High Court.
3. Making important	3. Delivering inaugural	3. Causing presentation	3. He can seek advice from	3. Provision of emergency in a	3. Making

appointments and removals.	addresses and sending messages to the Parliament.	n of budget in the Parliament.	the Supreme Court on any question of law or fact.	State(Art 356) in the event of breakdown of constitutional machinery.	g rules for the composition and working of the Union Public Service Commission.
4. Maintaining foreign relations.	4. Exercising veto power over non-money bills-absolute as well as suspensive.	4. Making appointment of Finance Commission.		4. Art 365 - enforcement of President's rule when a State does not obey the union government direction or the Indian Constitution.	4. Setting up official languages Commission and taking steps for the progressive use of Hindi for official purposes on the basis of its recommendations.
4. Maintaining foreign relations.	4. Exercising veto power over non-money bills-absolute as well as suspensive.	4. Making appointment of Finance Commission.		4. Art 365 - enforcement of President's rule when a State does not obey the union government direction or the Indian	4. Setting up official languages Commission

				Constitution.	and taking steps for the progressive use of Hindi for official purposes on the basis of its recommendations.
5. Holding supreme command of the Defence Forces.	5. Giving prior permission for introducing certain kinds of bills in Parliament.	5. Allowing determination of the shares of States in proceeds of income tax and of the amounts of grants-in-aid in lieu of jute export duty to the States of Assam, Bihar, Odisha and W.Bengal		5. The President under Art 360 has the power to declare financial emergency if he is satisfied that financial stability or the credit of India is threatened.	5. Making special regulations for the administration of the State of Jammu - Kashmir.
6. Approving rules and regulations for the working of the Supreme Court and other independent agencies.	6. Promulgating an ordinance if the Parliament is not in session.				6. Making special rules and regulations for the admini



					stratio n of Schedu led and Tribal Areas.
7. Sending directions and instructions to state governments and invoking Art.356 incase of breakdown of Constitutional machinery in a State.	7. Causing presentation in the Parliament of reports and recommendations of various commissions.				
8. Running of the administration of Union Territories and Scheduled and Tribal Areas.	8. Making appointment of presiding officer pro tem of the Lok Sabha.				
	9. Allowing extension, modification, or abrogation of law in cases of ports and aerodromes.				
	10. Exercising absolute veto power over State l				

Fact

The emergency powers of the President of India are specified in part XVIII of the Indian Constitution.

**Vice President**

On the pattern of the Constitution of USA, the Indian Constitution provides for the office of the Vice-President of India (Article 63). The Vice-President of India occupies the second highest office in the country.

### **Election**

The Vice-President of India is elected by the elected members of both Houses of Parliament by secret ballot on the basis of proportional representation system, by means of the single transferable vote.

### **Qualification**

To be eligible for election to the office of Vice-President, (a) candidate must be a citizen of India, (b) must have completed the age of thirty five years, (c) must be eligible for election as a member of the Rajya Sabha, and (d) must not hold any office of profit. In this connection provisions similar to those relating to the President apply.

### **Terms of Office**

The Vice-President is elected for a term of five years. He can voluntarily resign from his office before the completion of his term of office by writing to the President. He may also be removed from his office, if a resolution to that effect is passed by the Rajya Sabha by an absolute majority of its members and agreed to by the Lok Sabha. However fourteen days have to be given to move such resolution.

### **Functions and Duties**

The Vice-President is the ex-officio Chairman of the Rajya Sabha (Article 64 of the Indian Constitution). He presides over the meetings of the Rajya Sabha. As the presiding officer of the Rajya Sabha, his functions and powers are similar to those of the speaker of Lok Sabha. He draws his salary as the chairman of the Rajya Sabha, because the Vice-President's office itself carries no salary. In the event of occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until a new President is elected. This period shall not exceed six months. While acting as President the Vice-President gets salary, allowance, emoluments etc., as may be fixed by Parliament by law, and during that time he does not perform the duties of the chairman of Rajya Sabha.

### **The Prime Minister and Council of Ministers**

*He describe Prime Minister as 'primus inter pares' (first among equals) and 'key stone of the cabinet arch'. He said, "The head of the cabinet is 'primus intro pares', and occupied a position which so long as it lasts, is one of exceptional and peculiar authority".*

**- Lord Morely**



## The Prime Minister

### Introduction

**Executive:** The Constitution provides for a collegiate executive i.e Council of ministers under the chair members of the Prime Minister

**Meaning:** A body of persons having authority to initiate major policies, make decisions and implement them on basis of the Constitution and laws of the country. There are two important organs of the Union Government.

- ❖ The Union Legislature (or) the Union Parliament
- ❖ The Union Executive

In the previous unit you have learnt about the Union Legislature. Let us now deal with Union Executive. You should remember that articles 52 to 78 in Part V of the Indian Constitution deal with “Union Executive”.

India has adopted the British Parliamentary executive mode with the Prime Minister as the Head of the Government. Prime Minister is the most important political institution. But in the council of Ministers (Cabinet) the Prime Minister is primus inter pares (first among equals).

### Appointment

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. There is no direct election to the post of the Prime Minister. Article 75 says, the Prime Minister shall be appointed by the President. Appointment is not by the choice of the President. The President appoints the leader of the majority party or the coalition of the parties that commands a majority in the Lok Sabha, as the Prime Minister. In case no single party gets a majority, the President appoints the person most likely to secure a majority support. The Prime Minister does not have a fixed tenure. He/she continues in power so long as he/she remains the leader of the majority party or coalition.

### Functions and Position

The first and foremost function of the Prime Minister is to prepare the list of his ministers. He meets the President with this list and then the Council of Ministers is formed. Very important ministers are designated as Ministers of the Cabinet rank, others are called Ministers of State, while ministers belonging to third rank are known as Deputy Ministers. It is one of the discretionary powers of the Prime Minister to designate a minister as Deputy Prime minister. The President allocates portfolios among the ministers on the advice of the Prime Minister. The Prime Minister may keep any department or departments under his control; he may also advise the President to reshuffle portfolios of his ministers from time to time; he may bifurcate or trifurcate a department or have different departments amalgamated into one department.

**The Prime Minister`s pre eminent position is evident from these points:**

1. S(he)is the leader of the party that enjoys a majority in the popular House of the Parliament (Lok Sabha).
2. Has the power of selecting other ministers and also advising the President to dismiss any of them individually or require any of them to resign.
3. The allocation of business amongst the Ministers is a function of the Prime Minister. He can transfer a minister from one Department to another.
4. Is the Chairman of the cabinet, summons its meetings and presides over them. The Prime Minister is also the Chairman of many bodies like Inter-State Council, Nuclear command Authority and many more.
5. Is in-charge of co-coordinating the policy of the government and has accordingly a right of supervision over all the Departments.
6. While the resignation of a Minister merely creates a vacancy, the resignation or death of the Prime Minister means the end of the Council of Ministers.
7. The Prime Minister is the sole channel of communication between the President and the Ministers and between the Parliament and his Ministers. He/she is the chief spokesperson of the government in foreign affairs.

**Prime Minister`s Office  
Meaning**

Being the head of the government and the real executive authority, the Prime Minister plays a very vital role in the politico- administrative realm of our country. In order to fulfill his responsibilities, the Prime Minister is assisted by the Prime Minister`s Office (PMO). The Prime Minister`s Office is an agency meant for providing secretarial assistance and advice to the Prime Minister. It is an extra constitutional body which offers important role in the top level decision making process of the Government of India. The Prime Minister`s Office has the status of a department of the Government of India. The Prime Minister`s Office came into existence in 1947. Till 1977 it was called Prime Minister`s Secretariat (PMS). The Prime Minister`s Office is headed politically by the Prime Minister and administratively by the Principal Secretary.

**The Prime Minister`s office performs several functions**

**Functions**

1. Assists the prime minister in his overall responsibilities as head of the government, in maintaining communication with the central ministries/ departments and the state governments.
2. Helps the prime minister in his responsibilities as chairman of the Niti Aayog and the National Development Council.

3. Looks after the public relations of the prime minister like contact with the press and general public.
4. Deals with all references, which under the Rules of Business have to come to the Prime Minister.
5. Provides assistance to the Prime Minister in the examination of cases submitted to him for orders under prescribed rules.
6. Maintains harmonious relationship with the President, Governors and foreign representatives in the country.
7. Acts as the `think- tank` of the Prime Minister. It deals with all such subjects that are not allotted to any department/ministry.
8. It is not concerned with the responsibility of the Prime Minister as the chairman of the union cabinet. The cabinet cases are directly dealt by the cabinet secretariat, which also functions under the direction of the prime minister.

### **Central Council of Ministers**

Article 74th of the Constitution lays down that there shall be a council of ministers with the Prime Minister as the head to aid and advise the President, who shall in the exercise of his functions, act in accordance with the advice of the council of ministers. That means, there shall always be a council of ministers. The President accepts the advice of the Council of Ministers. The Council of Ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state and deputy ministers. While the Cabinet ministers are involved in policy decision making, the other two categories have mere administrative responsibilities. The difference between them lies in their respective ranks, emoluments and political importance. At the top stands the Prime Minister, the supreme governing authority of the country.

### **Appointment of the Council of Ministers**

Under Article 75th of the Constitution, the Prime Minister is appointed by the President and the other ministers are appointed by the President on the advice of the Prime Minister. The ministers hold office during the pleasure of the President. While the ministers are also appointed by the President and are said to hold office during the pleasure of the President as per the Constitution, in actual practice, the ministers are selected by the Prime Minister and the President cannot appoint any one not recommended by the Prime Minister.

### **Collective and Individual responsibility of the Council of Ministers**

The Constitution of India provides that the Ministers are collectively and individually responsible to the Lok Sabha. The collective responsibility of the Council of Ministers means that the entire council of ministers is jointly responsible to the Lok Sabha for all the acts of the government. It also means that the ministers must not speak in public in different voices. All the ministers of the government are expected to be unanimous in support of policies on all public occasions and issues.

### **The Union Cabinet**

A Cabinet is the council consisting of ministers of Cabinet rank. It is the inner body within the council of ministers. It is an extra constitutional authority created out of the council of ministers. The whole council of ministers does not meet to discuss business, it is the cabinet which takes policy decisions and advises the President. The Cabinet is the highest decision making executive body which looks after the administrative affairs of the Government of India. It is the nucleus of the council of ministers.

### **Role and functions of the Cabinet**

1. The Cabinet is the highest decision making and policy formulating authority in our politico-administrative system.
2. It deals with all major legislative, financial and foreign policy matters.
3. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
4. It recommends ordinances, when the parliament is not in session and supervises the implementation of policies.
5. It appoints enquiry commissions and resolves inter-departmental disputes.
6. It is entitled to recommend to the President declaration of emergencies, dissolution of the Lok Sabha, proroguing and adjourning the parliament sessions.

### **Cabinet Secretary**

Every cabinet minister is assisted by a cabinet secretary. Among them the cabinet chief secretary is given a top place among the civil servants in the official ladder. He is the chairman Senior Selection Board that selects officers for the post of joint secretary in the central secretariat. He presides over the conference of chief secretaries which is held annually. He acts as the chief advisor to the Prime Minister on all aspects of administration and policy. He acts as the link between Prime Minister's Office and various administrative agencies and also between civil service and the political system.

## **The Executive of the Constituent State**

### **Introduction**

Articles 153 to 167 in Part VI of the Indian Constitution deal with the State Executive. The same pattern of parliamentary form of government is followed in the states. The state executive consists of the Governor, the Council of Ministers headed by the Chief Minister. At the head of the executive power of a State is the Governor just as the President stands at the head of the executive power of the Union. All states of the Indian Union have the same pattern of government. Some States have Bicameral legislature and some states have unicameral legislature. Part VI of the Constitution which deals with the government in the states, is not applicable to the state of Jammu and Kashmir, which enjoys a special status and has a separate constitution of its own (Article 370).

### **The State Executive**

- ❖ The Governor.
- ❖ The Council of Ministers Headed by the Chief Minister.

### **The Governor Provision for Governor**

Article 153 of the Constitution lays down that there shall be a Governor for each state. Normally, there will be a Governor for each state but the constitution amendment of 1956 makes it possible to appoint the same person as the Governor for two or more states

### **Appointment of the Governor**

The Governor of a state is appointed by the President of India. (Article 155). No person shall be appointed as a Governor unless he/she:

- ❖ is a citizen of India
- ❖ has completed the age of 35 years
- ❖ does not hold any other office of profit
- ❖ is not a member of parliament or state legislature.

### **Term of office and position**

The prescribed term of office for the Governor is 5 years. But he holds office at the pleasure of the President. (Article 156). He may be removed by the President at any time. He may be transferred by the President from one state to another too. The Governor draws a salary which is fixed by the parliament. He is also entitled to certain allowances and benefits.

As per the Constitution of India, the Governor is the constitutional and executive head of the state. The executive power of the state is vested with the Governor. All executive actions are carried on in the name of the Governor. In actual practice, the real executive powers of the State lie with the council of ministers headed by the Chief Minister. The Governor acts according to the advice of the council of ministers, who are collectively responsible to the legislative assembly of the state.

**The Governor of a state has more powers and performs a number of functions. The powers and functions of the Governor are:**

#### **1. Executive Powers**

(i) The Governor is the executive head of the State Government. The executive powers of the Governor are to be exercised by him either directly or through officers subordinate to him (i.e., ministers). (Art. 154). All executive actions are taken in his name. His executive powers extend to the administration of all matters included in the State List.

(ii) The Governor appoints the leader of the majority party in the legislative assembly as the Chief Minister. He appoints the other ministers of the council of ministers according



to the advice of the Chief Minister. The council of ministers hold office during the pleasure of the Chief Minister, because the Governor acts in accordance with the advice of the Chief Minister.

(iii) The Governor appoints the Advocate General of the state, the chairman and members of the state public service commission, and determines the questions of appointments, postings, promotions, etc. of the judges of subordinate courts.

(iv) The Governor is responsible for the smooth running of the administration of the state. In case he finds that the constitutional machinery of the state has broken down or the administration of the state cannot be carried on in accordance with the provisions of the constitution, he may recommend to the President to proclaim constitutional emergency and impose President's rule under Article 356. During the President's rule, as there is no council of ministers, the Governor carries on the administration of the state on behalf of the President.

## **2. Legislative Powers**

The Governor is a part of the state legislature (Article 168). So, he has legislative powers. His legislative powers cover the following

i) He summons prorogues and dissolved the legislative assembly.

ii) He addresses the members of the state legislature.

iii) Without the Governor's assent, no Bill can become law even after it is passed by both the houses. The Bills passed by the legislature are sent to the Governor for his assent. He may give his assent or withhold it or may reserve the bill for the consideration of the President. The bills maybe returned by the Governor for reconsideration. (It may be noted that if the bill is again passed by the legislature with or without amendments, the Governor has to give his assent.)

iv) Under Article 213, the Governor may promulgate ordinance during the period when legislature is not in session. (However, for the continuation of such an ordinance, it has to be approved by the state legislature within six weeks from the re-assembly of the legislature.)

v) In State where bicameral legislature exists. The Governor nominates one-sixth of the members of the legislative council from among persons having special knowledge or practical experience in respect of literature, science, art, co-operative movement or social service. He may also nominate a person from the Anglo-India community to the legislative assembly.

## **3. Financial Powers**

The Governor has financial powers. His financial powers cover the following:

i) The finance minister submits the budget or financial statement before the legislature. But no money bill can be introduced in the legislative assembly without the prior permission of the Governor.

ii) No demand for grants can be made without the recommendation of the Governor.

iii) The Governor is the custodian of the contingency funds of the state from where he can make payments to meet the emergency without the prior sanction of the legislature.

#### **4. Judicial Powers**

The Governor has judicial powers. His judicial powers cover the following:

(i) He determines the questions of appointments, postings, promotions, etc. of subordinate courts (ie., district courts and munsiff courts).

(ii) He may be consulted by the President of India, while making appointments of the judges of the high court.

(iii) The Governor has the power to pardon, suspend, remit or commute the sentence of any person convicted of an offence against any law relating to a matter to which the executive power of the state extends

#### **5. Discretionary Powers**

The Governor also has discretionary powers, i.e., he has the powers to act independently using his wisdom and discretion. His discretionary powers relate to:

i) Appointing a new Chief Minister in a situation where no single party or leader commands majority support.

ii) Dismissing a ministry where it refuses to resign even after losing majority support in the house or after being defeated on a non-confidence motion.

iii) Dissolution of assembly on the advice of a Chief Minister who has lost majority support.

iv) Sending to the President report about the failure of constitutional machinery and to impose President's rule in the state.

v) Giving assent to bills passed by the legislature.

#### **Advocate General**

Each state has an advocate general who is an official corresponding to the Attorney-General of India and having similar functions for the state. He is a person who is qualified to be a judge of a High Court and he is appointed by the Governor.

#### **Council of Ministers headed by the Chief Minister**

##### **Position of the Chief Minister**

The Chief Minister is the head of the cabinet and the council of ministers. In practice, he is the real executive head of the state. As per Article 164(1) of the Constitution of India, the Chief Minister of a state shall be appointed by the Governor of the State.

## **Powers and functions of the Chief Minister**

As the real executive head of the state, the Chief Minister enjoys wide powers and performs a number of functions. The important powers and functions of the Chief Minister are:

i) As the head of the council of ministers, the Chief Minister has more powers in ministry-making. He can recommend appointment of ministers and designate them as cabinet ministers or ministers of state or deputy ministers. He can change the portfolios of the ministers. He can even recommend the removal of ministers.

ii) He presides over the meetings of the cabinet and makes major policy decisions of the Government.

iii) He acts as the sole channel of communication between the council of ministers and the Governor. He communicates to the Governor all the decisions of the cabinet relating to administrative and legislative proposals.

iv) He scrutinizes all papers, bills, resolutions, etc. that are to be placed before the legislature.

v) Though, in theory, all major appointments are made by the Governor, in practice, all such appointments are actually made on the advice of the Chief Minister.

## **State Council of Ministers Introduction**

Article 163(1) of the Constitution of India provides that there shall be a council of ministers headed by the Chief Minister to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion. The state council of ministers is formed in the same manner as the union council of ministers is formed. The leader of the majority party or coalition of parties in the legislative assembly is appointed as the Chief Minister by the Governor. The other ministers in the council of ministers are appointed by the Governor on the advice of the Chief Minister.

## **Term of office of the council of ministers**

As per the constitution, the council of ministers hold office during the pleasure of the Governor. But, in reality, the council of ministers hold office during the pleasure of the Chief Minister, because the Governor acts on the advice of the Chief Minister. The council of ministers are individually responsible to the Chief Minister. The council of ministers are collectively responsible to the legislative assembly of the state. That means, the council of ministers shall speak in one voice.

## **The State Cabine**

The council of ministers consists of cabinet ministers, ministers of state and deputy ministers. Of the council of ministers, the cabinet ministers constitute the state cabinet. The

cabinet ministers of the state cabinet are, generally, the prominent ministers of the council of ministers. It is headed by the Chief Minister. The cabinet takes decisions on behalf of the council of ministers, and so, all the ministers are bound by the decisions of the cabinet.



