

# APPOLO STUDY CENTRE

## Indian Polity

11 <sup>th</sup> std political science	Unit - 6	Forms Of Government
	Unit -10	Public Opinion and Party System
12 <sup>th</sup> std political science	Unit -2	Legislature
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### 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 Montesquieproposed 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.

## **6.4 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 confirm 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

### 6.5 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 overcentralization 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.

**Upendra Baxi**, 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 Rajya Sabha 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**

1. Familiarity with the System
2. Preference to More Responsibility
3. Need to Avoid Legislative – Executive Conflicts
4. 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
	Separation of Powers	Centralization
	Independent branches	Independent branches with Overlapping functions
	Individual Leadership	Collective leadership
	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 problems (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.

**6.8 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 states 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.

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## UNIT -10 - Public Opinion and Party System

### Introduction

This chapter focuses on the meaning and evolution of the Party system as adopted in various countries of the world. Tracing the emergence of party system in modern democracies we seek to explain the nature, characteristics, types and functions of political parties especially in a democracy. Deriving from this general background, the evolution of the party system in India at the national and regional levels are studied, with a specific focus on Tamil Nadu. The chapter also presents the meaning and importance of public opinion and its role in the effective working of a democracy

### Defining Public Opinion:

Public opinion can be defined as a psychological and social process in which the behaviour of each member of the public is conditional to that of all others with similar beliefs. In short it is the collective views of the people, their attitudes and opinions.

It is the people's collective preferences on matters relating to government and politics. It is based on the premise that collective individual opinions matters in a democracy and public opinion should carry more weight than individual opinion. Others opine that public opinion can be influenced and controlled by organized groups, government leaders, and media elite.

In fact, democracy derives its authority from the people. Public opinion is not the opinion of an individual, though he or she may be a highly respected person. It is not a private opinion. It is also not an expert opinion, irrespective of the wisdom of the expert. Public opinion is an organized and considered opinion of a section or many sections of the people on any public issue or concern.

## **Role of Public Opinion:**

Public opinion is an essential element for successful working of a democracy where the views of all citizens are respected and no government can survive by ignoring it.

## **Hindrances to formation of a genuine public opinion**

Public opinion needs to be the true reflection of the peoples` ideas and opinion, however there are some hindrances to genuine public opinion;

**Selfish interests (Me above nation):** The interest of the people seeking personal advancement over the affairs of their own country. People need to be sensitized towards important issues related to unity, commitment, integrity and progress of the nation.

**Illiteracy:** It is expected that literate and responsible public make good citizens by exercising their franchise without fear or favour. Illiterate masses are often misled by party workers and guided by sentiments, favours and rhetoric. A sound public opinion can be formed only in the environment of free thought and knowledge.

**(a) Poverty:** The poor in any country are easily influenced by the false promise of political leaders and cast their votes subjectively. Sound and objective public opinion is possible only by alleviating poverty.

**(b) Racist and Caste based Discrimination:** Sentiments that provoke discrimination based on caste, creed and religion create a divide among the masses that are often manipulated by political parties for their advantage. Social disharmony in the country is detrimental to the effective working of a democracy.

**(c) Freedom of speech and the media:** Unbiased, objective and independent media as well as respect for individual freedom of speech and assembly play a very significant role in the formation of healthy opinion. The vital importance of an independent and impartial media

that respects peoples freedom and exercises responsible news reporting are important criteria for formation of mature and responsive public opinion.

### **Definition of Political Parties**

Political parties are indispensable instruments in a democratic system. They are formed with definite ideologies, and programme of action. They enlighten the general public on issues concerning the society and state and they also prescribe alternatives. Through propaganda they educate people on political issues and garner their support for their policies and programme. In legislative bodies they represent organized opinion of the voters. In parliamentary democracies the party or an alliance of parties can win a majority of seats in legislature and forms the ministry (executive) examples: UK, India. In presidential democracies, the chief executives (president) are elected on party basis (USA, France). In any system political parties function as intermediaries between the government and people.

There is consistent competition between the various political parties and this competition ensures the mature functioning of a democracy.

### **Functions of Political Parties**

In a democracy, political parties serve as an integral link through which government and the public can interact. Political Parties act as a foundation that orients the people towards political initiatives and public experience. Political Parties work to influence political thought and opinion with the intention of mobilizing votes. They provide a platform for political, economic and social activism that serves as a training ground for future regional and national leadership. In the long run they hold leaders accountable for their actions through rigorous debate and queries both within the party as well as through opposition parties. Thus the people are presented with a diverse choice of candidates, ideologies and approaches to various issues governing the nation. Their confidence in democracy is thus reinforced in the



knowledge that they can bring about change and transformation should a majority of the population desire a transformation in the way they are governed.

## **The Party System**

The party system helps to operate and stabilize governments and they are particularly relevant for the effective functioning of democracies. The party system provides a system of checks and balances against the government's policies. By soliciting popular support among the masses and providing a structure for leadership and dialogue within the party according to specific party objectives and agenda, it helps sustain good governance.

A political party is a group of people who come together to contest elections and hold power in the government. They agree on some policies and programmes for the society with a view to promote the collective good.

(Symbols or Flag of different political parties )

Three components of a Political Party – Leaders, Active Members and Followers.

## **Types of Party Systems**

Different types of party system have evolved in various parts of the globe depending on the particular elements of democracy practiced. By and large the quality of a democracy is determined by how the government is representative of its people, how accountable the government is to its people, how human rights and equality of status and opportunity is guaranteed to all citizens and the level of political participation exercised by the people. The various types of party system address these issues in different ways, thereby determining the quality of democracy practiced.

## **A. One Party System**

In a one party system, a single political party exercises its right to form the government, which is often derived from a written or unwritten constitution. In most cases under a one party system, there is less participation and weaker accountability. Examples: Communist Party of China, (CPC) the Peoples` Action Party (PAP)in Singapore, Korean Workers Party, (KWP) North Korea, Communist Party of Vietnam (CPV) Vietnam, Communist Party of Cuba (CPC) Cuba. The single party system does not provide adequate space for democratic expressions and not provide scope for alternative. For example in the 1920s fascist movements advocating nationalistic militarism, captured power in Germany under Hitler, in Italy under Mussolini and in Spain under General Franco. They prevented other political parties to emerge.

## **B. Two Party System**

In the two party system, two political parties, with distinctly different interests have equal opportunity to attain a majority and form the government. The majority party is the governing party and the minority party forms the opposition party in two-party systems. The Two-Party system has far greater accountability by the political leaders and greater political participation. The threat of being voted out by the opposition hangs as a 'Damocles sword' on the incumbent thereby guaranteeing a higher degree of responsible conduct and action. However since the political atmosphere is heavily polarized, drastic changes can happen once a party loses power which mayprove detrimental to national interests. Examples of the two-party system include USA -Democrats and Republicans and UK Conservatives and Liberals.

However, in either country there is no constitutional restriction on number of parties. The constitutional procedures and peoples' political maturity led to the emergence of two party system.

### C. Multi-Party system

In the Multi-party system, multiple political parties are capable of garnering popular support and forming a government, either as a majority party or in coalition with many non-majority parties with similar political objectives. In this system, the political leaders are constantly observed and checked by checks and balances by their coalition partners. They are also subject to rigorous accountability to the people. The multi-party system offers the electorate the multiple avenues of political participation and the ability to bring about political change for greater national development.

The proportional representation system in France and Italy results in multi-party systems and coalition cabinets.

Examples of countries with multi-party systems include Canada, France, Germany, India and Sweden.

### Role of Political Parties in a Democracy

The existence of political parties is largely responsible for ensuring the quality and effectiveness of a democracy. In a federal multicultural and plural societies such as the United States of America and India, the maintenance of peace, unity and communal harmony are vital for social-economic progress. While single party system may have greater flexibility towards quicker decisions making and cohesive action, these decisions may not represent mass opinion and thus it would create greater opposition and dissent for the government.

#### The Role of Political Parties in a Democracy

##### What are political parties?

- ❖ They recruit and run candidates for public office under the party level
- ❖ They try to organize and coordinate the activities of government officials under the party name.

**Many political scientists believe that parties are essential to**

## **democracy**

- ❖ The political party is seen by some as the main instrument of popular sovereignty and majority rule.
- ❖ When political parties are working properly they can be essential tools of popular sovereignty

In the dual party system due to the nature of the party structure and leadership, this usually result in public policies and decisions blocked in political polarization rather than collaboration. While in Multi party systems, the performance is on the basis of deliberation and negotiation between coalition members, and issues are mostly settled by reaching a mutually derived consensus after debate and discussion. Thus, political parties are the drivers of a democracy that are necessary to safeguard the rights and freedoms of the people. Through effective Citizenship training and greater civic participation, youth in democratic nations can play a greater role in political parties thereby fostering more mature and wider democratization in countries.

## **Modern Party system**

### **A. Party system in the United Kingdom**

In the United Kingdom, polarization of opinions on issues relating to the status and role of monarchy led to the emergence of two parties:

- A. Tories or Conservatives and
- B. Whigs or liberals.

In the 20th century labour party became a major force eclipsing the liberals.

### **B. Party System in the USA**

The founding fathers of the United States wanted to steer clear of political parties and the ensuing factional conflict between them. Nevertheless, after American Independence, the first parties in the newly constituted nation under the Presidency of George Washington

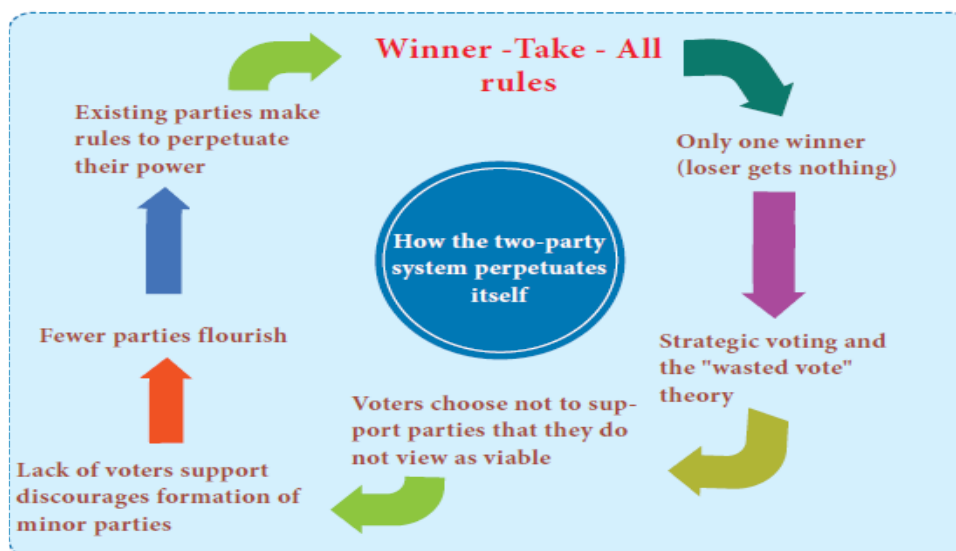
were the Federalist Party supporting a strong national government and the Democratic Republican Party supporting state autonomy.

## Two Party System

- ❖ Rare around the world
- ❖ Evenly balanced national at National and local level
- ❖ Electoral system
- ❖ Winner take all
- ❖ Wasted vote
- ❖ Priority system
- ❖ Broad coalitions form before election
- ❖ Opinion of voters
- ❖ Difficult for third parties to get on ballot

In 1828, the democratic Republican Party was renamed as the Democratic Party which championed state rights. In 1854, the Republican Party established itself on the anti slavery platform and gained pre-dominance with Abraham Lincoln as President of USA.

Since the United States settled for the Two-Party system, the Republican and Democratic parties have dominated the American political scene, though third party candidates have been floated on and off.



### **C. Party system in Europe:**

After the French Revolution (1789), democratic forces gained strength in European Nations, and political parties emerged. Political parties in Continental Europe were largely divided into Conservatives, Liberals, and ChristianitselfDemocrats. By the 19th century socialist movements gained popularity and social democratic or labor parties emerged which became popular and gained trade union support.

In Soviet Russia, the Bolshevik Party, was responsible for the Communist Revolution in 1917 which created the USSR (Union of Soviet Socialist Republics), popularly called the Soviet Union. The COMINTERN (Communist International) was established with the task of encouraging world communist revolution by supporting Communist parties in other countries. After the end of the Cold War era, the Communist party lost its popularity in Russia, though some minor communist parties still influence governmental policies within democratic states. Communist Parties however continue to control authoritarian governments in China and North Korea.

Democratic political systems are often reactive and responsive to the basic socio-economic values of their citizens. There has always been significant transformations in values and these are reflected in the political opinion of the people through political parties and their varying objectives. By late 20th century, socio-economic factors impacting Europe were reflected in the emergent types of parties some of which were more nationalistic and less open-minded, vocalizing their sentiments against immigration and the refugee influx that they see as a threat to European culture, security and economy.

### **D. Party System in South Africa**

In African countries, political parties were at first formed to secure decolonization. In many decolonized African countries, political parties are struggling hard against militarism.

## The Constitution of South Africa

- ❖ Universal adult suffrage vote at 18
- ❖ A national common voters roll
- ❖ Regular election
- ❖ A multi-party system of democratic government to ensure accountability, responsiveness and openness

### E. Party System in India

The party system in India emerged along with the rise of nationalism and out of the freedom struggle against British rule. While Indian politics today represent a multi-party system, for long periods in Indian political history, one party has dominated the political stage. The Indian National Congress (INC) was established in 1885 by A. O Hume, as the indigenous base for the political participation of Indians in legislative and political wings. It demanded political reforms in gradual stages. After the non-cooperation movement (1921-23) Indian National Congress began to demand absolute political freedom. In the 20th century, the parties with communal agenda have also come up i.e. The All India Muslim League in 1906 and Hindu Maha Sabha in 1916. In the Madras Presidency the South Indian Liberal Federation (Justice Party) was formed to project their interest of the Non-Brahmins (Dravidian).

However, the Indian National Congress represented the urban, upper caste elite, mostly western educated and provided a platform for negotiations with the British government. Gradually the Indian National Congress evolved to play a pivotal role in the development of India's political party system. After the partition of Bengal in 1905, the Indian National Congress was divided between the Moderates (policy of petitions) and the Extremists (aggressive militant strategy). The formation of the Muslim league in 1906 resulted in the era of conflicting political bargaining, reflected the true beginnings of the Indian party system.

The entry of Mahatma Gandhi into the political scene with his moral-ethical focus on non-violence as a political ideology and strategy, transformed the Indian National Congress to represent all sections of Indian society- the poor agriculturalists and lower caste people. Other parties that also emerged representing specific goals which included the Swaraj Party formed by Chittaranjan Das in 1922, the Congress Socialist Party, formed in 1934 by Acharya Narendra Dev and Jayaprakash Narayan and the

Communist Party, formed in the 1920's by the efforts of M. N. Roy were the other major political parties. There were a number of political parties which carry on political campaigns and propaganda, but do not contest elections, they function as pressure groups. Till 1977, the Communist Party, the socialist parties, and the right wing Janasangh were the mentionable opposition parties at the national level.

Until 1977, no single party could become an alternative to Indian National Congress at national level. Hence, a number of so called national parties, under the stewardship of Jayaprakash Narayan, merged to create a large national alternative party known as Janata Party. In 1977, it captured power at the centre. Yet this party lacked cohesion and unity and became shattered after 1980. The Jana Sangh was revived with a new name Bhartiya Janata Party, Meanwhile Kanshi Ram's Bahujan Samaj Party emerged as national level party with social justice as its main plank. The Communist Party of India (Marxist) became very powerful in a few states like Kerala, West Bengal and Tripura.

The 1990s was the period of an increasing quest towards coalition governments in Indian politics. The Indian Political System became more competitive, more democratized and more representative of the multicultural social nexus and diversity that is observed in contemporary India. It is observed that old parties became obsolete and defunct, and new parties have emerged that represent and seek to address the transformative challenges faced by various diverse sections of the people. Since the 1990's we see a federalization of politics with



regional parties gaining greater influence, representative of regional aspirations against the dominance of the Centre.

In the present period, regional alliances indicate a growing trend towards coalition governments that form an effective voice in favour of federal polity. This fragmentation is largely due to the regionalization of politics, with parties having high support base in specific areas.

### Regional Parties

Shiromani Akali Dal in the Punjab, Samajwadi Party in the Uttar Pradesh, Telugu Desam Party in Andhra Pradesh, Rashtriya Janata Dal (RJD) in Bihar, Trinamool Congress in West Bengal, Telangana Rashtra Samithi in Telangana, Asom Gana Parishad in Assam, Shiv Sena in Maharashtra, National Conference, People Democratic Party in Jammu & Kashmir, Dravida Munnetra Kazhagam (DMK) and All India Anna Dravida Munnetra Kazhagam (AIADMK) in Tamil Nadu are some of the major regional parties.

While there is growing political awareness among the electorate, there is also greater mobilization along lines of regional, social and religious identities. There is a widespread difference in the composition of political groups, and characteristics of political and social groups between one region and another.

Parties that gained seats in Parliament in 2009 Elections	Parties that gained seats in Parliament in 2014 Elections
Indian National Congress (INC)	Bharatiya Janata Party (BJP)
Bharatiya Janata Party (BJP)	Indian National Congress (INC)
Communist Party of India (Marxist)	All India Anna Dravida Munnetra Kazhagam (AIADMK)
Samajwadi Party (SP)	All India Trinamool Congress (AITC)
Bahujan Samaj Party (BSP)	Biju Janata Dal (BJD)
Dravida Munnetra Kazhagam (DMK)	Shivsena (SHS)
Shivsena	Telugu Desam (TDP)

Rashtriya Janata Dal (RJD)	Telangana Rashtra Samithi (TRS)
All India Trinamool Congress(AITC)	Yuvajana Sramika Rythu Congress Party (YSRC)
All India Anna Dravida Munnetra Kazhagam (AIADMK)	Nationalist Congress Party (NCP) 11 <sup>th</sup>

## Party System in Tamil Nadu

In Tamil Nadu, like most Indian states, the early independence period was dominated by the Congress party. However, issues of caste hierarchy, and the rising North South divide eroded the popularity of Congress leadership in the state. The Dravidian movement regenerated in Tamil Nadu under Periyar E.V Ramasamy and garnered popularity on assertion of Dravidian Rights and Dignity and through an anti-North, anti-Hindi, anti-Brahmin social agenda.

The Party System in Tamil Nadu is a pioneer model of the pre-eminence of the regional parties in state politics of independent India. There are very clear socio-economic, cultural and historical reasons for this development. The long history of rationalist and social justice movements from the colonial era and the mobilization of Dravidian consciousness since the beginning of 20th century have fundamentally transformed the nature of politics and the future of party system in state politics.

## Role of Political Parties in a Democracy

For the effective functioning of a democracy, the existence of political parties that represent conflicting interests is mandatory. While they advocate various interests and policies, largely political parties adopt Rightist ideology (conservative, traditional and capitalistic) or Leftist (pro-equality, liberal and labour interests). While it is true that political parties are essential for attaining the democratic ideal, the rise of individual parties with non-democratic agenda and authoritarian leadership is a critical challenge to Democracy. This is very relevant in the case of a multicultural, multilingual, multi religious and economically diverse country like India, only political parties can truly

represent the multidimensional interests of people from every corner of the country. It is vital in a democracy like India that political parties exercise maturity and maintain a secular position, the precious and precarious unity and stability of India cannot be maintained. It is in the interests of the nation, that responsibly and principled parties show a level of maturity and responsibility in exercising their duties and functions for the sustainability of democratic institutions.

## **Role of Opposition in a Democracy**

The relationship between party system and democracy will be incomplete without the discussion of the role of opposition parties in democracy. Democracy has no meaning without an effective opposition party or parties in the country. The nature of democracy is not only determined by the strength of ruling party alliance but also in the role and functioning of the opposition party alliance. In fact, the leader of the Opposition party enjoys the status and privileges of the rank of cabinet minister. A weak opposition leads to either a government without accountability or the tyranny of the majority.

Pressure or Interest groups also play an important role in special issues and events. These are organized groups, having common political and social interests, which influence decisions from outside. Pressure groups have voluntary membership and lobby for specific interests. Unlike political parties, pressure groups do not contest elections. The Pressure Groups are able to influence the government through various techniques with various public policy issues and are therefore called pressure groups. Professional pressure groups may include business interests, trade unions, Farmers, Teachers and Students, Doctors, culture groups, and institutional groups. Pressure Groups play an important role in the Indian political system by acting as a link and source of communication between the masses and the political parties. They sensitize the public towards vital socio- economic issues and through their lobbying, influence both the government and the administrative policies.

"Leadership and learning are indispensable to each other."

John F. Kennedy

## Psephology

Psephology deals with the study and statistical analysis of elections and polls. Public opinion polls play an important role in psephology. They analyze both Opinion Polls and Exit Polls as well as election results. Opinion Polls and Exit Polls are both important indicators of voter's choice during the elections.

The main difference between the two is that opinion poll is conducted before the voter actually votes and the exit poll is conducted after a voter comes out after casting his or her vote. Results of exit polls are generally considered to be more trustworthy than that of opinion polls.

The result of opinion polls may or may not actually collaborate the actual results. Yet they are important in generating opinions among the unsure and undecided as well as help to sustain a balance in voting practices for all parties concerned.

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## 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 exception 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 question, 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 Rajya Sabha as follows.

### **Who can be a Member of Rajya Sabha?**

- ❖ 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 Rajya Sabha.
- ❖ 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 Rajya Sabha.
- ❖ 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 LokSabha

- In the following matters, the powers and status of the RajyaSabha are equal to that of the LokSabha:
  - ❖ 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, RajyaSabha alone can initiate the removal of the vice- President. He is removed by a resolution passed by the RajyaSabha by a special majority and agreed to by the LokSabha 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 LokSabha.

- ❖ 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 RajyaSabha 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 LokSabha. But, the RajyaSabha can discuss and criticize the policies and activities of the government.

### Special Powers of RajyaSabha

- Due to its federal character, the RajyaSabha has been given two exclusive or special powers that are not enjoyed by the LokSabha:
  - ❖ 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 RajyaSabha 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 RajyaSabha in all other spheres are broadly equal and coordinate with that of the LokSabha.

Even though the RajyaSabha has been given less powers as compared with the LokSabha, its utility is supported on the following grounds:

- ❖ It checks hasty, defective, careless and ill-considered legislation made by the LokSabha 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 RajyaSabha.
- ❖ 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. 4<sup>th</sup> 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 RajyaSabha on 24 April 2015. It was introduced in the lower house LokSabha 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 RajyaSabha 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 LokSabha or the RajyaSabha	It can be introduced only in the LokSabha and not in the RajyaSabha
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 RajyaSabha	It cannot be amended or rejected by the RajyaSabha. The RajyaSabha should return the bill with or without recommendations, which may be accepted or rejected by the LokSabha
5	It can be detained by the RajyaSabha for a maximum period of six months.	It can be detained by the RajyaSabha for a maximum period of 14 days only.
6	It does not require the certification of the speaker when transmitted to the RajyaSabha (if it has originated in the LokSabha)	It requires the certification of the speaker when transmitted to the RajyaSabha.
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 LokSabha. 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 LokSabha may lead to the resignation of the government (if it introduced by a minister)	Its defeat in the LokSabha 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.



12<sup>th</sup> political science  
**Unit – 4 - Indian Judiciary**

What does the judiciary exactly do? I see people trusting the judiciary more than the legislature and the executive. Whenever their rights are violated, they look up to the judiciary and are so confident that their rights and privileges will be safeguarded.

### **Supreme Court of India**

- “The Supreme Court, an all-India Court, will stand firm and aloof from party politics and political theories. It is unconcerned with the changes in the Government. The Court stands to administer the law for the time being in force, has goodwill and sympathy for all, but is allied to none”- Hon’ble Sri Harilal J. Kania, First Chief Justice of India.
- The judiciary is one of the three organs of the government, the other two being the Legislature and the Executive. The judiciary is engaged in the interpretation of law and serves as a protector of the constitution. It guarantees the administration of justice and protects the individual from encroachments of rights and privileges by the government and the other individuals. The establishment of an independent and impartial judiciary is a pre-requisite for the functioning of a civilized state. The judiciary assumes greater importance in a federal polity such as India as it also acts as a protector of the federation resolving the conflicts of jurisdiction between the Centre and the States.

### **Thirukkural**

#### **1. Recite Thirukkural verses for bail**

- In February, a Tamil Nadu court reportedly ordered three college students, arrested in an assault case, to recite 100 verses of

Thirukkural treatise by poet-saint Thiruvalluvar daily for 10 days as a condition for granting bail.

- The court in Mettupalayam ordered the students, who were charged with assaulting a person, to appear before a Tamil teacher in the Government Boys High School in the area to recite the verses.
- The court also asked the head of the school to issue a certificate to the students at the end of the 10th day.

## 2. Madurai Bench paves way for in-depth study of Tirukkural

- One of the most significant contribution of the Madurai Bench of the Madras High Court towards promoting the cause of Tamil is a direction issued to School Education Department in 2017 to make 108 out of the 133 chapters of Tirukkural a part of school syllabus. The Madurai Bench direction led to passing of a G.O. for teaching 1050 couplets to students from the academic year 2017-18. It also ensure that students from Class VI to XII get to learn the couplets and their intended meaning in depth and not just superficially as was being done all these years.
- Tirukkural is perhaps the only ancient secular text from India that has been translated into 60 languages the world over.

## Evolution of Indian Judiciary

### Judicial System in Ancient India

- India has been a Sub - Continent of different races, different cultures, different languages and a multitude of political and social systems. In ancient times, as well as in the medieval times, none of the Indian states was segregating judicial functions from the executive. During the Vedic period, the authority of the head of the family (Kulapa or Kulapato) was insulated from royal interferences; Similarly the clannish or tribal bodies like Grama, Gopa, Vishaya, Jana and Gana enjoyed autonomies powers. In the ancient Indian monarchical orders,



the king was considered to be the highest judicial authority. As king's will was the law, his word was the highest and absolute verdict in disputes.

- However most of the disputes were settled and disposed of at the local level through caste bodies or local administrative bodies. Extreme cases like treason were tried in the king's court. There was no regular system of jurisprudence or judicial procedures. Most often the accused was to prove his innocence either through evidences and witnesses or through subjection to different kinds of ordeals such as ordeal by fire, ordeal by water and ordeal by poison.
- Punishments (penal system) was severe and even barbaric System if blood money was in vogue (less was to be replaced with material compensation) Whipping, flogging, amputation of limbs, impalement, rigorous imprisonment, enslavement, banishment, confiscation of property, beheading, hanging and trampling by elephants were some of the punishments meted out to the culprits. In kingdoms which came under Brahmanical influence, smritis were invoked in trial as well as in awarding punishments.
- There were a number of smritis such as Manusmrits, Narada Smriti, and Yagnavakya Smritis : of which manu Smriti was held as a core Smriti, other smritis had certain variations. The Smritis generally upheld the graded varna - Jati social order. There was no 'equality before law' Concept. Brahmins were mostly insulated from regular procedures and regular punishments, on any account, Brahmins, even if they committed the most heinous crimes, were to be exempted from physical torture, amputation, impalement or capital punishment. On the other hand the depressed castes were subjected to Ordealssevere ordeals and extreme punishments; changing of caste based occupations was treated (Varna Sangraha) as a serious crime.
- Arthasstra suggests disproportionate punishments for restricting instances of crimes; penalties levied on culprits, and confiscation of properties as a major source of royal income. The smritis treated women as inferior humans, and were prejudiced against them even in

matters of inheritance. The Sudras, and Panchamas were ineligible for a fair trial and fair punishment. Trade disputes were mostly settled through guilds (SRENIS), Similarly each artisan group had its own guild to resolve disputes within. The Mahasabhas of the Pallava - Pandya- Chola empires insulated Brahmins from regular system of justice. The Mahasabha's variyam (Dharma variam, Nyaya vasiam) settled issues within the mahasabhas. The local bodies like Ur, Urar, Nadu, Nattar and Nagarathar had their own judicial arrangements.

- The Buddhist kingdoms (like that of Asoka) mostly disregarded smritis and enforced some sort of equal treatment to various social groups in matters of judicial disputes. Asoka removed cruel punishments, and even instructed his official to be more humane and compassionate towards prisoners. The episode involving Kovalan's execution in Silappadikaram reveals the defects in the system of judicial procedure. Though high moral stature of the adjudicating officials were insisted in literature, we very often found arbitrariness in judicial trial and in awarding exemptions or punishments. There was no rule of law but rule of the powerful authorities that we find in ancient India.

## Ordeals

**Trail by Balance:** A palm leaf chit, with the alleged crime inscribed on it was placed on one side of the balance, and the accused was to sit on the other side of the balance. If the plate of the balance came down while the accused came down, the accused was declared guilty.

**Ordeal of Fire** : The accused was made to walk through fire and was deemed innocent only if the person suffered no injury.

**Ordeal of water** : The accused was made to drink the water used to clean the idol was deemed innocent if it had no harmful effects on him within the next 14 days.

**Ordeal By Poison** : The accused was made to consume poison and was deemed innocent only if did not have any effect on the person.

**Ordeal of lot** : The accused was asked draw from the lot and was deemed innocent if he chose the lot of dharma.

**Ordeal of Rice Grains** : The accused was made to chew rice without the husk being removed and the presence of blood stains in his mouth resulted in the person being declared guilty.

**Ordeal of Fountain - Cheese** : The accused was compelled to drink a potion that could make him/her delirious and was deemed guilty if the person confessed the crime.

- In medieval India, the Muslim rulers had faced a peculiar situation, where the majority of their subjects were Non-Muslims. While they applied Islamic law in cases where Muslims and Muslim interests were involved, they preferred a policy of Non-intervention in the socio-religious affairs of the Non-Muslims, hence allowed the traditional system of justice in the rural areas. The Muslim rulers made a clear distinction between civil and criminal disputes and assigned deferent system for each of them. However, in cases of blasphemy extreme punishment were awarded to the accused.

## Judicial System in Medieval India

- In Medieval India, the Sultan/Sultana was the supreme authority administering justice in his/her kingdom. He / She administered justice in the following capacities namely Diwan-e-Qaza (Arbitrator), Diwan-e-Mazalim (Head of Bureaucracy) and Diwan-e-Riyasat (Commander-in-Chief). There existed a systematic classification and

organization of courts in Medieval India. The administrative divisions were the basis for judicial organization. The jurisdiction of courts at the Capital, Provinces, Districts, Parganas and Villages were clearly demarcated. Generally, at the Capital of Sultanate, the following six courts were established.

- The King's Court
  - Diwan-Al-Mazalim
  - Diwan-e-Rialat
  - Sadre Jahan's Court
  - Chief Justice's Court
  - Diwan-e-Riyasat
- The King's Court was presided over by the Sultan and the Court had both original and appellate jurisdiction. It was the highest court of appeal and in the administration of justice, the Sultan was assisted by Muftis (legal experts). Diwan-Al-Mazalim and Diwan-e-Risalat are the highest courts of appeal in criminal and civil matters respectively. Though these Courts were to be officially presided over by the Sultan, he seldom attended the sessions of the Courts. In the absence of the Sultan, the courts were presided over by Qazi-ul-Quzat, the highest judicial officer of the State. But later, the post of Sadre Jahan was created making him the de-facto head of the judiciary. The Sadre Jahan's Court and the Chief Justice's Court remained separate for long until amalgamated later by AlauddinKhilji. The Chief Justice's Court dealt with both civil and criminal cases and the Chief Justice was assisted by judges who were men of ability and integrity and were greatly respected. Mufti, Pandit, Mohtasib (in charge of prosecutions) and Dadbak (administrative officer) were the officers attached to the Chief Justice's Court. The Diwan-e-Siyasat was primarily a court dealing with cases of high treason.

### **Judicial System in Modern India**

- The East India Company was incorporated in 1601 by the Charter of Queen Elizabeth I. The Charter granted recognition and authority to the Company to facilitate the regulation of trade. With regard to the

administration in Madras, the Charter of 1661 led to the appointment of Governor and the Council in each of its settlement. Once the company became a territorial power, especially at Madras, it introduced an adhoc system of judicial administration, in which the existing native systems were accommodated, as the company preferred a policy of non-intervention in native affairs. The Governor and the Council were empowered to decide on both civil and criminal cases in accordance with the law of England. However, in disputes involving only the natives the native traditions were continued. The year 1665 was of great significance as it witnessed the first trial by jury in Madras in the case of Mrs. Ascentia Dawas during the Governorship of Fox Croft. The appointment of Streynsham Master as the Governor in 1678 resulted in the reorganization of the judicial system of Madras. The Court of the Governor and Council came to be known as the High Court of Judicature and English was declared as the court language. The Charter of 1683 led to the Company establishing Courts of Admiralty to try traders committing various crimes on high seas. The Charter of 1687 authorized the Company to create the Corporation of Madras and the Mayor's Court was attached to it. It functioned as a court of record for the Madras town.

- With regard to the administration of justice in Bombay, the Charter of 1668 authorized the Company to exercise judicial authority over Bombay. The proclamation of 1672 introduced English Law in Bombay and the Court of Judicature and the new central court was established. The application of English law was confined to cases involving Europeans and European interests. The court exercised jurisdiction over civil, criminal and testamentary cases. Further, Justices of Peace were appointed to administer criminal law. After examining the witnesses and making an initial enquiry, the cases were moved to the Court of Judicature. However, the invasion of Sidi Yakub, the Mughal Admiral led to the dissolution of courts in Bombay in 1690. After 12 years, in 1718, the Court of Judicature was revived. The court had jurisdiction over civil and criminal matters. Though the court met only once a week, it was highly regarded for its speedy trial and impartial decisions.

- With regard to the Calcutta Presidency, the Governor and the Council were endowed with judicial powers. In the case of civil and criminal matters, the Company followed the already existing Mughal system of judicial administration. The Faujdari Court presided over by the English Collector decided on the criminal cases and the civil cases were referred to an arbitrator by the Collector. The Collector played a very important role in the judicial administration of Calcutta and the office dealt with civil, criminal and revenue cases.
- Thus, the Charter of 1687 applied only to Madras while the Charter of 1726 constituted a Mayor's Court in each of the three Presidencies. The Charter of 1753 further reformed certain judicial provisions of the Charter of 1726. It also set up five courts namely the Court of Requests, the Mayor's Court, the Courts of the President and the Council, and the King-in-Council. Another landmark in the evolution of Indian judiciary was the Warren Hasting's Plan of 1772. It regulated the system of judicial administration. In 1780, he also reorganized the Provincial Adalats.
- One of the major development in the field of judiciary during the colonial period was the codification of native laws.
- The first Governor General Warren Hasting caused the codification at Hindu Law, and Cornwallis's code was another major contribution. Similarly the Islamic law was also codified and adopted in courts.
- The Regulating Act of 1773 empowered the Crown to establish the Supreme Court of Judicature in Calcutta and the Charter of 1774 expounded on the jurisdiction of the court. However, the Supreme Courts were not established at Bombay and Madras during the same period. The Supreme Courts were established in Madras and Bombay in the years 1801 and 1824 respectively. In 1793, Lord Cornwallis prepared "A Set of Regulations" popularly known as the Cornwallis Code and it dealt with both civil and criminal justice. He reorganized civil courts, abolished court fees and reformed criminal courts. Lord Minto after being appointed as the Governor-General of Bengal in

1807 increased the powers and jurisdiction of the various courts. Lord Hastings who became Governor General in 1813, introduced many reforms in the civil and criminal judicature of the country. Efforts were taken to curb red-tapism in the administration of justice. He was succeeded by Lord Bentinck who reorganized and consolidated the whole system of judicial administration in India. He abolished the Provincial Courts of Appeal and their functions were transferred to District Diwani Adalats. Between 1834 and 1861, the King's Court and the Company's Court formed the dual system of courts with separate jurisdictions. The Indian High Courts Act of 1861 empowered the Crown to establish the High Courts of Judicature at Calcutta, Madras and Bombay and this also led to the abolition of Supreme Courts. This was considered a landmark in the evolution of High Courts in India. Later, the Government of India Act of 1935 effected considerable changes in the nature and jurisdiction of the High Courts. Between independence and the enforcement of the Constitution, seven High Courts at Punjab, Assam, Orissa, Rajasthan, Travancore, Mysore and Jammu and Kashmir were established. The other High Courts were established later. The Constitution of India after being enforced recognized all the existing High Courts and empowered the Parliament to establish High Courts for all the States or combined High Courts for two or more States and Union Territories. The 42nd Constitutional Amendment Act, 1976 brought in drastic changes in the jurisdiction of the High Courts.

- Thus, in the very beginning, there were only the three High Courts of Calcutta, Madras and Bombay. The Acts and regulations prior to independence brought in remarkable changes in their organization and jurisdiction, thereby ensuring their independence and impartiality. After the enforcement of the Constitution, their positions have been strengthened and apart from their original and appellate jurisdiction in civil and criminal cases they also act as the protector and interpreter of the Constitution.

**Source:** Sumeet Malik, V.D. Kulshreshtha's Landmarks in Indian Legal and Constitutional History, EBC Publishing Private Ltd, Lucknow, 2017.

- With respect to the establishment of the Supreme Court of India, the Government of India Act, 1935 is a landmark legislation. The Act attempted to change the structure of the Indian government. There was a shift from a 'unitary' to a 'federal' type of government necessitating the need of a Federal Court. Thus, the Act made specific provision in this regard and the Federal Court was inaugurated in the year 1937. It consisted of a Chief Justice and six judges. In 1950, the Federal Court of India was succeeded by the Supreme Court of India. The Federal Court in its short span of 12 years left an indelible impact on the legal history of India. It was the first court with a national jurisdiction. It was from this Federal Court that its successor inherited the traditions of independence, integrity and impartiality. Also, between 1726 and 1833, the role of the Privy Council requires special mention. It contributed immensely to the judicial system of India, laying down the fundamental principles of Indian law that serve as a beacon to the Indian Courts even today.

### **Sir Hari Singh Gour**

- In 1921, Sir Hari Singh Gour was the first person in the legal history of India to realize the necessity of establishing an All-India Court of Final Appeal in place of the Privy Council.
- The Indian Independence Act, 1947 resulted in the transfer of political power and this necessitated the establishment of a separate and independent judicial body. With this objective, the jurisdiction of the Federal Court was enlarged and the Abolition of the Privy Council Jurisdiction Act, 1949 was passed making the Federal Court of India the highest judicial body in the country. With the enforcement of the Constitution on 26 January 1950, Article 124 provided for the establishment of the Supreme Court of India. Thus, there has been a slow and steady evolution of the Indian judicial system and it has proven to be better and wiser with time.

### **Supreme court of India**

#### **Uniqueness - sources of Law - Jurisdiction and powers - Organization**



The Constitution of India provides for a three - tier judicial system:

1. The supreme court of India
  2. The High courts in the constituent states and
  3. The District and Sessions Courts in the judicial districts in every state.
- The constitution also provides for an independent judiciary i.e. independence of the Executive and the legislature. In a democratic federal polity like India. The Supreme Court assumes a much bigger note as the guardian of the constitution, as an arbitrator in disputes between States and the union Government and in disputes among the States, and as the highest appellate Courts in all civil and criminal cases. It is endowed with the onerous responsibility of safeguarding and enforcing the fundamental rights and freedoms of all citizens of India/ However, unlike the federal system in the USA, the constitution of India of India does not provide for two sets of judiciary (one as federal, another for states). India has only a unitary judiciary system, with the Supreme Court as the apex Court, with authority over all other Courts if India.
  - **The Sources of Law:** The Constitution becomes the fountain source of law in India. Statutes enacted by legislatures of the union, State or Union Territories become another sources of law as long as these are in conformity the basics of the Constitution. Besides the subordinate legislations in the form of rules, regulations as well as by - laws of any administrative body, unless and until negated by the judiciary constitute the third source of law.

### **Integrated Judiciary**

“The Indian Federation, though a dual polity, has no dual judiciary at all. The High Courts and The Supreme Court Constitute one single integrated judiciary having jurisdiction and providing remedies in all cases under the constitutional law, The Civil law or the criminal law. This is done to eliminate all diversities in a remedial procedure”  
-Dr. B. R. Ambedkar

## **Jurisdiction and powers on the Supreme Court:**

- The Supreme Court has original, appellate and advisory jurisdiction. The original jurisdiction of the Supreme court extends to all cases which can originate in the Supreme court. These include disputes between the Government of India and one or more States, or between two or more States. In disputes involving fundamental rights, the Supreme Courts has both original and appellate jurisdiction. It can issue writs of Habeas Corpus, Writ of Mandamus, writ of prohibition, writ of Certiorari and the writ of Quo warranto.
- The Supreme Court is the highest or Apex appellate Court in India, where appeals against judgments of High Courts can be made; ( in both civil and criminal cases)
- The Supreme Court of India has also been vested with certain advisory powers.
- The president can seek its advice on any legislative measure. However the advice of the Supreme Court is not binding on the president (Article - 143).
- The Supreme Court functions as the guardian of the constitution; It is the final authority to interpret the constitutional law, and has the authority to declare any law or executive action, or judgments of lower Courts 'null and void' if the Supreme court find them against the letter and spirit of the constitution. It is also the apex agency to safeguard the fundamental rights listed out in the Constitution.

## **Organization of the Supreme Court**

- The Supreme Court of India has been established by part V, Chapter IV of the Constitution of India. Articles 124 to 147 of the Constitution lays down the composition and jurisdiction of the supreme Court of India. Originally the Constitution provided for the chief Justice and seven lower ranking Judges. The Constitution enables the Parliament

to increase this number. By 2008 the number of judge have been increased (from eight) to 30.

- As to the appointment of the Supreme Court judges, The Chief Justice of India should consult a “Collegium” of four senior most judges of the Supreme court, The Collegium makes the decision in consensus. Every Judge of the supreme Court is appointed by the President after consultation with the cabinet and the Judges of the Supreme court, and such Judges shall hold office until they attain the age of sixty five years. If any of the judges wants to lay down office, he can do so through an hand written signed resignation letter to the president; the Parliament can remove a Judge through an impeachment. To be considered for the office of Judge, one must be a citizen of India and his qualification is per the Parliament’s decision, and the should have been judge of High court at least for a period of 5 years; or an advocates of a high court or of two or more such courts in succession for at least 10 years or the person must be, in the opinion of the president, a distinguished jurist.

### **Impeachment**

A Judge of the supreme Court try an order of the president, after an address by each House of the Parliament supported by a majority of the total membership of that house and by a majority of not less than two thirds of the members of the house present and voting in the same session.

### **Appointments are generally made on the basis of seniority**

Justice K.G. Balakrishnan in 2000 became the first judge from the depressed class. In 2007 he became the first Dalit Chief Justice of the Supreme Court.

The Supreme Court of India under the present Constitution commenced functioning on January 28, 1950. It was placed then in the Chamber of Princes in the Parliament. It moved to the present building in 1958.

Harilal J. Kania was the first Chief Justice of the Supreme Court. The

other judges who assumed office along with him were Justices Sayid Faze Ali, M. Patanjali Sastri, Mehar Chand Mahajan, Bijan Kumar, Mukherjea and S.R.Das.

## High Courts

- The High Court is the head of a State's judicial administration every constituent state is expected to have a high Court. However, at present four high courts have jurisdiction over more than one state. Among the union territories Delhi alone has a high court of its own. Other six union Territories come under the Jurisdiction of nearby state high Courts. Each High court comprises of a Chief Justice and such other Judges as the president may from time to time, appoint. The Chief Justice of the High court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. In appointing other judges, the Chief Justice of that High court is also consulted. The Judges of the High courts hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme court. To be considered for appointment as a Judge one must be a citizen of India and have held a Judicial office in India for 10 years or must have practiced as an advocate of high court.
- The High Courts too have original and appellate jurisdictions, in cases arising within the territories of the State. Each High court has powers of Super intendant over all courts within its jurisdiction. Though the High courts are the part of single and integrated judicial system, yet they are completely independent judicial institutions. The Supreme court has no direct administrative control over them, as they are in any way controlled by either the legislature or executive of the State. But the Judge may be transferred from one High court to another by the president in consultation with the Chief Justice of India.
- The High Court too has the power to issue writ in cases involving 'Fundamental Rights'.

## Legal Remedies for Safeguarding Fundamental Rights

- Both the Supreme court and High court have the power to issue writs with a view to ensure quicker justice and early relief to persons whose rights are violated. There are five such writs.
1. Habeas Corpus: Literally means a demand to produce the person in body. It applies in cases where a person is alleged to have been illegally detained. This writ safeguards personal liberty of every individual.
  2. Mandamus is a command to act law fully and to resist from penetrating an unlawful act, It is meant to direct any authority to perform its legal duty. Mandamus may be issued against any authority, Officers, Government or even judicial bodies that fail or refuse to perform a public duty and discharge a legal obligation.
  3. Prohibition is issued by a higher Court to a lower court or tribunal for prohibiting it from exceeding its jurisdiction. Writ of Prohibition is issued only against a judicial or quasi – judicial body.
  4. Certiorari too lies against judicial or quasi – judicial authorities, and it means ‘to be informed’. The writ of certiorari is issued to quash illegal orders of judicial or quasi – judicial bodies
  5. Quo – Warranto is a question asking ‘with what authority or warrant’. This is meant ascertain the legal position in regard to claim of a person to hold a public office.
- Besides these writs, the High Court’s under Article 226 may issue other directions and orders in the interests of justice to the people.

## **Judicial Review, Public Interest Litigation And Judicial Activism**

### **Judicial Review**

- To safeguard the liberty and rights of individuals, the judicial review power enshrined in the constitution of India becomes important. The

supreme court and the high court's in India are entrusted with the power of judicial review which extends to adjudicating upon the constitutionality of legislations as well as the legality of executive action.

- Parliamentary and state legislations which contravened constitutional requirements have been struck down. The most daring and controversial exercise of judicial review was the invalidation by the supreme court of Bank Nationalization legislation. Legislations which infringed the rights of the minorities to establish and administer their educational institutions have been struck down.
- Judicial review has been extended to review ability of constitutional amendments by evolving the doctrine of the basic structure of the constitution according to which a constitutional amendment which destroys or damages an essential feature of the constitution, for example secularism, democracy and federalism, would be unconstitutional.
- In the administration of law, judicial review in India has been very active. Article 13(2) of the Indian constitution believed that countrywide shall not create any regulation, those abbreviates or takes away the rights as deliberated in part 3 of the constitution. If any rule was created against this clause of the constitution, it will come within the purview of infringement and will be declared as null and void.
- However, but in 2007 the supreme court ruled laws included in this schedule after April 24, 1973 or now open to judicial review cannot be conducted in respect of the laws incorporated in the 9th schedule of the constitution. Judicial review applies only to the questions of law. It cannot be exercised in respect to political issues. The supreme court does not use the power of judicial review of its own. It can only use it when any law or rule is specifically challenged before it.

### **Public interest Litigation**

- Any citizen of India can approach the courts for public case (upon the interest of the public) by filing a petition under (a) the supreme court by article 32, (b) in the high court under article 226 and (c) in the magistrate court under section 133 of the CRPC. The guidelines provide that Public interest Litigations can be filed under the following categories: 1. Bonded labour matters, 2. Neglected children, 3. Non- payment of minimum wages, 4. Petitions from jails complaining of harassment, death in jail, speedy trial as a fundamental right etc. 5. Petitions against police for refusing to register a case, harassment of Bride, Bride burning, rape, murder, kidnapping etc. 6. Petitions complaining harassment or torture of persons belonging to scheduled caste and scheduled tribes. 7. Petitions pertaining to environmental pollution.
- The Public interest Litigation jurisdiction forged by the supreme court is an extension of its jurisdiction under article 32 of the constitution. Public interest Litigation is not in the nature of adversary litigation, but it is a challenge and an opportunity to the government and its officers to make such issues as human rights meaningful to the deprived and vulnerable sections of the society and to assure them socio-economic justice which is the signature tune of the constitution. A Public interest Litigation may be filed against state and central government, municipal authority, but not against any private party.
- Recently in India, many cases from the area of Public interest Litigation has come into picture which has been filed in the court of law. As in 2005 a case was decided by the supreme court named Common cause society Vs. Union of India. In this Public interest Litigation, the petitioner filed a Public interest Litigation praying to the court to enact a road safety act in view of the numerous road accidents. Secondly, in the Sangammal Pandey Vs. State of UP case the Lucknow bench of the high court stayed construction activities near Kanshiram memorial up to a specific date.
- In the Peoples union for democratic rights Vs. Union of India case, the supreme court permitted Public interest Litigations at the instance

of 'public spirited citizens' for the enforcement of constitutional and legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach the courts for relief. Public interest Litigation is a part of the process of 'participate justice' and standing in civil litigation, of that pattern which has liberal reception at the judicial doorsteps.

- In the Parmanand Katara vs. Union of India case the supreme court held in the Public interest Litigation filed by a human rights activist fighting for general public interest, that it is a paramount obligation of every member of the medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

### **Judicial Activism**

Judicial activism as a dynamic process of judicial outlook in a changing society. Arthur Schlesinger Jr. introduced the term judicial activism in 1947, in America in an article titled 'The Supreme court;1947'. According to Black's law dictionary judicial activism is a judicial philosophy which motivates judges to depart from the traditional precedents in favour of new progressive social policies.

- In recent years law making has assumed new dimensions through judicial activism of the courts. The judiciary has adopted a healthy trend of interpreting law in social context. Judicial activism describes judicial rulings suspected of being based on personal or political considerations rather than on existing law. The question of judicial activism is closely related to constitutional interpretation, statutory constructions and separation of powers.
- The Indian constitution, promulgated in 1950, largely borrowed its principles from western models like Parliamentary democracy and an independent judiciary from England, the fundamental rights from the bill of rights and federalism from the federal structure in the US constitution, and the directive principles of state policy from the Irish constitution. These modern principles and institutions were



borrowed from the west and imposed from above on a semi-feudal, semi backward society of India. But these feathers are meant to facilitate transformation in every field, instead of protecting the 'status quo'.

- The Indian judiciary, being a wing of the State has thus played a more activist role than its US counterpart in seeking to transform Indian society into a modern one, by enforcing the modern principles and ideas in the constitution through court verdicts. Article 21 of the constitution has been called up frequently in the Supreme court. Judgments upon this article suggest the trends of judicial activism.
- In the A.K. Gopalan vs. State of Madras case, the supreme court rejected the argument that to deprive a person of his life or liberty, not only the procedure prescribed by law for doing so must be fair, but reasonable and just. However, subsequently in Menaka Gandhi vs. Union of India case this requirement of substantive due process was introduced into article 21 by judicial interpretation. Thus the due process clause, which was consciously and deliberately avoided by the constitution makers, was introduced by judicial activism of the supreme court.
- In subsequent decisions, the Supreme Court has upheld death sentences in cases such as Bagwan Dass vs. state of Delhi case which involved honour killing of a man and woman for marrying outside their caste.

In Australia, the highest court is known as the High Court of Australia while the State Courts are known as the Supreme Court.

## **Constitutional Law, Administrative Law And Indian Penal Code**

### **Constitutional Law**

- It is known that everything man people do is governed by rules. For example there are rules for games and social clubs. Rules of morality and customs also play an important role to establish our day to day

life. Rules that are made by legislatures, for the nation are called 'laws'. Laws in society are a must so our society can regulate its work properly. They are designed to safeguard our property and safeguard us and to ensure that every one in society behaves in a proper manner.

- Essentially, the Constitutional law is the supreme law. All other laws have to conform to the Constitutional law. Constitutional law contains laws concerning the government and its people. Constitutional law is a body of laws which defines the role, powers, and structures of different entities of the State, namely, the legislature, the executive and the judiciary, as well as the basic rights of citizens and, the relationship between the central government and state governments.
- Constitutional law is a set of rules which can either be imposing or directive. It provides a way to regulate the nation by proposing a set of laws which shall be abided by the citizens of the country. It leads the country in the right direction without fail. It includes various fundamental rights, fundamental duties and directive principles. We need constitutional laws to regulate the system that prevails in the country. It acts as an obligation on the citizens where they cannot go beyond its fundamental rights, which is a must so as to monitor the whole nation at a time.
- Constitutional law creates a sense of equality amongst the citizens. It is like a parent to a child who imposes certain conditions but its sole purpose is the well being of the child. The same way Constitutional law acts for its citizens. Constitutional laws provide to some people who can either be elected or nominated for law making depending upon the nation's Constitutional provisions. Constitutional law facilitates the head of the State to administer the whole country which is large, culturally and linguistically diverse.

## **Rule of Law**

- The colonial regime introduced the English concept of 'Rule of Law' in India. The three major features of the Rule of Law are
  1. All are equal before law
  2. Nobody is above law and
  3. The same law is applicable to all.
- The Rule of law ensures 'equality of all citizens in the judicial process and reduces the scope of nepotism, favoritism, arbitrariness, unhealthy executive interferences in the judicial process. Rule of Law provides an effective check to the abuse of authority by executives and administrators. The procedural laws and constitutionally guaranteed fundamental rights ensure enforcement of Rule of Law.

### **Administrative Law**

- Administrative law is the law that governs the administrative actions. As per Ivor Jennings the administrative law is the law relating to administration. It determines the organization, powers and duties of administrative authorities. It includes law relating to the rule making power of the administrative bodies, the quasi-judicial function of administrative agencies, legal liabilities of public authorities and power of the ordinary courts to supervise administrative authorities. It governs the executive and ensures that the executive treats the public fairly.
- Administrative law is a branch of public law. It deals with the relationship of individuals and government. It determines the organization and power structure of administrative and quasi-judicial authorities to enforce the law. It is primarily concerned with official actions and procedures and puts in place a control mechanism by which administrative agencies stay within bounds. There are a few reasons for the development of administrative law in India.
- Firstly, India is a 'Welfare State'. Government activities have increased and thus the need to regulate the same. Therefore, this branch of administrative law was developed. Secondly, there is the

inadequacy of the legislatures. The legislatures have no time to legislate upon the ever changing needs of the society. Even if it does, the lengthy and time taking legislation procedure would render the rule so legislated of no use as the needs would have changed by the time the rule is implemented.

- Thirdly, there is judicial delay in India. The judicial procedure of adjudicating matters is very slow, costly complex and formal. Furthermore, there are so many cases already lined up that speedy disposal of suites is not possible. Hence, the need for administrative tribunals arose.
- Fourthly, as administrative law is not a codified law there is a scope of modifying it as per the requirement of the State machinery. Hence, it is more flexible. The rigid legislating procedures need not be followed again and again. There is a basic difference between constitutional law and administrative law. A constitutional law is the supreme law of the land. No law is above the constitutional laws and hence must satisfy its provisions and not be in its violation. Administrative law is therefore subordinate to constitutional law. Constitutional law deals with the structure of the State and its various organs. Administrative laws deal only with the administration. Administrative authorities should first follow the constitutional laws and then work as per administrative law.

### **Indian Penal Code**

- The Indian Penal Code is the criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The code was drafted in 1860 on the recommendation of the first law commission of India established in 1834. It came into force in British India during the early British Raj period of 1862. The objective of this act is to provide a general penal code for India.
- The Indian Penal Code has a basic format, it is a document that lists all the cases and punishments that a person committing any crimes is liable to be charged. It covers any person of Indian citizenship. The

exceptions are the military and other armed forces, they cannot be charged based on the Indian Penal Code. They have a different set of laws under the Indian Penal Code as well. The Indian judicial system is one that has evolved into a stable and fair system of detention and penalizing, after being tested well for several years.

- The most important feature of the Indian Penal Code is the impartial nature of judgments promoted by the document. The Indian Penal Code does not include any special favours for any special person at some position. Thus, the code stands alike for government employees, as for common man, and even for a judicial officer. This builds up the faith of the common citizens in the law making and enforcing bodies in the country and prevents any sort of corruption or misuse on the part of the people in power.
- The Indian Penal Code includes all the relevant criminal offences dealing with offences against the State, offences in public, offences for armed forces, kidnapping, murder and rape. It also deals with offences related to religion, offences against property and it has an important section for offences for marriage, cruelty from husbands or relatives, defamation and so forth. Indian Penal Code also provides for group liabilities that is, group liability under section 34 in the form of a rule of evidence making each member of the group liable for the final act if he has in any manner participated in action in furtherance of the common intention of all members of the group irrespective of his individual contribution which may have been very small.
- Group liability under section 149 is envisaged making the members of the unlawful assembly vicariously liable for the criminal act which is in furtherance of the common object or what members of the unlawful assembly ought to have known is likely to be committed in given circumstances besides making each of them liable for punishment for being member of an unlawful assembly. The code also makes punishable what are described as inchoate crimes that is, amendment, attempt and criminal conspiracy etc.

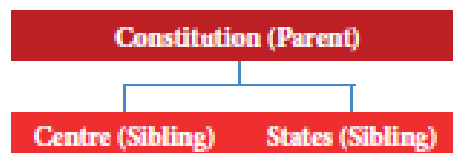
- The Indian Penal Code has been amended numerous times according to the emerging needs. Concepts like sedition which were outside the purview of the Indian Penal Code was included into it after amendments. The need to revamp the criminal justice system was felt for quite sometimes as it has come under severe stress and strain due to changing aspirations of the citizens and the resulting social transformation. The process of criminal investigation, prosecution and adjudication necessarily warrants changes and transformation in tune with the developments in science and technology.
  - The information age has ushered in modern methods of criminal activities which needs new methods of investigation and prosecution. For these, new criminal laws are needed. In view of this the Indian government set up the V.S Malimath committee in 2000 to consider measures for revamping the criminal justice system in the country. The committee submitted its report in 2003. This report has been examined at various levels to consider the various measures recommend by it for revamping the criminal justice system. Some of the recommendations of the committee have been accepted by the government and have been incorporated in the criminal law of the land substantive and procedural.
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# Federalism in India

## Meaning of Federalism

Federalism refers to a political system that possess Constitutionally provided and guaranteed distribution of powers between a national government and several regional governments. The fundamental attribute of a federal Constitution is the Constitutionally created and protected State or regional governments. If regions in a country are distinct in terms of ethnicity, language, religion etc., the ideal form of government will be the federal system. Democratic federalism is the best instrument to ensure 'Unity in diversity'. The constituent States retain and safeguard their distinct linguistic, religious or cultural identity, without compromising the unity of the federated nation. The federal system is based on distribution of powers between the federal or central or Union Government and the constituent States. This distribution is determined by the Constitution, in clear written terms. Hence in any federal system, the Constitution becomes the supreme authority.

### Meaning of Federalism



## Evolution of Federalism

In the modern world, the United States of America became the first federal State. Thereafter British colonies in Australia and Canada were also granted self government and they too adopted federal forms of government. The trilingual Switzerland similarly adopted a federal form of government. The European Union today another example of federal formation on a voluntary basis.

## **Rise of Federalism in India**

The beginnings of federalism in modern India could be traced in the Regulating Act of 1773, which brought the three regions in India under East India Company's authority (Madras, Calcutta and Bombay). The Indian National Movement recognized the plural character of colonial India. The Government of India Act 1919, introduced partial autonomy (Dyarchy) in the Presidencies, while the Government of India Act 1935, granted provincial autonomy to the presidencies and proposed a Dyarchical form of government at the Centre. The Nehru Committee Report in 1928 and Pandit Jawaharlal Nehru's first proposals of a Constitution favoured a federal structure with more powers for the constituent States. The Seventh Schedule of the Constitution contains the three lists relating to the distribution of powers between the Centre and States.

## **Federal features of Indian Constitution** **Indian Constitution possesses several federal features**

### **Written Constitution**

Federalism requires a written Constitution. There are many governments in any federal system and for their smooth and friction free functioning their powers must be stated in crystal clear terms. There are Twenty Eight State Governments and One national government at present operating in Indian federalism and therefore their powers and functions must be clearly defined.

### **Supremacy of the Constitution**

The Constitution must be the supreme legal document in the country. All governments must follow the terms and conditions, procedures contained in the Constitution. No government can claim powers above the Constitution.

### **Distribution of Powers**



The distribution of powers between Centre and States is the cardinal principle of any federal system. Indian Constitution distributes powers between the two levels of governments in a comprehensive scheme. There are three lists of power distribution unlike in the classical federalism of American Constitution where there is only a single mode of distribution.

### **Bicameralism**

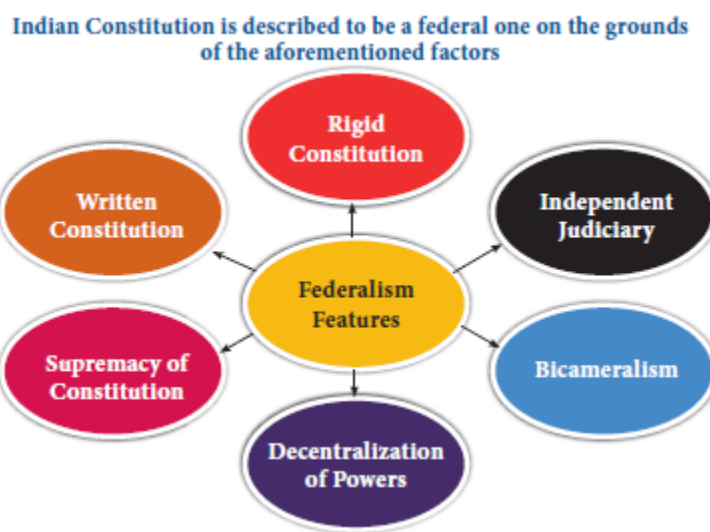
The federal Constitutions provide for bicameralism. It refers to parliament having two houses. Indian Parliament is bicameral as it consists of two houses. The upper house is called Rajya Sabha or Council of States while the lower house is known as Lok Sabha or House of the People. The Council of States is the guardian of States' rights and it consists of the representatives of the States. All over the world the upper house is deemed to be the protector of States' rights and interests.

### **Rigidity of Constitution**

A Constitution will be called a rigid Constitution if its provisions can be amended only through a special process of Constitutional amendment or through a separate amendment body and not through ordinary legislative process. Federal Constitutions do not permit Constitutional changes through ordinary legislative process. They prescribe a tougher, rigid process of amendment like greater majority. The rationale behind this rigidity is the desire to protect States' rights. The article 368 in Part XX Indian Constitution provides a separate amendment procedure for amending Constitutional provisions and therefore our Constitution is rigid one and to some extent protects the States.

### **Supreme Court**

Indian Supreme Court acts as the umpire of the federal system and protector of the Constitution. It possesses the powers of interpretation and adjudication. If any disagreement or contradiction arises among the Central and State Governments the Supreme Court resolves them. The Constitution endows the Supreme Court with Original Jurisdiction. It means that the Supreme Court alone possesses the exclusive powers to resolve any federal dispute between Union Government and State governments or among State governments. If a problem arises between Tamil Nadu and Union Government or between Tamil Nadu and any other State only Supreme Court has powers to resolve it.



There are important differences between Union of States and Territory of India. Union of State refers to the twenty eight states and Central Government. Territory of India means:

1. Twenty Eight States
2. Nine Union Territories
3. Acquired Territory (Any territory acquired by India like Pondicherry, Daman Diu after they became part of India and before they were made Union Territories)

### Unitary or Non-Federal Features of Indian Constitution

Indian Constitution differs greatly from the concept of federalism followed in the classical federal Constitutions like the United States

### **Single Constitution**

India possesses only one Constitution that caters to the needs of administration both in the Centre and States. Like the United States the individual States possess their own Constitution in addition to the national Constitution.

### **Single Citizenship**

There is only one citizenship, exists in India, i.e. national citizenship. In the United States the citizens are endowed with both national and State citizenships.

### **Flexibility of Constitution**

Indian Constitution is partially flexible. Some of the provisions of the Constitution can be carried out by a simple majority in the Parliament.

### **No Right to Existence for States**

Our Constitution doesn't recognize the right of the States to name and existence. The union parliament can change the nomenclature and territorial identity of the States through an ordinary law. The articles 3 and 4 of the Constitution provide the procedure for the creation of new States and abolition of the existing States. An ordinary bill is introduced in either House of the Parliament for creating a new State or changing the name on the recommendation of the President. The bill is discussed and passed in Parliament leading to the creation of new States. A simple majority in Parliament is the requirement for reshaping the identity of the States.

### **Anti-Federal nature of Rajya Sabha**

There are three reasons and areas where critics have criticized it as being against the States' rights and federal spirit of the Constitution.

There is no equality principle followed in the distribution of seats in the Council of States. The seats are distributed on the basis of population of the individual States. The most populous State of Uttar Pradesh has 31 seats whereas the smaller States like Nagaland have only one seat. But in any ideal federalism there should be equality of seat distribution in the upper house as seen in the United States where all the fifty State have two seats each in the upper House of Congress (Parliament) the Senate.

### **Tamil Nadu has 18 Seats in the Rajya Sabha**

Article 249 of the Constitution enables the Rajya Sabha to transfer a subject from the State List to the Union list for the purpose of legislation by parliament on grounds of national interest.

### **Imbalanced Distribution of Powers**

The Union Government is endowed with comparatively greater powers both in terms of quantity and quality. Most of the lucrative sources of revenue have been allotted to the Union Government and the States have been rendered financially weaker and forever dependent on Central Government. The Union List has more subjects than the State List and in the Concurrent List ultimately the union power over the States will prevail. The residuary powers are given to the Union Government and not granted to the States as in federal countries like the United States.

### **Emergency powers**

The articles 352 to 360 in Part XIII of our Constitution provide for three kindsof emergencies in India. Article 352 of the Constitution can proclaim National Emergency. Under article 356 of the Constitution the President can impose emergency in any State on the grounds of the

breakdown of Constitutional machinery in the State. Under article 360 of the Constitution, the President can declare Financial Emergency.

### **Integrated Judiciary**

India establishes a single, integrated and hierarchical judiciary. The Supreme Court is the apex judicial institution and the High Courts and the Subordinate Courts function under its supervision and power. In contrast, the classical federalism is following the United States.

### **Election Commission**

The National Election Commission conducts elections not only to Parliament but also to the State legislatures. There is a unified election machinery in charge of both Parliament and State legislature elections. The Chief Electoral Officer under the control of the Election Commission conducts the elections to the State legislatures. In the ideal federal systems, there is a separate election machinery for conducting elections to the State legislature.

State Election Commission is not part of the federal system in India. It conducts elections to Panchayat Bodies and Urban Local Bodies in accordance with 73rd and 74th Constitutional Amendments.

### **Unified Auditing**

India follows a unified auditing system for both the central and State governments. The Comptroller and Auditor-General as mentioned in article 148 of the Constitution controls the entire financial system of the country.

### **Centre-State Relations**

The Centre-State Relations revolve around the fulcrum of distribution of powers between Centre and States. Distribution of

powers is the foundational feature of federalism and in federal Constitutions there are three types of distributions, they are:

1. Legislative Power Distribution
2. Executive Power Distribution
3. Financial Power Distribution

## Legislative Relations

There are two aspects to the distribution of legislative powers between the Centre and States in our Constitution. They are

- a. Territorial Distribution of Powers
- b. Subject Distribution

### Territorial Distribution of Powers

The powers are distributed between the union and State governments territorially. The Union Government possess the powers over the entire territory of India while the States have jurisdiction over their own territories. The Central Government has extra territorial jurisdiction that means that its laws govern not only persons and property within India but also Indian citizens and their properties located in any corner of the world. In contrast, the State legislatures donot possess jurisdiction outside their own territory.

### Subject Distribution

The Constitution distributes the legislative subjects between the Union Government and States in an elaborate scheme. There are three Lists of distribution.

**List I (Union List)** contains the subjects and powers exclusively allotted to the union parliament. There are 100 subjects here including defense, foreign affairs, banking, currency

**List II (State List)** contains the subjects that are exclusively allotted to the State governments. There are 59 items including public order, and police, public health, local government, agriculture, forests, fisheries

**List III (Concurrent List)** contains 52 items including criminal law and procedure, civil procedure, marriage, education. This list is called as Concurrent List. Both the union and State governments have powers over these subjects. But when there occurs a clash between the union and State governments the law of the parliament will prevail

There is also another category called residuary powers. Any subject not mentioned in the above three lists will automatically come under the jurisdiction of the Union Government. Our Constitution broadly follows the legislative distribution of powers provided in the Government of India Act 1935 enacted during the British colonial era.

### **Exceptions**

The above scheme of legislative power distribution will be normally followed. But under exceptional circumstances the scheme will be suspended. The power of the Union Parliament will be expanded and concomitantly the powers of the State legislatures will be diminished.

### **National Emergency**

When the President of India declares National Emergency the union parliament acquires the powers to legislate over the subjects in the State List. The emergency is declared by the president to tackle problems like war, external aggression and armed rebellion that pose a danger to the existence of our nation. For the purpose of tackling the challenges successfully and effectively, the Union Government gains control over State legislature powers too.

### **Agreement between States**

When two or more States agree that their mutual interests will be served better if there is common law on a particular subject and request

the Union Government to enact the needed law, the Parliament can enact a common law for the desiring States on that subject even if it falls in the List II (State List).

### **International Agreement**

The Parliament will have powers of enactment on a State subject for the purpose of implementing an international agreement.

### **Article 356, Emergency**

After the declaration of article 356 emergency in a State the President can declare that the parliament will enact on State list subjects for that State.

### **Executive Relations**

Our Constitution distributes executive powers between the union and State governments. The distribution is co-terminous with legislative power distribution to a great extent. The Union Government possesses executive powers over the subjects that are included in the List I, namely the Union List. The States have executive powers over the subjects that are included in the List II, namely the State List. The executive power of the Union Government extends over the territory of India while the executive power of the State governments extend over their own territories

The executive powers over the subjects in the Concurrent List is ordinarily with the State governments. Nevertheless, the Union Government retains powers to issue directions to the State governments in the execution of executive functions both in normal times and during emergencies.

Another feature in the executive powers distribution scheme in the Constitution relates to mutual delegation of functions between the union and State governments. The Union Government can entrust its functions to the State government after getting the consent of the State



Government concerned. Conversely, the State Government can entrust its executive functions to the Union Government after getting the consent of the Union Government. Moreover, the Union Government can entrust its executive function to the State Government without getting the consent of the State Government concerned but it must obtain the consent of the parliament.

## **Financial Relations**

Finances are very fundamental in the successful operation of federal system. Indian Constitution distributes financial powers between the union and States in a comprehensive arrangement that is broadly modeled on the 1935 Government of India Act. There are two sources of revenue distributed by the Constitution namely Tax Revenue and Non-tax Revenue.

### **Tax Revenue Distribution**

There are five important ways in which the tax revenues are distributed between the union and State Governments.

1. Certain taxes like Corporation tax and Custom tax are exclusively allotted to the Central Government
2. Certain taxes like sales tax are exclusively allotted to the States
3. Certain taxes are levied by the Union but collected and appropriated by the concerned States and the examples are stamp duties on Bills of Exchange and Excise duties
4. Certain taxes are levied and collected by the Union Government but the proceeds are assigned to the States in which they are levied like the taxes on the sale of advertisements in newspapers.
5. Certain taxes are levied and collected by the Central Government and are distributed between the union and State Governments in a certain proportion like the tax on income other than an agricultural income

### **Non-tax Revenue Distribution**

Both the union and State Governments are provided with non-tax revenue sources. The Union Government gets its revenue from the receipts from commercial and industrial undertakings relating to central subjects like Industrial Finance Corporation. It gets its revenue from Railways, Posts and Telegraphs, Broadcasting etc

The State Governments get revenue from the receipts of commercial enterprises and industrial undertaking allotted to them. The sources among others include forests, irrigation, electricity, road transport.

The Constitution understands the greater financial needs of certain States and therefore the article 275 asks the Union Government to provide Grants-in- Aid to the States like Assam, keeping in mind the imperative of the development and welfare of the tribal population.

### **Finance Commission**

The president of India constitutes a Finance Commission once in every five years. The article 280 of the Constitution describes the composition of the Finance Commission. It will have one Chairman and four other members. The Chairman will be a person with experience in public affairs and the members will have experience in financial administration, special knowledge of economics, special knowledge of public accounts and government finances, and one member will have the qualification of a High Court judge.

**Finance Commission will provide recommendations in the following manner:**

1. For the distribution of net proceeds of taxes between the Centre and States
2. Principles governing grants-in-aid
3. Measures needed to increase the Consolidated Fund of India or States to supplement the resources of the Panchayat Bodies
4. Measures needed to increase the Consolidated Fund of India or States to supplement the resources of the Urban Local Bodies
5. Any other matter referred by the president

So far fourteen Finance Commissions have been constituted once in every five years

### **Co-operative Federalism**

The Indian Constitutional expert Granville Austin described (Granville Austin, renowned scholar of the Indian Constitution, described) Indian federal system as Co-operative Federalism designed to promote co-operation between the Centre and States. The concepts of co-operative federalism applies to those federal governments like the USA where the States have more or adequate powers and the formation of the union is based on “the indestructible union composed of indestructible States”. In a quasi federal State like India, the Union Government can very easily pull down any constituent State for non-cooperation or non-compliance or defiance of Union Government’s will through Constitutional provisions, especially through the emergency powers assigned to the President. The Constitution does not permit States defiance to Centre.

There are many provisions, institutions and bodies created in Indian political system to promote the co-operative functioning of the central and State Governments in India. They can be classified into Constitutional, statutory and political bodies and provisions.

### **Constitutional Provisions and Institutions**

The Constitution itself has created a number of devices to promote cooperation and co-ordination.

#### **Inter-State Council**

The article 263 of the Constitution says that the President of India can establish the Inter-State Council to serve public interests. There are three functions and duties assigned to the Inter-State Council

- a. To enquire into and advise upon disputes among the States

- b. To investigate and discuss the subjects that are common to the union and State Governments
- c. To make recommendations to the President for better co-ordination on any particular subjects among the State Governments.

A number of councils have been created to promote cooperation on specific subjects in the past like the Central Council of Health, Transport Development Council, and Central Council of Local Self-Government.

The holistic Inter-State Council was established in early nineties to deal with general cooperation among the units of Indian federal system on the recommendation of the Sarkaria Commission. The Prime Minister functions as the chairperson of the council. The Chief Ministers of all the States and Union Territories with Legislative Assemblies, six cabinet ministers of the Union Government, administrators of the Union Territories without Legislative Assemblies and Governors of States under President's Rule are its members. A Standing Committee consisting of the Union Home Minister, five other Cabinet Ministers and nine Chief Ministers also works as part of the Inter State Council to promote co-operation among the members of the federal system.

### **Statutory Bodies**

There are certain bodies created through the statute of the parliament but not mentioned in the Constitution that function to promote cooperative federalism.

### **Zonal Councils**

The Zonal Councils were established by the States Reorganization Act in 1956 to achieve cooperation and co-ordination among States. They were created in the backdrop of linguistic reorganization of India and the first Prime Minister of India Jawaharlal Nehru described their objective as to "develop the habit of co-operative working". Originally

five Zonal Councils were created and later on in 1971 one more Zonal Council was established for the North Eastern States. They are

1. Northern Zonal Council
2. Southern Zonal Council
3. Eastern Zonal Council
4. Western Zonal Council
5. Central Zonal Council
6. North Eastern Zonal Council

The Union Home Minister will be the common Chairperson of all the Zonal Councils. Additionally, each Zonal Council will consist of the Chief Minister and two other Ministers of the each State and the Administrator of the Union Territory in the zone. The Zonal Councils will discuss and suggest measures to promote cooperation among the members in areas like economic and social planning, border disputes, inter-State transport etc.

### **River Board**

The River Boards Act, 1956 establishes River Boards to provide advice to the concerned governments concerned for the regulation of an inter-State river or river valley.

### **Water disputes Tribunal**

The Inter-State Water Disputes Act, 1956 was enacted in accordance with the article 262 of the Constitution that mandated that all inter-State river disputes should be resolved through negotiations. The act provides for the formation of ad hoc tribunals for resolving inter-State water disputes if repeated negotiations prove to be futile in resolving the issue.

## **Political or Resolution Bodies**

### **NITI AAYOG**

The Union Government created the National Commission for Transforming India after dissolving, 65 year old, the Planning Commission on January 2015. The Prime Minister is the ex officio chairman and the permanent members of the governing council are all the Chief Ministers of all the States, Chief Ministers of the Union Territories of Delhi and Puducherry and the Lieutenant Governor of Andaman and Nicobar Islands. One of the primary objectives of the commission is to “foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis”. It recognizes that strong States will make strong nation. But, without Constitutionally empowering more the constituent States and adequate devolution of revenue resources, the States continue to remain over dependent on the Union Government, even in matters relating to tackling of natural calamities.

### **Inter - State River Water Dispute**

Inter-State River Water Disputes play a crucial role in the evolution of federalism in Indian politics. There are a large number of such disputes in our country. The Cauvery dispute involving Tamil Nadu, Karnataka, Kerala and Puducherry Union Territory, Vamsadara River dispute involving Andhra Pradesh and Odisha, Sutlej dispute involving Punjab, Haryana, Mahadayi river dispute involving Goa, Maharashtra and Karnataka are the major ones. We have the following dispute settlement mechanism in Indian federalism to solve them.

### **Constitution and Inter - State River Water Disputes**

The article 262 of the Constitution empowers the parliament to enact a law providing for the adjudication of any dispute, complaint relating to the use, distribution and control of any inter-State river or river valley. It also provides that parliament can exclude the Supreme Court or any other court from exercising any jurisdiction over inter-State river water disputes. For this purpose, parliament is empowered to

enact a law overriding any provision of the Constitution. The logic of this provision is that inter-State river water disputes contain emotional and economic implications affecting the lives and livelihood of millions of people. Judicial adjudication of the disputes may create social and economic problems. Therefore, the national legislature must have competence to evolve a mechanism for resolution of these disputes through negotiations and direct dialogue.

### **Inter-State River Water Disputes Act, 1956**

Empowered by the article 262 of the Constitution the parliament enacted inter- State river water dispute act, 1956. This act enables the Union Government to establish a tribunal for the adjudication of an inter- State river water dispute. The Indian Constitutional and legal consensus is that all inter-State river water disputes must be resolved through peaceful negotiations. If no fruitful decisions can be reached through negotiations, the States concerned can approach the union for the Constitution of a tribunal on ad hoc basis for resolving that issue.

When the Union Government decides to constitute a tribunal, the Chief Justice of Supreme Court of India will nominate a person to head it. Earlier, the tribunal always used to consist of one person only but later on this provision was amended to include more members. The Chief Justice will choose a person (nominee?) from the sitting or retired Judges of the Supreme Court and High Courts. The decision of the Tribunal shall be published in the Official Gazette and there after that decision shall be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court shall have jurisdiction over any inter-State water dispute referred to a tribunal under the Act. No tribunal can be constituted for any dispute that has been placed for arbitration under the River Water Board Act, 1956.

In shortly, we can say that our Constitutional, legal and political strategy advocates a dual strategy to resolve inter- State river water disputes. It advocates negotiated settlement as the first choice if negotiations fail to resolve the issues, an ad hoc tribunal based adjudication should be established.

## Issues and Demands in Indian Federalism

There are many issues in Indian federalism that create disturbances in the Centre-State relations. We will focus on the major problems in this section.

### Appointment and Role of the Governor

The very office of the Governor as an agent of the Central Government to monitor the State Government imperils the powers of the constituent States. The Raja Mannar Committee Report was highly critical of the office and role of governor. It is often pointed out that the Union Government to arm-twist the State executive. The Dravidian parties, since the days of C.N. Annadurai, have been demanding 'genuine autonomy for the States, by reducing the Governor's power of interfering with the State executive and State legislature.

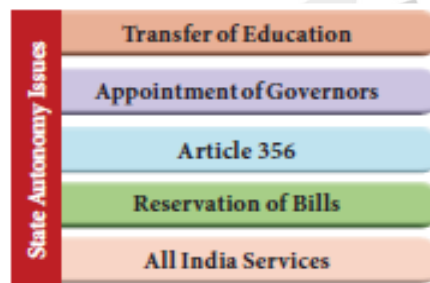
The regional parties have deprecated the practice of appointing politically active and partisan persons as governors. They have frequently demanded that the governor should be appointed in consultation with the State Government. Many political commentators and commissions have argued for the appointment of eminent persons who have contributed to India's development in diverse fields as governors.

The attitude of the Governor towards the State Governments of those ruled by parties opposed to the ruling party at the Centre is another major tension area in Centre-State relations. Whenever there is a split in a ruling State party or hung assembly, the role of the Governor becomes very crucial and in many instances, the regional and opposition parties have agitated against the decisions of the incumbents in gubernatorial office.



## Education

There is a popular demand that the subject of education must be restored to the List II or State List in which originally it was located. The Parliament in 1976 enacted the 42nd Constitutional Amendment Act that transferred the subject of education to the List III or Concurrent List. The State Governments exclusively had authority over education when it was in State List and the Union Government acquire education after this transfer. As we learnt earlier when a contradiction arises between the States and the Central Government in the Concurrent List the authority of the Central Government or Parliament will prevail. Many political parties in States like Tamil Nadu are demanding the transfer of education back to the State List.



## Reservation of State Bills for Presidential Consideration

The Governor of a State has discretionary power to reserve a bill of the State legislature for the consideration of the President. Whenever a money bill of the State legislature is reserved by the Governor the President may either declare or withhold his assent. In case of other bills, he can declare or withhold his assent. He can also direct the Governor to send the bill for reconsideration to the legislature concerned. Even if the bill is again passed by the State legislature it is not obligatory for President to declare his assent. This provision was incorporated in the Constitution to protect the unity and integrity of India.

But many State Governments have criticized the Governors for reserving the duly passed State bills for the consideration of the President as there were alleged to have been motivated by political

considerations to suppress the State Governments and to further the interests of the ruling party or coalition at the Centre.

### **Improper use of Article 356**

The article 356 in Part XVIII of the Constitution provides for the proclamation of Emergency by the President in any State where there is a breakdown of Constitutional machinery either based on the report of the Governor or even otherwise. The article emphasizes on the supremacy of the Constitution and national unity and integrity. The State Governments ruled by the opposition parties of the ruling party at the Centre have complained against the frequent and improper use of this article by the ruling party or coalition at the Centre. More than a hundred times, the article has been used to impose emergency in States and in many instances there was a huge complaint that political and party considerations have led to the imposition of the President's Rule. Many regional parties have demanded the abolition of this article. However, since the Supreme Court's judgement in S.R. Bommai vs Union of India case, the chances for misuse of article 356 drastically reduced.

### **All India Services**

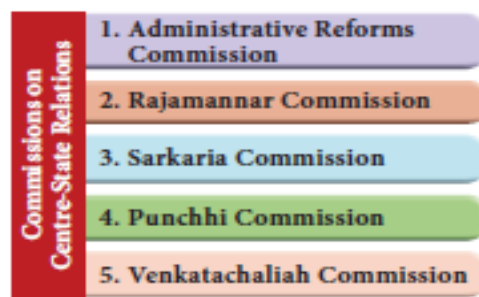
All India Services are created under article 312 of the Constitution. The officers to these services are recruited by the Union Government and posted in the States. The State Governments have powers of posting, transfer while the Central Government alone has powers to dismiss them. As the ultimate control over the All India Services are with the Central Government the State Governments have sought changes in the system and the Rajamannar Commission of Tamil Nadu government suggested a complete revamping in the structure and position of All India Services.

### **Commissions on Centre-State Relations**

A number of commission have been formed in past to study and provide recommendation on Centre-State relations.

## Administrative Reforms Commission

There were two Administrative Reforms Commissions established in the past to provide recommendations for reviewing and reforming the administrative system of the country. The First Administrative Reforms Commission was formed in 1966 initially under the leadership of Morarji Desai and later on by K. Hanumanthaiah. It submitted twenty reports including one in which extensive suggestions were provided in the domain of Centre-State relations. The Second Administrative Reforms Commission was constituted in the new millennium in 2005 under the chairmanship of initially Veerappa Moily and later on by V. Ramachandran.



## Rajamannar Commission

The Tamil Nadu government established the Rajamannar committee to analyze and provide recommendations for restructuring the Centre-State relations in our Constitution. The committee consisted of the retired Chief Justice of Madras High Court Justice. P.V.Rajamannar, former Vice- Chancellor of the University of Madras, Dr A Lakshmanaswamy and a former Chief Justice of Andhra, Dr P. Chandra Reddy. It submitted its report to the government in 1971 marking a great milestone in the history of autonomy debate in the country. The major suggestions of the committee include

The article 263 of the Constitution should be implemented and Inter-State Council should be formed to promote cooperation among central and State Governments. The proposed council must consist of the Chief Ministers of the States or their nominees and the Prime

Minister as the Chairperson. All the major bills of the Parliament and decisions of the Union Government that affect the interests of one or more States must be placed and discussed in the council. Its opinion should be considered in the decision making process. The committee's made consultation with the Inter State Council is mandatory in all matters barring those related to the two subjects, namely defence and foreign affairs.

The committee recommended the elimination of articles 256, 257, 339(2) from our Constitution. The committee was against specifically these articles as they enable the Centre to issue instructions to the State Governments

It favored the shifting of the residuary powers of legislation and taxation from the Union Government to the State Governments to empower the States.

The article 356 in Part XVIII of the Constitution should be diligently used by the Union Government only as a measure of last resort in the event of a complete breakdown of the Constitutional machinery in the State and not in a mere law and order break down situation.

The committee wanted to introduce far reaching changes in All India Services. It suggested the abolition of All India Services including the elite Indian Administrative Service as they are against the spirit of federalism and State autonomy. It highlighted the concerns of the State Governments ruled by opposition parties of the ruling party at the Centre about the All India Services acting as agents of the Union Government.

In the domain of financial resources the committee recommended greater devolution of powers and resources to the States. For the purpose of expanding the financial capacity of the States it suggested changes in certain taxes like corporation tax, customs and export taxes. The committee recognized the finances as the fulcrum of State rights and balanced federalism and therefore recommended the transfer of many

items from Union List and Concurrent List to State List in the seventh schedule of the Constitution. It argued for making the Finance Commission a permanent, impartial body devoted to the priorities of national unity, development and State rights and identities.

### **Sarkaria Commission**

The Union Government constituted a commission under the chairmanship of Justice R.S.Sarkaria in 1983 to review the Centre-State relations. B.Sivaraman and Dr.R.S.Sen were the two other members of the commission. Five years later, it submitted a comprehensive report containing 247 recommendations.

### **Inter State Council**

It recommended that the Inter-State Council must have the functions laid down in article 263 (b) and (c) that is to investigate subjects where many States have common interest and to make recommendation for better co-ordination of policy in that subject. The commission argued against article 263(a) stating that the Inter-State Commission should not have powers to enquire and advise on inter State disputes. The commission also suggested the establishment of an independent, permanent secretariat for Inter-State Council to make the body more effective.

### **Article 356**

It suggested that the article 356 must be imposed only meagerly, as a measure of last resort when there is a complete breakdown of Constitutional machinery in a State. All available and possible alternatives should be explored before the imposition of the article 356 Emergency in the State concerned.

### **Governor**

The commission rejected the demand and suggestion of some political parties and States that the office of governor must be abolished

or the concerned State Government must be consulted before the appointment of State governors. On the contrary, for smoother functioning of federalism it suggested that the politically active persons and leaders should not be appointed as governors. Only eminent persons must be appointed as governors. When differing parties are ruling at the Centre and States the leader belonging the ruling party at the Centre must not be appointed as the governor of a State.

## **Language**

It recommended the strict adherence to the tri language formula to strengthen the unity and integrity of the country.

## **Punchhi Commission**

The Union Government constituted a commission in 2007, under the leadership of Justice Madan Mohan Punchhi, the former Chief Justice of the Supreme Court in 2007. The commission also had three more members and a Secretary and presented its report in 2010. It recommended that the governors of the States must have fixed tenure and they should be removed only through impeachment process akin to the President of India. It wanted to introduce changes in articles 355 and 356 so that insurgency or problem afflicted areas or districts in a State rather than the entire State can be brought under emergency as a strategy to localize emergency and efficiently handle insurgency or troubles. The commission also suggested that the Union Government must have power and authority for the suo motu deployment of central forces without the consent of the concerned States in areas affected by communal violence.

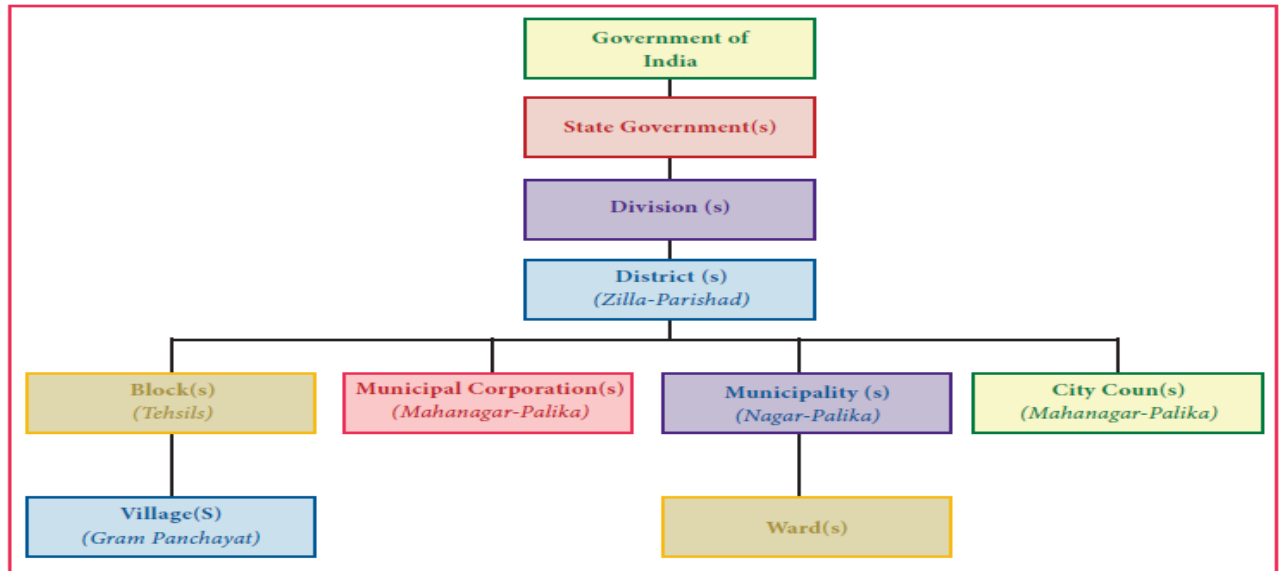
## **Venkatachaliah Commission**

The National Commission to review the working of the Constitution (NCRWC) also known as Justice Manepalli Narayana Rao Venkatachaliah Commission was set up by a resolution of the NDA Government of India led by Atal Bihari Vajpayee on 22 February 2000 for suggesting possible amendments to the Constitution of India.

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12<sup>th</sup> Std political science  
Unit – 6 Administrative Machinery in India

Framework of Indian Administration



Evolution of Indian Administrative System since Independence

- Modern India's administrative system had its beginnings in the colonial era. Until 1773, There was no regular system of administration in company's newly acquired territories in India. In theory the East India company acted as the agents of the Mughal Emperor, or the Nawabs. They managed the revenue affairs with nominated officials and traditional native sub staff. They gave priorities to military and policing requirements. Most of the Company's officers were ill educated, in experienced and untrained.
- As the foreign officers had no respect and sympathy for the native people, and as they were not accountable to any legislature, mal administration and corruption became order of the day. English parliamentarians like Edmund Burke brought such issues to the notice of the parliament. Such parliamentary criticisms resulted in the introduction of the regulating Act 1773 and the successive Charter Acts, through which the Company's Indian administration was

brought under the surveillance of the British Parliament. The Court of Directors and the Board of Control in England were subordinated to the parliament and the British Cabinet. Thus the administration of Company's territories was systematized, regularized and made accountable to parliament.

- Thereafter the English officials to India were trained at Haileybury College. The selected officers of the Superior cadre were known as the members of the Covenanted Service. They assisted the Governor Generals and Governors in administration. Indians were appointed for middle level and interior services. As the company was unwilling to interface in native traditions, and as it was desirous of winning the support of the influential. And traditional classes and castes for the colonial regime, They mostly accommodated people from such classes and castes in the middle level or lower level administrative assignments. There was no regular system for appointments in the middle and lower level offices.
- Persian was retained as official language till 1840: As such the English people were having a monopolistic hold over the superior services and native elites cornered all lower level offices. Gradually there emerged a demand for accommodating Indians in superior services. The introduction of European model of education and English medium prompted the Indians educated in the Macaulay system to plead with the colonial authorities for throwing open the higher services to Indians. After the Crown took over the Indian administration in 1858. The administrative system was revised, and the Indian Civil Service (ICS) organized. Offices to highest administrative and judicial positions were to be chosen through a competitive (ICS) examination and training. The elite Indians wanted age relaxations for Indians, and also insisted simultaneous ICS examinations in India too. These because the early demands in the Indian national movement.
- Until the 1919 Government of India Act, Indians could not occupy the highest executive posts. The Dyarchy, under the said Act, provided the 'transferred departments' to be entrusted to the Indian ministers,



chosen from the elected members of the legislature. But the Executive officials continued to be under the control of the Governors. It was during this period, the adhere appointments to lesser services was protested and a regular public service commission was contemplated. After India's independence, the existing services were reformed: ICS was replaced with Indian Administrative Service(IAS) thus the administrative system was totally India missed and recruitment through Public Service Commission because the basic feature.

### **Indian Administrative System in the post Independent era:**

- The functions and responsibilities of the Indian administration had to undergo significant changes in the Independent India. It is made accountable to the legislature and executive. As the Government of India preferred a welfare state, the responsibilities of the administrative agencies increased manifold.
- The new Government under Jawaharlal Nehru. Opted for 'democratic Socialism' and introduced a planned economy to achieve modernization, equalization, and tester growth. 'Mixed economy' was chosen to ensure the combination of democracy and socialism. Basic industries ( Like steel and iron) were developed through Government sector. While the private sector was allowed to involve in medium industries, transport, aviation etc. The administrative system had to exert more to achieve the goals in each plan. The first three ' Five year plans' yielded tremendous results. But thereafter the Indian economy had to confront several crises. Capitalism in Its 'Corporate' facade triumphed, the tall of the Soviet union, and other socialist countries. Creation a new challenge By 1990, India has fallen in line with the trend of Globalization - Privatization - Liberalization. The Indian administrative system adopted itself admirably to the Changing conditions. Corruption is a serious issue, but Corruption at highest level involving highest administrative officers is nothing to do with the economic order that the nation Chooses from time to time, as we found similar corruption in pre - Nehru era, as well as in the current economic order. There were corruptions and corrupt

officials in every order, but for that reason, we ought not condemn the whole democratic system.

- While the Colonial regime introduced modern administrative devices like Survey, Census, Creation of a number of departments to deal with exclusive issues, the post - colonial era regimes in India successfully segregated judicial functions for executive functions, and introduced a number of measures for the welfare of the people in the eradication of diseases extension of education massive irrigation schemes, electrification, for health and hygiene, in improving and expanding roads and railways.
- In every scheme of the parliamentary executive the administrative system plays a pivotal role. But for the trained, experienced and motivated administrative system, none of the developmental plans could have been materialized.
- There are now efforts to further democratize, modernize and humanize the Indian Administrative System So as to make them adequately relevant to the changing time. In a democratic system the officialdom ought not to be insulated from criticisms and responsible and lawful interventions. At the same time the officialdom cannot be degenerated as the wings of unethical and unlawful political activism. 'Checks and balances' would ensure a letter administrative system. It has to be and has to be guarded against pressures from extra- national and transnational forces.
- Our present constitution provide for a centralized administrative system. The personnel's in the State categories are subjected to twin masters, the state executive and the union executive. The administrative services created by the states are also subjected to union's supremacy. Liberalization does not mean that the bureaucracy is being relieved from excess burden, but if means reducing government's regulatory control over private sector. In the same way we now found a trend towards more centralization in policy making and policy enforcement. The Indian administrative system, which worked for the democratic socialist economy and

planned economy earlier is now given the task of more privatization and more centralized taxation system. This new arrangement now known as new public Management (NPM) movement in public administration.

- The Indian administrative system has to cope up with the enforced new economic order. It has to strive for opening domestic markets to new investors, i.e. Corporate from both India and abroad. Now the administrative system has to work for disinvestment, desubsidization, liberalizing and centralizing the tax – system in favour of trade and investors. Mining, ports, petroleum, airways are systematically being corporatized. Labour laws being revised. The Indian bureaucracy has to carry out the guidelines of transnational or globe bodies like world Bank, world Trade Organization, International monetary Fund in the domestic arena.
- The formation of regulators like IRDA, TRAI, CCI, PFRDA, SEBI, etc. have been a step in the same direction, further the idea of extending this concept to other areas is also being mooted, viz., in the infrastructure and mining sector. These reform proposals were also followed by reforms in the tax administration in the form of introduction of the VAT regime, introduction of a low and uniform tax rate regime, which is seen as the precursor to the uniform Goods and Services tax (GST). In all, these measures were received well by the industry and the markets and the numbers of economic growth started showing signs of increase and so much so that it is believed that the process of economic reform in India has been instrumental in pulling out more than 300 million out of poverty in India in a period of 20 years. Now-a-days the bureaucracy enjoys enormous powers not because it has a greed for power but because the need of the modern technological civilization has demanded this delegation. In recent times, there has been accelerated change globally brought about by technological advances, greater decentralization and social activism. The ramifications of these changes are being felt by government in the form of increasing expectations for better governance through effective service delivery, transparency, accountability and rule of law. But the public perception about the

members of the civil services, who function at cutting edge and higher coordination and policy making levels, is that they are 'burdensome low-performers' heading a highly bloated bureaucracy which is often perceived to be corrupt and inefficient in governing the country. The introduction of right to Information (RTI) Act, citizen charters and Social audit makes the administration more responsive and accountable to the public.

## **Ministry, Department, Boards and Commissions**

### **Union Government Ministries/Department**

- The main policy making institution in the Union government is the central secretariat which comprises all the ministries and departments which in turn characterized by certain patterns of structural arrangements and functional specifications.

### **Structure of a Ministry**

Ministry of Central Government has a three tier structure consisting of

- Political Head, who is a cabinet minister assisted by minister of state and deputy minister. Sometimes a minister of state may also be a political head of a ministry/department holding an independent charge.
- Secretariat organization headed by a secretary who is a career civil servant. He is assisted by Joint secretaries, Deputy Secretaries, Undersecretaries and office establishment.
- Executive organization under a head of the department who is known by various designations like Director, Director-General, Commissioner, Inspector-General, Chief Controller etc...
- A ministry is primarily divided into departments .Each department is divided into wings. Each wing is in turn divided into divisions which are further divided into branches. Each branch is divided into sections. A section is the lowest level and smallest organizational unit of a ministry/department.

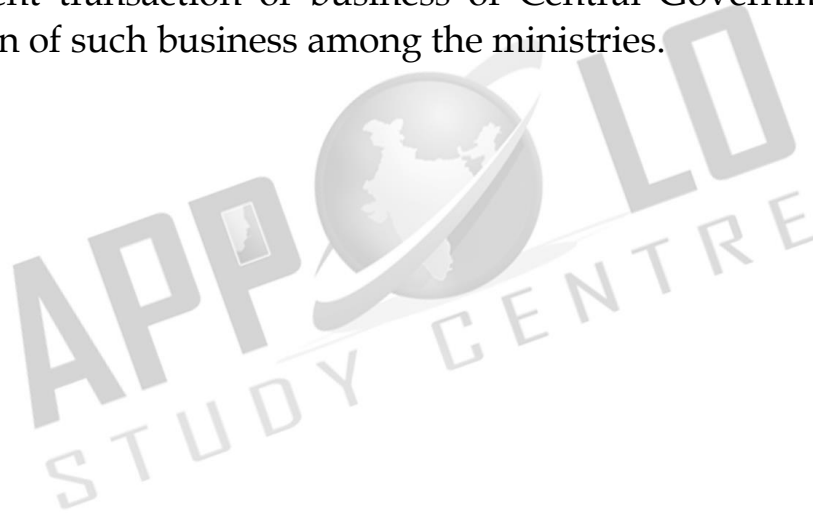
Department (Secretary)
------------------------

Wing (Additional/Joint Secretary)  
Division (Deputy Secretary)  
Branch (Under Secretary)  
Section (Section Officer)

- Under the Government of India, Rules of Business, 1961, the ministries departments in the Government of India were as follows

### **Central Secretariat**

- The central secretariat comprises of all the ministries and departments of the central Government. Article 77 of the Indian Constitution authorizes the President of India to make rules for more convenient transaction of business of Central Government and for allocation of such business among the ministries.



## Role and Functions

- The Central Secretariat is a policy making body of the government and is not, to undertake work of execution, unless necessitated by the lack of official agencies to perform certain tasks. The Central Secretariat normally performs the following functions:
  1. Assisting the minister in the discharge of his policy making and parliamentary responsibilities.
  2. Framing legislation, rules and principles of procedure.
  3. Sectoral planning and programme formulation.
  4. Budgeting and control of expenditure in respect of activities of the Ministry/department.
  5. Supervision and control over the execution of policies and programmes.
  6. Initiating steps to develop greater personnel and organizational competence both in the ministry/department and its executive agencies.
  7. Coordination and interpretation of policies, assisting other branches of government and maintaining contact with state administration.

## Union Government Ministries/Department

### 1. Ministry of Agriculture and Farmers Welfare

- Department of Agricultural Research and Education (DARE)
- Department of Agriculture, Cooperation and Farmers Welfare
- Department of Animal Husbandry, Dairying and Fisheries

### 2. Ministry of AYUSH

- Ministry of Chemicals and Fertilizers
- Department of Chemicals and Petrochemicals
- Department of Fertilizers
- Department of Pharmaceuticals

### 3. Ministry of Civil Aviation

- Ministry of Coal

- Ministry of Commerce and Industry
  - Department of Commerce
  - Department of Industrial Policy and Promotion
4. **Ministry of Communications**
- Department of Posts
  - Department of Telecommunications (DOT)
5. **Ministry of Consumer Affairs, Food and Public Distribution**
- Department of Consumer Affairs
  - Department of Food and Public Distribution
6. **Ministry of Corporate Affairs**
- Ministry of Culture
  - Ministry of Defence
  - Department of Defence
  - Department of Defence Production
  - Department of Defence Research & Development
  - Department of Ex-Servicemen Welfare
7. **Ministry of Development of North Eastern Region**
- Ministry of Drinking Water and Sanitation
  - Ministry of Earth Sciences
  - India Meteorological Department (IMD)
8. **Ministry of Food Processing Industries**
- Ministry of Health and Family Welfare
  - Department of Health and Family Welfare
  - Department of Health Research, Ministry of Health & Family Welfare
9. **Ministry of Electronics and Information Technology**
- Ministry of Environment, Forest and Climate Change
  - Ministry of External Affairs
  - Ministry of Finance
  - Department of Economic Affairs

- Department of Expenditure
- Department of Financial Services
- Department of Investment and Public Asset Management
- Department of Revenue

**10. Ministry of Consumer Affairs, Food and Public Distribution**

- Central Armed Police Forces
- Central Police Organisation
- Department of Border Management
- Department of Home
- Department of Internal Security
- Department of Jammu & Kashmir (J & K) Affairs
- Department of Official Language
- Department of States

**11. Ministry of Heavy Industries and Public Enterprises**

- Department of Heavy Industry
- Department of Public Enterprises

**12. Department of Atomic Energy**

Department of Space

[http://goirectory.nic.in/ministries\\_departments\\_view.php](http://goirectory.nic.in/ministries_departments_view.php)

**13. Ministry of Information and Broadcasting**

- Ministry of Labour and Employment
- Ministry of Law and Justice
- Department of Chemicals and Petrochemicals
- Department of Fertilizers
- Department of Pharmaceuticals

**14. Ministry of Petroleum and Natural Gas**

- Ministry of Power
- Ministry of Railways
- Ministry of Road Transport and Highways
- Ministry of Rural Development
- Department of Land Resources (DLR)



- Department of Rural Development (DRD)

## 15. Ministry of Micro, Small and Medium Enterprises

### Ministry of Mines

- Ministry of New and Renewable Energy
- Ministry of Panchayati Raj
- Ministry of Parliamentary Affairs
- Ministry of Personnel, Public Grievances and Pensions
- **Department of Administrative Reforms and Public Grievances (DARPG)**
- Department of Pension & Pensioner's Welfare
- Department of Personnel and Training

## 16. Ministry of Science and Technology

- Department of Biotechnology (DBT), Government of India
- Department of Science and Technology (DST)
- Department of Scientific and Industrial Research (DSIR)

## 17. Ministry of Shipping

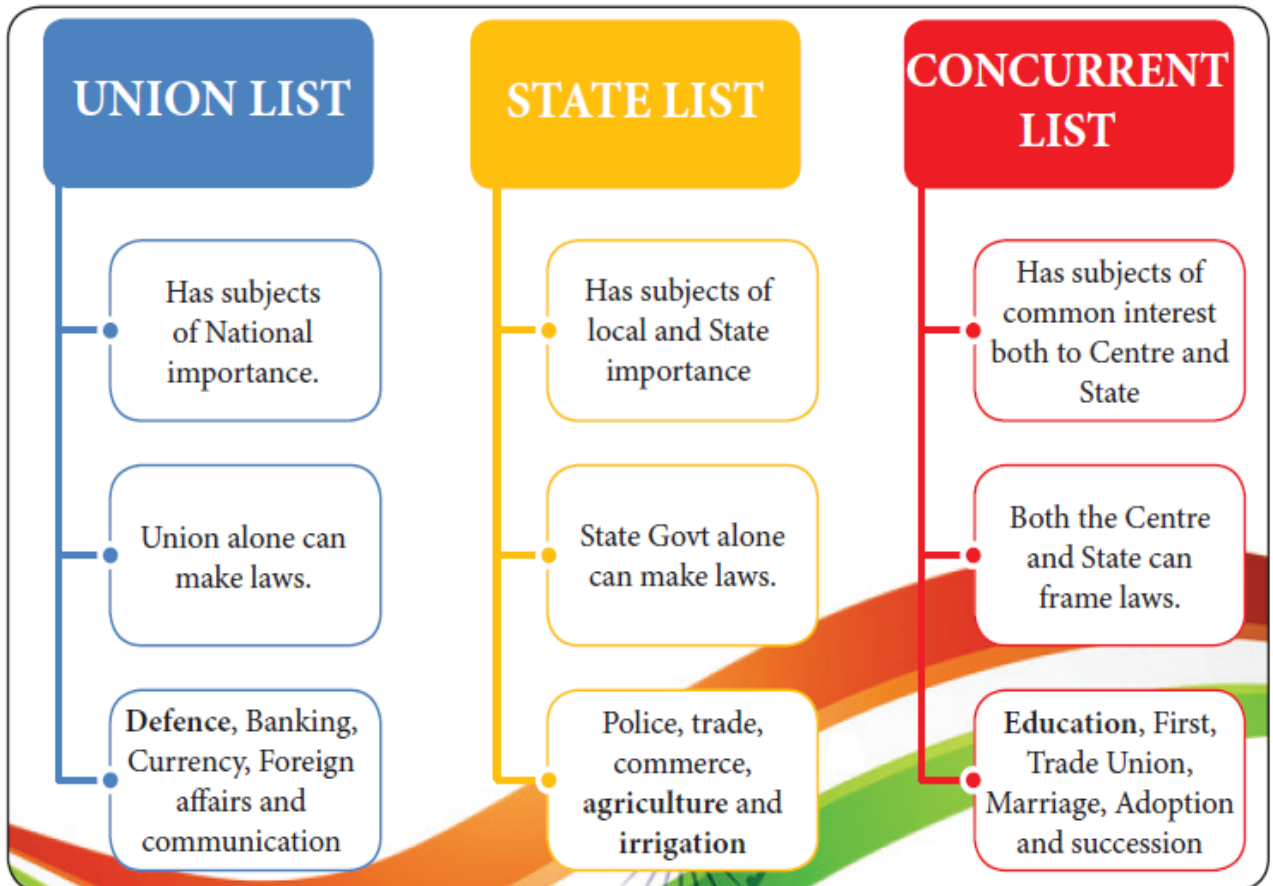
- Ministry of Skill Development and Entrepreneurship
- Ministry of Social Justice and Empowerment
- Department of Empowerment of Persons with Disabilities
- Department of Social Justice and Empowerment

## 18. Ministry of Statistics and Programme Implementation

- Ministry of Steel
- Ministry of Textiles
- Ministry of Tourism
- Ministry of Tribal Affairs
- Ministry of Water Resources, River Development and Ganga Rejuvenation
- Ministry of Women and Child Development
- Ministry of Youth Affairs and Sports
- Department of Sports
- Department of Youth Affairs

## 19. Ministry of Housing and Urban Affairs

- Ministry of Human Resource Development
- Department of Higher Education
- Department of School Education and Literacy



## Cabinet Secretariat Functions

The Cabinet Secretariat functions directly under the Prime Minister. The administrative head of the Secretariat is the Cabinet Secretary who is also the ex-officio Chairman of the Civil Services Board. The business allocated to Cabinet Secretariat under Government of India (Allocation of Business) Rules, 1961 includes (i) Secretarial assistance to the Cabinet and Cabinet Committees; and (ii) Rules of Business.

## Organisation of Cabinet Secretariat

The Cabinet Secretariat has three wings

- Civil wing
- Military wing
- Intelligence wing

**Civil wing** - It is the main wing and provides aid, advice and assistance to the Union cabinet.

**Military wing** - provides secretarial assistance to the defence committee of the cabinet, the military affairs committee etc.

**Intelligence wing** - it deals with the matters pertaining to the joint intelligence committee of the cabinet.

Other organizations are - RAW, Director General of Security, SPG, Joint intelligence group, DG public grievances (1988), National Authority, Chemical Weapons Convention.

The Cabinet Secretariat is responsible for the administration of the Government of India (Transaction of Business) Rules, 1961 and Government of India (Allocation of Business) Rules. The Secretariat assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst Ministries/Departments and evolving consensus through the instrumentality of the standing/adhoc Committees of Secretaries. Management of major crisis situations in the country and coordinating activities of various ministries in such a situation is also one of the functions of the Cabinet Secretariat.

## Support to Cabinet Committees

The secretarial assistance, provided by Cabinet Secretariat to the Cabinet and Cabinet committees, includes

- Convening of the meetings of the Cabinet & its Committees on the orders of the Prime Minister.
- Preparation and circulation of the agenda.

- Circulation of papers related to the cases on the agenda.
- Preparation of record of discussions.
- Circulation of the record of discussions after obtaining the approval of the Prime Minister.
- Monitoring implementation of decisions taken by the Cabinet and its Committees.
- The Cabinet Secretariat is the custodian of the papers of the Cabinet meetings

### **Cabinet Secretary**

The office of cabinet secretary was created in India in 1950. The first Cabinet secretary was N.R.Pillai. The Cabinet secretary is the head of the Cabinet Secretariat. He is given a top place among the civil servants. Thus he is the senior most civil servant in India.

### **Union Government -Apex Bodies**

- President of India
- Vice President of India
- Cabinet Secretariat
- Election Commission of India
- Union Public Service Commission (UPSC)
- National Human Rights Commission (NHRC), India
- Comptroller and Auditor General (CAG) of India,
- Indian Audit and Accounts Department
- NITI Aayog - National Institution for Transforming India
- National Commission for Women (NCW)
- National Commission for Scheduled Tribes (NCST)
- Fifteenth Finance Commission of India
- National Commission for Minorities(NCM)
- Insurance Regulatory and Development Authority (IRDA)
- Office of the Principal Scientific Adviser.

### **The Prime Minister's Office (PMO)**

The Prime Minister's Office (PMO) consists of the immediate staff of the Prime Minister of India, as well as multiple levels of support staff reporting to the Prime Minister. The PMO is headed by Adviserthe Principal Secretary, The PMO was originally called the Prime Minister's Secretariat until 1977, when it was renamed during the Morarji Desai ministry.

### **Office of Principal Scientific Adviser**

The Office of the Principal Scientific Adviser to the Government of India (O/o of PSA) was set-up in November, 1999, primarily to:

- Evolve policies, strategies and missions for the generation of innovations and support systems for multiple applications,
- Generate science and technology tasks in critical infrastructure, economic and social sectors in partnership with Government departments, institutions and industry,
- Office of PSA also services the Prime Minister's Science, Technology and Innovation Advisory Council (PM-STIAC)
- Office of PSA has been placed administratively under the Cabinet Secretariat in August, 2018.

The PMO provides secretarial assistance to the Prime Minister. It is headed by the Principal Secretary to the Prime Minister. The PMO includes the anti-corruption unit and the public wing dealing with grievances. The office houses the Prime Minister and few selected officers of Indian Civil Service who work with him to manage and coordinate government and his office. The Prime Minister through his office coordinates with all ministers in the central union cabinet, minister of independent charges and governors and ministers of state government.

### **Personnel Administration**

#### **Concept of Personnel Administration**

The tasks of government are increasing every day. Development and welfare orientations have led to the expansion of government and its administrative machinery. As the tasks, responsibilities and activities

of organisations whether public or private multiply, the demands on personnel, at every level, in terms of efficient discharge of their duties also rise. Thus the task of personnel administration is to, assure a steady source of people who can contribute to the success of an organization and meet the growing demands of development. To understand the concept of personnel administration, it is very essential to first understand the meaning and nature of the term.

### **Thus personnel administration aims at:**

- Effective utilisation of human resources
- Desirable working relations among all members of the organisation
- Maximum development
- Meeting the organisation's social and legal responsibilities.

### **Scope of Personnel Administration**

Personnel administration incorporates all aspects of management of persons in organization. The primary objective of personnel administration, is to ensure effective utilization of human resources in pursuit of organizational goals. The personnel administration departments should design and establish an effective working relationship among all the members of an organization by division of organizational tasks into jobs, defining clearly the responsibility and authority for each job and its relation with other jobs in the organization. Personnel administration must try to enthuse among the employees feelings of commitment, Involvement and loyalty to the organization. The aim is to create cordial relations among the employees and do away with frictional situations arising out of personal jealousies, rivalries and prejudices. Personnel administration also has to curbun favorable practices like favoritism and nepotism in an organization.

### **Functions of personnel administration**

Some of the important functions of personnel administration are :

- a. Manpower Planning
- b. Recruitment
- c. Training

- d. Promotion
- e. Salary structuring
- f. Employees' welfare

### **Civil Services - meaning and features**

Advantages of having an independent, permanent and impartial civil service are as follows:

- i. The spoils system has the propensity to degenerate into a system of patronage, nepotism and corruption. Having a credible recruitment process through an impartial agency provides a defense against such abuse.
- ii. Public policy today has become a complex exercise requiring in-depth knowledge and expertise in public affairs. A permanent civil service provides continuity and develops expertise as well as institutional memory for effective policy making.
- iii. A permanent and impartial civil service is more likely to assess the long-term social payoffs of any policy whereas the political executive may have a tendency to look for short term political gain.
- iv. A permanent civil service helps to ensure uniformity in public administration and also acts as a unifying force particularly in vast and culturally diverse nations.
- v. A permanent civil service like any other reputable profession is likely to evolve over time an ethical basis for its functioning.

### **Citizen and Bureaucracy**

At the heart of democracy lies the citizen. In the ancient state, the purpose of state was only threefold - defending the realm from external aggression, maintaining internal order, and rendering rough and ready justice. The bureaucracy was limited, and the might of the sword prevailed. In the medieval state, land relations were critical, and a somewhat larger bureaucracy was necessary in addition to the armed forces. In modern times, the state's role in creating common infrastructure and services became critical, and the bureaucracy's role expanded. In the 20th century state, helping the citizen fulfill her potential and eliminating avoidable suffering became the norm of Notes

of a civilized state. Dignity, opportunity and justice became the new watchwords, and the role of bureaucracy vastly expanded.

But despite democracy, we still have a highly centralized state. For a country of over a billion people, India has possibly the smallest number of final decision-makers in the public realm. The PM-CM-DM syndrome still dominates both our psyche and system. There is a near complete divorce between the vote and public good as a remote, centralized government has neither the will nor the capacity to address matters of real significance to the citizen - drinking water, sanitation, schooling, health care, electricity, roads, transport, agricultural productivity, market linkage, value addition, skill promotion and myriad other needs.

The district magistrate has become the embodiment of state power. As a result, the periodic change of governments has not altered the outcomes or quality of services. Politics has become a power game and power the source of private fortunes. The vote has become a purchasable commodity, or a means of transient assertion without real consequences. Democracy is reduced to electoral competition for power and elections about the fortunes of those who contest and not about the citizen and voter. The tax payer has no clue about the utilization of resources, nor any voice in demanding, and role in getting, better services. The remote-controlled bureaucracy is totally unaccountable to the local people whom it is supposed to serve.

### **Core Principles for making civil services Citizen Centric are:**

1. Rule of Law
2. Making Institutions Responsive and Accountable
3. Active Citizens' Participation - Decentralization and Delegation
4. Transparency
5. Civil Service Reforms
6. Ethics in Governance
7. Periodical Reforms



## **All India services, Central Services and State Services**

A unique feature of the Indian Administration system, is the creation of certain services common to both - the Centre and the States, namely, the All India Services. These are composed of officers who are in the exclusive employment of neither Centre nor the States, and may at any time be at the disposal of either. The officers of these Services are recruited on an all-India basis with common qualifications and uniform scales of pay, and notwithstanding their division among the States, each of them forms a single service with a common status and a common standard of rights and remuneration.

Like other federal polities the Centre and the constituent states, under the Indian Constitution, have their separate public services to administer their respective affairs. Thus, there are Central or Union Services to administer Union subjects, like defence, income tax, customs, posts and telegraphs, railways, etc. The officers of these Services are exclusively in the employment of the Union Government. Similarly, the states have their own separate and independent services.

### **All India services**

The Constitution provides for the creation of All India Services (AIS) common to the Union and the States. The All India Services Act, 1951 provides that the Central Government may make rules for regulating the recruitment and the conditions of service of persons appointed to the All India Services. Presently only the IAS, the IPS and the IFS (Indian Forest Service) have been constituted as All India Services. Recruitment to these services is made under the corresponding AIS Recruitment Rules and may be done by Direct Recruitment (through Competitive Examinations) and by promotion from the State Service . The AIS Branch is concerned with the latter mode of recruitment which is governed by the respective IAS/IPS/IFS Promotion Regulations.

### **What are the different modes of recruitment to the All India Services?**

There are two modes of recruitment to the All India Services;

- i. Direct Recruitment: Through the Civil Services Examination for IAS and IPS and the Indian Forest Service Examination for the IFS. These Examinations are conducted by UPSC.
- ii. Promotion/Selection: By way of promotion of the SCS/SPS/SFS officers to the respective All India Service and by way of selection of Non-State Civil Services (NSCS) Officers to the IAS.

## **Indian Administrative Service**

The Indian Administrative Service (IAS) is the direct descendant of the old Indian Civil Service. As an all India service, it is under the ultimate control of the Union Government, but is divided into State cadres, each under the immediate control of a State Government. The salary and the pension of these officers are met by the States. But the disciplinary control and imposition of penalties rest with the Central Government which is guided, in this respect, by the advice of the Union Public Service Commission. On appointment, the officers are posted to different State cadres. The strength of each State cadre, however, is so fixed as to include a reserve of officers who can be deputed for service under the Union Government for one or more 'tenures' of three, four or five years before they return to the State cadre. The majority of individual officers have an opportunity of serving at least one spell of duty under the Union Government; many have more than one such spell. The practice of rotating senior officers in and out of the Secretariat position is known in official parlance as the tenure system.

Another distinctive feature of this Service is its multi-purpose character. It is composed of 'generalist administrators' who are expected, from time to time, to hold posts involving a wide variety of duties and functions; for example, maintenance of law and order, collection of revenue, regulation of trade, commerce and industry, welfare activities development and extension work, etc. In brief, the IAS is intended to serve all the purposes formerly served by the ICS except providing officers for the judiciary. Thus, this Service is a kind of generalist service, and its officers are liable for posting in almost any branch, of the administration.

## **Indian Police Service**

The Indian Police Service is an original all India Service (it had pre-independence origins) which differs from the IAS in two ways: (i) most of the officers in this service work only in the state since there are only a few police posts at the Centre and (ii) its pay scale and status are lower than those of the IAS. The officers of the IPS are recruited from the same unified All India Civil Service examination which recruits all members of the IAS, IFS and other Central Civil Services. Recruits to the IPS are first given a five months foundational training and later special training at the Sardar Patel National Police Academy, Hyderabad. The subjects of study and the training is drill, handling of weapons, etc., which have a direct bearing on the normal work of a police officer. The syllabus of training includes studies of crime psychology, scientific aids in detection of crime, methods of combating corruption and emergency relief. After completing a year's training, the probationer passes an examination conducted by the UPSC. He is, then appointed as an Assistant Superintendent of Police. But, before this appointment he has to undergo a year's programme of training; he is given practical training which requires him to do the work of various subordinate officers. It is only after this that he is appointed an Assistant Superintendent of Police.

As an all India Service it is under the ultimate control of the Union Government, but is divided into state cadres, each under the immediate control of a state government. The Indian Police Service is managed by the Ministry of Home Affairs, though the general policies relating to its personnel are determined by the Department of Personnel and Administrative Reforms.

## **Indian Forest Service**

The Indian Forest Service is the only all India Service that has been set up after independence. It became operational by an Act of Parliament in 1963. Its pay scale and status is lower than that of the two original all India Services - the IAS and the IPS. Its recruits are chosen from an exclusive examination conducted by the Union Public Service Commission which consists of a written test and interview. Though it is

an All India Service, its nature is not that of a generalized civil service, but is specialized and functional. It is managed by the Department of Personnel and Administrative Reforms which is in charge of making rules of recruitment, discipline and conditions of service regarding all India Services.

After selection the appointees undergo a foundational course lasting three months along with successful candidates of the other all India and Central Services. After the foundation course, the probationers move to their own Academy (Indian Forest Institute) at Dehradun for a rigorous two year training course, the end of which they have to pass an examination before final posting. The Indian Forest Service is cadre-based as in the case of other All India Services. Like all other All India Services, a member of this Service can come to the Centre on deputation but has to go back to his cadre after the period of deputation is over.

Unlike the all India services, the Central Civil Services are under the exclusive control of the Central Government, its member positions only in the Central Government. The Civil Services of the Central Government comprise established services known as central civil service as well as civil posts created outside the established services, which constitute the general central service. Both the established central civil services and the civil posts are classified in the descending order of importance into Class I, Class 11, Class 111 and Class IV.

It has often been pointed out that since the appointing authority is the same, there is no justification for classifying the services into the all India and central services. Though the appointing authority is the same, yet there is a significant difference between the two. Officers of all India services are employed to serve under the central as well as the state governments. Further, the members of IAS can be appointed to any office calling for duties of a general supervisory nature, while the officers of the central services are employed in jobs of specialized nature. Therefore, the distinction can be said to be justified.

## Recruitment

Recruitment to the Central Services Class I and I1 are made by the Union Public Service Commission on the basis of the unified all India Civil Service Examination.

## The Indian Foreign Service (IFS)

The Indian Foreign Service comes under Central Civil Service - Class I and was created after Independence. It is under the exclusive control of the Central Government and its members are recruited from the top few positions of the All India Civil Services examination. Among the Central Civil Services it is the top most in prestige, status, pay and emoluments and its recruits are asked, to serve in Indian mission and embassies abroad. It is managed by the Ministry of External Affairs.

Also, involved in the management of the IFS are the Department of Personnel which determines the conditions of service and the Ministry of Finance which is concerned with the pay scales and other financial aspects of conditions of service. In matters of allowances the members of the Indian Foreign Service are more fortunate compared to other services. They are entitled to foreign allowance which are fixed with reference to: (a) local cost of living, (b) other expenditure

which an officer serving abroad necessarily incurs either at home or abroad, over and above that an officer of corresponding grade serving in India, (c) representational expenditure, i.e., expenditure which while optional for a private individual is obligatory for a member of the service resident, by virtue of his official position.

The recruit of the IFS undergoes a training programme which covers a period of three years. He is attached to a district for some time to enable him to pick up contact with practical work, he also undergoes a period of secretariat training.

## **UPSC- Organization, Powers, Functions and Role Historical Perspective**

The origin of the Public Service Commission in India is found in the First Dispatch of the Government of India on the Indian Constitutional Reforms on the 5th March, 1919 which referred to the need for setting up some permanent office charged with the regulation of service matters. This concept of a body intended to be charged primarily with the regulation of service matters, found a somewhat more practical shape in the Government of India Act, 1919. Section 96(C) of the Act provided for the establishment in India of a Public Service Commission which should “discharge, in regard to recruitment and control of the Public Services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council”.

After passing of the Government of India Act, 1919, in spite of a prolonged correspondence among various levels on the functions and machinery of the body to be set up, no decision was taken on setting up of the body. The subject was then referred to the Royal Commission on the Superior Civil Services in India (also known as Lee Commission). The Lee Commission, in their report in the year 1924, recommended that the statutory Public Service Commission contemplated by the Government of India Act, 1919 should be established without delay.

Subsequent to the provisions of Section 96(C) of the Government of India Act, 1919 and the strong recommendations made by the Lee Commission in 1924 for the early establishment of a Public Service Commission, it was on October 1, 1926 that the Public Service Commission was set up in India for the first time. It consisted of four Members in addition to the Chairman. Sir Ross Barker, a member of the Home Civil Service of the United Kingdom was the first Chairman of the Commission.

The functions of the Public Service Commission were not laid down in the Government of India Act, 1919, but were regulated by the Public Service Commission (Functions) Rules, 1926 framed under sub-section (2) of Section 96(C) of the Government of India Act, 1919.

Further, the Government of India Act, 1935 envisaged a Public Service Commission for the Federation and a Provincial Public Service Commission for each Province or group of Provinces. Therefore, in terms of the provisions of the Government of India Act, 1935 and with its coming into effect on 1st April, 1937, the Public Service Commission became the Federal Public Service Commission.

With the inauguration of the Constitution of India in January 26, 1950, the Federal Public Service Commission came to be known as the Union Public Service Commission, and the Chairman and Members of the Federal Public Service Commission became Chairman and Members of the Union Public Service Commission by virtue of Clause (1) of Article 378 of the Constitution.

The Union Public Service Commission is a Constitutional Body established under Article 315 of the Constitution of India. The Commission consists of a Chairman and ten Members.

Union Public Service Commission is a Constitutional Body, which has been mandated the responsibilities of making recruitment by conduct of competitive examinations as well as selection through interviews, advising on the suitability of officers for appointment on promotion and transfer-on-deputation, advising the Government on all matters relating to methods of recruitment to various services, framing & amendment of Recruitment Rules, disciplinary cases relating to various Civil Services, miscellaneous matters relating to grant of extraordinary pensions, reimbursement of legal expenses etc, advising the Government on any matter referred to the Commission by the President of India and on the request of the Governor of a State, to serve all or any of the needs of a State relating to recruitment, with the approval of the President.

In order to fulfill its constitutional obligations, the Commission is supported by Officers/Staff broadly known as Secretariat of the Commission, headed by the Secretary. The Administration Branch of the Commission is entrusted with the functions of administering the Secretariat of the Commission as well as looking after the personal

matters of Hon'ble Chairman/ Hon'ble Members and other Officers/ Staff of the Commission.

### **The Mandate of Union Public Service Commission**

**The Mandate of Union Public Service Commission Under Article 320 and 321 of the Constitution of India, includes:**

1. Recruitment by conduct of competitive examinations;
2. Recruitment by Selection through Interviews;
3. Advising on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
4. Advising the Government on all matters relating to methods of Recruitment to various services and posts; framing and amendment of Recruitment Rules;
5. Disciplinary cases relating to different civil services;
6. Miscellaneous matters relating to grant of extraordinary pensions, reimbursement of legal expenses, etc.
7. Advising the Government on any matter referred to the Commission by the President of India.
8. On the request of the Governor of a State, to serve all or any of the needs of a State relating to recruitment, with the approval of the President.

**Methods of Recruitment is made by one of the following four methods:**

1. Direct Recruitment
2. Promotion
3. Deputation/absorption; and
4. Composite Method (Deputation + Promotion)

### **Direct Recruitment**

Direct Recruitment is conducted broadly under the following two methods:

1. Recruitment by Competitive Examination; and



2. Recruitment by Selection. Recruitment Through Examination The Commission conducts following examinations on a regular basis at various Centers located throughout the country for appointment to various Civil/Defense services/posts:

1. Civil Services (Preliminary) Examination;
2. Civil Services (Main) Examination;
3. Engineering Services Examination;
4. Combined Medical Services Examination;
5. Indian Forest Service Examination;
6. Geologists' Examination;
7. Indian Economic Service/ Indian Statistical Service Examination;
8. Special Class Railway Apprentices' Examination [Held every alternate year];
9. Combined Defense Services Examination [Held twice a year];
10. National Defense Academy and Naval Academy Examination [Held twice a year];
11. Central Police Forces (Assistant Commandants) Examination;
12. Section Officers/ Stenographers (Grade-B/Grade-I) Ltd. Departmental Competitive Examination;
  - a. A Calendar of examinations is published in the Employment News / Rozgar Samachar, stating name of examination, date of notification, date of receipt of application & date of commencement of examination, well in advance normally in October of the preceding year and also displayed on the website [www.upsc.gov.in](http://www.upsc.gov.in)
  - b.

<b>Constitutional Provisions</b>	
Article - 315	Public Service Commissions for the Union and for the States.
Article - 316	Appointment and term of office of members.
Article - 317	Removal and suspension of a member of a Public Service Commission.
Article - 318	Power to make regulations as to conditions of service of members and staff of the Commission.
Article - 319	Prohibition as to the holding of offices by members of Commission on ceasing to be such members.
Article - 320	Functions of Public Service Commissions.

Article – 321	Power to extend functions of Public Service Commissions.
Article – 312	Expenses of Public Service Commissions.
Article – 313	Reports of Public Service Commissions.

## Functions

Under Article 320 of the Constitution of India, the Commission is, inter-alia, required to be consulted on all matters relating to recruitment to civil services and posts. The functions of the Commission under Article 320 of the

### Constitution are:

- Conduct examinations for appointment to the services of the Union.
- Direct recruitment by selection through interviews.
- Appointment of officers on promotion / deputation / absorption.
- Framing and amendment of Recruitment Rules for various services and posts under the Government.
- Disciplinary cases relating to different Civil Services.
- Advising the Government on any matter referred to the Commission by the President of India.

## State Public Service Commission

Parallel to the Union Public Service Commission (UPSC) at the Centre, there is a State Public Service Commission (State Public Service Commission) in a state. The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deal with the composition, appointment and removal of members, power and functions and independence of a State Public Service Commission.

## Composition

A State Public Service Commission consists of a chairman and other members appointed by the governor of the state. The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor. Further, no qualifications are

prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state. The Constitution also authorizes the governor to determine the conditions of service of the chairman and members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years). However, they can relinquish their offices at any time by addressing their resignation to the governor.

The governor can appoint one of the members of the State Public Service Commission as an acting chairman in the following two circumstances:

- a. When the office of the chairman falls vacant; or
- b. When the chairman is unable to perform his functions due to absence or some other reason.

The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

## Removal

Although the chairman and members of a State Public Service Commission are appointed by the governor, they can be removed only by the president (and not by the governor). The president can remove them on the same grounds and in the same manner as he can remove a chairman or a member of the UPSC. Thus, he can remove him under the following circumstances:

- a. If he is adjudged an insolvent (i.e., has gone bankrupt); or
- b. If he engages, during his term of office, in any paid employment outside the duties of his office; or

- c. If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the president can also remove the chairman or any other member of State Public Service Commission for misbehavior. However, in this case, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president. However, during the course of enquiry by the Supreme Court, the governor can suspend the concerned chairman or member, pending the final removal order of the president on receipt of the report of the Supreme Court.

Further, the Constitution has also defined the term 'misbehaviour' in this context. The Constitution states that the chairman or any other member of a State Public Service Commission is deemed to be guilty of misbehavior. If he (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit there from otherwise than as a member and in common with other members of an incorporated company.

## **Independence**

As in the case of UPSC, the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a State Public Service Commission:

- a. The chairman or a member of a State Public Service Commission can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy the security of tenure.
- b. The conditions of service of the chairman or a member, though determined by the governor, cannot be varied to his disadvantage after his appointment.

- c. The entire expense including the salaries, allowances and pensions of the chairman and members of a State Public Service Commission are charged on the consolidated fund of the state. Thus, they are not subject to vote of the state legislature.
- d. The chairman of a State Public Service Commission (on ceasing to hold office) is eligible for appointment as the chairman or a member of UPSC or as the chairman of any other State Public Service Commission, but not for any other employment under the Government of India or a state.
- e. A member of a State Public Service Commission (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC, or as the chairman of that State Public Service Commission or any other State Public Service Commission, but not for any other employment under the Government of India or a state.
- f. The chairman or a member of a State Public Service Commission is (after having completed his first term) not eligible for reappointment to that office (that is, not eligible for second term)

## Functions

A State Public Service Commission performs all those functions in respect of the state services as the UPSC does in relation to the Central services:

- a. It conducts examinations for appointments in the services of the state.
- b. It is consulted on the following matters related to personnel management:
  - i. All matters relating to methods of recruitment to civil services and for civil posts.
  - ii. The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
  - iii. The suitability of candidates for appointments to civil services and posts; for to another; and transfers from one service to another; and

appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the State Public Service Commission to ratify them.

- iv. All disciplinary matters affecting a person serving under the government of the state in a civil capacity including memorials or petitions relating to such matters. These include:
- Censure (severe disapproval)
  - Withholding of increments
  - Withholding of promotions
  - Recovery of pecuniary loss
  - Reduction to lower service or rank (demotion)
  - Compulsory retirement
  - Removal from service
  - Dismissal from service
- v. Any Claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
- vi. Any claim for the award of a pension in respect of injuries sustained by a person while serving under the government of the state and any question as to the amount of any such award.
- vii. Any other matter related to the personnel management.

The Supreme Court has held that if the government fails to consult the State Public Service Commission in these matters, the aggrieved public servant has no remedy in a court. In other words, the court held that any irregularity in consultation with the State Public Service Commission or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the State Public Service Commission does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or malafides.

The additional functions relating to the services of the state can be conferred on State Public Service Commission by the state legislature. It

can also place the personnel system of any local authority, corporate body or public institution within the jurisdiction of the State Public Service Commission. Hence, the jurisdiction of State Public Service Commission can be extended by an Act made by the state legislature.

The State Public Service Commission presents; annually, to the governor a report on its performance. The governor places this report before both the Houses of the state legislature, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non- acceptance.

### **Limitations**

The following matters are kept outside the functional jurisdiction of the State Public Service Commission. In other words, the State Public Service Commission is not consulted on the following matters:

- a. While making reservations of appointments or posts in favour of any backward class of citizens.
- b. While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.

The governor can exclude posts, services and matters from the purview of the State Public Service Commission. The Constitution states that the governor, in respect to the state services and posts may make regulations specifying the matters in which, it shall not be necessary for State Public Service Commission to be consulted. But all such regulations made by the governor shall be laid before each House of the state legislature for at least 14 days. The state legislature can amend or repeal them.

### **Role**

The Constitution visualizes the State Public Service Commission to be the 'watchdog of merit system' in the state. It is concerned with the recruitment to the state services and advises the government, when consulted, on promotion and disciplinary matters. It is not concerned

with the classification of services, pay and service conditions, cadre management, training and so on. These matters are handled by the Department of Personnel or the General Administration Department. Therefore, the State Public Service Commission is only a central recruiting agency in the state while the Department of Personnel or the General Administration Department is the central personnel agency in the state.

The role of State Public Service Commission is not only limited, but also recommendations made by it are only of advisory nature and hence, not binding on the government. It is up to the state government to accept or reject that advice. The only safeguard is the answerability of the government to the state legislature for departing from the recommendation of the Commission. Further, the government can also make rules which regulated the scope of the advisory functions of State Public Service Commission.

Also, the emergence of State Vigilance Commission (SVC) in 1964 affected the role of State Public Service Commission in disciplinary matters. This is because both are consulted by the government while taking disciplinary action against a civil servant. The problem arises when the two bodies tender conflicting advice. However, the State Public Service Commission, being an independent constitutional body, has an edge over the SVC.

Finally, the State Public Service Commission is consulted by the governor while framing rules for appointment to judiciary service of the state other than the posts of district judges. In this regard, the concerned state high court is also consulted.

## **Staff Selection Commission**

### **Function of Commission**

1. To make recruitment to (i) all Group "B" posts in the various Ministries/Departments of the Govt. of India and their Attached and Subordinate Offices which are in the pay scales the maximum of which is `10,500 or below and (ii) all non-technical Group "C"



posts in the various Ministries/Departments of the Govt. of India and their Attached and Subordinate Offices, except those posts which are specifically exempt from the purview of the Staff Selection Commission.

2. To conduct examinations and/or interviews, whenever required for recruitment to the posts within its purview. The examinations would be held as far as possible at different centres and successful candidates posted, to the extent possible, to their home State/Region.
3. In particular, to hold Open Competitive Examinations for recruitment to the posts of:
  - i. Lower Division Clerks in the various Ministries/Departments, Attached and Subordinate Offices of the Government of India including those participating in the Central Secretariat Clerical Service /Indian Foreign Service (B), Railway Board Secretariat Clerical Service and the Armed Forces Headquarters Clerical Service;
  - ii. Grade "C" and Grade 'D" Stenographers of the Central Secretariat Stenographers Service and equivalent Grades of Indian Foreign Service (B) Railway Board Secretariat Stenographers Service/Armed Forces Head quarters Stenographers Service and to the posts of Stenographers in other Departments including Attached and Subordinate Offices of the Government of India not participating in the aforesaid Services;
  - iii. Assistants in the various Ministries/Departments including Attached and Subordinate Offices of the Government of India including those participating in the Central Secretariat Service/ IFS (B)/ Railway Board Secretariat Service/Armed Forces Headquarters Civil Service;
  - iv. Inspectors of Central Excise in different Collectorates of Central Excise, Inspectors of Income-Tax in different charges of the Commissioners of Income-Tax, Preventive Officers and Examiners in different Custom Houses, Assistant Enforcement Officers in Directorate of Enforcement;

- v. Sub-Inspectors in, Central Bureau of Investigation and Central Police Organisations;
  - vi. Divisional Accountants, Auditors and Accountants under the Office of Comptroller and Auditor General of India and other Accounts Departments and Upper Division Clerks in Attached and Subordinate Offices of the Government of India.
  - vii. Junior Engineer (Civil & Electrical) in CPWD, a Group 'C' Non-Gazetted, Non-Ministerial, General Central Services (Technical) post.
  - viii. Statistical Investigators, Grade IV of Subordinate Statistical Service (SSC), a Group 'C' non-gazetted, non-ministerial post in the Ministry of Statistics and Programme Implementation
  - ix. Tax Assistant (a Group C non - Gazetted Ministerial post in various Commissionerates of Central Board of Direct Taxes ( CBDT) and Central Board of Excise and Customs )
  - x. Section Officer ( Commercial Audit), a Group "B" Non-gazetted post in the Indian Audit and Accounts Department
  - xi. Section Officer (Audit) , a Group B Non-Gazetted post in the Office of the Comptroller and Auditor General
4. The Commission also holds Departmental Examination for promotion from: Group "D" to Lower Division Clerk Grade of the Central Secretariat Clerical Service and equivalent grades in Indian Foreign Service (B)/Railway Board Secretariat Clerical Service/ Armed Force Hqrs. Clerical Service;
- i. Lower Divisional Clerks to Upper Divisional Clerks Grade of the Central Secretariat Clerical Service and equivalent Indian Foreign Service (B)/Railway Board Secretariat Clerical Service/Armed Forces Hqrs. Clerical Service;
  - ii. Stenographers Grade "D" to Stenographers Grade "C" of the Central Secretariat Stenographers Service and equivalent grades in Indian Foreign Service (B)/Railway Board Secretariat Stenographers Service/Armed Forces Hqrs. Stenographers Service.
5. The Commission conducts periodical Typewriting Tests in English and Hindi.

6. The Commission prepares schemes for recruitment to all Group "B" posts which are in the pay scale of Rs 9300 to 34800 with a grade pay of Rs 42000 or below and Group "C" non-technical posts in the Ministries/Departmental of the Govt. of India including its Attached and Subordinate Offices in consultation with the Departments concerned.
7. The Commission conducts examinations/selections for recruitment to all Group "B" posts which are in the pay scales the maximum of which is Rs.10, 500 or below and all Group "C" non-technical posts in the Ministries/Departments of the Govt. from time to time.
8. The Commission performs such other functions as may be entrusted to it by the Central Govt. from time to time.

### **Election Commission**

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. Article 324 of the Constitution provides that the powers of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission. Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments.

It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states. For this, the Constitution of India provides for a separate State Election Commission.

### **Comptroller and Auditor General of India**

The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India

(CAG). He is the head of the Indian Audit and Accounts Department. He is the guardian of the public purse and controls the entire financial system of the country at both the levels the Centre and the state. His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. This is the reason why Dr. B.R. Ambedkar said that the CAG shall be the most important Officer under the Constitution of India. He is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.

## **Financial Administration**

### **Financial Administration : Objectives**

The vagaries of the market in the developed countries, have led to an enlarged scope of financial administration which is characterised by deficit budgets, massive public debt and deficit financing. Similarly, in the developing countries, where governments have assumed the role of a facilitator of development, fiscal policies and administration reflect a set of multiple objectives such as stability, development, self-reliance, reduction of interpersonal inequalities in income and wealth, and balanced regional development. Interestingly these countries also utilize the same instruments of action. Even though political ideologies, or economic doctrines are of crucial importance in the management of the affairs of the state, there are certain fundamental objectives of financial administration which transcend, politico-economic compulsions.

1. Management of the finances of public household
2. Implementation of projects and programmes
3. Provision for public goods and social services
4. Growth, Employment and Price Stability
5. Capital formation
6. Productive deployment of national funds
7. Facilitating smooth flow of parliamentary processes
8. Achieving equity and equality.

## **Principles of Financial Administration**

**The following may be listed as some of the important principles of financial administration**

1. The principle of primacy of public interest, public choice and public policy
2. The principle of political direction and control
3. The principle of correspondence
4. The principle of unity of organisation and management
5. The principle of stability and balance
6. The principle of simplicity and flexibility
7. The principle of conduct, discipline and regularity
8. The principle of public trust and accountability.

## **Four Distinct Phases- Financial Administrative History of India**

Period I (1765-1858) - Creation of structure and concretisation.

Period II (1860-1919) - Development of systems and Procedures.

Period III (1919-1947) - Democratisation and Decentralisation

Period IV (1950-till date) - Development orientation.

## **New Emerging Trends - Financial Administration in India**

1. Regulation and control of fiscal deficit
2. Cutback on non-development expenditure
3. Development of zero base perspective
4. De-emphasised public sector
5. Non-bureaucratic delivery of public goods and services
6. Focus on decentralized responsibility for financing development plans
7. Towards deregulation and liberalization

## **Enactment and Execution of Budget Budgetary Cycle**

In order to allow time for the executive and legislative processes to go through, budgeting is geared to a cycle. The process of approval is very significant in all possible forms of government.

### **The cycle consists of four phases:**

Preparation and submission;  
Approval;

Execution; and Audit

At any given point of time, several cycles would be in operation and would be overlapping. Nevertheless, various segments of a cycle have different operational lives.

### **Budget Preparation**

In India, budget preparation formally begins on the receipt of a circular from the Ministry of Finance sometime during September/October, that is, about six months before the budget presentation. The circular prescribes the time-schedule for sending final estimates separately for plan and non-plan, and the guidelines to be followed in the examination of budget estimates to be prepared by the department concerned. The general rule is that the person who spends money should also prepare the budget estimates. Budget proposals normally contain the following information:

- i. Accounts classification
- ii. Budget estimates of the current year
- iii. Revised estimates of the current year
- iv. Actuals for the previous year; and
- v. Proposed estimates for the next financial year.

## Financial Year

When the first modern budget was presented in 1860, the financial year adopted by the government was from 1st May to 30th April. Beginning with the year 1866, however, the financial year was changed to 1st April to 31st March, in conformity with the practice in England.

## Everything you wanted to know about the Sen-Bhagwati debate

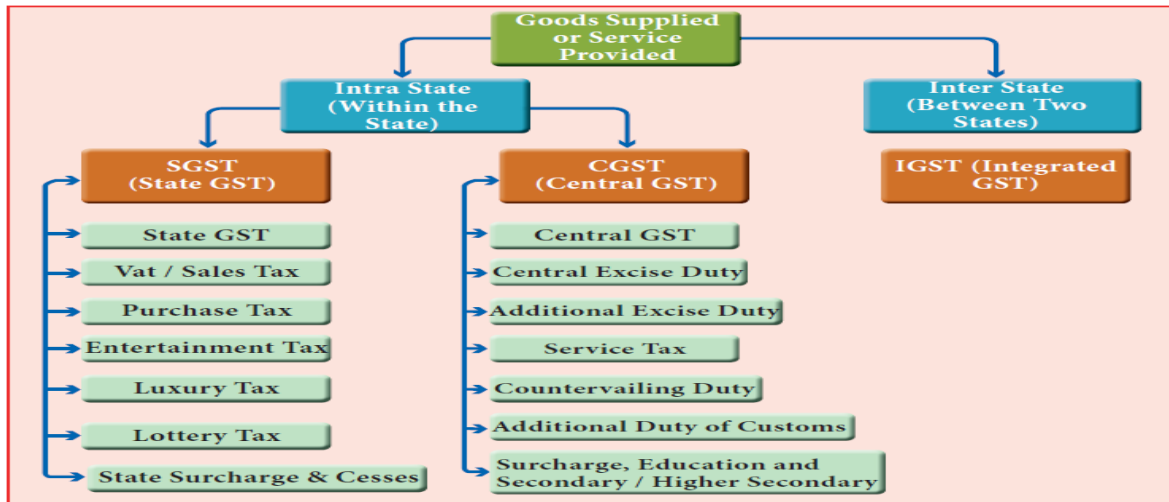
The debate on economic policy has never been as riveting as it is today, with two giants from the world of academic economics, Amartya Sen and Jagdish Bhagwati, tackling each other on what India's governance priorities should be. The debate between two of the finest Indian economists Amartya Sen and Jagdish Bhagwati reflects the deeper question facing India's political leaders

The debate on economic policy has never been as riveting as it is today, with two giants from the world of academic economics, Amartya Sen and Jagdish Bhagwati, tackling each other on what India's governance priorities should be. Sen is a Nobel Prize winner in economics and a professor of economics and philosophy at Harvard University. Bhagwati is a Columbia University professor of economics, who has been nominated for the top honour several times. Along with Sen and Avinash Dixit, he is considered to be among the three greatest Indian economists ever.

While Sen believes that India should invest more in its social infrastructure to boost the productivity of its people and thereby raise growth, Bhagwati argues that only a focus on growth can yield enough resources for investing in social sector schemes. Investing in health and education to improve human capabilities is central to Sen's scheme of things. Without such investments, inequality will widen and the growth process itself will falter, Sen believes. Bhagwati argues that growth may raise inequality initially but sustained growth will eventually raise enough resources for the state to redistribute and mitigate the effects of the initial inequality.

The debate on economic policy has never been as riveting as it is today, with two giants from the world of academic economics, Amartya Sen and Jagdish Bhagwati, tackling each other on what India's governance priorities should be.

## Tax Structure in India





## 12<sup>th</sup> Political Science Annexure

### List of Constitutional Amendments of India (1st to 103<sup>rd</sup> Amendment)

Amendment	Year	Objectives
1 <sup>st</sup> Amendment Act	1951	Added Ninth Schedule to protect the land reform, Added three more grounds of restrictions on freedom of speech and expression, viz., public order, friendly relations with foreign states and incitement to an offence. Empowered the state to make special provisions for the advancement of socially and economically backward classes.
2 <sup>nd</sup> Amendment Act	1952	Readjusted the scale of representation in the Lok Sabha by providing that one member could represent even more than 7,50,000 persons.
3 <sup>rd</sup> Amendment Act	1954	Empowered the Parliament to control the production, supply and distribution of the food stuffs, cattle fodder, raw cotton, cotton seed and raw jute in the public interest.
4 <sup>th</sup> Amendment Act	1955	Made the scale of compensation given in lieu of compulsory acquisition of private property beyond the scrutiny of courts.
5 <sup>th</sup> Amendment Act	1955	Empowered the president to fix the time-limit for the state legislatures. Extended the reservation of seats for the SCs and STs and exclusive representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a period of ten years (i.e. up to 1970)
6 <sup>th</sup> Amendment Act	1956	Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce.
7 <sup>th</sup> Amendment Act	1956	State reorganization
8 <sup>th</sup> Amendment Act	1959	Abolition of Zamindaris
9 <sup>th</sup> Amendment Act	1960	Facilitated the cession of Indian territory of

		Berubari Union (located in West Bengal) to Pakistan as provided in the Indo-Pakistan Agreement (1958).
10 <sup>th</sup> Amendment Act	1961	Incorporated Dadra and Nagar Haveli in the Indian Union
11 <sup>th</sup> Amendment Act	1961	Changed the procedures of election of the vicepresident by providing for an electoral college instead of a joint meeting of the two Houses of Parliament. Provided that the election of the president or vicepresident cannot be challenged on the ground of any vacancy in the appropriate electoral college.
12 <sup>th</sup> Amendment Act	1962	Incorporated Goa, Daman and Diu in the Indian Union.
13 <sup>th</sup> Amendment Act	1962	Gave the status of a state to Nagaland and made special provisions for it.
14 <sup>th</sup> Amendment Act	1962	Incorporated Puducherry in the Indian Union.
15 <sup>th</sup> Amendment Act	1963	Increased the retirement age of high court judges from 60 to 62 years.
16 <sup>th</sup> Amendment Act	1963	Included sovereignty and integrity in the forms of oaths or affirmations to be subscribed by contestants to the legislatures, members of the legislatures, ministers, judges and CAG of India.
17 <sup>th</sup> Amendment Act	1964	Prohibited the acquisition of land under personal cultivation unless the market value of the land is paid as compensation.
18 <sup>th</sup> Amendment Act	1966	The power of Parliament to form a new state also includes a power to form a new state or union territory by uniting a part of a state or a union territory to another state or union territory
19 <sup>th</sup> Amendment Act	1966	Abolished the system of Election Tribunals and vested the power to hear election
20 <sup>th</sup> Amendment Act	1966	Validated certain appointments of district judges in the UP which were declared void by the Supreme Court
21 <sup>st</sup> Amendment Act	1967	Included Sindhi as the 15th language in the Eight Schedule.

22 <sup>nd</sup> Amendment Act	1969	Facilitated the creation of a new autonomous State of Meghalaya within the State of Assam
23 <sup>rd</sup> Amendment Act	1969	Extended the reservation of seats for the SCs and STs and exclusive representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years (i.e. up to 1980)
24 <sup>th</sup> Amendment Act	1971	Affirmed the power of Parliament to amend any part of the constitution including fundamental rights. Made it compulsory for the president to give his assent to a Constitutional Amendment Bill
25 <sup>th</sup> Amendment Act	1971	Curtailed the fundamental right to property. Provided that any law made to give effect to the Directive Principles contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed by Articles 14, 19 and 31.
26 <sup>th</sup> Amendment Act	1971	Abolished the privy purses and privileges of the former rulers of princely states.
27 <sup>th</sup> Amendment Act	1971	Empowered the administrators of certain union territories to promulgate ordinances.
28 <sup>th</sup> Amendment Act	1972	Abolished the special privileges of ICS officers and empowered the Parliament to determine their service conditions.
29 <sup>th</sup> Amendment Act	1972	Included two Kerala Acts on land reforms in the Ninth Schedule.
30 <sup>th</sup> Amendment Act	1972	Did away with the provisions which allowed an appeal to the Supreme Court in civil cases involving an amount of 20,000 and provided instead that an appeal can be filed in the Supreme Court only if the case involves a substantial question of law.
31 <sup>st</sup> Amendment Act	1972	Increased the number of Lok Sabha seats from 525 to 545
32 <sup>nd</sup> Amendment Act	1973	Made special provisions to satisfy the aspirations of the people of the Telangana region in Andhra

		Pradesh.
33 <sup>rd</sup> Amendment Act	1974	Provided that the resignation of the members of Parliament and the state legislatures may be accepted by the Speaker/Chairman only if he is satisfied that the resignation is voluntary or genuine.
34 <sup>th</sup> Amendment Act	1974	Included twenty more land tenure and land reforms acts of various states in the Ninth Schedule
35 <sup>th</sup> Amendment Act	1975	Terminated the protectorate status of Sikkim and conferred on it the status of an associate state of the Indian Union. The Tenth Schedule was added laying down the terms and conditions of association of Sikkim with the Indian Union.
36 <sup>th</sup> Amendment Act	1975	Made Sikkim a full-fledged State of the Indian Union and omitted the Tenth Schedule.
37 <sup>th</sup> Amendment Act	1975	Provided legislative assembly and council of ministers for the Union Territory of Arunachal Pradesh.
38 <sup>th</sup> Amendment Act	1975	Empowered the president to declare different proclamation of national emergency on different grounds simultaneously.
39 <sup>th</sup> Amendment Act	1975	Placed the disputes relating to the president, vicepresident, prime minister and speaker beyond the scope of the judiciary. They are to be decided such authority as may be determined by the Parliament.
40 <sup>th</sup> Amendment Act	1976	Empowered the Parliament to specify from time to time the limits of the territorial waters, the continental shelf, the exclusive economic zone (EEZ) and the maritime zones of India.
41 <sup>st</sup> Amendment Act	1976	Raised the retirement age of members of State Public Service Commission and Joint Public Service Commission from 60 to 62.
42 <sup>nd</sup> Amendment Act	1976	It is also known as Mini-Constitution. It was enacted to give effect to the recommendations of

		<p>Swaran Singh Committee). Added three new words (i.e. socialist, secular and integrity) in the Preamble. Added Fundamental Duties by the citizens (new Part IVA). Made the president bound by the advice of the cabinet. Added three new Directive Principle viz., equal justice and free legal aid, the participation of workers in the management of industries. Shifted five subjects from the state list to be concurrent list, viz., education, forests, protection of wild animals and birds, weights and measures and administration of justice, constitution and organisation of all courts except the Supreme Court and the high courts. Empowered the Centre to deploy its armed forces in any state to deal with a grave situation of law and order.</p>
43 <sup>rd</sup> Amendment Act	1977	<p>Restored the jurisdiction of the Supreme Court and the high courts in respect of judicial review and issue of writs</p>
44 <sup>th</sup> Amendment Act	1978	<p>Empowered the president to send back once the advice of cabinet of reconsideration. However, the reconsidered advice is to be binding on the president, Replaced the term 'internal disturbance' by 'armed rebellion' in respect of national emergency. Made the President declare a national emergency only on the written recommendation of the cabinet. Deleted the right to property from the list of Fundamental Rights and made it only a legal right.</p>
45 <sup>th</sup> Amendment Act	1980	<p>Extended the reservation of seats for the SCs and STs and exclusive representation for the Anglo-Indian in the Lok Sabha and the state legislative assemblies for a further period of ten. Facilitated the extension of President's rule in Punjab beyond one year without meeting the two special conditions for such extension.</p>
46 <sup>th</sup> Amendment Act	1983	<p>Interstate sale tax</p>

47 <sup>th</sup> Amendment Act	1984	Land reforms enacted for the state of Assam, Bihar, Harayana, Tamil Nadu, Uttar Pradesh, and West Bengal.
48 <sup>th</sup> Amendment Act	1984	Continuation of force in Punjab.
49 <sup>th</sup> Amendment Act	1984	Gave a constitutional sanctity to the Autonomous District Council in Tripura.
50 <sup>th</sup> Amendment Act	1984	Empowered the Parliament to restrict the Fundamental Rights of persons employed in intelligence organisations and telecommunication systems set up for the armed forces or intelligence organisations.
51 <sup>st</sup> Amendment Act	1984	Provided for reservation of seats in the Lok Sabha for STs in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram as well as in the Legislative Assemblies of Meghalaya and Nagaland.
52 <sup>nd</sup> Amendment Act	1985	This amendment is popularly known as AntiDefection Law, Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a new Tenth Schedule containing the details in this regard.
53 <sup>rd</sup> Amendment Act	1986	Made special provisions in respect of Mizoram and fixed the strength of its Assembly at a minimum of 40 members.
54 <sup>th</sup> Amendment Act	1986	Increased the salaries of the Supreme Court and high court judges and enabled the Parliament to change them in the future by ordinary law.
55 <sup>th</sup> Amendment Act	1986	Made special provisions in respect of Arunachal Pradesh and fixed the strength of its Assembly at a minimum of 30 members.
56 <sup>th</sup> Amendment Act	1987	Fixed the strength of the Goa Legislative Assembly at a minimum of 30 members.
57 <sup>th</sup> Amendment Act	1987	Reserved seats for the STs in the legislative assemblies of the states of Arunachal Pradesh,

		Meghalaya, Mizoram and Nagaland.
58 <sup>th</sup> Amendment Act	1987	Provided for an authoritative text of the Constitution in Hindi language and gave the same legal sanctity to the Hindi version of the Constitution.
59 <sup>th</sup> Amendment Act	1988	Provided for the declaration of national emergency in Punjab on the ground of internal disturbance.
60 <sup>th</sup> Amendment Act	1988	Increased the ceiling of taxes on professions, trades, callings and employments from Rs.250 per annum to Rs.2,500 per annum.
61 <sup>st</sup> Amendment Act	1989	Reduced the voting age from 21years to 18 years for the Lok Sabha and state legislative assembly elections.
62 <sup>nd</sup> Amendment Act	1989	Extended the reservation of seats for the SCs and STs and exclusive representation for the Anglo-Indian in the Lok Sabha and the state legislative assemblies for the further period of ten years (i.e., up to 2000)
63 <sup>rd</sup> Amendment Act	1989	Repealed the changes introduced by the 59th Amendment Act of 1988 concerning Punjab. In other words, Punjab was brought at par with the other states in respect of emergency provisions.
64 <sup>th</sup> Amendment Act	1990	Facilitated the extension of the President's rule in Punjab up to a total period of three years and six months.
65 <sup>th</sup> Amendment Act	1990	Provided for the establishment of a multi-member National Commission for SCs and STs in the place of a Special Officer for SCs and STs.
66 <sup>th</sup> Amendment Act	1990	Included 55 more land reforms Acts of various states in the Ninth Schedule.
67 <sup>th</sup> Amendment Act	1990	Facilitated the extension of the President's rule in Punjab up to a total period of four years.
68 <sup>th</sup> Amendment Act	1991	Facilitated the extension of the President's rule in Punjab up to a total period of five years.
69 <sup>th</sup> Amendment Act	1991	Accorded a special status to the Union Territory of Delhi by designing it as the National Capital

		Territory of Delhi.
70 <sup>th</sup> Amendment Act	1992	Provided for the inclusion of the members of the Legislative Assemblies of National Capital Territory of Delhi and the Union Territory of Puducherry in the Electoral College for the election of the president.
71 <sup>st</sup> Amendment Act	1992	Included Konkani, Manipuri, and Nepali languages in the Eighth Schedule. With this, the total number of scheduled languages increased to 18.
72 <sup>nd</sup> Amendment Act	1992	Provided for reservation of seats for the STs in the legislative assembly of Tripura
73 <sup>rd</sup> Amendment Act	1992	Granted constitutional status and protection to the Panchayati-raj institutions. For this purpose, the Amendment has added a new Part-IX entitled as 'the panchayats' and a new Eleventh Schedule containing 29 functional items of the panchayats.
74 <sup>th</sup> Amendment Act	1992	Granted constitutional status and protection to the urban local bodies. For this purpose, the Amendment has added a new Part IX-A entitled as 'the municipalities' and a new Twelfth Schedule containing 18 functional items of the municipalities.
75 <sup>th</sup> Amendment Act	1994	Provided for the establishment of rent tribunals for the adjudication of disputes concerning rent, its regulation and control and tenancy issues including the rights, title, and interest of landlords and tenants.
76 <sup>th</sup> Amendment Act	1994	Included the Tamil Nadu Reservation Act of 1994 (which provided for 69 percent reservation of seats in educational institutions and posts in state services) in the Ninth Schedule to protect it from judicial review. In 1992, the supreme court ruled that the total reservation should not exceed 50 percent.
77 <sup>th</sup> Amendment Act	1995	Provided for reservation in promotions in government jobs for SCs and STs.



78 <sup>th</sup> Amendment Act	1995	Included 27 more land reforms Acts of various states in the Ninth Schedule. With this, the total number of Acts in the Schedule increased to 282 But, the last entry is numbered 284.
79 <sup>th</sup> Amendment Act	1999	Extended the reservation of seats for the SCs and STs and exclusive representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years (i.e., up to 2010)
80 <sup>th</sup> Amendment Act	2000	Provided for an 'alternative scheme of devolution' of revenue between the Centre and state
81 <sup>st</sup> Amendment Act	2000	Empowered the state to consider the unfilled reserved vacancies of a year as a separate class of vacancies to be filled up in any succeeding year or years
82 <sup>nd</sup> Amendment Act	2000	Provided for making of any provision in favour of the SCs and STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to the public services of the Centre and the states.
83 <sup>rd</sup> Amendment Act	2000	Provided that no reservation in panchayats need be made for SCs in Arunachal Pradesh
84 <sup>th</sup> Amendment Act	2001	Extended the ban on readjustment of seats in the Lok Sabha and the state legislative assemblies for another 25 years (i.e., up to 2026) with the same objectives of encouraging population limiting measures.
85 <sup>th</sup> Amendment Act	2001	Provided for 'consequential seniority' in the case of promotion under the rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995
86 <sup>th</sup> Amendment Act	2002	Made elementary education a fundamental right. The newly added Article 21-A declares that 'the State shall provide free and compulsory education to all children of the age of six to

		fourteen years in such manner as the State may determine. 'Changed the subject matter of Article 45 in Directive Principles. Added a new fundamental duty under Article 51-A which reads - 'It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years'
87 <sup>th</sup> Amendment Act	2003	Provided for the readjustment and rationalization of territorial constituencies in the states by the population figures of 2001 census and not 1991 census as provided earlier by the 84th Amendment Act of 2001
88 <sup>th</sup> Amendment Act	2003	(Article 268-A) - The Centre levies taxes on services. However, their proceeds are collected as well as appropriated by both the Centre and the states.
89 <sup>th</sup> Amendment Act	2003	Bifurcated the erstwhile combined National Commission for Scheduled Castes and Scheduled Tribes into two separate bodies, namely, National Commission for Scheduled Castes (Article 338) and National Commission for Schedules Tribes (Article 338-A). Both the Commission consist of a Chairperson, a Vice-Chairperson and three other members. The President appoints them.
90 <sup>th</sup> Amendment Act	2003	Provided for maintaining the representation of the Scheduled Tribes and non Scheduled Tribes in the Assam legislative assembly from the Bodoland Territorial Areas District (Article 332 (6))
91 <sup>st</sup> Amendment Act	2003	The total number of ministers, including the Prime Minister, in the Central Council of Minister, shall not exceed 15% of the total strength of the Lok Sabha (Article 75 (1A)). The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15% of the total strength of the

		Legislative Assembly of the state. However, the number of ministers, including the Chief Minister, in a state shall not be less than 12 (Article 164 (1A)).
92 <sup>nd</sup> Amendment Act		Included four more languages in the Eighth Schedule. They are Bodo, Dogri (Dongri), Maithili (Maithili) and Santhali. With this, the total number of constitutionally recognised languages increased to 22.
93 <sup>rd</sup> Amendment Act		Empowered the state to make special provisions for the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes in educational institutions including private educational institutions. This Amendment was enacted to nullify the Supreme Court judgment in the Inamdar case (2005) where the apex court ruled that the state cannot impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.
94 <sup>th</sup> Amendment Act		Freed Bihar from the obligation of having a tribal welfare minister and extended the same provision to Jharkhand and Chhattisgarh. This provision will now apply to the two newly formed states and Madhya Pradesh and Orissa.
95 <sup>th</sup> Amendment Act		Extended the reservation of seats for the SCs and STs and exclusive representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years, i.e., up to 2020 (Article 334).
96 <sup>th</sup> Amendment Act		Substituted 'Odia' for 'Oriya' Consequently, the 'Oriya' language in the Eighth Schedule shall be pronounced as 'Odia'.
97 <sup>th</sup> Amendment Act		Gave a constitutional status and protection to co-operative societies. It made the right to form co-operative societies a fundamental right (Article 19). It included a new Directive Principle of State

		Policy on the promotion of co-operative societies (Article 43- B). It added a new Part IX-B in the constitution which is entitled as 'The Co-operative societies' (Articles 243-ZH to 243-ZT).
98 <sup>th</sup> Amendment Act		To empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region.
99 <sup>th</sup> Amendment Act		It provided for the establishment of National judicial commission.
100 <sup>th</sup> Amendment Act		This amendment is the Land Boundary Agreement (LBA) between India and Bangladesh.
101 <sup>st</sup> Amendment Act		Goods and Service Tax (GST).
102 <sup>nd</sup> Amendment Act		Constitutional status to National Commission of Backward Classes.
103 <sup>rd</sup> Amendment Act		10% Reservation for Economically Weaker Section.