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MPS 104- INDIAN GOVERNMENT AND POLITICS

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UNIVERSITY OF SCIENCE & TECHNOLOGY MEGHALAYA

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Techno City, 9th Mile, Baridua, Ri-Bhoi, Meghalaya, 793101

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University of Science and Technology Meghalaya

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CHAPTER 1
MAKING OF THE INDIAN CONSTITUTION

LEARNING OUTCOME: After going through this lesson, students will be able to-

- **Understand the historical background of Indian Constitution**
- **Learn the composition, working and debates of Constituent Assembly**
- **Understand the Framing of the Constitution of India**

1.1 HISTORICAL BACKGROUND

The British came to India in 1600 as traders, in the form of East India Company Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I. In 1765, the Company, which till now had purely trading functions obtained the 'diwani' (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa.' This started its career as a territorial power. In 1858, in the wake of the'sepoy mutiny', the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on August 15, 1947. With Independence came the need for a Constitution. Hence, a Constituent Assembly was formed for this purpose in 1946 and on January 26, 1950, the Constitution came into being. However, various features of the Indian Constitution and polity have their roots in the British rule. There were certain events in the British rule that laid down the legal framework for the organisation and functioning of government and administration in British India. These events have greatly influenced our constitution and polity. They are explained here in a chronological order under two major headings:

1. The Company Rule (1773 - 1858)

2. The Crown Rule (1858 - 1947)

THE COMPANY RULE (1773-1858)

Regulating Act of 1773

This act was of great constitutional impor tance as (a) it was the first step taken by the British Government to control and regulate the affairs of the East India Company in India; (b) it recognised, for the first time, the political and administrative functions of the Company; and

(c) it laid the foundations of central administration in India. The features of this Act were as follows:

1. It designated the Governor of Bengal as the 'Governor-General of Bengal' and created an Executive Council of four members to assist him. The first such Governor-General was Lord Warren Hastings.

2. It made the governors of Bombay and Madras presidencies subordinate to the governor-general of Bengal, unlike ear-lier, when the three presidencies were independent of one another.

3. It provided for the establishment of a Supreme Court at Calcutta (1774) comprising one chief justice and three other judges.

4. It prohibited the servants of the Company from engaging in any private trade oraccepting presents or bribes from the
'natives.

5. It strengthened the control of the British Government over the Company by requiring the Court of Directors (governing body of the Company) to report on its revenue, civil, and military affairs in India.

Amending Act of 1781

In a bid to rectify the defects of the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, also known as the Act of Settlement

The features of this Act were as follows:

1. It exempted the Governor-General and the Council from the jurisdiction of the Supreme Court for the acts done by them in their official capacity. Similarly,
   it also exempted the servants of the company from the jurisdiction of the Supreme Court for their official actions.

2. It excluded the revenue matters and the matters arising in the collection of revenue from the jurisdiction of the Supreme Court.

3. It provided that the Supreme Court was to have jurisdiction over all the inhabitants of Culcutta. It also required the court to administer the personal law of the defendants i.e., Hindus were to be tried according to the Hindu law and Muslims were to be tried according to the Mohammedan law.

4. It laid down that the appeals from the Provincial Courts could be taken to the Governor-General-in-Council and not to the Supreme Court.

5. It empowered the Governor-General-in-Council to frame regulations for the Provincial Courts and Councils

Pitt's India Act of 1784

The next important act was the Pitt's India Act of 1784. The features of this Act were as follows:

1. It distinguished between the commercial and political functions of the Company.

2. It allowed the Court of Directors to manage the commercial affairs, but created a new body called Board of Control to manage the political affairs. Thus, it established a system of double government.

3. It empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India. Thus, the act was significant for two reasons: first, the Company's territories in India were for the nirst ume called the "Br tish possessions and second, the British Government was given the supreme control over Company's affairs and its administration in India

Act of 1786

In 1786, Lord Cornwallis was appointed as the Governor-General of Bengal. He placed two demands to accept that post, viz.,

1. He should be given power to override the decision of his council in special cases.

2. He would also be the Commander-in-Chief.

Accordingly, the Act of 1786 was enacted to make both the provisions.

Charter Act of 1793

The features of this Act were as follows:

1. It extended the overriding power given to Lord Cornwallis over his council, to all future Governor-Generals and Governors of Presidencies.

2. It gave the Governor-General more powers and control over the governments of the subordinate Presidencies of Bombay and Madras.

3. It extended the trade monopoly of the Company in India for another period of twenty years.

4. It provided that the Commander-in-Chief was not to be a member of the Governor-General's council, unless he was so appointed.

5. It laid down that the members of the Board of Control and their staff were, henceforth, to be paid out of the Indian revenues.

Charter Act of 1813

The features of this Act were as follows:

1. It abolished the trade monopoly of the company in India i.e., the Indian trade was thrown open to all British merchants. However, it continued the monopoly of the company over trade in tea and trade with China.

2. It asserted the sovereignty of the British Crown over the Company's territories in India

3. It allowed the Christian missionaries to come to India for the purpose of enlightening the people

4. It provided for the spread of western education among the inhabitants of the British territories in India.

5. It authorised the Local Governments in India to impose taxes on persons. They could also punish the persons for not paying taxes.

Charter Act of 1833

This Act was the final step towards centralisa-tion in British India. The features of this Act were as follows:

1. It made the Governor-General of Bengal as the Governor-General of India and vested in him all civil and military powers.
   Thus, the act created, for the first time, Government of India having authority over the entire territorial area possessed by the British in India. Lord William Bentick was the first Governor-General of India.

2. It deprived the Governor of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India. The laws made under the previous acts were called as Regulations, while laws made under this act were called as Acts.

3. It ended the activities of the East India Company as a commercial body, which became a purely administrative body. It provided that the Company's territories in India were held by it 'in trust for His Majesty, His heirs and successors'

4. The Charter Act of 1833 attempted to introduce a system of open competition for selection of civil servants and stated that the Indians should not be debarred from holding any place, office and employment under the Company.
   However, this provision was negated after opposition from the Court of Directors

Charter Act of 1853

This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853. It was a significant constitutional landmark. The features of this Act were as follows:

1. It separated, for the first time, the legislative and executive functions of the Governor-General's council. It provided for addition of six new members called legislative councillors to the council. In other words, it established a separate Governor-General's legislative council which came to be known as the Indian (Central) Legislative Council. This legislative wing of the council functioned as a mini-Parliament, adopting the same procedures as the British Parliament. Thus, legislation, for the first

time, was treated as a special function of the government, requiring special machinery and special process.

2. It introduced an open competition system of selection and recruitment of civil servants. The covenanted civil service was, thus, thrown open to the Indians also. Accordingly, the Macaulay Committee (the Committee on the Indian Civil Service) was appointed in 1854.

3. It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown. But, it did not specify any particular period, unlike the previous Charters. This was a clear indication that the Company's rule could be terminated at any time the Parliament liked.

4. It introduced, for the first time, local representation in the Indian (Central) Legislative Council. Of the six new legislative members of the Governor-General's council, four members were appointed by the local (provincial) governments of Madras, Bombay, Bengal and Agra

THE CROWN RULE (1858-1947)

Government of India Act of 1858

This significant Act was enacted in the wake of the Revolt of 1857-also known as the First War of Independence or the 'sepoy mutiny* The act known as the Act for the Good Government of India, abolished the East India Company, and transferred the powers of Government, territories and revenues to the British Crown.

The features of this Act were as follows:

1. It provided that India, henceforth, was to be governed by, and in the name of, Her Majesty. It changed the designation of the Governor-General of India to that of Viceroy of India. He (Viceroy) was the direct representative of the British Crown in India. Lord Canning, thus, became the first Viceroy of India.

2. It ended the system of double Government by abolishing the Board of Control and Court of Directors.

3. It created a new office, Secretary of State for India, vested with complete authority and control over Indian adminis-tration. The secretary of state was a member of the British Cabinet and was responsible ultimately to the British Parliament.

4. It established a 15-member council of India to assist the Secretary of State for India. The council was an advisory body. The secretary of state was made the Chairman of the council.

5. It constituted the Secretary of State-in-Council as a body corporate, capable of suing and being sued in India and in Bngland.

The Act of 1858 was, however, largely confined to the improvement of the administrative machinery by which the Indian Government was to be supervised and controlled in England, It did not alter in any substantial way the system of Government that prevailed in India!

Indian Councils Act of 1861

After the great revolt of 1857, the British Government felt the necessity of seeking the cooperation of the Indians in the administration of their country. In pursuance of this policy of association, three acts were enacted by the British Parliament in 1861, 1892 and

1909. The Indian Councils Act of 1861 is an important landmark in the constitutional and political history of India. The features of this Act were as follows:

1. It made a beginning of the representative institutions by associating Indians with the law-making process. It, thus, provided that the Viceroy should nominate some Indians as non-official members of his expanded council. In 1862, Lord Canning, the then Viceroy, nominated three Indians to his legislative council-the Raja of Benaras, the Maharaja of Patiala and Sir Dinkar Rao.

2. It initiated the process of decentralisation by restoring the legislative powers to the Bombay and Madras Presidencies. It, thus, reversed the centralising tendency that started from the Regulating Act of 1773 and reached its climax under the Charter Act of 1833. This policy of legislative devolution resulted in the grant of almost complete internal autonomy to the provinces in 1937.

3. It also provided for the establishment of new legislative councils for Bengal, North-Western Provinces and Punjab, which were established in 1862, 1886 and 1897, respectively.

4. It empowered the Viceroy to make rules and orders for the more convenient transaction of business in the council. It also gave a recognition to the 'portfolio system, introduced by Lord Canning in 1859. Under this, a member of the Viceroy's council was made in-charge of one or more departments of the Government and was authorised to issue final orders on behalf of the council on matters of his departments).

5. It empowered the Viceroy to issue ordinances, without the concurrence of the legislative council, during an emergency. The life of such an ordinance was six months.

Indian Councils Act of 1892

The features of this Act were as follows:

1. It increased the number of additional (non-official) members in the Central and provincial legislative councils, but maintained the official majority in them.

2. It increased the functions of legislative councils and gave them the power of discussing the budget and addressing questions to the executive.

3. It provided for the nomination of some non-official members of the (a) Central Legislative Council by the viceroy on the recommendation of the provincial legislative councils and the Bengal Chamber of Commerce, and (b) that of the provincial legislative councils by the Governors on the recommendation of the district boards, municipalities, universities, trade associations, zamin-dars and chambers.

The act made a limited and indirect provision for the use of election in filling up some of the non-official seats both in the Central and provincial legislative councils. The word "elec-tion" was, however, not used in the Act. The process was described as nomination made on the recommendation of certain bodies

Indian Councils Act of 1909

This Act is also known as Morley-Minto Reforms (Lord Morley was the then Secretary of State for India and Lord Minto was the then Viceroy of India). The features of this Act were as follows:

1. It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central legislative council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.

2. It retained official majority in the Central legislative council, but allowed the provincial legislative councils to have non-official majority.

3. It enlarged the deliberative functions of the legislative councils at both the lev-els. For example, members were allowed to ask supplementary questions, move resolutions on the budget and so on.

4. It provided (for the first time) for the association of Indians with the executive councils of the Vicerov and Governors. Satyendra Prasad Sinha became the first Indian to join the Vicerov's executive council. He was appointed as the Law Member.

5. It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
Under this, the Muslim members were to be elected only by Muslim voters.
Thus, the Act 'legalised communalism' and Lord Minto came to be known as the Father of Communal Electorate.

6. It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars

Government of India Act of 1919

On August 20, 1917, the British Government declared, for the first time, that its objective was the gradual introduction of responsible Government in India. The Government of India Act of 1919 was thus enacted, which came into force in 1921. This Act is also known as Montagu-Chelmsford Reforms (Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India).

The features of this Act were as follows:

1. It relaxed the central control over the provinces by demarcating and separating the central and provincial subjects.The central and provincial legislatures were authorised to make laws on their respective list of subjects. However, the structure of government continued to be centralised and unitary.

2. It further divided the provincial subjects into two parts--transferred and reserved. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the legislative council. The reserved subjects, on the other hand, were to be administered by the Governor and his executive council without being responsible to the legislative council. This dual scheme of governance was known as 'dyarchy'-a term derived from the Greek word di-arche which means double rule. However, this experiment was largely unsuccessful.

3. It introduced, for the first time, bicamer-alism and direct elections in the coun-try. Thus, the Indian legislative council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.

4. It required that the three of the six members of the Viceroy's executive Council (other than the Commander-in-Chief) were to be Indian.

5. It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.

6. It granted franchise to a limited number of people on the basis of property, tax or education.

7. It created a new office of the High Commissioner for India in London and transferred to him some of the functions hitherto performed by theSecretary of State for India.

8. It provided for the establishment of a public service commission. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants.

9. It separated, for the first time, provincial budgets from the Central budget and authorised the provincial legislatures to enact their budgets.

10. It provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force

Simon Commission- In November 1927 itself (i.e., 2 years before the schedule), the British Government announced the appointment a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All the members of the commission were British and hence, all the parties boycotted the commission. The commission submitted its report in 1930 and recommended the abolition of dyarchy, extension of responsible Government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate and so on. To consider the proposals of the commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states. On the basis of these discussions, a 'White Paper on Consitutional Reforms' was prepared and submitted for the consideration of the Joint Select Committee of the British Parliament.The recommendations of this committee were incorporated (with certain changes) in the next Government of India Act of 1935.

Communal Award- In August 1932, Ramsay MacDonald, the British Prime Minister, announced a scheme of representation of the minorities, which came to be known as the Communal Award. The award not only continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans but also extended it to the depressed classes (Scheduled Castes). Gandhiji was distressed over this extension of the principle of communal representation to the depressed classes and undertook fast unto death in Yerawada Jail (Poona) to get the award modified. At last, there was an agreement between the leaders of the Congress and the depressed classes. The agreement, known as Poona Pact, retained the Hindu joint electorate and gave reserved seats to the depressed classes.

Government of India Act of 1935

The Act marked a second milestone towards a completely responsible government in India. It was a lengthy and detailed document having 321 Sections and 10 Schedules. The features of this Act were as follows:

1. It provided for the establishment of an All-India Federation consisting of provinces and princely states as units.

   The Act divided the powers between the Centre and units in terms of three lists-Federal List (for Centre, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy. However, the federation never came into being as the princely states did not join it.

2. It abolished dyarchy in the provinces and introduced 'provincial auton-omy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres. Moreover, the Act introduced responsible Governments in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. This came into effect in 1937 and was discontinued in 1939

3. It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.

4. It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.

5. It further extended the principle of communal representation by providing separate electorates for depressed classes (Scheduled Castes), women and labour (workers).

6. It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.

7. It extended franchise. About 10 per cent of the total population got the voting right.

8. It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.

9. It provided for the establishment of not only a Federal Public Service Com-mission, but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

10. It provided for the establishment of a Federal Court, which was set up in 1937.

Indian Independence Act of 1947

On February 20, 1947, the British Prime Minister Clement Atlee declared that the British rule in India would end by June 30,1948; after which the power would be transferred to responsible Indian hands. This announcement was followed by the agitation by the Muslim League demanding partition of the country. Again on June 3, 1947, the British Government made it clear that any Constitution framed by the Constituent Assembly of India (formed in 1946) cannot apply to those parts of the con-try which were unwilling to accept it. On the same day (June 3, 1947), Lord Mountbatten, the Viceroy of India, put forth the partition plan, known as the Mountbatten Plan. The plan was accepted by the Congress and the Muslim League. Immediate effect was given to the plan by enacting the Indian Independence Act' (1947). The features of this Act were as follows:

1. It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.

2. It provided for the partition of India and creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth.

3. It abolished the office of Viceroy and provided, for each dominion, a governor-general, who was to be appointed by the British King on the advice of the dominion cabinet. His Majesty's Government in Britain was to have no responsibility with respect to the Government of India or Pakistan.

4. It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.

5. It empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new constitutions were drafted and enforced.
   No Act of the British Parliament passed after August 15, 1947 was to extend to either

of the new dominions unless it was extended thereto by a law of the legislature of the dominion.

6. It abolished the office of the Secretary of State for India and transferred his functions to the Secretary of State for Commonwealth Affairs

7. It proclaimed the lapse of British para-mountcy over the Indian princely states and treaty relations with tribal areas from August 15, 1947,

8. It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.

9. It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed. The dominions were however authorised to make modifications in the Act.

10. It deprived the British Monarch of his right to veto bills or ask for reservation of certain bills for his approval. But, this right was reserved for the Governor-General. The Governor-General would have full power to assent to any bill in the name of His Majesty.

11. It designated the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states. They were made to act on the advice of the respective council of ministers in all matters.

12. It dropped the title of Emperor of India from the royal titles of the King of England.

13. It discontinued the appointment to civil services and reservation of posts by the secretary of state for India. The members of the civil services appointed before August 15, 1947 would continue to enjoy all benefits that they were entitled to till that time.

At the stroke of midnight of 14-15 August, 1947, the British rule came to an end and power was transferred to the two new independent Dominions of India and Pakistan. Lord Mountbatten became the first Governor-General of the new Dominion of India. He swore in Jawaharlal Nehru as the first Prime Minister of independent India. The Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.

1.2 CONSTITUENT ASSEMBLY: COMPOSITION, WORKING AND DEBATES

DEMAND FOR A CONSTITUENT ASSEMBLY

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy, a pioneer of communist movement in India. An 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India, In 938, Jawaharlal Nehru, on behalf the INC declared that 'the Constitution of free India must be framed, without outside interfer-ence, by a Constituent Assembly elected on the basis of adult franchise. The demand was finally accepted in principle by the British Government in what is known as the 'August Offer' of 1940) In 1942, Sir Stafford Cripps, a Member 6f the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The Cripps Proposals were rejected by, the Muslim League, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies)Finally, a Cabinet Mission' sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

COMPOSITION OF THE CONSTITUENT ASSEMBLY

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

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

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

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

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

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

It is, thus, clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise. The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946 The Indian National Congress won 208 seats, the Muslim League 73 seats and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly. Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of the Indian society-Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sec-tions. The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi.

WORKING OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was, thus, attended by only 211 members. Dr. Sachchidananda Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice. Later, Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. In other words, the Assembly had two Vice-Presidents.

Objectives Resolution

On December 13, 1946, Jawaharlal Nehru moved the historic 'Objectives Resolution' in the Assembly. It laid down the fundamentals and philosophy of the constitutional struc-ture. It read-: "This Constituent Assembly declares its firm and solemn resolve to proclaim

India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

1. Wherein the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside India and the States as well as other territories as are willing to be constituted into the independent sovereign India, shall be a Union of them all; and

2. wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom; and

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

4. wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

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

6. whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and

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

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

Changes by the Independence Act

The representatives of the princely states, who had stayed away from the Constituent Assembly, gradually joined it. On April 28, 1947, representatives of the six states were part of the Assembly. After the acceptance of the Mountbatten Plan of June 3, 1947, for the partition of the country, the representatives of most of the other princely states took their seats in the Assembly. The members of the Muslim League from the Indian Dominion also entered the Assembly. The Indian Independence Act of 1947 made the following three changes in the position of the Assembly:

1. The Assembly was made a fully sovereign body, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.

2. The Assembly also became a legislative body. In other words, two separate functions were assigned to the Assembly, that is, making of the Constitution for free India and enacting of ordinary laws for the country. These two tasks were to be performed on separate days. Thus, the Assembly became the first Parliament of free India (Dominion Legislature). Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body, it was chaired by G.V. Maylankar. These two functions continued till November 26, 1949, when the task of making the Constitution was over

3. The Muslim League members (hail-ing from the areas? included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to 70.

Other Functions Performed

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

1. It ratified the India's membership of the Commonwealth in May 1949.
2. It adopted the national flag on July 22, 1947.
3. It adopted the national anthem on January 24, 1950
4. It adopted the national song on January 24, 1950.
5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the Constitutions of about 60 countries, and the Draft Constitution was considered for 114 days. The total expenditure incurred on making the Constitution amounted to 364 lakh. On January 24, 1950, the Constituent Assembly held its final session. It, however, did not end, and continued as the provisional parliament of India from January 26, 1950, till the formation of new Parliament after the first general elections in 1951-52

COMMITTEES OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. The names of these committees and their Chairman are given below:

Major Committees

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar

5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following five sub-committees:

   (a) Fundamental Rights Sub-Committee – J.B. Kripalani

   (b) Minorities Sub-Committee – H.C.Mukherjee

   (c) North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bardoloi

   (d) Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee - A.V. Thakkar

   (e) North-West Frontier Tribal Areas Sub-Committee

6. Rules of Procedure Committee - Dr. Rajendra Prasad

7. States Committee (Committee for Negotiating with States) - Jawaharlal Nehru

8. Steering Committee - Dr. Rajendra Prasad

Minor Committees

1. Finance and Staff Committee - Dr. Rajendra Prasad

1. Credentials Committee – A. Krishnaswami Ayyar

2. House Committee - B. Pattabhi Sitaramayya

3. Order of Business Committee - Dr. K.M. Munshi

4. Ad-hoc Committee on the National Flag- Dr. Rajendra Prasad

5. Committee on the Functions of the Constituent Assembly - G.V. Mavalankar

6. Ad-hoc Committee on the Supreme Court- S. Varadachari (Not an Assembly Member)

7. Committee on Chief Commissioners' Provinces - B. Pattabhi Sitaramayya

8. Expert Committee on the Financial

9. Provisions of the Union Constitution - Nalini Ranjan Sarkar (Not an Assembly Member)
10. Linguistic Provinces Commission - S.K.Dar (Not an Assembly Member)
11. Special Committee to Examine the Draft Constitution - Jawaharlal Nehru
12. Press Gallery Committee - Usha Nath Sen
13. Ad-hoc Committee on Citizenship - S. Varadachari (Not an Assembly Member)

Drafting Committee

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

1. Dr. B.R. Ambedkar (Chairman)
2. N. Gopalaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr. K.M. Munshi
5. Syed Mohammad Saadullah
6. N. Madhava Rau (He replaced B.L. Mitter who resigned due to ill-health)
7. T. Krishnamachari (He replaced D.P. Khaitan who died in 1948)

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the commilacion of india, which was published in February, 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October, 1948. The Drafting Committee took less than six months to prepare its draft. In all it sat only for 141 days.

CONSTITUENT ASSEMBLY DEBATES

The Constituent Assembly debates provide a good insight into the thinking behind the making of our Constitution. The material will help aspirants in building answers for the GS 2 mains paper. Additionally, certain facts related to the CADs will also help in the UPSC prelims exam. We can divide the CADs into four major sections, as shown below:

Stage	Work
Preliminary stage (9/12/1946 to 27/01/1948)	The guiding principles of the Constitution were outlined in reports submitted by certain committees such as the Fundamental Rights and Minorities Committee, Union Powers Committees, etc. Also, the Drafting Committee was formed to draft the Constitution.
First reading (4/11/1948 to 9/11/1948)	Introduction of the draft constitution in the Assembly.
Second reading (15/11/1948 to 17/10/1949)	The draft was discussed clause by clause.
Third reading (14/11/1949 to 26/11/1949)	The third reading of the Constitution was completed and it was enacted on 26th November.

The Constituent Assembly spent a total of about 165 days in framing the Constitution.

- Clause by clause discussion was done for about 101 days where the members discussed the text of the Constitution.

- About 36 lakh words were spoken in all and Dr. B R Ambedkar had the distinction of having spoken the most number of words.
- Fundamental rights, included in Part III, was debated for about 16 days, i.e., about 14% of the clause by clause discussion.
- The Directive Principles of State Policy (included in Part IV) was discussed for about 6 days (about 4%).
- The concept of citizenship formed about 2% of the clause by clause discussion among the eminent members of the Assembly. This was included in Part II.
- The members of the Drafting Committee had a higher share in the discussions since they frequently responded to what other members had to say on various issues.
- Altogether, women members contributed to about 2% of the discussions.
    - There were only 15 women members in the Assembly and out of them, only 10 took part in the debates.
    - Freedom fighter and Congress member, G Durgabai, spoke the maximum number of words among women members.
- Compared to members from the princely states who were nominated to the Assembly, the members from the provinces took a more active part in the debates.
    - Members from provinces contributed to about 85% of the discussions whereas princely states' members contributed to about 6%.

1.3 FRAMING OF THE CONSTITUTION

ENACTMENT OF THE CONSTITUTION

Dr. B.R. Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948). The second reading (clause by clause consideration) started on November 15, 1948 and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly. The third reading of the draft started on November 14, 1949. Dr. B.R. Ambedkar moved a motion-'the Constitution as settled by the Assembly be passed'. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution. This is also the date mentioned in the Preamble as the date on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this Constitution. The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules. The Preamble was enacted after the entire Constitution was already enacted. Dr. B.R. Ambedkar, the then Law Minister, piloted the Draft Constitution in the Assembly. He took a very prominent part in the deliberations of the Assembly. He was known for his logical, forceful and persuasive arguments on the floor of the Assembly. He is recognised as the 'Father of the Constitution of India' This brilliant writer, constitutional expert, undisputed leader of the Scheduled Castes and the 'chief architect of the Constitution of India' is also known as a 'Modern Manu'

ENFORCEMENT OF THE CONSTITUTION

Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949, itself. The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the 'date of its commencement', and celebrated as the Republic Day. January 26 was specifically chosen as the 'date of commencement' of the Constitution because of its historical importance. It was on this day in 1930 that Purna Swaraj day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC. with the commencement of the Constitution, the Indian

Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed. The Abolition of Privy Council Jurisdiction Act (1949) was however continued.

EXPERTS COMMITTEE OF THE CONGRESS

While elections to the Constituent Assembly were still in progress, on July 8, 1946, the Congress Party (Indian National Congress) appointed an Experts Committee for the purpose of preparing material for the Constituent Assembly. This committee consisted of the following members.

1. Jawaharlal Nehru (Chairman)
2. M. Asaf Ali
3. K.M. Munshi
4. N. Gopalaswami Ayyangar
5. K.T. Shah
6. D.R. Gadgil
7. Humayun Kabir
8. K. Santhanam

Later, on the Chairman's proposal, it was resolved that Krishna Kripalani be co-opted as member and convener of the committee. The committee had two sittings, the first at New Delhi from July 20 to 22, 1946, and the second at Bombay from August 15 to 17, 1946. Apart from a number of notes prepared by its members, the committee discussed the procedure to be adopted by the Constituent Assembly, the question of the appointment of various committees and the draft of a resolution on the objectives of the constitution to be moved during the first session of the Constituent Assembly&c. On the role played by this committee in the making of the Constitution, Granville Austin, an Indian constitutional expert, observed: "It was the Congress Experts Committee that set India on the road to her present Constitution.

The committee members, working within the framework of the Cabinet Mission Scheme, made general suggestions about autonomous areas, the powers of provincial Governments

and the Centre, and about such issues as the princely states and the amending power. They also drafted a resolution, closely resembling the Obiectives Resolution

CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticised the Constituent Assembly on various grounds. These are as follows:

1. Not a Representative Body: The critics have argued that the Constituent Assembly was not a representative body Indian Polity as its members were not directly elected by the people of India on the basis of universal adult franchise.

2. Not a Sovereign Body: The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.

3. Time Consuming: According to the critics, the Constituent Assembly took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work'. In this context, Naziruddin Ahmed, a member of the Constituent Assembly, coined a new name for the Drafting Committee to show his contempt for it. He called it a "Drifting Committee".

4. Dominated by Congress: The critics charged that the Constituent Assembly was dominated by the Congress party. Granville Austin, an American Constitutional expert, remarked: 'The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India

5. Lawyer-Politician Domination: It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.

6. Dominated by Hindus: According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus' Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India'

IMPORTANT FACTS

1. Elephant was adopted as the symbol (seal) of the Constituent Assembly.
2. Sir B.N. Rau was appointed as the constitutional advisor (Legal advisor) to the Constituent Assembly.
3. H.V.R. Iyengar was the Secretary to the Constituent Assembly.
4. S.N. Mukerjee was the chief draftsman of the constitution in the Constituent Assembly.
5. Prem Behari Narain Raizada was the calligrapher of the Indian Constitution The original constitution was handwritten by him in a flowing italic style.
6. The original version was beautified and decorated by artists from Shantiniketan including Nand Lal Bose and Beohar Rammanohar Sinha.
7. Beohar Rammanohar Sinha illuminated, beautified and ornamented the original Preamble calligraphed by Prem Behari Narain Raizada.
8. The calligraphy of the Hindi version of the original constitution was done by Vasant Krishan Vaidva and elegantly decorated and illuminated by Nand Lal Bose.

HINDI TEXT OF THE CONSTITUTION

Originally, the Constitution of India did not make any provision with respect to an authoritative text of the Constitution in the Hindi language. Later, a provision in this regard was made by the 58th Constitutional Amendment Act of 19878. This amendment inserted a new Article 394-A in the last part of the Constitution i.e., Part XI. This article contains the following provisions:

1. The President shall cause to be published under his authority:

(i) The translation of the Constitution in Hindi language. The modifications which are necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of the Central Acts in Hindi can be made in it. All the amendments of the Constitution made before such publication should be incorporated in it.

(ii) The translation of the Constitution and its every amendment published shall be construed to have the same meaning as the original text in English. If any difficulty arises in this matter, the President shall cause the Hindi text to be revised suitably.

(iii) The translation of the Constitution and its every amendment published shall be deemed to be, for all purposes, its authoritative text in Hindi.

CHECK YOUR PROGRESS

Self Assessment Exercises:

Q1. Write a note on the historical background of the Indian constitution.

Q2. Discuss the composition and working of the Constituent Assembly of India.

Q3. Write a note on the framing of the Indian constitution.

CHAPTER 2

IDEOLOGICAL CONTENETS

LEARNING OUTCOME: After going through this lesson, students will be able to-

- **Understand the crux of the Preamble of the Indian Constitution**
- **Explore the unique features of the Indian Constitution**
- **Identify the Basic Structure of the Constitution of India**

2.1 THE PREAMBLE

The American Constitution was the first to begin with a Preamble. Many countries, including India, followed this practice. The term 'Preamble' refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution. N.A. Palkhivala, an eminent jurist and constitutional expert, called the Preamble as the 'identity card of the Constitution.

The Preamble to the Indian Constitution is based on the 'Objectives Resolution', drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words-Socialist, Secular and Integrity.

TEXT OF THE PREAMBLE

The Preamble in its present form reads:

"We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, Social, Economic and Political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportu-nity; and to promote among them all;

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

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT. ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

INGREDIENTS OF THE PREAMBLE

The Preamble reveals four ingredients or components:

Source of authority of the Constitution:

The Preamble states that the Constitution derives its authority from the people of India.

1. Nature of Indian State: It declares India to be of a sovereign, socialist. secular democratic and republican polity.

2. Objectives of the Constitution: It specifies justice, liberty, equality and frater-mity as the objectives.

3. Date of adoption of the Constitution: It stipulates November 26, 1949, as the date.

Key Words in the Preamble

Certain key words - Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity -are explained as follows:

1. Sovereign- The word 'sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state. There is no authority above it, and it is free to conduct its own affairs (both internal and external). Though in 1949, India declared the continuation of her full membership of the Commonwealth of Nations and accepted the British Crown as the head of the Commonwealth, this extra-constitutional declaration does not affect India's sovereignty in any manner. Further, India's membership of the United Nations Organisation (UNO also in no way constitutes a limitation on her sovereignty'. Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

2. Socialist- Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit. Moreover, the Congress party itself adopted a resolution to establish a 'socialistic pattern of society' in its Avadi session as early as in 1955 and took measures accordingly. Notably, (the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state social-ism') which involves the nationalisation of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity?. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards the Gandhian socialism'. The new Economic Policy (1991) of liberalisation, privatisation and globalisation has, however, diluted the socialist credentials of the Indian State

3. Secular- The term 'secular too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words 'secular state" were not expressedly mentioned in the Constitution, there can be no doubt that Constitution. makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of refi. gion) have been included in the constitution, The Indian Constitution embodies the positive concept of secularism ie, all religions in our country (irrespective of their strength) have the same status and support from the state.

4. Democratic- A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people. Democracy is of two types -direct and indi. rect. In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, Referendum, Initiative, Recall and Plebiscite?. In indirect democ-racy, on the other hand, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds-parliamentary and presidential. The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elec-tions, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the

manifestations of the democratic character of the Indian polity. The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy. This dimension was stressed by Dr. Ambedkar in his concluding speech in the Constituent Assembly on November 25, 1949, in the following way- “political democracy cannot last unless there lies at the base of it social democracy. What does social democracy? It means a way of life which recognises liberty, equality and fraternity. The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative". In the same context, the Supreme Court observed in 1997 that: "The Constitution envisions establishing an egalitarian social order rendering to every citizen social, economic and political justice in a social and economic democracy of the Bharat Republic".

5. Republic- A democratic polity can be classified into two categories- monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, e.g., Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, e.g., USA. Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years. A republic also means two more things: one, vesting of political sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

6. Justice- The term 'justice' in the Preamble embraces three distinct forms-social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social justice denotes the equal treatment of all citizens without anv social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women. Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and

economic justice denotes what is known as "distributive justice'. Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government. The ideal of justice-social, economic and political-has been taken from the Russian Revolution (1917)

7. Liberty- The term liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities. The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation. Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the Preamble or Fundamental Rights is not absolute but qualified. The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789-1799).

8. Equality- The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination. The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality-civic, political and economic. The following provisions of the chapter on Fundamental Rights ensure civic equality:

1. Equality before the law (Article 14).
2. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
3. Equality of opportunity in matters of public employment (Article 16).
4. Abolition of untouchability (Article 17).
5. Abolition of titles (Article 18).

There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article325). Two elections to the Lok Sabha and the state assemblies to be on

the basis of adult suffrage (Article 326). The Directive Principles of State Policy (Article 39) secures to men and women equal right to an adequate means of livelihood and equal pay for equal work.

9. Fraternity- Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizen-ship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities. The Preamble declares that fraternity has to assure two things-the dignity of the individual and the unity and integrity of the nation. The word 'integrity' has been added to the preamble by the 42nd Constitutional Amendment (1976). The phrase 'dignity of the individual signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred. This is highlighted through some of the provisions of the Fundamental Rights and Directive Principles of State Policy, which ensure the dignity of individuals. Further, the Fundamental Duties (Article 51-A) also protect the dignity of women by stating that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women, and also makes it the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India. The phrase 'unity and integrity of the nation' embraces both the psychological and territorial dimensions of national integration. Article 1 of the Constitution describes India as a 'Union of States' to make it clear that the states have no right to secede from the Union, implying the indestructible nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguism, secessionism and so on.

SIGNIFICANCE OF THE PREAMBLE

The Preamble embodies the basic philosophy and fundamental values-political, moral and religious - on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the pounding fathers of the Constitution. In the words of Sir Alladi Krishnaswami lyer, a member of the Constituent Assembly who played a significant role in making the Constitution, 'The Preamble to our Constitution expresses what we had thought or dreamt so long. According to K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the 'horoscope of our sovereign democratic republic! Pandit Thakur Das Bhargava, another

member of the Constituent Assembly, summed up the importance of the Preamble in the following words: 'The Preamble is the most precious part of the Constitution. it is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution'. Sir Ernest Barker, a distinguished English political scientist, paid a glowing tribute to the political wisdom of the authors of the Preamble. He described the Preamble as the kev-note'13 to the Constitution. He was so moved by the text of the preamble that he quoted!4 it at the opening of his popular book, Principles of Social and Political Theory (1951). M. Hidayatullah, a former Chief Justice of India, observed, 'Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter. One of the controversies about the Preamble is as to whether it is a part of the Constitution or not. In the Berubari Union case (1960), the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble. Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is not a part of the Constitution. In the Kesavananda Bharati case" (1973), the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble. In the LIC of India case(1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution. Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly; but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly. While forwarding the Preamble for votes, the President of the Constituent Assembly said, 'The question is that Preamble stands part of the Constitution. The motion was then adopted. Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution. However, two things should be noted:

1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.

2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.

The question as to whether the Preamble can be amended under Article 368 of the Constitution arose for the first time in the historic Kesavananda Bharati case (1973). It was urged that the Preamble cannot be amended as it is not a part of the Constitution. The petitioner contended that the amending power in Article 368 cannot be used to destroy or damage the basic elements or the fundamental features of the Constitution, which are enshrined in the Preamble. The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by in in the Berubari Union (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the basic features, In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 36820. The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words-Socialist, Secular and Integrity-to the Preamble. This amendment was held to be valid.

2.2 FEATURES OF THE INDIAN CONSTITUTION

The Constitution of India has several salient features that distinguish it from the Constitutions of the other countries. It should be noted at the outset that a number of original features of the Constitution (as adopted in 1949) have undergone a substantial change, on account of several amendments, particularly 7th, 42nd, 44th, 73rd, 74th, 97th and 10lst Amendments. In fact, the 42nd Amendment Act (1976) is known as 'Mini-Constitution' due to the important and large number of changes made by it in various parts of the Constitution. However, in the Kesavananda Bharati case (1973), the Supreme Court ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.

SALIENT FEATURES OF THE CONSTITUTION

The salient features of the Constitution, as it stands today, are as follows:

1. Lengthiest Written Constitution- Constitutions are classified into written, like the American Constitution, or unwrit-ten, like the British Constitution. The Constitution of India is the lengthiest of all the written Constitutions of the world. It is a very comprehensive, elaborate and detailed document. Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently (2019), it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules?. The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 95 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9, 10, 11 and 12). No other Constitution in the world has so manv Articles and Schedules.

Four factors have contributed to the elephantine size of our Constitution. They are:

1. Geographical factors, that is, the vastness of the country and its diversity.
2. Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
3. Single Constitution for both the Centre and the states'.
4. Dominance of legal luminaries in the
5. Constituent Assembly.

The Constitution contains not only the fundamental principles of governance, but also detailed administrative provisions. Further, those matters which in other modern democratic countries have been left to the ordinary legislation or established political conventions have also been included in the constitutional document itself in India.

2. Drawn From Various Sources- The Constitution of India has borrowed most of its provisions from the Constitutions of various other countries as well as from the Government of India ActS of 1935. Dr B.R. Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the World. The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935. The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Trish Constitutions, respectively. The political part of the Constitution (the principle of Cabinet Government and the relations between the Executive and the Legislature) have been largely drawn from the British Constitution. The other provisions of the Constitution have been drawn from the Constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan and so on. The most profound influence and material source of the Constitution is the Government of India Act, 1935. The Federal Scheme, Judiciary, Governors, Emergency Powers, the Public Service Commissions and most of the administrative details are drawn from this Act. More than half of the provisions of Constitution are identical to or bear a close resemblance to the Act of 1935.

3. Blend of Rigidity and Flexibility- Constitutions are also classified into rigid and flexible. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution. The Constitution of India is neither rigid nor flexible, but a synthesis of both. Article 368 provides for two types of amendments:

1. Some provisions can be amended by a special majority of the Parliament, ic a two-third majority of the member of each House present and voting, and a majority of the total membership of
   each House.

2. Some other provisions can be amended bv a special majority of the Parliament and with the ratification by half of the
   total states.

At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably these amendments do not come underArticle 368.

4. Federal System with Unitary Bias- The Constitution of India establishes a federal system of Government. It contains all the usual features of a federation, viz., two Government, division of powers, written Constitution, supremacy of Constitution rigidity of Constitution, independent judiciary and bicameralism. However, the Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions and so on. Moreover, the term 'Federation' has nowhere been used in the Constitution. Article 1, on the other hand, describes India as a 'Union of States' which implies two things: one, Indian Federation is not the result of an agreement by the states; and two, no state has the right to secede from the federation. Hence, the Indian Constitution has been variously described as 'federal in form but, unitary in spirit', 'quasi-federal' by K.C. Wheare, 'bargaining federalism' br Morris Jones, 'co-operative federalism' by Granville Austin, federation with a centralising tendency by Ivor Jennings and so on.

5. Parliamentary Form of Government- The Constitution of India has opted for the British Parliamentary System of Government rather than American Presidential System of Government. The parliamentary system is based on the principle of co-operation and co-ordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs. The parliamentary system is also known as the 'Westminster' Model of Govern-ment, responsible Government and Cabinet Government. The Constitution establishes the parliamentary system not only at the Centre, but also in the states. The features of parliamentary government in India are:

1. Presence of nominal and real executives;

2. Majority party rule,

3. Collective responsibility of the executive to the legislature,
4. Membership of the ministers in the legislature
5. Leadership of the Prime Minister or the
6. Chief Minister,
7. Dissolution of the lower House (Lok Sabha or Assembly)

Even though the Indian parliamentary system is largely based on the British pat-tern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has hereditary head (monarchy). In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'

6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy- The doctrine of sovereignty of Parliament is associated with the British Parliament, while the principle of judicial supremacy with that of the American Supreme Court. Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in US. This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law contained in the Indian Constitution (Article 21). Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy. The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

7. Integrated and Independent Judiciary- The Indian Constitution establishes a judicial system that is integrated as well as independent. The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the

state laws are enforced by the state judiciary. The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence-security of tenure of the judges, fixed service conditions for the judges, all the expenses of the Supreme Court charged on the Consolidated Fund of India, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement, power to punish for its contempt vested in the Supreme Court, separation of the judiciary from the executive, and so on.

8. Fundamental Rights- Part III of the Indian Constitution guarantees six" fundamental rights to all the citizens:

1. Right to Equality (Articles 14-18);
2. Right to Freedom (Articles 19-22);
3. Right against Exploitation (Articles 23-24);
4. Right to Freedom of Religion (Articles 25-28);
5. Cultural and Educational Rights (Articles 29-30); and
6. Right to Constitutional Remedies (Article 32).

The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. They are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly. go to the Supreme Court which can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the restoration of his rights. However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a Constitutional Amendment Act. They can also be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

9. Directive Principles of State Policy- According to Dr. B.R. Ambedkar, the Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV of the Constitution. They can be classified into three broad categories -socialistic, Gandhian and liberal-intellectual. The Directive Principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation. Yet, the Constitution itself declares that 'these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws': Hence, they impose a moral obligation on the state authorities for their application. But, the real force (sanction) behind them is political, that is, public opinion. In the Minerva Mills case' (1980), the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'.

10. Fundamental Duties- The original constitution did not provide for the Fundamental Duties of the citizens. These were added during the operation of internal emergency (1975-77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty. The Part IV-A of the Constitution (which consists of only one Article 51-A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on. The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

11. A Secular State- The Constitution of India stands for a Secular state. Hence, it does not uphold any particular religion as the official religion of the Indian State. The following provisions of the Constitution reveal the secular character of the Indian State:

1. The term 'secular' was added to the Preamble of the Indian Constitution hw the 42nd Constitutional Amendment Act of 1976

2. The Preamble secures to all citizens of India liberty of belief, faith and worship.

3. The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).

4. The State shall not discriminate against any citizen on the ground of religion (Article 15).

5. Equality of opportunity for all citizens in matters of public employment (Article 16).

6. All the persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).

7. Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).

8. No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).

9. No religious instruction shall be provided in any educational institution maintained by the State (Article 28).

10. Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).

11. All minorities shall have the right to establish and administer educational institutions of their choice (Article 30)

12. The State shall endeavour to secure for all the citizens a Uniform Civil Code (Article 44).

The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics).This negative concept of secularism is inapplicable in the Indian situation where the society is multi-religious. Hence, the Indian Constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally. Moreover, the Constitution has also abolished the old system of communal representation, that is, reservation of seats in the legislatures on the basis of religion. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

12. Universal Adult Franchise- The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth and so on. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988. The introduction of universal adult franchise by the Constitution-makers was a bold experiment and highly remarkable in view of the vast size of the country, its huge population, high poverty, social inequality and overwhelming illiteracy. Universal adult franchise makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests and opens up new hopes and vistas for weaker sections.

13. Single Citizenship- Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizen-ship, that is, the Indian citizenship. In countries like USA, on the other hand, each person is not only a citizen of USA, but also a citizen of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights--one conferred by the National government and another by the state government. In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them Despite the constitutional provision for a single citizenship and uniform rights for all the people, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. This means that the cherished goal of the Constitution-makers to build a united and integrated Indian nation has not been fully realised.

14. Independent Bodies - The Indian Constitution not only provides for the legislative, executive and judicial organs of the Government (Central and state) but also establishes certain independent bodies. They are envisaged by the Constitution as the bulkworks of the democratic system of Government in India. These are:

1. Election Commission to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.

2. Comptroller and Auditor-General of India to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of Government expenditure.

    1. Union Public Service Commission to conduct examinations for recruitment to all-India services' and higher Central services and to advise the President on disciplinary matters.

    2. State Public Service Commission in every state to conduct examinations for recruitment to state services and to advice the governor on disciplinary matters.

The Constitution ensures the independence of these bodies through various provi sions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

15. Emergency Provisions- The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectivel.The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

The Constitution envisages three types of emergencies, namely:

1. National emergency on the ground of war or external aggression or armed rebellion' (Article 352);

2. state emergency (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and

3. Financial emergency on the ground of threat to the financial stability or credit of India (Article 360).

During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the

Indian constitution and the state legislatures in respect of other co-operative societies to make the appropriate law.

16. Three-tier Government - Originally, the Indian Constitution, like any other federal Constitution, provided for a dual polity and contained provisions with regard to the organisation and powers of the centre and the states. Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of Government (i.e., local) which is not found in any other Constitution of the world. The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new Schedule 11 to the Constitution. Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A18 and a new Schedule 12 to the Constitution.

17. Co-operative Societies - The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the Constitution:

1. It made the right to form co-operative societies a fundamental right (Article 19).
2. It included a new Directive Principle of State Policy on promotion of co-operative societies (Article 43-B).
3. It added a new Part IX-B in the Constitution which is entitled as "The
4. Co-operative Societies" (Articles 243-ZH to 243-ZT).

The new Part IX-B contains various provisions to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. It empowers the Parliament in respect of multi-state cooperative societies.

CRITICISM OF THE CONSTITUTION

The Constitution of India, as framed and adopted by the Constituent Assembly of India, has been criticized on the following grounds:

1. A Borrowed Constitution- The critics opined that the Indian Constitution contains nothing new and original. They described it as a borrowed Constitution' or a 'bag of borrowings' or a 'hotch-potch Constitution' or a 'patchwork' of several documents of the world constitu-tions.

However, this criticism is unfair and illogical. This is because, the framers of the Constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults. While answering the above criticism in the Constituent Assembly, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, said: "One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly, what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the dav are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based; I am sure, on an inadequate study of the Constitution".

2. A Carbon Copy of the 1935 Act- The critics said that the framers of the Constitution have included a large number of the provisions of the Government of India Act of 1935 into the Constitution of India. Hence, they called the Constitution as a "Carbon Copy of the 1935 Act" or an "Amended Version of the 1935 Act. For example, N. Srinivasan observed that the Indian Constitution is "both in language and substance a close copy of the Act of 1935" Similarly, Sir Ivor Jennings, a British Constitutionalist, said that "the Constitution derives directly from the Government of India Act of 1935 from which, in fact, many of its provisions are copied almost textually". Further, P.R. Deshmukh, a member of the Constituent Assembly, commented that "the Constitution is essentially the Government of India Act of 1935 with only adult franchise added". The same Dr. B.R. Ambedkar answered the above criticism in the Constituent Assembly in the following way: "As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration".

3. Un-Indian or Anti-Indian- According to the critics, the Indian Constitution is 'un-Indian' or 'anti-Indian' because it does not reflect the political traditions and the spirit of India. They

said that the foreign nature of the Constitution makes it unsuitable to the Indian situation or unworkable in India. In this context, K. Hanumanthaiya, a member of the Constituent Assembly, commented: "We wanted the music of Veena or Sitar, but here we have the music of an English band. That was because Indian Polity our Constitution-makers were educated there way" similarly, Lokanath Misra, another member of the Constituent Assembly, criticized the Constitution as a "slavish imitation of the west, much more - a slavish surrender to the west? Further, Lakshminarayan Sahu also a member of the Constituent Assembly, observed: "The ideals on which this draft Constitution is framed have no manifest relation to the fundamental spirit of India. This Constitution would not prove suitable and would break down soon after being brought into operation"

4. An Un-Gandhian Constitution- According to the critics, the Indian Constitution is un-Gandhian because it does not contain the philosophy and ideals of Mahatma Gandhi, the father of the Indian Nation. They opined that the Constitution should have been raised and built upon village panchayats and district panchayats. In this context, the same member of the Constituent Assembly, K. Hanumanthaiya, said: "That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage". T. Prakasam, another member of the Constituent Assembly, attributed this lapse to Ambedkar's non-participation in the Gandhian movement and the antagonism towards the Gandhian ideas.

5. Elephantine Size- The critics stated that the Indian Constitution is too bulky and too detailed and contains some unnecessary elements. Sir Ivor Jennings, a British Constitutionalist, observed that the provisions borrowed were not always well-selected and that the constitution, generally speaking, was too long and complicated. In this context, H.V. Kamath, a member of the Constituent Assembly, commented: "The emblem and the crest that we have selected for our assembly is an elephant. It is perhaps in consonance with that our constitution too is the bulkiest that the world has produced". He also said: "I am sure, the House does not perce that we should make the Constitution an elephantine one.

6. Paradise of the Lawyers decording to the critics, the Indian Constitution is too legalistic and very complicated. They opined that the legal language and phraseology adopted in the constitution makes it a complex document. The same Sir Ivor Jennings called it a "lawyer's paradise". In this context, H.K. Maheswari, a member of the Constituent Assembly, observed: "The draft tends to make people more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so,

the draft is really a lawyer's paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do". Similarly, P.R. Deshmukh, another member of the Constituent Assembly, said: "I should, however, like to say that the draft of the articles that have been brought before the House by Dr. Ambedkar seems to my mind to be far too ponderous like the ponderous tomes of a law manual. A document dealing with a constitution hardly uses so much of padding and so much of verbiage. Perhaps it is difficult for them to compose a document which should be, to my mind, not a law manual but a socio-political document, a vibrating, pulsating and life-giving document. But, to our misfortune, that was not to be, and we have been burdened with so much of words, words and words which could have been very easily eliminated."

2.3 BASIC STRUCTURE

EMERGENCE OF THE BASIC STRUCTURE

The question whether Fundamental Rights can be amended by the Parliament under Article 368 came for consideration of the Supreme Court within a year of the Constitution coming into force. In the Shankari Prasad case (1951), the constitutional validity of the First Amendment Act (1951), which curtailed the right to property, was challenged. The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights. The word law' in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws). Therefore, the Parliament can abridge or take away any of the Fundamental Rights by enacting a constitutional amendment act and such a law will not be void under Article 13. But in the Golak Nath case (1967), the Supreme Court reversed its earlier stand. In that case, the constitutional validity of the Seventeenth Amendment Act (1964), which inserted certain state acts in the Ninth Schedule, was challenged. The Supreme Court ruled that the Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot abridge or take away any of these rights. A constitutional amendment act is also a law within the meaning of Article 13 and hence, would be void for violating any of the Fundamental Rights. The Parliament reacted to the Supreme Court's judgement in the Golak Nath case (1967) by enacting the 24th Amendment Act (1971). This Act amended Articles 13 and 368.

It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13. However, in the Kesavananda Bharati case (1973), the Supreme Court overruled its judgement in the Golak Nath case (1967). It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the basic structure' (or basic features of the Constitution. It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the basic structure' of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the basic structure' of the Constitution. The doctrine of basic structure of the constitution was reaffirmed and applied by the Supreme Court in the Indira Nehru Gandhi case (1975). In this case, the Supreme Court invalidated a provision of the 39th Amendment Act (1975) which

kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts. The court said that this provision was beyond the amending power of Parliament as it affected the basic structure of the constitution. Again, the Parliament reacted to this judicially innovated doctrine of 'basic structure' by enacting the 42nd Amendment Act (1976).This Act amended Article 368 and declared that there is no limitation on the constituent power of Parliament and no amendment can be questioned in any court on any ground including that of the contravention of any of the Fundamental Rights.

However; the Supreme Court in the Minerva Mills case' (1980) invalidated this provision as it excluded judicial review which is a 'basic feature' of the Constitution. Applying the doctrine of basic structure' with respect to Article 368, the court held that:"Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of the Constitution and, therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one" Again in the Waman Rao case™ (1981), the Supreme Court adhered to the doctrine of the basic structure and further clarified that it would apply to constitutional amendments enacted after April 24, 1973 (i.e., the date of the judgement in the Kesavananda Bharati case).

ELEMENTS OF THE BASIC STRUCTURE

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the basic structure of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure of the Constitution. From the various judgements, the following have emerged as basic features' of the Constitution or elements of the basic structure' of the constitution:

1. Supremacy of the Constitution

2. Sovereign, democratic and republican nature of the Indian polity

3. Secular character of the Constitution
4. Separation of powers between the legislature, the executive and the judiciary
5. Federal character of the Constitution
6. Unity and integrity of the nation
7. Welfare state (socio-economic justice)
8. Judicial review
9. Freedom and dignity of the individual
10. Parliamentary system
11. Rule of law
12. Harmony and balance between Fundamental Rights and Directive Principles
13. Principle of equality
14. Free and fair elections
15. Independence of Judiciary
16. Limited power of Parliament to amend the Constitution
17. Effective access to justice
18. Principles (or essence) underlying fundamental rights
19. Powers of the Supreme Court under Articles 32, 136, 141 and 1426
20. Powers of the High Courts under Articles 226 and 2277

CHECK YOUR PROGRESS

Self Assessment Exercises

Q1. Explain the main keywords present in the Preamble of Indian Constitution.

Q2. Discuss the various features of the Indian Constitution.

Q3. Explain in detail the basic structure of the Indian Constitution.

CHAPTER 3

ORGANS OF THE GOVERNMENT

LEARNING OUTCOME: After going through this lesson, students will be able to-

- **Understand the Composition, Power and Functions of the Legislature**
- **Know the role and function of President, Prime Minister, Council of Ministers and Bureaucracy**
- **Explore the Judicial Activism and Judicial Review**

3.1 LEGISLATURE:

PARLIAMENT- COMPOSITION, POWERS AND FUNCTIONS

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government. Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers etc. of the Parliament.

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole. Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent. He also performs certain functions relating to the proceedings of the Parliament, for example, he summons and pro-rogues both the Houses, dissolves the Lok Sabha, addresses both the Parliament Houses, issues ordinances when they are not in pession,

and so on. In this respect, the framers of the Indian Constitution relied on the British pattern rather than the American pattern In Britain, the Parliament consists of the Crown (King or Queen), the House of Lords (Upper House) and the House of Commons (Lower House). By contrast, the American president is not an integral part of the legislature. In USA, the legislature, which is known as Congress, consists of the Senate (Upper House) and the House of Representatives (Lower House).The parliamentary form of government emphasises on the interdependence between the legislative and executive organs. Hence, we have the 'President-in-Parliament' like the 'Crown-in-Parliament' in Britain. The presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, the American president is not regarded as a constituent part of the Congress.

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha- The maximum strength of the Raja Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president. At present, the Rajya Sabba has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president. The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

1. Representation of States - the representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote.)The seats are allotted to the states in the Raja Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members - 2 from each state.

2. Representation of Union Territories- The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the nine union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The

populations of other six union territories are too small to have any representative in the Rajya Sabha.

3. Nominated Members- The president nominates 12 members to the Raiva Sabha from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.

Composition of Lok Sabha-The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 states, 13 members represent the union ter. ritories and 2 Anglo-Indian members are nominated by the President'.

1. Representation of States- The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

2. Representation of Union Territories - The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election

3. Nominated Members - The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.

Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

POWERS AND FUNCTIONS OF THE INDIAN PARLIAMENT

The functions of the Parliament are mentioned in the Indian Constitution in Chapter II of Part V. The functions of the Parliament can be classified under several heads. They are discussed below:

Legislative Functions

- The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.
- In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.
- The Parliament can also pass laws on items in the **State List** under the following circumstances:
    - If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.
    - As per **Article 249**, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by ⅔ majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.
    - As per **Article 253**, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.
    - According to **Article 252**, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.

Executive Functions (Control over the Executive)

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

- By a **vote of no-confidence**, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.

- The MPs (Members of Parliament) can ask questions to the ministers on their ommissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.

- **Adjournment Motion**: Allowed only in the Lok Sabha, the chief objective of the adjournment motion is to draw the attention of the Parliament to any recent issue of urgent public interest. It is considered an extraordinary tool in Parliament as the normal business is affected.

- The Parliament appoints a **Committee on Ministerial Assurances** that sees whether the promises made by the ministers to the Parliament are fulfilled or not.

- **Censure Motion:** A censure motion is moved by the opposition party members in the House to strongly disapprove any policy of the government. It can be moved only in the Lok Sabha. Immediately after a censure motion is passed, the government has to seek the confidence of the House. Unlike in the case of the no-confidence motion, the Council of Ministers need not resign if the censure motion is passed.

- **Cut Motion:** A cut motion is used to oppose any demand in the financial bill brought by the government.

Financial Functions

Parliament is the ultimate authority when it comes to finances. The Executive cannot spend a single pie without parliamentary approval.

- The Union Budget prepared by the Cabinet is submitted for approval by the Parliament. All proposals to impose taxes should also be approved by the Parliament.

- There are two standing committees (Public Accounts Committee and Estimates Committee) of the Parliament to keep a check on how the executive spends the money granted to it by the legislature. You can also read on parliamentary committees.

- Also see: Money Bills.

Amending Powers

The Parliament has the power to amend the Constitution of India. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for them to be effective. Read about the important amendments in the Indian Constitution here.

Electoral Functions

The Parliament takes part in the election of the President and the Vice President. The Electoral College that elects the President comprises of, among others, the elected members of both Houses. The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha.

Judicial Functions

In case of breach of privilege by members of the House, the Parliament has punitive powers to punish them. A breach of privilege is when there is an infringement of any of the privileges enjoyed by the MPs.

- A privilege motion is moved by a member when he feels that a minister or any member has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Read more on privilege motion.
- In the parliamentary system, legislative privileges are immune to judicial control.
- The power of the Parliament to punish its members is also generally not subject to judicial review.
- Other judicial functions of the Parliament include the power to impeach the President, the Vice President, the judges of the Supreme Court, High Courts, Auditor-General, etc.

Other powers/functions of the Parliament

- Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.

- A Parliament is sometimes talked of as a ‘nation in miniature’.
- In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members.

3.2 EXECUTIVE: PRESIDENT,PRIME MINISTER,COUNCIL OF MINISTERS, BUREAUCRACY

THE PRESIDENT

Articles 52 to 78 in Part V of the constitution deal that the Union executive. The Union executive consists of the Presi dent, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of electoral college consisting of:

1. the elected members of both the Houses of Parliament;
2. the elected members of the legislative assemblies of the states; and
3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry'.

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature and the nominated. members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election. The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

1. Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly.

2. Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament.

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected here only one candidate is to be elected as President) plus one and adding one to the quotient.

Each member of the Electoral College is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray. In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota. All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as President cannot be challenged on the ground that the electoral college was incomplete (ie, existence of any vacancy among the members of electoral college). If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force. Some members of the Constituent Assembly criticised the system of indirect election for the President as undemocratic and proposed the idea of direct election. However, the Constitution makers chose the indirect election due to the following reasons.

1. The indirect election of the President is in harmony with the parliamentary system of government envisaged in the Constitution. Under this system, the President is only a nominal executive and the real powers are vested in the council of ministers headed by the prime minister. It would have been anomalous to have the President elected directly by the people and not give him any real power.

2. The direct election of the President would have been very costly and time- and energy-consuming due to the vast size of the electorate. This is unwarranted keeping in view that he is only a symbolic head.

Some members of the Constituent Assembly suggested that the President should be elected by the members of the two Houses of Parliament alone. The makers of the Constitution did not prefer this as the Parliament, dominated by one political party, would have invariably chosen a candidate from that party and such a President could not represent the states of the Indian Union. The present system makes the President a representative of the Union and the states equally. Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could better be called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications for Election as President

A person to be eligible for election as President should fulfil the following qualifications:

1. He should be a citizen of India.

2. He should have completed 35 years of age.

3. He should be qualified for election as a member of the Lok Sabha.

4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority. A sitting President or Vice-President of the Union, the Governor of any state and a minister of the Union or

any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of 215,000 in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled. Before 1997, number of proposers and seconders was ten each and the amount of security deposit was <2,500. In 1997, they were increased to discourage the non-serious candidates

Oath or Affirmation by the President

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears:

1. to faithfully execute the office;
2. to preserve, protect and defend the Constitution and the law; and
3. to devote himself to the service and well-being of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior-most judge of the Supreme Court available. Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
2. He should not hold any other office of profit.
3. He is entitled, without payment of rent, to the use of his official residence (the Rastrapathi Bhavan).

4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

5. His emoluments and allowances cannot be diminished during his term of office.

In 2018, the Parliament increased the salary of the President from 71.50 lakh to 35 lakh per monthta. Barlier in 2008. the pension of the retired President was increased from 33 lakh per annum to 50% of his salary per month?. In addition, the former Presidents are entitled to furnished residence, phone facilities, car, medical treatment, travel facility, secretarial staff and office expenses upto <1,00,000 per annum. The spouse of a deceased President is also entitled to a family pension at the rate of 50% of pension of a retired President, furnished residence, phone facility, car, medical treatment, travel facility, secretarial staff and office expenses upto 220,000 per annum. The President is entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

Term, Impeachment and Vacancy

Term of President's Office-The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President. Further, he can also be removed from the office before completion of his term by the process of impeachment. The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number o of terms®. However, in USA, a person cannot be elected to the office of the President more than twice.

Impeachment of President-The President can be removed from office by a process of impeachment for 'violation of the Constitution' however, the Constitution does not define the meaning of the phrase 'violation of the Constitution'. The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should the right to appear and

to be represented at is vestigate the charges, The President has this investigation. If the other House sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the resolution is so passed. Thus, an impeachment is a quasi-judicial procedure in the Parliament. In this context, two things should be noted: (a) the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election; (b) the elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election. No President has so far been impeached.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal by the process of impeachment.
4. By his death
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In case of any delay in conducting the election of new President by any reason, the outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge. This is provided by the Constitution in order to prevent an 'interregnum' in this situation, the Vice-President does not get the opportunity to act as President or to discharge the functions of the President. If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy. The newly-elected President remains in office for a full term of five years from the date he assumes charge of his office. When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the

President until a new President is elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or another cause, the Vice-President discharges his functions until the President resumes his office. In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the senior-most judge of the Supreme Court available) acts as the President or discharges the functions of the President. When any person, ie, Vice-President, chief justice of India, or the senior-most judge of the Supreme Court is acting as the President or discharging the functions of the President, he enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are determined by the Parliament.

POWERS AND FUNCTIONS OF THE PRESIDENT

The powers enjoyed and the functions performed by the President can be studied under the following heads.

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

Executive Powers

The executive powers and functions of the President are:

1. All executive actions of the Government of India are formally taken in his name.
2. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.

3. He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.

4. He appoints the prime minister and the other ministers. They hold office during his pleasure.

5. He appoints the attorney general of India and determines his remuneration.
   The attorney general holds office during the pleasure of the President.

6. He appoints the comptroller and auditor general of India, the chief election commissioner and other election commis-sioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and soon.

7. He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.

8. He can require the Prime Minister to. submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.

9. He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.

10. He can appoint an inter-state council to promote Centre-state and inter-state cooperation.

11. He directly administers the union terri. tories through administrators appointed by him.

12. He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

Legislative Powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

1. He can summon or prorogue the Parliament and dissolve the Lok Saba.
   He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.

2. He can address the Parliament at the commencement of the first session after each general election and the first session of each vear.

3. He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.

4. He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
   Similarly, he can also appoint any member of the Raja Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

5. He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community.

7. He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.

8. His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.

9. When a bill is sent to the President after it has been passed by the Parliament, he can give his assent to the bill, or (i) withhold his assent to the bill, or (iii) return the bill (if it is not a money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

10. When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can give his assent to the bill, or withhold his assent to

the bill, or direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the state legislature and sent again to him for his consideration.

11. He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time. He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

12. He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli,Daman and Diu and Ladakh. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

Financial Powers

The financial powers and functions of the President are:

1. Money bills can be introduced in the Parliament only with his prior recommendation.
2. He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).
3. No demand for a grant can be made except on his recommendation.
4. He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
5. He constitutes a finance commission after every five ears to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

1. He appoints the Chief Justice and the judges of Supreme Court and high courts.

2. He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

3. He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:

   (i) In all cases where the punishment or sentence is by a court martial;
   (ii) In all cases where the punishment or sentence is for an offence against a Union law; and

   (iii) In all cases where the sentence is sentence of death

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassa-dors, high commissioners, and so on.

Military Powers

He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:

1. National Emergency (Article 352);

2. President's Rule (Article 356 & 365); and

3. Financial Emergency (Article 360)

VETO POWER OF THE PRESIDENT

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill

Thus, the President has the veto power over the bills passed by the Parliament, that is, he can withhold his assent to the bills. The object of conferring this power on the President is two-fold-(a) to prevent hasty and ill considered legislation by the Parliament; and (b) to prevent a legislation which may be unconstitutional. The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto, that is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be overridden by the legislature with an ordinary majority.
4. Pocket veto, that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with three-absolute veto, suspensive veto and pocket veto. There is no qualified veto in the case of Indian President; it is possessed by the American President. The three vetos of the President of India are explained below:

Absolute Veto- It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

1. With respect to private members' bills (ie, bills introduced by any member of Parliament who is not a minister); and

2. With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

In 1954, President Dr Rajendra Prasad withheld his assent to the PERSU Appropriation bill. The bill was passed by the Parliament when the President's Rule was in operation in the state of PERSU. But, when the bill was presented to the President for his assent, the President's Rule was revoked. Again in 1991, President R Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. The bill was passed by the Parliament (on the last day before dissolution of Lok Sabha) without obtaining the previous recommendation of the President.

Suspensive Veto- The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. This means that the presidential veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required in USA). As mentioned earlier, the President does not possess this veto in the case of money bills. The President can either give his assent to a money bill or withhold his assent to a money bill but cannot return it for the reconsideration of the Parliament. Normally, the President gives his assent to money bill as it is introduced in the Parliament with his previous permission.

Pocket Veto- In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto. The President can exercise this veto power as the Constitution does not prescribe any time-limit within which he has to take the decision with respect to a bill presented to him for his assent. In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the pocket of the Indian President is bigger than that of the American President. In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restrictions on the freedom of press and hence, was widely criticised. After three years, in 1989, the next President R Venkataraman sent the bill back for reconsideration, but the new National Front Government decided to drop the bill. It should be noted here that the President has no veto power in respect of a constitutional amendment bill. The 24th

Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

Presidential Veto over State Legislation- The President has veto power with respect to state legislation also. A bill passed by a state legislature can become an act only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).When a bill, passed by a state legislature, is presented to the governor for his assent, he has four alternatives (under Article 200 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (if it is not a money bill) for reconsideration of the state legislature, or
4. He may reserve the bill for the consideration of the President.

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill,
   Or
3. He may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his assent, the President is not bound to give his assent to the bill.

This means that the state legislature cannot override the veto power of the President. Further, the Constitution has not prescribed any time limit within which the President has to take decision with regard to a bill reserved by the governor for his consideration. Hence, the President can exercise pocket veto in respect of state legislation also.

ORDINANCE-MAKING POWER OF THE PRESIDENT

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws. The ordinance-making power is the most important legislative power of the President. It has been vested in him to deal with unforeseen or urgent matters. But, the exercises of this power are subject to the following four limitations:

1. He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

2. He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action. In Cooner casell, (1970),the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one house or both Houses of Parliament deliberpoly with a view to promulgate an ordinance of a controversial subject, so as to bypass the parliamentary decision and thereby ass cumventing the authority of the Parliament 1975 made the President's satisfaction final. Thus, constitutional Amendment Act of 1978, the President's satisfaction is justiciable on the ground of malafide.

3. His ordinance-making power is coextensive as regards all matters except dura-ton, with the law-making powers of the Parliament. This has two implications:

1 - An ordinance can be issued only on those subjects on which the Parliament can make laws.

2 - An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the funda-mental rights.

4. Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act. If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it. If the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks is calculated from the later of those dates. This means that the maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament), If an ordinance is allowed to lapse without being placed before Parliament, then the acts done and completed under it, before it ceases to operate, remain fully valid and effective. The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister. An ordinance like any other legislation, can be retrospective, that is, it may come into force from a hack date. It may modify or repeal any act of Parliament or another ordinance. It can alter or amend a tax law also. However, it cannot be issued to amend the Constitution. The ordinance-making power of the President in India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA, and UK. In justification of the ordinance-making power of the President, Dr. B.R. Ambedkar said in the Constituent Assembly that the mechanism of issuing an ordinance has been devised in order to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session. It must be clarified here that the ordinance-making power of the President has no necessary connection with the national emergency envisaged in Article 352. The President can issue an ordinance even when there is no war or external aggression or armed rebellion. The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation by ordinance should also be placed before the House. So far, no case has gone to the Supreme Court regarding promulgation of ordinance by the President. But, the judgement of the Supreme Court in the D.C. Wadhwa case (1987) is highly relevant here. In that case, the court pointed out that between 1967-1981 the Governor

of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years by promulgation from time to time. The court ruled that successive re-promulgation of ordinances with same text without any attempt to get bills passed by the assembly would amount to violation of the Constitution and the ordinance so re-promulgated is liable to be struck down. It held that the exceptional power of law-making through ordinance cannot be used as a substitute for the legislative power of the state legislature.

PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

1. Punishment or sentence is for an offence against a Union Law;
2. Punishment or sentence is by a court martial (military court); and
3. Sentence is a sentence of death.

The pardoning power of the President is independent of the Judiciary; it is an executive power. But, the President while exercising this power, does not sit as a court of appeal. The object of conferring this power on the President is two-fold: (a) to keep the door open for correcting any judicial errors in the operation of law; and, (b) to afford relief from a sentence, which the President regards as unduly harsh. The pardoning power of the President includes the following:

1. Pardon: It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
2. Commutation: It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.
3. Remission: It implies reducing the period of sentence without changing its character.

For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

4. Respite: It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

5. Reprieve: It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law. But, the pardoning power of the governor differs from that of the President in following two respects:

1. The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.

2. The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence. In other words, both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the President.

2. The President can examine the evidence afresh and take a view different from the view taken by the court.

3. The power is to be exercised by the President on the advice of the union cabinet.

The President is not bound to give reasons for his order. The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.

1. There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President.

2. The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, mala fide or discriminatory. Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition

CONSTITUTIONAL POSITION OF THE PRESIDENT

The Constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the prime minister. In other words, the President has to exercise his powers and functions with the aid and advise of the council of ministers headed by the prime minister. Dr. B.R. Ambedkar summed up the true position of the President in the following way. "In the Indian Constitution, there is placedat the head of the Indian Union a functionary who is called the President of the Union. The title of the functionary reminds of the President of the United States. But beyond the identity of names, there is nothing in common between the form of government prevalent in America and the form of government adopted under the Indian Constitution. The American form of government is called the presidential system of government and what the Indian Constitution adopted is the Parliamentary system. Under the presidential system of America, the President is the Chief head of the Executive and administration is vested in him. Under the Indian Constitution, the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in administration is that of a ceremonial device or a seal by which the nation's decisions are made known. He is generally bound by the advice of his ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any secretary at any time. The President of the Indian Union has no power to do so, so long as his ministers command a majority in Parliament". In estimating the constitutional position of the President, particular reference has to be made to the provisions of Articles 53, 74 and 75. These are:

1. The executive power of the Union shall be vested in President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 53).

2. There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who 'shall', in the exercise of his functions, act in accordance with such advice (Article 74).

3. The council of ministers shall be collectively responsible to the Lok Sabha (Article 75). This provision is the foundation of the parliamentary system of government.

The 42nd Constitutional Amendment

Act of 1976 (enacted by the Indira Gandhi Government) made the President bound by the advice of the council of ministers headed by the prime minister'&. The 44th Constitutional Amendment Act of 1978 (enacted by the Janata Party Government headed by Morarji Desai) authorised the President to require the council of ministers to reconsider such advice either generallv or otherwise. However, he 'shall' act in accordance with the advice rendered afer such reconsideration. In other words, the President may return a matter once for reconsideration of his ministers, but the reconsidered advice shall be binding.

In October 1997, the cabinet recommended President K.R. Naravanan to impose President's Rule (under Article 356) in Uttar Pradesh. The President returned the matter for the reconsideration of the cabinet, which then decided not to move ahead in the mat-ter. Hence, the BJP-led government under Kalyan Singh was saved. Again in September 1998, the President KR Naravanan returned a recommendation of the cabinet that sought the imposition of the President's Rule in Bihar. After a couple of months, the cabinet re-advised the same. It was only then that the President's Rule was imposed in Bihar, in February 1999. Though the President has no constitu. tional discretion, he has some situational discretion. In other words, the President can act on his discretion (that is, without the advice of the ministers) under the following situations:-Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister* in office dies suddenly and there is no obvious successor, Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha, Dissolution of the Lok Sabha if the council of ministers has lost its majority.

THE PRIME MINISTER

The scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (de jure executive) and Prime Minister is the real executive authority (de facto executive). In other words, president is the head of the State while Prime Minister is the head of the government.

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. However, this does not imply that the president is free to appoint any one as the Prime Minister. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month. This discretion was exercised by the President, for the first time in 1979, when Neelam Sanjiva Reddy (the then President) appointed Charan Singh (the coalition leader) as the Prime Minister after the fall of the Janata Party government headed by Morarji Desai. There is also one more situation when the president may have to exercise his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor. This is what happened when Indira Gandhi was assassinated in 1984. The then President Zail Singh appointed Rajiv Gandhi as the Prime Minister by ignoring the precedent of appointing a caretaker Prime Minister.' Later on, the Congress parliamentary party unanimously elected him as its leader. However, if, on the death of an incumbent Prime Minister, the ruling party elects a new leader, the President has no choice but to appoint him as Prime Minister. In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister. The President may first appoint him the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period. For example, Charan Singh (1979), V.P. Singh (1989), Chandrasekhar (1990), P.V. Narasimha Rao (1991), A.B. Vajyapee (1996), Deve Gowda (1996), I.K. Gujral (1997) and again A.B.Vajpayee (1998) were appointed as Prime

Ministers in this way. In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister. Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament. For example, three Prime Ministers, Indira Gandhi (1966), Deve Gowda (996) and Manmohan Singh (2004), were members of the Rajya Sabha. In Britain, on the other hand, the Prime Minister should definitely be a member of the Lower House (House of Commons).

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the Prime Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union Minister except as may be required for the due discharge of his duties as such minister. The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him. The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a Member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc. In 2001, the Parliament increased his sumptuary allowance from 31,500 to <3,000 per month.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

The powers and functions of Prime Minister can be studied under the following heads:

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.

2. He allocates and reshuffles various portfolios among the ministers.

3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

4. He presides over the meeting of council of ministers and influences its decisions.

5. He guides, directs, controls, and coordinates the activities of all the ministers.

6. He can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

Prime Minister In Relation to the President

The Prime Minister is important for the following:

1. He is the principal channel of communication between the President and the council of ministers." It is the duty of the prime minister:

(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

2. He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. He can recommend dissolution of the Lok Sabha to President at any time.
3. He announces government policies on the floor of the House

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

1. He is the chairman of the NITI Ayog (which succeeded the planning commission), National Integration Council, Inter State Council, National Water Resources Council and some other bodies.
2. He plays a significant role in shaping the foreign policy of the country.
3. He is the chief spokesman of the Union government.
4. He is the crisis manager-in-chief at the political level during emergencies.

5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.

6. He is leader of the party in power.

7. He is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr. B.R. Ambedkar stated, 'If any functionary under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union.

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of Prime Minister in Britain holds good in the Indian context also. These are mentioned below: Lord Morely He described Prime Minister as 'primus inter pares' (first among equals) and key stone of the cabinet arch' He said, "The head of the cabinet is 'primus inter pares', and occupied a position which so long as it lasts, is one of exceptional and peculiar authority". Herbert Marrison "As the head of the Government, he (prime minister) is 'primus inter pares' But, it is today for too modest an appreciation of the Prime Minister's position". Sir William Vernor Harcourt He described Prime Minister as 'inter stellas luna minores' (a moon among lesser stars). Jennings "He is, rather, a sun around which planets revolve. He is the key-stone of the constitution. All roads in the constitution lead to the Prime Minister." H.J. Laski On the relationship between the Prime Minister and the cabinet, he said that the Prime Minister "is central to its formation, central to its life, and central to its death". He described him as "the pivot around which the entire governmental machinery revolves."

H.R.G. Greaves "The Government is the master of the country and he (Prime Minister) is the master of the Government." Munro He called Prime Minister as "the captain of the ship of the state". Ramsay Muir He described Prime Minister as "the steersman of steering wheel of the ship of the state." The role of the Prime Minister in the British parliamentary government is so significant and crucial that observers like to call it a 'Prime Ministerial government. Thus, R.H. Crossman says, 'The post-war epoch has been the final transformation of cabinet government into Prime Ministerial government? Similarly, Humphrey Berkely points out, 'Parliament is not, in practice, sovereign. The parliamentary democracy has now collapsed at

Westminster. The basic defect in the British system of governing is the super-ministerial powers of the Prime Minister! The same description holds good to the Indian context too. The President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

1. Article 75 (a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the president on the advice of the Prime Minister; (b) The ministers shall hold office during the pleasure of the president; and (c) The council of ministers shall be collectively responsible to the House of the People.

2. Article 78; It shall be the duty of the Prime Minister:

    1. to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

    2. to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

    3. if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

RELATIONSHIP WITH THE PRESIDENT

The following provisions of the Constitution deal with the relationship between the President and the Prime Minister: Article 74 There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, there are chief ministers who became prime ministers Six people- Morarji Desai, Charan Singh, V.P. Singh, P.V. Narasimha Rao, H.D. Deve Gowda and Narendra Modi -became Prime Ministers after being Chief Ministers of their respective States. Morarji Desai, Chief Minister of the erstwhile Bombay State during 1952-56, became the first non-Congress Prime Minister in March 1977. Charan Singh, who succeeded him, was the Chief Minister of the undivided Uttar Pradesh in 1967-1968 and again in 1970. V.P. Singh, also from U.P., became Prime Minister in the short lived National Front government (December 1989 November 1990). p. Narasimha Rao, the first Prime Minister fom South India, who held the post from 991-1996, was Chief Minister of Andhra

Pradesh between 1971- 1973. H.D. Deve Gowda was Chief Minister of Karnataka when he was chosen to lead the United Front government in June 1996. Narendra Modi (BJP) was the Chief Minister of Gujarat when he became the Prime Minister in May 2014. He served as the Chief Minister of Gujarat for four times during 2001 to 2014.

CENTRAL COUNCIL OF MINISTERS

The Constitution of India provides A fora parliamentary sosten of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority is our politico-administrative system. The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

CONSTITUTIONAL PROVISIONS

Article 74; Council of Ministers to aid and advise President

1. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

2. The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75 - Other Provisions as to Ministers

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

2. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91st Amendment Act of 2003.

3. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.

4. The ministers shall hold office during the pleasure of the President.

5. The council of ministers shall be collectively responsible to the Lok Sabha.

6. The President shall administer the oaths of office and secrecy to a minister.

7. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.

8. The salaries and allowances of ministers shall be determined by the Parliament.

Article 77 - Conduct of Business of the Government of India

1. All executive action of the Government of India shall be expressed to be taken in the name of the President.

2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

3. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 78 - Duties of Prime Minister

It shall be the duty of the Prime Minister

1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
2. To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for

3. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Article 88 - Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall not be entitled to vote.

NATURE OF ADVICE BY MINISTERS

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional

Amendment Acts have made the advice binding on the President.' Further, the nature of advice tendered by ministers to the President cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the President and the ministers. In 1971, the Supreme Court held that 'even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office. Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advise of the council of ministers. Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74. Again in 1974, the court held that 'wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister. Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister. A minister

who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person (s) any matter that is brought under his consideration or becomes known to him as a Union minister except as may be required for the due discharge of his duties as such minister. In 1990, the oath by Devi Lal as deputy prime minister was challenged as being unconstitutional as the Constitution provides only for the Prime Minister and ministers. The Supreme Court upheld the oath as valid and stated that describing a person as Deputy Prime Minister is descriptive only and such description does not confer on him any powers of Prime Minister. It ruled that the description of a minister as Deputy Prime Minister or any other type of minister such as minister of state or deputy minister of which there is no mention in the Constitution does not vitiate the oath taken by him so long as the substantive part of the oath is correct. The salaries and allowances of ministers are determined by Parliament from time to time. A minister gets the salary and allowances that are payable to a Member of Parliament. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc. In 2001, the sumptuary allowance for the prime minister was raised from 31,500 to 73,000 per month, for a cabinet minister from 71,000 to 82,000 per month, for a minister of state from 3500 to 71,000 per month and for a deputy minister from 3300 to 7600 per month.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of ommission and commission. They work as a team and swim or sink together. When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha. Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet. For example, Dr. B.R. Ambedkar resigned because of his differences with his colleagues on the

Hindu Code Bill in 1953. C.D. Deshmukh resigned due to his differences on the policy of reorganisation of states. Arif Mohammed resigned due to his opposition to the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister. In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign oradvice the President to dismiss him. By exercising this power, the Prime Minister can ensure the realisation of the rule of collective responsibility. In

this con-text, Dr. B.R. Ambedkar observed: "Collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility."

No Legal Responsibility

In Britain, every order of the King for any public act is countersigned by a minister. If the order is in violation of any law, the minister would be held responsible and would be liable in the court. The legally accepted phrase in Britain is, "The king can do no wrong." Hence, he cannot be sued in any court. In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet minis-ters, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister -the supreme governing authority of the country. The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/ departments or can be attached to cabinet ministers. In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/ departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings. it must also be mentioned here that there is one more category of ministers, called parliamentary secretaries. They are the members ofthe last category of the council of ministers (which is also known as the 'ministry'). They have no department under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties. However, since 1967, no parliamentary secretaries have been appointed except during the first phase of Rajiv Gandhi Government.

At times, the council of ministers may also include a deputy prime minister. The deputy prime ministers are appointed mostly for political reasons.

COUNCIL OF MINISTERS VS CABINET

The words council of ministers and cabinet are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role

ROLE OF CABINET

1. It is the highest decision-making authority in our politico-administrative system.
2. It is the chief policy formulating body of the Central government.
3. It is the supreme executive authority of the Central government.
4. It is chief coordinator of Central administration.
5. It is an advisory body to the president and its advice is binding on him.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
9. It deals with all foreign policies and foreign affairs

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of cabinet in Britain holds good in the Indian context also. These are mentioned below:

Ramsay Muir "The Cabinet is the steering wheel of the ship of the state." Lowell "The Cabinet is the keystone of the political arch". Sir John Marriott "The Cabinet is the pivot around which the whole political machinery revolves". Gladstone “The Cabinet is the solar orb around which the other bodies revolve". Barker "The Cabinet is the magnet of policy". Bagehot "The Cabinet is a hyphen that joins, the buckle that binds the executive and legislative departments together", Sir Ivor Jennings "The Cabinet is the core of the British Constitutional System. It provides unity to the British system of Government", L.S. Amery

"The Cabinet is the central directing instrument of Government"

The position of the Cabinet in the British Government has become so strong that Ramsay Muir referred to it as the 'Dictatorship of the Cabinet' In his book How Britain is Governed', he writes "A body which wields such powers as these may fairly be described as 'omnipotent' in theory, however, incapable it may be of using its omnipotence. Its posi-tion, whenever it commands a majority, is a dictatorship only qualified by publicity. This dictatorship is far more absolute that it was two generations ago". The same description holds good in the Indian context too.

KITCHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the 'Inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the Prime Minister and two to four influential colleagues in whom he has faithand with whom he can discuss every problem. It advises the prime minister on important political and administrative issues and assists him in making crucial decisions. It is composed of not only cabinet ministers but also outsiders likefriends and family members of the prime minister. Every prime minister in India has had his 'Inner Cabinet' -a circle within a circle. During the era of Indira Gandhi, the 'Inner Cabinet' which

came to be called the 'Kitchen Cabinet' was particularly powerful. The prime ministers have resorted to the device of 'inner cabinet' (extra-constitutional body) due to its merits, namely:

1. It being a small unit, is much more efficient decision-making body than a large cabinet.

2. It can meet more often and deal with business much more expeditiously than the large cabinet.

3. It helps the Prime Minister in main-raining secrecy in making decisions on important political issues.

However, it has many demerits also. Thus,

1. It reduces the authority and status of the cabinet as the highest decision-making body.

2. It circumvents the legal process by allowing outside persons to play an influential role in the government functioning.

The phenomenon of kitchen cabinet' (where decisions are cooked and placed before the cabinet for formal approval) is not unique to India. It also exists in USA and Britain and is quite powerful in influencing government decisions there.

BUREAUCRACY

Bureaucracy in finance refers to the rules, regulations, and administrative procedures governing financial institutions, organizations, and government agencies. The term “bureaucracy” originates from the French word “bureau,” which means desk or office, and the Greek word “kratos,” meaning power or rule. It gained prominence during the late 18th and early 19th centuries, particularly with the works of French political economist Jean-Jacques Rousseau and German sociologist Max Weber.

Bureaucracy in finance often involves the following key elements:

Regulation and Compliance: Financial bureaucracies create and enforce rules to ensure financial institutions, markets, and transactions comply with laws and standards. Regulatory bodies like central banks, economic ministries, and securities commissions oversee compliance.

Risk Management: Bureaucratic structures are essential for evaluating, mitigating, and managing financial risks. This includes credit risk assessments, investment portfolio management, and hedging strategies to protect against adverse market movements.

Financial Reporting: Bureaucracy ensures the accurate and timely reporting of financial information. It involves the preparation of **financial statements**, auditing, and adherence to accounting standards to maintain transparency and accountability.

Resource Allocation: Financial bureaucracy helps allocate resources efficiently by **budgeting**, **cost control**, and capital allocation decisions. These processes are essential for organizations to meet their **financial goals** and objectives.

Investment Management: In the context of investment and finance, bureaucracy plays a critical role in managing investment portfolios, making **investment decisions**, and assessing the performance of assets.

CHARACTERISTICS

Here are the essential characteristics of bureaucracy:

Hierarchy: Bureaucracies are structured with a clear order of authority. This means there are distinct management and decision-making levels, with lower-level employees reporting to supervisors, who, in turn, report to higher-ranking managers. This hierarchy ensures accountability and a transparent chain of command.

Specialization: Bureaucracies often emphasize job specialization, where employees have well-defined roles and responsibilities. Specialization allows individuals to develop expertise in specific tasks, increasing efficiency and productivity.

Formal Rules and Procedures: Bureaucracies govern their operations using legal rules and procedures. These rules provide consistency and predictability in performing tasks and making decisions. They also help ensure fairness and impartiality.

Impersonality: Bureaucracies strive for impersonality, meaning that decisions are based on established rules and criteria rather than personal biases or favoritism. This fosters fairness and equity within the organization.

Merit-Based Recruitment: Bureaucracies hire and promote employees based on merit and qualifications rather than nepotism or personal connections. This meritocratic approach ensures that the most qualified individuals fill vital positions.

Clear Lines of Communication: Effective communication is crucial in bureaucracies. They establish clear communication channels, vertically (up and down the hierarchy) and horizontally (across departments or units), to facilitate information flow and coordination.

Standardization: Bureaucracies standardize processes and procedures to achieve uniformity and consistency. Standardization helps in replicating successful practices and reducing errors.

Record Keeping and Documentation: Bureaucracies maintain thorough records and documentation of their activities. This is essential for accountability, compliance, and historical reference.

Impartiality: Bureaucracies aim to treat all individuals and cases equally, adhering to established rules and regulations. This impartiality reduces the potential for discrimination or favoritism.

TYPES

Here are some common types of bureaucracy:

Weberian Bureaucracy: Named after sociologist Max Weber, this is the traditional and most well-known form of bureaucracy. It emphasizes a hierarchical structure with clear lines of authority and a formal set of rules and procedures. Decision-making is often centralized, and positions are filled based on merit.

Professional Bureaucracy: Professionals with specialized knowledge and expertise play a significant role in decision-making in this type of bureaucracy. Examples include law firms, medical practices, and academic institutions.

Adhocracy: Adhocracy represents a more flexible and dynamic form of bureaucracy. It is characterized by a decentralized structure that encourages innovation and adaptability. Decision-making can be fluid and based on expertise rather than strict hierarchy or rules.

Matrix Bureaucracy: Employees have multiple reporting relationships in a matrix bureaucracy, typically with functional managers and project or team leaders. This structure is typical in organizations where employees must balance their contributions to various projects or departments.

Network Bureaucracy: Network bureaucracies are often found in the public sector and involve collaboration among various agencies, departments, and organizations. They operate as a network of interconnected entities, working together to achieve common goals.

Virtual Bureaucracy: With technological advancements, virtual bureaucracies have emerged, where teams and employees work remotely or in geographically dispersed locations. Virtual bureaucracies rely heavily on digital tools and communication technologies to maintain coordination and accountability.

Hybrid Bureaucracy: Many organizations combine elements of different bureaucratic types to create hybrid structures that best suit their needs. For example, a large corporation may incorporate aspects of both Weberian and Adhocratic bureaucracy, allowing for centralized control in some areas while promoting innovation and flexibility in others.

FUNCTIONS

The critical functions of bureaucracy:

Rule Implementation: Bureaucracies are responsible for implementing and enforcing rules, laws, and regulations. They ensure that organizations and societies adhere to established norms and standards, promoting stability and predictability.

Administration: Bureaucracies handle administrative tasks such as record-keeping, document management, and data analysis. This function is crucial for maintaining accurate records, which can be used for decision-making, accountability, and historical reference.

Decision-Making: Bureaucracies affect decision-making processes, especially in organizations and government agencies. They facilitate the formulation and implementation of policies, strategies, and initiatives.

Regulation and Oversight: Bureaucratic bodies are often responsible for regulating industries and monitoring compliance with laws and regulations. For example, financial

regulatory agencies oversee the banking and **securities** sectors to protect investors and maintain **financial stability**.

Service Delivery: In government settings, bureaucracies provide essential services to citizens, such as healthcare, education, and public safety. They ensure these services are accessible, efficient, and of high quality.

Conflict Resolution: Bureaucracies can serve as intermediaries in conflict resolution processes. They may facilitate **negotiations**, mediate disputes, or provide a framework for addressing grievances within organizations or communities.

Expertise and Advice: Bureaucracies often house experts and specialists who guide and advise decision-makers. These experts offer insights on complex issues, helping organizations make informed choices.

Public Accountability: In democratic systems, government bureaucracies are accountable to the public. They provide transparency by publishing information, conducting audits, and responding to inquiries from citizens and the media.

3.3 JUDICIARY: JUDICIAL ACTIVISM AND JUDICIAL REVIEW

JUDICIAL REVIEW

Judicial review developed at the USA. It was propounded for the first time in the famous case of Marbury versus Madison(1803) by John Marshall, the then chief justice of the American Supreme Court. In India, on the other hand, the Constitution itself confers the power of judicial review on the judiciary both the Supreme Court as well as High Courts). Further, the Supreme Court has declared the power of judicial review as a basic feature of the Constitution or an element of the basic structure of the Constitution. Hence, the power of judicial review cannot be curtailed or excluded even by a constitutional amendment.

MEANING OF JUDICIAL REVIEW

Judicial review is the power of the judiciary to examine the constitutionality of legislative enactments and executive orders of both the Central and State governments. On examination, if they are found to be violative of the Constitution (ultra vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the judiciary. Consequently, they cannot be enforced by the Government. Justice Syed Shah Mohamed Quadri has classified the judicial review into the following three categories

1. Judicial review of constitutional amendments.

2. Judicial review of legislation of the Parliament and State Legislatures and subordinate legislations.

3. Judicial review of administrative action of the Union and State and authorities under the state.

The Supreme Court used the power of judicial review in various cases, as for example, the Golaknath case (1967), the Bank Nationalisation case (1970). the Privy Purses Abolition case (1971), the Kesavananda Bharati case (1973), the Minerva Mills case (1980), and so on. In 2015, the Supreme Court declared both the ggth Constitutional Amendment, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 as unconstitutional and null and void.

IMPORTANCE OF JUDICIAL REVIEW

Judicial review is needed for the following reasons:

1. To uphold the principle of the supremacy of the Constitution.

2. To maintain federal equilibrium (balance between the Centre and the states).

3. To protect the Fundamental Rights of the citizens.

In a number of cases, the Supreme Court has pointed out the significance of the power of judicial review in our country. Some of the observations made by it, in this regard, are given below: "In India it is the Constitution that is supreme and that a statute law to be valid, must be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not".

"Our constitution contains express provisions for judicial review of legislation as to its conformity with the constitution. This is especially true as regards the Fundamental Rights, to which the court has been assigned the role of sentinel on the qui vive"

"As long as some Fundamental Rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by these Rights are not contravened"

"The Constitution is supreme lex, the permanent law of the land, and there is no branch of government above it. Every organ of government, be it the executive or the legislature of the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty, can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the constitution. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits".

"It is the function of the Judges, may their duty, to pronounce upon the validity of laws.If courts are totally deprived of that power, the Fundamental Rights conferred on the people will become a mere adornment because rights without remedies are as writ in water.

A controlled Constitution will then become uncontrolled"

"The judges of the Supreme Court have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations"

The founding fathers very wisely, there-fore, incorporated in the Constitution itself the provisions of judicial review so as to maintain the balance of federalism, to protect the Fundamental Rights and Fundamental Freedoms guaranteed to the citizens and to afford a useful weapon for availability, availment and enjoyment of equality, liberty and Fundamental Freedoms and to help to create a healthy nationalism. The function of judicial review is a part of the constitutional interpretation itself. It adjusts the Constitution to meet new conditions and needs of the time.

CONSTITUTIONAL PROVISIONS FOR JUDICIAL REVIEW

Though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several Articles explicitly confer the power of judicial review on the Supreme Court and the High Courts. These provisions are explained below:

1. Article 13 declares that all laws that are inconsistent with or in derogation of the Fundamental Rights shall be null and void.

2. Article 32 guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights and empowers the Supreme Court to issue directions or orders or writs for that purpose.

3. Article 131 provides for the original jurisdiction of the Supreme Court in centre-state and inter-state disputes.

4. Article 132 provides for the appellate jurisdiction of the Supreme Court in constitutional cases.

5. Article 133 provides for the appellate jurisdiction of the Supreme Court in civil cases.

6. Article 134 provides for the appellate jurisdiction of the Supreme Court in criminal cases.

7. Article 134-A deals with the certificate for appeal to the Supreme Court from the High Courts.

8. Article 135 empowers the Supreme Court to exercise the jurisdiction and powers of the Federal Court under any pre-constitution law.

9. Article 136 authorises the Supreme Court to grant special leave to appeal from any court or tribunal (except military tribunal and court martial).

10. Article 143 authorises the President to seek the opinion of the Supreme Court on any question of law or fact and on any pre-constitution legal matters.

11. Article 226 empowers the High Courts to issue directions or orders or writs for the enforcement of the Fundamental Rights and for any other purpose.

12. Article 227 vests in the High Courts the power of superintendence over all courts and tribunals within their respective territorial jurisdictions (except military courts or tribunals).

13. Article 245 deals with the territorial extent of laws made by Parliament and by the Legislatures of States.

14. Article 246 deals with the subject matter of laws made by Parliament and by the Legislatures of States (i.e., Union List, State List and Concurrent List).

15. Articles 251 and 254 provide that in case of a conflict between the central law and state law, the central law prevails over the state law and the state law shall be void.

16. Article 372 deals with the continuance in force of the pre-constitution laws.

SCOPE OF JUDICIAL REVIEW

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court or in the High Courts on the following three grounds,

- it infringes the Fundamental Rights Part III),

-it is outside the competence of the authority which has framed it, and

-it is repugnant to the constitutional provisions.

From the above, it is clear that the scope of judicial review in India is narrower than what exists in the USA, though the American Constitution does not explicitly mention the concept of judicial review in any of its provisions. This is because, the American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The difference between the two is: "The due process of law gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable. Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications. The exercise of wide power of judicial review by the American Supreme Court in the name of 'due process of law' clause has made the critics to describe it as a 'third chamber' of the Legislature, a super-legislature, the arbiter of social policy and so on. This American principle of judiciai supremacy is also recognised in our constitutional system, but to a limited extent. Nor do we fully follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament in our country, like the written character of the Constitution, the federalism with division of powers, the Fundamental Rights and the judicial review. In effect, what exists in India is a synthesis of both, that is, the American principle of judicial supremacy and the British principle of parliamentary supremacy.

JUDICIAL REVIEW OF THE NINTH SCHEDULE

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights. Article 31B along with the Ninth Schedule was added by the 1$ Constitutional Amendment Act of 1951. Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present (in 2016) their number is 282. Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters. However, in a significant judgement delivered in I.R. Coelho case (2007)12, the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule. The court held that judicial review is a basic feature' of the constitution and it could not be taken away by putting a law

under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court if they violated Fundamental Rights guaranteed under the Articles 14, 15, 19 and 21 or the basic structure' of the Constitution. It was on April 24, 1973, that the Supreme Court first propounded the doctrine of basic structure' or basic features' of the constitution in its landmark verdict in the Kesavananda Bharati case.

While delivering the above judgement, the Supreme Court made the following conclusions:

1. A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine, or it may not. If former is the consequence of law, whether by an amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in the exercise of judicial review power of the Court. The constitutional validity of the Ninth Schedule laws on the touch. stone of basic structure doctrine can be adjudged by applying the direct impact and effect test, i.e., rights test, which means the form of an amendment is not the relevant factor, but the consequence thereof would be the determinative factor.

2. The majority judgement in the Kesavanand Bharati Case' read with Indira Gandhi case's requires the validity of each new constitutional Amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.

3. All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Articles 14 and 19 and the principles underlying them. To put it differently. even though an act is put in the Ninth Schedule by a Constitutional Amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the Fundamental Right or rights taken away or abrogated pertains or pertain to the basic structure.

4. Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be constitutionally protected, and on the touchstone of the basic structure

doctrine as reflected in Article 21 read with Articles 14 and 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the articles in Part III as held in the Indira Gandhi Case. Applying the above test to the Ninth schedule laws, if the infraction affects the basic structure, then such a law or laws will not get the protection of the Ninth Schedule. When the triangle of Article 21 read with Article 14 and Article 19 is sought to be eliminated not only the "essence of the right" test but also the "rights test" has to apply. There is also a difference between the "rights test" and the "essence of the right" test. Both form part of application of the basic structure doctrine. When in a controlled constitution conferring limited power of amendment, an entire chapter is made in applicable, the "essence of the right" test as applied in Nagaraj case will have no applicability. In such a situation, to judge the validity of the law, it is the "rights test" which is more appropriate.

1. If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24 April, 1973, such a violation infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Articles 14 and 19 and the principles underlying them.

2. Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.

JUDICIAL ACTIVISM

The term was first coined in 1947 by Arthur Schlesinger Jr., an American historian and educator. In India, the doctrine of judicial activism was introduced in mid-1970s. Justice VR. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai laid the foundations of judicial activism in the country.

MEANING OF JUDICIAL ACTIVISM

Judicial activism denotes the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. In other words, it implies the assertive role played by the judiciary to force the other two organs of the government (legislature and executive to discharge their constitutional duties. Judicial activism is also

known as "judicial dynamism". It is the antithesis of "judicial restraint", which means the self-control exercised by the judiciary. Judicial activism is defined in the following way:

1. "Judicial activism is a way of exercising judicial power that motivates judges to depart from normally practised strict adherence to judicial precedent in favour of progressive and new social policies. It is commonly marked by decision calling for social engineering, and occasionally these decisions represent intrusion in the legislative and executive matters"

2. "Judicial activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent, or are independent of, or in opposition to supposed constitutional or legislation intent"

3. "Judicial activism can be defined as the process of law-making by judges. It means an active interpretation of existing legislation by a judge, made with a view to enhance the utility of that legislation for social betterment. Judicial activism is different from judicial pessimism which means interpretation of existing provisions of law, without an attempt to enhance its beneficial aspects".

4. "Judicial activism is a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions"

5. "Judicial activism is a procedure to evolve new principles, concepts, max-ims, formulae and relief to do justice or to expand the standing of the litigant and open the door of courts for needy or to entertain litigation affecting the entire society or a section of it.

The concept of judicial activism is closely related to the concept of Public Interest Litigation (PIL). It is the judicial activism of the Supreme Court which is the major factor for the rise of PIL. In other words, PIL is an outcome of judicial activism. In fact, PIL is the most popular form (or manifestation) of judicial activism.

JUDICIAL REVIEW AND JUDICIAL ACTIVISM

The concepts of judicial review and judicial activism are closely related to each other. But, there is a difference between them. The fol lowing points bring out this difference:

1. Since about the mid-20th century, a version of judicial review has acquired the nick-name of judicial activism, especially in the USA. In India, the participants in the

debate mix up judicial activism with judicial review. The former is that form of latter in which judges participate in law-making policies, i.e., not only they uphold or invalidate laws in terms of constitutional provisions, but also exercise their policy preferences in doing so. a

2. The concept of judicial activism is inherent in judicial review, which empowers the court to uphold the constitution and declare the laws and action inconsistent with the constitution as void. Judicial activism is necessary for ensuring proper discharge of duties by other organs.

3. The term "judicial activism" came into currency sometime in the twentieth century to describe the act of judicial legislation i.e., judges making positive law. However, there is no standard definition of the term "judicial activism". As a whole it can be said that judicial activism stresses the importance of judicial review and a powerful judiciary in the protection and promotion of certain core rights.

4. The expanded concept of locus stand in connection with PIL, by judicial interpretation from time-to-time, has expanded the jurisdictional limits of the courts exercising judicial review. This expanded role has been given the title of "judicial activism" by those who are critical of this expanded role of the judiciary.

5. Judicial activism, as regards constitutional cases, falls under the rubric of what is commonly called judicial review, and at the broadest level, it is any occasion where a court intervenes and strikes down a piece of duly enacted legislation.

JUSTIFICATION OF JUDICIAL ACTIVISM

According to Dr. B.L. Wadehra, the reasons for judicial activism are as follows:

1- There is near collapse of the responsible government, when the Legislature and Executive fail to discharge their respec tive functions. This results in erosion of the confidence in the Constitution and democracy amongst the citizens.

2- The citizens of the country look up to the judiciary for the protection of their rights and freedoms. This leads to tremendous pressure on judiciary to step in aid for the suffering masses.

3- Judicial Enthusiasm, that is, the judges hike to participate in the social reforms that take place in the changing times. It encourages the Public Interest Litigation and liberalises the principle of 'Locus Standi'

4- Legislative Vacuum, that is, there may be certain areas, which have not been legislated upon. It is therefore, upon court to indulge in judicial legislation and to meet the changing social needs.

5- The Constitution of India has itself adopted certain provisions, which gives judiciary enough scope to legislate or to play an active role.

Similarly, Subhash Kashyap observes that certain eventualities may be conceived when the judiciary may have to overstep its normal jurisdiction and intervene in areas otherwise falling within the domain of the legislature and the executive.

(i) When the legislature fails to discharge its responsibilities.
(ii) In case of a hung' legislature when the government it provides is weak, insecure and busy only in the struggle for survival and, therefore, unable to take any decision which displeases any caste, community, or other group.
(iii) Those in power may be afraid of taking honest and hard decisions for fear of losing power and, for that reason, may have public issues referred to courts as issues of law in order to mark time and delay decisions or to pass on the odium of strong decision-making to the courts.

(iv) Where the legislature and the execu tive fail to protect the basic rights of citizens, like the right to live a decent life, healthy surroundings, or to provide honest, efficient and just system of laws and administration.

(v) Where the court of law is misused by a strong authoritarian parliamentary party government for ulterior motives, as was sought to be done during the emergency aberration
(vi) Sometimes, the courts themselves knowingly or unknowingly become victims of human, all too human, weaknesses of craze for populism, publicity, playing to the media and hogging the headlines.

ACTIVATORS OF JUDICIAL ACTIVISM

Upendra Baxi, an eminent jurist, has delin-cated the following typology of social / human rights activists who activated judicial activism.

1. Civil Rights Activists: These groups primarily focus on civil and political rights issues.

2. People Rights Activists: These groups focus on social and economic rights within the contexts of state repression of people's movements.

3. Consumer Rights Groups: These formations raise issues of consumer rights within the framework of accountability of the polity and the economy.

4. Bonded Labour Groups: These groups ask for judicial activism is nothing short of annihilation of wage slavery in India.

5. Citizens for Environmental Action:These groups activate an activist judiciary to combat increasing environmental degradation and pollution.

6. Citizen Groups against Large Irrigation Projects: These activist formations ask the Indian judiciary the impossible for any judiciary in the world, namely, cease to and desist from ordering against mega irrigation projects.

6. Rights of Child Groups: These groups focus on child labour, the right to literacy, juveniles in custodial institutions and rights of children born to sex workers.

7. Custodial Rights Groups: These groups include social action by prisoners' rights groups, women under state 'protective' custody and persons under preventive detention.

8. Poverty Rights Groups: These groups litigate issues concerning draught and famine relief and urban impoverished.

9. Indigenous People's Rights Groups: These groups agitate for issues of forest dwellers, citizens of the Fifth and Sixth Schedules of the Indian Constitution and identity rights.

10. Women's Rights Groups: These groups agitate for issues of gender equality, gender-based violence and harassment, rape and dowry murders.

11. Bar-based Groups: These associations agitate for issues concerning autonomy and accountability of the Indian judiciary.

12. Media Autonomy Groups: These groups focus on the autonomy and accountability of the press and instruments of mass media owned by the State.

13. Assorted Lawyer-Based Groups: This category includes the critically influential lawyers' groups which agitate for various causes

14. Assorted Individual Petitioners: This category includes freelance activist individuals.

APPREHENSIONS OF JUDICIAL ACTIVISM

The same jurist Upendra Baxi also presented a typology of fears which are generated by judicial activism. He observes: "The facts entail invocation of a wide range of fears. The invocation is designed to bring into a nervous rationality among India's most conscientious justices". He described the following types of fears

1. Ideological fears: (Are they usurping powers of the legislature, the executive or of other autonomous institutions in a civil society?)

2. Epistemic fears: (Do they have enough knowledge in economic matters of a Manmohan Singh, in scientific matters of the Czars of the atomic energy establishment, the captains of the Council of Scientific and Industrial Research, and so on.

3. Management fears: (Are they doing justice by adding this kind of litigation work load to a situation of staggering growth of arrears?)

4. Legitimation fears: (Are not they causing depletion of their symbolic and instrumental authority by passing orders in public interest litigation which the executive may bypass or ignore?)
   Would not the people's faith in judiciary, a democratic recourse, be thus eroded?)

5. Democratic fears: (Is a profusion of public interest litigation nurturing democracy or depleting its potential for the future?)

6. Biographic fears: (What would be my place in national affairs after superannuation if I overdo this kind of litigation?)

JUDICIAL ACTIVISM VS. JUDICIAL RESTRAINT

MEANING OF JUDICIAL RESTRAINT

Judicial activism and judicial restraint are the two alternative judicial philosophies in the United States. Those who subscribe to judicial restraint contend that the role of judges should be scrupulously limited; their job is merely to sav what the law is, leaving the business of lawmaking where it properly belongs, that is, with the legislators and the executives. Under no circumstances, moreover, should judges allow their personal political values and policy agendas to colour their judicial opinions. This view holds that the 'original intent' of the authors of the constitution and its amendments is know. able, and must guide the courts.

Assumptions of Judicial Restraint

In the USA, the doctrine of judicial restraint is based on the following six assumptions:

1. The Court is basically undemocratic because it is non-elective and presumably non-responsive to the popular will.
   Because of its alleged oligarchic composition the court should defer wherever possible to the 'more democratic branches of government.

2. The questionable origins of the great power of judicial review, a power not specifically granted by the Constitution.

3. The doctrine of separation of powers.

4. The concept of federalism, dividing powers between the nation and the states requires of the Court deference toward the action of state governments and officials.

5. The non-ideological but pragmatic assumption that since the Court is dependent on the Congress for its jurisdiction and resources, and dependent on public acceptance for its effectiveness, it ought not to overstep its boundaries without consideration of the risks involved.

6. The aristocratic notion that, being a court of law, and inheritor and custodian of the Anglo-American legal tradition, it ought not to go too far to the level of politics- law being the process of reason and judgment and politics being concerned only with power and influence.

From the above, it is clear that all the assumptions (except the second dealing with the judicial review) hold good in the Indian context too.

Supreme Court Observations

While delivering a judgement in December 2007, the Supreme Court of India called for judicial restraint and asked courts not to take over the functions of the legislature or the executive, saying there is a broad separation of powers under the Constitution and each organ of the state must have respect for others and should not encroach on others' domain.

In this context, the concerned Bench of the court made the following observations:

1. The Bench said, "We are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. This is clearly unconstitutional. In the name of judicial activism, judges cannot cross their limits and try to take over functions which belong to another organ of the state".

2. The Bench said, "Judges must know their limits and must not try to run the government. They must have modesty and humility, and not behave like emperors."

3. Quoting from the book 'The Spirit of Laws' by Montesquieu on the consequences of not maintaining separation of powers among the three organs, the Bench said the French political philosopher's "warning is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for 'overreach' and encroachment on the domain of the other two organs."

4. Judicial activism must not become judicial adventurism, the Bench warned the courts Adjudication must be done within the system of historically validated restraints and conscious minimisation of judges' preferences."The courts must not embarrass administrative authorities and must realise that administrative authorities have expertise in the field of administration while the court does not."

5. The Bench said, "The justification often given for judicial encroachment on the domain of the executive or the legislature is that the other two organs are not doing their jobs properly. Even assuming this is so, the same allegations can be made against the judiciary too because there are cases pending in courts for half-a-century."

6. If the legislature or the executive was not functioning properly, it was for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who would fulfil their expectations or by other lawful methods, e.g., peaceful demonstrations.

7. "The remedy is not in the judiciary taking over the legislative or the executive functions, because that will not only violate the delicate balance of power enshrined in the Constitution but also (because) the judiciary has neither the expertise nor the resources to perform these functions."

8. The Bench said: "Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the state. It accomplishes this in two ways: first, judicial restraint not only recognises the equality of the other two branches with the judiciary, it also fosters that equality by minimising inter-branch interference by the judiciary. Second, iudicial restraint tends to protect the independence of the judiciary. When courts encroach on the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored.

CHECK YOUR PROGRESS

Self Assessment Exercises:

Q 1. Discuss the powers and functions of the President of India.

Q 2. Discuss the powers and functions of the Prime Minister of India.

Q 3. Write a note on meaning and characteristics of Bureaucracy.

Q 4. Write a note on Judicial Activism in India.

CHPATER 4

NATIONAL INTEGRATION, PARTY SYSTEM, PRESSURE GROUPS, INTEREST GROUPS

LEARNING OUTCOMES: After going through this lesson, students will be able to -

- **Nature and Trends of Party System**
- **Understand the Pressure Groups and Interest Groups**
- **Know the Contemporary Challenges to National Integrations**

4.1 PARTY SYSTEM: NATURE AND TRENDS

Meaning and Types of Political Parties

Political parties are voluntary associations or organised groups of individuals who share the same political views and who try to gain political power through constitutional means and who desire to work for promoting the national interest. There are four types of political parties in the modern democratic states, viz., (i) reactionary parties which cling to the old socio-economic and political institutions; (ii conservative parties which believe in the status-quo; (iii) liberal parties which aim at reforming the existing institutions; and (iv) radical parties which aim at establishing a new order by overthrowing the existing institutions. In their classification of political parties on the basis of ideologies, the political scientists have placed the radical parties on the left and the liberal parties in the centre and reactionary and conservative parties on the right. In other words, they are described as the leftist parties, centrist parties and the rightist parties. In India, the CPI and CPM are the examples of leftist parties, the Congress of centrist parties and the BJP is an example of rightist parties.

There are three kinds of party systems in the world, viz., (i) one party system in which only one ruling party exists and no Opposition is permitted, as for example, in the former communist countries like the USSR and other East European countries; (ii) two-party system in which two major parties exists, as for example, in USA and Britain ; and (iii) multi-party

system in which there are a number of political parties leading to the formation of coalition governments, as for example, in France, Switzerland and Italy.

PARTY SYSTEM IN INDIA: NATURE AND TRENDS

The Indian party system has the following Characteristic features:

Multi-Party System

The continental size of the country, the diversified character of Indian society, the adoption of universal adult franchise, the peculiar type of political process, and other factors have given rise to a large number of political parties. In fact, India has the largest number of political parties in the world. On the eve of seventeenth Lok Sabha general elections (2019), there were 7 national parties, 52 state parties and 2354 registered unrecognised parties in the country. Further, India has all categories of parties- left parties, centrist parties, right parties, communal parties, non-communal parties and so on. Consequently, the hung Parliaments, hung assemblies and coalition governments have become a common phenomena.

One-Dominant Party System

In spite of the multiparty system, the political scene in India was dominated for a long period by the Congress. Hence, Rajni Kothari, an eminent political analyst, preferred to call the Indian party system as 'one party dominance system' or the 'Congress system'3. The dominant position enjoyed by the Congress has been declining since 1967 with the rise of regional parties and other national parties like Janata (1977), Janata Dal (1989) and the BJP (1991) leading to the development of a competitive multi-party system

Lack of Clear Ideology

Except the BJP and the two communist parties (CPI and CPM), all other parties do not have a clear-cut ideology. They (i.e., all other parties) are ideologically closer to each other. They have a close resemblance in their policies and programmes. Almost every party advocates democracy, secularism, socialism and Gandhism. More than this, every party, including the so-called ideological parties, is guided by only one consideration -power capture. Thus, politics has become issue-based rather than the ideology and pragmatism has replaced the commitment to the principles

Personality Cult

Quite often, the parties are organised around an eminent leader who becomes more important than the party and its ideology. Parties are known by their leaders rather than by their manifesto. It is a fact that the popularity of the Congress was mainly due to the leadership of Nehru, Indira Gandhi and Rajiv Gandhi. Similarly, the AIADMK in Tamil Nadu and TDP in Andhra Pradesh got identified with MG Ramachandran and NT Rama Rao respectively. Interestingly, several parties bear the name of their leader like Biju Janata Dal, Lok Dal (A), Congress (I) and so on. Hence, it is said that "there are political personalities rather than political parties in India".

Based on Traditional Factors

In the western countries, the political parties are formed on the basis of socio-economic and political programme, On the other hand, a large number of parties in India are formed on the basis of religion, caste, language, culture, race and so on. For example, Shiv Sena, Muslim League, Hindu Maha Sabha, Akali Dal, Muslim Majlis, Bahujan Samaj Party, Republican Party of India, Gorkha League and so on. These parties work for the promotion of communal and sectional interests and thereby undermine the general public interest.

Emergence of Regional Parties

Another significant feature of the Indian party system is the emergence of a large number of regional parties and their grow. ing role. They have become the ruling par. ties in various states like BJD in Orissa, DMK or AIADMK in Tamil Nadu, Akali Dal in Punjab, AGP in Assam, National Conference in JEK, JD(U) in Bihar and so on. In the beginning, they were confined to the regional politics only. But, of late, they have come to play a significant role in the national politics due to coalition govern. ments at the Centre. In the 1984 elections, the TDP emerged as the largest opposition party in the Lok Sabha.

Factions and Defections

Factionalism, defections, splits, mergers, frag. mentation, polarisation and so on have been an important aspect of the functioning of political parties in India. Lust for power and material considerations have made the politicians to leave their party and join another party or start a new party. The practice of defections gained greater currency after the fourth general

elections (1967). This phenomenon caused political instability both at the Centre and in the states and led to disintegration of the parties. Thus, there are two Janata Dals, two TDPs, two DMKs, two Communist Parties, two Congress, three Akali Dals, three Muslim Leagues and so on.

Lack of Effective Opposition

An effective Opposition is very essential for the successful operation of the parliamentary democracy prevalent in India. It checks the autocratic tendencies of the ruling party and provides an alternative government. However, in the last 50 years, an effective, strons, organised and viable national Opposition could never emerge except in flashes. The Opposition parties have no unity and very with respect to the ruling party. They have ailed to play a constructive role in the func toning of the body politic and in the process of nation building.

RECOGNITION OF NATIONAL AND STATE PARTIES

The Election Commission registers political parties for the purpose of elections and grants them recognition as national or state parties on the basis of their poll performance. The other parties are simply declared as registered unrecognised parties.

The recognition granted by the Commission to the parties determines their right to certain privileges like allocation of the party symbols, provision of time for political broadcasts on the state-owned television and radio stations and access to electoral rolls.

Further, the recognized parties need only one proposer for filing the nomination. Also, these parties are allowed to have forty "star campaigners" during the time of elections and the registered-unrecognized parties are allowed to have twenty "star campaigners". The travel expenses of these star campaigners are not included in the election expenditure of the candidates of their parties. Every national party is allotted a symbol exclusively reserved for its use throughout the country. Similarly, every state party is allotted a symbol exclusively reserved for its use in the state or states in which it is so recognised. A registered-unrecognised party, on the other hand, can select a symbol from a list of free symbols. In other words, the Commission specifies certain symbols as 'reserved symbols' which are meant for the candidates set up by the recognised parties and others as 'free symbols' which are meant for other candidates.

Conditions for Recognition as a National Party

At present (2019), a party is recognised as a national party if any of the following conditions is fulfilled:

1. If it secures six per cent of valid votes polled in any four or more states at a general election to the Lok Sabha or to the legislative assembly; and, in addition, it wins four seats in the Lok Sabha from any state or states; or

2. If it wins two per cent of seats in the Lok Sabha at a general election; and these candidates are elected from three states; or

3. If it is recognised as a state party in four states.

Conditions for Recognition as a State Party

At present (2019), a party is recognised as a state party in a state if any of the following conditions is fulfilled

1. If it secures six per cent of the valid votes polled in the state at a general election to the legislative assembly of the state concerned; and, in addition, it wins 2 seats in the assembly of the state concerned; or

2. If it secures six per cent of the valid votes polled in the state at a general election to the Lok Sabha from the state concerned; and, in addition, it wins 1 seat in the Lok Sabha from the state concerned; or

3. If it wins three per cent of seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more; or

4. If it wins 1 seat in the Lok Sabha for every 25 seats or any fraction thereof allotted to the state at a general election to the Lok Sabha from the state concerned; or

5. If it secures eight per cent of the total valid votes polled in the state at a General Election to the Lok Sabha from the state or to the legislative assembly of the state. This condition was added in 2011.

The number of recognised parties keeps on changing on the basis of their performance in the general elections. On the eve of the seventeenth Lok Saba general elections (2019), there were 7 national parties, 52 state parties and 2354 registered-unrecognised parties in the country. The national parties and state parties are also known as all-India parties and regional parties respectively.

4.2 PRESSURE GROUP/INTEREST GROUPS

Meaning and Techniques

The term 'pressure group' originated in the USA. A pressure group is a group of people who are organised actively for promoting and defending their common interest. It is so called as it attempts to bring a change in the public policy by exerting pressure on the government. It acts as a liaison between the government and its members.

The pressure groups are also called interest groups or vested groups. They are different from the political parties in that they neither contest elections hor try to capture political power. They are concerned with specific programmes and issues and their activities are confined to the protection and promotion of the interests of their members by influencing the government.

The pressure groups influence the policy-making and policy-implementation in the government through legal and legitimate methods like lobbying, correspondence, pub-licity, propagandising, petitioning, public debating maintaining contacts with their legislators and so forth. However, sometimes they resort to illegitimate and illegal methods like strikes, violent activities and corruption which damages public interest and administrative integrity.

According to Odegard, pressure groups resort to three different techniques in securing their purposes. First, they can try to place in public office persons who are favourably disposed towards the interests they seeks to promote. This technique may be labelled elec Pioneering.

Second, they can try to persuade public officers, whether they are initially favourably disposed toward them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests. This technique may be labelled lobbying. Third, they can try to influence public opinion and thereby gain an indirect influence over government, since the government in a democracy is substantially affected by public opinion. This technique may be labelled propagandizing.

PRESSURE GROUPS IN INDIA

A large number of pressure groups exist in India. But, they are not developed to the same extent as in the US or the western countries like Britain, France, Germany and so on. The pressure groups in India can be broadly classified into the following categories:

1. Business Groups

The business groups include a large number of industrial and commercial bodies. They are the most sophisticated, the most powerful and the largest of all pressure groups in India They include:

(i) Federation of Indian Chamber of Commerce and Industry (FICCI); major constituents are the Indian Merchants Chamber of Bombay, Indian Merchants Chamber of Calcutta and South Indian Chamber of Commerce of Madras. It broadly represents major industrial and trading interests.

(ii) Associated Chamber of Commerce and Industry of India (ASSOCHAM); major constituents are the Bengal Chamber of Commerce of Calcutta and Central Commercial Organisation of Delhi. ASSOCHAM represents foreign British capital.

(iii) Federation of All India Foodgrain Dealers Association (FAIFDA). FAIFDA is the sole representative of the grain dealers.

(iv) All-India Manufacturers Organisation (AIMO). AIMO raises the concerns of the medium-sized industry.

2. Trade Unions

The trade unions voice the demands of the industrial workers. They are also known as labour groups. A peculiar feature of trade unions in India is that they are associated either directly or indirectly with different political parties. They include:

(i) All-India Trade Union Congress (AITUC)-affiliated to CPI

(ii) Indian National Trade Union Congress (INTUC)-affiliated to the Congress

(iii) Hind Mazdoor Sabha (HMS) -affiliated to the Socialists

(iv) Centre of Indian Trade Unions (CITU) -affiliated to the PM

(v) Bharatiya Mazdoor Sangh (BMS)-affiliated to the BJP

First Trade Union in India- All India Trade Union Congress (AITUC) was founded in 1920 with Lala Lajpat Rai as its first presi-dent. Upto 1945, Congressmen, Socialists and Communists worked in the AITUC which was the central trade union organisation of workers of India. Subsequently, the trade union movement got split on political lines.

3. Agrarian Groups

The agrarian groups represent the farmers and the agricultural labour class. They include:

(i) Bhartiya Kisan Union (in the wheat belt of North India)

(ii) All India Kisan Sabha (the oldest and the largest agrarian group)

(iii) Revolutionary Peasants Convention (organised by the CPM in 1967 which gave birth to the Naxalhari Movement)

(iv) Bhartiya Kisan Sangh (Gujarat)

(v) R.V. Sangham (Tamil Nadu)

(vi) Shetkhari Sanghatana (Maharashtra)

(vii) Hind Kisan Panchayat (controlled by the Socialists)

(viii) All-India Kisan Sammelan

(ix) United Kisan Sabha

4. Professional Associations

These are associations that raise the concerns and demands of doctors, lawyers, journalists and teachers. Despite various restrictions, these associations pressurise the government by various methods including agitations for the improvement of their service conditions.

They include:

(i) Indian Medical Association (IMA)

(ii) Bar Council of India (BCI)

(iii) Indian Federation of Working Journalists (IFWJ)

(iv) All India Federation of University and

(v) College Teachers (AIFUCT)

5. Student Organisations

Various unions have been formed to represent the student community. However, these unions, like the trade unions, are also affiliated to various political parties.

These are:

(i) Akhil Bharatiya Vidvarthi Parishad (ABVP) (affiliated to BJP)

(ii) All India Students Federation (AISE) (affiliated to CPI)

(iii) National Students Union of India (NSUI) (affiliated to Congress)

(iv) Student Federation of India (SFI)

6. Religious Organisations

The organisations based on religion have come to play an important role in Indian politics. They represent the narrow communal interest. They include:

G) Rashtriya Swayam Sevak Sangh (RSS)

(ii) Vishwa Hindu Parishad (VHP)

(iii) Jamaat-e-Islami

(iv) Ittehad-ul-Mussalmeen

(v) Anglo-Indian Association

(vi) Associations of the Roman Catholics

(vii) All-India Conference of Indian Christians

(viii) Parsi Central Association

(ix) Shiromani Akali Dal

"The Shiromani Akali Dal should be regarded as more of a religious pressure group rather than a political party in view of the fact that it has been concerned more with the mission of saving the sikh community from being absorbed into the ocean of hindu society than with fighting for the cause of a sikh homeland"

7. Caste Groups

Like religion, caste has been an important factor in Indian politics. The competitive politics in many states of the Indian Union is in fact the politics of caste rivalries: Brahmin versus Non-Brahmin in Tamil Nadu and Maharashtra, Rajput versus Jat in Rajasthan, Kamma versus Reddy in Andhra, Ahir versus Jat in Haryana, Baniya Brahmin versus Patidar in Gujarat. Kayastha versus Rajput in Bihar, Nair versus Ezhava in Kerala and Lingayat versus Okkaliga in Karnataka'. Some of the caste-based organisations are:

(i) Nadar Caste Association in Tamil Nadu

(ii) Marwari Association

(iii) Harijan Sevak Sangh

(iv) Kshatriya Maha Sabha in Gujarat

(v) Vanniyakul Kshatriya Sangam

(vi) Kayastha Sabha

8. Tribal Organisations

The tribal organisations are active in MP, Chattisgarh, Bihar, Jharkhand, West Bengal and the North Eastern States of Assam, Manipur, Nagaland and so on. Their demands range from reforms to that of secession from India and some of them are involved in insurgency activities. The tribal organisa-tions include:

(i) National Socialist Council of Nagaland (NSCN)

(ii) Tribal National Volunteers (TNU) in Tripura

(iii) People's Liberation Army in Manipur

(iv) All-India Jharkhand

(v) Tribal Sangh of Assam

(vi) United Mizo Federal Organisation

9. Linguistic Groups

Language has been so important factor in Indian politics that it became the main basis for the reorganisation of states. The language along with caste, religion and tribe have been responsible for the emergence of political parties as well as pressure groups. Some of the linguistic groups are:

(i) Tamil Sangh

(ii) Anjuman Tarraki-i-Urdu

(iii) Andhra Maha Sabha

(iv) Hindi Sahitya Sammelan

(v) Nagari Pracharani Sabha

(vi) Dakshina Bharat Hindi Prachar Sabha

10. Ideology Based Groups

In more recent times, the pressure groups are formed to pursue a particular ideology, i.e., a cause, a principle or a programme. These groups include:

(i) Environmental protection groups like Narmada Bachao Andolan, and Chipko Movement

(ii) Democratic rights organisations

(iii) Civil liberties associations

(iv) Gandhi Peace Foundation

(v) Woman rights organisations

11. Anomic Groups

Almond and Powell observed: "By anomic pressure groups we mean more or less a spontaneous breakthrough into the political system from the society such as riots, demonstrations, assassinations and the like.

4.3 CONTEMPORARY CHALLENGES TO NATIONAL INTEGRATION

India is a land of widespread diversities in terms of religion, language, caste, tribe, race, region and so on. Hence, the achievement of national integration becomes very essential for the all-around development and prosperity of the country.

MEANING OF NATIONAL INTEGRATION

Definitions and statements on national integration:

"National integration implies avoidance of divisive movements that would balkanise the nation and presence of attitudes throughout the society that give preference to national and public interest as distinct from parochial interests" Myron Weiner.

"National integration is a socio-psychological and educational process through which a feeling of unity, solidarity and cohesion develops in the hearts of the people and a sense of common citizenship or feeling of loyalty to the nation is fostered among them" HA Gani.

"National integration is not a house which could be built by mortar and bricks.It is not an industrial plan too which could be discussed and implemented by experts. Integration, on the contrary, is a thought which must go into the heads of the people. It is the consciousness which must awaken the people at large" Dr. S. Radhakrishna.

"National integrations means, and ought to mean, cohesion not fusion, unity but not uniformity, reconciliation but not merger, agglomeration but not assimilation of the discrete segments of the people constituting a political community or state" Rasheeduddin Khan.

To sum-up, the concept of national integration involves political, economic, social, cultural and psychological dimensions and the inter-relations between them.

OBSTACLES TO NATIONAL INTEGRATION

Among the major obstacles to national inte gration include:

1. Regionalism

Regionalism refers to sub-nationalism and sub-territorial loyalty. It implies the love for a particular region or state in preference to the country as a whole. There is also sub-regionalism, that is, love for a particular region in preference to the state of which the region forms a part. Regionalism is "a subsidiary process of political integration in India. It is a manifestation of those residual elements which do not find expression in the national polity and national culture, and being excluded from the centrality of the new polity, express themselves in political discontent and political exclusionism". Regionalism is a country-wide phenomenon which manifests itself in the following six forms:

(i) Demand of the people of certain states for secession from the Indian Union (like Khalistan, Dravid Nad, Mizos, Nagas and so on).

(ii) Demand of the people of certain areas for separate statehood like Telengana, Bodoland, Uttarkhand, Vidharbha, Gorkhaland and so on).

(iii) Demand of people of certain Union Territories for full-fledged statehood (like Manipur, Tripura, Puducherry, Delhi, Goa, Daman and Diu and so on).

(iv) Inter-state boundary disputes (like Chandigarh and Belgaum) and river-water disputes (like Cauvery, Krishna, Ravi-Beas and so on).

(v) Formation of organisations with regional motives which advocates a militant approach in pursuing its policies and goals like Shiv Sena, Tamil Sena, Hindi Sena, Sardar Sena, Lachit Sena and soon).

(vi) 'Sons of the soil theory' which advocates preference to local people in government jobs, private jobs, permits and so on. Their slogan will be Assam for Assamese, Maharashtra for Maharashtrians and so on

2. Communalism

Communalism means love for one's religious community in preference to the nation and a tendency to promote the communal interest at the cost of the interest of other religious communities. It has its roots in the British rule where the 1909, 1919 and 1935 Acts had introduced communal representation for the Muslims, Sikhs and others. The communalism got accentuated with the politicisation of religion. Its various manifestations are:

(i) Formation of political parties based on religion like Akali Dal, Muslim League, Ram Rajya Parishad, Hindu Mahasabha, Shiv Sena and so on).

(ii) Emergence of pressure groups (non-political entities) based on religion dike

RSS, Vishwa Hindu Parishad, Jamaat-e-Islami, Anglo-Indian Christians Association and so on),

(iii) Communal riots (between Hindus and Muslims, Hindus and Sikhs, Hindus and

Christians and so on - Benaras, Lucknow, Mathura, Hyderabad, Allahabad, Aligarh, Amritsar, Moradabad and some other places are affecteady communal violence). (iv) Dispute over religious structures like temples, mosques and others (The dispute over Ram Janma Bhoomi in Avodhya where the kar sevaks had demolished a disputed structure on December 6, 1992).

The reasons for the persistence of com. munalism include religious orthodoxy of muslims, role of Pakistan, hindu chauvinism, government's inertia, role of political par. ties and other groups, electoral compulsions, communal media, socio-economic factors and so on.

3. Casteism

Casteism implies love for one's own caste-group in preference to the general national interest. It is mainly an outcome of the politi-cisation of caste. Its various manifestations include:

(i) Formation of political parties on the basis of caste like Justice Party in Madras, DMK, Kerala Congress, Republican Party, Bahujan Samaj Party and so on).

(ii) Emergence of pressure groups (non-political entities) based on caste (like Nadar Association, Harijan Sevak Sangh, Kshatriya Mahasabha and so on).

(iii) Allotment of party tickets during elections and the formation of council of ministers in the states on caste lines.

(iv) Caste conflicts between higher and lower castes or between dominant castes in various states like Bihar, Uttar Pradesh, Madhya Pradesh and so on.

(v) Violent disputes and agitations over the reservation policy. B.K. Nehru observed: “The communal electorates (of the British days) in a vestigal form still remain in the shape of reservations for the Scheduled Castes and Scheduled Tribes. They serve to emphasise caste origin and make people conscious of the caste in which hey were born. This is not conducive to national integration"

At the state level, the politics is basically a fight between the major caste groups like Kamma versus Reddy in Andhra Pradesh. Lingayat versus Vokaligga in Karnataka, Nayar versus Ezhava in Kerala, Bania versus Patidar in Gujarat, Bhumiar versus Rajput in Bihar, Jat versus Ahir in Haryana, Jat versus Rajput in Uttar Pradesh, Kalita versus Ahom in Assam and so on.

4. Linguism

Linguism means love for one's language and hatred towards other language-speaking people. The phenomena of linguism, like that of regionalism, communalism or casteism, is also a consequence of political process. It has two dimensions: (a) the reorganisation of states on the basis of language; and (b) the determination of the official language of the Union.

The creation of the first linguistic state of Andhra out of the then Madras state in 1953 led to the countrywide demand for the reorganisation of states on the basis of language. Consequently, the states were reor-ganised on a large-scale in 1956 on the basis of the recommendations made by the States Reorganisation Commission (1953-1955).

Even after this, the political map of India underwent a continuous change due to the pressure of popular agitations and the political conditions, which resulted in the bifurcation of existing states like Bombay, Punjab, Assam, and so on. By the end of 2000, the number of states and union territories had reached 28 and 7 from that of 14 and 6 in 1956 respectively.

The enactment of the Official LanguageAct (1963) making Hindi as the Official Language of the Union led to the rise of anti-Hindi agitation in South India and West Bengal. Then, the Central government assured that English would continue as an 'associate' official language so long as the non-Hindi speaking states desire it. Moreover, the three-language formula (English, Hindi and a regional language) for school svstem is still not being implemented in Tamil Nadu. Consequently, Hindi could not emerge as the lingua franca of the composite culture of India as desired by the framers of the Constitution. The problem of linguism got accentuated with the rise of some regional parties in recent times like the TDP, AGP, Shiv Sena and so on.

NATIONAL INTEGRATION COUNCIL

The National Integration Council (NIC) was constituted in 1961, following a decision taken at a national conference on 'unity in diver-sity', convened by the Central government, at New Delhi. It consisted of the prime minister as chairman, central home minister, chief ministers of states, seven leaders of political parties, the chairman of the UGC, two educationists, the commissioner for SCs and STs and seven other persons nominated by the prime minister. The council was directed to examine the problem of national integration in all its aspects and make necessary recommendations to deal with it. The council made various recommendations for national integration. However, these recommendations remained only on paper and no effort was made either by the Centre or by the states to implement them.

In 1968 the Central government revived the National Integration Council. Its size was increased from 39 to 55 members. The representatives of industry, business and trade unions were also included in it. The council met at Srinagar and adopted a resolution condemning all tendencies that struck at the root of national solidarity. It appealed to the political parties,

organisations and the press to mobilise the constructive forces of society in the cause of national unity and solidarity.

It also set up three committes to report on regionalism, communalism and linguism respectively. However, nothing tangible was achieved. In 1980, the Central government again revived the National Integration Council which had become defunct. Its membership was made more broad-based. It had three items on the agenda for discussion viz., the problem of communal harmony, unrest in the north-eastern region and need for a new education system. The council set up a standing committee to keep a constant watch on the activities of communal and other divisive forces posing a threat to the national unity.

In 1986, the NIC was reconstituted and its membership was further increased. It recognised terrorism in Punjab as an attack on the unity, integrity and secular ideals of the country. Accordingly, it passed a resolution to fight terrorism in Punjab. The council also set up a 21-member committee to function on a continuing basis. The committee was asked to formulate both short-term as well as long-term proposals for maintaining communal harmony and preserving national integrity.

In 1990, the National Front Government headed by V.P. Singh reconstituted the National Integration Council. Its strength was increased to 101. It included prime minister as chairman, some Central ministers, state chief ministers, leaders of national and regional parties, representatives of women, trade and industry, academicians, journalists and public figures. It had various items on the agenda for discussion, viz., Punjab problem, Kashmir problem, violence by secessionists, communal harmony and Ram Janmabhomi-Babri Masjid problem at Ayodhya. But, there was no concrete result.

In 2005, the United Progressive Alliance (UPA) Government reconstituted the National Integration Council under the chairmanship of the Prime Minister, Manmohan Singh. The 103-member NIC was constituted after a gap of 12 years having held its meeting in 1992. Besides some central ministers, state and UT chief ministers and leaders of national and regional parties, the NIC included chairpersons of National Commissions, eminent public figures and representatives from business, media, labour and women. The NIC was to function as a forum for effective initiative and interaction on issues of national concern, review issues relating to national integration and make recommendations.

The 14th meeting of the NIC was held in 2008 in the backdrop of communal violence in various states like Orissa, Karnataka, Maharashtra, Jammu and Kashmir and Assam and so on. Promotion of education among minorities, scheduled castes and scheduled tribes; elements contributing to national integration; removal of regional imbalances, caste and identity divisions; prevention of extremism; promotion of communal harmony and security among minori-ties; and equitable development were some of the important items on the agenda of the meeting.

In April 2010, the United Progressive Alliance (UPA) Government again reconstituted the National Integration Council (NIC) under the chairmanship of the Prime Minister, Manmohan Singh. The NIC has 147 members, including Union Ministers, Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Chief Ministers of all states and union territories with Legislatures. It also includes leaders of national and regional political parties, chairpersons of national commissions, eminent journalists, public figures, and representatives of business and women's organisations. It is chiefly aimed at suggesting means and ways to combat the menace of communalism, casteism and regionalism.

In October 2010, the Government also constituted a Standing Committee of the NIC. It consists of Union Home Minister as Chairman, four Union Ministers, nine Chief Ministers of various states and five co-opted members from NIC. It would finalise the agenda items for NIC meetings.The 15th meeting of the NIC was held in September, 2011. The agenda for the meeting included measures to curb communalism and communal violence; approach to the Communal Violence Bill; measures to promote communal harmony; measures to eliminate discrimination, especially against minorities and scheduled tribes; how the state and the police should handle civil dis. turbances; and how to curb radicalisation of youth in the name of religion and caste.

The 16th meeting of the NIC was held on 23-09-2013. A Resolution was passed in the meeting to condemn violence, take all measures to strengthen harmonious relationship between all communities, to resolve differences and disputes among the people within the framework of law, to condemn atrocities on Scheduled Castes and Scheduled Tribes, to condemn sexual abuse and to ensure that all women enjoy the fruits of freedom to pursue their social and economic development with equal opportunities, and to safeguard their right of movement in the public space at any time of the day or night.

NATIONAL FOUNDATION FOR COMMUNAL HARMONY

The National Foundation for Communal Harmony (NFCH) was set up in 1992. It is an autonomous body under the administrative control of the Union Home Ministry. It promotes communal harmony, fraternity and national integration. The vision and mission of the NFCH are as follows:

Vision: India free from communal and all other forms of violence where all citizens especially children and youth live together in peace and harmony.

Mission: Promoting communal harmony, strengthening national integration and fostering unity in diversity through collaborative social action, awareness programs, reaching out to the victims of violence especially children, encouraging interfaith dialogue for India's shared security, peace and prosperity.

The activities undertaken by the NFCH are mentioned below:

1. To provide financial assistance to the child victims of societal violence for their care, education and training, aimed at their effective rehabilitation
2. To promote communal harmony and national integration by organising variety of activities either independently or in association with educational institu-tions, NGOs & other organisations
3. To conduct studies and grant scholarships to institutions / scholars for conducting studies
4. To confer awards for outstanding contribution to communal harmony and national integration
5. To involve Central / state governments / UT Administrations, industrial / commercial organisations, NGOs and others in promoting the objectives of the Foundation
6. To provide information services, publish monographs and books, etc. on the subject

CHECK YOUR PROGRESS

Self Assessment Exercises

Q 1. Explain the nature and trends of the Indian party system.

Q 2. Write a critical note on pressure groups.

Q 3. Discuss the various challenges to national integration.

Suggested Readings

Recent Editions of :

1. G. Austin, The Indian Constitution: Corner Stone of a Nation, Oxford, Oxford University Press.

2. J. P. Bansal, Supreme Introduction to the Constitution of India, New Delhi, Prentice Hall.

3. U. Baxi, The Indian Supreme Court and Politics, Delhi, Eastern Book Company,.

4. B. Dasgupta and W. H. Morris-Jones, Patterns and Trends in Indian Politics, New Delhi,

Allied Publishers,.

5. S. Kaushik (ed.,), Indian Government and Politics, Delhi University, Directorate of Hindi Implementation.

6. S. Kaviraj, Politics in India, Delhi, Oxford University Press.

7. W. H. Morris Jones, Government and Politics in India, Delhi, BI Publications.

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